

# Queens

## BAR BULLETIN

Queens County Bar Association | qcba.org | 90-35 148th Street, Jamaica, NY 11435 | 718-291-4500

Dec. 2021 | Volume 89, No. 3



## President's Message

By Frank Bruno, Jr.

Thanksgiving just took place. We approach the December holiday season and a New Year.

I have often used the December month as a time to reflect on the past year and plan for the upcoming year. We are at a crossroads of gratitude and reflection and hope. Maybe there should only be two points at a crossroads, but I think that I am entitled to some latitude with the year that we all had. Gratitude is the Thanksgiving theme, where we are called to be thankful for all of the givens—family, friends, health, and peace. We should also be thankful for the inconvenient. The injury. The sore back. The broken boiler. The leaking roof. Even the complaining client—all of it.

The inconvenient helps us pace ourselves; the injury tells us to train, stretch, and improve our physical condition; the sore back teaches us to move more slowly, to lift with our knees; the broken boiler advises us to set up a comprehensive maintenance plan; the leaking roof tells us to save up for a rainy day; and the complaining client gives us the opportunity to learn from any errors—to set up a better system, to improve honest communication

with others and with ourselves.

Reflection is taking stock of the year personally and professionally. I have to consider my own dealing with my family and friends as well as my dealings with my staff, co-workers, the Court, clients and the Bar Association. The QCBA falls under both categories—it is a professional obligation and a personal commitment.

Hope speaks to the New Year: new beginnings, new expectations, and new life.

*"Hope is the thing with feathers that perches in the soul and sings the tune without the words and never stops at all."*

—Emily Dickinson

We all have hope for 2022—hope to seek better health, cultivate stronger relationships, and foster deeper connections with each other.

Despite this challenging year, the QCBA's top priority was to connect you with one another and with the courts, and to provide you the tools and resources you need for the success and fulfillment in your law practice. This was the year that further refined the virtual

practice of law. Starting in March 2020 we transitioned our educational, networking, and special events to virtual platforms; we continued to support the work of our Committees and relevant programming by our Sections and continuing through today. This year we extended our license to conduct CLE's remotely through June 2022. We shall hold virtual programs for the foreseeable future and transition to in person CLE programming as safely permitted. We expect to move to a hybrid system at some point and keep virtual committee meetings to the discretion of the Committees themselves. I have participated in dozens of virtual committee meetings and real work can take place. I was at one meeting where the Chair asked if the members wanted the next meeting to be in person. Twenty of 22 people declined an in-person meeting. Health concern is still a priority for some and the convenience of virtual committee meetings is hard to beat.

Recently, on behalf of the Officers, Board and the QCBA, I wrote an open letter to Chief Judge DiFiore

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## The Docket

Being the official notice of the meetings and programs listed below. Due to unforeseen events, please note that dates listed in this schedule are subject to change. More information and changes will be made available to members via written notice and brochures. Questions? Please call 718-291-4500.

## CLE Seminar & Event listings

### DECEMBER 2021

Wednesday, December 8 CLE: What Judges Expect You to Know About Distribution of Retirement  
Meeting ID: 817 2134 3753, Passcode: 734189

Friday, December 17 Meditation Fridays with Diana  
The Happy Lawyer - 1:00 pm  
Meeting ID: 817 2134 3753, Passcode: 734189

December 24-December 31 Office Closed

### JANUARY 2022

Wednesday, January 5 CLE: Real Property Series 2022 - Pt 1 - 1:00 pm

Monday, January 17 Martin Luther King, Jr. Day - Office Closed

Wednesday, January 19 CLE: Real Property Series 2022 - Pt 2 - 1:00 pm

### FEBRUARY 2022

Wednesday, February 2 CLE: Real Property Series 2022 - Pt 3 - 1:00 pm

Friday, February 11 Lincoln's Birthday Observed - Office Closed

Wednesday, February 16 CLE: Real Property Series 2022 - Pt 4 - 1:00 pm

Wednesday, February 16 CLE: Coop/Condo Update

Monday, February 21 Presidents' Day - Office Closed

### MARCH 2022

Wednesday, March 2 CLE: Real Property Series 2022 - Pt 5 - 1:00 pm

Tuesday, March 29 Judiciary Night, Past Presidents & Golden Jubilarian Night

### APRIL 2022

Tuesday, April 5 CLE: Equitable Distribution Update

Tuesday, April 12 CLE: Equitable Distribution Update

Friday, April 15 Good Friday - Office Closed

### MAY 2022

Thursday, May 5 Annual Dinner & Installation of Officers - Terrace on the Park

Monday, May 30 Memorial Day - Office Closed

### JUNE 2022

Monday, June 20 Juneteenth - Office Closed

### JULY 2022

Monday, July 4 Independence Day - Office Closed

### UPCOMING SEMINARS

Ethics Update  
LGBTQ+ Committee CLE

## New Members

Melissa B. DeBerry  
Tim Gentles  
Fay Parris

Kenyon Leggett  
Gabrielle Pullo



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### Queens County Bar Association

#### Annual Holiday Dinner Committee:

George E. Nicholas, *Chair* • Jay M. Abrahams, *Vice-Chair* • Michele Schuster, *Secretary*  
Kristen J. Dubowski Barba • Diana C. Gianturco • Delecia Hall • Maureen McHugh Heitner  
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To Reserve for the 2021 Holiday Party with the QUEENS COUNTY BAR ASSOCIATION  
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# President's Message:

## CONTINUED FROM PAGE 1

seeking the use of a vaccine mandate or negative PCR test before entry into the Courthouse. The Officers thought if we could get a vaccinated or negative covid test jury pool that we could have more people in the building at once so that additional in person trials could take place. In reply, I received a telephone call from Hon. Lawrence K. Marks, Chief Administrative Judge of the Courts. On behalf of the Chief Judge, the Chief Administrative Judge oversees the day-to-day operation of the Statewide court system. He advised me that nothing in the call was confidential and that I could disseminate the content of the conversation to the membership. Here is some of the conversation. Judge Marks advised that the vaccine mandate was considered early on and that there are serious constitutional concerns. Pro se litigants have a constitutional right to access; we cannot turn them away and there were also concerns for jury pools – if some communities, especially communities of color, have lower vaccination rates that jury pools might be skewed. Judge Marks mentioned that at private venues such as athletic events and Broadway Theatre implementation was easier because there were no constitutional implications. Judge Marks was pleasant, measured and an easy person to speak with, I could feel his concern for the litigants and for the attorneys. I thanked him for the call and advised that our membership is diverse and that we are hearing overall that attorneys are very pleased with virtual conferences and would like to see that continue with more in person trials. I advised that per diem, personal injury and L&T attorneys have been hardest hit. We were speaking exclusively about the Civil side of Supreme.

From memory but this is pretty much a straightforward quote. Judge Marks “We agree completely that we need to do more trials. Ramp up more, when we can, as soon as we can.”

He was quite gracious – somewhere in the call, I advised that I have been on trial in person in Queens Supreme for six full days starting August 2021 and shared my experience. I said at first it was hard to focus with the mask and sitting for that length of time – that my body was not used to it. He said most people cannot focus as well since the pandemic and that he personally doesn't think he can focus as much either since the pandemic. I retorted, jokingly, that since he is in charge of a three billion dollar budget that I hope he can focus a little better than me. He laughed. He was a genuinely nice guy on the phone. I am certain that he was trying to make me feel ok with my lack of focus and I assure you that he was focused, pleasant and sharp. Again, I thanked him and thanked the efforts of the Court system generally and appreciated the telephone call.

We have been graced with communications from the highest places and we shall continue to push for the needs of our membership. The bottleneck to full resumption is the safety concerns of course. As I write this, we have just learned of the Omicron variant and who knows what may be coming down the pike. There is measured hope as we wait for Covid to burn itself out.

This fall we have been conducting zoom committee meetings, CLE's and Board meetings on a regular basis and it was not unusual for 7 or 8 events to occur each week. A tremendous shout of gratitude is due our Executive Director Jonathan Riegel and staff members Janice Ruiz and Sasha Khan who have kept us going and thriving. November was an exceptionally productive

month for programming. Additionally, November 8, 2021 was the Grand Reopening of the Bar Building to our members. The Law Library and conference rooms are open from 9:30 AM to 4:00 PM with certain rules of engagement. Reach out for assistance.

We also have our social media platforms buzzing. We have Ashley Mangra and Briana Persaud on staff spearheading several social media postings per week across Facebook, Instagram and LinkedIn. We have a Monday Challenge written by our Lawyers Assistance Committee Chair Diana Gianturco; Talking Tuesday with Topics for discussion with additional weekly posts on various legal topics, holiday wishes, meditation tips and engaging themes.

The Supreme and Civil Court chairs Mike Abneri, Greg Newman & Hamid Siddiqui have been meeting regularly with Judges Catapano-Fox and Grays and their clerks and then reporting to the membership via email. We disseminate Court Part schedules and important information.

Last month the Appellate Court Committee program Recent Developments webinar had over 150 members registered due in no small part to the event moderator, Judge Valerie Brathwaite Nelson. We are thankful to have her as Co-Chair of the Appellate Court Committee. We now have a copy of the webinar and are considering how to best utilize that as a resource for our membership.

Our Young Lawyers Committee marked the Thanksgiving season with our Second annual “Friends-giving” virtual event. The event was sponsored by Big Apple Abstract, Property Tax Reduction Consultants, Mitra Hakimi Realty, Austin Ale House, One Station Plaza and Bourbon Street and raised nearly \$3,500 for the children at St. Mary's Children's Hospital in Bayside. We thank the sponsors and the attendees for their generous donations. I personally want to thank the Committee because they gave me a beautiful gift, a framed Queens Eagle newspaper article about my Installation.

Later this month we have the re-introduction of the in person annual Holiday Party. We have co-hosts galore for the party – the Assigned Counsel Association of Queens Family Court; Brandeis Association; Columbian Lawyers Association of Queens; Hellenic Lawyers Association; Latino Lawyers Association of Queens County; Macon B. Allen Black Bar Association; Queens County Women's Bar Association; South Asian and Indo-Caribbean Bar Association of Queens and the NYS-ACA and it really is a party because we have no guest of honor, no speeches, and no awards. There will be dancing with a DJ, great food and alcoholic beverages a plenty. Please support the camaraderie of the County Bar and the Affiliate associations; attend if you are able and it fits your schedule December 16, 2021. We expect a big turnout and we thank our event sponsors: TOVA QDRO & Retirement Valuation Consultants, Our Family Wizard and Speak Easy Services. As we are trying to be as safe as possible in these unsafe times, proof of vaccination or a negative PCR test is required for admission.

I want to highlight that the Bankruptcy Committee, Criminal Court and Landlord Tenant Committees all held CLE programs free to members. We also had a free No-Fault update presented by the Civil and Supreme Court Committees. Join the Bar Association and get the perks. Members in good standing can attend many programs for just the price of dues. The Surrogates' Court Committee's David Adler put on a very

successful four-hour program with Surrogate Peter A. Kelly dispensing wisdom along with Chief Clerk Jim Lim Becker and Supervising Clerk John Candela. It was highly informative and went by in the blink of an eye. The work of the Academy of Law under the guidance of Dean of the Academy, Michael Abneri cannot be publicly acclaimed enough and a second really loud shout out to Bar staff Sasha, Janice and Jonathan for bearing the heavy weight of November's schedule.

I am also very pleased that our Mental Health Monday program was very well received and that our Meditation Friday initiative is developing a following. Besides the several highlighted programs dozens of other committees had committee meetings during the month and we thank the members for their participation and effort. It is the behind the scenes, under the hood work of the By-Laws Committee, Family Law, Grievance, Lawyers Assistance, Board of Managers, Diversity, Academy, Judicial Screening, Young Lawyers Committee, Holiday Party to mention a few that had Committee meetings and many more that help us shine.

Last month I wrote an open letter to the Bar membership about issues related to the building. The building owner QCBA Fund, Inc. is moving forward with plans. This month in his editorial column Past President and Editor of the Bar Bulletin Paul Kerson writes emphatically and poetically that we need to find a way to keep the building. I support Paul's enthusiasm and his idealized version of the practice of law and the sentiment. Keeping the building is a great thought; I just do not think it is as simple as he postulates. I am not one to shy away from public debate but I do not think there is an argument to debate. I kept his column in this issue without revision. His commentary is not the opinion of the QCBA and is solely the opinion of Mr. Kerson. It is not the opinion of the Board or of the owner of the building. The building is in disrepair and no matter how much the actual value of the brick, the mortar, the earth and the sky rights are – we need present day cash to renovate the building. The building requires an elevator, HVAC system and more. To say we need \$1,500,000.00 to renovate is conservative. Anyone that has renovated a portion of their home knows how high prices are; how jobs balloon and once you open walls that you find unexpected and unanticipated issues. The entity to appoint a fundraising committee is the owner of the building and that's why we cannot debate, especially since we are on the same side. I would like to keep the building. I would like a few other things as well - world peace, perfect health, no more stress. But I am a pragmatist and must pick and choose my idealistic endeavors.

Let us remember in our work as members of the Bar, in our work as attorneys and judges, that no matter how challenging our work becomes, that there will always be reason, discernment and reflection, and that justice will prevail. I encourage you all to use the Bar Association as a resource, and I welcome any suggestions and ideas that would help better serve the membership, frank@frankbrunolaw.com. It is my honor to serve as President of the Queens County Bar Association.

Wishing you all a Beautiful Holiday Season in this month of December. May you make time to spend with your loved ones and those that are important to you in your life. Live in the magic.

**FRANK BRUNO, JR. | PRESIDENT**



**QUEENS COUNTY BAR ASSOCIATION**

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**The Nominating Committee is accepting applications to serve on the Queens County Bar Association Board of Managers**

*Please take notice that those members who wish to be considered for nomination as Members of the Board of Managers of the Queens County Bar Association should submit written requests and resumes highlighting your activities in the Association prior to January 14, 2022.*

A virtual meeting of the Committee will take place on February 2, 2022. Said meeting is scheduled for 5:00 P.M.

*You may present the names of the persons whom you desire to have considered by the Nominating Committee for nomination to offices to be filled at the Annual Meeting. A hearing will be held as indicated above for that purpose pursuant to the by-laws.*

**Zenith T. Taylor**  
Secretary

*Please submit your requests in writing to the attention of the:*

**Nominating Committee**  
Queens County Bar Association  
90-35 148 Street  
Jamaica, N.Y. 11435

*The Annual Election of Officers and Managers will be held on March 4, 2022. The newly elected Officers and Managers will assume their duties on June 1, 2022.*

**Dated: December 9, 2021**  
Jamaica, NY

*Get involved! Can't commit to the Board as yet...join a committee! Call for more info.*



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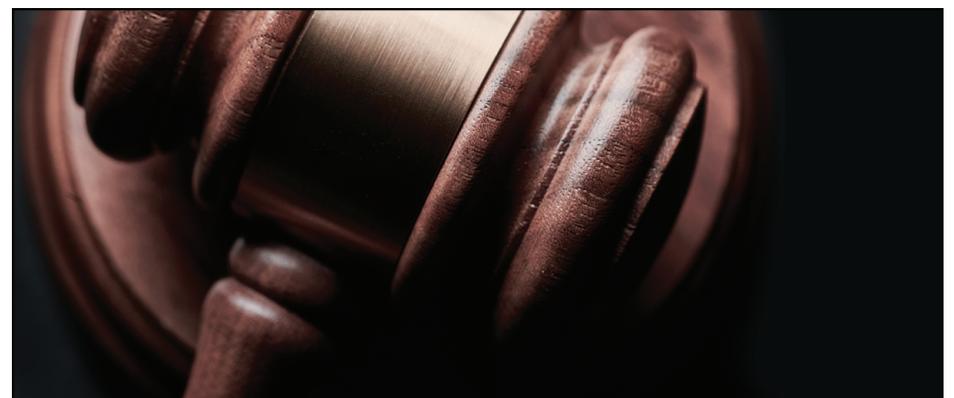
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## Editor's Note

# We Must Always Keep Our QCBA Building – the Beacon of Justice for all the World

By Paul E. Kerson

*The opinions expressed in this article reflect those of the author only and do not reflect the stated opinions or policies of the Queens County Bar Association or its Board of Managers.*

In our November issue, our esteemed President, Frank Bruno Jr. has informed us that the QCBA is running at a deficit and that our QCBA headquarters building at 90-35 148th Street, Jamaica, NY 11435 is in need of substantial repairs. The coronavirus has caused the QCBA to temporarily lose income from meetings, parties and Continuing Legal Education (CLE) programs.

The QCBA Officers and Board of Managers are considering a proposal to sell the building and operate largely virtually. Alternative proposals have been sought.

Selling the QCBA building would be a mistake of profound damage to the Queens community at large, the Queens legal community and to the entire world.

What goes on in our bar building every day? The bewildered, confused, and frightened exit the Jamaica, Queens County Supreme, Family, Civil and Surrogate's Courts with a flyer stating that you can get a lawyer to help you at the nearby QCBA building. Before coronavirus, they would walk slowly for one-half a block, one block or five blocks into our building the one with the Statue of Lady Justice with the scales of Justice right next to the large American Flag. There they were met by our front door staff, Janice Ruiz or Sasha Khan or one of their assistants. If they are poor and about to lose their home in a divorce, foreclosure, or eviction proceedings, Sasha or Janice would send them upstairs to see Mark Weliky and his staff at the Queens Volunteer Lawyers Project, Inc. (QVLP).

Mark and his staff at the QVLP have kept countless people from all over the world in their Queens County homes. What is the price tag for this?

It is priceless – beyond anything money can buy anywhere, anytime. It is Justice Itself in reducing the level of suffering in our County, the most international County in the world.

And if the confused, bewildered and frightened can afford a lawyer, Janice and Sasha and their assistants match them to lawyers from our Legal Referral Service. Janice and Sasha and their assistants pick lawyers with skills most likely to help with each individual problem – crimes, accidents, family fights over money, business failure, fights over estates, and bad divorces among people with resources.

And most important of all is our Bar Panels Committee. Pursuant to a 1966 Contract with the New York City Government the five County Bar Associ-

ations of New York City provide Public Defenders for indigent criminal Defendants pursuant to Article 18-B of the County Law.

For more than 35 years, I served as a member, Co-Chair or Chair of our Bar Panels Committee.

The late Moe Tandler was Chair before me. Moe taught us that a QCBA Bar Panels Committee Public Defender was the very highest calling of our profession. In this position, one is called upon to enforce four of the ten sections of the Bill of Rights that have to do with law in our Criminal Court, Supreme Court Criminal Term and in juvenile delinquency cases in the Family Court:

- Fourth Amendment Protection against unreasonable searches and seizures.
- Fifth Amendment Protection against self-incrimination.
- Sixth Amendment right to counsel and a jury trial.
- Eighth Amendment right to be free from excessive bail and from cruel and unusual punishment.

These rights call for a Panel of Public Defenders willing to conduct Wade, Mapp, Huntley and other pre-Trial Hearings and Jury Trials to make sure no evidence was improperly seized, no wrong Defendant was arrested, and no incriminating confessions improperly coerced are used, and no cruel and unusual punishment is imposed.

What the QCBA provides in the QCBA building is essentially a Government on top of the Government to police the way that very Government operates – all three of them – City, State and Federal. I ended my 35 years of service on the Bar Panels Committee only to become your President in 2015. The City Administrator for the Bar Panels Committee for the Second Department told me that the Queens County Article 18-B Panel was far better than the similar Panels for Brooklyn and Staten Island. This remains a multi-decades achievement of which I am very proud. It took a third of a century of usually monthly meetings in our QCBA building late into the night interviewing potential Panel members to accomplish this.

Our QCBA Bar Panels Committee has a very special philosophy. No one is permitted to become an Article 18-B lawyer without the appropriate dedication to the needs of the poor and the bewildered. Following are three examples of the unique importance of the QCBA Building to the administration of justice around the world.

1. Years ago, an airplane landed at Kennedy Airport from Moscow. During the landing, a fist fight broke out between a Father and a Mother over the custody of their infant child, age 1. The Port Authori-

ty Police brought the parents and child to the Queens County Family Court. Attorneys were assigned. I was assigned to represent the Mother. The learned Queens County Family Court Judge sent the child to live temporarily with the child's Grandmother in Brooklyn until a Hearing could be held the following week. At the initial judicial ruling, the Father became very agitated and refused to admit that the Queens County Family Court had jurisdiction over himself and his family. He threatened not to show up.

It occurred to me that a Mother and Father permitted to leave Moscow under these circumstances were most probably spies either for Russia or for the United States.

It also occurred to me that it was likely that the Father would kidnap the child from the Grandmother's house and that the Mother would never see the Father or the child again.

Thus, I wrote a Federal Express letter to the United States Secretary of State in Washington, DC informing him of my suspicions and directing him to make sure that the Father showed up at the Queens County Family Court the following week.

The next day, I received a telephone call from the Director of the Russia Desk of the United States State Department informing me that he would not confirm or deny that these parties were spies or whose spies they were. However, he personally, would make certain that all parties in the case would be present in the Queens County Family Court the following week.

At the following week's hearing, the parties were ready to submit to the jurisdictions of the Queens County Family Court thanks to the direct intervention of the Russia Desk of the U.S. State Department. A visitation schedule was set for Mother and Father separately, and the child continued in the custody of the Grandmother in Brooklyn.

2. Years ago a painfully young man, 19 years old, got off the plane from Nigeria at Kennedy Airport and was arrested by the Port Authority Police. He had a false bottom suitcase full of more than 30 pounds of cocaine. I was assigned to represent him. I met him in the holding pens of the Queens County Criminal Court. He could not speak English. He only spoke Igbo, the language of Nigeria. I spoke with the Assistant District Attorney. I told him it would be an absolute outrage for this young man to spend the rest of his life in Attica or Greenhaven because of this incident. Justice would be best served, I said, by sending him back to Nigeria on the next plane (without the cocaine).

CONTINUED ON PAGE 14



## Immigrant Visa Processing Through Consular Posts

Immigrant Consular Processing is the process of applying for an immigrant visa through a U.S. Embassy or consulate in a foreign country; meaning getting a permanent resident visa through a consulate or embassy. An individual who is outside of the U.S. and is the beneficiary of an approved immigrant petition must apply at a U.S. Department of State consulate abroad for an immigrant visa in order to be admitted into the U.S. as a permanent resident. In a Covid 19 world, consular posts have accumulated massive delays due to limited resources and reduced capacity to process interviews. There are slightly less than half a million (500,000) people waiting in line for their visa interviews to be scheduled.

Once an immigrant petition is approved, USCIS forwards the petition to the National Visa Center (NVC). The NVC notifies the petitioner and beneficiary, that the approval has been received and that visa processing steps must take place. The petitioner and beneficiary(ies) must submit immigrant visa processing fees, the immigrant visa form DS-260, and supporting civil documents in addition to Affidavit of Support documents. This is when the beneficiary and each family member immigrating with the beneficiary needs to complete the Application for Immigrant Visa and Registration, also known as Form DS-260. In addition, the petitioner of the approved petition will need to submit a Form I-864, Affidavit of Support. The Form I-864 is a legal contract between the

sponsor (who may be the same person as the petitioner) of an immigrant visa applicant and the U.S. government promising to support the beneficiary of that person is not able to support themselves and that the person or derivative persons, will not become public charges.

When the NVC has received the DS-260 and all supporting documents, the consular office will schedule an interview for the beneficiary. The consular office completes processing the beneficiary's case and determines if they are qualified to receive an immigrant visa. If the consular office grants the beneficiary an immigrant visa, the officer will then give them an Immigrant Visa packet. This packet is known as a "Visa Packet."

Once the beneficiary arrives to the U.S., they will need to give the Visa Packet to the Customs and Border Protection (CBP) officer at the port of entry. The CBP officer will inspect the beneficiary and confirm that they are admissible. If the CBP officer admits the beneficiary, they will be admitted as a permanent resident of the U.S. As a permanent resident the beneficiary will be able to enjoy the benefits of working, living, or going to school in the U.S. permanently. It should be noted that USCIS has implemented the Immigrant Fee now, which should be paid after the interview once the visa is issued and preferably before they enter the US but it can be done afterward as well. This fee which is currently \$220 needs to be paid, in

order to receive the actual lawful permanent resident card (green card).

Currently there is a delay in visa processing through consular posts and so there is a longer wait time before beneficiaries have their visa interview scheduled. Consular processing takes about 15 to 18 months for immediate relatives but due to the wait for a visa to become available, the process will likely take much longer for family preference immigrants. This attorney is hopeful that with new procedures and resources increasing that the wait times do get better. Consular processing is preferred by some applicants over adjustment of status because people can wrap up their affairs neatly before starting a life in the US. Also, the process can be a bit less prohibitive because a person can travel around while their immigrant visa is being adjudicated, but in stateside adjustment of status, the beneficiary/applicant must wait until they get work and travel authorization before they can work or leave the US. An immigrant visa applicant could still obtain a visitor visa for the period in between filing and visa grant as long as the terms of the visitor visa are not violated. Consular officers are not allowed to refuse granting a visa based on discretion, unlike adjustment of status which is discretionary. Currently the US consular post in Mumbai is handling all immigrant visas for all of India.

BY DEV B. VISWANATH, ESQ.

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# From The Executive Director's Desk

By Jonathan Riegel



I admit that I am not one who frequently stops to smell the roses or reflect on the many blessings I enjoy. We have a family tradition of going around the Thanksgiving table and each person shares what they are thankful for and many years, I struggle to think of something meaningful to share. This year was most definitely an exception.

I am blessed to have a child that is growing into a young adult before my very eyes. I think every generation remarks about how hard it is to be a teenager at that time and this generation is no exception. And every generation recognizes that teenagers can be difficult, both to the adults around them and to each other. My child is no exception and has also demonstrated an incredible amount of strength and dedication to be authentic. At an age when their peers can be mean, my child revealed to us, their peers and friends that they identify as non-binary and prefer the use of they/them pronouns. I am blessed to have such a brave and genuine child and so proud of the person they are.

I am also blessed to have met a wonderful woman that I can share this adventure with. Well, "met" might be a misnomer – we actually dated a quarter century and seemingly two lifetimes ago. We are building a life together and she has quickly become the ying to my yang. She has become a part of my family and I a part of hers. She and her family are one of the things I am most thankful for.

In August, I completed a long-time goal of mine. In my early 20s, I was a lousy student – bored, unfocused and I didn't really want to be in college. Rather than waste more time and money, I dropped out and began my career. About five years ago, for personal reasons, I made the decision to return to college and in August, I earned my Bachelors Degree, some 33 years after beginning my college journey. And in a true "who'd a thunk it" moment, I have decided to continue my education and pursue an MBA; my classes begin in January. I also earned my Certified Association Executive credential in February, the highest recognition awarded in the association management community. I am so thankful for these experiences and accomplishments.

At this time last year, I was guiding a trade association in the promotional products industry through a pandemic and helping them try to reinvent themselves. It is a small association and after several years, I knew I had brought them about as far as I could. In late January, I saw a posting about the Executive Director position at the Queens County Bar Association. I had a cursory knowledge of bar associations from my father and sister, both of whom are attorneys, so I submitted my resume. Following a thorough vetting process, I was offered the position and nearly seven months later, here we are. The opportunity has been a tremendous one and one I am grateful for.

I feel so blessed by the warm reception from so many people upon my arrival. Arthur Terranova was and remains a great resource and I am honored to follow in his footsteps. Janice Ruiz and Sasha Khan are the not-so-hidden gems of this place and anyone who has

had the pleasure of working with them know this to be true. I collaborate with them and learn from them daily and am so grateful for them. Ashley Mangra and Briana Persaud, both seniors at St. John's University, joined the team over the summer and both are invaluable, answering the phones, processing CLE certificates, managing our budding social media efforts and much more. I appreciate them and their energy, enthusiasm and professionalism. I have had the chance to get to know so many of our members and volunteers and appreciate all they – YOU – do for the association. To a person, you have welcomed me with open arms, have taught me how and why we do certain things, have listened to my ideas and even embraced some of them!

That's not to say everything has been peaches and cream. I accepted the position with some knowledge of some of the challenges QCBA was facing. The challenges are not necessarily unique to us – the pandemic caused great strain on many associations in many industries across the country. Associations tend to rely on events for revenue and COVID-19 eliminated virtually all in-person events for close to 21 months. Association memberships are declining across the country and across the spectrum of industries – experts have identified a number of causes: technological, generational, financial and others. But whatever the reason, it is a real trend. These factors and others have put a bit of a strain on our finances, but we are managing them and I have full faith that these issues are short-term in nature.

The biggest long-term challenge is far more difficult to resolve. We operate from a building that, when constructed over 60 years ago, met our needs. But today, the building is aging and it no longer meets our needs, our members' needs or those of the community. The building is not accessible to anyone with mobility issues – there are three steps to get into the building from the street. We can make arrangements for someone to enter the building through an alley and a back door, then down a dark narrow corridor. Once inside, there is no access to the second floor (QVLP offices and our conference rooms) or the lower level (social hall). There are no accessible bathrooms anywhere in the building and many of the doorways, even if accessible, are too narrow for a wheelchair. The building has no air conditioning system and the roof is certainly not new. If we wanted to undertake the massive project of bringing it into compliance with the Americans with Disabilities Act, performing the necessary asbestos abatement that would be required, upgrading the electrical service and technology, replacing the air conditioning, etc., we are likely looking at an expense approaching \$2,000,000.

As many of us have faced or will face, moving is not an end but a new beginning. Growing up, I was one of three children and we lived in a house that met my family's needs at that time. As we all moved out of that house and began our adult lives, my parents' needs changed so they sold that house and bought a new one. Times changed and needs changed, so they adapted. I admire and respect the passion that Past President Paul Kerson has for our existing building – it has been home

to several generations of members. But like with my family, the association's needs – and resources – have changed. We must change with them.

Let me be clear – QCBA will never be homeless. In his editor's note in this issue, Paul paints a picture of the downtrodden members of society shuffling down the street to our offices as a station of last resort and without this building, these individuals will be destined to live with some great injustice. That is simply not true. There has been no discussion of foregoing office space and moving to a virtual setting and there has been no discussion of eliminating the valuable services we offer our members and the community at large. There have been discussions about relocating to a space that better serves our needs – most likely within the same neighborhood as the civil and family courthouses. We have a large auditorium that seats over 300 that, pre-pandemic, was used infrequently and when it was used, was never to capacity. We have a social hall and kitchen in the basement that were also used only periodically. We have a board room that was used 10 times per year. We are paying a heavy price for space that is largely unused.

The idea is to re-envision what and how we do things and then secure space consistent with that new vision. We have all learned many valuable lessons since March 2020. One thing we learned is that virtual committee meetings and virtual education programs work. Attendance at our CLEs has never been higher. Committee meetings are efficient and well attended. As President Bruno noted in his message, one committee discussed holding their next meeting in-person and over 90% of the committee preferred a Zoom meeting. And for the past 21 months, when community members have come to the office for referrals to an attorney, they are instructed to call us on the telephone and referrals are still made. Is it a perfect system? No, but it works. Even the staff at the Queens Volunteer Lawyers Project has effectively carried on with their critically important work despite not meeting with clients in-person in the building.

I am thankful that we have members like Paul Kerson that are so passionate about QCBA that they have maintained their memberships for 45 years, have served in many volunteer capacities including as a committee chair, on the Board of Managers, as President and as Bar Bulletin editor, to name a few. We may not agree on this issue, but his energy and dedication are laudable. I am also thankful for the QCBA Board of Managers and the members of the QCBA Fund, who are willing to make the very difficult decisions required to ensure our long-term viability. The association is about to embark on our 145th year of operations; this potential move likely assures our existence for the next 145 years.

Lastly, I am thankful for all of you. Without you, the members, the Association does not exist, both literally and figuratively. We are at the dawn of a new day and I encourage each of you to reflect on what this year has meant to you and all that the upcoming year may bring. I wish each of you and your families a very happy, healthy and safe holiday season and New Year.

Lawyers Assistance Committee

## Festive Holly v. Melancholy

While the holidays are supposed to be a time to eat, drink and be merry, this time of year can be very difficult for people suffering from depression, anxiety and loneliness. The forced smile at the office party hides the bittersweet sadness for many who have lost loved ones or feel overwhelmed that their expectations of life have not come to fruition. Holidays can be hard.

Here are some tips from WEBMD to cope with holiday stress and depression.

1. Make realistic expectations for the holiday season about what you can and cannot do.
2. Pace yourself. Do not take on more responsibilities than you can handle.
3. Make a list and prioritize the important activities to help make holiday tasks more manageable.
4. Do not put all your energy into just one day (i.e., Christmas Day, New Year's Eve). The holiday cheer can be spread from one holiday event to the next..
5. Don't set yourself up for disappointment and sadness by comparing today with the good old days of the past.
6. Look to the future with optimism
7. If you are lonely, try volunteering some time to help others.
8. Find holiday activities that are fun and free, such as looking at holiday decorations, going window shopping without buying, and watching the winter weather, whether it's a snowflake or a raindrop.
9. Limit your drinking, since excessive drinking will only increase your feelings of depression.
10. Try something new. Celebrate the holidays in a new way. Reach out and make new friends.
11. Make time to contact a long-lost friend or relative and spread some holiday cheer.
12. Make time for yourself!
13. Let others share the responsibilities of holiday tasks.
14. Keep track of your holiday spending. Overspending can lead to depression when the bills arrive after the holidays are over. Extra bills with little budget to pay them can lead to further stress and depression
15. Spend time with supportive and caring people.

We are here to help. The Lawyers Assistance Committee of The Queens County Bar Association has a phone number you can call if you want to talk. This confidential, nonjudgmental conversation is available to attorneys, judges, law students and their families struggling with alcohol and substance abuse, depression, stress, burnout, career concerns and other issues that affect quality of life, personally and/or professionally. We offer an ear to refer you to the appropriate mental health professionals for counseling and crisis management. We also encourage you to investigate the Lawyers Depression Project, a peer support group for attorneys. Again, all communication with us is completely confidential as privileged and assured under Section 499 of the Judiciary law as amended by the Chapter 327 of the laws of 1993.

If you or someone you know is having a problem, let us help. To learn more, call the Lawyers Assistance Committee Confidential Helpline 718-307-7828



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## A Beach Accident And A Life Changer

- a human interest story \*

By Leonard L. Finz

Great composers and lyricists have the anointed gift of separating human emotions by turning their special creations into poetry. On point and most recently, I saw a TV commercial announcing the future showing of an old movie filmed upon a hit Broadway musical. The film was “Annie” based upon the popular and iconic Harold Gray comic strip, “Little Orphan Annie.” All the songs were charming with music and lyrics by the superbly talented Martin Charnin and Charles Strause. I saw “Annie” on Broadway when it opened almost a half century ago, and one beautiful song is still in my memory! Which one? “Tomorrow.”

The melody was magical! The lyrics, inspirational! I offer just the first stanza of “Tomorrow” so as to refresh the memory of those who might remember it, and for those who will read the inspiring words for the first time: “The sun will come out tomorrow. Bet your bottom dollar that tomorrow, there’ll be sun...” Where am I going with this “Tomorrow” stuff? Sadly, here’s the tragic story...

I’ll call him Billy (fictitious name). It was a beautiful summer day with a clear blue sky when he and three teenage friends decided to spend the day at a private beach owned and operated by the town in which they lived. What better way to enjoy relaxation and have fun whether you’re 16 or 60. He was all of 16 years of age. Soft white sand, clear bright sun and sparkling blue water making ripples of small waves that flowed to the surf and back!

Billy and his friends stretched out a blanket on the hot sand placing a cooler of cold soft drinks and sandwiches on top. What could be better? “I’m going in the water first and then we could grab some sun before lunch.” That said, Billy started to trot towards the clear blue water that turned into white foam as it hit the beach with a light tide before returning to the main body of water. Maintaining his trot, he splashed his feet into the warm surf as many beach lovers do, and kept up his trotting pace until the water was up to his waist. Billy then dove into it- a refreshing action as a prelude to submerging himself. What happened then, is the tragedy that follows...

When Billy dove into the water, his head violently struck a solid object. At that very instant, he felt as if a sudden bolt of lightning had attacked his entire body from head to foot. Unable to move, he cried out for help. Hearing Billy’s frantic screaming, his friends rushed into the waist high surf and carried Billy back to the sand. 911 was called. Within minutes, EMTs were at the scene. Upon examination, they could tell from Billy’s total lack of body response, that he was severely injured. A rescue medevac ‘copter was immediately called. It responded within minutes. Once on the

ground, an emergency crew carried Billy’s limp body on board.

The ‘copter zoomed quickly to the nearest hospital where after neurologically testing Billy, the sad news was later reported to his parents and friends. Billy had suffered a significant cervical (neck) fracture and was given a disastrous diagnosis. The doctors reported that Billy was rendered a quadriplegic! And what his head struck that caused a most significant fracture of his cervical spine, was below the surface of the water. It was a sandbar!

For many years, Billy was treated in various State rehab facilities. He received quality care with years of therapy and training so that he was able to maneuver a specialized motorized chair that he could operate by blowing into a tube. As a quadriplegic, he was paralyzed from his neck down that also included his arms. Already well into his twenties, his will to survive demonstrated a rare, bright, and even upbeat optimism. In fact, his amazing disposition carried over to other quadriplegics to whom he would always provide encouragement. His inspiring personality was so visible that he became a favorite of staff members and particularly to one of his regular nurses. And as in an emotional storyline of a movie, they fell in love and ultimately became husband and wife.

Regarding the legal issues, Billy’s dad retained a lawyer friend to bring an action against the town. It soon became apparent however, that although the lawyer was well-intentioned, the case, if there was one, was far beyond his ability or experience to pursue. And that’s when a reputable law firm was brought in.

The perplexing question the legal team had to face was, how could fault be attached to the town for the existence of a sandbar that was hidden below the surface of the water? But after intense investigation and deep research, the answer was discovered. What happened during the jury trial that to the average lawyer would have appeared almost impossible, is how they did it...

Through research, the trial team studied the geological science of how a sandbar is formed. The investigation included such questions as whether certain climate, wind, water temperature, and other factors, could make a sandbar predictable during certain specific conditions. Simply stated, sandbars are formed when wave currents pull sand from the beach back into the water mass. Atmospheric conditions are a factor! Wind is a factor! The temperature of the water is a factor! The position of the sun is a factor! The size and force of the wave that hits the beach is a factor! The temperature of the air is a factor! The position of the moon during certain summer days is a factor! And more. Further, sand bars had

formed at that beach during the same period of time when many of the named factors were in play. And it was stressed during the trial that the town through its beach supervisor knew or with the exercise of reasonable care should have known that sandbars did form on its beach. That when created, they were hidden slightly below the surface of the water, and could be dangerous to swimmers!

To confirm their theory, a highly credentialed oceanographer was retained as an expert witness. Having earned a PhD in his specialty, he had devoted much of his academic research to how sandbars are formed. Without hesitation, he set out in layman’s language to the jury all of the factors set forth above. At the conclusion of his strong testimony, there was little doubt that the town through its beach supervisor, should have tested the water for sandbars since he should have known of the possible danger that lurked below the surface of the water. Further, it was urged that he failed to warn swimmers of the existence of a dangerous sandbar. That under the climate conditions that existed at the time, he should have pursued a reasonable investigation. It appears that the supervisor was called as a witness who, under a strong examination, admitted that sandbars had formed in prior summer seasons. That he had full authority over the beach, and could even close it down if there was any danger in the water to swimmers. From what started as an almost impossible case, turned out to be one that the town finally ended by offering a fair and substantial settlement.

Back to “Annie” and that inspirational song, “Tomorrow.” Again, the first few lines: “The sun will come out tomorrow. Bet your bottom dollar that tomorrow there’ll be sun...” Billy is an inspiration to all. For him, the sun will always “come out tomorrow.” That’s the way he has lived his life following his tragic accident.

And for Billy and his devoted wife, you can, “Bet your bottom dollar that tomorrow there’ll be sun.”

END OF STORY!

\* Many of the above facts were drawn from the published memoir authored by the victim.

An l. Finz Aphorism

“When dark clouds disappear and bright sun shines through, even a most difficult world can become brighter.”

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*Leonard L. Finz, age 97, is a former New York State Supreme Court Justice (Queens), a decorated WWII Veteran (1st. Lt., Field Artillery, Philippines), Peer-Reviewed as “One of America’s Preminent Lawyers”, and the Founder of Finz & Finz, P.C.*



Allen E. Kaye

## Immigration Questions

### Practice Pointer: COVID-19 Vaccine Requirements for Travelers to the United States



Joseph DeFelice

#### Authority: 8 USC §§1182(f) and 1185(a) and 3 USC §301

On October 25, 2021, President Biden issued Presidential Proclamation 10294 rescinding the geographic COVID-19 travel bans and adopting COVID-19 vaccination requirements for all international air travelers to the United States. It is effective at 12:01 AM on November 8, 2021, which means that it applies to air passengers on planes that depart from their foreign destination at or after 12:01 AM Eastern Time on November 8.

The Proclamation governs the entry into the United States of nonimmigrants traveling to the United States by air. With limited exceptions, it suspends entry of noncitizen nonimmigrants who are not vaccinated and requires those individuals seeking an exception to follow health and safety requirements determined by the Director of the Center for Disease Control (CDC).

The White House and agencies such as the Department of State and the CDC have issued additional guidance concerning the implementation of the new travel requirements. AILA applauds the Administration for following our recommendation to implement science-based processes for reopening international travel.

#### Rescission of COVID-19 Geographic Travel Restrictions

The first section of the Proclamation rescinds the geographic COVID-19 travel bans that restricted travel for those from China (PP 9984), Iran (PP 9992), the Schengen Area, UK and Ireland, Brazil, South Africa (PP 10143), and India (PP 10199) at 12:01 AM ET on November 8, 2021.

Section 4(d) orders the Secretaries of State, Transportation, and Homeland Security to review regulations, orders, guidance, policies, and agency actions developed pursuant to these proclamations and to consider revising or revoking them, in line with the new proclamation and requirements.

#### Coverage and Requirements

The Proclamation suspends the entry into the United States via air travel of noncitizen, nonimmigrants who are not fully vaccinated against COVID-19, with certain exceptions. It notably does not suspend visa issuance for those whose travel is suspended. Travelers will be required to be fully vaccinated and provide proof of that vaccination before boarding a plane to the United States.

Per a White House Fact Sheet issued on October 25, 2021, passengers will need to provide proof of vaccination to airlines who will:

- Match the name and date of birth to the information on the vaccination documentation.
- Determine that the record was, in fact, issued by an official source (public health agency, government agency, or authorized vaccine provider) within the country it was given.
- Review the information to determine if the vaccination meets the CDC's definition of full vaccination, including being approved or authorized by the FDA or included on the WHO list of emergency use vaccines.

The received dosage, relevant dates of administration, and the location of the vaccination will also be reviewed.

In its Technical Instructions, the CDC has identified three documentation categories considered acceptable proof of COVID-19 vaccination, which require varying review processes by the airlines:

- Verifiable digital or paper records: This includes, but is not limited to, examples such as vaccination certificates or digital passes accessible via QR code (such as the UK NHS COVID Pass and the European Union Digital COVID Certificate)

- Non-verifiable paper records: A paper vaccination record or a COVID-19 vaccination certificate issued by a national or subnational level or by an authorized vaccine provider (such as the CDC vaccination card).

- Non-verifiable digital records: Digital photos of vaccination card or record, or a downloaded record or vaccination certificate from an official source (e.g., public health agency, government agency, or other authorized vaccine provider), or a record shown on a mobile phone app without a QR code.

Per the CDC Technical Instructions, airlines and other aircraft operators must be able to confirm proof of vaccination and review other required information. If documents are in a language other than English, check with the airline or aircraft provider before travel to determine whether a translation will be needed.

The CDC has confirmed that for purposes of travel to the United States, vaccines approved or authorized by the Food and Drug Administration or on the World Health Organization emergency use listed (EUL) vaccines will be accepted. The list of vaccines is available here and below.

- Janssen/Johnson & Johnson (Single Dose)
- Pfizer-BioNTech
- Moderna
- AstraZeneca
- Covishield
- BIBP/Sinopharm
- Sinovac
- Covaxin

Individuals will be considered fully vaccinated after two weeks of receipt of the last dose of a vaccine, the first dose of an approved single-dose vaccine, or any combination of two doses of an approved vaccine (mix and match). For more information on the "mix-and-match" combination see CDC guidance.

#### Exceptions to Vaccine Requirement

The Proclamation does not apply to United States citizens, lawful permanent residents, or those traveling on immigrant visas. Those applying for an immigrant visa abroad or who seek to adjust status from within the United States are required to receive, among other vaccinations, an authorized COVID-19 vaccination as of October 1, 2021.

In addition, Sections 2 and 3 of the Proclamation provide several exceptions to the vaccine requirement. Procedures to request these exceptions have been expanded upon by the CDC here.

- Children: Children under the age of 18.
- Clinical Trials: Those who have participated or are participating in clinical trials for COVID-19 vaccination, as determined by the CDC Director. The CDC has provided a list of qualifying vaccine candidates that meet this exception.
- Documentation of clinical trial participation is required.
- Contraindications: Those for whom approved COVID-19 vaccination is medically contraindicated. A letter must be provided to the airline from a licensed physician documenting the contraindication before boarding. The letter should be signed and dated with official contact from the provider, clearly state the con-

traindication, and have identifiable personal information. Letters not in English may require translation.

- Humanitarian and Emergency Exceptions: Those granted humanitarian or emergency exceptions by the Director of the CDC in limited circumstances for individuals who need to travel to the U.S. for their health and safety and are unable to complete the vaccine requirement before doing so. These individuals should contact the U.S. embassy or consular post nearest to their country providing relevant information about the request. The post will then transmit the information to CDC.

- Limited Vaccine Availability: Citizens of a country with less than 10% of the population vaccinated with any available COVID-19 vaccine, who seek to enter the United States pursuant to a nonimmigrant visa, except for a B-1/B-2 visa. See below for additional information on this exception. A passport/proof of citizenship AND a valid nonimmigrant visa that is not a B-1/B-2 visa will need to be shown.

- Members of the U.S. Armed Forces and their Spouses and Children: These individuals will need to show a U.S. military identification document, such as a military ID, Common Access Card, DEERS ID card, or other proof that the individual is a member or spouse/child of a member of the U.S. Armed Forces.

- National Interest Exceptions: Those whose entry would be in the national interest, as determined by the Secretaries of State, Transportation, Homeland Security or their designees. These individuals will need to show an official U.S. government letter documenting approval of the exception. It is unclear if the current process for obtaining an NIE will continue.

- o During a November 9, 2021, meeting with AILA, CBP confirmed that previously issued National Interest Exceptions are no longer valid under the new guidance effective on November 8, 2021. In addition, both the DHS and DOS have deferred authority for NIE determinations made under the new proclamation (PP 10294), to the CDC. AILA will provide additional updates on any specific categories of travelers who might qualify for an NIE and additional guidance on this topic.

- Diplomats or Persons on Official Government Travel: Individuals seeking entry pursuant to the following visa classifications: A-1, A-2, C-2, C-3 (as a foreign government official or immediate family member of an official), E-1 (as an employee of TECRO or TECO or the employee's immediate family members), G-1, G-2, G-3, G-4, NATO-1 through NATO-4, or NATO-6 (or seeking to enter as a nonimmigrant in one of those NATO classifications). These individuals will need to travel with an official letter, such as a letter from the U.S. government or foreign government.

- United Nations Travel: Individuals whose travel falls within the scope of section 11 of the UN Headquarters Agreement or who is traveling pursuant to United States legal obligation. If they have been invited to the United Nations, they will need a letter documenting the purpose for their travel.

- Sea Crew Members: Individuals seeking entry as sea crew members traveling pursuant to C-1 and D visas, provided the crew member adheres to industry standards for the prevention of COVID-19. They must provide an official letter (paper or digital) from their employer indicating that their entry to the United States is required for the purpose of operating a vessel that will depart from a U.S. seaport.

- Airline Crew Members: Individuals seeking entry

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## Immigration Questions

# Practice Pointer: COVID-19 Vaccine Requirements for Travelers to the United States

### CONTINUED FROM PAGE 11

to the United States as a crew member on official duty assigned by the airline or aircraft operator that involves operation of aircraft, or the positioning of crew not operating the aircraft (i.e., on “deadhead” status, or are maintenance personnel or contractors whose travel purpose is for flight operation or the safety of the aircraft, are also exempt if they are operating under an air carrier’s or operator’s occupational health and safety program. The exception does not apply to crew members who are traveling for training, commuting to or from work, or for business reasons not associated with the operation of the aircraft, or personal reasons. To be exempt, they must provide an official letter (paper or digital) from their employer confirming the purpose of travel and that specifies that the crew member meets all other criteria to be considered not subject to the Presidential Proclamation and CDC’s Order as set forth above.

An individual may be required to attest to the exceptions before traveling to the United States, via an Excepted Covered Individual Attestation. Providing false or misleading information, including false test results or vaccination cards, may lead to criminal fines or imprisonment.

#### Please note:

- There are no exceptions to the vaccine requirement for religious reasons or other moral convictions under the Presidential Proclamation and CDC’s Order.
- There are also no specific exceptions for individuals who have received a vaccine authorized by their country, that has not yet been approved or authorized by the FDA and WHO, except for diplomats.

#### Vaccination Requirements After Arrival

While the categories of persons above are exempted from the vaccination requirement, these individuals will be subject to more rigorous testing requirements (as discussed below), as well as a requirement that they be vaccinated against COVID-19 within 60 days of arriving in the United States. The Proclamation provides limited exceptions for the 60-day vaccination requirement:

- Those whose intended stay is sufficiently brief.
- Children whose vaccination would be inappropriate given their age.
- Those who have participated or are participating in clinical trials for COVID-19 vaccination, as determined by the CDC Director.
- Those for whom approved COVID-19 vaccination is medically contraindicated.
- Those entering via the nonimmigrant visa categories for diplomats listed above, provided they have previously received a COVID-19 vaccine authorized or approved by their country of nationality.
- It is determined that the COVID-19 vaccine is not warranted for the individual in question.

#### Other Required Protective Measures

Depending on the category of exception, the CDC has issued guidance indicating that excepted individuals may also be required to attest that they will:

- Be tested with a COVID-19 viral test 3–5 days after arrival in the United States, unless they have documentation of having recovered from COVID-19 in the past 90 days;
- Self-quarantine for a full 7 days, even if the post-arrival COVID-19 test result is negative unless they have documentation of having recovered from COVID-19 in the past 90 days; and
- Self-isolate if the result of the post-arrival test is positive or if they develop COVID-19 symptoms.

The CDC recommends that all travelers follow the above steps, whether or not they are subject to the vaccine requirements or have been fully vaccinated.

In addition, a new contact tracing order issued by

the CDC requires airlines to collect information for all inbound international travelers, including full name, phone number, email, and address where they can be reached in the United States. This information will be kept on hand and turned over to the CDC when requested for contact tracing purposes.

Per a November 5, 2021, CDC order, effective on November 8, 2021, children under the age of 18 covered under the exception to the Proclamation will need to present a completed “Covered Individual Attestation”. However, they will not be required to attest (or have a parent or guardian attest) that they have arranged self-quarantine in the United States after they arrive. They will be required to attest (or have a parent or guardian attest) that they have arranged for a COVID test 3-5 days after arrival and to self-isolate if they receive a positive result or develop COVID-19 symptoms. Lastly, for now, attestation of a post-arrival vaccination within 60 days will also not be required for children under the age of 18.

#### Countries with Low Vaccination Rates

As discussed in the Proclamation and confirmed via CDC guidance, individuals seeking entry with a non-immigrant visa, other than B-1/B-2, who have a passport or proof of citizenship from a country where less than 10% of the population are vaccinated are eligible for an exception to vaccination requirements under the Proclamation. Please note that per CDC guidelines, this exception does not apply to an individual residing in a covered country but who is not a citizen of that country. A passport or other proof of citizenship for a covered country will be required to qualify.

The list of countries considered to have limited COVID-19 vaccine availability can be found here. It will be updated every three months.

#### Testing Requirements for Vaccinated and Unvaccinated Adults and Children

Per guidance issued after the issuance of the Proclamation, the United States is also amending testing requirements for all persons entering the country, whether the Proclamation covers them or not.

All vaccinated individuals, including American citizens, lawful permanent residents, and foreign nationals traveling to the United States on immigrant or nonimmigrant visas, will be required to produce a negative viral test (NAAT or PCR) result within three calendar days of travel to the United States, or before boarding the first flight in a series of connection to the United States. The example provided by the Department of State is as follows:

- If a traveler is departing for the United States at 10 PM on January 19, they would have to present a negative test result for a test taken any time after 12:01 AM on January 16.

Unvaccinated travelers, whether U.S. citizens, lawful permanent residents, or those who qualify for an exception under the Proclamation, will be required to show documentation of a negative test taken within one day of travel to the United States.

Children between the ages of 2 and 17 will be required to take a pre-departure test. If the child is not fully vaccinated but traveling with a fully vaccinated adult, they can show proof of a negative viral test taken within three calendar days before departure, much like vaccinated adults. If they are traveling alone, they will be subject to the same testing requirements as unvaccinated adults.

#### Requirements for Land and Ferry Border Crossing

On October 29, 2021 DHS announced a modification to Title 19 restrictions for travel via land POEs and ferry terminals. Effective November 8, 2021, non-citizen travelers who are fully vaccinated for COVID-19 and can

provide documentary proof will be allowed to enter the United States for both essential and non-essential (tourism) travel via POEs and ferry terminals. Information is not yet available concerning the time of day this change will be in effect. Per a fact sheet released by DHS, non-citizen travelers should be prepared to provide:

- Proof of COVID-19 vaccination (see CDC website); and
- Verbally attest to their reason for travel and COVID-19 vaccination status during a border inspection.

Per a CBP FAQ document, similar to the vaccines accepted for air travel, CBP will require proof of full COVID-19 vaccination that is approved or authorized by the FDA, as well as vaccines listed as EUL for the WHO. Children under 18 years of age will be excepted from this requirement. U.S. citizens, LPRs and those traveling for essential reasons (see below) will also be exempt from this requirement.

Starting in January 2022, DHS will require all inbound foreign national travelers seeking to enter the United States to be fully vaccinated and provide proof of the vaccination, regardless of the reason for their travel. It is unclear what exceptions will be made available once this new requirement is in place.

While none of the CBP announcements gave a particular date for January 2022, on October 21, 2021 in two Federal Register notices concerning travel from Canada and Mexico, DHS extended Title 19 restrictions for non-essential travel, including exceptions for non-vaccinated foreign nationals on essential travel, through January 21, 2022.

Essential travel continues to be allowed for unvaccinated individuals and includes, but is not limited to:

- U.S. citizens and lawful permanent residents returning to the United States;
- Individuals traveling for medical purposes (e.g., to receive medical treatment in the United States);
- Individuals traveling to attend educational institutions;
- Individuals traveling to conduct essential work in the United States;
- Individuals traveling for emergency response and public health purposes;
- Individuals engaged in lawful cross-border trade;
- Individuals engaged in official government travel or diplomatic travel; and
- Members of the U.S. Armed Forces and their children and/or spouses returning to the United States and individuals engaged in military-related travel or operations.

Impact on Individuals Seeking Humanitarian Protection

The proclamation states that it does not limit the ability of individuals to apply for asylum, refugee status, withholding of removal, or protection under the Convention Against Torture.

#### Termination

The proclamation will remain in effect until terminated by the president. The Secretary of Health and Human Services will, after no more than 60 days, and the final day of each calendar month after, recommend whether the Proclamation should be continued, modified, or terminated.

For more information on the new vaccine requirements, please refer to <https://www.aila.org/infonet/white-house-memo-resume-global-travel-covid-19>.

**BY ALLEN E. KAYE AND JOSEPH DEFELICE**

*Allen E. Kaye and Joseph DeFelice are the Co-Chairs of the Immigration and Naturalization Committee of the Queens County Bar Association.*



## The Practice Page

# CPLR Article 16 and 4th Grade Math

BY JUSTICE MARK C. DILLON

*Serves on the Appellate Division, Second Department*

Thank goodness for 4th grade math class. It provides the foundation for computations that are made by attorneys and judges each day for determining proportional shares of liability under CPLR Article 14, collateral source set-offs under CPLR 4545(c), statutory interest additions under CPLR 5001-5003, marital shares of property and QDROs under DRL 236(B), and of course, the all-important value of one-third contingency fees. All are simple additions, subtractions, or percentages. We leave the complications of algebra and calculus to the MBAs.

But there is one provision of the CPLR, section 1601, where 50% does not necessarily mean 50%. CPLR 1601(1) provides that when a claim for personal injury is determined against two or more joint-tortfeasors, and the liability of a defendant is found to be “50% or less” of the total liability assessed against all persons liable, that defendant’s liability for non-economic loss (e.g. past and future pain and suffering, loss of enjoyment of life) shall not exceed its own equitable share of the total culpability. The statute acts as a cap upon a qualifying defendant’s liability,

to protect parties liable for a “minor” percentage of culpability from paying a much larger percentage of the non-economic loss damages. Economic loss calculations are unaffected. There are some major exceptions, as CPLR Article 16’s limitations of liability do not apply to administrative proceedings, workers’ compensation claims, intentional and reckless torts, actions involving the use of automobiles, and other boutique carve-outs found in CPLR 1602(1) through (14).

Along came *Robinson v June* at the Supreme Court, Tompkins County, in 1996. The case involved a physical altercation at Poor Richard’s Saloon, where the plaintiff commenced an action against the saloon for negligent security at the premises and violations of the Dram Shop Act, and against defendants June and Norman for the intentional tort of battery. A jury, upon hearing the evidence of the plaintiff’s unfortunate beat-down, found the saloon to be 50% liable, the individual defendants 45% liable, and the plaintiff, not being entirely innocent in the sordid affair, 5% contributorily negligent. The court held

that the various defendants were jointly liable, and that since defendants June and Norman were liable for intentional torts, they were not entitled to the limitations of liability under CPLR 1602(5).

The saloon in *Robinson* argued that since it was found 50% or less negligent from among all persons liable, it was entitled to the CPLR 1601 limitations of liability. The saloon was presumably the only defendant with a deep pocket insurance policy, and without the limitations of liability under CPLR 1601, it would otherwise be required to pay 95% of the plaintiff’s damages, subject to contribution from the individual defendants who presumably had no assets. But not so fast. Recall, the jury found that the plaintiff was 5% contributory negligent. CPLR 1601 applies its statutory limitations of liability to tortfeasors “jointly liable.” The plaintiff, while 5% contributory negligent, was not a tortfeasor “jointly liable” to himself and would not enforce payment of 5% of the damages to himself. Therefore, if the plaintiff’s 5% contributory negligence is eliminated from the stat-

**CONTINUED ON PAGE 15**



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## We Must Always Keep Our QCBA Building – the Beacon of Justice for all the World

### CONTINUED FROM PAGE 4

The Assistant District Attorney agreed. However, he told me that he would never get the approval of his Bureau Chief for such a just result. We had to achieve this in the Criminal Court in the morning before this case went to the Grand Jury that afternoon, where the Defendant would most certainly be indicted, most probably convicted, and sentenced to spend the rest of his life in Attica or Greenhaven. Speaking only Igbo, and no English, and being young and small, he was most likely to become a rape and/or assault victim in our State Prison “system”.

I called the Office of Court Administration seeking an Igbo translator right away. “We have no Igbo translators,” they said. Denied. I called the Nigerian Embassy seeking an Igbo translator. “No Igbo person would ever do such a thing” said the Clerk at the Nigerian Embassy and he hung up.

I called the Columbia University Tutoring and Translating service. They sent a Nigerian engineering student to the Queens County Criminal Court immediately. My engineering student translated my advice into Igbo for my assigned Defendant. That afternoon, the Assistant District Attorney took a low-level felony plea in the Queens County Supreme Court, Part W-50 with the approval of the Justice presiding and over the internal objections of the District Attorney’s Grand Jury Bureau Chief. The Port Authority Police were instructed by the Justice to take the Defendant back to Kennedy Airport and put him on the next plane for Nigeria. The Port Authority Police were instructed by the Queens County Supreme Court Justice to purchase the ticket at their expense.

3. Just this past year, as part of our QCBA Legal Referral Service (LRS) Sasha Khan sent me two young parents from Pakistan who had walked into the QCBA Building seeking justice. Their car had been seized by a Bank. They had saved for many months to buy this car, a used Honda sedan. Apparently, the prior owner had failed to pay off his car loan and neglected to inform my clients of this fact or the State Department of Motor Vehicles (DMV) of this fact.

Next, I immediately brought an Order to Show Cause in the Queens County Civil Court explaining this situation and demanding return of the car from the Bank. When the Bank’s lawyers received the Court papers, we entered into a serious discussion. The Bank’s attorney understood the injustice of the situation and agreed to return the car to the family and to chase only the prior owner for the debt. All of my discussions with the Mother and Father had to be conducted through the 14-year-old son, because only he could speak the English language. The parents only spoke Urdu, the language of Pakistan. The car was returned to the family. Jamaica DMV insisted that only the Bank could get new license plates. I had to write to the DMV General Counsel in Albany to get new license plates for my Pakistan family. They were so overjoyed that they came to my office to take a photograph of me which they now keep on their wall in their tiny Jamaica apartment.

The critically important work of Mark Weliky and his staff and Sasha Khan, Janice Ruiz and their assistants cannot be overemphasized. It has unfortunately been partially suspended by the coronavirus for the past 20 months, and that has caused the management of the QCBA and the QCBA Fund, Inc. to think that we could get along virtually. This is extremely short sighted. At the QCBA building, Mark Weliky and his staff and Sasha Khan, Janice Ruiz and their assistants and the QCBA Bar Panels Committee provide justice for the world’s individuals as they collide with each other in the world’s most international community, a community

dependent on JFK Airport, a ten-minute Air Train ride to the QCBA building.

This is not done in Washington, DC, or at the United Nations.

This has all happened because our QCBA Bar Panels Committee spent decades upon decades in the solemnity of the Victor Werner Room in the QCBA building picking candidates for the most important job in the legal community – Public Defender for indigent people who just got off the plane at Kennedy Airport today, yesterday, or years ago, as well as long-term residents in serious legal trouble.

Victor Werner dedicated this room to his father, a Judge in Wisconsin. There is a framed letter from his father to Victor on the wall explaining that serving the public as a lawyer is the highest calling in our society. It is with Victor Werner’s father’s philosophy in mind that we pick QCBA Public Defenders.

“No” I would say to applicants who wanted to operate their law offices from the basements of their Massapequa Park homes. “No” I would say. You cannot invite indigent Defendants who recently came here from another country to try to find their way to Massapequa Park. You must relocate your office as a sub-tenant to other lawyers in Jamaica and Kew Gardens next to the Courthouses so that your local or foreign bewildered clients can show up at your office without an appointment together with their witnesses and you can truly provide first class legal services. This cannot be done in your basement in Massapequa Park.”

“Your clients can barely afford the subway fare to Jamaica. They are not going to afford the Long Island Rail Road fare to Massapequa Park and they are unlikely to have automobiles. You must be committed to taking care of them as if they were your own family – which they are – your human family – all of it.”

For 35 years I did that, as the late Moe Tandler did that before me. As a result, the QCBA Bar Panels Committee has set the gold standard for Public Defenders. Just ask our Administrator. What price can you put on this result? The QCBA building stands for Justice Itself. One cannot put a price tag on that.

The QCBA Board of Managers and Officers are currently debating on how to solve our financial problems.

I’d say we have less than Zero financial problems – just a problem of not understanding that we preside over the single most valuable institutional building in our society – the building that makes the right to counsel and the Bill of Rights available to every soul who walks in from anywhere in the world having just got off the plane at Kennedy Airport today, yesterday or years ago.

Mark Weliky and his staff and Janice Ruiz, Sasha Khan and their assistants are the living embodiment of the right to counsel and the Bill of Rights in the most international County in the world. What is the price tag for that? How can it ever show up in a balance sheet prepared by an Accountant or CPA who knows little about what Justice means and it what it takes to produce Justice?

Our QCBA building is decidedly NOT “just another building”. It is the most important building in Queens County, bar none.

But we must establish the financial resources to keep our priceless asset afloat permanently for the people of Queens County and for every lost soul who gets off the plane at Kennedy Airport in our County today, yesterday or years ago and finds himself or herself in some kind of serious trouble.

In addition to dues, we must establish an annual Building Fund to permanently maintain our Building. We are certainly NOT a Bar Association of indigents. Members must contribute annually on a sliding scale:

Admitted 5 years or less, \$50.

Admitted between 5 and 10 years, \$100.

Admitted between 10 and 20 years, \$200.

Admitted between 20 and 30 years, \$300.

Admitted between 30 and 40 years, \$500.

Admitted 40 years or more, \$1,000 or greater. Older members must remember that you cannot take your earnings with you in the end. A substantial gift to the QCBA is the best way to say thank you to the institution that is responsible for your success in the first place.

I ask the Officers and Board of Managers to approve this plan. I volunteer to be Chair of the Building Fund Committee.

If this proposal passes, I will not stop calling each of you as a constant pest until you contribute to the cause of justice for one of the world’s most important buildings.

Justice for the Russian spy and/or American spy at JFK about to kidnap his own infant without the intervention of a QCBA Public Defender.

Justice for the 19-year-old Nigerian “mule” looking at life in prison because someone pushed him onto a plane with a false bottom suitcase full of cocaine, a person who was facing life imprisonment in dangerous New York State prisons. Justice was achieved for this 19-year-old Nigerian by a QCBA Public Defender.

Justice for an immigrant Pakistani family who was cheated by their neighbor and a major Bank, but got their car back and license plates back because of the dedication of a QCBA Legal Referral Service member.

What we do in our QCBA building is priceless. Nothing anyone does in any other building in Queens County even comes close. Because of Kennedy Airport, the Justice we produce in our QCBA Building literally reverberates around the world, in Russia, in Nigeria, in Pakistan and everywhere else. And some of our members want to tear this Institution down? Examine your own conscience. If you seriously want to tear down our QCBA building, perhaps you have lost your way. I pray you find it again before it is too late and a wrecking ball hits the Beacon of Justice entrusted to our care for future generations not yet born. As long as there is a Kennedy Airport bringing us the world’s most terribly troubled people on the Air Train, the QCBA building must stand.

Contributions from this Annual Building Fund should more than cover the \$50,000 each year we spend on building maintenance and thus eliminate any budget deficit.

If we wish to make substantial improvements in the building in the upcoming year, we should consider the air rights estimated to be worth \$625,000 to \$1,314,000 by our resident air rights expert QCBA member and former New York City Department of Buildings (DOB) attorney Kevin O’ Sullivan, Esq.

Substantial improvements might include a new air conditioning system and/or an elevator but these items are not related in the core function of our building, as a magnet for the unrepresented, confused, and bewildered recent arrivals as well as longer term Queens County residents.

None of this will show up on a “balance sheet” prepared by a CPA which is based on unbalanced thinking about what matters and what doesn’t.

*The opinions expressed in this article reflect those of the author only and do not reflect the stated opinions or policies of the Queens County Bar Association or its Board of Managers.*

BY PAUL E. KERSON, ESQ  
EDITOR

## The Practice Page CPLR Article 16 and 4th Grade Math

### CONTINUED FROM PAGE 13

utory calculation, the liability of the defendants is no longer 50% and 45%, but must be “extrapolated” to a scale of 100%. Doing the math, the saloon’s adjusted proportional liability of the joint defendants’ liability was actually 52.63% on a 100% scale, and the individual defendants’ proportional liability was 47.37%. The saloon’s liability among the joint tortfeasors increased from 50% to 52.63% on a 100% basis, rendering the saloon ineligible for the limitations of liability under CPLR 1601, as its percentage of extrapolated liability was no longer “50% or less” as required for eligibility under the statute. Thus, in this context, 50% did not mean 50%, and instead meant 52.63%, notwithstanding what was taught in 4th grade math.

Robinson v June was never appealed, but a case from the First Department, Risko v Alliance Builders Corp., lends appellate credence to its mathematical approach upon eliminating the plaintiff’s contributory share from the total liability assessed against all liable parties. Extrapolating percentages of liability seems to be legally correct and consistent with the public policy of the statute, when applicable, in deducting the plaintiff’s percentage of contributory negligence from the overall calculations. The unavailability of the limitations of liability under CPLR Article 16 in Robinson v June might have made Poor Richard’s Saloon all the bit poorer.



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### Holiday Recess 2021

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**Please be advised that Queens Supreme Court – Civil Term will be in recess beginning December 24, 2021 through December 31, 2021. Regular court sessions will resume on January 3, 2022. During the recess period, all Parts located in the Jamaica and Long Island City court buildings will be closed with the exception of the Emergency Part and Mental Hygiene proceedings.**

All emergency applications shall be presented to the Emergency Part located in the Jamaica courthouse at 88-11 Sutphin Boulevard, Jamaica, NY, 11435. **Virtual Mental Hygiene Hearings will be held on December 28, 2021 and December 30, 2021.**

**No Foreclosure Auctions will be scheduled for December 24, 2021 or December 31, 2021.**

Any matters made returnable during the recess period before any I.A. Part, the Medical Malpractice Part, Foreclosure Parts, Matrimonial Parts, Guardianship Parts, Commercial Division Parts, etc. (with the exception of the Emergency Part and Mental Hygiene) will be administratively adjourned to an available date, and the moving party will be responsible for ascertaining the new date and notifying all parties entitled to notice of the new court date.

Please note that the Long Island City courthouse located at 25-10 Court Square will be closed during the recess period and will reopen January 3, 2022.

*The Queens County Bar Association offices will be closed during this same period, also reopening on Monday, January 3, 2022.*

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