

# Queens BAR BULLETIN

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

Feb. 2022 | Volume 89, No. 5

## Covid And Recent Court Decisions

Stephen Fink, ESQ.



There is little question that Covid has devastated the Court system. Efforts to control the disease have led to various Judges seeking to do what each can do to help.

### Historical Background

Historically the United States Supreme Court has upheld the authority of the states to enforce compulsory vaccination laws. In **Jacobson v. Massachusetts**, 197 US 11 (1905) the Court agreed that Massachusetts cities and towns could enforce mandatory free vaccinations for adults over the age of 21 if the municipality determined it was necessary for the public health or safety of the community.

The Supreme Court found that mandatory vaccinations are not arbitrary or oppressive so long as they do not go beyond what is reasonable for the safety of the general public. In the 7-2 decision Justice John Marshall Harlan noted that

“(r)eal liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others”. Similarly, the New York Court of Appeal upheld the

New York City Board of Health

requirements mandating children to receive annual influenza vaccinations. See, **Garcia v. NYC Department of Health & Mental Hygiene**, 31 N.Y. 2d 601 (2018).

### Recent cases

Recent Court cases seem to uphold the basic concept that vaccinations may need to be mandated.

For example in the recent present case of **United States v. Pimental**, 21 Cr. 451 (J GK)[August, 2021], Judge Jed S. Rakoff of the Southern District of New York required the defendant Elouisa Pimental to be vaccinated as part of her bail package. While the requirement was “unusual” the Court felt it necessary to protect the community and the vulnerable public from the worst risks of Covid-19.

Similarly, Bronx Criminal Court Judge Jeffrey M. Zimmerman in **People v. D.R.**, 2021 NY Slip Op. 21266, 73 Misc. 3d 733 (October 6, 2021) required vaccination in connection with the defendant’s conditional discharge as per Penal Law Section 65.10.

Judge Zimmerman reviewed the history of such requirements within the scope of Section 65.10 and found

them well supported in the case law. The Judge considered the history of Covid and the defendant’s right to choose whether or not to be vaccinated. He then concluded that there was ample basis for such a requirement and that vaccine mandates were already the law of the land.

Similarly Justice Jeffrey Sunshine was faced with the vaccine issue in **B.S. v. A.S.**, 2021 N.Y. Slip Op. 21349, (Sup. Ct., Kings County, December 21, 2021).

In that case, the Court was faced with a mother and father who had diametrically opposed opinions as to whether vaccination was needed for their eight and ten year old children. The parties shared joint custody but could not agree despite the substantial medical evidence.

Justice Sunshine spent a great deal of time discussing the history of the case and the need to adhere to a negotiated joint custody agreement. Each party had set forth extensive arguments as to their respective position. The attorney for the children supported the mother’s position in favor of the vaccination.

The Court eventually ordered an evidentiary hearing as to whether a proper medical

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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

### FEBRUARY 2022

Wednesday, February 2 CLE: Real Property Series 2022 - Pt 3 - 1:00 pm  
Friday, February 4 Diversity & Inclusion Committee Mtg - 1:00 pm  
Meeting ID: 825 4611 4612, Passcode: 414300  
Friday, February 4 Meditation Friday with Diana The Happy Lawyer 1:10 pm  
Meeting ID: 817 2134 3753, Passcode: 734189  
Tuesday, February 8 Academy of Law Mtg - 1:00 pm  
Wednesday, February 9 Grievance Committee Mtg - 5:30 pm  
Friday, February 11 Lincoln's Birthday Observed - Office Closed  
Tuesday, February 15 CLE: Update on the Current Operation  
at Queens County Housing Court - 1:00 pm  
Wednesday, February 16 CLE: Real Property Series 2022 - Pt 4 - 1:00 pm  
Thursday, February 16 CLE: Coop/Condo Update - 6:00 pm  
Friday, February 18 Meditation Friday with Diana The Happy Lawyer 1:10 pm  
Meeting ID: 817 2134 3753, Passcode: 734189  
Monday, February 21 Presidents' Day - Office Closed  
Thursday, February 24 CLE: Litigation in Immigration Cases - 5:30 pm  
Thursday, February 24 Event: My Name is Pauli Murray Screening  
at Bourbon Street, Bayside, NY- 6:00 pm  
Friday, February 25 Meditation Friday with Diana The Happy Lawyer 1:10 pm  
Meeting ID: 817 2134 3753, Passcode: 734189

### MARCH 2022

Wednesday, March 2 CLE: Real Property Series 2022 - Pt 5 - 1:00 pm  
Thursday, March 3 Elder Law Committee Mtg - 1:00 pm  
Meeting ID: 885 4366 8513, Passcode: 192134  
Thursday, March 3 CLE: EB5 Immigrant Visa - 5:30 pm  
Friday, March 4 Meditation Friday with Diana The Happy Lawyer 1:10 pm  
Meeting ID: 817 2134 3753, Passcode: 734189  
Thursday, March 10 CLE: ABC's of Divorce - 1:00 pm  
Friday, March 11 Meditation Friday with Diana The Happy Lawyer 1:10 pm  
Meeting ID: 817 2134 3753, Passcode: 734189  
Tuesday, March 15 CLE: LGBTQ+ Program on Trans Seniors - 6:00 pm  
Friday, March 18 Meditation Friday with Diana The Happy Lawyer 1:10 pm  
Meeting ID: 817 2134 3753, Passcode: 734189  
Wednesday, March 23 Family Court Committee Meeting - 1:00 pm  
Meeting ID: 845 1444 9922, Passcode: 080329  
Thursday, March 24 CLE: Real Estate & Divorce - 1:00 pm  
Friday, March 25 Meditation Friday with Diana The Happy Lawyer 1:10 pm  
Meeting ID: 817 2134 3753, Passcode: 734189  
Tuesday, March 29 Judiciary Night, Past Presidents & Golden Jubilarian Night

### APRIL 2022

Friday, April 1 Meditation Friday with Diana The Happy Lawyer 1:10 pm  
Meeting ID: 817 2134 3753, Passcode: 734189  
Tuesday, April 5 CLE: Equitable Distribution Update - Part 1  
Friday, April 8 Meditation Friday with Diana The Happy Lawyer 1:10 pm  
Meeting ID: 817 2134 3753, Passcode: 734189  
Tuesday, April 12 CLE: Equitable Distribution Update - Part 2  
Friday, April 15 *Good Friday - Office Closed*  
Friday, April 22 Meditation Friday with Diana The Happy Lawyer 1:10 pm  
Meeting ID: 817 2134 3753, Passcode: 734189  
Wednesday, April 27 CLE: Search & Seizure - 1:00 pm

### MAY 2022

Tuesday, May 3 CLE: Ethics Seminar 2022 - Part 1  
Thursday, May 5 Annual Dinner & Installation of Officers - Terrace on the Park  
Friday, May 6 Meditation Friday with Diana The Happy Lawyer 1:10 pm  
Meeting ID: 817 2134 3753, Passcode: 734189  
Wednesday, May 11 CLE: Ethics Seminar 2022 - Part 2  
Wednesday, May 18 CLE: Update on 30.30 - 1:00 pm  
Friday, May 20 Meditation Friday with Diana The Happy Lawyer 1:10 pm  
Meeting ID: 817 2134 3753, Passcode: 734189  
Friday, May 27 Meditation Friday with Diana The Happy Lawyer 1:10 pm  
Meeting ID: 817 2134 3753, Passcode: 734189  
Monday, May 30 *Memorial Day - Office Closed*

### JUNE 2022

Monday, June 20 *Juneteenth - Office Closed*

### JULY 2022

Monday, July 4 *Independence Day - Office Closed*

## 2021-2022 Officers and Board of Managers of the Queens County Bar Association

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**Publisher:**  
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The Queens County Bar Association  
**Advertising Office:**  
Queens Daily Eagle  
8900 Sutphin Boulevard, LL11,  
Jamaica, Queens, NY 11435  
(718) 422-7412

**Send letters and editorial copy to:**  
Queens Bar Bulletin 90-35 148th Street, Jamaica, NY 11435  
**Editor's Note:** Articles appearing in the Queens Bar Bulletin represent the views of the respective authors and do not necessarily carry the endorsement of the Association, the Board of Managers, or the Editorial Board of the Queens Bar Bulletin.

**"Queens Bar Bulletin"**  
(USPS Number: 452-520) is published monthly except June, July, August, and September by Queens Public Media, LLC, 8900 Sutphin Boulevard, LL11, Jamaica, NY 11435, under the auspices of the Queens County Bar Association. Entered as periodical postage paid at the Post Office at Jamaica, New York and additional mailing offices under the Act of Congress. Postmaster send address changes to the Queens County Bar Association, 90-35 148th Street, Jamaica, NY 11435.

## New Members

Rosemarie L. Ashbahian	Joseph Gilfeather
Brett A. Bauth	Matthew D. Hunter, III
Peter L. Coritsidis	Tanvir H. Rahman

## Necrology

Francis A. Kahn, Jr.	Murray J. Kaplan
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## Covid And Recent Court Decisions

**CONTINUED FROM PAGE 1**  
ble. It also wanted testimony as to whether the father has cooperated and complied with the New York City and New York State guidelines as to Covid.

We will need to see how Justice Sunshine eventually handles the matter. Perhaps joint custody as to medical decisions is not possible in the time of Covid.

### CONCLUSION

There is no question that the Courts will be faced with the Covid vaccine issue for many months or years to come. There will be many cases on the subject in both State and Federal Court. The United States Supreme Court will probably need to weigh in many years after its 1905 decision in Jacobson.

It does appear to this writer that vaccine mandates will be upheld despite a significant portion of the population being opposed to them.

DATED: FOREST HILLS, NEW YORK



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## Editor's Note

# The Child Victims Act is an Unconstitutional Assault on the Law of New York

By Paul E. Kerson

In 2019, the State Legislature enacted a wholly unconstitutional and foolish statute, the Child Victims Act (CVA), CPLR 214-g and 208(b). These new laws allow a State Supreme Court Civil Term plaintiff to file a summons and complaint against a defendant who allegedly committed sexual crimes in violation of Penal Law Article 130 decades ago.

Prosecutorial discretion in sex crime cases has now been thrown out the window together with the prosecutor.

Instead, any deeply troubled soul can now retain his or her own counsel to prosecute a sex crime case decades after the fact.

The human memory is insufficient to meet the Preponderance of the Evidence standard for facts of so long ago.

Instead, a Child Victims Act plaintiff, now an adult, can file a sex crimes complaint on the NYSCEF system severely damaging the reputation of the defendant decades after the incident in question.

Whether or not the complaint is true is now completely irrelevant. The NYSCEF publication of the Summons and Complaint has now ruined the reputation of the defendant before he or she can even retain defense counsel and file an Answer, Affirmative Defenses, Counterclaim and/or Third Party Summons and Complaint.

Before the CVA was passed, a prosecutor's indictment in a Penal Law Article 130 sex crimes case had to meet the detailed requirements of Criminal Procedure Law (CPL) Sections 200.30(1) and 200.50: each count could charge one offense only, a separate accusation as to each offense charged is required, the county where it happened must be named, the date of occurrence must be provided and a precise statement of the facts set forth.

The CVA is silent as to these procedural safeguards for defendants in civil sex crimes cases, defendants who have already been convicted and held up to public ridicule on NYSCEF before they can even file their Answer denying the Complaint.

The New York State Constitution, Article I, Section 6 and the United States Constitution, Amendments 5 and 14 clearly state that "No person shall be deprived of life, liberty or property without due process of law."

The CVA and its state-sanctioned and state-owned cousin, NYSCEF is not Due Process of Law. Ironically, it smacks of a Police State, specifically because the Police Department and District Attorney's

Office have been excluded from the case. When our dedicated police departments and professional prosecutors are involved, no one is charged with a sex crime (or any other crime) until sufficient evidence is collected.

Under the CVA, this basic principle of Due Process is thrown out the window. Any disturbed plaintiff can file a civil Summons and Complaint without any evidence at all, and hope to get some with CPLR Article 31 discovery – document exchange, depositions and the like. That public process labels the defendant as a sex offender to all of his or her friends, family and business associates who have access to NYSCEF. That would be everybody on this Planet with reasonable computer skills.

So how does a first class defense attorney defend a CIVIL sex crimes case when the procedural safeguards of the CPL and State and Federal Constitutions have been thrown out by a State Legislature and Governor who completely forgot their oath "to preserve, protect and defend the Constitution of the State of New York and the United States"?

### 1. IMMEDIATELY FILE A MOTION TO REMOVE THE CASE FROM NYSCEF

Upon receiving the Summons and Complaint, the newly retained defense attorney must immediately file a motion pursuant to 22 NYCRR Section 202.5-bb(e)(3).

This section permits the removal of cases from NYSCEF upon a showing of "good cause". In my view, EVERY CVA COMPLAINT CONSTITUTES GOOD CAUSE FOR REMOVAL FROM NYSCEF.

How dare a responsible State Government allow a lifetime reputation of a defendant to be ruined with allegations of sex crimes that have not been proven?

The Courts of the European Union, Argentina and the Phillipines are way ahead of us on this point. They have developed a "Right to be Forgotten" (RTBF) for cases like this. Unproven sex crimes should certainly head the list of embarrassing material that individual citizens can demand to be removed from computer databases THAT OTHERWISE LAST FOREVER. See Google, Wikipedia, Right to be Forgotten.

If anything positive comes out of the CVA, it will be adoption by our New York State Court System of the RTBF that is the only logical antidote to the foolishness and injustice of allowing the NYSCEF system

to be used in civil sex crime cases BEFORE ANY ALLEGATIONS ARE EVEN PROVED!

### 2. IMMEDIATELY FILE A MOTION FOR ANONYMITY OF ALL PARTIES IN THE CASE.

Defense counsel in a CVA civil sex crimes case must also immediately ask the Court to direct all the parties in the case to be labeled "John Doe", "Jane Doe", "Richard Roe" or "Mary Roe" and not by their real names.

Keeping the case off NYSCEF is not enough to protect the reputation of a CVA defendant where no Complaint has yet to be proved.

Fortunately, requests for anonymity antedate the CVA and there is favorable case law on this subject. See *Anonymous v. Anonymous*, 191 Misc. 2d 707, 744 N.Y.S. 2d 659 (N.Y. Co. Sup. Ct. 2002), *Anonymous v. Anonymous*, 27 A.D. 3d 356, 814 N.Y.S. 2d 21 (1st Dept. 2006).

In ordering anonymity in a CVA case, the Rockland County Supreme Court had this to say: "(T)he mere filing of a complaint...is not indicative of merit." See *Doe v. MacFarland*, 66 Misc. 3d 604, 117 N.Y.S. 3d 476 (Rockland Co. Sup. Ct. 2019). See also *Doe v. Amherst Central School District*, 196 A.D. 3d 9, 148 N.Y.S. 3d 305 (4th Dept. 2021).

### 3. FILE A MOTION TO DISMISS ALL CVA COMPLAINTS ON THE GROUNDS THAT THE CVA IS AN UNCONSTITUTIONAL EX POST FACTO LAW.

An Ex Post Facto law is one that has retroactive force or effect.

Laws of this type are hallmarks of dictatorships and monarchies. This why they are forbidden to Congress and the State Legislatures by the United States Constitution, Article I, Sections 9 and 10.

The CVA is clearly an unconstitutional Ex Post Facto law as it seeks to punish conduct which may or may not have happened decades ago, and to punish it immediately without trial by publishing it on Official State Media known as NYSCEF.

The leading U.S. Supreme Court cases on this subject are *Smith v. Doe*, 538 U.S. 84, 123 S.Ct. 1140 (2003) and *Kennedy v. Mendoza-Martinez*, 374 U.S. 144, 83 S.Ct. 554 (1963).

Michigan required convicted sex offenders who had served their prison sentences to register with the State and follow a detailed set of bureaucratic rules

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— Wanda M.

I cannot recommend Etan highly enough. From the very beginning, we charted a sale plan and it worked flawlessly. Etan is extremely knowledgeable in navigating the complexities of selling a home and guided me every step of the way, I had a special situation where timing of the sale was critical. Etan worked exceptionally hard to ensure that we hit our targets. Aside from being an awesome professional. He's just a really nice guy and a pleasure to work with. A truly fantastic experience.

— Richard A.

I became the Executor of my Aunt's estate which included a condo she owned in Queens. Etan was recommended by our estate attorney to be our realtor. He was great from the very beginning! He was always very professional and extremely knowledgeable about the real estate market. I live in New Jersey and he made the difficult task of selling my Aunt's condo in Ridgewood NY an absolute pleasure. He helped me with every aspect of the entire process. With Covid entering the picture, it became a long process and he was wonderful every step of the way. He spent a lot of time answering numerous questions, always returning calls promptly and keeping me updated on different strategies to sell the condo. I would recommend him and his team very highly!

— Joan T.



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## President's Message

By Frank Bruno, Jr.

"On some positions, Cowardice asks the question, "Is it safe?" Expediency asks the question, "Is it politic?" And Vanity comes along and asks the question, "Is it popular?" But Conscience asks the question "Is it right?" And there comes a time when one must take a position that is neither safe, nor politic, nor popular, but he must do it because Conscience tells him it is right." Martin Luther King, Jr.

Our society tolerates unfairness every day. It tolerates misogyny, racism and indifference to those born without privilege. Race, class, culture and economics are pushed, morphed, melded, pigeonholed and marginalized.

The biggest issues of the day recede into the background. We still manage to find endless resentment for petty slights and small-time favoritism. Our own little bubble within the larger bubble of America.

When the car in front of you gets the last spot or a colleague fails to reply to the last text we sent and we are left hanging, we bristle. When a student is given an undeserving grade, we're outraged. When a ruling is made because the other attorney yelled a little louder or barked last, we scream. When the cook dishes out the juiciest piece of chicken to the person before you or the baker gives away the last loaf of bread to the person in front of you, that's a slight worth a few hours of discontent.

The small rebuff defeats the consequential.

The Birmingham Campaign 1963 was an effort of nonviolent direct action led by the Southern Christian Leadership Conference, Martin Luther King, Jr., James Bevel, Fred Shuttlesworth and others. The event started as a boycott to pressure business leaders to desegregate and other laudable goals. A series of sit-ins and marches were organized to provoke mass arrests. To keep from running out of protesters, students trained in nonviolence from all grades were brought in to become the main demonstrators. Thousand were arrested. The low point and the turning point was when City Commissioner Bull Connor used high-pressure hoses and police attack dogs on children and bystanders. To be sure, not every protester was non-violent but the children stuck to this premise and the world was changed. It directly paved the way for the Civil Rights Act of 1964.

The collision of the consequential and the event. The world didn't witness the centuries of implicit and explicit racism, they saw the water cannons and dogs, a small, vivid act, moving in its obvious unfairness. It was the small act that focused our attention on the larger injustice. Like a knee to the neck did last year.

We don't change markets, or populations, we change people. One person at a time, at a human level. And often, that change comes from small acts that move us, not from grand declarations.

*"The saving of our world from pending doom will come, not through the complacent adjustment of the*

*conforming majority, but through the creative maladjustment of a nonconforming minority."*

— Martin Luther King, Jr.

Black History Month is an annual celebration started in 1926 conceived by Historian Carter G. Woodson to honor African Americans and raise awareness of Black history. We at the Bar Association have a series of Committee meetings amongst our Diversity and Inclusion Committee starting last month and continuing this month on this topic and for the greater legal community we are hosting a dinner and documentary screening of the film, My Name is Pauli Murray at Bourbon Street on February 24. This is a look at the life and ideas of a non-binary Black lawyer, activist and poet who has influenced so many in our community to this day.

February happens to be Cancer Awareness month as well and I will defer my story on that topic until next month.

In January, along with Chairperson Barbara Wilkanowski, I wrote a letter to the Administrative Judge of the Criminal Court of the City of New York wherein we expressed some concerns over the foot traffic in our Queens Criminal Court. We copied the Hon. Amaker, Marks, Kaplan, Grasso and Waters. We sought, where appropriate to increase virtual appearances with no reduction in Court volume. The Hon. Tamika Amaker replied in part that Judges have broad discretion but that certain proceedings such as Grand Juries or trials are best or only able to be done in person. There was less disagreement than you might think rather the nuances of our letter were lost on the Court as we did not seek blanket closures or a reversion to remote operations. The last paragraph of the Court's letter is a sentiment that we can all agree with "...that maintaining access to our justice system is critically important; it is what the public is entitled to and deserves."

As the Criminal Court forges ahead with in person grand juries, hearing and trials we are increasingly fielding concerns from our civil side litigators. I handled multiple emails and phone calls this week praising the Bar for our advocacy, receiving compliments on our new website and facing the inquiry of when can the Supreme Court open up? We know it is open. Slowly, grudgingly it is opening but I think TSP has two small calendar calls a day. The Personal Injury Plaintiff's Bar members are looking for more. Sooner dates, more dates, more trials. The consensus of the Plaintiff's Bar is that without trial dates that insurance carriers have no impetus to settle. We hear that Nassau and Suffolk are up and running and even have a hybrid

model. We hear that Brooklyn has more cases. Slow footing the move into Court has been prudent but with 73% of all New Yorkers vaccinated and 82% with at least one dose maybe we are ready for more? With Omicron's less deadly effects and the introduction of and rapid deployment of Covid treating therapeutics maybe now is the time to open up. I appreciate the concerns of sick, elderly and infirm. I had Covid at the end of December and although not life threatening it was like the flu and then a cold and I still have symptoms, more than a month later. I think there is a way to bring us back and assist our members and the litigants of Queens. In the words of the esteemed Court "...that maintaining access to our justice system is critically important; it is what the public is entitled to and deserves." Our Plaintiffs and Queens litigants deserve their day in Court. Justice delayed is justice denied.

As an aside, I was a Foreclosure Referee this month in the rain on the steps of the Courthouse huddled beneath the green scaffold canopy. I kept my mask on but it didn't seem well enough socially distanced and was rather Covid friendly. The best safest place to conduct the sales are indoors inside the building. The entrance and exit doors of the building were in the way of bidders and prospective bidders were in the way of the doors. No one was happy with the set up.

I repeat the mantra, we do what we can, with what we have, for as long as we can, when we can, where we can.

I want to Congratulate Sharifa Milena Nasser and Jasmine Valle on their respective appointments to the Board of Managers. I appointed Ms. Nasser in January to fill the role vacated by the election of Hon. Andrea Ogle to the Bench. She was unanimously approved by the Board to fill the open spot immediately. She will serve the balance of the existing term. In February, I appointed Ms. Valle to fill the vacant seat of the Hon. Diego Freire. Ms. Valle also was unanimously elected into the vacancy immediately and will fill out the duration of his term. Please see the write up this issue.

The Nominations Committee met this week and interviewed several highly qualified applicants to be voted onto our Board of Managers. Please take a look at our Report of the Nominating Committee in this issue. The election takes place in March where the four prospective Board members must be voted to serve a three-year term to begin June 1, 2022. The election of new Officers takes place as well. Congratulations to all.

Face front; True believers! In the words of Stan Lee, "Nuff said!"

Maybe not enough because I really want to end with "let's live in the magic."



## H1B Pre-Registration - Right around the corner!!!

With the year 2022 under way, Employers are all gearing up and organizing candidates for H1b filings for Fiscal Year 2023, which will begin October 1st 2022. The filings for H1Bs will start around April of 2022 and the lottery system will be based on cases selected through Pre-registration, similar to last year, which will start as of March 1st, which is almost 2 weeks earlier than previous years and ends almost 10 days earlier than previously. From noon Eastern Time on March 1st through noon Eastern Time on March 18, all pre-registration should be done and in.

Typically, this is how it works:

1. First round pre-registration candidates are randomly selected from all the Quotas. Those who are picked will have 90 days to file their H1B - earliest date they can start to file would be April 1st 2022.

2. Anyone who is not selected but still eligible, will be kept as "submitted" until a short bit after 90 days. Those who are not eligible will be rejected and removed from the FY 2023 H1B lottery.

3. Within and up to that 90 day period, some H1B petitions will be filed and denied, and some will be

filed and withdrawn, and still some will just never be filed within the 90 days. So, all the leftover visas that were not positively used will be utilized for 2nd round picks.

4. Typically, 2nd round picks will happen around the 2nd or 3rd week of July, after USCIS has had a chance to tally all the visas left and available. And then a random selection will occur again.

5. After all the visas available are used to pick random folks for round 2, those people will have 90 days to file and everyone else will remain as "submitted".

6. Sometime around November round 3 will begin after the 90 days for round two and also to account for any additional denials starting from Round 1. There may or may not be many visas left at that point but still gives an opportunity to use up every possible visa number available.

7. The H1B lottery is a per year system and the visa numbers not used in a given fiscal year will go to waste. That is why this relatively new pre-registration system is so valuable and helpful. It allows the maximum number

Prospective petitioners with selected registrations

will be eligible to file a FY 2023 cap-subject petition only for the alien named in the registration and within the filing period indicated on the eligibility notice. It is extremely important that all accounts are created properly otherwise registration can get easily messed up and missed.

For those employers who have counsel/attorneys, there will be account process for the attorney and then any account process for the employer and they are interconnected so that preregistration can take place. AND absolutely no one should have duplicate filings for the same employee and same employer for the same job. If that occurs the entire preregistration for that beneficiary will be cancelled as moot.

For successful applicants, the system will send a confirmation saying that the preregistration is complete. Then it will be a wait game to find out if the applicant is picked. For any employers or potential H1B applicants, if you need information or advice, please contact an experienced immigration attorney.

BY DEV B. VISWANATH, ESQ.

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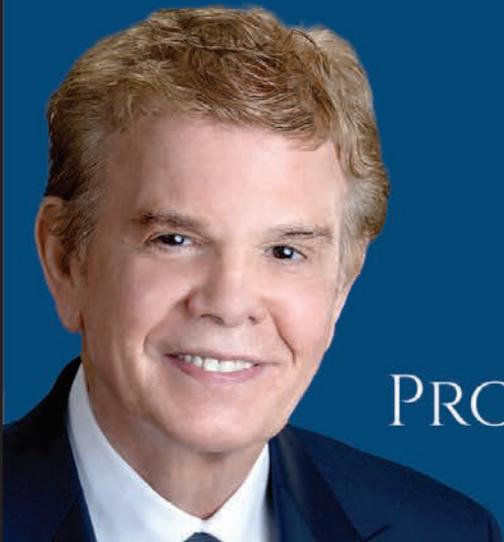
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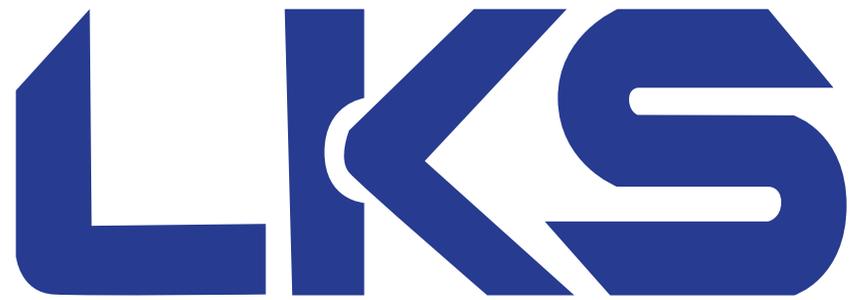
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Donna received her law degree from St. John's University of Law. She is currently the Chairperson of the Board of Directors of the Catholic Lawyers Guild of Queens and was past President of the Queens County Women's Bar Association, the Astoria Kiwanis Club, East River Kiwanis Club, and the Catholic Lawyers Guild of Queens.

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## The Practice Page

# Enforcing Foreign Judgments

BY JUSTICE MARK C. DILLON

*Serves on the Appellate Division, Second Department*

Money judgments rendered by foreign countries may become relevant to collection efforts in New York. To be enforceable, there must be a “domestication” of the foreign judgment under the procedures defined by the Uniform Foreign Country Money-Judgments Recognition Act. The Uniform Act is embodied in CPLR Article 53.

Some foreign money judgments will be cognizable and enforceable here under the Uniform Act, and others not. There is essentially a two-tiered analysis that needs to be examined for enforcing foreign country judgments. One tier is whether the judgment is subject to mandatory non-recognition, and the other is whether there is a discretionary reason for its non-recognition. Both hurdles must be satisfied for the foreign money judgment to be enforceable in New York.

The “mandatory” grounds for non-recognition are defined in CPLR 5304, and there are two that are separate and unrelated from one another. A foreign judgment is not conclusive in New York if it is rendered by a judicial system which does not provide tribunals or procedures compatible with the requirements of due process. Throughout the world, there are countries which New York has recognized as meeting our expectations of due process and other countries which

do not meet those expectations. It makes sense that foreign judgments comport with due process to be “worthy” of enforcement here. The other instance a foreign judgment is not enforceable here is when personal jurisdiction was never obtained over the defendant in the foreign country. That rule operates across the board, where all judgments, including those rendered from New York, are void if personal jurisdiction was never obtained over the defendant in the first instance. CPLR 5305 sets forth bases on which the New York courts are to determine whether the foreign court had obtained personal jurisdiction over the defendant, and practitioners are warned that the statute’s considerations are different from the standard service of process rules seen in CPLR 302 and 308.

Assuming that there is no mandatory reason for refusing to enforce a foreign country judgment, our courts retain jurisdiction to not recognize them for other reasons which are discretionary. Those grab bag reasons include 1) the foreign country’s lack of subject matter jurisdiction, 2) the defendant in the foreign court lacked timely notice of the foreign proceedings sufficient for defending itself, 3) the foreign judgment was obtained by fraud, 4) the cause of action underlying the judgment is repugnant to New York public policy, 5) the judgment conflicts with another final judgment

rendered elsewhere, 6) the foreign proceeding violated an agreement between the parties to resolve the matter in other ways, 7) the forum was “seriously inconvenient,” 8) and in the case of defamation, the foreign court’s law did not provide as much protection for free speech and free press as provided by the U.S. and New York constitutions.

As between the “mandatory” and “discretionary” grounds for rejecting foreign money judgments, the plaintiff seeking to enforce the foreign country’s judgment bears the initial prima facie burden of establishing that the mandatory grounds for non-recognition are not applicable. Thus, the foreign country judgment is not cognizable in New York unless the proponent hurdles the mandatory concerns of CPLR 5304(a)(1). If that burden is met, the defendant opposing the domestication of the foreign judgment then bears the shifted burden of proving one of the discretionary grounds of CPLR 5304(a)(2) for the non-recognition of the foreign money judgment. Doing so is dependent upon the unique facts and circumstances of the foreign litigation, which necessarily vary from case to case. If the opposing party fails to establish any discretionary ground for the non-recognition, the foreign money judgment is subject to enforcement in New York.

## The Child Victims Act is an Unconstitutional Assault on the Law of New York

### CONTINUED FROM PAGE 4

for living out the rest of their lives upon release. The geniuses in the Michigan State Legislature called this the “Sex Offender’s Registration Act” (SORA), Michigan Public Act 295, Section 10 (1994).

In *Does v. Snyder*, 837 F. 3d 696 (6th Cir. 2016) SORA was struck down as an unconstitutional ex post facto law by the U.S. Court of Appeals for the Sixth Circuit, holding:

“...punishment may never be retroactively imposed or increased...it is far more dangerous to permit the government under the guise of civil regulation to punish people without prior notice. Such lawmaking has ‘been, in all ages, (a) favorite and most formidable instrument of tyranny.’” citing *The Federalist No. 84* (Alexander Hamilton) See 834 F. 3d at 697

This wave of zaniness had spread throughout the country. State Legislatures kept jumping on the bandwagon.

Alaska passed the Alaska Sex Offender Registration Act (ASORA), Alaska Statutes Section 12.63.100(5). In *Doe v. State of Alaska*, 189 P. 3d 199

(2008), the Alaska Supreme Court would have none of it, holding ASORA an unconstitutional ex post facto law:

“because ASORA’s registration, disclosure and dissemination provisions violate the protection against ex post facto laws...”

The Maine, Oklahoma, and Kentucky State Legislatures all tried the same foolishness. No, no, said their Highest State Courts. See *State of Maine v. Letailian*, 2009 ME 130, 985 A. 2d 4 (2009), *Starkey v. Oklahoma Department of Corrections*, 2013 OK 43, 305 P. 3d 1004 (2013), and *Commonwealth of Kentucky v. Baker*, 295 S.W. 3d 437 (2009).

The Kentucky Supreme Court said this type of state statute “intended to impose punishment” See 295 S.W. 3d 437, page 5.

Isn’t this the exact outrageous unconstitutional conduct of the New York State Legislature that is going on in CPLR Sections 214-g and 208(b) (the CVA)?

Didn’t those maniacs in Albany want to “impose punishment” on sex offenders?

That is what the CVA is clearly doing. But Alba-

ny is acting far worse than Michigan, Alaska, Maine, Oklahoma or Kentucky ever did. The NY CVA does not require conviction or even a civil verdict before the plaintiff WITHOUT ANY PROOF WHATSOEVER can post unproven allegations of sex crimes on STATE OWNED PUBLIC MEDIA, THE NYSCEF SYSTEM!

So who is the wrongdoer here? The unproven CVA defendant, or the Government in Albany that encourages unproven sex crimes to be posted on NYSCEF for all to see by anyone on the Planet with a laptop?

And you thought elections for the State Legislature were unimportant. Guess again. I call upon our State Supreme Court and Appellate Division Justices and Judges of our State Court of Appeals to strike down all CVA cases immediately as unconstitutional. At the very least, all CVA cases must be struck from NYSCEF and directed to proceed anonymously.

BY PAUL E. KERSON, ESQ  
EDITOR



Allen E. Kaye

# Immigration Questions

## Overview Of The EB-5 Program

### Part 1



Joseph DeFelice

**This memo will attempt to briefly describe how to obtain U.S. permanent residence (a “green card”) through an investment in the United States through the “EB-5 program”.**

**We are currently in a doubly strange situation:**

**1. Normally the amount of investment is a Targeted Employment Area is \$900,000; elsewhere \$1,800,000 but, because of a recent lawsuit, the amount of investment is a Targeted Employment Area is \$500,000; elsewhere \$1,000,000**

**2. All Regional Center investment is currently suspended.**

The investor is usually required to invest a minimum of \$1.8 million, but, if the investment is in a Targeted Employment Area, the EB-5 petitioner may invest only \$900,000. “Targeted Employment Area” means an area which, at the time of investment, is a rural area or has an unemployment rate of at least 150 per cent of the national average. Rural areas must not be within a metropolitan statistical area as labeled by the U.S. Office of Management and Budget. A rural area must also not be on the outskirts of a town or city that has a population of 20,000 residents or more as determined through the U.S. Census.

However, because of a recent lawsuit the basic investment is now just \$1,000,000 and the amount of investment in a targeted area is only \$500,000.

Unfortunately, we have no idea how long this state of affairs will last, nor what will happen to those people who invested less than the higher amounts when and if this decision is reversed. Further, because (according to USCIS) the regional center program has been suspended until extended by Congress, USCIS is currently accepting only “direct” investment.

**Except as stated in the following 2 paragraphs the investor must invest his own personal funds.** The best practice is for the investor to directly invest his own personal funds out of his own personal account. Funds invested by a corporation will generally not count as monies invested by the investor even if the investor is the sole owner of the corporation. An investor wishing to invest funds which officially belong to a corporation or other business entity which he owns or controls should (lawfully) cause the entity to issue the funds to him, then invest them directly.

**Gifts are OK.** There are no restrictions on the investment of gifted funds, provided that there is no legal or moral obligation or expectation of repayment at any time in the future. However, if the money is gifted then the person making the gift must show how he legally acquired those funds just as the investor must do so as discussed below. Further, the funds must be gifted, not the investment. An investor does not qualify for permanent residency if someone transfers him their interest in an investment, such as a partnership interest or corporate stock.

**Borrowing creates complications.** According to the most recent interpretations released by the USCIS, if you borrow the money needed to make the required investment you must: a) give your lender security equal to at least the amount of the loan; b) demonstrate that as a practical matter the lender can actually seize this security under the laws of the country in which it is located in the event you default on the loan and c) demonstrate that the lender can actually sell his right to

collect on this loan for the loan amount to some arms length third party buyer. You must also show that the security was lawfully acquired.

However, there was recently a decision by a U.S. Federal court rejecting the USCIS’s position on this issue and holding that the loan need not be secured. However, if you wish to rely upon this decision then you should be prepared to go to federal court to get your EB-5 petition approved.

**The investment should be made in full before the EB-5 petition is filed.** However, the investor can have an agreement with whoever is selling him an investment that his funds be held in escrow pending a decision on his EB-5 petition, and that his investment be refunded if the petition is not approved. While theoretically one could file an EB-5 petition before the full investment is made, provided that one submits a clear plan for future investment the law on this issue is not clear and I would consider such a petition quite risky. Further, this would probably be possible only if you were managing your own investment. I am not aware of any regional center which allows one to make payments over time.

**The invested funds must be from a lawful source. The investor must demonstrate that the capital he invests is in fact from a legal source.** This means he must prove exactly where the money he invested came from, showing exactly how the funds passed from the source they were originally earned to the account from which the investment is made. This evidence must include, but is not limited to, the following:

Foreign business registration records;

Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;

Evidence identifying any other source(s) of capital; and Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

**If the money comes from outside the U.S., it must be transferred here in accordance with the laws of the country it comes from or goes through.** This may require an opinion letter from a lawyer or other reliable source from the originating country explaining the laws pertaining to the transfer of currency out of the country.

**The investment must be at risk.** The EB-5 petitioner’s capital investment must be subject to total loss at all times until he becomes an unconditional permanent resident. Guarantees of return of any capital are strictly prohibited, and if discovered the investor’s petition will be denied.

**The Job creation requirement for every investor is ten new American jobs.**

Each foreign national EB-5 Investor must create at least ten full time United States-based jobs for legal workers who are not members of the investor’s immediate family. These job should be created within 2 years of the investor becoming a “conditional permanent resi-

dent” (see the “Procedure” section below). Since it usually takes about a year for an investor to become a conditional permanent resident, therefore the jobs should be created within 3 years of the time the investment is made. Because “new” jobs must be created, one cannot qualify for EB-5 just by buying a business that already employs 10 people unless that business is a “troubled business”. A troubled business means a business that has been in existence for at least two years, has incurred a net loss for accounting purposes (determined on the basis of generally accepted accounting principles) during the twelve or twenty-four month period prior to the date the investor files his EB-5 petition, and the loss for such period is at least equal to twenty per cent of the troubled business’s net worth prior to such loss.

**The jobs must be for legal employees,** not the investor or the family members immigrating with him, and not for independent contractors. A legal worker is simply anyone authorized to be employed in the U.S.

**Timing of the job creation.** The jobs should all be created after 100% of the investment has been made. However, they needn’t be created before the EB-5 petition is filed. Rather, a petition can be filed before the jobs are created, but only if the petition is supported by a very detailed, persuasive business plan that will show how all the necessary jobs will be created within 30 months of the filing of the petition. **This must be shown through a very detailed business plan** filling certain quite specific requirements published by the USCIS. We can assist you in finding a company to help write the necessary business plan.

**The commercial enterprise must have come into existence after November 29, 1990.**

There are various ways of “restructuring” a commercial enterprise which was established on or before November 29, 1990, but they are quite complex and strictly construed by USCIS. The best strategy is simply to avoid investing in a business that existed in any form on or before that date. This includes predecessors of the same business that may have existed at the same location under different ownership. If you are intent upon investing in a business which existed in any form on November 29, 1990 you need to consult legal counsel regarding the feasibility of obtaining permanent residency based upon such an investment.

**The investor must be involved in the management of the investment.**

If the enterprise is a corporation the investor should be a corporate officer or a member of the corporate board of directors. If it is a partnership, the investor should be engaged in either direct management or policy making activities.

The safest bet is to be a limited partner. If the investor is a limited partner and the limited partnership agreement provides the investor with certain rights, powers, and duties normally granted to limited partners under the Uniform Limited Partnership Act, the investor will be considered sufficiently engaged in the management of the new commercial enterprise.

**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.



## A Tractor-Trailer, Danger, And Survival

- a battle against all odds  
- a human interest story

BY LEONARD L. FINZ

It is no secret and bares retelling, that danger does not lurk in a vacuum. It can become the instrument of grievous harm – and usually accomplishes its insidious purpose. All of which takes me to the amazing story that follows...

John (name is fictitious) had been driving tractor-trailers from his middle twenties to his middle forties. Being behind the wheel of a powerful rig had always been his dream. And he was really good at it. Living in the Deep South with his wife and teenage daughter, he would usually pick up a load of supermarket products from a designated depot and travel to a central location in the New England area where his trailer's contents would be distributed to awaiting trucks. He loved his job and was so proud that in the thousands of miles he had travelled he had never had an accident.

The day in question was no different than others. The instruction received from his employer was that he pick-up a load of frozen food packed in containers that would ultimately find their way into the frozen food section of Northeast supermarkets. The tractor he drove was built as solid as the engine of a freight train. And when John sat in the driver's seat of the cab, wearing his good luck baseball cap that adorned his head, he was king of his castle. The trailer that measured almost 60 feet in length on this trip was refrigerated so that the products he was transporting would remain frozen.

Departing even before daylight arrived, he proceeded North on the interstate. Streaming through Virginia, Washington, DC, Maryland, Delaware, and New Jersey, were the states he had passed through so many times before. Many hours later, John had reached a tollbooth on the interstate that displayed a "Welcome" sign. Throwing his usual friendly salute to one of the toll collectors he headed north on his way to his destination. What happened soon thereafter, could have served as a tense action scene in a Hollywood movie...

As John powered his huge rig onto the interstate soon after leaving the tollbooth, he accelerated until it reached the speed limit of 65 MPH. Suddenly, he felt a violent jolt on the right front of his tractor. Instantly, he lost control as the tractor and attached trailer swung perilously to the right of the roadway. The huge thunderous rig slammed shatteringly into a guardrail. The structure was no match for the rig that then was more like a runaway freight train. Pulverizing the rail, the tractor-trailer continued its uncontrollable motion despite John's desperate efforts to gain control.

At that specific location, the thruway was elevated over a parkway that was 35 feet below. As the out of control rig kept moving with total disregard to John's frantic efforts to bring it to a halt, its momentum and weight caused it to mount the right side of a protective wall, crushing it as it proceeded forward. Sixty tons of tractor-trailer with John in the cab flew in the air and plummeted down with volcanic impact upon the parkway 35 feet below. The crash bent the trailer into a pretzel-like metal mass. The tractor struck the pavement with equal volcanic force.

The trailer's contents were scattered all over the roadway. Fortunately, traffic on the parkway was light, and amazingly, no passenger vehicles were struck. As for John however, he was trapped in the crushed metal of the tractor. Motorists stopped their cars. They got out and ran to the bashed rig believing that its trapped driver was probably dead. Despite heroic efforts, the good Samaritans were unable to pry open the doors of the tractor. Within 15 minutes, fire engines, police vehicles, and ambulances merged upon the horrendous scene. Jaws of Life were used to free open one door of the tractor. They reached John who was unconscious and blood soaked. EMT's went to work within seconds. Miraculously, John was breathing, but fading fast. Oxygen was administered as other quick emergency measures were employed to keep him alive. Rushing John into a waiting ambulance, it sped off to the nearest hospital 20 minutes away. To have survived such a disaster would have shaken up Las Vegas odds. But John did survive although he suffered serious multiple fractures, a brain concussion, and internal injuries.

John was confined to a hospital for six weeks following the significant and multiple surgeries performed. Metal plates and internal fixation devices became part of his deformed anatomy. Upon discharge, he was sent to a rehab facility where therapists worked tirelessly to bring some order to his severely damaged body. During this process, pain was John's constant unwelcome companion. Mounting depression added to the reality that he was not a whole man. No longer a person of towering strength, he became totally withdrawn and lost his self-confidence. John now had to rely upon others to hold his arm even when he had to go to the bathroom, just so that he wouldn't stumble and fall. His loving wife was with him everyday in her constant desire to provide support and reassurance. But despite all of her efforts, John still harbored horrifying thoughts of doing away with himself. How sad!

After an agonizing year in which John even had to fight off addiction to pain opioids, he started to see a little sunshine come into his life. Of course, despite some remarkable improvement, he would never be able to return to operating a tractor-trailer, a job that had given him such pleasure and self esteem. Fortunately however, his employer—a very decent human being—took John back and had him trained as a dispatcher. Not only did he salvage him but he also restored some of the manliness that was so cruelly ripped away by the titanic accident.

Aside from John's devastating injuries, a troubling question had to be answered: what caused the accident and calamity? While John was recovering slowly in the hospital, his wife retained a prominent law firm. The team engaged one of the most reputable highway engineers in the country. Answers to the big question were finally provided...

When John left the tollbooth and continued his journey on the interstate, road and skid marks on the pavement led the engineer to the exact spot where John had lost control of his rig. Gouges on the road led to a large circular area that had been filled with blacktop. The engineer reported that the blacktop was reasonably fresh, and using electronic instruments, he was able to determine the depth of the hole that it covered and the exact circumference that was measured. There was sufficient evidence for him to conclude that John's right front tire struck a deep and large pothole. It was the sudden contact of this massive road failure that alarmingly caused John to lose control of his rig.

The trial of John's lawsuit that was tried before a jury, spanned a period of almost three weeks. At the conclusion, the jury returned a verdict in favor of John, finding that the State failed in its duty to maintain its highways in a reasonably safe condition. That it knew, or should have known of the dangerous pothole and that its failure to repair it, caused the tragic accident that changed the quality of John's life, forever. John's nightmare was clear evidence that as to him, danger does not lurk in a vacuum. And as stated earlier, it is often the cruel instrument of grievous harm. Overall, John is a true persona of the innocent victim who fought endlessly to survive—and he succeeded!

But John will never again wear his proud baseball cap in the cab of a tractor-trailer. He will never again experience the majesty of being at the wheel of a giant rig. For him, that castle is gone forever. But he is now a dedicated dispatcher— thanks to the humanitarian kindness of his employer. John's manliness has finally been restored! John has the respect of his peers! John is a humble husband in a marriage where mutual love was never displaced! John is the loving father of a daughter whose greatest fear was that the parent she worshipped would be gone forever! And as frightening dark clouds are replaced by a slight shining sun, John continues to feel blessed today, tomorrow, and all the tomorrows yet to come!

END OF STORY

*Leonard L. Finz, age 97, is a former New York State Supreme Court Justice (Queens County), a decorated WWII Veteran (1st. Lt., Field Artillery, Philippines), inducted into the Army Artillery "Hall of Fame", the author of four published thriller novels, Peer-Reviewed as "One of America's Preminent Lawyers", an active member of the QCBA for 67 years, and the founder of Finz & Finz, PC.*

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# Becoming Conscious of Your Subconscious Mind

BY DIANA C. GIANTURCO\*

*Chair, Lawyers' Assistance Committee*

Consciousness is awareness. It includes our thoughts, feelings, and actions which are at hand. Our subconscious mind consists of things that exist but that we are not presently aware of, but which can be brought to the surface when needed. Because our brain takes in so many stimuli every moment, we need to be selective about what we are aware of or else our heads would explode. For example, you read that last sentence, but you didn't consciously become aware of every letter in every word or the punctuation. You didn't consider the contrast of the color of the dark type against the white page, but those things did go through your mind. There may have even been a typographical error that your brain picked up, but your subconscious mind just archived it and filled in with the correct word. We need the subconscious mind to filter out necessary from unnecessary information to keep our brain performing effectively. Scientific research on habitual behavior provides evidence that 90% of our thinking goes on in our subconscious mind. (There is also the unconscious mind which houses deep seated ideas and phobias which may not be easily accessed – like why you are afraid of spiders or flying in a plane even if you have never left the ground. The unconscious mind is not part of this discussion herein.)

Our subconscious mind is the story we tell ourselves daily of who we are, where we came from and where we are likely to go. It holds the beliefs and attitudes we have collected from various sources of all the days gone by and the expectations of our future based on the known outcomes of past experiences. Our subconscious mind allows us to move through the day with a sense of predictability and routine behaviors. This "autopilot" works to our benefit when our subconscious programming includes good eating habits, regular exercise, and a copacetic well-being. But if our subconscious formulations are based on low self-esteem, anxiety, and stress, we could be running 90% of our mind on gloom and doom and a dismal outlook for the future. The good news is that we can use the remaining 10% - our conscious mind - to recondition our subconscious and shift to a more pleasing state of being. Are you ready for a "subconscious makeover?"

Any effort to change must be preceded by a recognition of who we are and what we need to address. This is where most people stop. Right at the beginning. It can be uncomfortable to move out of our predictable mind even if it is not serving us. It's like still wearing those old torn ratty slippers even though you got a new pair for Christmas. It's easier to just stick within our comfort zone. It may take considerable effort to modify or reverse long held beliefs and attitudes and who wants to do that? Sounds like a pain in the neck. In some cases, you may be challenging your own identity. Who will you be if you don't have that? Well, who do you want to be? Let's start there.

Do you want to be a person who jumps out of bed full of energy after a good night's sleep, happy and inspired for the day? Do you want to be a person who eats healthy foods and walks an hour a day in the sunlight and smiles at people walking by? Do you want to give up addictions like fast foods, alcohol and your cell phone and instead read a few pages in an informative book before you go to sleep? If you are not that person now, you can become that person by taking a hard look at your behaviors and questioning whether it is better to stay there or make an effort to change. You must become consciously aware of your subconscious before you can start your makeover. You must take a critical look at YOU. Put yourself on the witness stand and cross examine the ideas you live with that don't serve you. Look for loopholes and contradictions in your thinking and question your logic when reasoning why to stay in an old behavior that may be doing you a disservice. If your answer is, "Well I've just always been that way," is that a good enough reason to stay there? Are there other options? (Of course, there are) Are they easily available? If they are not easy, is it worth the effort? The amount of effort you put in is directly related to how badly you want change. If your answer is, "I'll never change," then you're right – you never will.

You know yourself better than I do but here are some general statements I commonly find programmed into the subconscious mind.

I always wake up in a bad mood.

Traffic is always a hassle.

I don't have time to eat a good breakfast.

I don't have time to walk in the morning, afternoon, or evening.

Meditation is not for me. I could never stop thinking.

My desk is a mess. I am so disorganized.

I can never get enough stuff done in a day.

My whole family is like this.

I hate my job. My boss hates me.

I am not good enough.

I never get any help around the house. I hate where I live.

I can never sleep. I always wake up at 2am and stare at the ceiling for hours.

This is all subconscious programming based on past experiences put on autopilot and transferred to the future – to today. Expectations rest in your subconscious mind and we always get what we expect to get. If you expect to wake up in a bad mood – you will. If you expect traffic to be a hassle, it will be. If you never expect to have time for healthy habits, you never will. If you believe you won't be able to get to sleep tonight, you won't.

Now, I want you to do a vigorous cross examination of yourself on these issues or any others you may have. Ask yourself, "Why?" and "Why not?" but don't stop with just one layer, keep asking "Why?" until you determine if the claim is valid. It may take several layers to get to the bottom of it. Don't stop until you do. The answers are your conscious awareness of your subconscious mind.

In future articles, I will address some of these areas in more detail with corresponding ideas for modification. Until then, take some time to think about who you are. A good way to start is to ask yourself, "Who do I want to be when I get out of bed in the morning?" Listen for the answer and go from there.

Please contact me if you have specific questions or issues.

Have a grateful day,

*Diana C. Gianturco, Chair  
Lawyers Assistance Committee*

# Your Most Special Valentine

BY DIANA C. GIANTURCO\*

*Chair, Lawyers' Assistance Committee*

It was early morning on February 14th, and I was buckling up for a plane ride somewhere. The flight attendant greeted me with a smile, and I spontaneously said, "Happy Valentine's Day!" She looked down and said, "Oh, I don't have anyone special in my life right now." "Yes, you do!" I replied. "YOU ARE SPECIAL! In fact, YOU are the most special person in your life." She beamed back with wide eyes and said "You're right! I am special!" We chatted a bit more, exchanging a growing warmth before she moved on to the other passengers. As the plane began to pull away from the gate, she took to the loudspeaker giving the usual final instructions about takeoff and concluded with "And I want to wish everyone a Happy Valentine's Day and if you don't think you have someone special in your life, remember that YOU are special!" To this day, I am thrilled that my momentary but meaningful comment

may have been repeated to hundreds or even thousands of people who needed to hear it that day.

Why do we resist thinking of ourselves as "special?" Has the idea of self-love been construed as arrogant conceited narcissism to the point where it feels wrong to love ourselves? Have the negative opinions or comments from other people led us to believe that we are not worthy of love? There is an abundance of quotes about loving yourself first before you can love others that you have likely heard, and they won't be listed here yet it still so hard to do.

One of the easiest ways of experiencing self-love is a practice created by Louise Hay called "Mirror Work." It's simple. In the morning, look at yourself in the mirror – look into your own eyes – and speak love to yourself using your name. I would say "Diana, I love you." "Diana, I really love you." Take a deep breath between

each affirmation of love. Say it 5 times. Build up to 10 times. Feel it. Believe it. It only takes a few minutes. Then as you go through the day, every time you see your reflection in a mirror or a store window, look in your own eyes and say "(Me), I love you."

If it's too hard to start with "love" you can begin with "I like you." Or "I am amazing." Or "I am pretty cool." Whatever feels good. You can build on it until you can look yourself in the mirror and declare self-love. "Diana, I love you. I really really love you!"

You may be surprised at the impact this straightforward and effective technique is in developing love for yourself.

Try it. See what happens.

*Diana C. Gianturco, Chair  
Lawyers Assistance Committee  
a/k/a Diana The Happy Lawyer*

IN MEMORIAM

**Murray J. Kaplan, Esq.**

Murray J. Kaplan, Esq., a veteran of WWII, admitted to the NY Bar since 1951 and a member of the Queens County Bar Association, passed away at home on Sunday, January 16, 2022, surrounded by his family. He was predeceased by his wife of 65 years, Shirley, in August 2016.

Ever thankful for the GI Bill, Murray entered Brooklyn College upon honorable discharge from the U.S. Army, where he earned his law degree.

Murray was a trial lawyer from the beginning to the end of his 71 year legal career. He represented plaintiffs as a young lawyer while working for attorney Harry Lipsig and ultimately accepted an appointment as Asst. Corporation Counsel for the City of New York, where he defended NYC police and NYC hospitals and doctors. He was reappointed by four different mayors and ultimately retired after 25 years with the City. Post retirement from the City, Murray continued to practice law, concluding his last case when he was 92 years old.

Murray was a completely self-made man, who loved his family, G-d, his country and Israel.

He is survived by his daughter, son, daughter-in-law, grandchildren and friends, all of whom loved him dearly and will miss him greatly.



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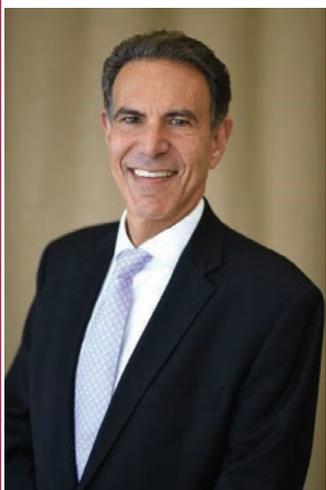
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BY HON. GEORGE HEYMANN

## Book Review:

# A History of One of America's Foremost Unelected Leaders

*This incredibly well written, fact-laden book provides the reader with an understanding of our current world order in retrospect to the past five decades.*

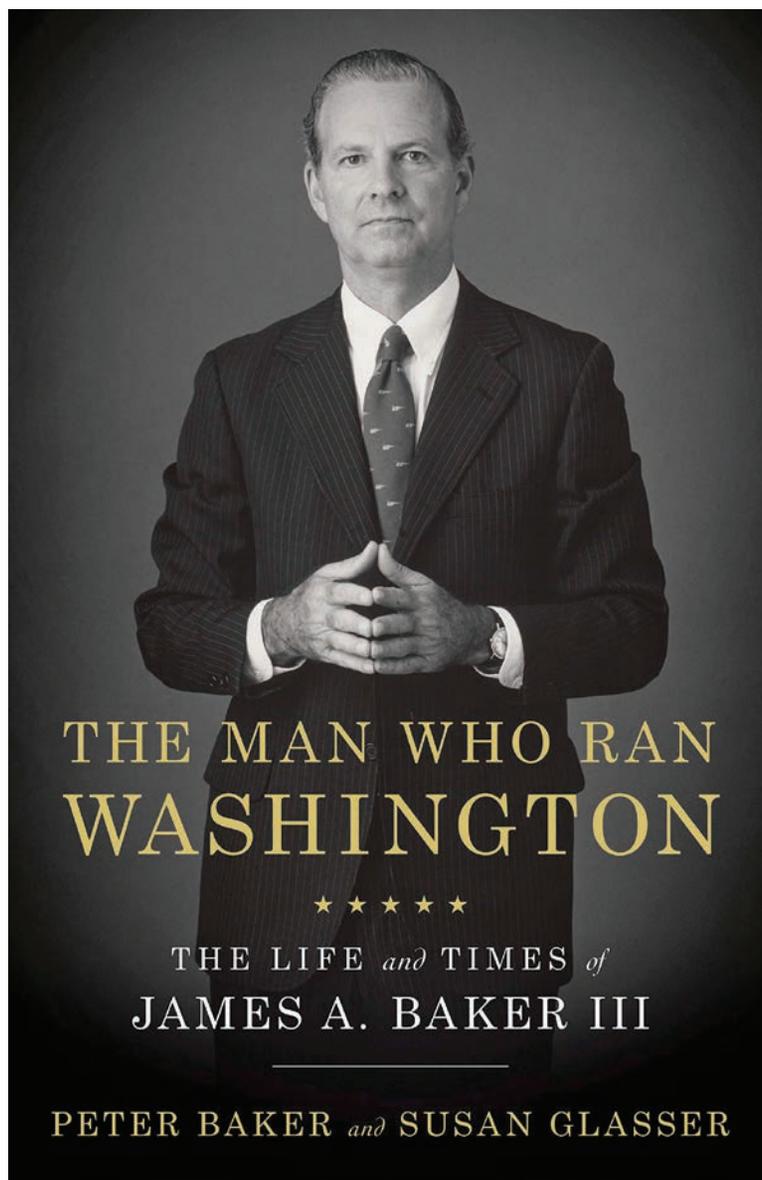
If you love palace intrigue and are interested in the behind the scene workings of the executive branch of the federal government at its highest echelons, especially the Oval Office, then Baker's and Glasser's book about the extraordinary life of James Aldrich Baker III should be at the top of your reading list.

As a "boomer" who lived through the historical events detailed in this book, I, like most people, only saw and read what the TV and print media enabled us to witness. This book pulls back the curtain to provide an unvarnished view of those who shaped the course of history from the end of Nixon's disgraced presidency to the Trump administration, with Baker as a central figure throughout. At the end of the book, Baker acknowledged to the authors that despite his family's entreaty not to vote for Trump and the public disdain for Trump by the entire Bush clan, Baker could not bring himself to turn his back on the Republican Party that he devoted over half a century of hard work to help shape. However, he refused Trump's requests for an endorsement and conceded that Trump was "nuts" and "crazy". Since this book was published one month before the November 2020 election, one can only speculate as to whether Baker again voted Republican, having observed the then incumbent completely dismantle everything Baker strived to achieve, while trampling upon and abusing the Office of the President that Baker so revered.

This incredibly well written, fact-laden history of one of America's foremost unelected leaders provides the reader with an understanding of our current world order in retrospect to the past five decades. Baker, most well remembered as Secretary of State in the Administration of former President George H. W. Bush, also served as the first chief of staff to former President Ronald Reagan and thereafter as Secretary of the Treasury in his second term.

But how did James A. Baker III rise from political obscurity to the pinnacle of power in the United States? The authors give us a fascinating look back at the beginnings of what would become the Baker dynasty in Houston, Texas.

JABIII (as Baker liked to have embroidered on his tailored clothes) was born into a family of wealth and



prominence in Houston on April 28, 1930. Named after his great grandfather, he is actually the fourth generation to bear the name. Baker's great grandfather, born in 1821, moved from Alabama to Huntsville, Texas. An owner of several slaves, he fought for the Confederacy during the Civil War. Prior to his stint in the Army, he was elected a judge and after his service in the military he assumed his position. Although he was subsequently removed as a judge by the Reconstruction Governor of Texas, he kept the title for the remainder of his life. Embittered by the experience, he instilled an aversion to politics to his children which was passed down the line to each succeeding generation. In 1872, Judge Baker moved his family to Houston where he joined a law firm that eventually became known as Baker Botts, one of the most pre-eminent law firms in the ever-growing

commercial center representing banks and railroad companies.

In 1857, James A. Baker Jr. was born and his father had already determined that his namesake would follow in his footsteps; become an attorney and work at Baker Botts. In addition to working at the firm, he joined the state's National Guard and earned the honorary title "Captain" which he proudly used from that point forward. When the Captain's second son was born, he was named James A. Baker Jr., as the Captain decided to drop the suffix from his name and conferred it upon his son. As the years went by the Captain became extremely wealthy and, like his father before him, had decided the trajectory and career paths for his sons. He was a "dominating" and "tough taskmaster" who believed in hard work and avoiding politics. When Jr.'s older brother suddenly died at age 18, the burden of his father's expectations fell upon his shoulders. He went to Princeton and the University of Texas at Austin law school. After serving in WWI, he "bowed to the inevitable" and joined Baker Botts. By the time his namesake, James A. Baker III, was born he was living a life of luxury. As a member of the exclusive Houston Country Club, he insisted that his son learn tennis at an early age to which he became addicted and extremely competitive.

Although growing up surrounded by wealth, young Baker did not have an easy childhood because his father was a strict and demanding disciplinarian, to the

point where his friends bestowed upon his dad the nickname "the Warden". Even after his death, Baker would still refer to his dad by that moniker. Ingrained in him from his forebearers, especially the Warden, were the "Five P's" [Proper Preparation Prevents Poor Performance] which enabled him to successfully tackle any problems thrust upon him throughout his professional life. Like his father, he attended Princeton and then returned to Texas for law school. Unable to join the family firm due to a new anti-nepotism policy, he joined another prominent firm and looked forward to a successful career in the law. He was happily married with four sons and continued to be a powerhouse on the tennis court. Little did he know that a fortuitous meeting with a young man named George H. W. Bush

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## Book Review:

# A History of One of America's Foremost Unelected Leaders

### CONTINUED FROM PAGE 16

would change his life forever.

Moving to Texas from the preppy Northeast, Bush, a graduate of Yale and son of a future U.S. Senator from Connecticut, wanted to start a new life in the oil business and founded Zapata Offshore Drilling. He first lived in Odessa, then Midland and finally settled in Houston. An avid tennis player, he also joined the Houston Country Club and set about to find the best tennis player to become his doubles partner. It turned out that Baker won the Club's tennis championships four years running. What began as a friendship on the court became a lifetime friendship for both men off the court, until Bush's death at age 94 on Nov. 30, 2018. At the end, Baker was at his side massaging his friend's feet to comfort him.

Although Baker was a nominal Democrat with no interest in politics, when Bush made his first attempt for elective office to Congress, he persuaded Baker to run his campaign. A few years later when Bush decided to run for the Senate, he again requested Baker to run that campaign as well. Although Bush lost both races, his vast connections in the Republican Party opened the door for Baker at the highest levels of government. Over the course of his career, he ran an impressive five campaigns for President. His first was for President Gerald R. Ford seeking to be elected in his own right against Jimmy Carter. But first Baker had to secure the nomination for Ford against a strong insurgent effort by the Governor of California, Ronald Regan. Ford received the nomination but lost the election to Carter. Four years later, Baker was again up against Regan, spearheading the campaign of his best friend Bush. Although Regan won the nomination, the authors credit Baker's talents and tenacity in helping Bush secure the nod for Vice President. Regan and Bush won the election in an historic landslide.

Notwithstanding that Baker ran two consecutive races against Regan, recognizing his talents Regan selected Baker as his first chief of staff. Ironically, Baker was now in a position that carried more weight and responsibility than the Vice President. With Regan's approval, Baker became the de-facto "shadow" president with complete control over the executive branch of government. While Regan governed at arms-length, in broad strokes and idealism, Baker was the studious nuts and bolts operator to ensure that the President's agenda was carried out.

As Regan's first term was coming to an end, he asked Baker to chair his campaign. After Regan was re-elected, Baker was looking for a change in position. While many considered Baker to be the most powerful man in D.C., next to the president, Baker viewed himself simply as another member of the staff, albeit the first among equals. He wanted a seat at the table as a member of the Cabinet. His first choice would have been Secretary of State but George Schultz wasn't leaving. Rumors that AG Meese was considering stepping down prompted Baker to set his sights on heading the Justice Department. When Meese heard that Baker was angling for his job, he decided not to leave just to

thwart Baker's efforts because of the animus that developed between them. Baker then approached Donald Regan, Secretary of the Treasury, a man who lived for power, and offered to swap positions. Regan agreed and they broached the idea with the President who gave his blessing. Unlike Baker, Regan alienated everyone in the Oval Office and his death knell came when in the middle of an argument on the telephone with the First Lady he hung up on her. Exit Regan.

With Reagan's second term winding down, leaders of the Republican Party were looking for a new standard bearer and reached out to Baker. He let it be known that if Bush wanted the nomination, he would never challenge him and would do everything to support him. Baker once again found himself in charge of yet another presidential campaign. The very next day after he was elected the 41st President, Bush announced that Baker would become his Secretary of State. The book discusses in great detail Baker's trials and tribulations on the world stage which encompassed the war in Iraq, negotiations with leaders of the Middle East, the reunification of Germany and the collapse of the Soviet Union.

What were Baker's attributes that made him a sought-after counsel to every Republican President since Nixon? His closest advisor called him "Mr. Caution". He was disciplined, dispassionate, always listing the pros and cons to every conceivable issue on his yellow legal pads, determined to resolve disputes and willing to work across the aisle to achieve his goals. As the authors note, "Baker was a compulsive winner, but he also had a way of making his rivals feel like they had not been entirely defeated" earning him the title "The Velvet Hammer" which appeared along side his picture on the cover of Time [2/13/89]. A previous cover of Time called Baker a "handler", which he disliked immensely.

After Bush lost his bid for a second term and left office, Baker returned to Houston to practice law and be with his family. He wanted to join Baker Botts, the firm that bore his family name since the 1870s. Once again, he was faced with the anti-nepotism rule as his son, James A. Baker IV [really the 5th!], was practicing there. This time an exception was made to accommodate a former Secretary of State. Supplementing his practice, Baker became a consultant and served on various Boards of Directors. Within a year after leaving government service his income exceeded a million dollars. Baker was finally finished with politics, or so he thought.

In November 2000, eight years after Baker and Bush 41 left the White House, Bush's oldest son, George W., was in a contested election for president, only the second time in U.S. history (the first was the election of 1876 settled by the "Compromise of 1877" awarding the presidency to Rutherford B. Hayes over Samuel Tilden, earning the new president the nicknames "Rutherfraud" and "His Fraudulency"). Al Gore had won the popular vote but the entire election ultimately hinged on 537 votes in Florida and whether there should be a manual recount of the ballots. Both sides called in teams of attorneys who were prepared to

take the matter all the way to the U.S. Supreme Court. Gore chose Clinton's former Secretary of State, Warren Christopher, to head his team. Now "W" needed someone of equal stature and, once again, the Bushes turned to Baker. Although the relationship between Baker and the Bushes had been strained after 41's loss, Baker immediately accepted the challenge and left Houston for Florida. The authors point out that the two men (Baker and Christopher) "could hardly be more different, the elk-hunting cowboy-boot-wearing, dirty-joke-telling Texan and the gray, stoic, rigidly proper Californian". Christopher was a "technocrat" and Baker "a political knife fighter". Only in this case, it was Christopher who showed up with a knife—to a gun fight! When the U.S. Supreme Court halted the recount, Bush secured Florida's electoral votes and the presidency, making him only the second son of a former president to become president since John Quincy Adams in 1825. In contrast to our most recent presidential election, Gore was credited with giving the most gracious concession speech in recent memory.

Naturally, the authors delve into Baker's private life as well, describing the difficulties of losing his first wife to cancer after only 17 years of marriage; the challenges of raising four boys as a single dad and his second marriage to a divorced friend of his deceased wife with three children of her own. The situation presented its own rollercoaster ride for this "blended" family of seven children, especially with Baker rarely at home, placing a major burden on his new wife to keep things functioning.

The story of Baker and Bush is played out beautifully by the authors. In and of itself, it's a love story between two men who basically grew up together as "brothers" with their own sibling rivalry throughout the years. Both men knew that Baker, like Bush, had the intellect and ability to be the President sitting behind the Resolute Desk. When Baker (Bush called him "Bake") would get under his skin, Bush (whom Baker affectionately called "el Jefe") would make the snarky remark "If you're so smart, how come you're not President?"

Despite any disputes between the two over the course of a lifetime, they were totally devoted to each other. In 2010, Bush and Baker, along with their wives, were together for a dedication in a Houston park of a bronze statue of Baker. It stands on the opposite side of the park from where Bush's had previously been erected. The juxtaposition of the two bronze men facing one and other will be a reminder to everyone of their friendship for all eternity. Their loyalty to each other enabled them to reach this country's political stratosphere that few others have achieved, which, perhaps, would not have been possible otherwise.

George M. Heymann, formerly a NYC Housing Court Judge, is of counsel at Finz & Finz PC.

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#### HON. GEORGE M. HEYMANN

*NYC Housing Court Judge (Ret); "of Counsel", Finz & Finz PC; Adjunct Professor of Law, Maurice A. Deane School of Law at Hofstra University*

## Joint Tenancy Real Estate

Today's story will be about real estate with an overview on Joint Tenancy and estate planning. There are four types of real estate that can be owned land, residential, commercial and industrial. There are different types of real estate deeds – bargain and sale deed, quit claim deed, warranty deed and Executor's deed to name a few. Real property ownership can also take several forms – sole ownership, tenants by the entirety, tenants in common, corporate ownership and today's star, joint tenancy.

### Joint Tenancy: Fact and Fiction

You have probably heard the terms “joint tenancy” or “joint tenants” before. However, you might not know what those terms mean. Although the word “tenant” makes it sound as if you are renting an apartment or house, joint tenants own a piece of property together, as opposed to renting it. The tenant in joint tenancy is actual an owner. When two or more people own a home together as co-owners with the right of survivorship, they are said to be joint tenants. Joint tenants are equal, undivided owners. Undivided ownership means each joint tenant owns every square foot of the property together with the other joint tenants. Joint tenancy invokes the right of survivorship, so that on the death of one of the owners, the ownership of an asset passes in equal shares to the surviving owners. Tenants in common, on the other hand, have their share of an asset become part of their estate, with the asset distributed on their death based on their will.

If you and someone else own the house where you live, you might be joint tenants however you may be tenants in common. The Deed is typically the controlling document defining ownership and ownership is determined at closing of title. This article will provide a cursory review of a complex subject. The proper titling of any asset requires great care to avoid potentially unpleasant and unintended consequences. I often field prospective client calls where the caller does not know how they own their own home or an inherited home. On occasion we have a person provided for in a Last Will be frustrated or shut out because the deed of the property in question was owned by joint tenancy and by operation of law, the premises passed to the joint tenant upon the death of the Joint holder. Sometimes we see handwritten scrawl on a filed deed that either confers joint tenancy or defeats it by the insertion of an ownership percentage.

The law imposes strict rules on how joint tenants can be created.

### The Four Requirements

If you and one more or several persons want to hold title to an asset as joint tenants, then you must satisfy all four of the following factors:

1. Unity of time. You must both take ownership of the property at the same time.
2. Unity of interest. Each joint tenant must have the

same amount of ownership. For example, if you and the other person own a house, you must have a one-half share and the other person must have a one-half share. If three people own the house, they must each have a one-third share. If one person has a one-half share and each of the other people have a one-fourth share, they are not joint tenants. Instead, they are tenants in common.

3. Unity of possession. Each of you must have the equal right to use and possess the entire piece of property, even though you do not individually own a 100 percent share of the property. Assume someone converts a four-story building into four condominiums. Four different people buy the condos, with each person owning only the unit on their floor. If you own unit A, you do not have the right to enter or use units B, C, or D. This situation is not joint tenancy.
4. Unity of title. The names of all the joint tenants must be on the same legal document, the document that transferred the property to the joint tenants together. This legal document can be a deed, a last will and testament, revocable living trust or another document that is sufficient to transfer the title to the property.

### Joint Tenancy is Not Automatic

Inheritance is a common way that people become joint tenants. However, this is not automatic. Suppose a surviving spouse passes away and leaves the family home to her three children Kelly, Beyonce and Michelle under her revocable living trust (RLT). She specifically identified only these three children by name as the “specific bequest” beneficiaries of the family home under her RLT, because her intention was for them alone to inherit the home, not grandchildren or in-laws. Kelly, Beyonce and Michelle inherited the home at the same time through the same document, this alone does not create joint tenancy between them. In New York the default would be tenants in common. Should Kelly predecease her siblings her share would pass through to her estate. A result that maybe her mother did not want especially if she was unhappy with her son-in-law or grandchildren.

Change the scenario: Kelly predeceased her mother and mother did not revise her estate planning document, in this case a revocable living trust. What happens to Kelly's interest in the home at her mother's death? It passes to Kelly's children, not to her siblings. The default legal presumption is equal shares as a tenant in common.

What should the mother have done to ensure joint tenancy between her children? Like abracadabra or hocus pocus we need magic words. Mother's estate planning document should have provided that the home passed to Kelly, Beyonce and Michelle as joint tenants with rights of survivorship and not as tenants in common.

### Joint Tenants with Right of Survivorship

Sometimes parents leave an inheritance to their children as JTWROS to keep the inheritance from passing to irresponsible grandchildren or in-laws. In that

case, what if all the children predeceased their mother? How could her estate planning document protect the home from passing directly to irresponsible grandchildren or in-laws? This is where further estate planning with one or more inheritance trusts can administer the home along with specific guidance provided to a trustee appointed. In the event Kelly predeceases me, her share is to go to X, Y and Z.

### Joint Tenants with Right of Survivorship Advantages

There are several advantages to transferring property in JTWROS. These benefits include:

**Probate Avoidance.** Property held in JTWROS passes directly to the surviving joint tenant(s) without requiring probate. In fact, a death certificate is typically all that is required to transfer the interest of a deceased joint tenant.

**Efficient Ownership Continuity.** It is an effective and efficient means to pass title between one or more joint tenants when ongoing ownership is intended to remain among the joint tenants until the death of the last joint tenant.

### Joint Tenants with Right of Survivorship Disadvantages

As with everything is life, there are several disadvantages to transferring property in JTWROS. Here is one of the biggest:

**Loss of Sole Ownership.** Suppose in the previous hypothetical, the mother chose to deed her home to herself, along with Kelly, Beyonce and Michelle as JTWROS while she was alive. This is not uncommon. Unfortunately, the mother no longer is the sole owner of her home, but even worse, the ownership of the home itself could be jeopardized should any one of her children experience a divorce, lawsuit or a bankruptcy. If the mother needs to sell her home to move to assisted living, then she must have the agreement to sell from all her children and, possibly their spouses.

### Still Need a Will?

Sure do. If you are relying on Joint tenancy to control the distribution of your assets (e.g., joint stock ownership or joint bank accounts - the law does not limit joint tenancy to real estate), that's a fine but incomplete method. Be sure to create a Last Will and Testament at a minimum or a more robust estate plan should you run out of surviving joint owners. Joint tenancy helps the surviving tenant to receive the property but when the last guy or girl is standing what happens next? What happens at the death of the survivor- that's when another estate plan is necessary.

BY FRANK BRUNO, JR.

**SAVE  
THE  
DATE**

*Annual Judiciary, Past Presidents  
and Golden Jubilarian Night*

Tuesday, March 29, 2022

Invitation and Registration Details to Follow!



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ACADEMY OF LAW ASSOCIATE DEANS: Kristen J. Dubowski Barba, Esq. • Hon. Darrell L. Gavrin • Leslie S. Nizin, Esq. • Violet E. Samuels, Esq. • Hamid M. Siddiqui, Esq.

Free to QCBA Members

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QUEENS VOLUNTEER LAWYERS PROJECT

Landlord & Tenant Section of the Civil Court Committee Present Zoom CLE

**UPDATE ON THE CURRENT OPERATION OF THE QUEENS COUNTY HOUSING COURT**

Tuesday, February 15, 2022  
1:00 pm - 2:00 pm

**Novick Edelstein Pomerantz P.C.**  
ATTORNEYS AT LAW

Craig D. Zim, Esq.

CLE Credit: 1.0 in Professional Practice

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**PRESENTERS:**

HON. JOHN S. LANSDEN

Supervising Judge, Housing Court, Queens County

**MODERATORS:**

LORI GEFFON HYMAN, ESQ.

Court Attorney to Honorable John S. Lansden

JAMES P. DE FRANCO, JR., ESQ.

Co-Chair of the Landlord & Tenant Committee and Vice-Chair, Civil Court Committee

**PROGRAM:**

Update on Landlord & Tenant Court, post Eviction Moratorium  
End on January 15, 2022.

**Registration Form**

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*Immigration and Naturalization Committee presents*  
**ZOOM CLE**

IMMIGRATION SERIES 2022

Moderators: Joseph F. DeFelice, Esq. & Allen E. Kaye, Esq.  
Co-Chairs, Immigration and Naturalization Committee

PRESENTER: Michael E. Piston, Esq.  
Piston & Carpenter, PC  
Of Counsel, Law Offices of Allen E. Kaye & Associates, PC

<b>LITIGATION IN IMMIGRATION CASES</b> Thursday, February 24, 2022 5:30 pm – 6:30 pm CLE Credit: 1.0 in Professional Practice	<b>EB 5 IMMIGRANT VISA INVESTOR CASES</b> Thursday, March 3, 2022 5:30 pm – 6:30 pm CLE Credit: 1.0 in Professional Practice
--	---

QCBA Member - \$15 each session  
Non-Member - \$50 each session

Transitional Course - Valid for All Attorneys. QCBA has been certified by the NYS CLE Board as an Accredited CLE Provider in NYS, 10/2019 - 10/2022.

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[Registration Link Here](#) or EMAIL: [CLE@QCBA.ORG](mailto:CLE@QCBA.ORG)  
No Refunds/credits if registration is not canceled by February 22, 2021.

## Two Appointed to Board of Managers

Sharifa Milena Nasser, Esq. and Jasmine I. Valle, Esq. were both appointed to the Board of Managers to complete unexpired terms. Ms. Nasser replaces Hon. Andrea Ogle, who resigned the board following her election as a civil court judge and Ms. Valle replaces Hon. Diego Freire following his appointment to the Civil Court.

Ms. Nasser, a 2002 graduate of SUNY Albany Law School, brings a broad range of experience to the QCBA Board of Managers, including serving on the Judiciary and Attorney Grievance Committees. In addition to her membership in the Queens County Bar Association, Ms. Nasser has also been a member of the Hispanic National Bar Association, New York State Bar Association, New York State Association of Criminal Defense Attorneys, Puerto Rican Bar Association, Latino Lawyers Association of Queens County and Cafecito Network for Latina Attorneys over the course of her career. Ms. Nasser currently serves on the board of the Latino Lawyers Association of Queens County.

"I am excited to join the Queens County Bar Association Board of Managers," Ms. Nasser said. "Having been involved with the Association for many years, I know the good work QCBA does and I look forward to contributing to those efforts."

Ms. Valle earned her JD from CUNY Law School in 2013 and currently works as the Principal Law Clerk to Hon. Lourdes M. Ventura. Ms. Valle is Vice Chair of the QCBA Diversity and Inclusion Committee, a member of and state delegate for the Queens County Women's Bar Association, a member of the Latino Lawyers Association of Queens County, the Dominican Bar Association and others. Ms. Valle has taken the lead planning a Pipeline to the Profession program for law students attending CUNY Law School, which will launch this spring.

"I am honored to serve the Queens legal community in this capacity and look forward to taking an active role on the Board of Managers," said Ms. Valle.

Frank Bruno, Jr., QCBA President, added that "we are fortunate to have two individuals as highly respected and highly committed to helping the legal community in Queens as Sharifa Milena Nasser and Jasmine Valle are. I am certain they will both make an immediate positive impact on our board and our membership."

Ms. Nasser's term expires on May 31, 2022 and Ms. Valle's term expires on May 31, 2024. Both are eligible for election to serve two additional three-year terms on the Board of Managers at the conclusion of their appointed terms; Ms. Nasser has been nominated for election to a full three year term, beginning on June 1, 2022 through May 31, 2025.

## Hon. Patria Frias-Colon Meets With QCBA Leadership

On Tuesday, January 25, the newly appointed Supervising Judge of Queens Civil Court, Honorable Patria Frias-Colon, invited QCBA representatives President Frank Bruno, Jr., Civil Court Committee Chair Hamid M. Siddiqui and Executive Director Jonathan Riegel to join herself, Court Attorney Irwin Weiss and the Clerk of the County Birdena Frye invited for a virtual meeting to review Queens Civil Court operations.

The Court advised that it will continue all virtual calendars/conference calls which are listed as follows:

**Part 15N Non-Jury No-Fault Trials**  
Daily at 10 am; Trials held at 2 pm

**Part 52 Commercial Landlord and Tenant**  
Daily 10 AM; Trials held at 2 pm

**Part 104 Represented Litigant Civil Trials**  
Every Monday at 10:00 am

**Part 15 Non-Jury Represented Litigant Civil Trials**  
Every Tuesday and Thursday at 12 pm  
Tuesdays: Calendars for Monday, Tuesday and Wednesday are called  
Thursdays: Calendars for Thursday and Friday are called

**Part 40 No-Fault Procedural Motions and  
Part 41 No-Fault Non-Procedural Motions**  
Every Wednesday and Friday at 11 am  
Wednesdays: Calendars for Monday, Tuesday and Wednesday are called  
Fridays: Calendars for Thursday and Friday are called

**Part 30 Procedural Motions and  
Part 32 Non-Procedural Motions**  
Every Monday at 11:00 am; the entire week's calendars are called

**Part 11 Non-Jury Trials, Self-Represented Litigants**  
Daily at 10 am

**Part 34 Procedural Motions-Self Represented Litigants**  
Daily at 11 am

**Part 35 Non-Procedural Motions-Self Represented Litigants**  
Daily at 12 pm

**Part 20 (325d cases), Part 29 Summary Jury Trials and  
Part 29H Evidentiary Hearings for Summary Jury Trials**  
Every Wednesday at 10:00 am; The entire week's calendars are called

**Part 15C Consumer Debt: Non-Jury Trials-Represented Litigants**  
Mondays at 11 am

**Part 30C Consumer Debt: Procedural Motions-Represented Litigants**  
Mondays at 11:30 am

**Part 32C Consumer Debt: Non-Procedural Motions-Represented Litigants**  
Mondays at 12 pm

**Part 11C Consumer Debt: Non-Jury Trials-Self Represented Litigants**  
Tuesdays and Fridays at 11 am

**Part 34C Consumer Debt: Procedural Motions-Self Represented Litigants**  
Tuesdays and Fridays at 10am

**Part 35C Consumer Debt: Non-Procedural Motions-Self Represented Litigants**  
Tuesdays and Fridays at 12 pm

The Court will look into the backlog of part 5 jury trials cases and emphasized its commitment of serving the people of Queens County. The Court also invited the QCBA leadership to have these meetings more frequently to discuss any issues faced by the bar and our members. The QCBA representatives welcomed Judge Frias-Colon to Queens and offered their support for the smooth operation of Queens Civil Court.

## Meditation Friday

*You are invited to join Diana  
The Happy Lawyer for Meditation*

**Every Friday  
Sign on to Zoom at 1:00 pm**

The Meditation will run from 1:10-1:40 pm.  
Join whenever you can and stay as long as you like.

Meeting ID: **817 2134 3753**

Passcode: **734189**

*Frank Bruno, Jr., President*



## Queens County Bar Association

90-35 148<sup>th</sup> Street, Jamaica, New York 11435 • Tel 718-291-4500 • Fax 718-657-1789

### REPORT OF THE NOMINATING COMMITTEE

The Nominating Committee of the Queens County Bar Association, after due and timely notice, in accordance with the provisions of the By-Laws of the Queens County Bar Association, have nominated the following list of members for the positions to be filed at the coming election at the Annual Meeting of the Association on March 4, 2022.

TO THE QUEENS COUNTY BAR ASSOCIATION:

We, the undersigned, members of the Nominating Committee do hereby respectfully report that pursuant to the provisions of Article VI, Section 3, of the By-Laws of the Queens County Bar Association, we have nominated for the respective offices the following named members:

#### OFFICERS 2022-2023

- For President ADAM M. ORLOW
- For President-Elect MICHAEL D. ABNERI
- For Vice President ZENITH T. TAYLOR
- For Secretary KRISTEN J. DUBOWSKI BARBA
- For Treasurer DEBORAH MARIE GARIBALDI

#### FOR FOUR MEMBERS OF THE BOARD OF MANAGERS FOR A TERM OF THREE YEARS (expiring May 31, 2025)

- ETAN HAKIMI
- SHARIFA MILENA NASSER
- TAMMI D. PERE
- A. CAMILA POPIN

#### FOR ONE MEMBER OF THE BOARD OF MANAGERS FOR A TERM OF THREE YEARS AS IMMEDIATE PAST PRESIDENT (expiring May 31, 2025)

- FRANK BRUNO, JR.

#### NOMINATING COMMITTEE

- |                        |                         |
|------------------------|-------------------------|
| Lucille S. Di Girolomo | Gregory J. Brown        |
| Joseph F. DeFelice     | Seymour W. James, Jr.   |
| David Louis Cohen      | Gregory J. Newman       |
| Paul E. Kerson         | Jennifer M. Gilroy-Ruiz |
| Paula Pavlides         |                         |

The following members have been designated by petition, pursuant to the By-Laws of the Association, as candidates for election to the office of members of the Nominating Committee to serve for a period of three years (expiring May 31, 2025)

- RICHARD MICHAEL GUTIERREZ
- JEFFREY D. LEBOWITZ
- VIOLET E SAMUELS

THE ANNUAL MEETING of the Queens County Bar Association will be held in the Bar Headquarters Building, 90-35 148th Street, Jamaica, New York on FRIDAY, MARCH 4, 2022, at 4:00 P.M. The election of officers will take place at that time, together with such other business as may regularly come before the meeting. **SINCE NO INDEPENDENT NOMINATIONS HAVE BEEN FILED WITHIN THE TIME LIMITED BY THE BY-LAWS, THE ELECTION WILL BE PRO FORMA.**

Dated: Jamaica, N.Y.  
February 8, 2022



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LGBTQ+ Committee present ZOOM CLE

## AGING WHILE TRANSGENDER

- Unique Issues -

Tuesday, March 16, 2022  
6:00 pm - 8:00 pm

**PRESENTERS:**

- Andy Izenson, Esq.  
*Senior Associate Attorney, Diana Adams Law & Mediation, PLLC*
- Moira Meltzer-Cohen, Esq.  
*Moira Meltzer-Cohen, Attorney at Law*
- Aaron Tax  
*Director of Advocacy, SAGE Advocacy & Services for LGBTQ+ Elders*

**MODERATOR:**

- John Duane, Esq., *Co-Chair, LGBTQ+ Committee*

**PROGRAM:**

This Program will cover the steps attorneys should take to treat trans senior clients in a sensitive and respectful manner, the preparation of legal documents specific to the health care and testamentary wishes of trans seniors and the ongoing work on policy issues to make the federal, state and local governments as well as administrative agencies inclusive and responsive to the needs of trans seniors.

**Registration Form**

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# Queens Supreme Court Compliance Conference Part

Hon. Tracy Catapano-Fox - CSCP1  
Hon. Laurentina McKetney-Butler - CSCP2  
Hon. Sally Unger - CSCP3

Effective February 7, 2022, Compliance Conference Orders will be automatically generated by the assigned Compliance Conference Part. The So-Ordered Compliance Conference Order will be forwarded to the County Clerk. A copy of the Order can be obtained via NYSCEF (if it is an efiled case) or from the County Clerk (if it is a non-e-filed case). **No appearance is required.**

Where the Court directs, or if discovery is not complete or the parties require a judicial ruling on a discovery issue prior to the Certification Order date, a virtual conference with the Compliance Conference Part will be held via Microsoft Teams. The parties shall request a conference via email to the address provided in the generated Compliance Conference Order. **E-mails forwarded to any email address other than the email address set forth in the Compliance Conference Order will not be processed.** A So Ordered Stipulation will be generated at the conference resolving outstanding discovery and extending the Certification Order date if necessary.

Parties should refer to Justice Catapano-Fox's, Justice McKetney-Butler's, and Judge Unger's Part rules for further guidance.



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February 15, 2021.

Cooperative & Condominium Law Committee present ZOOM CLE

## COOPERATIVE & CONDOMINIUM LEGAL UPDATE 2022

February 17, 2022

6:00 pm - 7:30 pm

PANELISTS:

Geoffrey Mazel, Esq. - Founder Member of Hankin & Mazel, PLLC;

Co-Chair of the Cooperative & Condominium Committee

Jeremy Hankin, Esq. - Member of Hankin & Mazel, PLLC

Zahra Jafri - President, Lynx Mortgage Bank LLC

TOPICS:

- Legislative Update-Review of several key pieces of legislation which are being considered or have passed in the NY City Council and NY State Legislature of interest to practicing real estate attorneys in dealing with Co-ops and Condos.
- Case Law Update-A review of several significant case decisions of interest to practicing real estate attorneys in dealing with Co-ops and Condos.
- Co-op & Condo Loan Updates- a review of best practices when representing a client taking a Co-op or Condo loan. In addition, a review of recent underwriting and Fannie Mae guidelines that real estate attorneys should be aware of.

### Registration Form

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Great for Newly Admitted Attorneys!

Young Lawyers Committee and Real Estate Committee present

ZOOM CLE

## ABCs of REAL ESTATE CLOSINGS

All the Basics of Closings

- Part 1: January 5<sup>th</sup>, 1:00 pm: Pre-Contract
- Part 2: January 19<sup>th</sup>, 1:00 pm: Contract drafting
- Part 3: February 2<sup>nd</sup>, 1:00 pm: Title Report & Survey
- Part 4: February 16<sup>th</sup>, 1:00 pm: Between Contract & Closing
- Part 5: March 1<sup>st</sup>, 1:00 pm: The Closing

PRESENTERS:

Frank Bruno, Jr., Esq.

Samuel B. Freed, Esq.

Etan Hakimi, Esq.

Alan C. Kestenbaum, Esq.

Lawrence M. Litwack, Esq.

Sydney A. Spinner, Esq.

...(more to come)

PROGRAM:

This lunchtime series will provide the steps necessary to complete a real estate closing. It will take you from the moment your client says "I want to sell my house," through the closing itself. Whether you have never done a closing before, or need a refresher, this series will give you a crash course. Sessions are free to members in good standing.

### Registration Form

QCBA Member in Good Standing - \$0       Non-Member - \$35.00 each session

Pay by:  Check  Credit Card      Auth. Signature \_\_\_\_\_      Tel. \_\_\_\_\_

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Must Register with Zoom & Pay by January 2<sup>nd</sup> to receive access. [Registration Link Here](#) or EMAIL: [CLE@QCBA.ORG](mailto:CLE@QCBA.ORG)

No Refunds/credits if registration is not canceled by January 2, 2022.



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# Doing Business Has Its Rewards



When you open a new Flushing Bank **Complete Business Checking** account<sup>1</sup>, you could be eligible to receive a gift card and cash bonuses valued up to **\$1,700**<sup>2,3</sup> with our **Business Value Program**.

90-Day Average Balance <sup>1,2</sup>	Business Value Program Balance Bonus Gift Card <sup>1,2</sup>	Business Value Program Activation Bonus <sup>1,3</sup>	Total Business Value Program Bonus
\$15,000 - \$24,999	\$200	\$200	<b>\$400</b>
\$25,000 - \$74,999	\$350	\$200	<b>\$550</b>
\$75,000 - \$149,999	\$600	\$200	<b>\$800</b>
\$150,000 - \$249,999	\$1,000	\$200	<b>\$1,200</b>
\$250,000+	\$1,500	\$200	<b>\$1,700</b>

For more information, visit your local Flushing Bank branch or go to [FlushingBank.com](https://FlushingBank.com).

Small enough to know you.  
Large enough to help you.®



1) To qualify for the Business Value Program (BVP) you must be a new Complete Business Checking customer. Certain fees, minimum balance requirements, and restrictions may apply. New account with new money only. Existing checking account customers are not eligible. A new business checking account is defined as any new checking account that does not have any authorized signatures in common with any other existing Flushing Bank business checking account(s). An existing checking customer is defined as anyone who currently has or has had a Flushing Bank checking account within the last 24 months. New money is defined as money not currently on deposit with Flushing Bank. You must deposit a minimum of \$100 to open a Complete Business Checking account. 2) The Business Value Program (BVP) Balance Bonus is limited to one (1) gift card per new Complete Business Checking customer. A minimum opening deposit of \$15,000 is required in the Complete Business Checking account to qualify for the BVP Balance Bonus gift card. The gift card tier is based on the 90-day average balance of the new Complete Business Checking account. The minimum 90-day average is \$15,000 to qualify for the minimum gift card tier. The 90-day average balance tiers and single load 12-month Visa® gift card values are as follows: Tier 1: \$15,000 - \$24,999 a \$200 gift card, Tier 2: \$25,000-\$74,999 a \$350 gift card, Tier 3: \$75,000-\$149,999 a \$600 gift card, Tier 4: \$150,000 - \$249,999 a \$1,000 gift card, and Tier 5: \$250,000+ a \$1,500 gift card. 3) The Business Value Program (BVP) Activation Bonus is limited to one (1) account credit per new Complete Business Checking customer. No minimum balance required to be eligible for the BVP Activation Bonus. You will receive \$100 for the completion of 5 debit card purchases and \$100 for the completion of 5 online banking bill-payments via Flushing Bank's Online Banking portal. Each debit card purchase and each online bill-payment must be \$25 or more and must be completed prior to 60 days after the account is opened. THE MAXIMUM AMOUNT A BUSINESS CHECKING CUSTOMER CAN RECEIVE IS \$200. The compensation will be credited to the checking account on or about the end of the month following the completion of the qualifying transactions. Other fees and restrictions may apply. Notwithstanding the Business Value Program, a minimum deposit of \$100 is required to open the Complete Business Checking account. A 1099 will be issued in the amounts of the gift card received and all bonuses credited to the account. All offers are subject to change and termination without prior notice at any time. Speak with a Flushing Bank representative for more details. Flushing Bank is a registered trademark

