Queens BAR BULLETIN

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February 2024 | Volume 91, No. 5

In Family Law, Don't Focus; Use A Wide Angle Lens

BY JOSEPH TROTTI

There's truth to the famous adage, "an expert is one who knows more and more about less and less until he knows absolutely everything about nothing." The legal field as a whole seems to be moving in that direction, with areas of practice increasingly siloed from one another and lawyers increasingly focused on niche aspects, many of which didn't exist before, like medical record data protection or cannabis law.

This may work for some areas, but after forty years in practice, my advice is this—in family law, don't focus; use a wide-angle lens.

Polymath perspective

Matrimonial and family law encompasses a wide range of issues that families face. A family law attorney's work mostly consists of the obvious ones: division of assets, child custody and visitation, termination of parental rights, abuse, relocation, etc.

But what many attorneys fail to comprehend, in my experience, is that family law invariably touches upon other areas of law, and it's important to have at least a rudimentary knowledge of them or collaborate closely with colleagues and other professionals from those fields.

These other areas include tax law, real estate law, business and corporate law, labor law, pension obligations, and trusts and estates, to name a few. To overlook these when representing a client is to potentially do them a disservice. In extreme scenarios it might even lead to malpractice.

For example, in the state of New York, in a divorce or separation the parties divide property under the Equitable Distribution Law. Although equitable does not mean equal, in many cases, certainly in long-term marriages, the parties do equally divide their assets. For an attorney to properly advise their client they must be able to evaluate these assets. The issue of values arises more than one would think.

Say the couple owns two parcels of real estate appraised at the same value—without an understanding of real estate law, how can the attorney factor in the tax basis for the properties? Or the capital gains that may be imposed on a commercial property as opposed to a marital residence? What is the equity in each of the properties? Is either income-producing? Are there mortgages in both names which must be modified or satisfied in the event of settlement? Has a title search been conducted to verify that there are no judgments, liens, or other encumbrances that might prevent the delivery of a clean title? The attorney would be remiss not to address these things.

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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 2024

Monday, February 19	*Presidents' Day – Office Closed*
Thursday, February 22	**Event:** Black History Month Celebration: Ink & Impact – 6:00 pm at Bourbon Street Restaurant

MARCH 2024

Tuesday, March 5	**Event:** Judiciary, Past Presidents & Golden Jubilarian Night – 5:30 pm at St. John's Law School
Wednesday, March 13	**CLE:** Incompetence & Guardianship in Divorce – 5:30 pm
Wednesday, March 20	**CLE:** ABC's of Trusts - Pt 1 – 1:00 pm
Wednesday, March 27	**CLE:** ABC's of Trusts - Pt 2 – 1:00 pm
Friday, March 29	*Good Friday – Office Closed*

APRIL 2024

Tuesday, April 2	**Event:** NY Islanders Event at UBS Arena, Elmont, NY – 7:30 pm
Wednesday, April 3	**CLE:** ABC's of Trusts - Pt 3 – 1:00 pm
Tuesday, April 9	**CLE:** Equitable Distribution Update Pt 1 – 5:30 pm
Wednesday, April 10	**CLE:** ABC's of Trusts - Pt 4 – 1:00 pm
Tuesday, April 16	**CLE:** Equitable Distribution Update Pt 2 – 5:30 pm
Wednesday, April 17	**CLE:** Antisemitism – 1:00 pm
Thursday, April 18	**CLE:** Search & Seizure Update 2024 – 1:00 pm

MAY 2024

Thursday, May 22	**Event:** Annual Dinner & Installation of Officers – 5:30 pm at Terrace on the Park
Monday, May 27	*Memorial Day – Office Closed*

JUNE 2024

Wednesday, June 19	*Juneteenth – Office Closed*

JULY 2024

Thursday, July 4	*Independence Day – Office Closed*

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For additional resources from the Lawyer's Assistance Committee, visit www.qcba.org

Editor's Note

The Cutting Edge: Right of Privacy Litigation under NY Civil Rights Law Sections 50 and 51

By Paul E. Kerson

We now live in an age of Facebook, Instagram, Twitter (X), Internet entries of every description and universal E-mail making every previously thought right of privacy seemingly abolished.

For at least the last 50 years, there was a guaranteed Federal Constitutional right to privacy. It was contained in *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705 (1973). The right to an abortion and privacy was rooted in the "penumbras" of the Bill of Rights, the First, Fourth, Fifth and Ninth Amendments.

The Federal Constitutional right to privacy was eliminated by the United States Supreme Court two years ago in *Dobbs v. Jackson Women's Health Organization*, 597 U.S., 215, 142 S. Ct. 2228 (2022).

In *Dobbs*, the United States Supreme Court overturned *Roe v. Wade*, and found that there is no longer a Federal Constitutional right to privacy.

There are two federal statutory rights to privacy: 18 U.S. Code Section 2724 creating a right to privacy in motor vehicle records and 5 U.S. Code Section 552, a right to privacy in records maintained on individuals by federal agencies.

Besides these two statutes, there is no federal statutory right to privacy or possible valid federal case law general right to privacy following *Dobbs v. Jackson Womens Health Organizatio*n, cited above.

Fortunately, as far back as 1903, 121 years ago, New York State placed a statute on our books called New York Civil Rights Law Section 50 which provides a "right of privacy" as follows:

> "A person, firm or corporation that uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person, or if a minor of his or her parent or Guardian, is guilty of a misdemeanor"

You will not see the State's District Attorneys rushing to charge people with misdemeanor right of privacy crimes. However, New York State Civil Rights Law Section 51 provides for a civil "action for injunction and for damages" for violating New York State Civil Rights Law Section 50. New York State Civil Rights Law Section 51 provides for an injunction, money damages and exemplary damages if such a violation can be proved.

Fortunately, we in New York are on the frontier of litigation concerning the Right of Privacy. McKinney's Consolidated Laws of New York lists 691 case law entries under New York Civil Rights Law Sections 50 and 51. In this article, we will review some of the most interesting and most recent cases.

When New York State Civil Rights Law Sections 50 and 51 were brand new, one of the early leading cases was *Wyatt v. James McCreery Co.*, 126 A.D. 650, 111 N.Y.S. 86 (1st Dept. 1908). In that case, New York State Civil Rights Law Sections 50 and 51 (then known as Chapter 132 of the Laws of 1903) was ruled constitutional by the Appellate Division, First Department. This was a period of time when photographic cameras first became widely distributed. The original Statute was designed to protect people involved in the advertising industry so that their photographs could not be used without compensation. These Statutes were ruled constitutional by the Appellate Division, First Department as far back as 1908.

In *Grodin v. Liberty Cable*, 244 A.D. 2d 153, 664 N.Y.S. 2d 276 (1st Dept. 1997), the Appellate Division, First Department held that a case claiming the unauthorized use of an image and voice in a television commercial could not be the subject of a summary judgment Motion.

In *Messenger v. Gruner and Jahr Printing and Publishing*, 94 N.Y. 2d 436, 706 N.Y.S. 2d 52 (2000), the New York State Court of Appeals held a teenage girl's unrelated photograph could be used in a publication with an article about sexual intercourse with multiple partners, even though the model was unconnected to the article. Her claim under New York State Civil Rights Law Sections 50 and 51 was denied.

In *Costanza v. Seinfeld*, 279 A.D. 2d 255, 719 N.Y.S. 2d 29 (1st Dept. 2001), an actor named Michael Costanza obtained a bit part in the noted Seinfeld comedy television show. He then claimed the fictional character of George Costanza was based on himself. After an examination of the facts, the Court found that the character of George Costanza existed before the actor Michael Costanza had his small part in the Seinfeld television program. Thus, Michael Costanza could not recover under New York State Civil Rights Law Sections 50 and 51.

In *Morse v. Studin*, 283 A.D. 2d 622, 725 N.Y.S. 2d 93 (2d Dept. 2001), the Plaintiff's plastic surgeon mailed out 4,000 copies of "before" and "after" photographs of his patient, claiming that his "consent" form allowed this. The Appellate Division, Second Department would have none of it. The Court held that the patient had a viable action against her plastic surgeon under New York State Civil Rights Law Sections 50 and 51.

In *LoRiggio v. Sabba*, 69 A.D. 3d 446, 892 N.Y.S. 2d 387 (1st Dept. 2010), the Appellate Division, First Department held that where a lawyer who was also a Certified Public Accountant had a Shareholders Agreement with an unlicensed tax preparer, and the unlicensed tax preparer used the Plaintiff's name as an attorney and CPA after dissolution of their corporation, the Plaintiff lawyer-CPA had a valid New York State Civil Rights Law Sections 50 and 51 claim against the unlicensed tax preparer for wrongful use of the Plaintiff's name.

In *Sondik v. Kimmel*, 131 A.D. 3d 1041, 16 N.Y.S. 3d 296 (2d Dept. 2015), the Appellate

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Editor's Note

The Cutting Edge: Right of Privacy Litigation under NY Civil Rights Law Sections 50 and 51

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Division, Second Department held that an amateur comedian who voluntarily appeared on Jimmy Kimmel's television show could not successfully sue Mr. Kimmel under New York State Civil Rights Law Sections 50 and 51 because the Plaintiff voluntarily appeared on Mr. Kimmel's television program.

In *Roberts v. Bliss*, 229 F. Supp. 3d 240 (S.D.N.Y 2017), the United States District Court for the Southern District of New York was called upon to address the question of the applicability of New York State Civil Rights Law Sections 50 and 51 to the following facts: the Plaintiff Soshana Roberts (a Queens County resident) appeared in a public service video for no fee. This video was later used in a nation-wide TJI Fridays commercial. The commercial was viewed more than 41,000,000 times on the Internet around the country and the world. Ms. Roberts became "a public figure and celebrity virtually overnight" and "she received death and rape threats". This experience caused Ms. Roberts substantial personal injuries.

She originally sued in the U.S. District Court under the Lanham Act, 15 U.S. Code Section 1051, et seq. prohibiting false advertising. The Court dismissed the Lanham Act claims but gave the Plaintiff permission to re-file her case in the New York State Courts under New York State Civil Rights Law Sections 50 and 51.

In *Leviston v. Jackson*, 43 Misc. 3d 229, 980 N.Y.S. 2d 716 (N.Y. Co. Sup. Ct. 2013), the New York County Supreme Court was called upon to review a case where the Plaintiff's video showing her engaged in sexual intercourse was used by rap-musicians in their advertising video. Because of this horrific invasion of privacy, the Plaintiff suffered serious mental health injuries. This video received 3,233,369 hits on the internet.

Because of this horrific invasion of privacy, the Plaintiff "entertained suicidal ideation" and "was unable to function normally in her daily life." She suffered from Post-Traumatic Stress Disorder (PTSD) as well as "Major Depressive Disorder" All of these mental illnesses were proved by the reports of her licensed psychologist.

The New York County Supreme Court held that this was a horrific invasion of privacy forbidden by New York State Civil Rights Law Sections 50 and 51.

In *Curtis v. City of New York*, 80 Misc. 3d 321, 195 N.Y.S. 3d 592 (N.Y. Co. Sup. Ct. 2023), the New York County Supreme Court declared a recent New York City Council ordinance, Administrative Code Sections 20-563.7 et seq. as constitutional. This Section provides that food service establishments cannot rent, sell or disclose customer data to any other party in exchange for financial benefit, except with the express consent of the customer. This most recently enacted Statute is designed to prevent food service delivery companies (which have multiplied greatly in recent years) from selling the individual data of consumers, including credit card numbers, names and addresses.

You could imagine the abuse that could come if this Statute was not enacted. Every restaurant take-out order could cause your credit card number to be widely distributed.

The world we now live in includes 3,233,369 hits of someone's most private sexual activities on the internet (*Leviston v. Jackson*) and 41,000,000 hits on the internet of a public service announcement used by a national restaurant company in its advertising without fee to the actress. (*Roberts v. Bliss*). It also includes a plastic surgeon who sent out 4,000 embarrassing copies of his patient's medical records (*Morse v. Studin*).

What has our society come to if these things are technologically possible but nevertheless allowed?

We in New York are at the cutting edge of a most important issue that will define how we live our lives in the years to come. New York State Civil Rights Law Sections 50 and 51 is now the only thing that stands between all of us and the horrific possibility that our most private actions and thoughts will be broadcast on the internet 41,000,000 times or 3,233,369 times or 4,000 times (in the U.S. Mail) against our will.

We can be thankful that we live in New York. If you see one of these cases, do not hesitate to file the Summons and Complaint and the Order to Show Cause seeking a Temporary Restraining Order immediately. Free speech has limits, and the mental health of each and every one of us ought to be that limit. Fortunately, our New York State Legislature thought of all of this back in 1903, 121 years ago. The more things change the more they remain the same.

QUEENS COUNTY BAR ASSOCIATION
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ANNUAL JUDICIARY, PAST PRESIDENTS AND GOLDEN JUBILARIAN NIGHT

Tuesday, March 5, 2024
5:30 pm - 8:00 pm

Held at:
St. John's University School of Law
8000 Utopia Pkwy. • Jamaica NY 11439

Guest Speakers:

HON. MARGUERITE A. GRAYS
Administrative Judge
Queens Supreme Court,
Civil Term

HON. DONNA-MARIE E. GOLIA
Administrative Judge
Queens Supreme Court,
Criminal Term

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Dinner: **5:30 pm - 7:00 PM**
Reception, Open Bar & Hot Buffet

Ceremony: **7:00 pm - 8:00 pm**
Guest Speakers
Introduction of Judiciary Members & Past Presidents
Recognition of Golden Jubilarians
Academy of Law Award: Hon. Bernice D. Siegal
Court Appreciation Award: William Reyes

Cost:

Members:	Dinner & Ceremony	$ 60.00
	Ceremony Only	FREE
Non-Members:	Dinner & Ceremony	$120.00
	Ceremony Only	$ 60.00
Judiciary:	Dinner & Ceremony	FREE

Please register by Sunday, March 3. Additional $20 for registrations received on Monday, March 4 or Tuesday, March 5 or at the door.

No refunds or credits for cancellations after Friday, March 1.

REGISTER: *https://qcba.org/event-5538627*

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Wednesday, March 13, 2024 • 5:30 pm – 7:30 pm

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President's Message

Greetings Everyone

By Michael D. Abneri

I hope you are all well as we are in the middle of winter as we approach Presidents' Day and for some will be a time to go away with your families on vacation. Others of course will be working and taking care of business as usual.

Last month, it came to our attention that Gov. Hochul, in her fiscal year 2025 executive budget, was looking to transfer $100 million from the IOLA fund to the state general fund. For those who do not know what IOLA accounts are, they are "interest on lawyer's accounts" which is a dedicated fiduciary fund derived only from the interest on attorney escrow accounts, without any taxpayer funding contributions. These funds are typically earmarked exclusively to making people whole when they have been victims of lawyer theft, as well as providing funding for civil legal services to low-income New Yorkers to help them with their legal issues. Since these funds are tied to interest rates, The income derived from these accounts will rise and fall with interest rates. As most people are aware, interest rates were historically low since the 2008/2009 financial crisis up until about a two years ago when they were raised significantly by the United States Federal Reserve. Now that interest rates are over 5%, these accounts are generating more revenue. This is not a time for New York State to raid this fund to pay for something else in the New York State budget. In the 40-year history of IOLA accounts, use of this money for the general New York State budget has never happened. The Queens County Bar Association has joined a number of other bar associations objecting to Gov. Hochul's plan and we hope that she changes her mind and abandons this attempt to take these IOLA funds.

February is also a time when we celebrate Black History Month. In 1976, Pres. Gerald Ford recognize Black History month and urged Americans to honor and celebrate the too often neglected accomplishments of African Americans. In the legal community, certainly African Americans have made some significant accomplishments both in New York State where Honorable Rowan Wilson is now the first African-American Chief Judge of the New York State Court of Appeals. Two of the four judges from Queens County that sit in the second Department are African-American, Justices Valerie Braithwaite Nelson and Justice Janice Taylor. Justice Marguerite Grays, Administrative Judge for the Civil Courts in Queens County, is the first African American woman to hold his position. In my over 30 years of coming to Queens County as a trial lawyer, primarily in the civil area, I've also seen a sizable increase in the number of African-American jurists and their staffs. I am sure there will also be more to come in the future in all of the various courthouses. The first African-American president of the Queens County Bar Association was Seymour James and starting June 1, the first African-American woman, Zenith Taylor will begin her term as president of the Queens County Bar Association. We at the Queens County Bar Association continue to diversify and celebrate the diversity of the Queens County legal community. Please join us at our Black history month event on February 22, 2024, where Dr. Jelani Cobb, Dean of the Columbia University School of Journalism, will present the topic *Ink and Impact: Journalism's Role in the Civil Rights Movement*. Registration is available on our website and the program will start at 6:00 PM at Bourbon Street restaurant in Bayside.

One of the early influences on my legal career was an African-American trial lawyer named David L. Stephens. David was one of the few African-American trial lawyers that I saw when I first started practicing. I first met him as a law student and he was a partner in the law firm I was working for in law school. I did not see him much until the summer of my second year of law school, when I was working full time, as he was constantly on trial. After working on some cases in writing some briefs, there were numerous occasions where he would come to discuss points of law or ask my opinion on the potential trial strategy and ideas. Even though I was young and didn't know much about trial practice then, I enjoyed these discussions and learned from them and still carry these lessons with me today.

Finally, I would encourage you to join us on March 5, 2024, at St. John's University Law School for Judiciary, Past Presidents and Golden Jubilarian Night. On this night, we first of all be honoring our Judiciary from all of the Queens County courts who will be attending. This is an opportunity for you to mingle with judges from the various courts in the borough. For whatever area you practice in, there has been some turnover in recent years, as some judges have retired after long and distinguished careers, and new judges have been elected to take their places in the Supreme Court and Civil Courts, as well as appointments by the mayor to the Criminal, Family and Housing Courts. Please come out and meet them in this informal setting. With less opportunities to be in front of some of these judges in the courthouse, this can only benefit you and your practice. I've been attending this event for many years, and I have always enjoyed it. Also, come out and meet some of our past presidents as well. I have served on the Board of Managers with 11 of them. As of this writing, it is my understanding that we will be honoring five Golden Jubilarians, those who have been practicing for 50 years. Four of those five have been QCBA members for all 50 of those years. Both accomplishments are remarkable and worthy of celebrating – I hope you will join us to do so.

As always, please feel free to reach out to me at president@qcba.org.

QUEENS COUNTY BAR ASSOCIATION

One Hundred Forty-Seventh Annual Dinner
and Installation of the 2024-2025 Officers & Managers

at

Terrace on the Park • Flushing, NY

Wednesday, May 22, 2024

Installation of Officers and Managers

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Joshua R. Katz — Vice President
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Tammi D. Pere	Adam Moses Orlow	Sydney A. Spinner
A. Camila Popin	Estelle J. Roond	Jasmine I. Valle

Installing Officer:
Hon. Rowan D. Wilson
Chief Judge
New York State Court of Appeals

Cocktails: 5:30 pm • Dinner & Program: 7:00 pm
Business Attire

Reservations: $190 per person
Early Reservations: $165 per person through May 12
$135 per person for QCBA members admitted to practice 4 years or less (through May 12)
Same Day Reservations: $225 per person (day of dinner or at the door)
Kosher meals available if registered by May 19 *($25 additional)*

Annual Dinner Sponsorships

DIAMOND *Limit of 1* — $8,500
- back cover full page ad in full color
- table of 12 in premium location near dais
- acknowledgement in all marketing and press releases
- 4 email messages to QCBA members between May 2024 and April 2025
- Up to $1,500 in sponsorship credit for any 2024-25 CLE program(s)
- one marketing table at the dinner
- company logo on signage and table flyers at the dinner
- recognition from the podium

RUBY *Limit of 2* — $6,000
- inside front or back cover full page ad in full color
- 8 tickets at table in premium location near dais
- acknowledgement in all marketing and press releases
- 3 email messages to QCBA members between May 2024 and April 2025
- Up to $1,000 in sponsorship credit for any 2024-25 CLE program(s)
- one marketing table at the dinner
- company logo on signage and table flyers at the dinner
- recognition from the podium

EMERALD *Limit of 4* — $5,000
- includes Gold page full page ad
- 6 tickets at a table near the dais
- acknowledgement in all marketing and press releases
- 2 email messages to QCBA members between May 2024 and April 2025
- one marketing table at the dinner
- company logo on signage and flyers at the dinner
- recognition from the podium

SAPPHIRE — $4,000
- includes Silver page full page ad
- 4 tickets at a table near the dais
- acknowledgement in all marketing and press releases
- 1 email messages to QCBA members between May 2024 and April 2025
- company logo on signage and flyers at the dinner
- recognition from the podium

GOLD — $3,000
- includes full page ad
- 3 tickets to the dinner
- acknowledgement in all marketing and press releases
- company logo on signage and flyers at the dinner
- recognition from the podium

SILVER — $2,500
- includes full page ad
- 2 tickets to the dinner
- acknowledgement in all marketing and press releases
- listed on signage and table flyers
- recognition from the podium

BRONZE — $1,500
- includes half page ad
- 2 tickets to the dinner
- acknowledgement in all marketing and press releases
- listed on signage and table flyers
- recognition from the podium

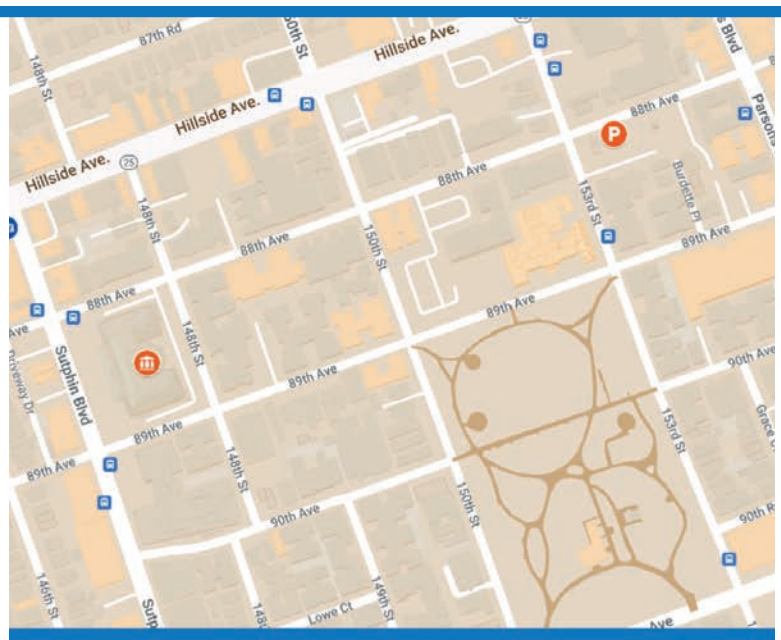
SPONSOR — $1,000
- includes quarter page ad
- 1 tickets to the dinner
- acknowledgement in all marketing and press releases
- listed on signage and table flyers
- recognition from the podium

Annual Dinner Journal Ads

• Back Cover	7.375" x 9.875"	$2,600	• Inside Front or Back Cover	7.375" x 9.875"	$1,800
• Gold Page	7.375" x 9.875"	$1,300	• Silver Page	7.375" x 9.875"	$1,050
• Full Page	7.375" x 9.875"	$800	• Half Page	7.375" x 4.75"	$525
• Quarter Page	3.50" x 4.75"	$375	• Business Card	3.50" x 2.00"	$225

All journal ad measurments are listed as width x height and represent the printable area for your ad.
Inside front or back and outside back cover ads are full color. All interior page ads are black and white only.

To Register For Any Sponsorship or Ad, Please Visit: https://qcba.org/event-5616153



We are pleased to serve as the operator of the parking garage located at 153-10 88th Ave (the 88). Daily and Monthly Parking is now available. **Enter code PARK10 in the promo code field at checkout for an extra 10% off your daily parking reservation price.** Please note that this discount code cannot be combined with any other offer.

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SCAN ME

In Family Law, Don't Focus; Use A Wide-Angle Lens

BY JOSEPH TROTTI

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Same for tax law. Sometimes—oftentimes—what appears to be a simple tax clause in the Stipulation of Settlement could be a trap. Does the attorney know the difference between having one be declared Head of Household as opposed to taking the dependency exemptions for the children? Is there a value to one party or the other taking these credits? Is that a negotiable item so the parties equalize their benefits or obligations? Has the tax impact on the retirement accounts been examined? Tax ramifications and continuing obligations post-settlement are crucial.

A family law attorney can shadow colleagues from other practices and learn from them, or at least meet with them periodically to ask questions. QCBA CLEs are a good source. So are former law school professors. The more initiative the attorney shows, the better.

Advocate and advisor

Family law attorneys must also possess a wide range of skill sets. If contractual lawyers are trained to be meticulous, and litigators are trained to be assertive, a family law attorney must be both. They need to be a fierce advocate as well as a realistic advisor to their client.

And they must be both from day one. Attorneys are mostly concerned with the preliminary conference with the court, understandably, since that's when the issues are addressed, and the discovery and trial schedule is set. However, I believe that just as important, if not more so, is the initial intake meeting with the client. That's when they need to clarify for the client all the rights, obligations, and issues of the case, and manage their expectations regarding the process and, importantly, the financial and emotional cost of obtaining their goals.

At the same time, the attorney must be ready for trial from the get-go. It's not just that defending their client's rights and interests is their duty, it's that being prepared for trial usually helps reach a settlement quickly, because the opposing counsel and the judge see that the attorney is prepared.

The significance of being prepared both to settle and try the case cannot be underestimated. It's up to the attorney to move the case towards resolution. Even a court that's not pressuring the attorneys to resolve the case will ultimately focus on the issues. If an attorney is constantly prepared for both trial and settlement, the court will ultimately put pressure on the opposing council. It can even impose sanctions, council fees, etc.

What makes family law so interesting is how dynamic and evolving it can be. Legislation and application change rapidly, and there's always something new in another field that has a bearing on it.

This, coupled with being able to resolve family disputes and restore people's lives, it is endlessly rewarding. But to do a good job, the attorney needs to have a wide view of it.

Joseph Trotti is a partner at Vishnick McGovern Milizio LLP, where he heads the Litigation Department and the Matrimonial & Family Law practice. He is the founding partner of the VMM Family Institute℠, which applies Collaborative Law principles to domestic cases. He is also a key member of the Surrogacy, Adoption, and Assisted Reproduction and LGBTQ Representation practices.

REMEMBERING SPIROS A. TSIMBINOS

Spiros A. Tsimbinos passed away on January 10, 2024 in Dunedin, FL. He was an active member of the Queens County Bar Association for several decades, culminating in his election as President for the 1995-1996 term. After his term ended, he remained an active member of QCBA, spearheading the Court of Appeals Update program for over two decades.

Spiros A. Tsimbinos was born on the lower Eastside of Manhattan on July 28, 1943. A first generation American of Greek immigrant parents, he attended Stuyvesant High School, the City College of New York and New York University School of Law. Immediately upon his admission to the Bar of the State of New York in December of 1968, he was appointed as an Assistant District Attorney in Queens County and served in the Appeals Bureau for two years.

Thereafter in 1970, he established a private practice of law dealing primarily with criminal law and appellate practice. He remained in the private practice of law until 1990 when he was requested by then-District Attorney John Santucci to rejoin the Queens office. Spiros served as Legal Counsel to the entire District Attorney's office and as the Executive Assistant in charge of the Legal Division. He was also designated by the District Attorney to serve as acting District Attorney in his absence.

With the retirement of District Attorney John Santucci in 1991, Spiros returned to private practice with offices in Kew Gardens. During his career Spiros handled over 600 appeals and was recognized as one of the leading appellate and criminal law practitioners in the state.

Throughout his legal career, Spiros was been extremely active in professional activities. He served as President of the Criminal Courts Bar Association of Queens County, as President of the Queens County Bar Association in 1995, President of the Queens Assistant District Attorneys Association and President and Chairman of the Board of the Eastern Orthodox Lawyers Association (currently known as the Hellenic Lawyers Association). For numerous years he also served as Chair of the Appellate Practice Committee of the Queens County Bar Association and served as the Chair of the Judiciary Committee.

Spiros devoted a great deal of time to public service and civic activities. In 1998-1999 he was appointed by Mayor Giuliani as one of the Commissioners of the New York City Charter Revision Commission. For several years he was also a member of the Board of Trustees of the Queens Supreme Court Library. He also served as legal counsel and advisor to several civic and religious organizations including the Hellenic Cultural Center, the Jackson Heights Senior Citizens Center, and the Transfiguration of Christ, Greek Orthodox Church of Corona. Working through the Queens County Bar Association, Spiros was instrumental in establishing some unique legal education programs for the Queens community. For several years he organized a lawyer outreach program with the Queens high schools in which lawyers were assigned to provide lectures to high school students on relevant legal subjects. Spiros also administered a high school essay contest which was run by our Bar Association. Spiros's interest in imparting information regarding the legal system to the larger community also led him to teach in a Paralegal Studies Program at Bernard Baruch College where he served as a part-time adjunct professor from 1983-1988.

Spiros moderated and helped produce some fifteen legal education programs that were shown on Queens Public Television providing important legal information to the community. He moderated and organized QCBA's popular Court of Appeals program until 2019, involving a review of Court of Appeals decisions during each year. Presenters included former Chief Judge Judith Kaye, as well as Associate Judges of the New York State Court of Appeals, Associate Justices of the Appellate Division, 2nd Dept., Professors John Pieper, John Q. Barrett and Paul Shechtman, and others.

In his latter years, Spiros characterized himself as "semi-retired" and his practice was limited to selected appeals and legal writing for Bar Association journals and legal publications. Over the course of his long and distinguished career, Spiros was a prolific writer and is the author of numerous articles which have appeared in the New York Law Journal, the New York State Bar Journal, the Queens Bar Bulletin and various legal publications. He also wrote three substantial pamphlets for the Matthew Bender Company; the first one dealt with the Sentencing Reform Act of 1995, followed by Jenna's Law of 1998, and finally a review of the modifications of the Rockefeller Drug Laws. Spiros also authored a chapter dealing with the Imposition of Sentence as part of the *New York Criminal Practice Treatise* published by Matthew Bender.

In the past Spiros was recognized for his distinguished service to the legal community and has been the recipient of several awards and certificates. In 1998 he was presented with the Herbert A. Lyon Memorial Award for distinguished and meritorious service by the Criminal Courts Bar Association of Queens County. He also received a Certificate of Service from the Queens County Bar Association, a Certificate of Appreciation from the New York City Board of Education for his participation in the Open Doors Lawyers in the Classroom Program and many others.

Spiros was a long-time member of the New York State Bar Association and served as a Delegate. He was a member of the New York State Bar Foundation and was the Editor of the Criminal Justice Newsletter, having served in that capacity for three years.

Spiros was viewed by his colleagues as a "professional lawyer's lawyer" having rendered quality service to the profession and his clients. Past President David Adler recalled Spiros as being "a gentleman and a scholar"; an avid tennis player who served as president of the West Side Tennis Club in Forest Hills; a warm and devoted friend who enjoyed a good meal and spirited conversation; and an individual with traditional values and a sense of compassion who always treated others with fairness and honesty.

Spiros was predeceased by his parents George and Katherine (Katina) and by his siblings Argie, John, Mary, and Leo. He is survived by his nephew Steven Tsimbinos and niece Melanie Tsimbinos Wortmann.

The Practice Page

THE LATEST PROCEDURAL AMENDMENTS

BY HON. MARK C. DILLON
Serves on the Appellate Division, Second Department

This is an annual topic for this column, taking note of recent amendments to statutes and rules that affect practitioners in New York.

CPLR 2106

There has been a lot of legislative activity on CPLR 2106, as it has been amended twice within weeks. The earlier version of the statute permitted licensed attorneys, as well as physicians, osteopaths, and dentists, to file affirmations with the court, rather than affidavits, so long as such persons were not parties to the action. Certainly, affirmations are more convenient than affidavits, as they dispense with the need to utilize the services of a notary public.

The first amendment to CPLR 2106, effective October 25, 2023, expanded the scope of the statute so that affirmations could be used by "health care practitioners" licensed under title 8 of the state Education Law (2023 Sess. Law of N.Y., Ch. 585, sec. 1) .

The second amendment to the statute became effective on January 1, 2024 and is even more sweeping. It provides that the affirmation of "any person" may be used in lieu of an affidavit (2023 Sess. Laws of N.Y., Ch. 559, sec. 1). The affirmation may be used "wherever made," meaning within or without of New York (*Id.*). Now, affirmations will predictably become the litigation norm as they are represented to be true under the penalties of perjury, but without the inconvenience of notarization.

Where does that leave CPLR 2903(c), which was not repealed or amended? CPLR 2903(c) requires that an oath or affirmation taken without the state shall be treated as if taken within the state if it is accompanied by such certificate or certificates as would be required to entitle a deed acknowledged outside the state to be recorded within the state if such deed had been acknowledged before the officer who administered the oath or affirmation. In other words, 2903(c) requires a "certificate of conformity" for out-of-state affidavits and affirmations. Unclear from the most recent amendment of CPLR 2106 is whether an affirmation executed by an out-of-state person must still be accompanied by a certificate of conformity. *Arguably*, since an affirmation pursuant to CPLR 2106 is not "taken" or "acknowledged before the officer who administered the oath or affirmation" within the language of CPLR 2309(c), CPLR 2309(c) will not apply to affirmations executed out-of-state. But unless the legislature repeals CPLR 2903(c) or until courts resolve the now-conflicting provisions of CPLR 2106 and 2309(c) for out-of-state affirmations, counsel might consider using the affidavit procedure with the certificate of conformity out of an abundance of caution. This is a procedural question that should be resolvable by legislative attention or by future case law.

ATTORNEY REGISTRATION

Part 118.1 and 118.3 of the Rules of the Chief Administrator have been amended to require that attorneys register, or re-register, on line. Paper registration ended as of December 1, 2023. The purpose behind the amendment is to render the registration procedures more efficient and improve the accuracy of data collection. Until now, 80% of attorneys have filed their biannual registration online. Now, it will be 100%.

The required $375 registration fee must be paid online using a credit or debit card (with a 2.99% service fee) or an e-Check (with a $1.00 service fee). From each attorney's registration fee, $60 is paid to the Lawyers' Fund for Client Protection, $50 to the Indigent Legal Services Fund, $25 to the Legal Services Assistance Fund, and the balance to the Attorney Licensing Fund. Attorneys who are "retired," as defined, continue to be exempt from payment (Part 118.1[g]).

GOVERNOR HOCHUL'S VETOES

In my opinion, the end of last year's legislative session is more notable for Governor Hochul's vetoes of acts passed by the legislature than by what was actually signed into law. For civil practitioners, the vetoes include these subjects:

1. The legislature wished to enact a new CPLR 301-a and amend BCL 1301, to provide that a foreign corporation's application to do business in New York qualifies for as consent to the assertion of general jurisdiction for all actions against the corporation, and a revocation of the corporation's registration would concomitantly revoke the state's general jurisdiction over it. The legislation was intended to nullify a holding by the Court of Appeals in *Aybar v Aybar*, 37 NY3d 274 (2021) whereby, under still-continuing law, a corporation is subject to New York's general jurisdiction only if it is incorporated within the New York or maintains its principle office within the state, or under exceptional circumstances (see also *Daimler AG v Bauman*, 571 U.S. 117 [2014]). None of the foregoing affects the assertion of specific jurisdiction over out-of-state entities under the long-arm statute (CPLR 302).
2. The governor vetoed a bill to amend CPLR 902, which would have prohibited courts from denying class certification solely on the ground that the action involves governmental operations (S5137, A4721).
3. The governor vetoed amendments to EPTL 5-4.1, 3, 4, and 6, which would have expanded potential damages for wrongful death to include emotional loss. The existing law only permits damage awards for pecuniary loss (S6636, A6698).
4. Governor Hochul vetoed a repeal of Judiciary Law 470 which, if signed into law, would have permitted attorneys maintaining law offices outside of New York to practice law in New York, without a physical law office here (S3261, A2218).

Until next year…

Mark C. Dillon is a Justice of the Appellate Division, 2nd Department, an Adjunct Professor of New York Practice at Fordham Law School, and a contributing author of CPLR Practice Commentaries in McKinney's.

NYSBA - Vice President's Report

The Annual Meeting of the New York State Bar Association was held in New York City, January 17 to January 20, 2024. Various Sections of the State Bar conducted CLE programs and awards luncheons and dinners.

The Presidential Summit focused on the impact of Artificial Intelligence in the practice of law. Following the Summit was the Constance Baker Motley Symposium, named after the Federal Court District Judge and distinguished civil rights litigator. Following this was the Presidential Reception which gave all those in attendance opportunity to socialize and network.

As the Vice President, I serve on the Executive Committee of the State Bar. The Executive Committee meets four times a year before the House of Delegates. The Executive Committee acts as the Board of Directors of the Bar Association. Our meetings are all day affairs and we review reports that will be submitted to the House as well as reports from the Treasurer and other leadership positions.

This year's Executive Committee meeting reviewed:

1. Report and Recommendations from the Committee of the NYS Constitution concerning the creation of a Temporary Commission to study the NYS Constitution and make recommendations to the Legislature regarding amendments to the Constitution.
2. Report of the Committee on Continuing Legal Education.
3. Report of the Committee on Membership. This report outlines the new dues structure that will be implemented in 2025. The State Bar is going to an all-inclusive type of membership that will give members access to most CLE programs, Section publications, legal forms, and two Section memberships.
4. Report of the Treasurer.
5. Report and Recommendation of the Task Force on Medical Aid in Dying.
6. Report and Recommendation of the Trusts and Estates Law Section concerning the Equity for Surviving Spouses Act.
7. Report and Recommendation of the Task Force on Combating Antisemitism and Anti-Asian Hate.

As you can see it was a busy and important agenda. Should you wish to have any further information on any of these reports, please feel free to email me at david@davidlouiscohenlaw.com.

The Presidential Gala was held at MOMA and the NYSBA Gold Medal was awarded to former United States Secretary of Homeland Security Jeh Johnson.

The House of Delegates met on Friday. The House is the policy making body of the State Bar. All reports must be approved by the House before they can be deemed to be official State Bar policy. All reports reviewed by the Executive Committee were approved by the House and therefore became State Bar policy.

Anyone interested in joining or becoming more active in the State Bar, please contact me by email or calling my office 718-793-1553. I am more than happy to discuss any issues that you may be want more information about and to provide you with copies of any Report that you have an interest in.

David Louis Cohen, Esq.
Vice-President, 11th Judicial District
New York State Bar Association

Allen E. Kaye

Immigration Questions

Thoughts On Asylum

Joseph DeFelice

Hundreds of thousands if not millions of persons are now seeking asylum in the United States due to the influx of individuals entering our southern border. So it may be of interest to review the asylum process.

What is an asylee? This is a person who sought and obtained protection from persecution from inside the United States or at the border. He is a person who needs to demonstrate a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group, who has been forced to flee his or her country because of persecution, war or violence. They apply for protection from inside the United States or at a port of entry. They must do so within one year of entry unless they can demonstrate some exceptional reason for their delay in applying.

What is a refugee? Simply put this is a person who applies for protection from outside the United States.

Who is an unaccompanied alien child? This is a minor immigrant child who arrived in the United States or at a port of entry without a parent or guardian. They are children under the age of 18. They can be placed in temporary care of the Office of Refugee Resettlement (ORR) within the US Department of Health and Human Services (HHS) which screens them to determine if they have been victims of trafficking and ensures timely appointment of legal pro bono counsel for as many children as possible. They can be placed in the care of some family member or other sponsor who may be in the United States.

To qualify for asylum the person must be physically present in the United States and apply within one year of his or her last arrival unless the person can show exceptional circumstances as to why they are filing after one year. The individual must show that he or she has been persecuted or fears persecution in their home country because of race, religion, nationality, political opinion, or membership in a social group. They must show that the persecution is done by the government or by people who the government cannot or will not control.

The Board of Immigration Appeals (BIA) has determined that asylum applicants bear the burden of establishing their asylum claims, with corroborating evidence if necessary, without prompting from the Immigration Judge. See Matter of L-A-C, 26 I&N Dec. 5166, 523-524 (BIA 2015).

Applicants for asylum are interviewed by a USCIS officer and at this interview they must demonstrate a credible fear of returning to their home country. That is, a significant possibility that they can establish at an asylum merits hearing before an Immigration Judge (IJ) that they can show they have been persecuted or have a well-founded fear of persecution on account of race,religion, nationality, membership in a particular social group or political opinion if returned to their country. If the officer determines the person has a credible fear he can retain their application for asylum and consider the person's eligibility for what is known as withholding of removal or for protection under the Convention Against Torture (CAT) at a second interview. Or the officer can issue a Notice to Appear directing the person to appear before an IJ for consideration of their asylum application. At a merits hearing before an IJ the applicant must demonstrate a well founded fear of persecution. *Mashiri v Ashcroft*, 383 F3d 1112, 1120 (9th Cir. 2004) and *Duarte de Guinac v INS*, 179 F3d 1156, 1163 (9thCir. 1999). The persecution can be physical or psychological. *Ndom v Ashcroft*, 384 F3d 743, 752 (9thCir.2004)—two detentions without formal charges for a combined total of 25 days in a dark crowded cell where he was shackled in cuffs preventing him from straightening his legs and forcing him to urinate on his clothes was found to be persecution; *Prasad v INS*, 47 F3d 336, 339 (9thCir. 1995)–detention and physical torture; *Tarabac v INS,* 182 F3d 1114, 1118 (9thCir. 1999)—being kidnapped, beaten, held without food and threatened is persecution; In Re V-T-S, 211 I & N Dec 792 (BIA 1997)—kidnapping. *Chand v INS*, 222 F3d 1066,1075 (9thCir. 2000)—physical harm. In order to demonstrate a well founded fear of persecution the asylum applicant must establish that he or she has both a subjective and objective fear of returning to their country of origin. *INS v Cardoza-Fonseca*, 480 US 421 (1987). When an applicant can show past persecution, he or she is presumed to have a well founded fear of persecution. 8 CFR1208.13(b)(1)(iii) and *Matter of Chen*, 20 I & N Dec 16 (BIA 2012)—past persecution may well merit the granting of asylum even if the refugee no longer has a well founded fear of future persecution.

If the USCIS officer does not find that the applicant has a credible fear,the applicant can seek review before an IJ and if there is a negative finding be placed into removal proceedings where he or she can seek asylum,withholding or CAT relief in a defensive posture.

As the burden is on the applicant, he or she should provide evidence that corroborates otherwise credible testimony, and such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence. 8 USC 1158(b)(1)(B)(ii) and Matter of L-A-C,26 I & N Dec 516, 523-524 (BIA 2015). It might be mentioned that some of the Circuit court decisions are based on a deference to federal agencies such as the BIA due to the case of *Chevron USA Inc v Nat. Res. Def. Council, Inc.*, 467 US 837 (1984). For example, on the issue of whether an applicant at an asylum hearing should be given an opportunity to explain why they could not reasonably obtain corroborating evidence and whether the applicant should be prompted by the IJ to explain, which explanation should be on the record, the BIA determined that the IJ need not prompt the applicant to explain. The First Circuit disagreed with the application of the BIA decision and interpretation. *Ixcuna-Garcia v Garland*, 25 F4th 38, 46 (1stSir. 2022) and the Second Circuit deferred to the BIA. *Wei Sun v Sessions*, 883 F3d 23, 25 (2d Cir. 2018) citing Matter of L-A-C, supra. There is a possibility that the Chevron doctrine maybe altered as the US Supreme Court has agreed to hear arguments in the fall in a case called *Loper Bright Enterprises v Raimondo*, 143 US 2429 (May 1,2023).

All applicants must be aware that they should not file a frivolous application. This is one of the most serious wrongs that an applicant for immigration status can commit. Regulations define an asylum application as frivolous "if any of its material elements is deliberately fabricated". 8 CFR208.20. It is not frivolous if the application is simply denied or weak. To be frivolous there must be a "deliberate fabrication". If frivolous, however, "the alien shall be permanently ineligible for any benefits under the Immigration and Nationality Act". INA 208(d)(6).

Finally, applicants who are denied asylum (as well as other immigration relief) and who appeal their case and choose to move and/or hide without providing their new address, face the possibility that the appeals court will refuse to hear their case under the fugitive disentitlement doctrine. *Smith v United States*, 94 US 97 (1876). However, this still remains discretionary with the court. *Esposito v INS*, 987 F2d 108, 110 (2d Cir. 1993).

Once an asylum application is filed the applicant must await 150 days before he or she can apply for a work permit which can not be issues earlier than in 180 days. There is recently some discussion on granting work permits sooner to a large number of individuals who have entered thru the southern border.

Qualifying for the granting of asylum will depend upon the particular facts of the person's case and the country conditions. Although Jeh Johnson,who served as Homeland Security Secretary under former President Obama,was quoted as saying that "only about 20% of people who apply for asylum qualify for it". He later changed that to 30%. The statistics on the granting and denying of asylum applications by each particular IJ in the United States can be found at **Trac.syr.edu/immigration/reports/judgereports.**

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.

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Preserving Your Legacy: A Guide to Protecting Assets & Inheritance

An elder law estate plan revolves around crucial questions that shape your choices. Firstly, it addresses the fate of your assets after you pass away. Secondly, it anticipates the scenario of needing long-term care and how it might impact your assets. A well-rounded plan seamlessly addresses both issues, ensuring not only the smooth transfer of assets to your beneficiaries but also safeguarding them from being depleted by long-term care expenses.

Securing long-term care insurance stands as the most effective defense against the financial challenges associated with extended care needs. When contemplating this insurance option, critical considerations involve defining an appropriate daily benefit amount and incorporating an inflation rider to match the escalating costs of nursing home care. Notably, long-term care insurance goes beyond by covering the expenses of home health aides, empowering individuals to gracefully age within the familiarity and comfort of their own homes, steering clear of the need for relocation to a facility. In case you're unable to obtain long-term care insurance, there's a backup plan called Medicaid Asset Protection (MAPT). Assets held in MAPT for at least five years are shielded from nursing home expenses, and upcoming laws may extend protection to two and a half years for home care.

Explore the option of using trusts instead of wills to bypass probate, which is a legal process initiated when you pass away with assets solely in your name. Trusts are harder to challenge than wills, especially if you're disinheriting a child. In general, trusts streamline the estate settlement process, saving both time and money.

Opt for Inheritance Protection Trusts when leaving assets to your children instead of direct distributions. These trusts serve as a protective measure during your children's divorces, ensuring that in the unfortunate event of your child's passing, the inheritance is preserved for your grandchildren rather than being vulnerable to claims from your children's spouses.

Elder law estate planning is a comprehensive approach tailored to address the unique legal and financial concerns that individuals face as they age. Moreover, elder law estate planning aims to mitigate potential tax liabilities, ensuring that as much of the estate as possible goes to the intended heirs rather than being depleted by taxes or other financial burdens.

In essence, an elder law estate plan does three main things: (1) safeguards your assets from long-term care expenses, (2) passes assets to your heirs while minimizing taxes and legal fees, and (3) ensures your grandchildren inherit while shielding the legacy from your children's divorces.

Elder law estate planning offers a holistic approach to secure the well-being of seniors, protect their assets, and provide a clear roadmap for the distribution of their estate according to their wishes. By taking a proactive stance, individuals can steer the complexities of aging with confidence and ensure a legacy that aligns with their values and goals.

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- **Elder Law & Estate Planning**
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Deciphering the Word Soup of the CTA

BY FRANK BRUNO, JR.

The Corporate Transparency Act (CTA) sprung from a prior anti-money laundering act, because Congress wanted more information and additional oversight (about owners and Senior officers of small companies). I am about to present you with government word soup – sort of like the novelty pasta that provides a medley of fresh vegetables, aromatic herbs and playful letters – Alphabet Soup except served cold or maybe too hot so that you burn your mouth and leaving a bad taste in your mouth.

CTA, made law in 2021 as part of the National Defense Authorization Act with an effective date of January 1, 2024, was passed to enhance transparency in entity structures and ownership to combat money laundering, tax fraud, funding for terrorism and other illicit activities. Like other laws, it is Not-So Transparent.

Who files? CTA requires any "Reporting Company" to file "Beneficial Ownership Information" ("BOI") reports with the Financial Crimes Enforcement Network for its "Beneficial Owners" and if created after January 1, 2024, its "Company Applicants." Failure to report the required information may result in civil penalties of up to $500/day until corrected or criminal penalties of 2 years imprisonment or a $10,000 fine.

What or who is a reporting company? According to the CTA, a reporting company is a corporation, limited liability company, or other similar entity formed or in the case of any foreign entity, registered to do business, by filing a document with a Secretary of State or similar office under the law of any U.S. State or Indian Tribe. This short and broad definition means that most privately owned businesses such as any corporation, limited liability company, limited partnership, or limited liability limited partnership, along with any other entity formed by filing a document with a secretary of state, will be subject to the duty to report. General partnerships, sole proprietorships, and trusts do not file documents with a secretary of state upon creation and are exempt from reporting. The Act exempts large companies and other highly already regulated industries - 23 categories such as banks, credit unions, depositories, securities brokers and dealers, tax-exempt entities, and large (more than 20 employees and gross sales of over $5 million) companies.

Who is considered a beneficial owner of a company? Under CTA, an individual qualifies as a beneficial owner if they directly or indirectly have a significant ownership stake in a company. A person has a major influence on the reporting company's decisions or operations, owns at least 25% of the company's shares, or has a similar level of control over the company's equity.

How do you determine beneficial Owners? The Act looks at two separate "tests" to determine Beneficial Owners: the substantial control test and the 25% ownership test. Beneficial Owners are individuals who own or control 25% or more of ownership interest or any non-owner that exercises substantial control over the company. The "ownership test" requires a Reporting Company to identify all individuals who own or control at least 25% of the ownership interests of the company. Ownership interests include equity, stock, voting rights, capital or profits interest, convertible instruments, options, non-binding privileges to buy or sell any of the foregoing, and any other instrument, contract, or mechanism used to establish ownership. The Act does not require family attribution although it does require attribution for direct and indirect interests of an individual.

The "substantial control test" means any individual exercising substantial control over the company meets the definition of Beneficial Owner and must be reported. A President, CEO, CFO, COO, general counsel, or any other individual performing similar functions exercises substantial control. And, anyone with the authority to appoint or remove certain officers, a majority of directors, or similar group of the Reporting Company exercises substantial control. Also, any individual with the authority to make loans, undertake debt, modify governing documents, or otherwise make or influence important decisions for the entity exercises substantial control. For lack of transparency, the definition was made overly broad. The Government is looking to receive more information rather than less and until tested to avoid penalties it makes sense to report even if uncertain if a person exerts substantial control.

There are three different reporting time periods depending on when the entity was formed. A 30-day deadline to report for any entity created on or after January 1, 2024 has been extended to 90 days after creation of the entity. If the company existed prior to January 1, 2024, reporting companies have until January 1, 2025, to file their BOI report. Those reporting companies formed after January 1, 2025, have 30 days to file their initial BOI report. Pending legislation may extend certain deadlines for companies, although until passed, reporting companies should follow the stated deadlines. The Financial Crimes Enforcement Network published "Beneficial Ownership Information Reporting Frequently Asked Questions" and guidance on how to complete the report (www.fincen.gov/boi) to help explain the Act and the reporting requirements. Every reporting company is required to report its legal name, all names under which it does business, principal business address, jurisdiction of formation, taxpayer identification number, Beneficial Owners.

CTA requires any Reporting Company to disclose the name, date of birth, street address, a unique identifying number from a passport, driver's license, or another such document, and a copy of that document for each of its Beneficial Owners determined under both the substantial control test and the ownership test. All Reporting Companies created on or after January 1, 2024, needs to report the Company Applicant, the individual who filed the formation or registration document for the Reporting Company, and if different, the individual "primarily responsible for directing or controlling such filing," limited to two individuals. This requirement has numerous implications for attorneys; a partner may direct an associate or paralegal to make the filing and both individuals would meet the definition of Company Applicant. CTA permits individuals who anticipate being Company Applicants to register for a FinCEN number that such individuals will provide to the Reporting Company instead of their personal information.

Trust attorneys need to advise clients that the CTA does consider a trustee a Beneficial Owner in certain circumstances. A trust itself cannot be a beneficial owner, because a beneficial owner must be a person. Although, if the trust owns at least 25% of a reporting company or has substantial control over a company, it must report its beneficial owner. As it applies to trusts, a beneficial owner is someone who benefits from the trust or can make decisions related to its assets, any beneficiary with the ability to withdraw substantially all of the assets of a trust containing at least 25% of an interest in a Reporting Company will also be a Beneficial Owner of such Reporting Company.

A beneficiary, grantor, or settlor of a trust can also be a beneficial owner in some cases. The law says a beneficial owner can be: a beneficiary who is the sole permissible recipient of income and principal from the trust; a beneficiary who has the right to demand a distribution or withdrawal of the trust assets; a grantor or settlor who has the right to revoke the trust or withdraw trust assets. There may be multiple beneficial owners associated with a trust under the CTA, a trustee, beneficiary, and grantor could all be beneficial owners of a trust. There are a few exceptions when it comes to Trust beneficial owners under the law. A minor who is the beneficiary of a trust will not be considered a beneficial owner until they become an adult and have the power to control the trust's assets. A future beneficiary of a trust that holds 25% ownership in a reporting company will not be a beneficial owner until they inherit those interests.

Trust Compliance Requirements and CTA. Existing entities have one full year to submit their initial beneficial ownership report and must file every year thereafter and report any changes as they occur. The CTA is complicated, cumbersome and causes increased responsibilities on Counsel and Clients.

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