

Queens

BAR BULLETIN

Queens County Bar Association | qcba.org | 88-14 Sutphin Blvd., 3rd Floor, Jamaica, NY 11435 | 718-291-4500

January 2024 | Volume 91, No. 4



Co-op & Condo Law-Legislative Update

Criminal Background Searches Materially Limited In Residential Housing

BY GEOFFREY R. MAZEL, ESQ.

As the year 2023 has drawn to a close, so has the New York City Council legislative session. Although there was not a large volume of legislation passed, one bill will have a significant and profound effect on owners of real property in New York City, including Cooperative Board of Director's, when doing criminal background checks for prospective residential tenants. On December 20, 2023, the New York City Council passed Introduction 632/2022 by an overwhelming majority. The bill is currently on the Mayor's desk awaiting signature. This bill creates

a set of significant limitations and guidelines that a property owner must follow when leasing property for residential purposes to an individual. More importantly, the bill effectively creates a protected class for individuals with a criminal history and failure to comply with this law could result in liability for a Property Owner in the form of a Human Rights complaint for discrimination. By way of background, Intro 632 was introduced to the New York City Council on August 11, 2022 by New York City Council Member Keith Powers. The bill was heard by the Committee on

Civil and Human Rights on December 8, 2022. The hearing was extremely contentious since the original version of the bill excluded Property Owners, including Cooperative Board of Directors, from conducting a criminal background search of prospective shareholders when purchasing a unit. The use of a criminal background search has been a basic tool for Property Owners, including Co-op Boards when doing a background search of prospective purchasers for decades. The rationale was quite simple—if someone has committed

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LINK TO THE BILL:
<https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=5755059&GUID=1081D9A0-5626-4DE4-BB6A-142AB373A4AF>



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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

JANUARY 2024

Monday, January 1	<i>New Year's Day – Office Closed</i>
Wednesday, January 10	CLE: Overview of MVA Litigation & Depositions – 1:00 pm
Monday, January 15	<i>Martin Luther King, Jr. Day – Office Closed</i>
Thursday, January 18	CLE: Overview of Premises Liability & Depositions – 1:00 pm
Tuesday, January 23	CLE: Cybersecurity CLE by MyLegalSoftware – 1:00 pm
Wednesday, January 24	CLE: Human Rights CLE
Tuesday, January 30	CLE: Nuts & Bolts of Real Property Sales and Commercial Leases in Bankruptcy
Wednesday, January 31	CLE: SoberLink Lunch & Learn – 1:00 pm

FEBRUARY 2024

Thursday, February 1	CLE: DNA101: No Attorney Left Behind – 1:00 pm
Monday, February 12	<i>Lincoln's Birthday – Office Closed</i>
Tuesday, February 13	CLE: Interplay Between Workers Compensation Claims and a Third Party Action – 1:00 pm
Monday, February 19	<i>Presidents' Day – Office Closed</i>
Thursday, February 22	Event: Black History Month Event

MARCH 2024

Tuesday, March 5	Event: Judiciary, Past Presidents & Golden Jubilarian Night at St. John's Law School – 5:30 pm
Wednesday, March 13	CLE: Guardianships & Divorce
Friday, March 29	<i>Good Friday – Office Closed</i>

APRIL 2024

Tuesday, April 2	Event: NY Islanders Event at UBS Arena, Elmont, NY
Tuesday, April 9	CLE: Equitable Distribution Update Pt 1
Tuesday, April 16	CLE: Equitable Distribution Update Pt 2

MAY 2024

Monday, May 27	<i>Memorial Day – Office Closed</i>
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JUNE 2024

Wednesday, June 19	<i>Juneteenth – Office Closed</i>
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Michael D. Abneri, Esq.
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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

HON. MARGUERITE A. GRAYS Administrative Judge Queens Supreme Court, Civil Term	HON. DONNA-MARIE E. GOLIA Administrative Judge Queens Supreme Court, Criminal Term	DOMENICK NAPOLETANO, ESQ. President-Elect New York State Bar Association
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Guest Speakers
Introduction of Judiciary Members & Past Presidents
Recognition of Golden Jubilarians
Academy of Law Award: Hon. Bernice D. Siegal
Court Appreciation Award

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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Editor's Note

After the Gaza War - The Three State Solution

By Paul E. Kerson

One of the founders of the State of Israel was my late Great Aunt Bessie Freed of Chicago, Ill., the sister of my maternal Grandfather, the late Henry Shoch of New York City.

They had a third sibling, my late Great Aunt Rachel Shoichet of Brest Litovsk, Poland, who was murdered in the Holocaust along with dozens of other members of my extended family.

When Great Aunt Bessie found out about this, she went into overdrive. Bessie was loud and demanding. If anti-Semites were going to murder her sister, well, Bessie would make certain that no one else's sister was going to be murdered going forward.

Bessie's husband, my Great Uncle Louie Freed, was a man of boundless energy. When he came to America at the turn of the last century, most of his fellow Yiddish-speaking immigrants faced employment discrimination.

So for the most part, they became peddlers, selling any and all household items from a pack on the back. Long before Wal-mart and Target, American Jewish men on foot were the main salesmen for everyday goods.

When the peddler became successful enough, he would buy a horse and wagon, taking that big load of cloth, needles, buttons, thread, socks, Bibles, newspapers, hammers, nails, screws and screwdrivers off his back. (Whew, that was heavy.)

My Great Uncle Louie was one such peddler. Peddlers dreamed of owning a store, so the customers would come to them. They could live in an apartment above the store, and have a much easier life, than traipsing through the mud on unimproved roads every day.

Louie decided to go into the business of building stores for his fellow Yiddish speaking peddlers. And so it came to pass that many small towns in Illinois, Indiana, Ohio, Michigan and Wisconsin were centered around stores built by hand by my Great Uncle Louie Freed and operated by his fellow Yiddish-speaking former peddlers.

These Yiddish-speaking peddlers of the late 19th and early 20th centuries built the

commercial, urban and creative United States – its “general stores”, department stores, most cities, towns and villages and one of America's leading exports – the recorded entertainment industry of movies and television shows.

See: Harry Golden, *The Forgotten Pioneer*, World Publishing Co., Cleveland and NY 1963; Leon A. Harris, Jr., *Merchant Princes: An Intimate History of the Jewish Families Who Built Great Department Stores*, Harper & Row Publishers, NY 1979 and Kodansha America, Inc. NY 1994; Neal Gabler, *An Empire of Their Own: How the Jews Invented Hollywood*, Crown Publishers, Inc., NY 1988; and Vanda Krefft, *The Man Who Made the Movies: The Meteoric Rise and Tragic Fall of William Fox*, HarperCollins Publishers, NY 2017.

Harvard University graduate Leon A. Harris, Jr., the grandson of Adolph Harris, founder of A. Harris & Co. a Dallas, Texas department store in 1886, summed all this up in his 1979 book, *Merchant Princes*, cited above:

“In much of the rest of the world, the shape and character of big cities were determined by Indian rajahs, Persian emperors, European kings. Frequently in America, especially in the South and West, this determination was made, or at least much influenced, by a recently arrived Jewish former peddler.” Page xxvi.

“...in small towns and villages where the Jewish storekeeper's family were often the only Jews in town...The man who kept the dry-goods or general store in a small town might also be its postmaster and telegraph-operator, its magazine and newspaper subscriber and its bookseller... He was a man of consequence, around whose stove in winter and cracker barrel in summer the questions of community were discussed and resolved; for good or ill, he played a major role.” Page xxi.

In 1891, Thomas Edison of New Jersey invented the motion picture projector, among hundreds of other major inventions, including the light bulb, storage battery, and phonograph. Mostly Jewish

arcade owners in Coney Island, Brooklyn, New York started making early primitive movies to show to the vacationing crowds for five cents each.

Edison wanted a large piece of the action, constantly suing the Brooklyn arcade owners. The early movie makers fled to Hollywood, California, where it was much more difficult for Edison and his forces to sue them, and one of America's leading industries today was born at the very fringes of the economy.

Enter William Fox, who was building fabulous movie palaces all over Five-Borough New York City. Fox persuaded the U.S. Justice Department that Edison was violating the Sherman Anti-Trust Act in trying to get control of movie content because he invented the movie projector, without which the movies could not exist. See 15 U.S.C. Section 1 et seq.

In one of the most consequential cases in United States economic history, the U.S. Justice Department sued Edison's company, the Motion Picture Patents Co., in the U.S. District Court in Philadelphia, Pennsylvania. In *U.S. v. Motion Picture Patents Co.* 225 F. 800 (E.D.Pa. 1915), appeal dismissed 247 U.S. 524 (1918). Judge Oliver Booth Dickinson ruled that Edison could not own every movie ever made and to be made just because he had invented the movie projector.

William Fox was behind the U.S. Justice Department's effort, and provided most of the evidence for the case. Underlying this case were upstart Yiddish-speaking peddlers peddling dreams against the hard-nosed Protestant Establishment selling industrial equipment.

The upstarts won in courts then dominated by the Protestant Establishment. What would the world be like today without Judge Dickinson's 1915 U.S. District Court decision? Would anyone since 1915 have bothered to make a movie if Thomas Edison had been ruled the owner of it?

The tech wizards of today call the Hollywood movie industry “content providers”. Would the techies of today have any “content” without the

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Editor's Note

After the Gaza War - The Three State Solution

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creation of Hollywood that we owe to William Fox and Judge Dickinson?

It is strongly suspected that most readers never heard of this history or read any of the above listed books. Why? These books are essential to understanding the United States itself and the world in which we live. They are not part of the standard American History or World History curriculum in most high schools, colleges and universities. Why?

The answer is found in a study of the Inquisition, the Crusades, the Prologs, the Holocaust, Henry Ford's *Dearborn Independent*, Father Coughlin's radio programs, the continual 75 years of attacks by the Arab world on the State of Israel, and the attitude of the Presidents of the University of Pennsylvania, Harvard University and the Massachusetts Institute of Technology on full public display in recent U.S. Congressional hearings.

It is called anti-Semitism, and it is banned in New York along with all other forms of hate since 1945 by the Human Rights Law of the State of New York, Executive Law Sections 296 and 297 and actionable in the New York State Supreme Court, Queens County, among other courts and administrative tribunals. Our New York Human Rights Law was passed in 1945 because of the then-revealed horrors of World War II, the Holocaust, Holocaust refugees in New York at the time, and the large Jewish minority population of New York, almost all of whom lost the European branches of their families.

Our New York State Human Rights Law, the first in the world, has been the model for similar laws all over the planet, including the Federal Government in Washington, DC. See the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq.

But statutes cannot change people's minds, people who are unfamiliar with our collective American history and the out-sized role of our Yiddish-speaking ancestors in it. That is the job of high schools, colleges and universities, and until they teach the above, they are all failing at it.

As part of the Pioneer Women of Chicago, Ill. My Great Aunt Bessie put the arm on every one of those Yiddish-speaking former peddlers whose store was built by Louie.

Louie made them a success in America, she would say, and now that we know it is essential for Holocaust survivors, you must contribute as much as you can to found the State of Israel. Generally speaking, survivors were not permitted

to return to their former homes in Europe by the very anti-Semites who permitted their families to be rounded up and killed in the first place.

Very few people could say "no" to Great Aunt Bessie. She was quite a character. The memory of her murdered sister Rachel drove her to never give up.

This effort became the Development Corporation for the State of Israel, a New York State chartered corporation also known as Israel Bonds, with offices today at 641 Lexington Avenue, New York, NY 10022.

Israel Bonds sells long-term bonds to fund the construction of roads, sewers, docks, schools, hospitals and sidewalks in Israel. Israel Bonds is not involved in financing guns, bombs or warplanes.

My Great Aunt Bessie and Great Uncle Louie would not be happy at all with the current war in Israel.

But we here in the far distant future of their lives must take a lesson from them and what their generation accomplished against all odds.

We must convince our American neighbors with relatives in Gaza and the West Bank to organize Gaza Bonds and West Bank Bonds to provide capital to build a future de-militarized State of Gaza and a future de-militarized State of the West Bank.

It is clear that these two lands do not get along with each other or with the State of Israel.

But that is now.

We must look to the future. The American Jewish Community can certainly forge an alliance with the American Gazan Community and the American West Bank Community to form State of Gaza Bonds and State of the West Bank Bonds.

And then we could organize the Palestine-Israel Board of Directors (PIBD) to supervise the construction of railroads, highways, docks, sidewalks, reservoirs and electric lines linking the three states.

The PIBD could prescribe regulations that allow each state's citizens to reside in one of the other two states if they wish to do so, but required to vote in his or her home state's elections.

This plan would finally resolve the problems of settlements (claimed to be unlawful by one side) and return to old neighborhoods (previously refused by the other side) and reverse general animosity and bloodshed.

It would also lead to regional cooperation and prosperity for all three states.

The United States Government's and the United Nations' two state solution has never worked because it ignores a basic principle of political geography: States must be contiguous to function well. This is the big mistake the British made in 1947 when they tried to make West Pakistan and East Pakistan (Bangladesh) into one State with India in the middle. That did not work, leading to Bangladesh independence from (West) Pakistan, after a bloody 1971 military confrontation, The Bangladesh Liberation War.

To understand how the study of geography determines how governments are run, the reader is directed to: Tim Marshall, *Prisoners of Geography: Ten Maps That Explain Everything About the World*, Scribner – An Imprint of Simon & Schuster, Inc., NY, 2015; Tim Marshall, *The Power of Geography: Ten Maps That Reveal the Future of Our World*, Scribner – An Imprint of Simon & Schuster, Inc., NY 2021; and Jerry Brotton, *A History of the World in 12 Maps*, Penguin Group (USA) LLC, NY 2012.

In courthouse negotiations, we call this kind of plan a win-win-win. In a three state solution in the case of Israel, Gaza and the West Bank with a PIBD to forge common interests, all three sides win the whole thing yet maintain their separate states.

We Americans with relatives in all three of these lands must together lead the way. The people who reside there now are too angry, too hostile, too stubborn and too intransigent to prevent the destabilization of our world by their actions.

My Great Aunt Bessie led the way in heavily Yiddish-accented English with very little formal education. Certainly we, with our University diplomas, can do as well as she did if we work at it hard enough and follow this plan.

And we must do so in the memory of my murdered Great Aunt Rachel and the rest of the 5,999,999 souls who were murdered in the Holocaust and in memory of everyone who has lost his or her life in this current mismanaged conflict since that time.

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Human Rights Committee present a ZOOM CLE

Right of Privacy Litigation Under NY Civil Rights Law Sections 50 and 51

Wednesday, January 24, 2024

5:30 pm – 7:30 pm

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PAUL E. KERSON, ESQ.

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President's Message

Greetings Everyone

By Michael D. Abneri

I hope everyone had a good holiday season and a happy new year. Our holiday party in December was a great event, with good food, and a chance to see many people, some of whom I have not personally seen not seen in quite a while. Our social programs continue to be a success where our fellow members can come out and network and see old friends. I expect that we will have more into the spring and the summer, so please look out for these events.

As we head into 2024, I am hopeful that Chief Judge Wilson and Chief Administrative Judge Zayas, starting a full year in their offices, will have an opportunity to work with the legislature to address various needs of the court system including greater resources devoted toward matrimonial cases, family court cases, and housing court cases, all of which are backlogged due to the pandemic. A resolution of the assigned counsel rates would also be helpful.

Cases filed in the Supreme Court; Civil Term in Queens County are coming up for a first pretrial conference, where a jury has been requested in approximately 12 to 13 months after the note of issue was filed. A trial date is being given out about 7-8 after the last conference. A lot of progress has been made toward reducing that backlog which has dropped

dramatically in the last year or so from an 18 to 24-month backlog. This is welcome progress which of course we hope continues further into this year.

On a sad note, we lost two past presidents of QCBA last year. One was Herbert Rubin, a founder of the law firm, of Herzfeld and Rubin, who was president from 1971 to 1972. (For some perspective as to how long ago, I was 9 years old then!) He was over 105 years old when he passed away and was active practicing law into his 90s. Just a few days ago, we lost Spiros Tsimbinos, who was a past president from 1995 to 1996. Spiros, for many years, ran our appellate court update program annually and was a past chair of our Judiciary Committee. He was very knowledgeable about United States Supreme Court issues as well. He was also a good guy and always upbeat. We offer both of their families our deepest sympathies on their losses.

We have some exciting upcoming events, including a Black History Month event on February 22, 2024. Details will be shared in the very near future as things are finalized. Also, our annual Judiciary, Past Presidents and Golden Jubilarian Night will be held on March 5, 2024, at St. John's Law School. We had the event there last year as well. As many of you know,

we are in the process of selling our former building, and we no longer can host events in that space.

We continue to progress in achieving a better level of financial stability for the QCBA as our corporate and platinum sponsor program has been very successful. We thank sponsors for their support and hope they continue to do so in the future. We continue to offer continuing legal education classes, most of them for free if you are a QCBA member, and I encourage you to take as many as you need or want to.

Finally, for those who are not committee members I urge you to join a committee and become active in the Bar Association. It will give you an opportunity to help shape how law is practiced in your specialty area or another aspect of the Bar Association that may interest you. I have personally found committee membership to be rewarding and often it is an avenue into bar leadership.

Please stay healthy this winter, as anecdotal evidence suggests there are a lot of nasty illnesses going around, and a lot of people getting sick.

Please feel free to reach out and contact me at president@qcba.org.

Remembering Spiros Tsimbinos

By Past President David N. Adler

We are saddened to report the death of Past President Spiros Tsimbinos on January 10, 2024. Past President David Adler shares some memories:

The phrase "a gentleman and a scholar" seems to have been invented for Spiros Tsimbinos, who passed away on January 10 of this year, in Dunedin, FL. He brought a dignity and true commitment to all of his endeavors, be they personal or professional.

Born on the Lower East Side, Spiros attended City College of New York and New York University School of Law. His career in the law, spanning over 50 years, was exceptional. He maintained a successful private practice for most of those years focusing on Criminal Appellate work and was known as a "lawyer's lawyer", both for the depth of his knowledge, his insights and his accessibility to members of the Bar. His reputation as a premier appellate attorney extended to all corners of the state.

Yet, his professional interests were expansive. He served on the Board of Managers of the Queens

County Bar Association and attained various officer positions culminating in his Presidency of the Association during the 1995-96 term. He remains one of our most successful presidents, implementing two unique initiatives. He created and oversaw what is more recently known as the Appellate Practice Update in which leading appellate jurists and practitioners in diverse areas present an overview and analysis of the past year's appellate decisions. The respect with which he was held by judges and practitioners alike permitted this broad undertaking, which he continued to coordinate and moderate for over 20 years. Further, he was able to arrange for and participate in a number of legal programs that were filmed and recorded for Queens Public Television, a series that spanned over two years.

His overall reputation led to a multi-year tenure as Chief of Appeals in the Office of the Queens County District Attorney. He also served as Counsel to the District Attorney.

His academic propensities were well represented in his writing, incorporating his appellate briefs, multiple articles in countywide and statewide publications, and as editor & contributor to the New York Criminal Law Newsletter. He also served as president, director, or chairperson in various other legal and community organizations and committees over the years.

Spiros remained an avid tennis player for decades and, not surprisingly, was President of the West Side Tennis Club in Forest Hills. He was a warm and devoted friend who enjoyed a good meal and spirited conversation. Spiros was truly an individual with traditional values and a sense of compassion, who always treated others with fairness and honesty. He will be missed. Rest in peace, my friend.

Please read the February *Queens Bar Bulletin* for more memories of Spiros and his remarkable life and career.



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PRESENTER:

Michael Serres, Esq.

Pyrros, Serres & Rupwani, LLP

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PRESS RELEASE JAN. 2, 2024

Judge Rudy Greco Celebrates His Golden Jubilee Anniversary With Release Of His Podcast Memoir Uncommon Law

(LESSONS THEY DON'T TEACH
IN LAW SCHOOL)

2024 marks the Golden Jubilee 50th Anniversary of retired N. Y. S. Supreme Court Justice Rudy Greco's admission to the N. Y. S. Bar.

In his just released podcast-memoir Judge Greco draws upon his long and richly varied career to discuss true cases, characters, and situations drawn from his 33 1/2 years in private practice and 13 years on the bench as a trial judge in N. Y. Civil and Supreme Courts.

The stories, nearly 100 in number, average about 20 minutes each in length. They fall into roughly 5 categories: true crime, humor, colorful characters, justice for all, and biography. They are intended to appeal to a general audience of lawyers and anyone who enjoys tales of law and human nature in all its aspects.

Judge Greco, first in his family to go to college, has a unique perspective of the law. A NYS Regents Scholar, he was academically expelled from law school after only 1 semester.

After teaching 3 tumultuous years in a Fort Apache South Bronx middle school he embarked on a 4 year law office study clerkship passing the bar exam on his first try. His mentor was the late, esteemed Executive Director of the Queens County Bar Association William W. "Bill" Weinstock.

Turning down job offers from both the Legal Aid Society and U. S. Attorney Southern District of New York, Judge Greco went directly into private practice where the need to pay rent every month brought him a broad spectrum of cases and clients. He appeared at every level of state and federal courts including successful appearances in the N. Y. Court of Appeals and the Supreme Court of the United States.


Judge Greco's clients are a fascinating range of people including killers, an Irish rock band, boxers, jockeys, rogue cops, artists, con men, gangsters, and war heroes to name but a few.

Listen to UNCOMMON LAW (Lessons They Don't Teach in Law School) and spread the word. Nearing his 80th birthday Judge Rudy Greco is not about to waste his time or yours.



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Donna received her law degree from St. John's University of Law. She is currently on 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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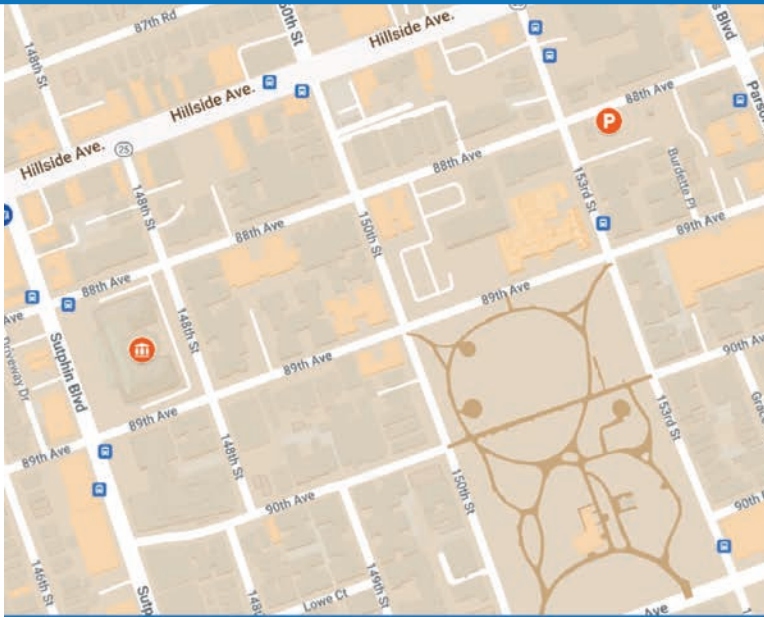


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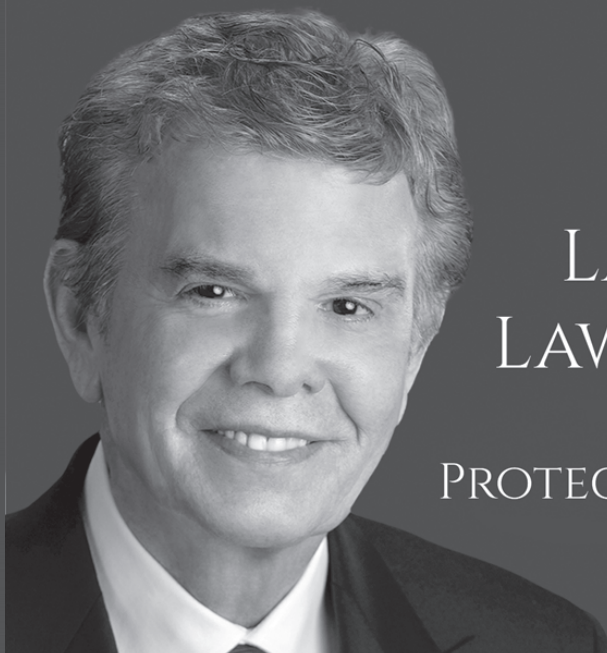
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The Practice Page

Those Pesky Venue Selection Clauses. Ugggghh!

BY HON. MARK C. DILLON

Serves on the Appellate Division, Second Department

So you finally schedule that long-planned ski vacation at a resort hotel in the mountains of Resort County in upstate New York, to share with family or lifetime school friends. You look forward to the opportunity to have a well-deserved winter respite from Westlaw research, pleadings, real estate closings, probate proceedings, and judges. On your first day while you are skiing the mountain, one of your legs is caused to slip too far forward, converting your person-to-earth angle from that of vertical to horizontal. Unfortunately, you are also somewhat injured in the process. The only good news is that there was no video recording of your fall that might be televised on an episode of America's Funniest Home Videos.

The accident was of course not your fault as lack of balance could not possibly have been a factor in your fall given your terrific physique despite your ever-advancing age. Fault, you believe, was in the unexpected trap-like roll of the ground surface on the ski slope that the resort knew or should have known about had it exercised reasonable diligence and which foreseeably created a danger to patrons, or the negligent failure of the resort to properly pack the slope with sufficient snow cover, or the absence of appropriate warning signs about the curve that was ahead. Primary assumption of the risk for the dangers of the sporting activity? Absolutely not.

You decide to commence an action. Not that you are a litigious person. You bring the action in your home county for the convenience of the local venue. You've frequently enjoyed conversation with the county's judges at bar association events while eating Swedish meatballs and ziti with them. However, you later receive a demand from the defendant to change venue to Resort County on the ground that when you signed up for your ski vacation, there was fine print in the documents that in the event of any litigation, the venue would be in *that* county, far away. You may be unfamiliar with the town where its county courthouse is located. Chances are, members of a potential jury pool have friends or family with favorable views of the very ski resort that you are suing, or of others like it.

But for the grace of God go any of us. What are we to do with those pesky contracts and their more-pesky venue selection clauses? As Charlie Brown is occasionally known to say, "Ugggghh." Even we, as trained and experienced attorneys, sometimes sign personal documents containing standard legalese that we may not have carefully

read, or do so knowing that the language is not truly negotiable anyway.

A contractual forum selection clause is *prima facie* valid and enforceable unless it is shown by the challenging party to be unreasonable, unjust, in contravention of public policy, invalid due to fraud or overreaching, or it is shown that a trial in the selected forum would be so gravely difficult that the challenging party would, for all practical purposes, be deprived of its day in court (*KMK Safety Consulting, LLC v Jeffrey M. Brown Assoc., Inc.*, 72 AD3d 650, 651 [2010]). See *Casale v Sheepshead Nursing & Rehabilitations Ctr.*, 131 AD3d 436 [2015]; *Molino v Sagamore*, 105 AD3d 922 [2013]). A forum selection agreement will control absent a strong showing that it should be set aside (*Bernstein v Wysoki*, 77 AD3d 241 [2010]). This legal standard for challenging contractual venue is difficult for most plaintiffs to meet. In *Molino v Sagamore*, *supra*, a plaintiff from Queens County signed a rental agreement at the defendant resort hotel providing that in the event of legal action over claims or disputes, the parties' venue would be Warren County. The court rejected the plaintiff's argument that the venue selection clause was unfair and unenforceable adhesion language, since the rental agreement in *Molino* was not a product of high pressure tactics or deceptive language as required for setting adhesion provisions aside. A similar result was reached in *Karlsberg v Hunter Mountain Ski Bowl, Inc.*, 131 AD3d 1121 (2015), which pitted a Suffolk County plaintiff against a Greene County resort. There, the plaintiff was provided upon his arrival at the facility with an Equipment Rental Form containing a forum selection clause, which the court found did not qualify as an unenforceable contract of adhesion and was not otherwise against public policy.

What if the defendant is located in another state? The same legal standard applies in determining the enforceability of the forum selection clause. In *Bernstein v Wysoki*, *supra*, which involved an infant injured at a summer camp in Wayne County, Pennsylvania, the court enforced a forum selection clause requiring that claims be adjudicated in that Pennsylvania county. Where the selected forum is out of state, the New York action must be dismissed in favor of recommencing the action in the other forum (*Bernstein v Wysoki*, 77 AD3d at 253), since a mere intra-state change of venue is obviously not possible (*Fritsche v Carnival Corp.*, 132 AD3d 805 [2015] [action in Richmond County dismissed on

the basis of enforceable language on a plaintiff's cruise ticket requiring that disputes be litigated in the federal Southern District of Florida, and failing a basis for federal jurisdiction there, in a state court within Miami-Dade County]; *DiRuocco v Flamingo Beach Hotel & Casino, Inc.*, 163 AD2d 270 [1990] [case of scuba diver dismissed on basis of forum selection agreement that claims be litigated in the Caribbean where the plaintiff's accident occurred]). When courts dismiss a New York action in favor of a foreign state venue clause, they should consider doing so on the condition that the defendant, in seeking to enforce its venue, waive any statute of limitations defense that might have arisen in the foreign jurisdiction after the commencement of the New York action.

A defendant's motion to change venue on the basis of a contractual venue selection clause is not subject to the requirements of CPLR 511(a) and (b) that a demand be made before or with the answer and that a motion be made within 15 days of the answer (*Puleo v Shore View Center for Rehabilitation and Health Care*, 132 AD3d 651 [2015]). Instead, the motion must be made within a "reasonable time after commencement of the action" (CPLR 511[a]; *Hendrickson v Birchwood Nursing Home Partnership*, 26 AD3d 187 [1st Dep't. 2006]; *Medina ex rel. Valentin v Gold Crest Care Ctr., Inc.*, 117 AD3d 633 [1st Dep't. 2014]). The reason is that notwithstanding the provisions of CPLR 511, the parties' contractual agreement on venue is what ultimately controls the issue (CPLR 501; *Bhonlay v Raquette Lake Camps, Inc.*, 120 AD3d 1015 (2014)). A defendant's contractual venue motion was found to have been unreasonably delayed when brought two years (*Brown v United Odd Fellow & Rebekah Home, Inc.*, 184 AD3d 478 [2020]), 14-months (*Williams v Bronx Harbor Health Care Complex, Inc.*, 213 AD3d 430 [2023]), and as little as one year from the commencement of the action (*Mena v Four Wheels, Inc.*, 272 AD3d 223 [2000]). Meaning, that defendants seeking to enforce a contractual venue clause should not sit on their right.

Actually, the best advice is to stay upright on your skis, accident-free.

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.



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Co-op & Condo Law-Legislative Update

Criminal Background Searches Materially Limited In Residential Housing

BY GEOFFREY R. MAZEL, ESQ.

CONTINUED FROM PAGE 1

a serious crime that would affect their ability to make good neighbor, the Owner/Board wants to vet this when deciding whether or not to accept this application.

The reasoning put forth by the proponents of the bill is that once a person has been convicted of a crime and has paid their dues to society, they should have a fair chance to find accommodation like everyone else in society. They further reasoned that criminal background searches put the person with a criminal history in a position where finding housing is nearly impossible. The opposition to this bill argued that if someone has been convicted of a serious crime, then it is the right of the Property Owner/Cooperative Board to be aware of that fact. In addition, the original version of the bill did not have any hold harmless language protecting the Property Owner in the event the convicted individual creates a situation where damage could accrue to the Property Owner.

The original version of Intro 632 was met with fierce resistance and subsequently was amended to compromise concerns of the opposition to this bill.

The summary of the bill is as follows:

- This bill would prohibit housing discrimination on the basis of criminal history, with limited exceptions. Landlords, owners, brokers and other covered entities may not consider criminal record until after determining a housing applicant's other qualifications.

- Covered entities may consider registered sex offenses as well as misdemeanors and felonies for 3 and 5 years, respectively, after completion of a prison sentence. If an applicant is rejected because of this reviewable criminal history, the entity must provide a written explanation for why the rejection was due to a legitimate business interest.
- This bill would not apply where federal, state or local laws, including laws protecting victims of domestic violence, sex offenses or stalking, require or permit exclusion based on criminal history.
- This bill does not apply to two-family owner-occupied housing or rooms in owner-occupied housing.
- Covered entities would not be liable under other laws for complying with this law.

The final version of the bill does provide several areas of compromise. Most importantly it does give a Property Owner's limited ability to view a prospective tenant's criminal background. However, the law is extremely technical, and every criminal search must be made in conformity with the law. Failure to follow these strict guidelines may result in the Property Owner being the subject of a Human Rights proceeding for discrimination.

On the other hand, it does contain the following language regarding liability immunity: "A covered entity shall be immune from liability in any civil action arising as a result of an alleged act of an individual with a criminal history based on the claim that the covered entity should not

have sold, rented or leased, or otherwise granted a housing accommodation or an interest therein, to such individual or as a result of a covered entity's decision not to perform a criminal background check". This provision was insisted upon by Property Owners and did make its way into the final bill.

Even though this law severely limits a Property Owner's ability to do a criminal background search, it is better than the original version of Intro 632, which completely banned criminal background searches by Property Owners, except for the sex offender registry. As stated above, this law creates a protected class for individuals with a criminal history and must be followed copiously when a Property Owner is evaluating a tenant application for residential housing. A word to the wise, please review the law carefully before advising a client regarding the use of a criminal background search for applications for prospective tenants for residential housing.

Geoffrey R. Mazel, Esq. is a founding partner of Hankin and Mazel, PLLC and has been representing condominium and cooperative boards for over 30 years. Mr. Mazel serves as co-chair of the QCBA Cooperative and Condominium Law Committee.

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Preserving Your Legacy: A Guide to Protecting Assets & Inheritance

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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 disinherit 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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Resolve To Get Unstuck

BY FRANK BRUNO, JR.

It is not easy to generate forward motion. Forward motion requires being intentional. It requires action and risk-taking. It requires feedback and reflection. It requires effort and discomfort. Doing all of that is hard, especially if you feel alone and unsupported. And without moving forward, we often feel stuck, which is draining and demotivating. These feelings work against us and we get caught in a cycle of 'stuckness.' We realize when we are connected and supported, we are the opposite of stuck. So that's my push for the Bar Association—to become connected; to provide support to our members and community and be supported by them. Then we can get past the 'stuck.'

As I already fell off the wagon of resolutions on January 5, let me provide some insights. I "resolved" to take several actions per day. I happen to be a self-development junkie: from Tony Robbins, Brian Tracy and Zig Ziglar to Bob Proctor and Abraham Hicks. My intentions were to take some small non-office work related steps each day in a variety of creative and soul-satisfying endeavors. Historically, I love to draw, write, read and exercise (I was in the Marine Corps after all!). Daily, I aimed to stoke the flames of old passions. To stop being reactive in life and to take a more proactive role in my everyday actions. As the years have marched on, hobbies have fallen by the wayside as I became a Coach or spectator to my children's sports and a leader in Scouting.

I have a book or manual in mind to write. I want to draw as a creative outlet, to read to improve my knowledge base or simply for fun, and to exercise to live a thinner, longer existence. The proposition--write daily, draw a cartoon daily, meditate, do jumping jacks, listen to a portion of a book on Audible every day. A few other small daily habits. I had been (for four days) using 10PM to accomplish the remaining unperformed items before bed. On January 3rd at 10PM, I took out my pad and wrote a few paragraphs. On January 4th, I opened up my computer browser to a picture of a flower bouquet and I drew it, completing the daily agenda. Then came that fateful Friday after New Year's, January 5. I happened to have a dinner scheduled with my Fraternity brothers and our wives at 7:30PM. I worked all day without planning ahead and came home late, in a rush to meet them on time. We

ate, drank and socialized. It was a fun night with long-held friends. Except—the writing did not get done. Neither did the drawing or exercising. On Saturday the 6th, I had an all-day home project of putting up a door frame, hinge and gate. I did meditate and I helped out with the household laundry and drove my daughter to a friend's house. There was an audible book involved. But the rest fell off. Sunday the 7th happened to involve attendance at a wedding so nearly everything was scrapped. Now, with a little more discipline the daily tasks could have been accomplished. Alas, it did not really happen. Several days later and the exercises did not bounce back at all. I skipped one day of the book but immediately started listening again the next day. Some habits may be permanent. Time will tell.

By the way, I have not stopped meditating. As I write this I've been going on twelve straight days since the Resolve. Apparently, first thing in the morning is the way to go. I wake up and meditate at 7AM. For years, I wanted to be consistent with a meditation habit and was not. In October, I listened to the book by Kamal Ravikant, "Love Yourself Like Your Life Depended On It." I then bought the book for my entire staff, my family, and sent to a few friends as well. Born in India and raised in Queens, Ravikant speaks about the fragility of human life, his turmoil, the way out and learning how to love yourself. A daily practice of meditation is prescribed within the book. The small persuasive book is a needed tonic to the difficulties of the past several years and I wholeheartedly recommend it. As a result, I love myself and you will too. In the days since the streak breaking weekend, I continued the meditation in an unbroken string and several other habits have stepped back intermittently. My favorite personal phrase is that I am directionally accurate. I am moving forward and unstuck.

A resolution is a firm decision to do or to not do something. In the law it can be an intent voted on by a body politic. However, a decision is not real unless accompanied by action, a conclusion after consideration, although without action a decision is not a decision. A decision must act on the world. A resolution distances you from action. It is a mesh filter to view and consider action. A middleman of terms. The New Year's Resolution sometimes replaces action. It is the

"To Do" list for the year. Something else not to get done. The body makes the resolution and convinces the mind you have actually done something. Perhaps the nervous system gets a hit of dopamine. Should you resolve, it must be immediately followed by action. And the items that remain is my "Resolve," a firmly decided course of action. Resolve to eat better, go through the cabinets and refrigerator and throw away the junk food. Do not buy it anymore. If it's not in the house, it's impossible to eat. Resolve to do five jumping jacks and start hopping before you finish the sentence. (I did that. I really did.) Resolve to walk 10,000 steps a day, and then park a few blocks from your office or the Courthouse. Stop circling the block for a closer spot. Resolve, and then commit. Commit to action. Commit to a project. Give a deadline. Publicly announce what you are going to do. Write an article about it. Make a bet with friends. Put your money where your mouth is. Do something concrete in the world that binds you to your resolution. Join a class.

Commit to a 5K. Get a coach. Planning is fine but action is the mandate.

Do not wait. Do not be slow. Success loves speed. Take the dopamine hit you got from your resolution and immediately put it to work by taking action.

Frank Bruno, Jr. is Past President of the QCBA, a Member of the Board of Managers, a regular contributor to the Bar Bulletin and a practicing attorney for more than 26 years.



QUEENS COUNTY BAR ASSOCIATION

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Real Property Committee present a ZOOM CLE

MASTERING TIME CONSTRAINTS: A Time of Essence CLE Workshop

Thursday, January 25, 2024

1:00 pm – 2:00 pm



PRESENTER:

James Anthony Wolff, Esq.

Senior Associate at Sobel Pevzner, LLC

MODERATORS:

Samuel B. Freed, Esq.

Etan Hakimi, Esq.

Co-Chairs, Real Property Committee

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PROGRAM: Join our comprehensive Continuing Legal Education (CLE) course on the critical concept of "Time is of the Essence" in contract law. This course is designed for legal professionals seeking to deepen their understanding of this pivotal doctrine, especially as it applies in various contractual contexts. Beyond theoretical understanding, this course provides practical scenarios and case studies, enabling attendees to apply the doctrine in real-world contexts. This includes real estate transactions, construction contracts, supply chain agreements, and intellectual property licenses. It will discuss the nuances of giving notice under this doctrine, what constitutes a 'reasonable' time frame for performance, and the consequences of non-compliance. The course is designed to enhance the skills of legal professionals in negotiating, drafting, and litigating contracts where timely performance is a crucial element. Whether you're an experienced attorney or new to the field, this CLE course offers valuable knowledge and skills to navigate the complexities of "Time of the Essence" in various legal settings.

CLE Credit: 1.0 in Skills

Transitional Course – Valid for All Attorneys. QCBA has been certified by the NYS CLE Board as an Accredited CLE Provider in NYS, 10/2022 - 10/2025.

Registration: QCBA Member - \$0.00 Non-Member - \$35.00

Must Register & Pay by January 23rd to receive access.

qcba.org/event-5562335 or EMAIL: CLE@QCBA.ORG

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CLE CREDIT: 1.0 IN CYBERSECURITY,

Privacy and Data Protection

-General Transitional Course



Speaker

SURYIA RAHMAN, ESQ.

Law Offices of Gehl & Associates

Tuesday, January 23, 2024

1:00PM – 2:00PM EST

Valid for All Attorneys

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Key Takeaways:

Gain insights into the latest cybersecurity threats targeting law offices. Learn practical strategies to enhance data protection and privacy. Ensure the confidentiality and integrity of client information. Acquire best practices for secure communication and collaboration. Develop a comprehensive incident response plan to mitigate risks.

Don't miss this opportunity to fortify your legal practice against cyber threats. Register now for the Cybersecurity Best Practices for Law Offices CLE Event.

Registration: QCBA Member - \$0.00 Non-Member - \$35.00

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Criminal Court Committee presents a ZOOM CLE

DNA 101: No Attorney Left Behind

Thursday, February 1, 2024

1:00 pm – 2:00 pm

Sponsored by:

Before ever tackling emerging topics such as *Likelihood Ratios*, *Investigative Genetic Genealogy* and *DNA Phenotyping*, a solid foundational grounding is necessary.

Join us as we review the fundamental concepts that underlie any criminal case involving DNA deconvolution, analysis and interpretation.

A primer for some. A review for others. A "safe space" for an hour where there's no such thing as a dumb question and NO attorney is left behind – not even Goldy...



PRESENTER:

DANIEL D. CHU, ESQ.

Supervisory Attorney for DNA

Mayor's Office of Criminal Justice/Assigned Counsel Plan

MODERATOR:

BARBARA WILKANOWSKI, ESQ.

Chair, Criminal Court Committee



CLE Credit: 1.0 in Professional Practice

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Registration: QCBA Member - \$0.00 Non-Member - \$35.00

Must Register & Pay by January 31st to receive access.

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Resolving Resolutions

BY DIANA C. GIANTURCO

If you are like 25% of people, you already quit your New Year's Resolution weeks ago. If you are like 43%, you will quit by the end of January. Only 9% of people keep resolutions according to research done at The Ohio State University.

Merriam-Webster's Dictionary defines a New Year's resolution as "a promise to do something differently in the new year." It does not say what that "something" is or whether it has to be big or small. It could be as simple as cleaning your coffee cup right after using it, or it could be harder, like giving up a lifelong habit of drinking coffee every morning (as if anyone would really want to do that!). The likelihood of success increases when we resolve to make small manageable changes. But as January 1st looms, we try big changes as if that date awakens an untapped invincible power enabling us to succeed at something which at any other time of the year was impossible. Basically, the pressure is on just because it is a new year. So, while it is a good practice to create change in your life by replacing poor habits with better ones, the tendency at the New Year to promise ourselves that we will "FINALLY . . . (fill in the blank)" can result in big goals that we don't meet and we feel like failures.

It is apparent that resolutions are a losing proposition. They never worked before. They come with built in or lifelong obstacles. We EXPECT it to be hard, so it is, we give up quickly and quickly fail. So, forget about resolutions. Instead, set New Year's ASPIRATIONS!

If we swap out the word resolutions for the word aspirations the whole feeling changes. "What are your New Year's aspirations?" Doesn't that feel much better? Our chances of success are greater. When we aspire to achieve our dreams, hopes and desires, it lasts forever. It doesn't have to begin in January or end at some other time. If we aspire to finally have a rose garden, we cannot even start until March or April. Do you aspire to read more, walk more, love more, be healthy, play the bass? Aspirations are enjoyable and bring new life. Resolutions feel heavy and dreadful. Stop making resolutions and follow your aspirations. Keep aspiring and keep achieving.

Verbiage counts. Simply decide on things. Any change starts with a decision to change. The origin of the word "decide" is to cut off. You have to cut off other options and move forward

on this one thing. Saying "I have **decided** to quit smoking/eat better/move more" is a definite statement and more likely to lead to success. Saying "I **will try** to quit smoking/eat better/move more" is two steps removed from the goal. The words "I will try" lack confidence and commitment. They keep a door open for excuses as to why we did not succeed. "Do or do not. There is no try." Yoda

**WE EXPECT IT TO BE HARD,
SO IT IS,
WE GIVE UP QUICKLY AND
QUICKLY FAIL. SO,
FORGET ABOUT RESOLUTIONS.
INSTEAD, SET NEW YEAR'S
ASPIRATIONS!**

Change the words you use for your goal. If you want to lose weight, say "I have decided to eat better." The natural consequence will be weight loss. If you want to start an exercise plan, say "I have decided to move more." The result will be exercise. Just saying "I will move more and eat better" feels easier than "I will exercise and lose weight."

Whether it's resolutions, aspirations, or decisions, keep it simple. It is about you. Don't make changes to meet other people's expectations and don't explain your choices.

Imagine this conversation:

Them: "What are your New Year's resolutions?"

You: "I'm going to wash my coffee cup right after I use it."

Them: "That's it?"

You: "Yes."

Once you start washing out your coffee cup you will feel successful. That feeling will lead to other successes and you will accomplish bigger things. Once you get that feeling, you can become unstoppable.

Make it easy on yourself. "The journey of a thousand miles begins with a single step." Lao Tzu. Take one step, feel the sense of pride, and let that build. Then take another step and repeat. If you want to start walking, start by going to the end of the block and back, then in a week go for 10 minutes, then 20 then 30. If you want to slim down, start by picking the right foods. Shop around the outside edges of the grocery store where fresh whole foods are. If you go into the aisles, you are looking at artificial pre-packaged unhealthy foods. Stay out of the aisles. You can only take out of your refrigerator what you put in, so put in good stuff.

It all starts in your thinking and the words we use which create feelings. If you think it will be hard, it will be. So don't make it hard. Pay attention to the words you use. Don't say or think, "This will be hard." Repeat out loud and in your mind "I can do this." Remember "impossible" is "I'm possible." Self improvement starts with yourSELF. Personal development is personal.

Finally, when deciding on a goal, don't look at the obstacles. Look only at solutions. What we put our attention on grows. If you look at obstacles, the obstacles grow. If you look at solutions, solutions grow. Look only at solutions.

Does this all sound too easy? It is as easy as you think it is.

*Diana C. Gianturco, Chair
Lawyers Assistance Committee
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