Queens BAR BULLETIN

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COOP SHAREHOLDER-TENANTS NEED PROTECTION FROM THE TENANT "PROTECTION" ACT.

BY GEOFFREY MAZEL, ESQ.,
CO-CHAIRPERSON OF THE COOPERATIVE & CONDOMINIUM LAW COMMITTEE

On Friday, June 14, 2019 New York State lawmakers approved, and Governor Cuomo signed, legislation entitled The Housing Stability and Tenant Protection Act of 2019 ("the Act") and was signed by the Governor on June 25, 2019. This legislation will significantly change New York State's rent laws. The intention of the act was to provide protection to the millions of tenants in the State of New York. However, the Act has had a profound impact on the thousands of Cooperative Corporations in New York State, which is clearly an unintended impact of the Act.

The result is legislation that will have a deleterious impact on the Coop shareholders in New York State, with no benefits whatsoever. Clearly, this Landmark Legislation was rushed through the New York Legislature, with no consideration given to its' impact on the hundreds of thousands of Coop shareholders.

The Coop form of home ownership forms a Landlord Tenant relationship between the Coop Corporation and the Tenant-Shareholder. It is a unique relationship, far different from the Landlord Tenant relationship in a rental situation. The abuses the Act intended to protect against have no place in the Coop relationship with its shareholders. Coops are run by volunteer Board's made up of shareholders; the Coop Corporation makes no profit and any losses incurred by the Coop Corporations will impact all its shareholder. This article will review the major provisions Act from the perspective of its' impact on Coops and will address what is being done to carve out Coops from its' grasp.

The first issue of concern is the amendment of GOL Sec. 7-108, as amended by the Act, which adds a new subdivision 1-a. This provision limits the rights of the Landlord to collect a security deposit of only one (1) month rent. However, if this section is then applied to Coops, it would have a devasting impact on those Coop applicants who are on the financial margin.

It is a common practice for Coops to accept financially questionable applicants if they deposit maintenance in escrow, usually the equivalent of a year or two of maintenance. The deposit is designed to protect the other shareholders in the event the questionable applicant defaults. This provision opens up housing to applicants who would not normally qualify. If the Act now prohibits this deposit, these applicants will be prevented from purchasing the Coop of their choosing and greatly limit their choices. Though this is undoubtedly not the intended effect of this law, this may well be one of the more important negative impacts of the Act.

Under RPL 238-a, a new section added by the Act, "no landlord, lessor or sub-lessor may demand any payment, fee or charge for the processing, review of acceptance of an application … before or at the beginning of a tenancy" (with a few exception); provided, however that the landlord may charge a fee to reimburse costs associated with conducting a background check and a credit check, provided the cumulative fee is no more than the actual cost or twenty ($20.00), whichever is less (and only if the landlord gives the prospective purchaser a copy of the reports as well as a receipt or invoice).

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The Docket

Being the official notice of the meetings and programs listed below, which, unless otherwise noted, will be held at the Bar Association Building, 90-35 148th Street, Jamaica, NY. 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

NOVEMBER 2019
Tuesday, November 5
Election Day
– Office Closed
Thursday, November 7
An Evening on Guardianship
Monday, November 11
Veteran's Day
– Office Closed
Tuesday, November 12
Breakin' Up Is Hard to Do: Basics of Business Dissolution
Friday, November 15
Surrogate's Court Seminar – 1-4 pm at Surrogate's Court
Wednesday, November 20
Landlord & Tenant Update
Thursday, November 28
Thanksgiving Day
– Office Closed
Friday, November 29
Thanksgiving Holiday
– Office Closed

DECEMBER 2019
Thursday, December 12
Holiday Party
– Douglaston Manor
Wednesday, December 25
Christmas Day
– Office Closed

JANUARY 2020
Wednesday, January 1
New Year's Day
– Office Closed
Monday, January 20
Martin Luther King Jr. Day – Office Closed

FEBRUARY 2020
Wednesday, February 12
Lincoln's Birthday
– Office Closed
Monday, February 17
President's Day
– Office Closed

APRIL 2020
Friday, April 10
Good Friday
– Office Closed
Wednesday, April 22
Equitable Distribution Update

MAY 2020
Thursday, May 7
Annual Dinner & Installation of Officers

UPCOMING SEMINARS
Elder Law
Family Law
LGBT Law

New Members

Alexandre G. Carvalho
Ruizhi Chen
Carolina Frias
Tamara M. Harris
Stanislav Khaldarov
Margaret T. Ling
Shadazaih Lucas
Aron Pirov
Emily Schwartz
Sarah Vinci

Necrology

Eugene F. Levy
Hon. Robert L. Nahman

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Lawyers Assistance Committee

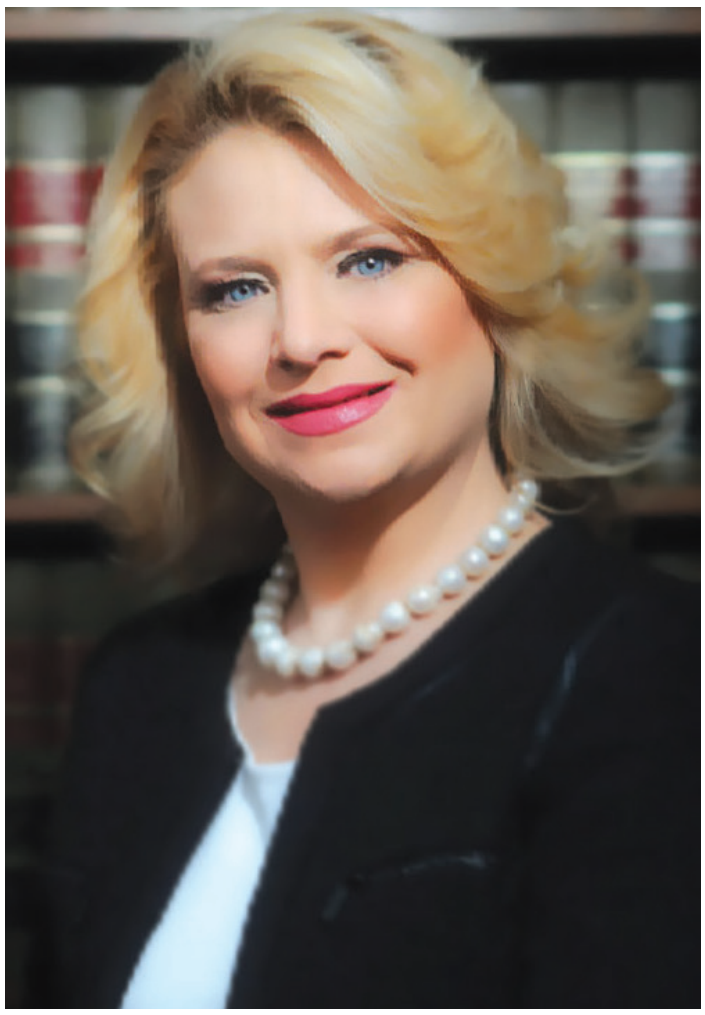
The Queens County Bar Association (QCBA) provides free confidential assistance to attorneys, judges, law students and their families struggling with alcohol and substance abuse, depression, stress, burnout, career concerns and other issues that affect quality of life, personally and/or professionally.

QCBA Lawyers Assistance Committee (LAC) offers consultation, assessment, counseling, intervention, education, referral and peer support.

All communication with QCBA LAC staff and volunteers are completely confidential. Confidentiality is privileged and assured under Section 499 of the Judiciary law as amended by the Chapter 327 of the laws of 1993.

If you or someone you know is having a problem, we can help. To learn more, contact QCBA LAC for a confidential conversation.

LAWYERS ASSISTANCE COMMITTEE
CONFIDENTIAL HELPLINE
718-307-7828



President's Message

Greetings Dear Members,

Hope you are all well and have your warmer clothes ready as we gear up for cooler days during this month of November. We some have good news; our Diversity and Inclusion Committee continues to grow. This month we warmly welcome our new member Margaret T. Ling as Co-chair of the committee.

Part of what a Bar Association does is to foster a sense of community and to provide some moral support for its members, membership is not just about law-related matters. After all, even though we are professionals working in the field of law, we are still human beings living in the world, and sometimes we face personal challenges including health issues of ourselves or of our loved ones.

Raising awareness of illnesses that affect the broad-spectrum of the human population is important because people should not have to feel that they are dealing with these issues alone. As one writer so succinctly states, "One of the biggest tools we have to fight health conditions is the power of human connection. That's why awareness months, weeks, and days are so important. They rally us together to spread awareness and show support. Educational and fundraising events are often held at these times to create a ripple of positivity and empowerment for not only those living with health conditions but their loved ones too." Kelly Aiglon, "2019 Health Awareness Calendar," December 7, 2018, healthline.com.

November is an important month because it raises awareness about many different illnesses affecting people. November is Alzheimer's Awareness and Diabetes Awareness month in the United States, and is Pancreatic Cancer Month Worldwide.

The following are a few facts on and some resources for Alzheimers, Diabetes, and Pancreatic Cancer.

Alzheimer's disease greatly impacts so many people living in the United States, and this includes both the person with the illness, their loved ones, and their caregivers. According to the Alzheimer's Associations Facts and Figures report, half of adults aged 85 and older suffer from Alzheimer's. 18.5 billion hours of care valued at nearly $234 billion are provided by more than 16 million unpaid caregivers. There is an increased likelihood of depression, emotional stress and financial problems among caregivers for those with the disease. Between 2000 and 2017 Deaths from Heart Disease have decreased 9% while deaths from Alzheimer's have increased 145%. 1 in 3 Seniors dies with Alzheimer's or another dementia. It kills more than great cancer and prostrate cancer combined. More than half of the 5.4 million Americans with the disease may not know they have it. More women have Alzheimer's. The disease is the 6th-leading cause of death in the U.S. Taken from Alzheimers Association, alz.org.

More than 30 million people in the United States have diabetes, and 1 in 4 of them do not know that they have it. More than 84 million adults in the United States over a third have prediabetes, and 90% of them do not know they have it. Diabetes is the 7th leading cause of death in the United States. Taken from Centers for Disease Control and Prevention, cdc.org

In 2019 an estimated 56,770 Americans will be diagnosed with pancreatic cancer in the U.S. and more than 45,750 will die from the disease. Pancreatic cancer is the 3rd leading cause of cancer-related death in the U.S. by the year 2020, surpassing colorectal cancer. Source for stastics: American Cancer Society: Cancer Facts & Figures, 2019, Hirshberg Foundation for Pancreatic Cancer Research, pancreatic.org.

Here is a list of resources for those of you who have loved ones or may be affected by these illnesses: Alzheimers & Dementia: Alzheimer's Association, alz.org; Diabetes: American Diabetes Association (ADA) www.diabetes.org; Pancreatic Cancer: The Pancreatic Cancer Action Network (PanCAN) (800) 813-HOPE(4673).

Despite the seeming grimness of these facts and figures and that this is an upsetting reality for so many, we must always remember that we have the power of love and hope on our side. At the end of the month is the secular holiday of Thanksgiving which is celebrated on the last Thursday of the month in the United States. Thanksgiving is a time to take some time out to celebrate with our loved ones, our families, our friends. During this time we can come together in fellowship and celebration to give thanks for the many good things in our lives, and for us to recharge, refocus, renew and resource ourselves so that we can be the best that we can be in both our personal and professional lives.

On November 7, 2019, 5:30 - 7:30 p.m., the Association in conjunction with the South Asian Indo Caribbean Bar Association and the Asian American Bar Association of New York will be co-sponsoring a Free CLE, 1.5 Credits in Professional Practice on Guardianship Law. RSVP Only CLE@QCBA.ORG; SAICBAQ@GMAIL.COM.

SINCERELY YOURS,
MARIE-ELEANA FIRST | PRESIDENT

Editor's Note

The Right Answer to the Main Question

The Nation seems hopelessly divided. The Federal Government is in disarray. There is no leadership. Income disparity is getting worse and worse.

Readers will recall Nacher v. Dresdner Bank, 198 F.R.D. 429 (D.N.J. 2000), 213 F. Supp. 2d 439 (D.N.J. 2002), 236 F.R.D. 231 (D.N.J. 2006), 240 Fed. Appx. 980 (3d Cir. 2007), Cert. den. 552 U.S. 1098 (2008).

For 14 years, from 1994 to 2008, we pursued the Dresdner Bank's New York Branch for financing World War II and the Holocaust with the stolen industrial empire of the family of our client, Mr. Ferdinand Nacher. Mr. Nacher was 90 years old in 1994 when we first met him. He was then living on Social Security in a rent stabilized apartment in Forest Hills, New York. Before 1934, his family owned Engelhardt Breweries Inc. They lost breweries, hotels, restaurants and malt factories all over Germany.

We argued this case in the New York State Supreme Court, Queens County before Justice Joseph Golia. We prevailed against the Bank's Motion to Dismiss the case in 1999. We had deposited our case file in the Holocaust Museum in Washington, D.C. in 1996. Thereafter, 56 similar cases were filed in Federal and State Courts around the United States.

In the year 2000, the U.S. Treasury Department took over all 57 cases and settled them for $5 billion. Each Holocaust survivor in the world received $7,000, a small fortune in impoverished Eastern European Countries such as Poland, Romania, Lithuania, and Latvia.

The United States Treasury Department sent the Nacher claims to arbitration in Switzerland. We lost this arbitration in 2006.

We thus continued to litigate in the U.S. District Court in Newark, New Jersey, the U.S. Court of Appeals, Third Circuit in Philadelphia, Pennsylvania and we even filed a United States Supreme Court Certiorari Petition.

We had retained German Co-Counsel, Sebastian Schuetz of Berlin in 1995 to help us with the American case. Sebastian had grown up in Israel, the son of the German ambassador to Israel. He also started numerous Nacher cases in the former East Germany. Sebastian recovered deeds to destroyed Nacher family breweries, hotels, restaurants and malt factories. These were sold, and Mr. Nacher's executor, his nephew Ronnie Mandowsky of Toronto, recovered several million dollars for the Nacher family heirs, far less than Engelhardt was worth, but far more than they had received in 73 years of waiting.

The Nacher case was the subject of leading Queens County Bar Association and Lawline.com Continuing Legal Education programs. These are recorded on discs and internet videos if a reader wishes to view them. Over the years, we have explained the Nacher case to numerous audiences at the University of Michigan Law School, Case Western Reserve University Law School, Cardozo Law School, Case Western Reserve University Hillel, Queens College and Syracuse University.

Ronnie e-mailed me last month. For the past 12 years, he has been trying to make a movie of this case of all cases. He has arranged for financing from the Film Boards of the Canadian Government and the German Government. I was earlier interviewed by the script writer, Don Young. A director and producer have been retained. Ronnie believes the film will be made and distributed some time next year in 2020.

What did we learn from Nacher v. Dresdner Bank over 14 years? How is it relevant today, in a leaderless world?

The Nazis believed that certain people were somehow "better" than others. In their view, some people had to die. They got people they did not like into "concentration camps" in order to kill them. They did this by constricting the food supply and providing limited food if people would just board special trains to the camps. Top on their list of undesirables to be killed were Jews, Gays, Physically and Mentally Disabled people and Political opponents.

We must show the world that we have learned from this experience.

Our most valuable asset of national unity is the United States Postal Service (USPS). It has one or more offices in every American village, town, and city. It has one of the world's largest fleets of trucks. We all own all of this property together.

Sixty million people were killed in World War II, including 407,316 U.S. soldiers, who died to end it. In their memory, suppose each of us were to deliver six cans of vegetables to the local Post Office on our way home from the supermarket each week? (Cans of food are best because they last the longest.)

And suppose every hungry person was invited to pick up a few cans of food every day no questions asked, no paperwork, no on-line anything? And suppose the food Donors actually met the hungry people from time to time. A few Donors might own a gasoline station, or a beauty parlor or a 99¢ store or a dry-cleaning establishment. He or she might offer a hungry person a job. Thus, a hungry person would not be hungry any more and would become a food donor himself or herself.

The act of donating the cans of food is as uplifting to the Donor as it is to the Recipient. Since I met Mr. Nacher in 1994, I have been placing six cans of vegetables in my local synagogue food donation box every time I go to the supermarket, usually once a week.

No matter what has happened to me that week, this act is uplifting. If adversaries, judges, clients or court personnel have given me a hard time that week, my spirits are raised by the donation of cans of food.

The problem with a church, mosque, or synagogue as a collection point is this: the Donor is unlikely to actually meet the Recipient to interact a bit and give the hungry person a lead on a job.

The local Post Office on the other hand, belongs to everyone, and the Donor and Recipient are much more likely to meet and interact.

The wealthier zip codes might accumulate more cans of foods than the poorer zip codes.

Aha! The Post Office has many, many trucks moving mail all around all day long. Suppose our postal trucks from our richer zip codes brought cans of food to our poorer zip code Post Offices every day on their way to deliver the mail? No extra gasoline needed there. Postal trucks are rarely full because of the logistics of delivering mail on time.

Why then we would be taking care of each other. More hungry people would gain jobs. More homeless people could afford apartments if they did not have to worry every day about having enough food.

Then we will have finally beaten the Nazi idea. We will announce to the world that no one is better than anyone else and that no one deserves to go to bed hungry.

And what if this plan – which costs our Government nothing at all – were to catch on in other countries? Well then, we would have finally beaten the Nazi idea world-wide. No one is better than anyone else. No one deserves to be hungry.

We will show everyone what the United States of America truly is - a country that stands up for the dignity of every human being.

Our first Postmaster General, Ben Franklin, would undoubtedly be especially proud of this plan. "We must all hang together or we shall all hang separately," he said upon signing the Declaration of Independence in 1776.

Attention: Nation's Postmasters: Please put this plan into effect as soon as possible. Perhaps you might wish to try it out in selected Post Offices around the country before introducing it nationwide so any logistical problems can be addressed. Our country's hungry people, many of them children, should not have to wait another day for us to get organized about this.

Ben Franklin would have wanted no less of us here in the far distant future of 2019.

BY PAUL E. KERSON | EDITOR

COOP SHAREHOLDER-TENANTS NEED PROTECTION FROM THE TENANT "PROTECTION" ACT.

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Of course, this allows for an absurdly small amount of money for the application fee. The backbone of the Coop community is the careful vetting of their prospective shareholders to ensure they will be good neighbors. This unique right enjoyed by Coops has been upheld by the NYS Court of Appeals on many occasions. Part of this process usually will include performing a criminal background check and credit check on the prospective applicant. In addition, this process usually includes the review of the application by Management; the Board; and the Board's Professionals. Finally, this process usually results in a face to face interview with the prospective shareholder. This is a detailed process that has significant built in costs, as well as third party fees. The statutory allowable sum of $20.00 patently absurd.

Some good news came out of the New York State Department of State. In light of the mass confusion from the Act and push back from the Coop community, the Department of State issued a memorandum in September, 2019. In this memorandum, they specifically stated that Coops are exempt from the portion of the Act limiting the application fees to $20.00. This memorandum has been helpful in providing guidance on how to proceed with new applications at Coops. This memorandum is not binding law and is still subject to legal challenges. At this point, it will be up to the Court's or an amendment of the Act to provide the final word on this issue.

The next part of the Act to be discussed deals with RPAPL702, as amended by the Act. This amendment provides that only rent may be sought in a summary proceeding, and no fees or other charges. This section is extremely harmful to the operations of a Coop. In addition to charging monthly maintenance, Coops very often charge for electric usage (if they are not submetered); administrative fees; legal fees and special assessments allowable under the proprietary lease. All these charges are designed to simply make the Coop whole for expenses they laid out on behalf of the shareholders.

If the Coop cannot collect these charges in a Landlord-Tenant summary proceeding, they will be forced to bring two legal actions to collect their monies or alternatively forego these other charges. This provision is a disaster for the Coop Corporation who will see their legal fees grow exponentially. Remember, if the Coop suffers financial losses as a result of this provision, the monies must be made up by the other shareholders, who are tenants. Ironically, the Tenant Protection Act not only does not protect Coop shareholders as tenants, but actually will be causing them great financial harm.

On the issue of legal fees, the Act amends RPL 234 to preclude a landlord from recovering attorneys' fees upon obtaining a default judgment even if the tenant initially appeared – albeit there may have been substantial fees incurred. Again, this protection will inflict great financial harm on the other shareholders.

Other provisions with significant negative impact on Coops includes the limitation on late charges. RPL 238-a also provides that no landlord may demand a payment, fee or charge for late payments of rent if it exceeds fifty ($50.00) Dollars or five (5%) of the monthly rent, whichever is less. Many proprietary leases already include late fees and interest, and the new law may void those provisions – even if they have been amendments to the proprietary lease, enacted by a supermajority of the shareholders. This new law encourages and makes its cost beneficial for shareholders to pay their maintenance late.

In the event a landlord commences a summary proceeding for non-payment of rent and obtains a judgment of possession, and the tenant can demonstrate "extreme" hardship, the court can allow the tenant to remain in occupancy for up to a year. A child's enrollment in school is listed as one of the circumstances a court may consider. (RPAPL 753) This will undoubtedly adversely affect the governance of coops and increase the amount of shortfall that the other cooperators will be forced to bear.

Finally, the Act amends RPAPL 702 to provide that if a tenant does not pay his/her maintenance within five (5) days of when it is due, the landlord must send a notice, by certified mail. If not sent, the tenant can use this fact as an affirmative defense in any eviction proceeding based on that non-payment of rent. Proprietary leases typically have their own deadlines and methods of sending a notice, so this may be duplicative or add yet another layer onto the process. In any event, it is an additional and cumbersome requirement, particularly if the shareholder/tenant is in arrears for several months.

As you can discern the negative impact this legislation will have on Coops is immeasurable. The impact of the Act will make it cost effective for shareholders to pay their maintenance late. The Coop has lost many of its tools to recover arrears in a timely and cost effective manner. The unintended impact of this law is profound, with no discernible benefits for the Coops or their shareholders.

The push back on this legislation has been fierce in the Coop community. However, on October 9, 2019, State Senator John Liu, introduced legislation to the New York State Senate amending the Act to carve out Coops.(Intro S6770 of 2019). The Legislature goes back into session in January, 2020. Hopefully, common sense prevails, and the Coop carve out of the Act is passed immediately.

BY GEOFFREY MAZEL, ESQ.,
CO-CHAIRPERSON OF THE COOPERATIVE & CONDOMINIUM LAW COMMITTEE

Immigration News Update DHS Attempts Massive Expansion of Unilateral Deportation Power

Allen E. Kaye

Joseph DeFelice

On July 22, 2019 the Department of Homeland Security (DHS) announced a new policy designed to dramatically expand expedited removal to apply throughout the United States to anyone who has been in the U.S. for less than two years. The policy will take effect on July 23, 2019, before the public has the opportunity to comment.

Jennifer Minear, President-Elect of the American Immigration Lawyers Association (AILA) decried the announcement, saying, "Expedited removal gives near-total authority to immigration officers to apprehend, cast judgment upon, and remove someone from this country. Now DHS seeks to apply that power nationwide, subjecting thousands of people to deportation without a meaningful chance to collect evidence, consult with an attorney, or come before a judge. Under the new rule, people will be denied a fair day in court even if they might qualify for legal relief. The administration's answer to the humanitarian situation at our southern border should be to improve the immigration court system; instead DHS is eliminating the judges from the process altogether. That is not the kind of due process envisioned in the Constitution. But we will fight and our close allies at the American Immigration Council are already planning to file a lawsuit challenging this unjustifiable expansion of power."

Background

Expedited removal is a fast track, summary process for removing certain noncitizens without a hearing before an immigration judge. By statute, expedited removal applies only to individuals who are inadmissible pursuant to INA §§212(a)(6)(C) and (a)(7) – that is, individuals who lack valid entry documents, who commit fraud or misrepresent a material fact to obtain admission, or who falsely claim U.S. citizenship.

On July 22, 2019, DHS published an advance copy of a Notice "Designating Aliens for Expedited Removal" in the Federal Register ("Notice"). It will be officially published in the Federal Register on July 23, 2019 and take effect the same day.

In the announcement, DHS states that it will expand expedited removal nationwide to individuals who are inadmissible under INA 212(a)(6)(C) or (7) and have been in the U.S. for less than 2 years. The announcement asserts that DHS is exercising the full remaining scope of its statutory authority to place noncitizens in expedited removal proceedings. The Notice is not a proposed or final rule, but rather notification to the public that it will be changing its policy. DHS asserts that it is not required to undergo notice-and-comment rulemaking but is nonetheless accepting comments for 60 days after July 23. Media outlets had reported earlier this year that the Administration was considering this plan.

Who Did Expedited Removal Apply to Prior to July 23, 2019?

Before the July 22 announcement, DHS had applied expedited removal to noncitizens inadmissible under INA §§212(a)(6)(C) and (a)(7) encountered within 100 air miles of the border who have not been physically present in the United States continuously for 14 days.

Who Will Expedited Removal Apply to Starting July 23, 2019?

The July 22 announcement expands the use of expedited removal to cover the whole country and to apply to noncitizens who have been in the U.S. for under two years. Thus, beginning on July 23, DHS will apply expedited removal to all noncitizens who are inadmissible under to INA §§212(a)(6)(C) and (a)(7) and who have not been continuously physically present in the U.S. for at least two years, no matter where in the country ICE or CBP encounters them.

This significant expansion will mean that DHS officers in the interior of the country will be able to bypass immigration court and put noncitizens directly on a fast track to removal.

How Will the Expansion Be Applied and Implemented?

The Notice has very few details on how it will implement such a far-reaching, immense change. However, the following information may be helpful in order to understand the new policy:

Fear of Persecution Abroad: Anyone who is subject to expedited removal and expresses a fear of persecution abroad will be subject to current procedures for credible fear screenings.

Prosecutorial Discretion: DHS states that immigration officers may exercise their discretion to allow affected noncitizens to return voluntarily, withdraw applications for admission, or be placed in full removal proceedings before a judge. It plans to issue guidance on the use of this discretion but does not specify a timeline for the guidance or whether it will be made public.

Physical Presence Requirement: The Notice specifies that any absence from the U.S. would break the physical presence requirement. The burden is on noncitizens to show that they have been in the U.S. for at least two years, but DHS does not include any information on what evidence it will accept to prove two years of continuous physical presence. It states only that DHS officers will place noncitizens in expedited removal if they have not shown "to the satisfaction of an immigration officer" that they have been "physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility."

Is Anyone Planning to Sue?

The American Immigration Council, along with the American Civil Liberties Union, have announced that they plan to sue the government to stop the expansion of expedited removal.

New Change Announced to the EB5 Immigrant Visa Program Minimum Investments, Targeted Employment Area Designations Among Reforms

U.S. Citizenship and Immigration Services (USCIS) published a final rule on July 24 that makes a number of significant changes to its EB-5 Immigrant Investor Program, marking the first significant revision of the program's regulations since 1993. The final rule will become effective on Nov. 21, 2019.

New developments under the final rule include:

- Raising the minimum investment amounts;
- Revising the standards for certain targeted employment area (TEA) designations;
- Giving the agency responsibility for directly managing TEA designations;
- Clarifying USCIS procedures for the removal of conditions on permanent residence; and
- Allowing EB-5 petitioners to retain their priority date under certain circumstances.

Under the EB-5 program, individuals are eligible to apply for conditional lawful permanent residence in the United States if they make the necessary investment in a commercial enterprise in the United States and create or, in certain circumstances, preserve 10 permanent full-time jobs for qualified U.S. workers.

"Nearly 30 years ago, Congress created the EB-5 program to benefit U.S. workers, boost the economy, and aid distressed communities by providing an incentive for foreign capital investment in the United States," said USCIS Acting Director Ken Cuccinelli. "Since its inception, the EB-5 program has drifted away from Congress's intent. Our reforms increase the investment level to account for inflation over the past three decades and substantially restrict the possibility of gerrymandering to ensure that the reduced investment amount is reserved for rural and high-unemployment areas most in need. This final rule strengthens the EB-5 program by returning it to its Congressional intent."

Major changes to EB-5 in the final rule include:

- Raising minimum investment amounts: As of the effective date of the final rule, the standard minimum investment level will increase from $1 million to $1.8 million, the first increase since 1990, to account for inflation. The rule also keeps the 50% minimum investment differential between a TEA and a non-TEA, thereby increasing the minimum investment amount in a TEA from $500,000 to $900,000. The final rule also provides that the minimum investment amounts will automatically adjust for inflation every five years.
- TEA designation reforms: The final rule outlines changes to the EB-5 program to address gerrymandering of high-unemployment areas (which means deliberately manipulating the boundaries of an electoral constituency). Gerrymandering of such areas was typically accomplished by combining a series of census tracts to link a prosperous project location to a distressed community to obtain the qualifying average unemployment rate. As of the effective date of the final rule, DHS will eliminate

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a state's ability to designate certain geographic and political subdivisions as high-unemployment areas; instead, DHS would make such designations directly based on revised requirements in the regulation limiting the composition of census tract-based TEAs. These revisions will help ensure TEA designations are done fairly and consistently, and more closely adhere to congressional intent to direct investment to areas most in need.

• Clarifying USCIS procedures for removing conditions on permanent residence: The rule revises regulations to make clear that certain derivative family members who are lawful permanent residents must independently file to remove conditions on their permanent residence. The requirement would not apply to those family members who were included in a principal investor's petition to remove conditions. The rule improves the adjudication process for removing conditions by providing flexibility in interview locations and to adopt the current USCIS process for issuing Green Cards.

• Allowing EB-5 petitioners to keep their priority date: The final rule also offers greater flexibility to immigrant investors who have a previously approved EB-5 immigrant petition. When they need to file a new EB-5 petition, they generally now will be able to retain the priority date of the previously approved petition, subject to certain exceptions.

BY ALLEN E. KAYE AND JOSEPH DEFELICE

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

Be Prepared: "Presumptive ADR" is Coming.

The Importance of Being Proficient in Mediation

In light of the court systems' ADR initiative and imminent implementation of a new "presumptive ADR" program, practioners should be aware of the impetus behind the drive and how they can prepare for it.

It started with a Press Release in April 2018 – "New ADR Initiative Aims to Reduce Case Delays and Enhance Access to Justice" – that memorialized a plan to revitalize the court system's commitment to Alternative Dispute Resolution, specifically mediation. The Press Release highlighted that this new plan would promote the goals of Chief Judge Janet DiFiore's Excellence Initiative by helping to eliminate case backlogs and enhance the quality of justice. It stressed that although ADR has proven a meaningful, efficient and cost-effective way to resolve disputes in appropriate cases, it continues to be underutilized. Launching the initiative means increasing efforts to expand the use of ADR within the courts.

The Press Release also announced the formation of an Advisory Committee on ADR that included highly esteemed and knowledgeable judges, attorneys, mediators and professors. The committee was assigned to assist and guide in the undertaking by examining the services currently accessible within the court system and to make recommendations for improvement and expansion. Also discussed in this initial Press Release was an existing New York County early mediation pilot program that followed the "presumptive ADR" model. Presumptive ADR entails referring cases, without the need of judicial intervention, to mediation or some other form of ADR as a first step, before the matter can proceed formally in court. Conversely, at present parties are typically referred to ADR services by the judge handling the case, after some or significant court involvement has already occurred.

The Advisory Committee delivered its thirty-five-page Interim Report and Recommendations in February 2019 that was attached to another Press Release published in May 2019 – "Court System to Implement Presumptive Early Alternative Dispute Resolution for Civil Cases". An enumerated summary of the Committee's interim recommendations was provided as follows: (1) significantly expand statewide infrastructures for developing and supporting court-sponsored ADR (and particularly court-sponsored mediation); (2) promulgate statewide uniform court rules; (3) increase court connections with and expand funding for Community Dispute Resolution Centers (CDRCs), as a significant component of scaling up existing court-connected programs; (4) take steps to support, encourage, and educate about court-sponsored mediation; and (5) develop mechanisms for effective monitoring and evaluation of individual programs. Sub-sections supplied further explanations and procedures to carry-out each recommendation. The Report was comprehensive, and the Committee was commended for its efforts by the Chief Judge in the May Release.

Notably that Press Release, alluding to the Report, announced the systemwide movement to implement presumptive ADR; to direct parties in a broad range of civil cases, aside from appropriate exceptions, to ADR methods, with a focus on court-sponsored mediation. Again, this program does not require judicial intervention for a referral to an ADR approach and acts as a first step in the case proceeding to court. Realization of the program is set to begin in September.

To accomplish this undertaking and in keeping with the Committee's recommendations a taskforce comprised of the Deputy Chief Administrative Judges, their staffs, the statewide ADR coordinator, administrative and trial court judges, and local bar associations along with other stakeholders, will work together to expand the number and scope of ADR programs offered and to educate participants in the constructive use of ADR. Likewise, the Office of Court Administration will promulgate uniform rules and guidelines for the program, including processes for parties to opt out of presumptive ADR. Presumably, instructions for screening and recommending cases appropriate for the program will be published as well.

The preference, and imminent directive to employ presumptive mediation in the courts should underscore for practioners the importance of being prepared for September's launch. In fact, this was one of the Advisory Committee's recommendations and goals. Preparedness entails understanding the process of mediation and its benefits. It means sharing that knowledge with clients who, considering their attorney's counsel, can make an informed decision whether to participate in mediation, or opt out. It involves having a functional proficiency in a mediator's role, as well as the skills they apply to promote settlement, and using this insight to the client's best advantage. Finally, it requires attorneys who are resistant or uneasy towards the process to embrace it.

Mediation/Mediators/Attorney Representatives: A "Very" Brief Overview

Mediation can be best described as facilitated negotiation. Negotiation is the essence of modern legal practice with a nominal percentage of actions commenced actually proceeding to trial. Mediation involves introducing an impartial individual into negotiation discussions who works as a catalyst to help others constructively address disputes and to encourage mutually agreeable outcomes or resolutions. The process itself is less formal than traditional court proceedings and generally takes place with the mediator, all parties, and their attorneys situated around a conference room table engaging in open dialogue. A mediator may also choose to employ the caucus, or a method of mediation dubbed "shuttle diplomacy".

Mediation has as its hallmarks and benefits self-determination, durability, universality and, frequently, confidentiality. Mediation is consensual. It is driven by the parties who maintain control over the process, as well as the outcome. This self-determinative aspect, rather than ceding power to a judge or jury, means that the parties are invested in both the process and its conclusion. They participate in conversations affording them the opportunity to express themselves candidly, to be heard and to hear each other. Doing so effectively tempers unrealistic positions, unwarranted assumptions and demonization. The parties' active role provides them the chance to find and choose among potential solutions, as well as the possibility of crafting their own settlements. Autonomy in this way mitigates the risks of adjudication and infuses the process with a level of predictability not shared by litigation. Self-determination as all-encompassing leads to the reliability and durability of agreements reached, as opposed to decisions, judgments or verdicts strictly imposed.

The universality of mediation connotes its ability to hear and undertake the totality of a dispute and all its potential outcomes. Parties do not have to fit their conflict into a narrow frame of a legal "cause of action." They are not constrained to deal with only legal issues and are free to touch upon the emotional underpinnings that often act as an invisible barrier to conciliation. They also are not subject to a binary finding of right and wrong, or only to remedies germane to the law and litigation. Given that the process enhances communication, fosters collaboration and encourages creative problem-solving, parties can seek emotional, practical and psychological closure. Parties even have the opportunity to devise methods for handling and preventing future disputes.

Mediation is ordinarily more economical than litigation. It is a faster and less expensive process. Sessions can be scheduled quickly and at the convenience of the parties. It does not incur the normal and anticipated court costs associated with litigation, discovery and motion practice.

In the event a case is referred to presumptive mediation and a resolution is not reached, the process does not have to be viewed as a failure or wasteful. A mediation can be considered successful if the parties gain a better understanding of their dispute, and each other's positions and perspectives relative thereto. Progress is also achieved if the parties gain insight into the strengths and weaknesses of their case. The hallmarks and benefits of mediation discussed above speak to this success. Apropos the court system, a mediation may not settle the entire matter, but may help to clear emotions underlying a conflict that act as an impediment to settlement and to narrow the issues brought before the court.

The mediator is responsible to set the stage, foster and focus communication and maintain the process' hallmarks and benefits. The meditator is an organizer, a motivator and facilitator, an educator, an impartial negotiator and a protector. Paramount to the mediator's function is their neutrality. It is that neutrality that informs the mediator's actions and decisions relative to the

CONTINUED ON PAGE 9

Be Prepared: "Presumptive ADR" is Coming.

The Importance of Being Proficient in Mediation

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process. A mediator is absolutely not a decision-maker.

The mediator as organizer oversees all aspects of the process, from the most fundamental as the arrangement of the meeting room and participants, to the most crucial of setting the discussion agenda. Arguably the most significant of the mediator's functions is that of communication motivator and facilitator, and neutral negotiator. This means a mediator helps parties to speak clearly and to listen and understand each other. The mediator does this by summarizing, explaining and translating employing the tools of reflecting, reframing and looping, which are all approaches to "active listening." By going beyond hostile dialogue and extracting "building blocks" a mediator: 1) elicits common interests; 2) frames open issues in an unbiased way; 3) culls shared proposals for resolutions; 4) acknowledges feelings and goals; and 5) explores the parties' alternatives while evaluating the strengths and weaknesses of those options. This role also includes the task of capturing and recording understandings that will lead to the terms of an agreement. The mediator as motivator, facilitator and negotiator leads in subtle ways so parties believe that they have achieved their own results. A mediator is also an educator, both about the process and in reality testing agreements reached. Finally, a mediator is a protector acting as sentinel and steward of the process, as well as referee ensuring equality at the table.

It is important for practitioners to familiarize themselves with these functions and the tools and skills mediators use to carry them out, so that they may use that familiarity to their client's advantage, maximizing all that mediation has to offer. Tantamount to practioners who will represent clients in this process is an attitude and perspective shift, a new orientation different from that of an attorney representing a client in litigation. This involves letting go of the idea that parties are strictly adversaries, that the attorney acts only as zealous advocate and that disputes may only be resolved by a judge or jury's application of the law to the facts. It requires attorneys to look beyond the binary concept of winner and loser, to become more sensitive and creative and to adopt a more global view of the conflict. Attorneys must embrace their role as innovative problem-solver. Clients too need to be re-orientated to this perspective by the attorney representatives, who can frame the process in terms of a voluntary compromise, a "win-win" possibility.

Another adjustment necessary for attorney representatives not found in litigation, is to plan for their clients' active participation in the process. They must allow for this unfamiliar aspect and discuss how that can be accomplished. Clients should understand the mediation process and the mediator's function. Clients, and their attorneys, should be prepared to tell a full detailed account of the dispute inclusive of the feelings rooted therein, and to actively listen to the other side's similar presentation. They need to be informed of the broad range of settlement options and to research those outcomes to decide which satisfy their goals and are acceptable.

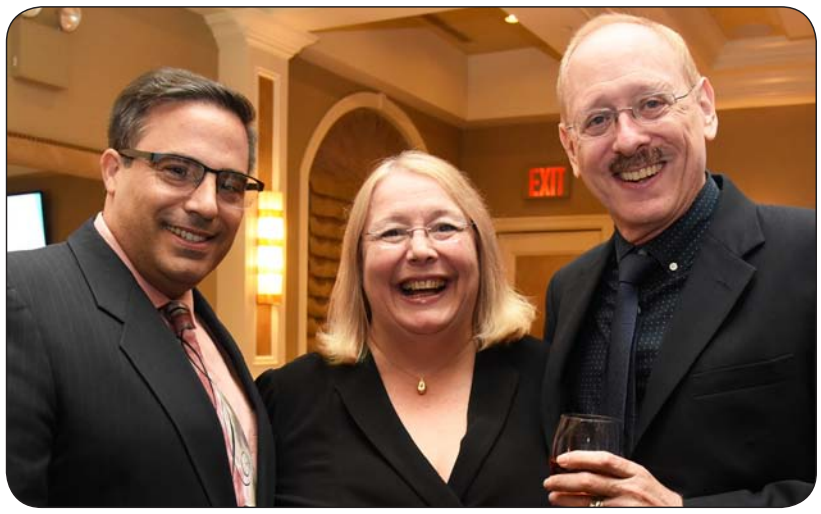
Common mistakes for attorneys to avoid are failing to understand the clients' interests and objectives, addressing the mediator as opposed to the other side, balking at emotions and relationships, losing patience with the process, resorting to adversarial and threatening tactics and failing to truly seek settlement and close.

ADR, specifically mediation, is a discipline that, although not new, has become an objective for the court system to endorse, encourage and utilize more frequently in pursuit of speedier and superior justice. It is no longer the future's wave. It is the present. The implementation of "presumptive ADR" in a wide range of civil cases starting this September makes that evident. Practioners should prepare themselves for this reality by educating themselves about the process of mediation– its benefits, utility and efficiency – so that they may pass this information along to their clients, who may then decide whether to take advantage of this process, or not. Also, that they may represent and advocate for their clients within the context of mediation in an enhanced and productive capacity. In short, presumptive ADR is coming and we should all be prepared.

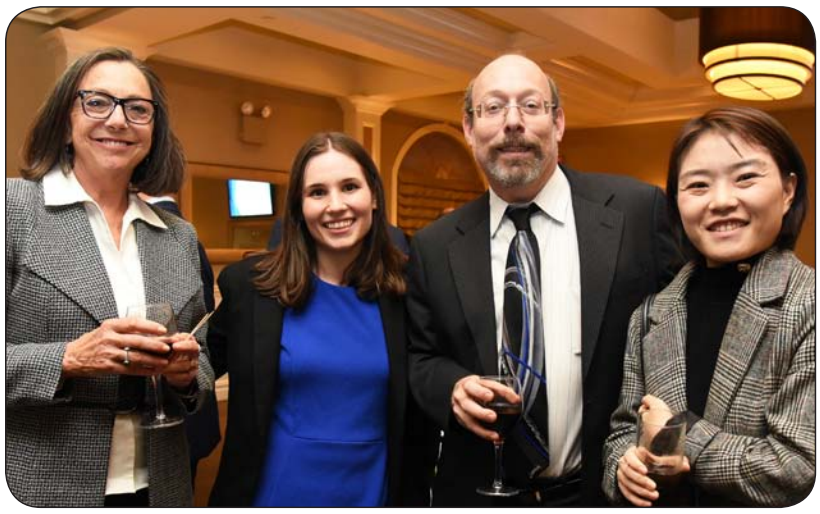
BY CLAUDIA LANZETTA, ESQ., LL.M.

The Queens legal community discusses presumptive ADR

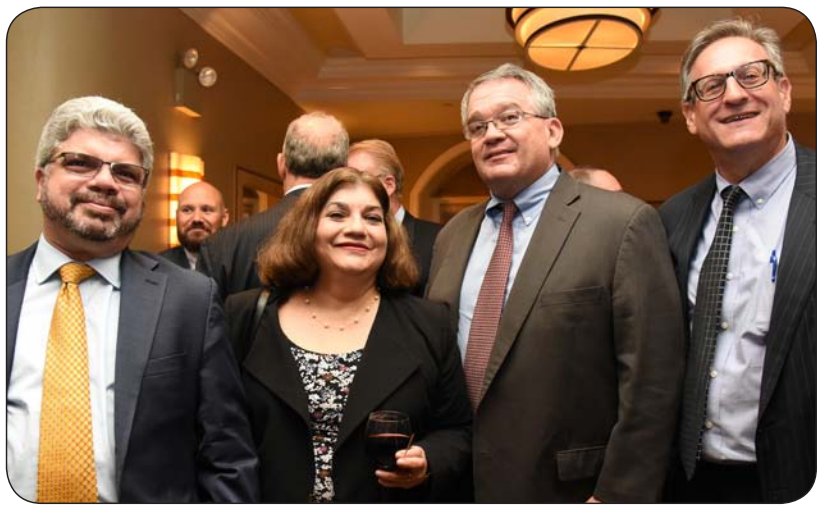
From left to right, Judge Donna Marie Golia, Judge Anthony Cannataro, Justice George Silver, former Judge Joseph Golia and Greg Newman.



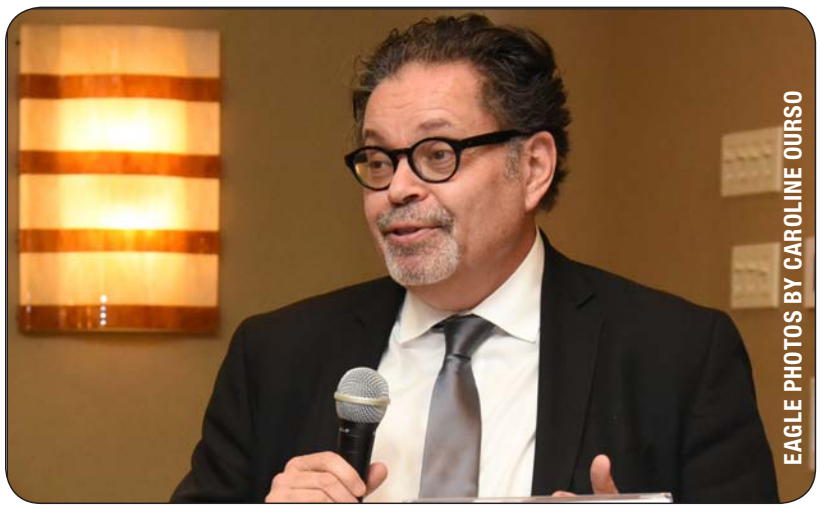
Frank Bruno (left), Patricia Powis (center) and Ron Caveglia.



From left to right, Teresa Ombres, Melissa Bohl, Joshua Katz and Ruizhi Chen.



Michael Goldman, Felicia Varlese, Judge Bill Viscovich and Michael Abneri.



EAGLE PHOTOS BY CAROLINE OURSO

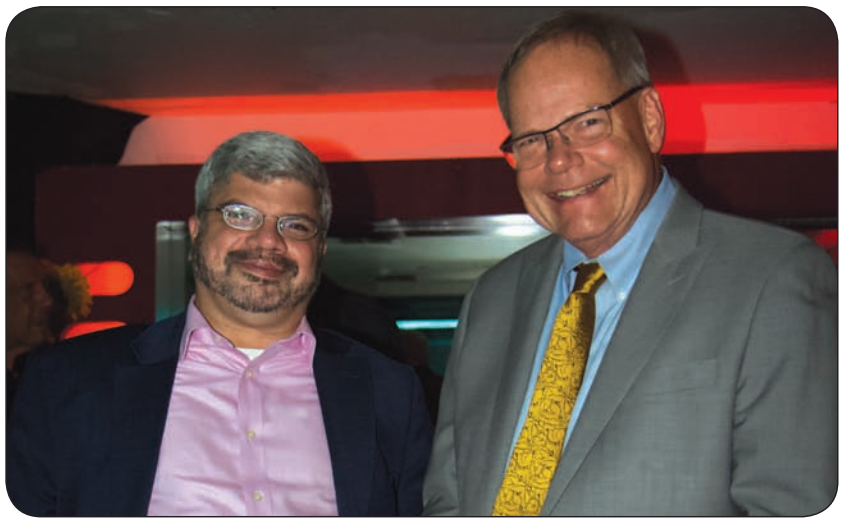
Justice George Silver speaks about alternative dispute resolutions in Civil Court.

Guardians of Justice gather for Eagle's inaugural gala

Latino Lawyers Association of Queens County President Thomas Oliva, retired Supreme Court, Civil Term Administrative Judge Jeremy Weinstein, Brandeis Association President Adam Orlow, Queens County Women's Bar Association President Adrienne Williams, Chief Clerk of the Queens County Supreme Court Tamara Kersh, Acting Queens District Attorney John Ryan, former Legal Aid Society Attorney-In-Chief Seymour James, Queens County Bar Association President-Elect Clifford Welden and Eagle co-publishers Dozier Hasty and Michael Nussbaum. **EAGLE PHOTO BY ANDY KATZ**

Rebranded LGBTQ+ Committee reflects bar association inclusiveness

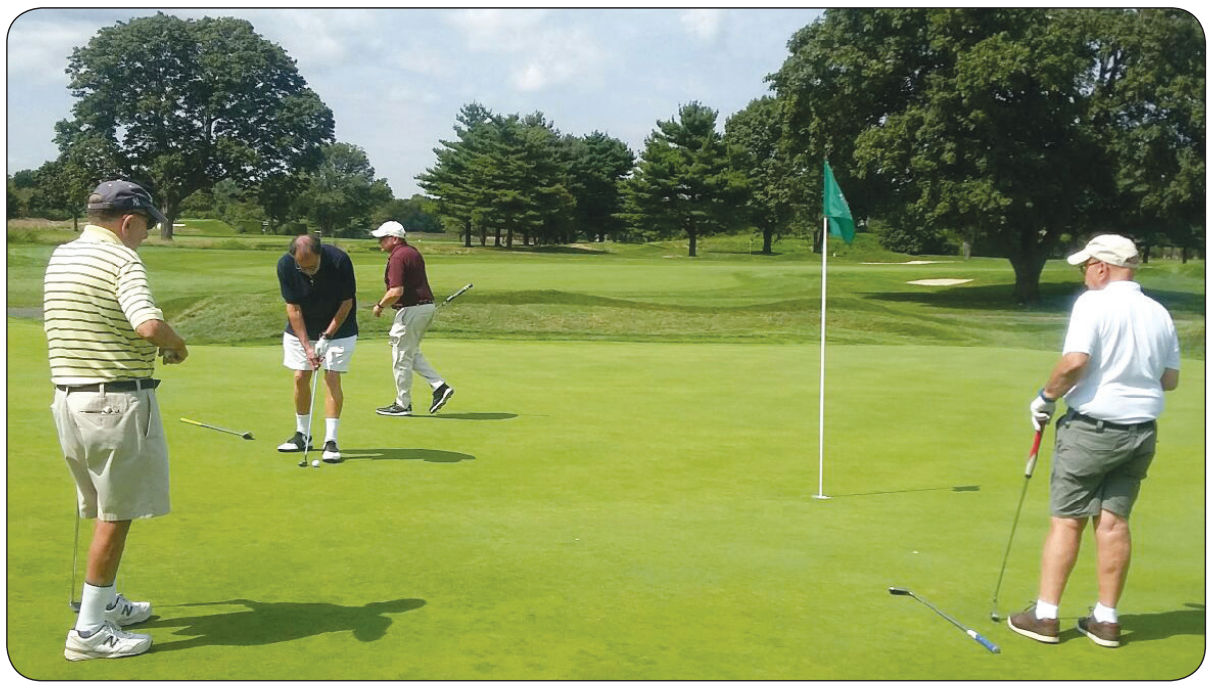
From left to right, John Duane, Michael Goldman, Tom Burrows, Jacqueline Monier, Penny Gold (back row), Benjamin Astrim, Matt Skinner (back row) and Mary Northridge.



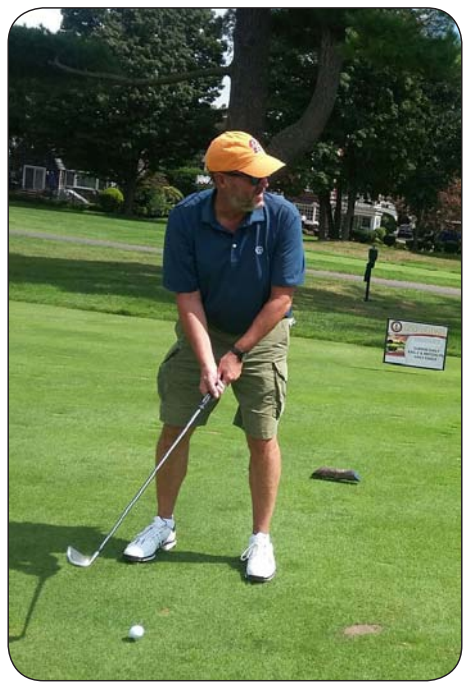
LGBTQ+ Committee Chairs Michael Goldman and John Duane.

EAGLE PHOTOS BY JONATHAN SPERLING

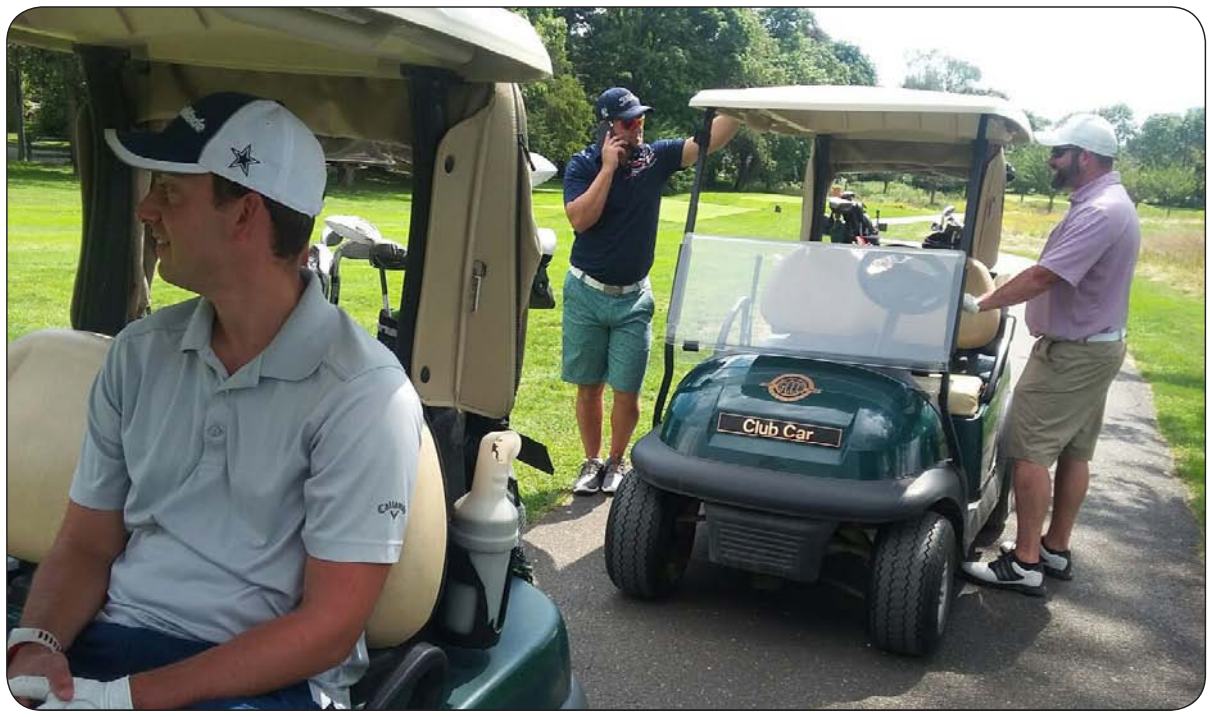
Queens County Bar hits the links and the hardcourt



From left, George Nashak, Bart Resnicoff, Bob Miller and Queens County Bar Association Executive Director Arthur Terranova reach the green during the Queens County Bar Association's annual golf and tennis outing.



Jim Coonan lines up his drive at the 11th hole.



From left, Jeremy Hankin, Matt Goldberg and Jared Madoff.

EAGLE PHOTOS BY JIMIN KIN

Wayne Starberg connects on a drive from the 11th hole tee box.

DHS Finalizes Public Charge Rule

Allen E. Kaye

Joseph DeFelice

The Department of Homeland Security (DHS) announced its much-anticipated version of its final changes to the public charge ground of inadmissibility. The agency has targeted an implementation date of October 15, 2019 when the new regulations will take effect. The following summary is based on language in a pre-publication version that was made available to the public today. We will provide an update if there are any changes in the final version published on August 14, 2019.

The new public charge rule and procedure will affect applications filed or postmarked (or, if applicable, submitted electronically) on October 15, 2019. Applications and petitions already pending with USCIS on the effective date of the rule (postmarked and accepted by USCIS) will be adjudicated based on the current public charge standard. Although the published rules refer to public charge inadmissibility adjudications by USCIS, the Department of State is expected to adopt these same standards to apply to those applying for immigrant and nonimmigrant visas abroad.

Advocacy groups have announced plans to challenge many of the changes in federal court, so it is unclear when or if some of the more controversial portions will go into effect.

The agency published proposed regulations on October 10, 2018, which started a 60-day public comment period. The agency received over a quarter of a million comments, the vast majority of which opposed the announced changes. Advocacy groups and individuals objected to the expanded definition of public charge, the inclusion of new public benefit programs whose possible receipt could be considered, and the interpretation or definition of the five statutory factors. The following is a summary of the anticipated final regulation and the change to current policy.

The term "likely at any time to become a public charge," which is a ground of inadmissibility found in INA § 212(a)(4), has been redefined in four important ways. First, instead of being applied to those who might become "primarily dependent" on a designated list of state and federal programs, it is to be applied to those who are more likely than not to receive any of these benefits for more than 12 months in the aggregate within any 36-month period.

Second, DHS has expanded the list of identified programs that can be considered when applying the public charge "totality of the circumstances" test. Prior to the regulation becoming final, the agency could only consider receipt of three cash assistance programs—Supplemental Security Income (SSI), Temporary Assistance to Needy Families (TANF), and state general relief or general assistance—as well as a Medicaid program that covers institutionalization for long-term care. The final regulation adds five new programs: non-emergency Medicaid; Supplemental Nutrition and Assistance Program (SNAP, formerly food stamps); Section 8 Housing Choice Voucher Program; Section 8 Project-Based Rental Assistance; and Public Housing. Benefits received by the applicant's U.S. citizens children or other family members are not considered in determining whether the applicant is likely to become a public charge. Benefits received by an individual who was not subject to the public charge ground of inadmissibility when the benefits were received are also not considered.

Third, in determining public charge inadmissibility, the regulation shifts attention away from the petitioning sponsor's income as reported on the affidavit of support and re-directs it to the five statutory factors: the applicant's age, health, family status, assets/resources/financial status, and education/skills. Adjudicators will assign weight—negative and positive, as well as heavily negative and heavily positive—to these five factors to determine whether the applicant passes the public charge test. All adjustment of status applicants will need to be complete a declaration of self-sufficiency form and support it with documentary evidence.

Finally, the regulation allows for the posting of a public charge bond for applicants who, in the opinion of the USCIS or State Department, might otherwise fail the public charge test.

Likely Receipt vs Primarily Dependent

The final rule vacates a 1999 agency memorandum, field guidance, and proposed rule and replaces it with one that substantially broadens the definition of public charge. An applicant will now be inadmissible based on public charge if he or she is "more likely than not at any time in the future to receive one or more [of nine designated] public benefits…for more than 12 months in the aggregate within any 36-month period." The prior interpretation considered whether the applicant was likely to become "primarily dependent" on government services or rely on these programs for more than half of their income or support. To merely receive benefits from one or more of the programs is a much lower standard. This is significant because the five added programs address health, nutrition, or housing needs, rather than income maintenance. Receipt of these new benefits would not have been defined as making the recipient "primarily dependent" on the government.

Five New Public Benefit Programs and Form I-944

The final rule expands on the prior list of cash programs—SSI, TANF, Medicaid for long-term care, and state general assistance—and identifies five non-cash programs. It exempts receipt of public benefits by members of the U.S. armed forces serving in active duty or in any of the Ready Reserve components. It also would not consider Medicaid benefits received by foreign-born children of citizen parents who will be deriving citizenship under the Child Citizenship Act. Additionally, the new public charge test does not assign negative weight to U.S. citizen children or other family members' receipt of benefits.

The first four programs will be considered if the applicant is currently receiving or has received them in the past; the last five will be considered if received by the applicant starting on October 15, 2019. The following nine benefit programs are:

- SSI
- TANF
- State general relief or general assistance
- Benefits provided for institutionalization for long-term care
- Medicaid (except for "emergency Medicaid," certain disability services related to education, school-based services or benefits to children below the oldest age set for secondary school education; benefits received while under age 21; and pregnancy benefits including 60 days post pregnancy)
- Supplemental Nutrition Assistance Program (SNAP, formerly food stamps)
- Section 8 Housing Choice Voucher Program
- Section 8 Project-Based Rental Assistance, and
- Public Housing.

The final rule does not include receipt or potential receipt of the following benefit programs:

- Emergency medical assistance
- Disaster relief
- National school lunch or school breakfast programs
- Foster care and adoption
- Head Start
- Child Health Insurance Program
- Earned Income Tax Credit or Child Tax Credit

Five Statutory Factors

Under the new regulations, USCIS officers will scrutinize the applicant's current and estimated income, job history, job skills, health status, assets, household size, and current or history of public benefits receipt. The following is a summary of how the agency defines these five statutory factors.

1. Age: applicants younger than 18 or older than the minimum early retirement age for Social Security will need to demonstrate why their age will not impact their ability to work.

2. Health: applicants who have any medical condition will need to show whether it affects their ability to work, attend school, or care for themselves. In making this determination, USCIS will generally defer to civil surgeon or panel physician report.

3. Family status: DHS will determine the applicant's household size based on the new household definition at 8 CFR § 221.21(d). Under this definition, the household includes dependents and persons providing the applicant with more than 50 percent of their support.

4. Assets, resources, and financial status: DHS will consider whether the annual household income of the applicant is at least 125 percent of the Federal Poverty Guideline (FPG) using the new household definition. Assets may be considered to make up an income shortfall. If the applicant is the spouse or child over age 18 of a U.S. citizen, assets must equal three times the income shortfall; for most others, the value of assets must equal five times the difference between required household income and actual household income. Their financial status will also be measured by considering any civil liabilities, past application or certification for, or receipt of public benefits, receipt or application for a fee waiver for an immigration benefit after the effective date of the regulations, credit history and credit score.

5. Education and skills: DHS will consider whether the applicant has adequate education and skills to either obtain or maintain lawful employment with an income sufficient to avoid becoming a public charge. Factors include employment history, education level (high school diploma or GED, or higher education degree); occupational skills and licenses, English proficiency; and status of the applicant as a primary caregiver to another individual in the household.

In addition to these five statutory factors, DHS will also consider the applicant's prospective immigration status and expected period of admission, i.e. whether the applicant is seeking admission as an immigrant or nonimmigrant. Where an affidavit of support is required, DHS will consider the likelihood that the sponsor will actually provide the statutorily-required amount of financial support

Any of the following will be considered a "heavily weighted negative factor" if the applicant:

- Is not a full-time student and is authorized to work, but currently unemployed.
- Is currently receiving, or certified or approved to receive one or more of the designated public benefits above the threshold.
- Has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or will interfere with the ability to work, attend school or care for himself or herself, and the applicant is

CONTINUED ON PAGE 13

DHS Finalizes Public Charge Rule

CONTINUED FROM PAGE 12

uninsured and has no prospect of obtaining private health insurance or financial resources to pay for reasonably foreseeable medical costs.

• Has previously been found inadmissible or deportable based on public charge.

Either of the following will be considered a "heavily weighted positive factor" if:

• The applicant's household has income of at least 250 percent of the FPG for the household size.

• The applicant is authorized to work, is gainfully employed, and has an income of at least 250 percent of the FPG.

• The applicant has private health insurance, not including insurance for which the applicant received subsidies in the form of premium tax credits under the Patient Protection and Affordable Care Act.

Receipt of the SSI, TANF and long-term institutionalization benefits before October 15, 2019 will be considered a negative factor, but not a heavily weighted one. DHS will not consider receipt of any other of the nine public benefits before October 15, 2019 as a negative factor.

Posting of Public Charge Bonds

The statute allows for the posting of a public charge bond in situations where the applicant needs to assure the USCIS or State Department that he or she will not become a public charge. But during the last 20 years, the posting of such bonds has been extremely rare. The final rule details the procedure for the posting and canceling such bonds with the implication that they may become a common occurrence. Applicants who are initially determined likely to become a public charge by the USCIS may be offered the opportunity to post a public charge bond of at least $8,100. The bond may be cancelled only upon the immigrant's death, permanent departure, five years as a lawful permanent resident, or naturalization. The bond will be considered breached if the immigrant receives any of the nine cash or non-cash programs identified above for more than 12 months in the aggregate within any 36-month period.

Impact on Lawful Permanent Residents

The final DHS rule does not change the public charge ground of deportability, so lawful permanent residents (LPRs) will generally not be affected now by their receipt of public benefits identified in the newly-expanded list of programs. Nor would they be subject to any new scrutiny in their application for naturalization. LPRs can be subject to the new rules, however, in circumstances where they are considered applicants for admission, which includes returning to the United States from a trip abroad in excess of 180 days. In addition, the Department of Justice intends to publish a regulation that would make it easier for the agency to deport non-citizens who have become a public charge within five years of entry based on conditions existing at the time they were last admitted. That proposed regulation has been sent to the Office of Management and Budget and is awaiting clearance and publication in proposed form.

Thanks to Charles Wheeler and Susan Sehreiber of CLINIC for allowing us to use this material.

Thirteen States File Lawsuit over Public Charge Final Rule

Thirteen states, co-led by Washington State Attorney General Robert Ferguson and Virginia Attorney General Mark Herring filed a lawsuit over the DHS public charge final rule, arguing that the rule violates federal immigration statues and unlawfully expands the definition of "public charge." (State of Washington, et. al., v. DHS, 8/14/19)

The other attorneys general filing suit include those from Colorado, Delaware, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, and Rhode Island.

From the complaint:

• "The Department's new definition of "public charge" is contrary to its longstanding meaning in the Immigration and Nationality Act."

• "The Rule is arbitrary, capricious, and an abuse of discretion because—among other reasons—it reverses a decades-old, consistent policy without reasoned analysis, offers an explanation for the Rule that runs counter to the overwhelming weight of evidence before the Department, and disingenuously promotes as its purpose self-sufficiency in the immigrant population when, as abundantly shown by the administrative record, its effect is precisely the opposite."

BY ALLEN E. KAYE AND JOSEPH DEFELICE

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

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SPEAKERS:

MATTHEW D. DONOVAN, ESQ.
Commercial Litigation; Business Divorce
PARTNER, FARRELL FRITZ, P.C.
New York City

FRANKLIN C. MCROBERTS, ESQ.
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Queens County Bar Association Surrogate's Court Estates & Trusts Committee &
Queens County Surrogate's Court presents

PROBATE & ADMINISTRATION OF ESTATES: A Primer
Friday, November 15, 2019
1:00 pm - 4:00 pm

Held at:
Jamaica Supreme Court Building, Queens County
Surrogate's Courtroom – 6th Floor
88-11 Sutphin Boulevard, Jamaica, New York

CLE CREDIT: 3.0 in Skills
Transitional Seminar– Valid for All Attorneys

PRESENTERS:

Honorable Peter J. Kelly – Moderator; *Surrogate, Queens County*
David N. Adler, Esq. – Moderator; *Chair – Surrogate's Court Estates & Trusts Committee*
James Lim Becker – *Chief Clerk, Surrogate's Court, Queens County*

PROGRAM:

A discussion of the basic mechanics in preparation of documentation required to appoint a Fiduciary, with an emphasis on common problems as seen from the Court's perspective.

Cost for those that pre-register and pre-pay at least one day before the CLE:
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Held at:
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88-11 Sutphin Boulevard, Jamaica, New York

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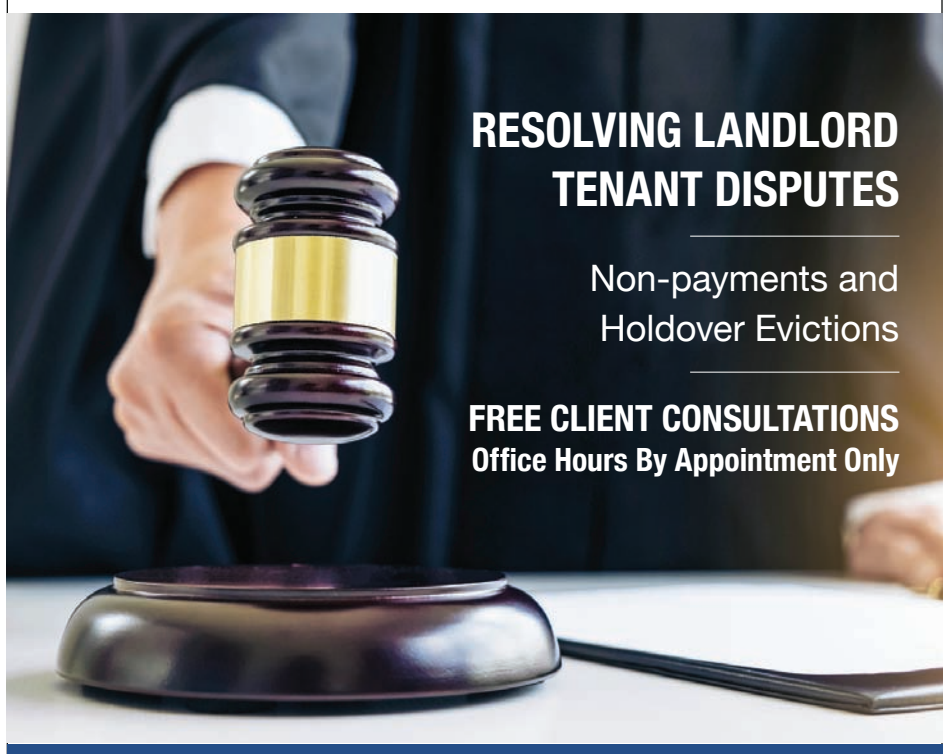

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Book Review

As an attorney I spend my days reading and talking. My interest in the law and American history brings me to books that support my passion for both. Here is a quick review of two books that I highly recommend to my colleagues at the bar.

1. Theodore Roosevelt for the Defense

Theodore Roosevelt has been dead for 100 years but he continues to fascinate historians. This book is written by Dan Abrams and David Fisher. Mr. Abrams is the son of the well-known first amendment lawyer Floyd Abrams. He is also on the talk shows at CNN, MSBC and others.

This book relates to the libel lawsuit brought against Roosevelt by William Barnes, Jr., the Republican party leader of New York State. It relies heavily upon the extensive six weeks trial transcript.

"Teddy" was probably the most famous American of his day. He had run for President in 1912 on the Progressive (Bull Moose) ticket but had lost to Woodrow Wilson. He continued to lead the progressive movement while contemplating another run in 1916 or 1920.

He was disappointed that the New York State Republican party had not been supportive of him. In 1914 he had published an article in which he attacked Barnes as being a corrupt political boss. Barnes denied the allegations and claimed that Roosevelt had therefore libeled him. He sought unspecified damages in that his reputation was ruined.

The book extensively utilizes the full transcript of the trial in Supreme Court, Syracuse. It includes the remarkable examination and cross-examination of Roosevelt himself. Roosevelt's testimony had as its purpose to show that Barnes was a political boss and corrupt in his actions. He was on the stand for eight days.

The cast of characters who testified is extensive - even Franklin Roosevelt who was Teddy's cousin. Ultimately Roosevelt was cleared of the charges. While appeals were contemplated they never took place. Roosevelt's reputation remained unblemished. While the trial is largely forgotten it gives the practicing lawyer an opportunity to see trial practice one hundred years ago.

2. Lincoln's Last Trial

This is another Dan Abrams (and David Fisher) trial book. It focuses on Abraham Lincoln's final criminal trial. It was held in 1859 in Springfield, Illinois, Lincoln's home town. The twenty-two year old defendant, Quinn Harrison was accused of murder.

Lincoln who had been involved in thousands of cases (including twenty-five murder trials) was hired to defend him.

In contrast to the Roosevelt libel trial, the transcript here was more limited. The Court Reporter (Robert Hill) was one of the originators of the profession. In fact, the story of the trial is told through his eyes. Hill was actually hired by the defendant's family in case an appeal was needed.

Lincoln had experienced co-counsel. Yet he did all the usual things you would expect from a local lawyer. The jury, made up of (only) local men were familiar with the participants from "small town" America. Lincoln was well-known from his debates with Stephen Douglas the previous Fall and as a local attorney.

The reader can enjoy the difference of the trial techniques between this trial and the Roosevelt trial. The contrast in just the fifty years between the trials is remarkable.

Lincoln would say no to those cases where he did not believe the possible client. He also often did not charge people who lacked funds to hire him. Perhaps we as members of the Bar should learn horn this.

These two books are worth your attention. Abrams and Fisher are very good writers.

STEPHEN FINK

QUEENS COUNTY BAR ASSOCIATION

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List two attorneys or judges (*none of whom are my present partners and associates*) who have knowledge of professional work and ability:

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Queens County Bar Association

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Marie-Eleana First, President

Landlord & Tenant Section of the Civil Court Committee present

LANDLORD & TENANT UPDATE 2019

The Housing Stability and Tenant Protection Act of 2019 ("HSTPA"): What you need to know about the most radical legislative changes in Landlord-Tenant Law in the State of New York.

Wednesday, November 20, 2019 6:00 pm - 9:00 pm

Light Dinner Available After 5:00 pm

Sponsored by: COUNSEL PRESS

PANELISTS & TOPICS (*In Order of Presentation*):

HON. JOHN S. LANSDEN - *Supervising Judge, Housing Court, Queens County*

- Court implication of the Housing Stability and Tenant Protection Act of 2019 ("HSTPA"); What Judges look for in Motion Papers and Memoranda of Law as well as other helpful suggestions from the Judiciary, Recent Decisions and Court Decorum.

JAMES P. DE FRANCO, JR., ESQ. - *Moderator, Vice-Chair, Civil Court Committee and Co-Chair of the Landlord & Tenant Committee*

- Implication of the new HSTPA as it applies to Security Deposits, Advance Rent Limitations; Amended GOL 7-107 and 108; Bill to be submitted in the 2020 session of the NYS Legislature by Hon. Fred W. Thiele, Jr., NYS Assembly 1st District as to Lease Rentals of 120 days or less and Advanced Rent.

NILES C. WELIKSON, ESQ. - *Member, Horing Welikson Rosen & Digrugilliers, P.C.*

- What Tenants' and Landlords' attorneys should be aware of in addressing issues that arise as a consequence of the HSTPA including Retroactivity, Rent Calculations, Rent Overcharges, Treble Damages and Deregulation.

JULIA MCNALLY, ESQ. - *Supervising Attorney, The Legal Aid Society and Adjunct Professor at NYU School of Law*

- How HSTPA impacts Tenants living in Rent Regulated and Non-regulated apartments.

MICHAEL KOHAN, ESQ. - *Kohan Law Group, P.C.*

- The HSTPA's impact on Rent Regulation, inclusive of the effect of Amendments to the Real Property Law ("RPL").
- Major Capital Improvement and Individual Apartment Increases under HSTPA.

HON. GEORGE M. HEYMANN - *Former NYC Housing Court Judge; of Counsel, Finz & Finz, P.C.*

- The HSTPA's impact on Rent Regulation and practice in the courts, inclusive of the effect of Amendments to the Real Property Actions and Proceedings Law.

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Queens County Bar Association

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George E. Nicholas, *Chair* • Jay M. Abrahams, *Vice-Chair* • Michele Schuster, *Secretary*
Kristen J. Dubowski Barba • Jawan N. Finley • Diana C. Gianturco
Maureen McHugh Heitner • Mark J. Keller • Milene Mansouri • Ricardo Rengifo • Peter S. Thomas

HOLIDAY PARTY

THURSDAY, DECEMBER 12, 2019

5:30 pm to 9:30 pm

DOUGLASTON MANOR: 6320 Commonwealth Blvd, Douglaston, NY 11362

Hosted by the following Associations:
Brandeis Association, Hellenic Lawyers Association,
Latino Lawyers Association of Queens County,
Macon B. Allen Black Bar Association, Queens County Women's Bar Association

$85.00 per person or Table of 10 for $800 – if payment received before Dec. 2nd
$95.00 after Dec. 2nd & at the door

Financial Assistance for paying for the cost of the ticket is available to Law Students and Attorneys admitted to practice law five years or less; if there is any fiscal concerns about paying contact George Nicholas at 516-459-5800

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Kosher meals can be ordered provided the request is received by 12/2/19

Dance music by: DJ Sottile

Toy Drive! **We will be collecting new, unwrapped toys to be presented to Forestdale, Inc., a non-for-profit foster care agency located in Queens. Monetary Donations will also be accepted. This has been an ongoing tradition on behalf of all the Associations.**

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