Queens BAR BULLETIN

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

November 2022 | Volume 90, No. 2

President's Message
The Dawn Of A New Day

By Adam Moses Orlow

I am thrilled to finally be able report to you that the Board of Managers of the Queens County Bar Association has approved the signing of a lease for our new home. In a matter of weeks, the QCBA will be moving its offices to 88-14 Sutphin Blvd, a newly constructed building directly across the street from the Supreme courthouse. A big thank you goes to David Adler and our Executive Director, Jonathan Riegel, for securing this space and negotiating the terms of the lease.

This is a big moment for us. We have occupied our current building for over 60 years. It has served us well over that period. I want to assure you that making the decision to leave is not something the Board of Managers did lightly. Nevertheless, as I wrote to you in my last message, it was a decision that needed to be made in order to provide us financial security in the long term.

Now, we can look forward to the next chapter in the history of our Association. We have brand new, even more conveniently and prominently located space, that will hopefully be our base of operations for another 60 years or more. The new space does not offer the large auditorium space that we are used to but given the state of the new world we live in as a result of the pandemic, we also don't need that space as often as we used to. We will be able to host smaller events of approximately 40 people at our new space. For larger events that will take place only in person, we will find outside locations where we can host these events.

The next step for us in our long-term plan to move forward is to sell our building. We thought we had a buyer but the deal seems to have fallen through at this point. As a result, the Queens County Bar Association Fund, Inc. will be placing our building on the market once again. If you know anyone who may be interested in purchasing it, please have them contact Jonathan Riegel at 718-291-4500.

In addition to the work being done to secure our new space, we have offered many wonderful events, such as the recent Hispanic Heritage Month celebration, brought to you by our Diversity and Inclusion Committee and co-hosted by many of the Queens and neighboring affinity bar associations and local law school Latin American law student associations. Our annual *Recent Significant Developments from our Highest Appellate Courts*, organized by the Appellate Practice Committee and Academy of Law, was outstanding. A special thank you to Justice Valerie Braithwaite Nelson for her efforts executing the event and to each of the presenters and sponsors.

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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

NOVEMBER 2022

Tuesday, November 1	CLE: Business Valuations – Family Law Committee
Wednesday, November 2	Academy of Law Committee Mtg – 1:00 pm
Wednesday, November 2	Grievance Committee Mtg – 5:30 pm
Monday, November 7	Supreme, Civil & Torts Section Committee Mtg – 1:00 pm
Tuesday, November 8	*Election Day – OFFICE CLOSED*
Friday, November 11	*Veterans Day – OFFICE CLOSED*
Tuesday, November 15	CLE: Landlord & Tenant Update 5:00 pm
Wednesday, November 16	CLE: Surrogate's Court Update 1:00 pm (at Surrogate Court)
Thursday, November 17	EVENT: Friendsgiving, 6:30 pm
Wednesday, November 23	Family Court Committee Mtg – 1:00 pm
Thursday, November 24	*Thanksgiving Day – OFFICE CLOSED*
Friday, November 25	*Thanksgiving Holiday – OFFICE CLOSED*

DECEMBER 2022

Wednesday, December 7	CLE: Criminal Court Seminar – 1:00 pm
Thursday, December 15	Holiday Party at Jericho Terrace, Mineola, NY – 5:30 pm
Monday, December 26	*Christmas Day Observed – OFFICE CLOSED*
Tuesday, December 27 to Friday, December 30	*OFFICE CLOSED*

JANUARY 2023

Monday, January 2	*New Year's Day Observed – OFFICE CLOSED*
Monday, January 16	*Martin Luther King, Jr. Day – OFFICE CLOSED*

FEBRUARY 2023

Monday, February 13	*Lincoln's Birthday Observed – OFFICE CLOSED*
Monday, February 20	*Presidents' Day – OFFICE CLOSED*

MARCH 2023

Tuesday, March 14	Judiciary, Past Presidents & Golden Jubilarian Night

APRIL 2023

Friday, April 7	*Good Friday – OFFICE CLOSED*

MAY 2023

Thursday, May 4	Annual Dinner & Installation of Officers at Terrace on the Park
Monday, May 29	*Memorial Day – OFFICE CLOSED*

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Ivan Almonte
Johan Byssainthe
Federico Curbelo
Thomas Epstein
Katherine Garcia
Kathleen Gatti
Juliana Gonzalez
Angella S. Hull
Kathleen Loy
Jenna Marshiano
Stefania Quintero
Camille Sanchez
William D. Shanahan
Paul Testaverde

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Editor's Note

Electronic Threat to our Justice System

By Paul E. Kerson

The efficiency of the Internet is a subterfuge. The Internet as currently structured is ruining our core function – to make justice happen.

We cannot do this if the lowest point of embarrassment and humiliation in a person's life is preserved forever available worldwide to anyone at the touch of a button on a cellphone or laptop.

Further, we also have hacked personal, medical and financial information, revenge porn, spam of all types and con artists of every description. The Internet today is the equivalent of the Wild West before the transcontinental railroad tamed it.

Just as the railroad tamed the Wild West so we must tame the Internet.

The Internet as currently structured has failed us. Electronic filing of civil cases became mandatory in New York State only within the past few years. It has opened a Pandora's Box of legal problems never faced before.

Consider the following three cases: (names and details have been changed to protect clients' privacy)

1. **Smith** – Smith is locked out of his hedge fund offices by his long-term business partner Jones. They had a fight. I bring an Order to Show Cause to get Smith back into his office.

Jones responds in writing, through his lawyers: "I had to lock Smith out because he has become an alcoholic and I can't entrust our customers' funds to a drunk."

Smith comes into my office with his face as white as a ghost. "My life is ruined," he says. "Even if I win this case, I will never get a job or business partner again if these Court files stay on the Internet accusing me of alcoholism".

Our Uniform Rules for the New York State Trial Courts Section 216.1 permit a Judge to seal a Court file and thus remove the case file from the Internet "upon a written finding of good cause" whatever that means. I make this Motion to seal the record and remove the case from the Internet.

Denied, says the Judge. Smith declines to take an appeal. He has now lost faith in the justice system.

2. **Mr. and Ms. Glen** have a bitter domestic argument. Ms. Glen is so angry that she files a false Complaint of child abuse against Mr. Glen at the local police station.

The Criminal Court dismisses the Complaint for lack of evidence. The State Office of Children and Family Services (OCFS) nevertheless puts Mr. Glen on a permanent state-wide list of child abusers.

I bring a CPLR Article 78 proceeding for a Court Order taking Mr. Glen off the OCFS child abusers list. Denied, says the Court but their written opinion is picked up by six legal publishers and sent all around the world on the Internet where anyone and everyone can Google Mr. Glen's name and find this opinion.

Mr. Glen comes into my office crying. He makes Mr. Smith look calm by comparison.

"My four children will never get through middle school and high school from the ridicule they are suffering from the Internet publication of my case. They will be rejected from colleges and jobs with this false Complaint of child abuse on the Internet that can be easily Googled forever. Do something."

I file a Motion to seal this case pursuant to Rule 216.1 and thus to remove this case from the Internet. The State Attorney General representing the OCFS seeks a compromise – just identify Mr. Glen by his first name and the letter G.

Mr. Glen says this will not work as the Google Internet search engine will still find and display his case worldwide anyway with just his first name and the initial G.

In light of their ruling in the Smith case, how do you think the Court will rule on Mr. Glen's case?

3. **Ms. Blue** regularly frequents a gift shop near her house. She becomes friends with the owner. The owner abuses their friendship and says "I will remove the curse on your daughter for $30,000 payable in installments."

Ms. Blue complies. She realizes she has been defrauded and comes into my office for a solution. I sue the gift shop's owner for the $30,000. After considerable negotiation, the gift shop's owner's lawyer advises her to give the money back to Ms. Blue.

Ms. Blue comes into my office to receive her $30,000. I anticipate a very happy client.

However, the legal publishers have picked the pleadings off the Internet and published them world-wide to anyone with a Google Chrome search engine.

"Help", says Ms. Blue. Thank you for the $30,000 but I work in a sensitive position in my local hospital and they are likely to fire me if they find out I did anything this foolish."

When the automobile became available to most Americans in the 20th century, there were numerous fatal accidents, and even more with serious injuries. The answer: guard rails on highways, seat belts, padded dashboards, other safety features and the establishment of the National Highway Safety Administration (NHSA). This took many decades, but today driving is much safer than it had been.

All of this has to do with a limitation on the First Amendment rights of internet publishers.

The first distinction to understand is that there are now two kinds of public records. There are public records which had previously been kept in file cabinets in the basement of our Courthouses. Those public records required someone to look up the Index Number, pull the file, and stand at a xerox machine with a roll of quarters xeroxing the file so that it could later be read by one individual person.

Now, with electronic filing, that is all unnecessary because all Court files in civil cases are on the internet all the time on the NYSCEF and the EDDS systems.

This is a very different kind of public record. This is a record that is broadcast to everyone who has a cell phone or a laptop and access to the Google Chrome Search engine.

We need new language to describe widely distributed public records and public records that are kept in a file cabinet in an office. These are two entirely different types of public records.

The internet is a relatively new invention. The mandatory filing of all New York State Court cases in civil cases is only several years old. We are first learning what a terrible decision this was. This could have been predicted and in fact I did predict it in numerous Bar Association meetings. However, the State has prevailed because electronic filing of civil cases is much more efficient from the point of view of the Office of Court Administration, Judges and Justices, their staffs and lawyers ourselves.

However, efficiency is not justice. That is the teaching of world history. Certainly a King can say "Off with his head", and that is certainly efficient.

However, there is the problem of cutting off the wrong head and damaging any innocent individual in the process.

That is what has gone on in the cases of Mr. Smith, Mr. and Ms. Glen and Ms. Blue, cited above.

Thus, we must look to pre-internet efforts to place some kind of limits on the First Amendment.

The New York State and Federal Constitutional Rights to Freedom of the Press have limits.

The United States Constitution, First Amendment and the New York State Constitution, Article 1, Section 8 both provide for "freedom of the press".

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However, this "freedom of the press" is not unlimited. Rather, our leading Appellate Courts have placed significant limits on the State and Federal Constitutional Right to Freedom of the Press.

In *Rogers v. New York City Transit Authority (NYCTA)*, 89 N.Y. 2d 692, 657 N.Y.S. 2d 871 (1997), the New York State Court of Appeals determined that the NYCTA did not have to extend Freedom of the Press to James L. Rogers who wished to distribute Socialist Workers' Party (SWP) literature at a card table on the mezzanine level of a subway station in Jamaica, Queens County, New York. Mr. Rogers sought to distribute SWP political literature right before New York City elections. This would seem to be a classic case of the right to Freedom of the Press.

No, no said the New York State Court of Appeals, holding:

> "Rather, the Transit Authority's regulatory and adjudicative actions are within reasonable constitutional parameters, dictated by its primary and essential public transportation function and responsibility to provide safe and secure services. This case also reflects its reasonable management of a subsidiary role in fairly and evenhandedly controlling the large number and variety of purveyors of ideas, views, goods and services on its stretched network and myriad properties." See 89 N.Y. 2d at 696.

In *Lebron v. National Railroad Passenger Corp. (Amtrak)*, 69 F. 3d 650 (2d Cir. 1995), the United States Court of Appeals for the Second Circuit reached the same conclusion. In that case, Mr. Michael A. Lebron sought to rent a large billboard (called the Spectacular) at New York's Pennsylvania Station satirizing Coors Beer and Coors Beer's advertising campaign. Coors Beers advertised itself as the "right beer". Mr. Lebron wanted to run a billboard asking if Coors Beer "Is it the Right's Beer Now? Mr. Lebron wished to utilize his First Amendment Rights to satirize the First Amendment Rights of a different private company using a large billboard in a large public railroad station which functions as the rail gateway to New York City.

The United States Court of Appeals, Second Circuit sustained Amtrak's refusal to honor Mr. Lebron's First Amendment Rights under these circumstances, holding:

> "Because we conclude that Amtrak's historical refusal to accept political advertising such as Lebron's on the Spectacular is a reasonable use of that forum that is neutral as to viewpoint, and that Lebron lacks standing to assert a facial challenge to Amtrak's general policies concerning the acceptance of advertising for display at Pennsylvania Station, we again reverse the judgment of the district court." See 69 F. 3d at 653.

In *Macula v. Board of Education*, 75 A.D. 3d 1118, 906 N.Y.S. 2d 193 (4th Dept. 2010), the Appellate Division, Fourth Department placed limitations on the First Amendment Rights of Anthony J. Macula. Mr. Macula wanted to hand out leaflets warning high school students of the dangers of U.S. military service. The Board of Education of the Geneseo Central School District sought to place limitations on Mr. Macula's First Amendment Rights under these circumstances.

The Appellate Division, Fourth Department sustained the Geneseo Central School District Board of Education's limitations on Mr. Macula's First Amendment Rights, holding:

> "The first cause of action alleges that the denial of petitioner's request to set up a 'truth-in' table violated petitioner's constitutional right of free speech. According to petitioner, respondents engaged in viewpoint discrimination by allowing military recruiters into the School but prohibiting him from setting up a 'truth-in' table. The second cause of action alleges that the denial of petitioner's request to observe the military recruiters in the School is arbitrary and capricious. We conclude that neither cause of action has merit." See 75 A.D. 3d at 1119.

As can be seen by a careful reading of these three cases, the New York State Court of Appeals, United States Court of Appeals for the Second Circuit, and Appellate Division, Fourth Department are all in agreement: The First Amendment Right of Freedom of the Press can be limited under appropriate circumstances.

What these learned courts limited was the right to distribute political literature in a subway station, the right to denigrate an industrial company on a "Spectacular" billboard at Pennsylvania Station, and the right to criticize military recruiting in a public high school. All of these limitations are far less significant than the right of three minor children to go through life without improper allegations of child abuse published on the world-wide internet by four major legal publishers now and forever, the right of a banker not to be called an alcoholic and the right of a citizen not to be publicly shamed by a fraud.

Certainly, the rights of adults to hand out political literature in a subway station, to rent a 'Spectacular" billboard in Pennsylvania Station, and to distribute anti-military literature in a high school pale in comparison to the rights of Mr. Smith, Mr. Glen and Ms. Blue to not be publicly humiliated on the Internet forever.

However, the leading limitation on the First Amendment concerns the conflict with the Sixth Amendment right to a fair trial in a criminal case.

For this purpose, we must bring ourselves back to the summer of 1954. This was a period of time in American History after the end of World War II and after the end of the Korean War but before the start of the Vietnam War. It was a relatively quiet time. Thus, one particularly difficult homicide case in Cleveland, Ohio captured the entire nation's attention.

Sam Sheppard was accused of killing his wife. Sheppard was a prominent doctor and owner of a local hospital. Newspapers from all over the country converged upon the Courtroom where his Trial was being held. When the case reached the Ohio Supreme Court Justice James F. Bell of that Court called the Trial's atmosphere "a 'Roman Holiday' for the news media". See *State v. Sheppard*, 165 Ohio St. 293, 135 N.E. 2d 340 at 342-353 (1956).

However, no new Trial was ordered despite this obvious conflict between the First Amendment and Sixth Amendment right to a full and fair jury trial. Under the onslaught of publicity at *Sheppard's* Trial, it was impossible for jurors to follow the Court's instruction to ignore all newspaper and radio coverage of the Trial as the media was saturated with coverage of the *Sheppard* case.

The *Sheppard* case reached the United States Supreme Court in 1966. Justice Tom C. Clark's majority opinion held that the original Trial judge "did not fulfill his duty to protect Sheppard from the inherently prejudicial publicity which saturated the community…" See *Sheppard v. Maxwell*, 384 U.S. 333, 86 S.Ct. at 1507 at 1518 (1966).

When considering the cases of Mr. Smith, Mr. and Ms. Glen and Ms. Blue and all similar cases that are bound to come up as time goes on, our Courts must follow the wisdom of Justice Clark in the *Sheppard* case. Our Trial Courts have a duty to protect litigants from unwanted Google Searches of their cases. These cases must be removed from the internet either completely, or with pseudonyms used instead of the names of the litigants. This is the clear teaching of Rule 216.1 of the Uniform Rules for the New York State Trial Courts. Our New York Courts are permitted to seal records in a proper case. It is respectfully suggested that this rule must be used far more frequently than it is now.

We also have a long line of cases permitting litigants to change their names to "John Doe" or "Anonymous". Indeed, in the famous *Roe v. Wade* case, 410 U.S. 113, 93 S. Ct. 705 (1973)that has recently been overturned, Ms. Roe was permitted to use this pseudonym instead of her own name.

Our New York State Courts have regularly and routinely granted litigants the right to proceed under the name Anonymous or John Doe in appropriate cases. Our New York State Courts have also regularly refused to release records of alleged child abuse in litigation.

In *C.T. v. Brant*, 202 A.D. 3d 1360, 162 N.Y.S. 3d 551 (3d Dept. 2022), the Appellate Division, Third Department refused to release Child Protective Services (CPS) records to a party in a medical malpractice case.

In *Anonymous v. Anonymous*, 27 A.D. 3d 356, 814 N.Y.S. 2d 21 (1st Dept. 2006), the Appellate Division, First Department approved the use of the pseudonym Anonymous whenever there were "unusual circumstances". In that case, the Appellate Division, First Department held that "In considering the best interests of the children, there is a finding that their health and welfare would be protected…" See 27 A.D. 3d at 361.

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An Estate Plan for the Seasons of Life

BY FRANK BRUNO, JR.

There is a season turn, turn, turn and a time for every purpose under heaven. A time to be born, a time to die; a time to plant, a time to reap. Time to kill, a time to heal, a time to laugh and a time to weep. Turn and turn and a time for every purpose under heaven; to build up, to break down, to gather and plan. To Everything there is a season.

Estate planning is not just reserved for those over 55. It is not only for older people with assets. It's for everyone, in every season of life. Here are some guiding thoughts on the matter. I will recommend a few, simple, yet effective, estate planning documents for every season of life from a single college student to a nonagenarian. Do not consider this legal advice, consider it life advice.

The strategy for the College student will look different than for the retiree. The uninitiated might think that estate planning consists only of a Will or that you need to be gray or bald with assets to make a plan. That thinking will be problematic for so many. The sad statistic is although people "know" what a Will is and even if they think it might be useful; more than fifty percent die without a Will. Best estimates are that 56% to 60% of all Americans do not have a Will; one recent survey pegged the number at 68%. More than half of all adults never make plans for their eventual demise so unless you are a vampire-read on. Every individual adult should take the time to prepare even a basic plan. The steps I recommend can be easily accomplished, often for little or no cost.

Estate planning is not just for the old and rich although each stage of life has different requirements for an estate plan. Starting point now and we all know you cannot get to the finish line without first starting. Here are planning strategies with a short list of documents for each of the 4 seasons of life: young adulthood, marriage and family, middle adulthood, and retirement. This is a broad framework for this article and further delineated seasons could be arrived at - minor children, older children, the sandwich generation, the snowbird or the asset protection pre-Medicaid planning season.

We require four dimensional thinking-what is your season and what are the proper clothes to wear. If raining we bring an umbrella or if a cold temperature, we wear a parka. If unseasonably warm, we wear clothes lighter in color and feel. We do not wait for a future event to put a plan in place. We start with the recognition that all individuals in each season of life can benefit from having an estate plan. Peace of mind in advance to control what you have and determine what happens to it. You can avoid foreseeable problems, family discord or a lengthy probate process filled with unnecessary costs.

To that end, here to help guide you. Let's get started.

1. Young Adulthood

Our invincible young adults, should have a plan just in case. College age, and the first 10 years after leaving home, a person should have a simple will with a few advanced directives and payable on death accounts. Transfer on death or beneficiary designations are a great tool to plan your estate. Any stock, bond, brokerage or cash account with a balance allows you to designate who gets that money when you are gone. There may not be much in your checking account during this season of life but do your family a favor and designate a beneficiary to keep the money out of probate. Advanced Directives such as a health care proxy and a Living Will directs your family how you want to be treated as far as life-saving or preserving procedures go. Importantly, it selects who you want to make decisions for you when you are unable. A HIPAA authorization from young adult to parent is valuable because an 18-year-old is legally a stranger to their parent and the HIPAA permits a doctor or hospital to share private health information with them when necessary.

A simple Durable Power of Attorney can be useful if temporarily unable to handle your affairs. With it, the person you select can pay your bills, collect your mail, and handle anything else regarding your finances-deal with insurance, cable, hospital bills or discuss College finances.

Lastly, having a list of account passwords and information designated to a specific person can save your loved one's time and effort. Provide a way to access your social media accounts and even your iPhone. Providing passwords allows access to pictures and other important data.

In summary, here is a list of the things that make up an estate plan for an engaged young adult:

A Simple Will, Beneficiary Designations on Bank Accounts, Health Care proxy, POA, and a List of Online Accounts and Passwords

2. Marriage with Family

An exciting time with so much promise for most people. Likely you will want to re-designate both your POA and Proxy to your spouse. You also want to consider how your assets are controlled and directed now that you are married.

If you decide to have children, updating your Will is crucial if you plan to provide for your children. You may draft a trust for your children, (peace of mind) for the unlikely event (car crash) something happened to both you and your spouse, your children's money was safeguarded for their support and education, and not released to them at 18 without restriction.

Here is what I think you need during this season: A Will with Testamentary Trust Provisions to Protect Your Minor Children or a Revocable Trust; a Guardianship Directive and child care provisions; updated beneficiary designations; perhaps some term or whole life insurance; a POA, Health Care Proxy and Living Will for each spouse and a list of accounts and passwords.

If there are minor children, you want to designate a guardian for them. The who and the how need to be discussed. Conversations about selecting one person to care for the children, and another to handle their money are valid and useful considerations. This is also a time to look into life insurance. There are different needs with children in the home.

3. Middle Years.

Middle age could be the sprint to retire comfortably. For some, their children are grown and through college and starting families of their own; for some the kids are still small and others are starting a new blended brood. As a 52-year-old, I have two young adults and a minor child. (20, 18 and 14 for the curious). Both of my parents are resting peacefully but both in-laws have serious health conditions, and they live with us; that makes my wife and I part of the sandwich generation. (Sandwiched between young and old)

Take a comprehensive look at your estate plan. I think most people should consider a trust of whatever flavor fits your assets and circumstances. A living trust avoids probate, delay, provides for incapacity planning and offers a more comprehensive plan than a simple Will. You should consider a trust-based plan as possibly the best tool for this season of life.

Reevaluate your insurance needs and whether necessary and perhaps invest in long-term care insurance. Only possible if picked up early rather than late. This coverage will protect you if it is necessary to go into assisted living, and the rates are better by starting early.

Consider your team and who you surround yourself with, who is advising you. I personally think having a good estate planning attorney makes more sense if you also are being advised by a good financial planner and a tax advisor.

Here is your middle Years estate planning list: A Living Trust-based plan; Pour-over Will for each spouse; proper Real Estate Deeds to avoid probate if possible and appropriate; Updated Designations on accounts; Life Insurance with Proper Beneficiary Designations; Health Proxy for each spouse; POA; a list of online accounts and passwords.

4. Retirement

Once you have reached this season of life, whether you are starting from scratch or modifying an old plan it does not matter. You are among the winners that never untimely passed! Congratulations on not using any previously made estate plan. Now, make the plan now. Now not later, while health concerns are not present and while you have your wits about you.

You would not be alone if this is the first time that you made a plan. Statistically, this is the first-time people tackle these issues. The good news is that getting a plan in place at any season of your life puts you ahead of about half of your neighbors.

The list of estate planning documents for retirement are basically the same as for your middle years except the critical issue is keeping it updated and accessible. Estate planning is not a set it and forget it event. Any plan needs to match up with your unique family situation-second spouse, blended families, pre-deceased adult child, special needs, senior adult child, etc.

Banks love to eliminate mailed monthly account statements, I recommend that you print out copies of your investment and insurance statements. Put them in a 3-hole binder at least two times each year, including a list of usernames and passwords to access these accounts. This can be valuable if you have a future health issue.

Consider your beneficiaries as to their own season in life, and whether receiving an inheritance from you in a single, lump-sum payment is the right choice.

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The Practice Page

Confidentiality Agreements and CPLR 5003-b

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

CPLR 5003-b is a relatively new practice statute and deserves some initial focus. It was added to the CPLR in 2018, followed by an amendment rendering its application more expansive in 2019. The statute was enacted in response to a national and statewide focus in 2017 upon the problem of sexual harassment in the workplace, including what became known then as the "Me Too" and "Time's Up" movements. The state legislature enacted a number of Acts responsive to those issues in 2018, including a mandate that all employers in the state implement a sexual harassment policy, employee training, and clear internal complaint and investigation processes ("NYS Assembly Mem. in Support of Legis.," Bill Jacket, p. 15, L.2019, ch. 160, sec. 9). CPLR 5003-b was parallel legislation initially focused on the litigation side of sexual harassment claims (L.2018, ch. 57, pt. KK, subpt. D, sec. 2), until it was expanded the following year to apply to all forms of discrimination suits (L.2019, ch. 160, sec. 9).

The statute is one paragraph. In its amended form, it expansively applies to any and all causes of action involving discrimination, whether derived in common law, equity, or "any [other] provision of law." The phrase "any provision of law" is of course a nod to statutes, but also, to any relevant discrimination-related codes, rules, and regulations. The statute specifically invokes article 15 of the state's Executive Law, which renders unlawful any discriminatory practice based on race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, or status as a victim of domestic violence (Executive Law 296, 296-a, *ß* 296-b).

Actions and proceedings within the scope of CPLR 5003-b are subject to special provisions regarding the execution of confidentiality agreements between the parties. The procedures for negotiating and executing confidentiality agreements are at the true heart of CPLR 5003-b. Given the nature of discrimination claims, there was legislative concern about the negotiation of confidentiality stipulations for settlement agreements, shielding information about the terms of the settlement from the public. The statute does not prohibit such stipulations which, as a general matter, may serve a useful and mutually-beneficial purpose for the parties. But the statute imposes time-regulated safeguards for plaintiffs in deciding when, and whether, to agree to confidentiality in a way that becomes binding upon them.

In actions or proceedings within the scope of the statute, the defendant employer is prohibited from including within the settlement agreement a condition of confidentiality "unless the condition of confidentiality is the plaintiff's preference." Fair enough. Beyond that, the plaintiff is entitled to at least 21 days to consider the issue of confidentiality, which assures that any decision that is ultimately reached on the issue is made freely, knowingly, and upon consultation with counsel and perhaps others. Even after the 21-day wait period is fulfilled and the settlement agreement is executed by all parties with a confidentiality provision included, the plaintiff enjoys an additional seven days, measured from the agreement's execution, to revoke the agreement. A revocation of the agreement necessarily voids any previously-contemplated stipulation of confidentiality. The final sentence of CPLR 5003-b therefore directs that the parties' executed settlement agreement is not effective or enforceable until after the seven-day revocation period has expired. The statute has the effect of pacing the true completion and effectiveness of settlement agreements in discrimination cases until a week after their execution, to provide plaintiffs with the benefit of time for consultation, contemplation, and even the changing of minds.

A wide range of discrimination cases are affected by CPLR 5003-b. Defendant employers may continue to negotiate stipulations of confidentiality when they wish, and may typically be willing to pay more money to settle actions in exchange for that confidentiality. But under this relatively new statute, the statutory waiting periods are binding before such actions are fully and finally resolved.

CPLR 5003-b is still new enough that it does not appear to have yet generated any case law. As to that, it may just be a matter of more time.

Mark C. Dillon is a Justice of the Appellate Division, 2nd Dep't., an Adjunct Professor of New York Practice at Fordham Law School, and a contributing author of CPLR Practice Commentaries in McKinney's.

Allen E. Kaye

Immigration Questions

Biden Administration to Appeal Court's Ruling on Roll Back of Title 42

Joseph DeFelice

The Biden administration will appeal a ruling by a federal judge that temporarily stopped the roll back of Title 42, according to a statement from the White House released Friday.

"The Administration disagrees with the court's ruling, and the Department of Justice has announced that it will appeal this decision," White House press secretary Karine Jean-Pierre said, according to the statement.

The statement from Jean-Pierre came hours after U.S. District Court Judge Robert Summerhays stopped the administration from ending Title 42, a Trump-era border management policy that allows migrants to be expelled quickly from the border under pandemic conditions.

The Louisiana judge granted a preliminary injunction to a group of Republican state attorneys general who opposed the rollback.

Summerhays argued that the Centers for Disease Control and Prevention (CDC) bypassed a process that allows for input from the public on the decision to rescind Title 42.

Summerhays continued that the plaintiffs demonstrated harm that would result from the rollback, adding, "despite the impact of the order on the states, they were not able to protect their interest by participating in the notice-and-comment process."

President Joe Biden speaks at a reception to celebrate Asian American, Native Hawaiian, and Pacific Islander Heritage Month the Rose Garden of the White House in Washington, D.C., on Tuesday, May 17, 2022.

In the White House statement, Jean-Pierre argued that the authority to determine public health policy should reside with the CDC.

"The authority to set public health policy nationally should rest with the Centers for Disease Control, not with a single district court. However, in compliance with the court's injunction, the Biden Administration will continue to enforce the CDC's 2020 Title 42 public health authority pending the appeal."

She added that "this means that migrants who attempt to enter the United States unlawfully will be subject to expulsion under Title 42, as well as immigration consequences such as removal under Title 8."

The Friday ruling from Summerhays came just days before the rollback was set to take place on May 23. The Biden administration announced that it would rescind Title 42 in early April, a decision that drew criticism from both sides of the aisle.

At the time, moderate Democrats including Sens. Joe Manchin (W.Va.) and Kyrsten Sinema (Ariz.) opposed the decision. Manchin called it "frightening."

Immigration restrictionists panned the rescission as taking away a final defense against "mass migration."

BY ALLEN E. KAYE AND JOSEPH DEFELICE

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

An Estate Plan for the Seasons of Life

BY FRANK BRUNO, JR.

CONTINUED FROM PAGE 7

Last week, I counseled a client about leaving money to a 78-year-old relative-perhaps that person's children would be the better alternative. Leaving a large sum of money to a beneficiary who has addiction issues, is receiving disability payments, cannot control their spending, or is in a troubled marriage can create more problems. A child's inheritance with a few changes to your Trust can create much-needed protection.

Next, it is important to reexamine your medical directives. Have you changed your thinking about the circumstances you would want or refuse life supporting measures? This is especially important because of Covid, treatment and widespread use of ventilators. Do your legal documents reflect your current wishes? Is the right person appointed to advocate for you if you are unable?

This is also the right time to consider who your personal property should go to. Dividing money between your children may be easy. However, who gets your hobby collection, opal ring or diamond earrings can cause disputes between your heirs. The best approach is to take pictures of valuable items and write down who they should be given to upon your death.

How about your choices regarding funerals, burials vs. cremation, and memorial services. Traditional funerals with 2 days of viewing are almost unheard of anymore. Views have changed. Twenty years ago, less than 20% of people who died in the United States were cremated. Today, more than half are cremations.

Here is a complete set of estate planning documents you should consider for the last season of your life: A Living Trust-based plan perhaps an Irrevocable Trust or Medicaid Asset Protection Trust; a Pour-over Will for each spouse; proper Real Estate Deeds to avoid probate; Correct Transfer on Death Designations on Bank Accounts; Updated Beneficiary Designations on life insurance; a Health Care proxy; a Durable Power of Attorney for Each Spouse; a List of Online Accounts and Passwords; a Personal Property Distribution List; funeral arrangements;

Estate planning during any season of life is important and often overlooked. It is the necessary but not urgent; until it is an emergency or too late. The good news is that piece of mind is just a plan away. You can start with the age-appropriate plan and shift as circumstances warrant change. To Everything there is a season.

Frank Bruno, Jr., is an elder law attorney in Queens, the Immediate Past President & current member of the Board of Managers of the Queens County Bar Association; and a Past President of the Columbian Lawyers Association of Queens County.

President's Message

The Dawn Of A New Day

By Adam Moses Orlow

CONTINUED FROM PAGE 1

Over the next few weeks our staff will be busy making preparations for the move but our events will continue without interruption. We have a Landlord & Tenant Update CLE on November 15 and a three-hour CLE on Electronic Filing in Surrogate's Court on November 17, both of which will be held virtually. Also on November 17 is our Friendsgiving event, presented by our Young Lawyers Committee. The event will be held at One Station Plaza in Bayside and raises money for a great cause, Dancing Dreams. Finally, our annual holiday party will be held on Thursday, December 15 at Jericho Terrace. Please join us for what promises to be a fun evening, co-hosted by nearly all of the Queens County affinity bar associations. Other CLE programs are in the works so please watch your email for details. You can register for all of these events at **www.qcba.org/events**.

Finally, I reflect on the words of two former presidents.

"The vote is the most powerful instrument ever devised by human beings for breaking down injustice and destroying the terrible walls which imprison people because they are different from others."

– President Lyndon B. Johnson

"The future of this republic is in the hands of the American voter."

– President Dwight D. Eisenhower

In that spirit, I hope all of you exercise your right to vote on (or before) Tuesday, November 8. It is your constitutional right and a profound civic responsibility that I encourage all members to fulfill.

QUEENS COUNTY BAR ASSOCIATION
90-35 148th Street, Jamaica, NY 11435 • Tel 718-291-4500 • Fax 718-657-1789 • www.QCBA.org • CLE@QCBA.ORG
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Queens County Bar Association Surrogate's Court, Estates & Trusts Committee & Queens County Surrogate's Court presents

Virtual CLE

ELECTRONIC FILING IN SURROGATE'S COURT UPDATE

Thursday, November 17, 2022
1:00 pm - 4:00 pm

CLE Credit: 3.0 in Skills
Transitional Course – Valid for All Attorneys
ACCREDITATION: QCBA has been certified by the NYS CLE Board as an Accredited CLE Provider in NYS, 10/2019 - 10/2022.
FINANCIAL HARDSHIP POLICY: Please contact the Executive Director for information on financial alternatives.

PRESENTERS:

Honorable Peter J. Kelly – Moderator;
Surrogate, Queens County

David N. Adler, Esq. – Moderator;
Chair–Surrogate's Court, Estates & Trusts Committee

Jeffrey Carucci –
Director-NYS Courts E-Filing, Statewide Coordinator for E-Filing

Chris Gibson –
Court Clerk Specialist, E-Filing Resource Center

PROGRAM: A discussion of the process of electronic filing in Surrogate's Court with a view to addressing current problems, best practices and response to individual concerns.

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Landlord & Tenant Section of the Civil Court Committee present

LANDLORD & TENANT UPDATE 2022

Tuesday, November 15, 2022
5:00 pm - 7:00 pm

CLE Credit:
2.0 in Professional Practice
Transitional Course – Valid for All Attorneys
ACCREDITATION: QCBA has been certified by the NYS CLE Board as an Accredited CLE Provider in NYS, 10/2019 - 10/2022. Application for Renewal has been filed and is currently pending.

Live Zoom Fee:
QCBA Member - $0.00

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

HON. JOHN S. LANSDEN - *Supervising Judge, Housing Court, Queens County*
- The present Operation of the Landlord & Tenant Parts of the Civil Court post pandemic.

JAMES P. DE FRANCO, JR., ESQ. - *Moderator, Co-Chair of the Landlord & Tenant Committee and Vice-Chair, Civil Court Committee*
- Update on exemptions from HSTPA as it applies to Security Deposits and Advancement Limitations.

MICHAEL KOHAN, ESQ. - *Kohan Law Group, P.C.*
- The Basics of Landlord & Tenant Practice (Holdover and Non-Payment Actions and Proceedings)

ATUSA MOZAFFARI, ESQ. - *Staff Attorney, The Legal Aid Society of NYC*
- Common Affirmative Defenses for Tenants.

HON. GEORGE M. HEYMANN - *Former NYC Housing Court Judge; of Counsel, Finz & Finz, P.C.; Former Adjunct Professor of Law at Maurice A. Deane School of Law at Hofstra University*
- Recent Significant L&T Decisions.

Registration Form

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Must Register with Zoom & Pay by November 10th to receive access.
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Editor's Note | Electronic Threat to our Justice System

CONTINUED FROM PAGE 5

In *Doe v. Amherst Central School District*, 196 A.D. 3d 9, 148 N.Y.S. 3d 305 (4th Dept. 2021), the Appellate Division, Fourth Department held that the use of the name "John Doe" by litigants should be permitted where a court must "use its discretion in balancing plaintiff's privacy interest against the presumption in favor of open trials and against any potential prejudice to the defendant." See 196 A.D. 3d at 12.

Our Courts must establish a Right to be Forgotten.

We live in very strange times. The world-wide internet has been regularly abused to post the most private details of the lives of individuals. A world-wide effort to control this outrage has been commenced by Courts around the planet. The Court of Justice for the European Union, its highest Court, has held in *Google Spain SL v. Agencia Española De Protección De Datos (AEPD)* ECLI: EU: C: 2014: 616 (May 13, 2014), that Google must consider individual requests to remove personal information from its search engine. This case originated with the efforts of one Spanish citizen to remove his insolvency proceedings from the internet.

The Court of Justice of the European Union (CJEU), the equivalent of the United States Supreme Court ruled in favor of Mr. González, holding that

> "… Data-processing systems are designed to serve man; … they must, whatever the nationality or residence of natural persons, respect their fundamental rights and freedoms notably the right to privacy, and contribute to… the well-being of individuals…". See Id. at page 2.

In this holding, the Court of Justice of the European Union was adopting directive 95-46 of the European Union itself.

In interpreting directive 95-46, the Court of Justice of the European Union held:

> "As the data subject may, in light of his fundamental right under Article 7 and 8 of the Charter, requests that the information in question no longer be made available to the general public on account of its inclusion in such a list of results, those rights override, as a rule, not only the economic interest of the operator of the search engine but also the interests of the general public in having access to that information upon a search relating to the data of the subject's name". See Id at page 21.

The Court of Justice of the European Union went on to distinguish cases involving people in public life, as follows:

> "However, that would not be the case, if it appeared, for particular reasons, such as the role played by the data subject in public life, that the interference with his fundamental rights is justified by the preponderant interest of the general public in having, on a count of its inclusion and the list of results, access to the information in question". See Id at page 21.

Our American Courts have noted that a Right to be Forgotten should be established in the United States. However, none of the Courts that have considered this problem have found their underlying facts to be sufficiently compelling.

In *Garcia v. Google, Inc*, 786 F. 3d 733 (9th Cir. 2015), the United States Court of Appeals for the Ninth Circuit held that the "Right to be Forgotten" established by the Court of Justice for the European Union could not be established in that case because the Petitioner was a movie actress to seeking to suppress a film. See 786 F. 3d at 745-746.

In *Doe v. Sex Offender Registry Board*, 473 Mass. 297, 41 N.E. 3d 1058 (2015), the Supreme Court Judicial Court of Massachusetts held that "'Information posted on the internet is never truly forgotten.'", but nevertheless declined to extend the Right to be Forgotten to the Courts of Massachusetts. See 473 Mass. at 308.

In *Mosha v. Yandex, Inc.* 2019 WL 5595037 (S.D.N.Y. 2019), The United States District Court for the Southern District of New York was called upon to enforce a Russian Court Order enforcing a Right to be Forgotten. The United States District Court for the Southern District of New York declined to establish an American Right to be Forgotten in that case because the Russian Court Orders were contradictory, making the *Mosha v. Yandex, Inc.* case an inappropriate one to establish an American Court Right to be Forgotten.

In *Manchanda v. Google, Yahoo and Microsoft Bing*, 2016 WL 6806250 (S.D.N.Y. 2016), the United States District Court for the Southern District of New York declined to establish a Right to be Forgotten for American Courts because the Plaintiff, Rahul Manchanda was suing the search engines themselves, Google, Yahoo and Microsoft Bing, who were protected by the U.S. Communications Decency Act (CDA), 47 U.S.C. Section 230. The CDA analogizes Google, Yahoo, and Microsoft Bing to Verizon, formerly known as New York Telephone Company. In other words, telephone companies have traditionally not been held responsible for conversations broadcast on the telephone by anyone. Similarly, the United States Court for the Southern District of New York declined to impose a Right to be Forgotten on Google, Yahoo and Microsoft Bing.

Our Courts must issue a "Right to be Forgotten" Order guiding all American Courts that under these circumstances, litigants have a "Right to be Forgotten" as to whatever went on in their lives that can cause permanent embarrassment.

If we do not take positive steps to either remove sensitive and embarrassing cases involving alleged alcoholism, child abuse, fraudulent behavior and the like, we will be discouraging the use of the Court system for resolving disputes of this type.

Any discouragement of the use of our Court system leads to random fist fights and shootings. As we well know from the general practice of law in the nation's most diverse county, it is the impartial administration of justice with respect for the litigants' rights to privacy that make our system function. If we continue to publish cases of this type, we are weakening our system, perhaps beyond repair.

Danger Demands Warning

- cross examination, "the greatest legal engine"

a human interest story

BY LEONARD L. FINZ

John Henry Wigmore born in 1863 and who died in 1943, is to this day considered the unparalleled legal scholar on the law of Evidence. His treatise titled, "The Anglo – American System in Trials at Common Law" which ultimately filled twelve volumes when published in 1904, was described by the esteemed United States Supreme Court Justice Felix Frankfurter as the conclusive authoritative work on the law of Evidence. It's long title has been commonly reduced to, "Wigmore on Evidence" which every lawyer recognizes from law school. Further, much of Wigmore's preeminent treatise is merged into the Federal Rules of Evidence, in addition to being adopted within the Judicial System of the majority of the States of the Union.

For the purpose of this article however, I will borrow a celebrated Wigmore quote that trial lawyers are familiar with, and that is, **"Cross examination is the greatest legal engine ever invented for the discovery of the truth."** All of which, takes me to an incredible story that would have drawn a most approving nod from John Henry Wigmore, the iconic master of Evidence. And here it is…

John Jackson (fictitious name) worked for a local hospital. As a union member, he was a workman of many trades, ready to do whatever small jobs he was called upon. In reality, he was an in-house handyman, good with a hammer, screwdriver, pliers, and wrench. You get the idea!

One morning, John's supervisor instructed him free-up a clogged pipe that was located outside of the hospital. The assignment was no stranger, since whenever certain pipes were clogged, John would use a commercial drainage compound that he would pour into the pipe until the clog was cleared. Simple! No sweat! As he had always done, he picked up the drainage can that morning, placed it in his work - golf cart, and drove to the location of the clogged pipe. When he arrived at the scene, he removed the can that contained the chemical compound that normally would dissolve a clog. Regarding the size of the can, it was approximately eighteen inches in diameter and approximately twenty-four inches high.

John opened the can and poured some of its contents into the pipe. Within seconds, there was a sudden loud explosion and a fiery flashback of the chemical fluid. The violent stream struck John squarely in his right eye. He let out a loud scream. In extreme pain and sheer panic, he instinctively used his walkie-talkie for help. Within minutes, a hospital ambulance responded.

John was on the ground, screaming, and in obvious distress. Taken immediately to the ER and attended to by an eye specialist who had already been summoned, the diagnosis was not good. The corrosive chemicals in the drainage compound had destroyed the optic nerve of his right eye.

At age 52, and married with two kids, John was presented with a most difficult future – he would have to live his remaining life totally blind in one eye. The destroyed eye would have to be surgically replaced with a cosmetic prothesis. His inability to perform simple tasks that did not require accurate depth perception, was a devastation to John, whose future to him looked most grim. Before long, deep depression became his constant visitor.

Sometime later, John retained a lawyer, a family friend, who brought suit against the manufacturer of the drainage compound. Unfortunately, the lawsuit languished and collected much dust, since the lawyer who had a small practice that included real estate closings, wills, matrimonial disputes, and some commercial matters, was way out of his league against the large experienced defense firm that represented the national manufacturer.

After years of delay, John discharged his lawyer and substituted a law firm that was well versed in product liability litigation. When the new firm received the file from the outgoing attorney, it was reported to be in a mess! Although the case was on the trial calendar, there was a total absence of any technical or important pre-trial documents. No depositions! No experts! No witness statements! Nothing but total neglect by a lawyer whose lack of knowledge in product liability actions was a glaring red flag!

The trial had been adjourned a zillion times and an angered Judge was ready to dismiss the case if another adjournment was sought. An immediate motion to reopen discovery was made so that the CEO of the defendant company could be deposed. It was argued that the incoming substituted firm, should have the opportunity to perform what was totally neglected by the prior attorney. Although the trial judge was sympathetic, he was under pressure to move a case that was on his trial docket far beyond the permissible time. His decision: "Motion Denied." And the trial date was only three weeks away! The prior lawyer did at least manage to obtain the original can of chemical compound used by John.

The printed label on the can was carefully inspected. Oddly however, there was a word spelled out in large red block letters that stretched from the upper left corner of the can and diagonally down to the right lower corner. The word that appeared in large colorful print, and that screamed out on the can was, "REGIT."

What was "REGIT?" The trial team was totally astounded. The scientific literature was searched but nothing was found on the word, "REGIT." A consult with chemical engineers, and even with a nationally respected professor of chemistry at a top prestigious university, had ever heard of the word "REGIT." Nobody could shed light on what "REGIT" meant. It was astonishing and mystifying!

The large block red letters were extraordinarily prominent. And by contrast, at the bottom left of the can, there was a warning that the user should wear safety goggles to protect the eyes from any chemical flashback. When compared to the flashy coverage given to "REGIT", the size of the warning was a bit larger than a postage stamp. It was this "warning" that the defendant manufacturer claimed would bar any recovery to John since he was not wearing protective eye goggles at the time he poured the chemical contents into the clogged pipe.

The trial date arrived, and despite a second request seeking a short adjournment, the Judge directed the plaintiff to select a jury or the case would be dismissed. Not much of a choice! The CEO of the company was subpoenaed and called as plaintiff's first witness. The following Q&A's are taken from the court transcript:

Q. Please keep your voice up so that all the jurors can hear you.
A. Okay.

Q. You are the CEO of the defendant corporation. Right?
A. Right.

Q. How long have you been its CEO?
A. I started the company twenty-three years ago and have been the CEO from its start to this day.

Q. I take it then that you are fully familiar with each of the products your company produces. Right?
A. That's right.

Q. And that familiarity would include this can. Correct?
A. Correct.

Q. And that familiarity would also include the can's chemical contents. Right?
A. Right.

(The can was offered into evidence and marked as an exhibit.)

Q. And as CEO did you specifically give your approval to the can's contents and its labeling?
A. Yes.

(Trial lawyers know that as a generally accepted strategy, the examiner should never ask a question without knowing in advance what the answer will be. But here, plaintiff's lawyer had no choice but to abandon the practice and assume a risk. And despite the Hobson's Choice he faced, and relying heavily upon the fact that even his experts were totally in the dark as to what "REGIT" was, he had to ask the question without knowing what the CEO's answer would be. His decision finally led to the big question…

Q. What is "REGIT?"

The witness remained silent for what seemed to be an eternity. He appeared to be in somewhat of a trance. He fidgeted nervously with his tie. He looked furtively around the courtroom. Breaking his silence, what ultimately came from his mouth was amazing, astounding, and above all, outrageous!

Hesitatingly, the CEO with obvious unease, answered that the salesman of the company who had the highest sales record for the year, and whose nickname was, "TIGER" would be celebrated and honored by having his nickname imprinted backwards on every can.

CONTINUED ON PAGE 15

Danger Demands Warning

BY LEONARD L. FINZ

CONTINUED FROM PAGE 14

You got it! "TIGER" spelled backwards is, "REGIT." His nickname on the can was as prominent as Mount Rushmore, and the warning to wear safety goggles was as tiny as a grain of sand. That was it! And after that remarkable disclosure, coupled with the angered looks of disbelief on the faces of the jury, the case that started with "no offer", was settled for an appropriate sum.

Professor Wigmore's immortal saying that, **"Cross examination is the greatest legal engine ever invented for the discovery of the truth,"** was once again validated, thus ending the trial with the scales weighted and poised in the direction of truth and justice. **And isn't that what every trial should be seeking?**

END OF STORY

Leonard L. Finz, age 98, is a former New York State Supreme Court Justice, (Queens County); a decorated WWII Veteran (1st. Lt., Field Artillery, Pacific War Zone, Philippines); inducted into the prestigious U.S. Army OCS Artillery "Hall of Fame"; and on July 23, 2022 inducted into the elite Army OCS "Hall of Fame" by order of the United States Department of Defense; the author of four published thriller novels; Peer-Reviewed as "One of America's preeminent lawyers"; an active member of the QCBA for 68 years; and the founder of Finz & Finz, P.C.

And I Missed You Too!

BY SID STRAUSS

As you know, for only the 2d time in the last 43 years, I was unable to MC our annual dinner. For months I was preparing myself not only making my usual mental notes as to my remarks but getting medical clearance to be in a room with 300 people in these Covid days. Oh well, you know what they say about "best laid plans" but I still have those notes and I want to share them with you.

First, I am enormously excited just to be here with so many people at one time and to see so many people that I know, some friends, some acquaintances but all here for the same purpose.

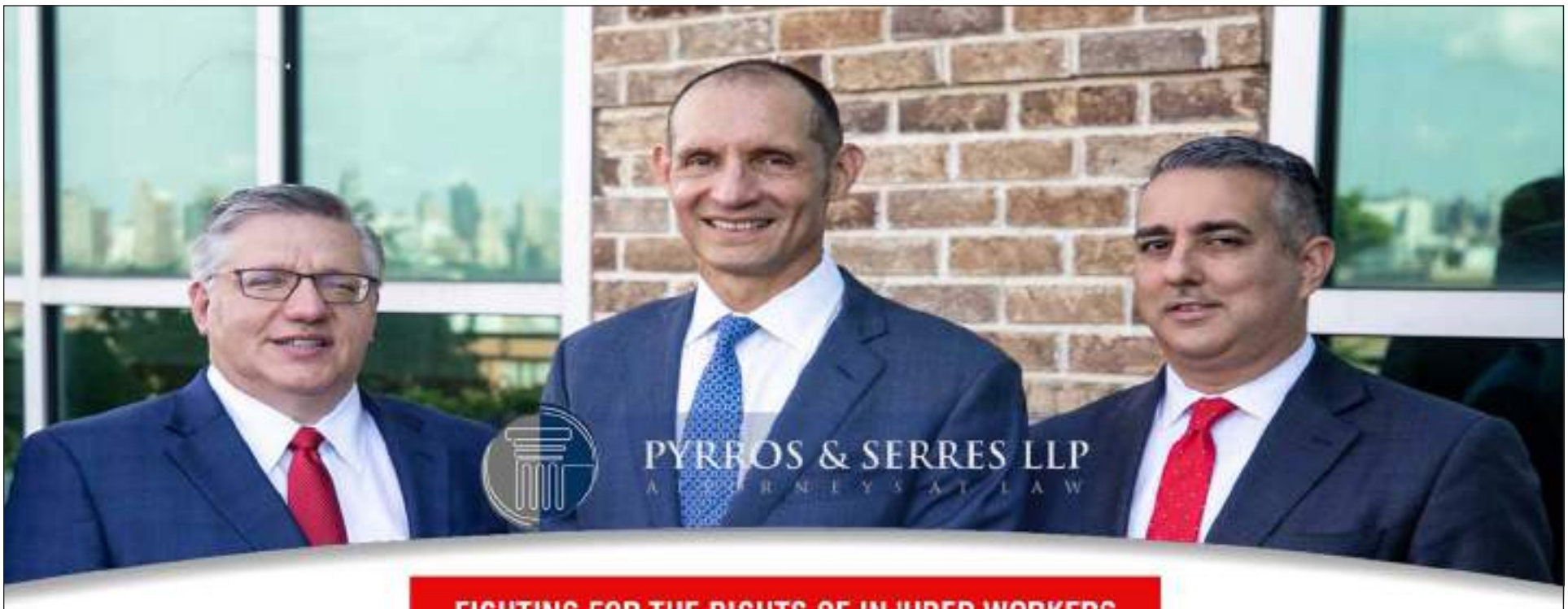
These last 2 years have been an enormous burden on everyone, some more so than others, but a burden just the same. And yet through it all, our Bar Association not only survived but thrived. It's always been said (by whom, I don't know), that lawyers don't like change. Well, let's take a look at what we collectively have experienced since we last met in 2019. Marie-Elena First's successful administration ended and there was a most orderly transition into Cliff Welden's who hit the ground running and never stopped until the rules said so and his successor, Frank Bruno took over

I am sure that through all this, you were always kept in the loop as to CLE, association goings-on etc, I guess all due to electronic wizardry to today's world and a fabulous staff. That's a perfect sequel to all the changes we experienced:

1. For the first time in history, we experienced a new President Governor and Mayor coming into office in the same year and yes, our legal lives went on.
2. For the first time in 37 years, we have a new executive director but that will all be dealt with at much greater length later in this program.
3. For the first time in the history of our association, whereas we have had father then son presidencies, we never had an uncle-nephew which again, strengthens the continuance of our organization.

PS. Albeit after the fact of my remarks above, I would be remiss if I didn't thank publicly my young friend (I'm old) Jerry Weinstein for pinch-hitting for me and you can tell from my remarks above that he was a lot more humorous than I would have been, Jonathan, our new exec. experiencing his first "baptism of fire" and last, but certainly not least, our 2 reliables, Janice and Sasha, who always make the dinner chairman's life a lot easier.

All the best to Adam and the incoming officers and board members for a healthy and successful administration.



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1) New Business Power Money Market account with new money only. To qualify for this offer you must maintain a Complete Business Checking account with a minimum monthly balance of $5,000. Existing Business money market account customers are not eligible. New money is defined as money not currently on deposit with Flushing Bank. The Annual Percentage Yield (APY) is effective September 24, 2022. The interest rate is guaranteed for a 365-day period from the date of account opening. For daily balances of $74,999 or less, the 365-day guaranteed interest rate is 0.10% with an APY of 0.10%; for daily balances of $75,000 to $999,999 the 365-day guaranteed interest rate is 1.98% with an APY of 2.00%; and for daily balances of $1,000,000 or more the 365-day guaranteed interest rate is 1.98% with an APY of 2.00%. After the Guaranteed Rate Period has lapsed, the interest rate will revert to the non-guaranteed tiered rates in effect for the Business Power Money Market. Fees may reduce earnings. Other than as described above, at our discretion, rates may change at any time without notice. You must maintain the required daily balance for the statement cycle to receive the respective disclosed yield. You must deposit a minimum of $100 to open this account. A low balance service charge of $15.00 will be imposed every month if the balance in the Business Power Money Market account falls below $5,000 any day of the month. The rate and offer are subject to change and early termination without prior notice at any time. 2) A Flushing Bank Complete Business Checking account with a minimum monthly balance of $5,000 is required to receive the advertised rate. Certain fees, minimum balance requirements, and restrictions may apply. Fees may reduce earnings on these accounts. 3) The Business Value Program (BVP) is limited to one (1) new Complete Business Checking account per customer. New money only. Existing business checking account customers are not eligible. A new checking account is defined as any new checking account that does not have any authorized signatures in common with any other existing Flushing Bank business checking account(s). An existing business checking customer is defined as anyone who currently has or has had a Flushing Bank business checking account within the last 24 months. New money is defined as money not currently on deposit with Flushing Bank. The Flushing Bank BVP consists of two bonus programs: the BVP Gift Card bonus and the BVP Activation bonus. Please speak with a Flushing Bank representative for additional information and program specific details including balance and transaction requirements.

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