Queens BAR BULLETIN

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Justices Golia and Hom Appointed to Second Department

Governor Kathy Hochul announced three appointments to the New York State Supreme Court, Appellate Division Second Judicial Department on Wednesday, August 14, including Queens judges Hon. Donna Marie Golia and Hon. Phillip Hom.

"Our courts must be led by qualified, fair and impartial jurists," Governor Hochul said. "With decades of legal experience and deep knowledge of the law, these three judges will be tremendous additions to the appellate division."

Hon. Donna-Marie E. Golia, currently the Administrative Judge for Criminal Matters, State Supreme Court, Queens County. Justice Golia joined the New York State bench in 2013, upon her election to the New York City Civil Court, Queens County. Initially assigned to the New York City Criminal Court, Queens County, she later sat on the bench in Civil Court, Queens County. She was designated an Acting Supreme Court Justice in 2016, handling matrimonial and other matters in addition to managing a Civil Court calendar.

From 2018 to 2019, she served as Supervising Judge, New York City Civil Court, Queens County, working with the Administrative Judge in overseeing the Court's day-to-day management. Justice Golia was elected to the State Supreme Court, Queens County, in 2020, serving in both the Court's Civil and Criminal Terms. In January 2021, she was appointed an Associate Justice of the Appellate Term, Second Department for the Second, Eleventh and Thirteenth Judicial Districts, hearing appeals from the lower civil and criminal courts in Kings, Queens and Richmond counties, in addition to presiding over matters in State Supreme Court, Queens County.

Prior to becoming a judge, Judge Golia served

CONTINUED ON PAGE 9

Table of Contents

The Docket

Being the official notice of the meetings and programs listed below. Due to unforeseen events, please note that dates listed in this schedule are subject to change. More information and changes will be made available to members via written notice and brochures. Questions? Please call 718-291-4500.

CLE Seminar & Event listings

SEPTEMBER 2024

Monday, September 2	*Labor Day - Office Closed*
Wednesday, September 4	Academy of Law Meeting – 1:00 pm
Monday, September 9	2024 Golf, Tennis & Pickleball Outing presented by Subin & Assoc. at Seawane Golf Club
Wednesday, September 18	LGBTQ+ Committee Meeting – 1:00 pm

OCTOBER 2024

Wednesday, October 9	LGBTQ+ Fall Social Event
Thursday, October 10	**CLE:** Domestic Violence – 5:30 pm
Monday, October 14	*Columbus Day – Office Closed*
Tuesday, October 22	**CLE:** LGBTQ+ Webinar

NOVEMBER 2024

Tuesday, November 5	*Election Day – Office Closed*
Monday, November 11	*Veteran's Day – Office Closed*
Thursday, November 28	*Thanksgiving Day – Office Closed*
Friday, November 29	*Thanksgiving Holiday – Office Closed*

DECEMBER 2024

Friday, December 6	Family Law Symposium with Our Family Kind, Soberlink and Our Family Wizard – 10:00 am-1:30 pm
Thursday, December 12	Holiday Party at Jericho Terrace – 5:30 pm
Wednesday, December 25	*Christmas Day – Office Closed*
Thursday, December 26-31	*Christmas Week – Office Closed*

JANUARY 2025

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

Upcoming CLE's and Events

Appellate Practice Update
Equitable Distribution Update
Ethics Update
Judiciary Night, Past Presidents & Golden Jubilarian Night
NY Islanders Game Night
Surrogate's Court Seminar
The Trial – Part 5

For more information on upcoming seminars, CLE's and events, go to qcba.org/CLE-Courses

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

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New Members

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Editor's Note

Si Vis Pacem, Para Bellum

By Paul E. Kerson

Si Vis Pacem, Para Bellum. If you want peace, prepare for war. This principle of government was first set forth by the Roman writer Publius Flavius Vegetius Renatus in the 4th century C.E. *See Google, Si Vis Pacem, Para Bellum.*

From reading newspapers and the internet, one might think that the greatest threat to world peace today is Iran's malevolence in arming the Houthis, Hezbollah and Hamas and trying to curtail the United States Government's hegemony in the Middle East. Or one might think that the greatest threat is Russia's continued vicious attack on Ukraine.

One would be wrong on both counts.

The Biden Administration has not been asleep on the greatest threat to world peace. On Sept. 15, 2021, our Federal Government formed AUKUS, a security partnership of Australia, the United Kingdom and the United States. *See Google, AUKUS.*

On August 18, 2023, our Federal Government formed JAROKUS at Camp David, Maryland. Formally known as the American-Japanese-Korean Trilateral Pact, and often called the Camp David Principles, this security partnership has the same goal: the protection of the independence of Taiwan, and the avoidance of a military showdown between the United States and the People's Republic of China (PRC), the two leading economies in the world today.

Taiwan, an island of 23.57 million people 100 miles off the coast of China is a vibrant, wealthy democratic country. It was annexed by the Qing dynasty of China in 1683 (the same year as the founding of the Queens County Supreme Court by the British Empire). Taiwan was ceded by China to Japan in 1895.

At the close of World War II in 1945-49, China was having an internal battle between the Communist Party led by Mao Zedong and the Nationalist Party, led by Chiang Kai-shek. The Communists won, and Chiang and his Party fled to Taiwan, setting off the potentially deadly conflict we are living in today.

Chiang named Taiwan the Republic of China (ROC) to distinguish it from the much larger PRC. Since 1949, the PRC has tried to militarily take over the ROC (Taiwan) in 1954-55 and again in 1958. The PRC backed down when then-President Dwight Eisenhower threatened the use of nuclear weapons if the PRC continued their military offensive against Taiwan and the adjacent islands of Quemoy and Matsu. The PRC has threatened to do this again and again since then. *See Google, Wikipedia, History of Taiwan, and Britannica, Chiang Kai-shek and Formosa Resolution of 1955.*

In order to fudge this entire mess, in 1972 (52 years ago!) then President Richard Nixon announced the "One China Policy" of the U.S. Government: The U.S. acknowledges that all Chinese on either side of the Taiwan Strait maintain that there is but one China and that Taiwan is a part of China." Thus, we have formal diplomatic relations with the PRC and "informal" economic relations with the ROC (Taiwan). *See Google, One China.*

Perhaps the best analogy is that of the American Indians. After decades of formal warfare in the 18th and 19th centuries, and oppressive policies well into the 20th century, the U.S. Government reversed itself in the President Lyndon Johnson Administration. This was summed up by American Indian scholar/activist Phillip S. Deloria of the Standing Rock Tribe: "'It was through the Great Society program that Indian tribes became widely recognized by federal agencies as legitimate governments.'" *See Ned Blackhawk, The Rediscovery of America – Native Peoples and the Unmaking of U.S. History, Yale University Press, New Haven, Conn. 2023, page 437.*

These "new" tribal governments were given authority to enter the gaming business. *See Blackhawk at page 443.*

Mohegan Sun, a gaming resort owned by the Mohegan Tribe of Uncasville, Conn., and Foxwoods, a similar enterprise owned by the Mashantucket Pequot Tribe of Mashantucket, Conn. have generated millions of dollars in income for their tribes and for the State of Connecticut and the U.S. Government, through taxes on gaming winnings.

Perhaps this is a model for how the PRC could work with Taiwan without firing a shot or endangering the wider world. The U.S. Government changed its collective mind in 1965, and decided that military and other oppressive solutions were not nearly as effective as financial cooperation.

On its website, the United States Department of State has this to say about why Taiwan is important to the United States: "Taiwan has become an important U.S. partner in trade and investment, health, semiconductor and other critical supply chains, investment screening, science and technology, education and advancing democratic values." *See Google, U.S. Department of State, U.S. Relations with Taiwan.*

And that is one of the two reasons why, in late June and early July 2024, the militaries of the United States, Japan and South Korea held joint exercises "to promote trilateral interoperability and protect freedom for peace and stability in the Indo-Pacific including the Korean peninsula."

These exercises included "cooperative ballistic missile defense, air defense, anti-submarine warfare, search and rescue, maritime interdiction and defensive cyber training." The fact that North Korea recently set off its seventh ballistic missile test was the additional reason for these exercises. *See Google, Nikkei Asia, Japan, US, South Korea Military drills to counter North.*

For a detailed explanation of all of this, see James M. Vardaman, *Japan Today and How it Got This Way*, iTep Japan publishers, 2021, page 47-49.

At this same time, I took a two-week vacation in Japan. Their newspapers fully reported on these exercises while our media was focused on Ukraine and Gaza.

All of this is beyond ironic. The Constitution of Japan was written by a 24-person committee on the staff of General Douglas MacArthur during one week in February 1946. Four of the principal authors were Lt. Col. Milo Rowell (1903-1977), Brigadier General Courtney Weaver (1897-1969), Lt. Col. Charles L. Kades (1906-1996) and their staff translator, the only woman on the committee, Beate Sirota Gordon (1923-2013).

Weaver graduated from George Washington University Law School in 1927, and had a private law practice in Manila, Philippines before rejoining the U.S. Army in 1940. Rowell attended Stanford University and the Harvard Law School, graduating in 1926, when he opened his own law office in Fresno, Cal.

Kades, a native of Newburgh, NY, graduated from Cornell University in 1927 and Harvard Law School in 1930. He worked for Hawkins, Delafield and Longfellow in Manhattan and as Assistant General Counsel for the U.S. Public Works Administration and U.S. Treasury Department before joining the U.S. Army. Gordon had graduated from Mills College in Cal. *See Google, Milo Rowell, Courtney Weaver, Charles L. Kades, Beate Sirota Gordon.*

MacArthur, Rowell, Weaver, Kades and Gordon were hardly Washington, Jefferson, Franklin,

CONTINUED ON PAGE 19

President's Message

Embracing Our New Norm

By Zenith T. Taylor

Welcome back from the summer break!

I am deeply honored to be the first Black female president of the Queens County Bar Association, the oldest in Queens County. This milestone not only speaks to our progress but also underscores the work that still needs to be done in our community.

In an era when association memberships are declining globally, the active involvement of both current and potential members becomes even more crucial. Rapid technological advancements have shifted networking methods from traditional face-to-face interactions to virtual engagements. This new norm has significantly transformed how we communicate, practice law, administer justice, and network. Embracing this change is about leveraging these advancements to our advantage and ensuring that our association remains relevant and continues to meet the evolving needs of our members.

As we embrace this new norm, let's view it not as a challenge but as an opportunity to grow, innovate, and better serve our members and the community. Together, we can navigate these changes and shape a future that is not just technologically advanced but also socially relevant and professionally fulfilling.

In the weeks ahead, one of my primary initiatives will be connecting with high school and law students. We aim to inspire them, foster their self-confidence, and provide them with the resources they need to thrive in the legal field. As part of this initiative, QCBA intends to launch a debate/mock trial program to inspire young minds to consider careers in law. I invite those interested in mentoring our future legal professionals to volunteer their time and expertise, as your involvement is crucial to the success of this program.

Your membership and involvement are not just beneficial—they are vital. So, please join or renew your QCBA membership and encourage others to do the same. Your participation is needed to ensure our association's legacy continues to inspire upcoming legal professionals.

As we move forward, remember that our strength lies in our diversity and commitment to inclusivity. Let's work together to make QCBA a more inclusive and vibrant community, one that truly reflects the rich tapestry of Queens County. I am looking forward to this exciting phase of growth and transformation.

Justices Golia and Hom Appointed to Second Department

CONTINUED FROM PAGE 1

as a court attorney referee and before that as a principal law clerk in Surrogate's Court, Queens County. Previously, she worked as an assistant district attorney in the Queens County District Attorney's Office where, over the course of her 11-year tenure, she served in various bureaus, including the Office's Homicide Investigations, Narcotics Trial, Appeals and Special Victims bureaus. Judge Golia is a graduate of City University of New York Law School at Queens College.

Justice Phillip Hom was elected to the Queens Civil Court in 2017 and to the New York State Supreme Court in 2019. He is a native New Yorker and a proud product of New York's public schools, graduating from the Bronx High School of Science and SUNY-Binghamton with a Bachelor of Arts in Political Science. Justice Hom received a JD, cum laude, from the University of Minnesota Law School. While in law school, he worked as a law clerk at the Hennepin County Public Defender's office.

Justice Hom returned to New York after law school working in private practice and the public sector in all three branches of government. He started his legal career at a New York law firm specializing in commercial litigation. In 1997, he began his government service as an agency attorney for the New York City Department of Social Services, where he prosecuted civil claims for the recovery of public assistance and Medicaid.

In 2002, Justice Hom became the Chief of Staff for the first Asian American elected to the New York City Council, supervising the Council Member's staff and managing the office budget. He was also the liaison to other elected officials' offices and advised the Council Member and staff on legal matters. In 2003, he became counsel to the New York City Council's Transportation Committee where he wrote local laws and policy reports related to transportation, mass transit and for-hire vehicles. He also helped conduct oversight hearings of the New York City Department of Transportation and Taxi and Limousine Commission. In 2010, he was promoted to assistant director of the Council's legislative unit, where he supervised staff preparing legislation, policy reports and conducting oversight hearings. After the City Council, Justice Hom worked as Deputy General Counsel in the New York City Comptroller's office.

Before becoming a judge, Justice Hom returned to private practice, working at a law firm advising transportation, technology, banking, municipal and other clients on regulatory, legislative, employment and other matters. At the firm, he also represented clients in adjudications before the New York State Department of Labor, New York State Department of Transportation, the New York City Office of Administrative Trials and Hearings and the New York City Taxi and Limousine Commission Administrative Tribunal.

"We are thrilled for Justice Golia and Justice Hom and congratulate them on their appointments", said QCBA President Zenith Taylor. "Over their lengthy careers, both have demonstrated their judicial excellence and I am certain that they will be outstanding additions to the Appellate Division, Second Department."

Ms. Taylor also expressed her appreciation to Governor Hochul. "When we learned in the Spring that additional jurists were being appointed to the Second Department, we advocated to the Governor that at least two judges from Queens be appointed. From nearly all measurable perspectives, such additional representation from Queens was warranted and appropriate. We are grateful that Governor Hochul considered our perspective and made these appointments."

Hon. James McCormack, a Supreme Court justice from Nassau County and an Associate Justice on the Appellate Term for the Ninth and Tenth judicial districts, was elevated along with Justices Golia and Hom.

The Queens County Bar Association congratulates all three jurists on their appointments to the Appellate Division, Second Department.

Preserving Your Legacy: A Guide to Protecting Assets & Inheritance

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

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

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

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

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

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

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

New Immigration Program

BY JOSEPH F. DEFELICE

The Biden administration has opened the doors to persons married to United States citizens and the children (step child) of United States citizens who otherwise could not adjust their status as legal permanent residents in the United States. These are individuals who entered the United States illegally or on parole. Before the implementation of this new program, these individuals had to return to their home country to adjust their status and obtain legal permanent resident status (green card). Often, they were fearful of returning, feeling that the Consulate reviewing their paperwork might reject them for a number of reasons (e.g. medical, criminal offense) preventing them from returning to the United States. Also in certain cases it would be necessary for them to obtain a waiver by filing form I601A and paying a fee with the USCIS. Under the new program this has all been changed. They will no longer need to leave the country to adjust their status and will be able to apply while remaining in the United States. The program "Parole in Place" begins on August 19, 2024.

To be considered for the parole in place program, the applicant must meet certain conditions. The individual (spouse or child) must be someone who is in the United States without an admission (eg entered illegally) or entered on parole. He or she must have been in the United States continuously for at least 10 years as of June 17, 2024. They must present a valid marriage license to a United States citizen as of June 17, 2024. They can not have any disqualifying criminal history or appear as a threat to national security and must merit favorable exercise of discretion.

Once approved they will have three years to apply for permanent residence by seeking adjustment of status and will be able to obtain work authorization.

As of the time this article is written there is no available application. However, it is recommended that individuals who seek to take advantage of this program should begin to assemble documentation to prove their eligibility. For instance, they should be obtaining a certified copy of a marriage certificate and a certified translation of same if it is in a foreign language. They should be obtaining proof of their identity and any expired documents such as an expired passport. Of course, they need to prove the citizenship of their spouse and will need to present a US passport, birth certificate or naturalization papers. They must also need to present documents and evidence to establish their continued presence in the United States for 10 continuous years. This can be in the form of various materials such as leases, bank statements, hospital records, school records etc. Affidavits from witnesses would also be helpful in this regard. Children will need to show their relationship to the spouse of the United States citizen by presenting a certified birth certificate.

For those who qualify this is an excellent program that can avoid the anxiety and worry about leaving the United States to adjust their status as well as the additional cost of travel to their home country and the cost of filing an I601A form. The filing fee for the I601A form with biometrics is $795.00 so this is a significant savings for the immigrant family. These individuals can now legally adjust their status in the United States without the need to leave the country and pay for airfare and lodging.

Any application filed before August 19, 2024 will be rejected so anyone who can take advantage of this program must wait until that date before filing the application.

"Failing to Prepare is Preparing to Fail"

BY FRANK BRUNO, JR.

"To be undue influence in the eye of the law there must be — to sum it up in a word — coercion…. It is only when the will of the person who becomes a testator is coerced into doing that which he or she does not desire to do, that is undue influence. The coercion may of course be of different kinds, it may be in the grossest form, such as actual confinement or violence, or a person in the last days or hours of life may become so weak and feeble, that a very little pressure will be sufficient to bring about the desired result, and it may even be, that the mere talking to him at the stage of illness and pressing something upon him may so fatigue the brain, that the side person may be induced, for quietness' sake, to do anything. This would equally be coercion, though not actual violence. These illustrations will sufficiently bring home to your minds that even very immoral considerations either on the part of the testator, or of someone else offering them, do not amount to undue influence unless the testator is in such a condition, that if he could speak his wishes to the last, he would say, 'this is not my wish, but I must do it.'"– Lord Justice Hannen, *Wingrove v. Wingrove*, 11 Prob. Div. 81 (U.K. 1885)

My practice includes estate planning and elder law. Parents come to my office regularly to change their estate planning. We are diligent about ensuring that the children are not in the room with mom or dad if there appears to be any possible issues or if they are not providing for another child. We are extremely careful and ask as many questions as possible because we want to ensure that there is no undue influence on the part of a family member.

"Undue influence" is often used as a reason to contest a will or estate plan, but what does it mean? Undue influence is an equitable doctrine that involves one person taking advantage of a position of power over another person. Undue influence occurs when someone exerts pressure on an individual, causing that individual to act contrary to his or her wishes and to the benefit of the influencer or the influencer's friends. Pressure can take the form of deception, harassment, threats, or isolation. Often the influencer separates the individual from his or her loved ones to coerce them. The elderly and infirm are usually most susceptible to undue influence.

To prove a loved one was subject to undue influence in drafting an estate plan, you have to show that the loved one disposed of his or her property in a way that was unexpected under the circumstances, that he or she is or was susceptible to undue influence (because of illness, age, frailty, or a special relationship with the influencer), and that the person who exerted the influence had the opportunity to do so. The burden of proving undue influence is on the person asserting undue influence. Although, if the alleged influencer had a fiduciary relationship with your loved one, the burden may be on the influencer to prove that there was no undue influence. A fiduciary relationship is one recognized by the law to impose special duties on the fiduciary to act under the laws regulating fiduciaries. People who have a fiduciary relationship can include children, spouses, or agents under a power of attorney.

"If you don't have time to do it right, when will you have time to do it over?"— John Wooden

When drawing up a will or estate plan, it is important to avoid even the appearance of undue influence. For example, if you are planning on leaving everything to your son who is also your primary caregiver, your other children may argue that your son took advantage of his position to influence you. To avoid the appearance of undue influence, do not involve any family members who are to inherit under your will in drafting your will. Family members should not be present when you discuss the will with your attorney or when you sign it. To be safe, family members shouldn't even drive or accompany you to the attorney's office. You can also get a formal assessment of your mental capabilities done by a medical professional before you draft estate planning documents.

IMPORTANCE OF MEDICAID AND SOME THOUGHTS.

"Failing to prepare is preparing to fail." — John Wooden

Medicaid provides long-term care for elderly and disabled individuals who may not have the financial resources to afford such care. Medicaid serves as a safety net, covering expenses that are otherwise out of reach for many, making it a crucial consideration in estate planning.

Medicaid Rules and Policies: There are Federal and State-specific regulations that govern Medicaid eligibility. These rules include income and asset limits, the five-year look-back period for asset transfers, and the penalty period for improper asset transfers.

Key Rules:

Asset Limits: The Medicaid asset limit for an individual is typically $2,000. However, there are exemptions for certain assets, such as the primary residence, one vehicle, and certain personal belongings.

Look-Back Period: Medicaid enforces a five-year look-back period to prevent individuals from giving away assets to qualify for Medicaid. Any transfers made in excess of $500 not for good value during this period can result in a penalty, delaying eligibility.

Penalty Period: The penalty period is calculated by dividing the amount of transferred assets by the average monthly cost of care in the state. This period must be served before Medicaid coverage begins.

Step-by-Step Process for Medicaid Planning:

Initial Assessment: The process begins with a comprehensive assessment of the client's financial situation, including a review of all assets, income sources, and potential liabilities.

Strategic Planning:

Restructuring Assets: Depending on the client's situation, assets may be restructured, such as converting countable assets into exempt ones.

Establishing Trusts: One of the key strategies discussed was the use of irrevocable trusts. Assets placed in an irrevocable trust are no longer considered part of the client's estate, helping to meet Medicaid's asset requirements.

Spending Down: Clients may also spend down their assets legally by paying off debt, making home improvements, or purchasing exempt assets.

Application Process: Documentation: Gathering all necessary documentation, including proof of income, asset statements, and verification of any transfers made within the look-back period.

Submission: The application must be submitted to the state's Medicaid office along with all supporting documents.

Follow-Up: Regular follow-up is essential to address any questions or issues that arise during the review process, ensuring a smooth approval.

Sample Scenarios and Applicable Rules:

Scenario 1: Protecting Assets Through an Irrevocable Trust. A client with substantial assets but in need of nursing home care. An irrevocable trust can protect these assets while enabling the client to qualify for Medicaid. According to Medicaid rules, assets transferred to an irrevocable trust are no longer considered part of the client's estate, provided the trust was established prior to the five-year look-back period.

Scenario 2: Navigating the Penalty Period. In this scenario, a client had transferred assets within the look-back period, resulting in a penalty. There are strategies to minimize the penalty's impact, such as partial return of the assets or using exempt transfers to a spouse or disabled child.

Scenario 3: Planning for a Married Couple. When one spouse requires Medicaid, the rules allow for spousal impoverishment protections. The community spouse (the spouse not applying for Medicaid) is allowed to keep a certain amount of income and assets. It is extremely important to structure the couple's finances to protect the community spouse while ensuring the other spouse qualifies for Medicaid.

"Always plan ahead. It wasn't raining when Noah built the ark." — Richard Cushing.

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

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Years of Experience: 20+

Many years of experience working on behalf of the Plaintiff and/or Defense; has testified over 20 times in various venues

Thomas J. Rossi

Attorney-at-Law

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Robert A. Miklos

Empowering the Future: The Importance of Mentoring Latino Law Students

Maria Mateo

In the vast, often intimidating world of law, mentorship plays a critical role in shaping the careers and futures of aspiring legal professionals. For Latino law students, mentorship isn't just a helpful boost—it's a necessary lifeline that can mean the difference between success and stagnation in an industry where representation and support for minorities remain lacking.

The Challenges Facing Latino Law Students

The legal profession has long been dominated by individuals from privileged backgrounds, creating a challenging environment for Latino students who may be the first in their families to attend college, let alone law school. These students often face a unique set of challenges, including cultural barriers, financial constraints, and a lack of networking opportunities. Moreover, the pressure of breaking into a field where they see few people who look or sound like them or share their experiences can be daunting.

Cultural barriers manifest in various ways, from language differences to unfamiliarity with the unspoken rules of professional conduct. Financial challenges can exacerbate these challenges, as law school is expensive, and scholarships or family financial support may be limited. Additionally, many Latino students work part-time jobs or support their families, leaving them less time to dedicate to their studies and networking activities.

Organizations such as the Latino Lawyers Association of Queens County and other Latino groups have made tremendous progress in promoting the general welfare and legal rights of the Latino community by providing a voice for the community, and providing information, guidance and education. More work remains. Mentoring is crucial.

The Role of Mentorship

Mentorship provides Latino law students with the support, advice, and encouragement they need to navigate the complexities of law school and the legal profession. A mentor can offer practical advice on everything from study techniques and time management to interview preparation and networking strategies. More importantly, mentors can serve as role models, showing students that success is possible and providing a tangible example of what they can achieve.

For Latino students, having a mentor who shares their cultural background can be particularly empowering. These mentors understand the unique challenges their mentees face and can provide culturally relevant advice and support. They can help students navigate the dual identities of being Latino and a law professional, offering insights on how to maintain cultural integrity while thriving in the legal profession.

Moreover, mentors can open doors that might otherwise remain closed. The legal profession is built on relationships, and mentors can introduce students to important contacts, recommend them for internships and jobs, and help them build the professional network necessary for career success. This aspect of mentorship is especially important for Latino students, who may not have the same access to influential networks as their non-Latino peers.

Mentors also play a crucial role in helping students develop the competencies required to thrive in the legal profession. This includes academic skills, and also lessons on communication, negotiation, and problem-solving. By offering constructive feedback and guidance, mentors help their mentees hone these skills, preparing them for the challenges they will face in their careers.

The Ripple Effect of Mentorship

The benefits of mentoring Latino law students extend far beyond the individual mentee. When Latino students succeed, they bring their unique perspectives and experiences to the legal profession, enriching the field and contributing to a more diverse and inclusive legal system. These new lawyers are more likely to serve Latino and underrepresented communities, advocate for issues that affect their communities, and mentor the next generation of Latino law students, creating a powerful cycle of support and success.

The presence of more Latino lawyers in the profession helps to break down stereotypes and challenge the status quo. It sends a strong message that Latino individuals belong in all areas of society, including the highest echelons of the legal profession. This, in turn, can inspire younger Latino students to pursue careers in law, knowing that others have paved the way before them.

The Responsibility of Legal Professionals

Given the importance of mentorship, it's essential that those in the legal profession take an active role in supporting Latino law students. This isn't just the responsibility of Latino lawyers; it's a collective responsibility that all legal professionals share. By mentoring Latino students, lawyers can help address the underrepresentation of Latinos in the legal field and contribute to a more equitable and inclusive profession.

Law firms and legal organizations can also play a significant role by establishing formal mentorship programs specifically designed to support Latino students. These programs can provide structure and resources, making it easier for busy legal professionals to get involved. Additionally, law schools can foster mentorship by connecting students and the LALSA programs with alumni and local lawyers, offering mentorship, and encouraging a culture of support and collaboration.

Conclusion

Mentoring Latino law students is not just a noble endeavor—it's a necessary one. By providing mentorship, legal professionals have the opportunity to shape the future of the profession, ensuring that it is more diverse, inclusive, and representative of the society it serves. The impact of mentorship is profound, creating a ripple effect that benefits not only individual students but also the legal field as a whole and the communities these future lawyers will serve. For those who have succeeded in the legal profession, there is no greater legacy than helping the next generation of Latino lawyers achieve their dreams.

Robert A. Miklos ia a Partner at Silberstein, Awad & Miklos and Board Member of the Latino Lawyers Association of Queens County; and Maria Mateo is the owner of Maria Mateo Law and 3rd Vice President of Latino Lawyers Association of Queens County.

Emotional Distress For Dog Strike?

BY HON. GEORGE M. HEYMANN

For more than half a century there has been a slow but steady trend to allow certain individuals to sue for emotional stress when witnessing the death or serious injury of another within the "zone of danger". A key factor had always been whether that person is considered a member of the "immediate family".

BRIEF HISTORY

In the late 1800s a person could not sue for "fright" unless that person actually sustained personal injury. By the 1930s the Court of Appeals (Court) in *Comstock v. Wilson*, 257 NY 231 [1931], "required that a plaintiff be physically impacted in order to recover" but "recognized that damages for a 'mental disturbance' might be recoverable where the 'fright' or 'nervous shock' is produced by a concurrent physical impact." (see id.at 237-239) In 1961, the Court stated in *Battalla v. State of New York*, 10 NY2d 237 [1961], that incorporating "justice", "experience" and "logic" (id.at 239) concluded that a plaintiff subjected to the fear of physical injury as a direct result of tortious conduct (citation omitted) may state a claim that he or she was "negligently caused to suffer 'severe emotional and neurological disturbances with residual physical manifestations' when the defendant owed the plaintiff a direct duty such as the one owed to the plaintiff by the ski lift operator at issue in that case. By the late 1960's we crystallized that point. There was no longer any question that in some circumstances one may have a cause of action for negligently induced mental trauma without physical impact" (Tobin V Grossman, 24 NY2d 609, 613[1969]).

In New York, causes of action by a bystander was finally recognized in *Bovsun v. Sanperi*, 61 NY2d 219 [1984]. Here, the Court incorporated the zone of danger rule into our jurisprudence citation. That rule "allows one who is… threatened by bodily harm in consequence of the defendant's negligence to recover for emotional distress" flowing only from the "viewing of the death or serious physical injury of a member of his or her immediate family" (id.at 228).

As noted above, the one area that has given consternation to the courts, and litigants alike, is who has a right to sue for compensatory damages as the survivor of the defendant's negligence. This goes in tandem with being in the zone of danger as that alone does not create a cause of action for recovery. The prime issue that is constantly being reviewed by the courts is the composition of "immediate family" which in recent generations has changed significantly from the original nuclear family of father, mother, children, and siblings. Over the years, grandparents have been recognized as having "special status" with respect to their grandchildren and now qualify as members of the immediate family. (see, DRL §72 [L 1966 and subsequent amendments]).

Yet, in *Trombetta v. Conkling*, (82 NY2d 549 [1993]) a deceased aunt did not qualify as an immediate family member for the plaintiff niece for the purposes of the zone of danger rule.

GREENE V. ESPLANADE VENTURE PARTNERSHIP

In a 32-page decision, including two concurring opinions [Rivera, J. & Garcia, J.], the Court in *Greene v. Esplanade Venture Partnership*, (36 NY3d 513; 2021 NY Slip Op 01092 [2021]), discusses "the evolution of New York with respect to bystander claims and the shifting understanding of varied familial relationships intersect" (*id*.at 525).

In this case, the plaintiff grandmother and her two-year-old granddaughter Greta were walking by a building when part of the façade fell off striking Greta who died the next day. There is no dispute that they were both in the zone of danger when the incident occurred.

Plaintiff brought an action for damages and a second for wrongful death. At that time, she failed to bring an action for emotional distress. When she subsequently sought permission to amend her complaint the motion was granted. However, on appeal by the defendants, the Appellate Division (AD) reversed. The Court reversed the AD and granted plaintiff the right to serve an amended complaint.

The Court opined at the very outset that "[u] nsettled at this juncture, however, are the 'outer limits' of the phrase 'immediate family' (citation omitted)" (*id*. at 516). In ruling in favor of the grandmother, the Court did "not establish an outer boundary for 'the immediate family' and 'simply conclude[s] that a grandchild is within our understanding of what is meant by 'immediate family'. (id.)" Neither *Bovsun* or *Trombetta* defined the boundaries of "immediate family" and "[l]ikewise, it is unnecessary to do so here, and that issue remains open". (*id*. at 526)

DeBLASE V. HILL

We now come to the issue raised in the headnote. This case, (2024 NY Slip Op 50901(U) [July 15, 2024]) is currently pending in Kings County Supreme Court. The matter is scheduled for motions on August 22, 2024. The facts in the case at bar are analogous to those discussed in *Greene*, with one extremely notable exception never before brought to the fore in a "zone of danger"/ "immediate family" situation: the deceased in the "zone of danger" is a nonhuman [dog]. The bystander, who was also in the "zone of danger", is seeking, *inter alia*, compensation for infliction of emotional stress caused by the negligence of the defendant.

The plaintiff is the mother of the owner of the dog she was walking when defendant's car negligently struck and killed the dog while it was standing next to her on a leash in the zone of danger. Fortunately, she was unharmed. In addition to her claim, her son seeks property damage for the cost of the dog as well as veterinary bills.

Plaintiffs maintain that dogs "are certainly much more than personal property, and as countless dog owners can attest, are akin to family". They further advocate that the current laws are "antiquated" and no longer "in line with both common societal views and trends in the law".

The defendant seeks dismissal as to plaintiff's emotional distress claims relying on the Court of Appeals holding in Greene, arguing that "[a]s much as we all love our dogs, they are not legally 'immediate family'…pets are personal property and that New York does not recognize a cause of action for the infliction of emotional stress for the loss of animals (citations omitted)."

Clearly, while the trial court could have disposed of this action by simply adhering to the strictures of prior case law, it chose not to. To the contrary, the court sought to obtain as much information on the subject as possible by requesting amicus curiae briefs; reaching out to no less than 29 associations, such as the Queens County Bar Association and numerous other bar associations and organizations such as ASPCA, Pet Advocacy Network, Paws NY, and others to determine "whether a pedestrian possesses a cause of action for infliction of emotional distress resulting from witnessing the family dog being struck by a vehicle as she walked it on a leash across the street and she herself was nearly killed".

CONCLUSION

Bovsun, and subsequent opinions by the Court of Appeals intentionally avoided defining the "outer limits" of what constitutes "immediate family" as an element of "zone of danger" litigation thus leaving the door open for the possibility that family pets may someday be included as well.

Naturally, we'll have to await the judge's opinion on this issue. Should the judge find in favor of the plaintiff, it will be groundbreaking and precedential. It will open the door to completely assimilate certain household pets, such as dogs, as members of one's "immediate family" and will enable family members to seek redress if they and their pets are in the "zone of danger" and, regrettably, a defendant's negligent acts cause the death or serious injury of the pet.

The judge's opinion will still be subject to review by the Appellate Division and, possibly, the Court of Appeals. The trial court cited from the recent case *Nonhuman Rights Project, Inc. v. Breheny*, (38 NY3d 555, 575 [2022]), where the Court of Appeals stated that facts such as these "must be viewed cautiously in light of a preference for "the slow process of decisional accretion".

(see, Heymann, "HAPPY", DON'T PACK YOUR TRUNK! Court of Appeals Rejects Bid for Nonhuman Elephant's Writ of Habeas Corpus (NYLJ, 7/28/22; Queens Bar Bulletin, May-June 2022)

It should be noted that Nonhuman was written by the former Chief Judge who has since resigned. The decision succinctly held that an animal is not a human. However,

CONTINUED ON PAGE 17

Emotional Distress For Dog Strike?

BY HON. GEORGE M. HEYMANN

CONTINUED FROM PAGE 16

it contained a 70 -page dissent by Associate Judge Rowan Wilson who has since been elevated to Chief Judge. As a result, there may be a shift in the Court's viewpoint regarding the issues discussed above.

Judge George M. Heymann served with distinction for over two decades as a Judge of the New York City Civil Court/Housing Part. Judge Heymann has over 85 published decisions to his credit, of which more than a third were selected by the State Reporter for publication in the Official Miscellaneous Reports. He is the author of more than sixty (60) articles that frequently appear in the New York Law Journal and various bar association bulletins and journals and is the recipient of numerous awards for his professional and community service.

Judge Heymann is a former Adjunct Professor of Law at the Maurice A. Deane School of Law at Hofstra University; a Certified Mediator for Basic and Advanced Commercial Mediation; Of Counsel to Finz &Finz, PC and a member of the Committee on Character and Fitness for the Second, Tenth, Eleventh and Thirteenth Judicial Districts (Appellate Division, Second Department).

Immediately prior to ascending the bench, Judge Heymann served for 10 years as a Principal Law Clerk in both the Civil and Criminal terms of the Supreme Court in Queens County; was a Smalls Claims Arbitrator and a former Queens County Assistant District Attorney. He also served for 15 years as a member of his local Community Boards and was chair of the Parks Committee for CB11.

Editor's Note | Si Vis Pacem, Para Bellum

CONTINUED FROM PAGE 4

Madison and Hamilton. But their work is equally, if not more important, today. They placed in the Constitution of Japan a new Article 9:

> "Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as a means of settling international disputes.
>
> "In order to accomplish the aim of the preceding paragraph, land, sea and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized." *See Gary D. Allinson, The Columbia Guide to Modern Japanese History, Columbia University Press, NY, 1999, page 234.*

So how does Japan join the U.S. Government in JAROKUS military exercises this past month? Over the years, Article 9 has been reinterpreted to allow Japan a self-defense force. *See Google, Japan Self-Defense Forces and Makoto Iokibe, The History of US-Japan Relations, Palgrave Macmillan, 2008, pages 123-124.*

Every country in the world ought to have Article 9. We would all be a lot safer.

And equally important was and is article 14 of the new Japanese Constitution, the work of Lt. Col. Charles Kades and Ms. Sirota Gordon:

> "All of the people are equal under the law, and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin." *See Allinson at page 234.*

Article 14 was more far reaching than U.S. domestic anti-discrimination law at the time, and arguably still is, as it and Article 24 gives equal rights to women. Every country in the world ought to have Articles 14 and 24 as well.

For a detailed explanation of how this was accomplished, see Ian Buruma, Year Zero – A History of 1945, Penguin Books, Penguin Random House LLC, 2014, page 299-300 and Google, Wikipedia, Birth of Beate Sirota Gordon, Jewish Womens Archive.

Up until the Meiji Restoration of 1868-1889, Japan was a feudal society and a monarchy with an Emperor in charge. Although there was some extended economic freedom, there was no human rights statute similar to Articles 14 and 24 of the 1946 Constitution. Certainly, there was nothing similar to Article 9 reigning in the militarism that characterized pre-1945 Japan.

Kades and Sirota Gordon were members of the Jewish Community, one-third of whom had just been executed in Europe by Japan's Axis ally, the Nazis of Germany. There was no state of refuge for the Jewish Community in 1934-45. The modern day State of Israel was not founded until 1948.

Of this effort to bring human rights to Japan during one week of drafting in February 1946, Lt. Col. Kades had this to say:

> "(The Japanese leaders) wanted to take a tree that was diseased and prune the branches…We felt it was necessary to, in order to get rid of the disease, take the root and branches off." *See Buruma at page 299.*

You cannot make up this stuff. The irony of history can be overwhelming.