

# Queens

## BAR BULLETIN

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

December 2020 | Volume 88, No. 3

## Happy December!

By Clifford M. Welden



The year is drawing to a close and I am sure that you are as happy to see this year end as I and the members of our Board of Managers are! As of this writing there is hope on the horizon as vaccines are about to roll out first to our seniors and health care heroes and then to the rest of us.

Despite this challenging year, the QCBA's top priority was to connect you with one another and with the courts, and to provide you the tools and resources you need for the success of and fulfillment in your law practice. This was the year that brought the virtual practice of law into our everyday lives. In early March, we immediately transitioned our educational, networking, and special events to virtual platforms; we continued to support the excellent work of our Committees and relevant programming by our Sections; we issued a series of statements on important public issues; and so much more.

The fall months have been quite busy in the bar association and as we head into the last few weeks of 2020 the Board of Managers and our committee chairs continue our information sessions for our mem-

bership and engage in event planning for the new year. We hope that we have kept you apprised of recent directives in the courts as the practice of law moves forward into the 21st century.

By fall we were conducting zoom committee meetings, CLE's and Board meetings on a regular basis and it was not unusual for 7 or 8 events to occur each week. A tremendous debt of gratitude is owed to our Executive Director Arthur Terranova and his staff of Janice Ruiz and Sasha Khan who have kept us going from virtual platforms. We had a meeting of the chairs of our biggest committees to discuss the impact that the Office of Court Administration's directives has had on their committee members. The job of reconfiguring the court system that OCA had was a big one and the five Administrative Judges in the civil, criminal and family courts have done a good job keeping us informed of their intended plans. The Supreme and Civil court chairs Mike Abneri, Greg Newman & Hamid Siddiqui have been meeting regularly with Judges Catapano-Fox and Grays and their clerks and then reporting to the membership via email. The Bar Association took a public position

against bringing juries into the Queens Courts after several defense groups in the criminal courts brought their concerns to the Association. We voiced our objections to senior court management over bringing in 70+ people in for jury selection during the uptick in the number of Covid cases in the county. Three weeks after our initial concerns were raised jury trials and Grand Juries were shut down. We also voiced our concerns regarding the decision by OCA to end the certification process of judges who reached the age of 70 to work for an additional two-year period. Forty-Six judges statewide were advised that their jobs would end in December and 13% of them were sitting in Queens courthouses. The Chief Judge responded with a letter advising that she had no alternative due to budget cuts directed by Governor Cuomo. Litigation was soon brought by those judges based on age discrimination issues. I look forward to seeing what that litigation brings.

The Academy of Law reported that the Biomechanical Expert CLE held in October had over 50 attendees and was an overall success. We thank Frank Scahill

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## The Docket

Being the official notice of the meetings and programs listed below, which, unless otherwise noted, will be held at the Bar Association Building, 90-35 148th Street, Jamaica, NY. Due to unforeseen events, please note that dates listed in this schedule are subject to change. More information and changes will be made available to members via written notice and brochures. Questions? Please call 718-291-4500.

## CLE Seminar & Event listings

### DECEMBER 2020

Wednesday, December 9	Criminal Court Committee Mtg - 1:00 pm <a href="https://us02web.zoom.us/j/84943150159?pwd=VGNNRkczMkJKYzNDQy9aRDVZNFNRT09,MeetingID:84943150159,Passcode:484859">https://us02web.zoom.us/j/84943150159?pwd=VGNNRkczMkJKYzNDQy9aRDVZNFNRT09,</a> Meeting ID: 849 4315 0159, Passcode: 484859
Thursday, December 10	Civil Court Committee Mtg - 1:00 pm <a href="https://us02web.zoom.us/j/89633275088?pwd=dTg5SFQ0dGxYWm5sN1c4dy9jMytEUT09,MeetingID:89633275088,Passcode:056145">https://us02web.zoom.us/j/89633275088?pwd=dTg5SFQ0dGxYWm5sN1c4dy9jMytEUT09,</a> Meeting ID: 896 3327 5088, Passcode: 056145
Tuesday, December 22	LGBTQ+ Committee Mtg - 1:00 pm <a href="https://us04web.zoom.us/j/79147662721?pwd=S1Q4UjgxTmZ4UU5SSZUhwV1hzTS8ydz09,MeetingID:79147662721,Passcode:3fv9Rq">https://us04web.zoom.us/j/79147662721?pwd=S1Q4UjgxTmZ4UU5SSZUhwV1hzTS8ydz09,</a> Meeting ID: 791 4766 2721, Passcode: 3fv9Rq
Thursday, December 24	Christmas Eve – Office Closed
Friday, December 25	Christmas Day – Office Closed
Thursday, December 31	New Year’s Eve - Office Closed

### JANUARY 2021

Friday, January 1	New Year’s Day - Office Closed
Tuesday, January 12	CLE: LGBTQ+ & Immigration Seminar
Wednesday, January 13	Medicaid Updates & New Eligibility Rules: Protecting Assets to Plan for Long-term Care Needs
Monday, January 18	Martin Luther King, Jr. Day - Office Closed
Tuesday, January 19	Academy of Law Committee Mtg - 1:00 pm

### FEBRUARY 2021

Friday, February 12	Lincoln’s Birthday - Office Closed
Monday, February 15	President’s Day - Office Closed

Upcoming Seminars  
Guardianship Training

## Lawyers Assistance Committee

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

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

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

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

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## Editor's Note

# A New American Political Philosophy: CUNY, HHC and Harry Truman's world

### I. Domestic Policy

Cities are centers of humanity's search for knowledge of all kinds. The four largest universities in the country are the California State University system, the State University of NY (SUNY), the University of California system, and the City University of NY (CUNY).

CUNY is the model for where our nation must go. It was founded as the Free Academy by Townsend Harris in 1847 and later renamed City College for men. In 1870, the New York City government founded the Normal School, a college for women, renamed Hunter College in 1914 for Thomas Hunter, one of its early Presidents. Brooklyn College was opened in 1930, and Queens College in 1937.

By the 1940s, approximately 8000 of New York City's best high school students were given a free college education at these four colleges by a grateful municipality. These were largely children of European Jewish immigrants to New York, for whom anti-Semitism and high tuition were barriers to college at other institutions. These four colleges were run by the New York City Board of Higher Education, a city government department.

Fast forward to 2020. The Board of Higher Education was renamed CUNY in 1961 and now runs 25 colleges and graduate schools for men and women together in all five boroughs of the City with a grand total of 274,000 students, the fourth largest university in America.

Its annual budget is \$3.6 billion. In 1975, the City could no longer manage CUNY and it was taken over by the State of NY. It is 25% white, 25% Black, 25% Hispanic and 18% Asian. 58% of the students are women. 28% of the students are over 25 years old.

CUNY's motto and guiding principle: "The education of a free people is the hope of humanity." With low tuition and state and federal grants, 60% of CUNY's students today attend college tuition-free. High achieving high school students are welcome in CUNY's honors programs and colleges. But every student is welcome at CUNY's network of two year community colleges. See Google, CUNY, Wikipedia.

My late parents were in the City College Class of 1943 and Hunter College Class of 1944. All their lives, they were especially grateful for the tuition-free college education they received from the City and

State of NY. They devoted their working lives to paying back the City for its investment in them. My father, Dr. Jerome Kerson, served in World War II as a Captain in the Medical Corps of the U.S. Army Air Corps. He later was the Administrator of the City's Dental Clinics for the indigent.

My mother, Florence Shoch Kerson, was a social worker on the staff of the Elmhurst Hospital, a part of the New York City Health and Hospitals Corporation (HHC). Elmhurst Hospital was on the front lines of the battle against Covid-19 this past April. National news photos of Elmhurst Covid-19 patients lined up waiting to get into the hospital were shown around the world.

HHC turns away no one. Its motto is "Health care is a right". Its annual budget is \$6.7 billion. It is the largest municipal health care system in America. HHC operates 11 acute care hospitals, including Elmhurst, five nursing homes, six diagnostic and treatment centers, and 70 community based primary care sites. HHC serves 1.4 million patients per year, including 475,000 uninsured people in 190 different languages. HHC was taken over from the City by the State in 1969, and reorganized as a separate public benefit corporation. See Google, HHC, Wikipedia.

It should be the goal of the United States Government to encourage the building of CUNY and HHC clones in all 50 states and around the world. CUNY and HHC are the ultimate statements of a democratic society, where every person is valued. New York City is the capital of capitalism, with our concentration of stock market and bank headquarters. But in CUNY and HHC, we are also the capital of the nation's and the world's Safety Net.

It is no accident that 190 languages are spoken in and around Elmhurst Hospital and Queens College. This is the direct result of the expansion of CUNY and HHC in the past half-century, since both became separate public financial entities, no longer direct departments of City or State Government.

If you are in need of health care or higher education from any state in the union or any nation in the world, New York, and especially Queens County, will take care of you at CUNY and HHC. These are the nation's greatest strengths.

### II. Foreign Policy

To understand our world as it is currently struc-

tured, everyone should read "Plain Speaking: An Oral Biography of Harry S. Truman" by Merle Miller, Berkley Publishing Corp., NY 1973.

After President Truman retired, Merle Miller interviewed him extensively using a voice recorder. He later edited the tapes, resulting in a book that reads as if President Truman was right there in the room with the reader.

Merle Miller had President Truman tell us exactly what happened the day President Roosevelt died, April 12, 1945:

"Well, Margaret and Mrs. Truman went back to our apartment; they were both crying, and all the members of the Cabinet were there, I believe, except the Postmaster General, Frank Walker; I forget where he was. And we all sat down around the Cabinet table, and then Steve Early or Jonathan Daniels (another Presidential press secretary) came in and said the newspapermen were outside, and they all wanted to know if there was going to be the United Nations meeting in San Francisco in April as had been planned, and I said it most certainly was. I said it was what Roosevelt had wanted, and I said it had to take place if we were going to keep the peace. And that's the first decision I made as President of the United States." Page 199, emphasis added.

"If we were going to keep the peace"

That day in 1945 is the day we became the world's police officer. Since that time, there has not been another world war, although we came close many times. Another President might have pulled us out of the UN, NATO, or the World Bank.

In 2016-2020, we were actually and unbelievably pulled out of the Paris Climate Agreement, the Iran treaty and the World Health Organization in the middle of a global pandemic.

We must reinstate the world that Harry Truman created – the world of international cooperation with American leadership, the leadership that has led our planet to its highest levels of prosperity and cooperation in recorded history up to 2016.

Or would you rather have Russia or China in charge?

BY PAUL E. KERSON, ESQ  
EDITOR

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## Reasonable Accommodations For Covid-19 Positive Employees

According to the World Health Organization, most people who become infected with COVID-19 are either asymptomatic or experience only mild symptoms or moderate illness. While those with mild cases usually recover fully within about two weeks from exposure to the virus, some people who experience more severe symptoms may need up to six weeks to fully recover, while a small percentage experience symptoms that may linger or recur for months. Although most people normally do not remain infectious over two weeks after exposure, thus making it safe for them to return to the workplace, ongoing symptoms may make it impossible for them to do so.

Over the last eight months, most New York employers have become aware of their obligations to provide paid leave to employees who become infected with COVID-19. For those who are not aware, this article will provide a brief primer. The Families First Coronavirus Response Act, a federal paid leave law passed in March as part of the federal government's response to the pandemic, generally requires that employers with fewer than 500 employees provide a COVID-positive employee (as well as quarantined employees and those merely experiencing COVID-19 symptoms and seeking a medical diagnosis) with two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay.

Under New York's COVID-19 paid leave law, an employee's paid leave entitlement depends upon the employer's size. Small employers with ten or fewer employees and net income in 2019 of \$1 million or less are not required to provide new paid sick leave to their employees under New York's law. However, COVID-positive employees working for NYC businesses may still be entitled to paid sick leave benefits under NYC's Paid Safe and Sick Leave Law (see NYC.gov/workers), as well as paid family leave benefits and/or disability benefits (see PaidFamilyLeave.NY.gov). Small employers (ten or fewer employees) with net income in excess of \$1 million and medium-sized employers with between 11 and 99 employees must provide employees with five paid sick days, while large employers with 100 or more employees must provide 14 paid sick days.

But what happens when a COVID-positive employee is no longer infectious – and thus no longer subject to a mandatory quarantine – but continues to suffer symptoms or complications from the illness that limit or inhibit the employee's ability to return to work? What are an employer's obligations when any COVID-related paid sick leave has been exhausted and an employee is no longer a threat to others, but yet is physically unable to return?

CONTINUED ON PAGE 12

## Happy December!

### CONTINUED FROM PAGE 1

and the Scahill Law Group for sponsoring same. The Academy reported that the October Stated meeting dealing with recent Appellate Court developments had over 150 members registered due in no small part to the event moderator, Judge Valerie Brathwaite Nelson who served as moderator. Our Family Law committee chairs led by Board Members Joshua Katz and Deborah Garibaldi had over 50 practitioners in attendance to discuss the implications of CO-VID on Child Custody Litigation with Marvin Aronson, Ph.D. Also in November our LGBT and Diversity and Inclusion Committees both held successful seminars as did the Civil Court Committee in its November program on No-Fault Insurance issues. Going into December our Matrimonial Law committee held an informative seminar on mediation of matrimonial matters which included Board Members Joshua Katz, and Judge Jeffrey Lebowitz that was sponsored by NAM. Our Diversity & Inclusion, Young Lawyers, and Law School Liaison Committees marked the Thanksgiving season with our first ever "Friendsgiving" virtual event which was held jointly with the Queens County Women's Bar Association, Brandeis Association & the Catholic Lawyers Guild of Queens County. The event was sponsored by Big Apple Abstract and Property Tax Reduction Consultants and raised well over a thousand dollars for the children at St. Mary's Children's Hospital in Bay-side. We thank all of the attendees for their generous donations. Later this month our Young Lawyer's Committee will have an "Ugly Sweater Happy Hour" get together to wish each other well in this joyous season and try to fill the void caused by the cancellation of our annual Holiday Party. If you are getting up there in years, have clients who fit that description or elderly parents we have an exciting program dealing with Medicare estate Planning that will be presented by members Ann-Margaret Carozza and moderated by Brian Heitner. Ann-Margaret has appeared on numerous national television and radio programs to discuss elder law issues and will surely give an informative presentation on navigating through the maze of Medicaid and Medicare regulations. That event will be free for all active members. Also in January we will report to you on the work of Board Member Zenith Taylor and her committee to establish the Queens County Judicial Election Qualification Commission which is intended to promote the election of diverse and competent Queens County qualified judicial candidates and to provide public confidence in the judicial process to reflect the socio and economic make-up of Queens County.

Please check your membership account with us to make sure that we have your email addresses! To keep your access to all of the benefits we offer and the programs and meetings that you want to be a part of and to stay connected to your fellow QCBA members we need your email address. Lastly our Bar Association does not run on kindness alone. We need your dues money! We do have quite a few members who are in arrears and have not renewed their membership. If you are in that category know that we want you back in 2021 so please don't forget to renew! If you have personal issues that might prohibit you for renewing your membership, please call our offices and discuss them with Arthur and we will endeavor to reach an accommodation that will benefit us both.

Here's wishing you all a safe and healthy month and a Happy holiday season!

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## When the Petitioner Dies after the Petition has been Approved, What to do? Humanitarian Reinstatement

If an individual applies for a green card through a relative who is a Lawful Permanent Resident or US Citizen, but the Petitioner passes away before the application process is complete, the individual may still receive their green card, in some circumstances. The principal beneficiary may request humanitarian reinstatement of a petition only if the petition had already been approved before the death of the petitioner. Humanitarian reinstatement is a discretionary form of relief which means the positive factors for granting the petition must be significant.

There is no form or fee required when asking for humanitarian reinstatement. The primary beneficiary must make a written request with supporting evidence to the USCIS office that had originally approved the petition. If the beneficiary had already properly filed an application for adjustment of status with USCIS then the request for reinstatement should be sent to the USCIS office that has jurisdiction over the adjustment application. The request would normally include the following documents (but this is at a minimum):

- The name of the primary beneficiary and the deceased petitioner's name;
- The receipt number of the petition;
- Death certificate of the deceased petitioner;

- A substitute sponsor;
- Proof of the substitute sponsor's relationship to the beneficiary; and
- Any evidence showing that a favorable exercise of discretion should be given to the beneficiary.

If the beneficiary was required to have Form I-864 and the petitioner dies, the beneficiary must either have a new Form I-864 from a substitute sponsor or Form I-864W, for an exemption. The substitute sponsor must meet the following requirements:

- A U.S. citizen, national, or lawful permanent resident;
- 18 years old or older; and
- Be the beneficiary's spouse, parent, mother-in-law, father-in-law, sibling, child, son, daughter, son-in-law, daughter-in-law, sister-in-law, brother-in-law, grandparent, grandchild, or legal guardian.

When deciding on whether or not to grant request humanitarian reinstatement USCIS considers many factors such as:

- If the beneficiary is elderly or in poor health;
- How long the beneficiary had resided in the U.S.;
- If the beneficiary has strong ties to their home country;
- The impact of revocation on the family living in

the U.S., especially on the family who are U.S. citizens or lawful permanent residents or other relatives lawfully living in the U.S.; and

- If the beneficiary had waited an unusually long time for the case to be processed and the delay is because of the government.

If the humanitarian reinstatement request is granted USCIS will notify the beneficiary and send its decision to either the Department of State or to the USCIS officer processing the beneficiary's adjustment case, if they are outside the U.S. If the humanitarian reinstatement request is not granted USCIS will notify the beneficiary in writing. USCIS's decision can not be appealed and therefore if denied the beneficiary will need to find a different way of getting an immigrant visa or green card. But, it also does not preclude the beneficiary from filing for reinstatement again, if more equities are discovered or if they have new legal counsel who may have the ability to present a stronger case than previously submitted. This is a great form of relief for people and families when they have already suffered the loss of a loved one.

**BY MICHAEL PHULWANI, ESQ.  
AND DEV B. VISWANATH, ESQ.**

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## A Supreme Court Committee Update



As the pandemic of Covid 19 rages on, and the courts closed in the third week of March, 2020, we are nine months into a new era of law practice utilizing virtual technology which has dramatically changed the nature of our profession. During this time, Supreme Court Committee has been advocating for our members and attempting to educate them on developments as the New York State Court system literally reinvented itself eliminating all personal appearances for Supreme Court, Civil cases in Queens County. There was a brief respite for a few short jury trials scheduled for a few weeks in October and early November, before jury trials were suspended again in civil cases.

We hope that your practice has at least survived, and hopefully better in this new environment. We recognize that this has particularly hit hard the lawyers who had a "per diem" practice almost extinguishing their business. While we do not know how long things will remain as they are, hope is on the way with the vaccine developments. At some point in 2021, likely in the latter part of the second half of the 2021, we may see some return to normalcy.

In the interim, some members of the Supreme Court Committee have been meeting met with Queens County, Supreme Court, Civil Term Administrative Judge Hon. Marguerite A. Grays several times, most recently on December 4, 2020. We offer the following update from the meeting and other developments since our last report. Justice Grays has advised that she will continue to meet with as there are major developments and we welcome this collaboration.

As everyone knows, the resumption of jury trials was suspended until further notice. The court continues to monitor the situation and will advise when they feel that it is safe to resume these trials.

The Following has happened since our last update.

### Preliminary Conferences

The court started issuing preliminary conference orders in Tort cases and other matters with the exception of medical malpractice, matrimonial and commercial

cases on October 5, 2020. We have been advised that there is a new preliminary conference order for all automobile accident cases that will be implemented in all five boroughs of New York City, in the Supreme Court. We do not see any dramatic changes from the draft that we saw, as compared to the current preliminary conference order used in general cases in Queens County. The implementation of the "automobile accident" case preliminary conference order will commence sometime in early 2021. There is also 5 borough preliminary conference order for cases where the City of New York is a party that also started being issued in October.

### Compliance Conferences

Compliance conferences will resume starting in January, 2021. The first compliance conferences that were scheduled in the new preliminary conference orders are scheduled for early January. In commercial cases and medical malpractice cases, there will be a form order available to fill out, the parties will fill out the form and submit it to the court. We assume that if there are discovery disputes there will be a mechanism in these types of cases for a conference with the court. We believe that there will be only one compliance conference in commercial cases and medical malpractice cases.


As to all other cases, the initial compliance conference is currently scheduled for 90 days after the issuance of the preliminary conference order. We have been advised that there will be multiple compliance conferences after the first conference until discovery is complete. The forms for the compliance conference orders are not available at this time nor is the amount of time between conferences. Again we assume that if there is no dispute, the compliance conference proposed order form will be submitted to the court as agreed by the parties. We also have been advised that successive compliance conferences will be scheduled when the Compliance conference order is signed by the court. We believe that compliance conferences will be continued on

a periodic basis until discovery is complete. We expect to have further information in this regard sometime in January. Justice Grays has advised us that there will be likely two judges handling compliance conferences. Newly elected Supreme Court Justice Mojgan Lancman and possibly another judge, but at the time of our meeting concrete plans were not finalized.

### Compliance Conference Part Cases Stayed cases by Justice Healy


The conferencing of cases that were previously stayed through what were called "in person" conferences by Justice Healy as part of the compliance conference part has resumed. The court is contacting parties by e mail to inquire whether the case has been settled or discovery has been completed. If settled or discovery is complete, the parties will fill out a stipulation accompanying the e mail and report same to the court returning the stipulation. If the parties report that discovery is not complete, Justice Healy's chambers will send an e mail with a stipulation form which the parties need to fill out and sign detailing the outstanding discovery. If the parties agree as to the outstanding discovery, they will then receive in order based on the stipulation with dates to complete discovery by. The order will state where the case will remain on the trial calendar, or whether the note they shall be vacated, and set down for a further compliance conference. If a note of issue has not been filed there may be a date to do so. Summary judgment motion deadline dates will also be part of the order. In situations where stipulation filed has the agreed upon discovery, the conference itself may cancelled and the order issues as outlined above. Where there is a discovery dispute the court will conference the case. It is critically important that parties to these conferences that are being held virtually complete the stipulation at least two business days prior to the conference date and submit them to Justice Healy's chambers. Justice Healy will be leaving the bench at the end of 2020, and a new

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## A Supreme Court Committee Update

### CONTINUED FROM PAGE 8

judge will be assigned to handle these matters in 2021. Once the stayed cases are cycled through, this system of stayed cases will be ending. No new stays are being granted.

### Virtual Summary Bench Trials

With Jury trials being suspended, the court is encouraging parties to consider doing Virtual summary bench trials. These will be done via the Microsoft Teams platform. The rules and stipulations for summary bench trials are available on the Queens County Supreme Court website. If you and your adversary have agreed to do one, send an email to Nicole McGregor Mundy, Justice Gray's principal law clerk and she will get the process started. Once the parties have agreed to a summary bench trial, the court will be scheduled an evidentiary hearing by referee Leonard Florio, Esq... After the evidentiary hearing, the court will give the parties a trial date within three or four weeks of the evidentiary hearing. The virtual summary bench trials are similar to summary jury trials as there will be agreed upon monetary parameters (a high and low amount) with stipulated evidence. They are not appealable. Details about exchanging evidentiary packages virtually are still being worked out by the court. We currently do not know which judges will be doing the virtual bench trials. We await further information in this regard.

This might be an opportune time for parties in tort cases with limited insurance policies to give consideration to using this process as a means of expediting a resolution of your case. While we do not know when jury trials will begin again like they were pre-pandemic, it is highly likely that a backlog of 1 to 2 years will be building up until things get back to normal.

### Pre-Trial conferences involving the City of New York

Since the pandemic started, there have not been any pretrial conferences involving cases Where the City of New York is a party. We have been advised that these conferences will resume virtually this is January, 2021. We know as of now as to which justice will be handling these conferences as the court is dealing with multiple retirements and reassigning of caseloads.

### Foreclosures

Foreclosure settlement conferences are scheduled to resume in January, 2021. Details will follow. While the court was hoping to resume foreclosure auctions in October the spike in Covid 19 cases recently has delayed this and currently there are no foreclosure auctions taking place. With respect to the settlement conferences, the Supreme Court Committee is exploring ways for pro se parties and those who do not have access to the technology required to participate in the settlement conferences to get access to such technology. There is

one computer terminal in the "self-help" office in the Supreme Court building, however we do not know if it is currently staffed.

### Retiring judges

A number of judges are leaving the bench this year in the Supreme Court Civil Term. Some are voluntarily retirements and some are involuntarily due to the OCA decision not to certify judges to stay on the bench who have become 70 years old or recertify judges who are over 70 years old and have completed a two-year certification term or are turning 76 and must retire. As a result there will be less judges than this current year and case inventories will be reassigned to existing judges or the newly elected Supreme Court justices who will be assigned to civil term.

We at the Queens County Bar Association and the Supreme Court Committee would like to thank the following judges for their years of service to the County of Queens and to the State of New York as elected Supreme Court Judges and in many cases as elected Civil Court judges: Justice Rudolph Greco, Justice Bernice Siegal, Justice Martin Shulman, Justice Joseph Esposito, and Justice Maureen Healy.

Please stay safe and have a great holiday season.

BY MICHAEL D. ABNERI ESQ



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Allen E. Kaye

# Immigration Questions

## The Biden Immigration Plan



Joseph DeFelice

The 20 page plan can be found at <https://joebiden.com/immigration/>.

The plan is entitled The Biden Plan for Securing our Values as a Nation of Immigrants.

The first part of the document sets out Joe Biden's general views on immigration. He notes first that his goal is to stop the Trump assault on immigration.

"As president, Biden will forcefully pursue policies that safeguard our security, provide a fair and just system that helps to grow and enhance our economy, and secure our cherished values."

### The plan has the following components:

- Take urgent action to undo Trump's damage and reclaim America's values
- Modernize America's immigration system
- Welcome immigrants in our communities
- Reassert America's commitment to asylum-seekers and refugees
- Tackle the root causes of irregular migration
- Implement effective border screening

A fair and humane immigration system – this lays out the general approach Biden will take and then the document goes into the components noted above.

Biden notes support for the 2013 comprehensive immigration reform bill and the Obama-Biden's accomplishments on DACA and the various 2014 task force recommendations that were enacted including the prioritization memorandum that focused on threats to national security and public safety and not mass deportation.

Biden also highlights efforts to address the push factors in Central America and not just reacting to the migration north.

### Take Urgent Action to Undo Trump's Damage and Reclaim America's Values

In the 1st 100 days, Biden will:

1. Reverse family separation policies [since the release of this policy, Biden has announced he will immediately appoint a taskforce to deal with this issue]. This will include ending prosecution of parents for minor immigration violations and prioritize reunification of families.

2. End Trump's detrimental asylum policies including new border restrictions on filing for asylum (MPP), no longer preventing victims of gang and domestic violence from seeking asylum, no longer prosecuting asylum seekers for misdemeanor illegal entry, and reversing anti-LGBTQ asylum policies.

3. End the mismanagement of the asylum system, which fuels violence and chaos at the border – no more metering at the border (forcing people to remain in Mexico and limiting the number of asylum applications per day); directing more resources to border asylum processing.

4. Surge humanitarian resources to the border and foster public-private initiatives.

5. End prolonged detention and reinvest in a case management program which support migrants as they navigate their legal obligations.

6. Reverse Trump's public charge rule.

7. End the National Emergency that allows diverting of federal funds to build a border wall.

8. Protect Dreamers and their families – give Dreamers and their parents a roadmap to citizenship through legislative immigration reform, preceded by reinstating the DACA program and seeking all legal options to protect their families; ensure Dreamers are eligible for federal student aid and access to community college without debt.

9. Rescind the un-American travel and refugee bans.

10. Order an immediate review of TPS for vulnerable populations who cannot find safety in their countries ripped apart by violence or disaster; offer a path to citizenship through legislation.

11. Restore sensible enforcement priorities – direct enforcement toward threats to public safety and national security, end workplace raids, protect sensitive locations from immigration enforcement actions.

12. Ensure that Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) abide by professional standards and are held accountable for inhumane treatment; more training and independent oversight over ICE and CBP activities; better people appointed to head the agencies and they're report directly to Biden.

13. Protect and expand opportunities for people who

risked their lives in military service – no targeting of military members or their families for deportation; creation of a parole process for veterans deported by Trump to be returned to the US.

14. Restore and defend the naturalization process for green card holders – this will involve streamlining and improving the naturalization process, addressing the naturalization backlog by prioritizing the naturalization workstream, processing applications quickly and rejecting unreasonable fees.

15. Revitalize the Task Force on New Americans and boost our economy by prioritizing integration, promoting immigrant entrepreneurship, increasing access to language instruction, and promoting civic engagement.

16. Convene a regional meeting of leaders, including from El Salvador, Guatemala, Honduras, Mexico and Canada to address the factor driving migration and to propose a regional settlement solution.

### Modernize America's Immigration System

Biden will commit the political capital to finally deliver legislative immigration reform.

"Currently, we are not taking advantage of America's ability to attract the best and brightest workers in the world. A modern immigration system must allow our economy to grow, while protecting the rights, wages and working conditions of all workers, and holding employers accountable if they don't play by the rules."

Biden will work with Congress to pass legislation that:

1. Creates a roadmap to citizenship for the nearly 11 million people who have been living in and strengthening our country for years.

2. Reform the visa program for temporary workers in selected industries.

- a. The system for seasonal workers is cumbersome, bureaucratic and inflexible.

- b. Make it easier for workers to switch employers while certifying the labor market's need for the workers.

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# Immigration Questions

## The Biden Immigration Plan

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c. Stronger safeguards to ensure workers are paid the prevailing wage and have the right to join a union.

3. Reform the temporary visa system for high skilled workers.

a. Establish a wage-based allocation process and establish enforcement mechanisms to ensure they are aligned with the labor market and not used to undermine wages.

b. Expand the number of high-skilled visas.

c. Eliminating the limits on employment-based visas by country.

4. Provides a path to legalization for agricultural workers who have worked for years on US farms and continue to work in agriculture.

a. Provide a legal status based on prior agricultural work history.

b. Faster track to a green card and citizenship.

c. Ensure labor and safety rules are enforced with respect to these workers.

5. Rejects the false choice between employment-based and family-based immigration.

a. The current system is poorly designed with per-country caps that prevent applications from being approved in a timely fashion.

b. Allow any approved applicant to receive a temporary non-Immigrant visa until the permanent visa is processed.

c. End counting derivative spouses and children in green card caps.

d. Allow sponsored parents to bring their minor children with them at the time they immigrate.

6. Preserves preferences for diversity in the current system – preserve the DV lottery program.

7. Increases the number of visas offered for permanent, work-based immigration based on macroeconomic conditions:

a. Increase the employment-based green card caps from 140,000/year and add market mechanisms to allow increases when unemployment is low and decreases when it is high.

b. Exempt graduates of PhD programs in STEM fields in the US from green card quotas including granting a green card at the time of receiving the degree from a US graduate program.

8. Creates a new visa category to allow cities and counties to petition for higher levels of immigrants to support their growth – allow any county or municipal executive of a large or midsize county or city to petition for additional immigrant visas to support a region's development.

9. Enforces the rules to protect American and foreign workers alike – focus on abusive employers instead of the vulnerable workers they are exploiting.

10. Expands protections for undocumented immigrants who report labor violations – expand the U visa program to certain workplace violations of federal, state and local labor laws.

11. Increases visas for domestic violence survivors – end delays for VAWA self-petitions, U visas and T visas and triple the cap of 10,000 on U visas.

### Welcome Immigrants in our Communities

"It's time for the federal government to listen and learn from local municipalities across the country that have built vibrant and inclusive communities and economies by developing concrete policy and program recommendations at the grassroots level to provide opportunity for new immigrants."

Biden will:

Marshall federal resources, through the reestablishment of the Task Force for New Americans, to support efforts to welcome immigrants. This will include:

- Establishing Offices of Immigrant Affairs in city halls or at the county and state level.

- Creating neighborhood resource centers or welcome centers.

- Supporting entrepreneur incubators geared toward immigrants.

- Promoting statewide seals of biliteracy.

- Driving campaigns to help people naturalize.

- Facilitate efforts to re-license professionals.

- Increasing immigrant representation on community boards.

- Ensure public schools have sufficient English-language learning support.

- Investing in program to connect immigrant professionals in their fields.

- Push to repeal extreme, anti-immigrant state laws that have a chilling effect on the ability of immigrant domestic violence, sexual assault survivors, and other victims of crimes to seek safety and justice.

- Expand long overdue rights to farmworkers and

domestic workers – Biden will support passage of the Fairness for Farmworkers Act and Domestic Workers' Bill of Rights.

### Reassert America's Commitment to Asylum-Seekers and Refugees.

As President, Biden will:

- Surge asylum officers to efficiently review the cases of recent border crossers and keep cases with positive credible-fear findings with the Asylum Division.

- Restore asylum eligibility for domestic violence survivors.

- Apply US asylum laws to those fleeing political persecution.

- Double the number of immigration judges, court staff and interpreters.

- End for-profit detention centers and ensure that facilities that temporarily house migrants seeking asylum are held to the highest standards of care and prioritize the safety and dignity of families.

- Increase the number of refugees we welcome into the country; Biden will set the annual refugee admission cap at 125,000 and will raise it over time.

### Tackle the Root Causes of Migration

Biden will pursue a comprehensive strategy to strengthen the security and prosperity of Central America that

- Addresses the root causes of migration by fostering greater security, economic development and respect the rule of law in Central America.

- Strengthen regional humanitarian responses.

- Manage migration through refugee resettlement and other legal programs; this will include making it possible for people to apply from their home countries.

### Implement Effective Border Screening

Building a wall is a waste of money and diverts resources from real threats. Biden will:

- Invest in better technology coupled with privacy protections at the border.

- Improve cross-agency collaboration.

- Work with Mexico and Canada as partners – not as adversaries.

BY ALLEN E. KAYE AND JOSEPH DEFELICE

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

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# Reasonable Accommodations For Covid-19 Positive Employees

## CONTINUED ON PAGE 6

In NYC, the City’s Human Rights Law (NYCHRL) provides broad protections for employees who suffer from disabilities. The NYCHRL defines “disability” as “any physical, medical, mental, or psychological impairment,” and broadly includes both temporary and short-term injuries, as well as chronic conditions. There is no question that an employee suffering from long-term complications of COVID-19 – or from symptoms which recur or do not fully resolve within the normal two-week time frame – would qualify as suffering from a disability under the NYCHRL.

So what is a New York employer to do when such an employee states that they are unable to return to work following the conclusion of their COVID-19 related quarantine due to lingering health effects caused by the illness? Under the NYCHRL, an employer has an obligation to make “reasonable accommodations” to employees suffering from a disability, unless the employer can show that the requested accommodation would cause the employer an “undue hardship.” Essentially all requested accommodations are considered reasonable under the law unless the employer can make such a showing, which can be difficult to do.

While an employer is not required to provide such an employee with paid leave (unless the employee has accrued entitlements to paid leave pursuant to law or the employer’s policies), providing an employee with an extended period of unpaid leave while the employee completes their recovery from lingering or recurring COVID-19 complications could very well constitute a reasonable accommodation which the employer would be obligated to grant. In such a situation, the employer would have to keep the employee’s job open for them until their return, either reassigning work tasks, scheduling additional workers to cover the employee’s shifts, or hiring temporary or part-time help in the interim period. Under the NYCHRL, an employer would be required to do these things, unless the employer could show that doing so would impose an undue hardship. Whether a specific accommodation would constitute an undue hardship must be determined on a case-by-case basis, and depends upon, among other things, the nature and cost of the accommodation, the size and overall financial resources of the employer, and the nature of the employer’s operations.

Employers faced with a request by an employee for an extended period of unpaid leave due to complications from COVID-19 should conduct a careful analysis of these factors before determining whether or not to grant or deny such an employee’s request. Regardless of what decision is reached, it is important for NYC employers to know that they have an independent legal obligation to have a “cooperative dialogue” with such an employee. This means that the employer must engage with the employee in a good faith written or oral dialogue concerning the employee’s needs, potential accommodations that might address such needs, and the difficulties that such potential accommodations would place upon the employer. It is strongly recommended that an employer document every step of any such a cooperative dialogue in writing, and the NYCRHL requires that an employer provide an employee with a final determination in writing identifying any accommodations which were granted or denied, with the reasons for such determinations.

By taking these steps, NYC employers can protect themselves from disability discrimination claims, and also ensure that they are properly supporting any of their employees who may be suffering from long-term complications from COVID-19.

STEPHEN D. HANS



# Jeff Boyar (1950-2020)

We often refer to our Queens General Courthouse at 88-11 Sutphin Blvd. as “the capital of the known universe” and certainly it is. People from all over the world come through our doors seeking justice – a commercial dispute, a bad car accident, a foreclosure, a doctor who erred, a partnership that went south – the tales of woe are endless and ongoing.

Our energetic colleague, Jeff Boyar, Esq. had his hands on the pulse of all this every day, many times a day. Jeff was one of the best of a rare breed – per diem lawyers who could cover 10 to 20 cases per day for the rest of us. Jeff could learn and know well all of his daily caseload by studying emails the night before.

Jeff did not just fall into per diem work. He came to it late in his career. By the time he started his per diem practice, Jeff had already served as Managing Attorney at DeBlasio & Aton and for Stephen L. Widlitz.

He had worked as a litigation associate for Stanley R. Waxman, and in the Legal Departments of Con Edison and Public Service Mutual Insurance Company. He also had worked in the New York City Corporation Counsel’s Office. Jeff negotiated hundreds of settlements with liability insurance carriers on behalf of both plaintiffs and defendants.

Jeff graduated from Stuyvesant High School, Queens College, and Georgetown Law School. He drove a NYC yellow cab in college to pay the bills.

He was an avid hobbyist and traveler. Jeff visited 47 different countries, did scuba diving, bird watching,



participated in the Million Tree count, built a model railroad, built a fish pond and planted gardens in his back yard in Little Neck, took dance lessons, regularly listened and corresponded with WQXR radio, and kept every card, drawing and report card of his two sons.

I met Jeff in JHS 185 in Flushing more than 50 years ago. We played touch football together with five other junior high school classmates regularly in Bowne Park and Kissena Park throughout our junior high and high

school years. Thereafter, we played once a year every year for decades on the day after Thanksgiving, when we all returned to Flushing for family Thanksgivings. We called it the “Belch Bowl” as we had all usually overeaten the day before. In the early years, playing football was vastly preferable to us than sitting in front of the television watching football.

Throughout my life, he was always there. I will especially miss the late nights when I drove from my office in Forest Hills to his house in Little Neck to brief him about an especially difficult case where I needed coverage the next day at the Capital of the Known Universe, usually because I had to appear at an even messier case in Brooklyn or Manhattan at the same time. I would pour out details of several years worth of litigation, and Jeff could understand the whole thing in 10 minutes without taking any notes. He was that skilled.

Jeff is survived by his wife, Marietta, and his two sons, Jason and Daniel.

Contributions in Jeff’s memory can be made in his name to his favorite charities: the National Resources Defense Council (NRDC), Earth Justice, Radio stations WQXR and WBGO and the Adirondack Council.

He will be sorely missed by all who knew him, and by the system of justice he so nobly advanced, day after day after day for decades.

BY PAUL E. KERSON, EDITOR



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City \_\_\_\_\_State \_\_\_\_\_Zip \_\_\_\_\_

Office phone ( )\_\_\_\_\_

Home phone ( )\_\_\_\_\_

Cell phone ( )\_\_\_\_\_

Fax Number ( )\_\_\_\_\_

Email Address \_\_\_\_\_

Website\_\_\_\_\_

Contact via: \_\_\_\_\_ Email \_\_\_\_\_ Mail \_\_\_\_\_

Mailing Preference: \_\_\_\_\_ Business \_\_\_\_\_ Home \_\_\_\_\_

Date of Birth \_\_\_\_\_

College\_\_\_\_\_

Graduation Year\_\_\_\_\_Degree\_\_\_\_\_

Law School\_\_\_\_\_

Graduation Year\_\_\_\_\_Degree\_\_\_\_\_

Date of Admission to the NYS Bar\_\_\_\_\_

Judicial Department\_\_\_\_\_

### DUES PAYMENT

☐ Check Enclosed ☐ MasterCard ☐ Visa ☐ Amex ☐ Discover

Credit Card #\_\_\_\_\_

Exp. Date \_\_\_\_\_ CSC/CVV# \_\_\_\_\_

Signature\_\_\_\_\_

Date of Application \_\_\_\_\_

### ANNUAL MEMBERSHIP DUES

- ☐ Sustaining Membership \$ 350.00  
*Member who voluntarily provides additional funds to further support the Association (Includes coupons for three free CLE credits to be used for any CLE program in the coming year)*
- ☐ Combined Sustaining Membership \$ 625.00  
*(Includes coupons of 12.0 CLE Credits for any live Continuing Legal Education Programs)*
- ☐ Attorney Admitted more than 10 years \$ 300.00
- ☐ Attorney Admitted 5-9 years \$ 225.00
- ☐ Attorney Admitted less than 5 years \$ 135.00
- ☐ Admitted less than 1 year Free
- ☐ Law Student\* Free  
*(\*Current Law School student OR recent graduate awaiting admission. Please include a copy of your school's official OR unofficial school transcripts.)*

**GOVERNMENT SERVICE MEMBERSHIP:** *Members who are in Government Service (Judges, Court Attorneys, Law Secretaries, Legal Aid Society, Queens Legal Services, District Attorneys, Queens Law Associates, Corporation Counsel, etc.) are eligible for a 30% dues reduction. Please inform us of which Government Service gives you this eligibility.*

- ☐ Government Sustaining Membership \$ 245.00
- ☐ Government Attorney 10+ years \$ 210.00
- ☐ Government Attorney 5-9 years \$ 157.00
- ☐ Government Attorney less than 5 years \$ 94.00

### 18B ASSIGNED COUNSEL PLAN MEMBERSHIP:

*Eligible for a 20% dues reduction. Please inform us of which 18B Assigned Counsel Plan gives you this eligibility (Family or Criminal).*

- ☐ 18B Sustaining Membership \$ 280.00
- ☐ 18B Attorney 10+ years \$ 240.00
- ☐ 18B Attorney 5-9 years \$ 180.00
- ☐ 18B Attorney less than 5 years \$ 108.00

Discounts are also available for members of other local (Queens) bar associations who have never belonged to the Queens County Bar Association.

Membership dues can be made in one payment or by installments.

QUEENS COUNTY BAR ASSOCIATION  
90-35 148TH STREET  
JAMAICA, NEW YORK 11435

TEL - 718-291-4500  
FAX - 718-657-1789

WWW.QCBA.ORG  
INFO@QCBA.ORG





# QUEENS COUNTY BAR ASSOCIATION

## LAWYER REFERRAL SERVICE

### APPLICATION & REGISTRATION FORM

90-35 148th St.,  
Jamaica, NY 11435  
T: 718-291-4500  
F: 718-657-1789

Name: \_\_\_\_\_ DOB: \_\_\_\_\_

First Middle Last

Firm Name: \_\_\_\_\_ Practice consists of: \_\_\_ Trial work \_\_\_ Office work

Address: \_\_\_\_\_

Telephone number(s): \_\_\_\_\_ E-Mail: \_\_\_\_\_

Date of Admission to the NYS Bar \_\_\_\_\_ Admission to Other Jurisdictions \_\_\_\_\_

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

\_\_\_\_\_  
Languages other than English that you speak fluently: \_\_\_\_\_ or Office offers translation: \_\_\_\_\_

I will accept cases in the area(s) checked below (limit to five). I consider myself competent in such areas. Please indicate any specialties or exclusions within area of law.

AREAS OF PRACTICE	SPECIALTIES	EXCLUSIONS
<input type="checkbox"/> Adoptions		
<input type="checkbox"/> Bankruptcy		
<input type="checkbox"/> Civil Rights		
<input type="checkbox"/> Civil Service		
<input type="checkbox"/> Commercial		
<input type="checkbox"/> Consumer Law		
<input type="checkbox"/> Elder/Guardianship Law		
<input type="checkbox"/> Criminal Law		
<input type="checkbox"/> Decedent's Estates, Wills & Trusts		
<input type="checkbox"/> Domestic Relations (Family Law)		
<input type="checkbox"/> Immigration & Naturalization		
<input type="checkbox"/> Insurance		
<input type="checkbox"/> Juvenile Delinquency Matters		
<input type="checkbox"/> Labor Relations & Unemployment Compensation		
<input type="checkbox"/> Landlord & Tenant		
<input type="checkbox"/> Libel & Slander		
<input type="checkbox"/> Malpractice		
<input type="checkbox"/> Negligence		
<input type="checkbox"/> Patent, Trademark, Copyright, Unfair Competition		
<input type="checkbox"/> Real Property		
<input type="checkbox"/> Taxation		
<input type="checkbox"/> Social Security Appeals (SSI, SSD)		
<input type="checkbox"/> Small Claims		
<input type="checkbox"/> Traffic Law		
<input type="checkbox"/> Worker's Compensation		

#### LAWYER REFERRAL SERVICE DUES PAYMENT

☐ Registration fee with one area law **\$395.00** ☐ Additional area(s) of law (limit four) **\$ 100.00/per area**

Amount \$ \_\_\_\_\_ ☐ Check ☐ MasterCard ☐ Visa ☐ AMEX ☐ Discover

Credit Card Number \_\_\_\_\_ Exp. Date \_\_\_\_/\_\_\_\_/\_\_\_\_ CSC: \_\_\_\_\_

The undersigned hereby applies for registration on the panel of the Lawyer Referral Service of the Queens County Bar Association **and is also a member in good standing**. He/she certifies that he/she is familiar with its procedures and that he/she will abide by all rules which may be promulgated by the Association and agrees to be bound thereby.

Date of Application: \_\_\_\_\_

Signature of Applicant \_\_\_\_\_



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1) New business checking account with new money only. Existing business checking account customers are not eligible. A new business checking account is defined as any new business checking account that does not have any authorized signatures in common with any other existing Flushing Bank business checking account(s). An existing checking customer is defined as anyone who currently has or has had a Flushing Bank checking account within the last 24 months. New money is defined as money not currently on deposit with Flushing Bank. 2) You must deposit a minimum of \$100 to open a business checking account. No minimum balance required to be eligible for the Bonus. You will receive \$100 for the completion of 5 debit card purchases. And \$100 for the completion of 5 online banking bill-payments via Flushing Bank's Online Banking portal. Each debit card purchase and each online bill-payment must be \$25 or more and must be completed prior to 60 days after the account is opened. THE MAXIMUM AMOUNT A BUSINESS CHECKING CUSTOMER CAN RECEIVE IS \$200. The compensation will be credited to the checking account on or about the end of the month following the completion of the qualifying transactions. A 1099 will be issued. Other fees and restrictions may apply. 3) A minimum opening deposit of \$15,000 is required in the Complete Business Checking account to qualify for the Value Program gift card. The gift card tier is based on the 90-day average balance of the new Complete Business Checking account. The minimum 90-day average is \$15,000 to qualify for the minimum gift card tier. The 90-day average balance tiers and single load 12-month Visa® gift card values are as follows: Tier 1: \$15,000 - \$24,999 a \$200 gift card, Tier 2: \$25,000-\$74,999 a \$350 gift card, Tier 3: \$75,000-\$149,999 a \$600 gift card, Tier 4: \$150,000 - \$249,999 a \$1,000 gift card, and Tier 5: \$250,000+ a \$1,500 gift card. Notwithstanding the Business Value Program, a minimum deposit of \$100 is required to open the Complete Business Checking account. All offers are subject to change and termination without prior notice at any time. Speak with a Flushing Bank representative for more details Flushing Bank is a registered trademark

