Queens BAR BULLETIN

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

February 2023 | Volume 90, No. 5

The Extraordinary Life of Judge Leonard L. Finz

He Will Be Remembered For Eternity

August 17, 1924 to February 1, 2023

Judge Leonard L. Finz founded the Law Offices of Leonard L. Finz (now known as Finz & Finz, P.C.) in 1984. He was a former New York State Supreme Court Justice and a top-ranked trial lawyer with the highest ratings for legal ability and ethics, having earned a reputation as a master trial advocate in the courtroom. He achieved the highest legal rating of "Preeminence" in addition to being peer-reviewed as "One of America's Preeminent Lawyers."

Judge Finz was born in a walk-up tenement in the Lower East Side of Manhattan in 1924 to immigrant parents and attended elementary school in Brooklyn where he trained in music and voice during the Great Depression. Although a distant two hours from his residence, Judge Finz applied and was accepted as a gifted music student into the High School of Music & Art in upper Manhattan (relocated to Lincoln Center and merged with the School for Performing Arts under the umbrella of the "Fiorello H. LaGuardia High School of Music & Art and Performing Arts"). After becoming first clarinetist in the prized school symphony orchestra and leader of its jazz band, he was drafted into the U.S. Army at the age of 18 during WWII.

Completing basic training, his talent led to his dispatch to Special Services as a producer, director, and performer of shows he created for thousands of soldiers on the base. A lead article in the military press headlined Judge Finz as "Born of Talent." Thereafter, he was assigned to the U.S. Army Band as a saxophone and clarinet specialist. Although he could have remained stateside in a cushy band role throughout the war, Judge Finz stated, "I didn't want to play the sax on parade grounds while combat soldiers were dying in battle for our country." Thus, he applied to the Field Artillery Officer Candidate School (OCS), passed test requirements, and was accepted as a candidate. One hundred candidates started in the class, most of whom were Sergeants coming from European and Pacific battlefields. Judge Finz was but a Private First-Class, the second lowest rank in the U.S. Army, who came not from the horrors of war, but from the cozy life of a United States Army band musician.

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QUEENS COUNTY BAR ASSOCIATION

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

CLE Seminar & Event listings

FEBRUARY 2023

Monday, February 20	*Presidents' Day – OFFICE CLOSED*
Tuesday, February 21	EVENT: Virtual Judicial Law Clerk Panel - 6:00 pm
Wednesday, February 22	**CLE:** Litigating Adverse Possession & Easements - 1:00 pm
Wednesday, February 22	Elder Law Committee Meeting - 5:30 pm https://us02web.zoom.us/j/89177050986?pwd=OC84M-HgrNFNDY3dKL1NFZ2RKbUdEZz09
Wednesday, February 22	Kickbox with QCWBA, QCBA Building - 6:30 pm
Tuesday, February 28	EVENT: Black History Month: Celebration of Judicial Excellence - 5:00 PM

MARCH 2023

Thursday, March 2	**CLE:** Real Estate Litigation and Common Pitfalls in Transactions - 1:00 pm
Wednesday, March 8	**CLE:** ABC's of Surrogate's Court – Part 1 - 1:00 pm
Tuesday, March 14	**CLE:** The Trial Series – Pt 3 – Direct Questioning - 5:30 pm
Wednesday, March 15	**CLE:** ABC's of Surrogate's Court – Part 2 - 1:00 pm
Tuesday, March 21	EVENT: Judiciary, Past Presidents & Golden Jubilarian Night at St. John's Law School - 5:30 pm
Wednesday, March 22	**CLE:** ABC's of Surrogate's Court – Part 3 - 1:00 pm
Wednesday, March 29	**CLE:** ABC's of Surrogate's Court – Part 4 - 1:00 pm
Wednesday, March 29	EVENT: Women's History Month: The Women of the Appellate Term 2nd, 11th & 13th Judicial Districts - 6:00 pm via Zoom

APRIL 2023

Friday, April 7	*Good Friday – OFFICE CLOSED*
Tuesday, April 18	**CLE:** Equitable Distribution Update – Pt 1 - 5:30 pm
Tuesday, April 25	**CLE:** Equitable Distribution Update – Pt 2 - 5:30 pm

MAY 2023

Thursday, May 4	Annual Dinner & Installation of Officers at Terrace on the Park
Tuesday, May 9	**CLE:** Update on Search & Seizure - 1:00 pm
Wednesday, May 17	Family Law Committee Dinner - 5:30 pm
Wednesday, May 24	**CLE:** Ethics Update – Pt 1
Monday, May 29	*Memorial Day – OFFICE CLOSED*
Wednesday, May 31	**CLE:** Ethics Update – Pt 2

JUNE 2023

Monday, June 19	*Juneteenth – OFFICE CLOSED*

New Members

Iffat Astha
Eliyakol Djokoto
Evette C. Ennis
Grayson Glover
Anica Johnson
Victoria E. Knapik
Nathan Matatov
Lauren Norton Lerner
Paul Papantoniou
Krystal A. Roberts
Katlyne E. Ryan
Crystal L. Screen
Vitaliy Usten

Necrology

Hon. Leonard L. Finz

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Editor's Note

The Responsibilities of the Greater United States Empire

By Paul E. Kerson

The world faces vexing problems. First on the list is the increasingly destructive war in Ukraine. Second on the list is China's wish to dominate Taiwan, Hong Kong and perhaps all of Southeast Asia. Third on the list is Israel's long simmering conflict with Gaza and the West Bank.

As an institution, the United States Federal Government in Washington, D. C. refuses to recognize its status as a governing Empire.

The leading book on this subject is "*How to Hide an Empire: A History of the Greater United States*", by Daniel Immerwahr, an associate Professor of history at Northwestern University in Evanston, Illinois. (Picador – Farrar, Strauss and Giroux, New York, 2019)

The solution to all of these conflicts is suggested by a reading of the United States Code.

At the outset, it must be noted that the predecessors of the American Empire are still operating. The Roman Catholic Church was the official state religion of the Roman Empire and today operates in all countries of the world with the exceptions of Saudi Arabia and North Korea. (See Google, Roman Catholic Church).

The British Empire continues as the Commonwealth of Nations, a federation of 56 countries. The official British Church, the Anglican Church, continues to operate in 42 countries. (See Google, British Commonwealth of Nations, Anglican Church).

Rome and Britain are no longer military empires. But their military successor is the current American Empire.

Our military arm, the North Atlantic Treaty Organization (NATO) is codified at 22 U.S. Code Section 1928 and includes Albania, Belgium, Bulgaria, Canada, Croatia, Czechia, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Montenegro, The Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Slovakia, Spain, Turkey, The United Kingdom and the United States.

Through NATO, the United States Federal Government has extended its military reach to all of these countries.

Similarly, the Organization of American States (OAS) headquartered in Washington, D.C. is codified at 22 U.S. Code Sections 288-288(i) and includes the following countries: Antigua and Barbuda, Argentina, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, The Dominican Republic, Ecuador, El Salvador, Granada, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Peru, St. Kitts and Nevis, St. Vincent and the Grenadines, the Bahamas, Trinidad and Tobago, the United States, Uruguay and Venezuela. These countries are part of the American Empire as surely as the NATO countries are part of it. While the OAS is not strictly a military alliance, it is a continuation of the Monroe Doctrine of 1823, warning European powers to stay out of South America.

We are also the military leader of an informal group of Pacific Ocean Nations called the QUAD – India, Japan, Australia and the United States. See Google, "*U.S. Seeks to Build Network of Like-Minded Nations in the Indo-Pacific*" by Jim Garamore, September 29, 2022 DOD News, defense.gov, an official website of the United States Government.

In the Middle East, the United States Federal Government is allied with Israel, Saudi Arabia, Bahrain, Kuwait, Iraq, Oman, Qatar, The United Arab Emirates (UAE), Yemen, Jordan and Turkey. See Google, U.S. allies in the Middle East.

In Africa, the United States Federal Government has formal or informal alliances with Morocco, Egypt, Nigeria, South Africa and Liberia. See Google, U.S. alliances in Africa.

The way to understand the current Ukraine war is to understand that Ukraine wishes to join the NATO countries as part of the American Empire.

The solution to the Ukraine war is for our United States Federal Government to reassure the Russian Government that the American Empire will not extend such an invitation to Ukraine. This assurance will hopefully stop the violence, preserve the citizenry of Ukraine, and stop the risk of World War III.

The Russians must be persuaded to allow Ukraine to exist as an independent country associated with Russia just the way the countries of the Commonwealth of Nations are associated with the United Kingdom and all of the Roman Catholic Churches in the world are associated with the Vatican.

By using this analogy, the Russians will hopefully be persuaded that their former Soviet Empire can continue just as the British Empire continues in the Commonwealth of Nations and the Roman Empire continues in the Roman Catholic Church.

There is no question but that Israel, Gaza and the West Bank are part of the American Empire just as much as the NATO countries, the OAS countries, the QUAD countries, and all over other "allies" around the world.

However, by allowing a conflict to fester there for 75 years, our United States Federal Government is neglecting its responsibility as the current leading empire in the world.

A solution reveals itself in a study of prior solutions in the United States Code.

The case of American Samoa is set forth at 48 U.S. Code, Chapter 13 Sections 1661-1670. In those sections, it is clear that American Samoa is governed by the United States Federal Government, but its residents are not United States Citizens. They cannot vote, run for office or serve in law enforcement. However, they are entitled to elect their own Governor, Lieutenant Governor and their own Legislature, known as The Fono in two houses, a Senate and House of Representatives. In this way, American Samoa remains part of the American Empire with its own government, but not as citizens.

Just as American Samoans are not United States citizens, but are non-citizens nationals of United States with their own self-government, so the West Bankers and Gazans can achieve this same status with the State of Israel. That should solve the problem of self-government in the West Bank and Gaza, yet still protect the State of Israel from violent invasion or being overwhelmed by high adjacent birth rates.

As detailed below, this plan must be presented together with a plan for the economic success of the West bankers and Gazans.

This solution is instructive for Israel, Gaza and the West Bank. The proposed two state solution is in reality, a three or four or five state solution. I recently returned from a trip to Israel and the West Bank. From what I can gather, there is no agreement whatsoever among the Bedouins, Druze, West Bankers, Gazans, and Non-Jewish Israelis to form any kind of Palestinian State. There is much too much internal disagreement. However, the urge for self-government is strong in Gaza and the West Bank.

The lesson of 48 U.S. Code, Chapter 13 Sections 1661-1670 is instructive. American Samoa has no military and no U.S. citizenship. They cannot be a threat to the United States Federal Government or anyone else. Nevertheless, they have self-government as much as any other countries listed in NATO and the OAS have self-government despite all being subject to the United States Federal Government's military supremacy.

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Editor's Note

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Further models concerning enriching the Gazans and West Bankers are found in the Indian Gaming Regulation Act, 25 U.S. Code, Chapter 29, Sections 2701 et seq. Recall that the Mashantucket (Western) Pequot Tribal Nation was defeated in the Pequot War of 1636-1638 by the Connecticut colonists, sent to Connecticut by the former British Empire.

In 22 U.S. Code, Chapter 29 Section 2701 et seq., the Mashantucket (Western) Pequot Tribal Nation was given permission to build the Foxwoods Resort and Casino in Ledyard, Connecticut, a highly successful business enriching the tribe as never before.

Similarly, the Mohegan tribe was defeated in 1637 by the Puritans, a British religious group that rejected the Anglican Church and the Roman Catholic Church and set up its own Church in Colonial Connecticut. Similarly, the Mohegans were rescued from poverty by the Indian Gaming Regulation Act, cited above, and given permission to build the Mohegan Sun Resort in Uncasville, Connecticut, a very successful business, enriching the Mohegan tribe as never before.

These resorts permit gambling, and the construction of luxury hotels for this purpose. Thus, despite the passage of 400 years, the United States Federal Government figured out a way to compensate the Mashantucket (Western) Pequot Tribal Nation and the Mohegan tribe for the loss of their lands back in 1636 to 1638. See Google, Mashantucket (Western) Pequot Tribal Nation.The State of Israel forbids casino gambling, causing numerous Israeli players to travel to Europe to gamble. See Google, Leo Giosue, *"Gambling in Israel," The Jerusalem Post*, January 9, 2022. Imagine a West Bank State and a Gaza State with a ready market right next door. They'd soon be richer than Foxwoods and Mohegan Sun.

The State of Israel is populated by the descendants of Holocaust survivors. Much of the Jewish population of Europe, 6 million people, did not survive the planned executions of World War II. This fact must be respected. Continued military attacks by Gazans and West Bankers are simply unacceptable.

However, the solution to this problem lies in making sure that the Gazans and West Bankers have economic opportunity but not military opportunity. As can be seen by the examples above the United States Federal Government has already come up with solutions for these very circumstances in Connecticut and American Samoa.

While the Quran forbids gambling to Muslims, gambling is big business in the Muslim countries of Egypt, Morocco, Tunisia, Lebanon and Dubai.

It should also be noted that the West Bank and Gaza have a significant Christian population, where there is no gambling prohibition. See Google, *"Gambling in the Muslim World"* by Steve Gallaway and Andrew Tottenham, *Global Gaming Business Magazine (GGB)*, July 17, 2019.

The questions of China, Taiwan and Hong Kong are answered by the United States Federal Government making it clear to China that we have no intention of admitting Taiwan and Hong Kong to NATO, the OAS, the QUAD or any similar association.

Because of the unique and wildly successful history of our country, there is a model for virtually every political problem buried in the United States Code for those willing to look.

The United States Federal Government's Empire thus has full or partial responsibility for the military defense of many of the world's nations, a fact unprecedented in World History.

The reasons for this level of success can be summed up in one word: **Federalism**.

Because of the Federal way founders chose, the United States Federal Government in Washington, D.C. is designed to mediate between and among the needs of 50 relatively independent state governments.

That internal constitutional strength led to the military victory over traditional top-down empires in World War II.

This military strength has been maintained by our United States Federal Government, which mediates now between and among many different nations as well as the 50 American states.

It is only when we finally understand the incredible beauty of Federalism as applied nearly world-wide from Washington, D.C. that can get on with the business of successfully mediating between and among the 50 American states and numerous foreign nations that are part of the American nuclear umbrella.

In all of World History there has never been anything like this. We can thank Franklin Roosevelt, Harry Truman and Dwight Eisenhower if only we can hold on to their achievement.

President's Message

And Justice For All?

By Adam Moses Orlow

NOTE: The piece below was written just prior to the full Senate vote on February 15, 2023. So, while the facts have obviously changed, and Judge LaSalle will not be our next Chief Judge, the point of the message very much remains.

As of this writing, the nomination of Judge Hector LaSalle sits in limbo. His nomination, having been rejected by the Senate Judiciary Committee, has not advanced to the full Senate for debate and a vote. Governor Hochul has made it clear that she believes he is entitled to a vote of the full Senate under the State Constitution. The Senate, feeling otherwise, seems to have no intention of giving him one. So here remain the citizens of New York State, without a permanent Chief Judge and with no end to this standoff in sight.

It is most ironic that in choosing the top judge of this State, whose most basic duty is to give each side a fair opportunity to be heard before coming to a decision, a significant amount of our State Senators came to their decision and rejected Judge LaSalle before giving him a fair opportunity to be heard. The main reason given by these Senators is that Judge LaSalle, a Democrat, nominated by a Governor who is a Democrat, is too conservative generally and not supportive of a woman's right to choose specifically. The case most often cited as a demonstration of this: *Matter of Evergreen Assn., Inc. v Schneiderman* (153 AD3d 87 [2d Dept 2017).

A brief review of the facts of *Evergreen* makes plain that it provides no basis for the claim that Judge LaSalle is conservative or anti-choice. In *Evergreen*, the Attorney General's office was investigating a crisis pregnancy center they thought was going too far in encouraging pregnant women not to have abortions by giving them medical advice without a license to do so. As part of their investigation, they issued a subpoena to the center demanding documents and information including information about donors to the center. It was the center's motion to quash the subpoena that led to the decision at issue. Basically, what the 2nd Department held was that the subpoena was lawfully issued but that the AG did not have the right to demand the donor lists and information on who was funding the center. This, it held, was an overreach that would have violated the First Amendment's provisions for freedom of speech and freedom of association. Said Judge Jeffrey Cohen, who authored the Evergreen decision to which Judge LaSalle signed on: "What we did, proudly, was we tailored the subpoena to conform with First Amendment requirements and sent it back to the lower court." In other words, while Evergreen happened to be about abortion rights, the legal principle at issue was the First Amendment. A simple altering of the fact pattern reveals this to be so. What if instead of a pregnancy crisis clinic, the AG's office was investigating a Planned Parenthood clinic and wanted information on its donors and supporters? Certainly, we can envision many states today where such an investigation is plausible. While, thankfully, New York is not presently one of those states, who knows what the future holds? Would that subpoena be appropriate? Would it be a First Amendment issue then? Or would our Senators agree then too that obtaining the donor information would be appropriate? To the extent that anyone would argue for different outcomes in these two fact patterns this would render stare decisis, the most basic principle of our legal system, meaningless. A good judge recognizes that while the fact patterns before her change, the legal principles do not. As attorneys we rely on our judges to follow the law regardless of the issue even, and especially, when it leads to an outcome that might not be popular. Judge LaSalle did that and rather than being labeled conservative or anti-choice, he should be called competent and qualified.

If the Senators of this State want to reject an otherwise experienced, qualified and distinguished jurist for political reasons that is their prerogative. But the citizens of New York should be aware that in claiming to base their decision on the Evergreen case, the Senators demonstrate a fundamental misunderstanding of the role of the Judge in our legal system and have done a disservice to the citizens of this state.

Queens County Bar Association

90-35 148th Street, Jamaica, New York 11435 ● Tel 718-291-4500 ● Fax 718-657-1789

REPORT OF THE NOMINATING COMMITTEE

The Nominating Committee of the Queens County Bar Association, after due and timely notice, in accordance with the provisions of the By-Laws of the Queens County Bar Association, have nominated the following list of members for the positions to be filed at the coming election at the Annual Meeting of the Association on March 3, 2023.

TO THE QUEENS COUNTY BAR ASSOCIATION:

We, the undersigned members of the Nominating Committee, do hereby respectfully report that pursuant to the provisions of Article VI, Section 3, of the By-Laws of the Queens County Bar Association, we have nominated for the respective offices the following named members:

OFFICERS 2023-2024

For President	MICHAEL D. ABNERI
For President-Elect	ZENITH T. TAYLOR
For Vice President	KRISTEN J. DUBOWSKI BARBA
For Treasurer	JOSHUA R. KATZ
For Secretary	JOEL SERRANO

FOR FOUR MEMBERS OF THE BOARD OF MANAGERS FOR A TERM OF THREE YEARS (expiring May 31, 2026)

DESIREE CLAUDIO
RUBEN DAVIDOFF
MARK L. HANKIN
ESTELLE J. ROOND

FOR ONE MEMBER OF THE BOARD OF MANAGERS FOR A TERM OF THREE YEARS AS IMMEDIATE PAST PRESIDENT (expiring May 31, 2026)

ADAM M. ORLOW

NOMINATING COMMITTEE

Gregory J. Brown	Joseph F. DeFelice	Richard M. Gutierrez
David Louis Cohen	Gregory J. Newman	Jeffrey D. Lebowitz
Jennifer M. Gilroy-Ruiz	Paula Pavlides	Violet E. Samuels

The following members have been designated by petition, pursuant to the By-Laws of the Association, as candidates for election to the office of members of the Nominating Committee to serve for a period of three years (expiring May 31, 2026)

JOSEPH CAROLA, III	DEBORAH M. GARIBALDI	MICHAEL KOHAN

THE ANNUAL MEETING of the Queens County Bar Association will be held in the Bar Headquarters Building, 90-35 148th Street, Jamaica, New York on FRIDAY, MARCH 3, 2023, at 4:00 P.M. The election of officers and Managers will take place at that time, together with such other business as may regularly come before the meeting. **SINCE NO INDEPENDENT NOMINATIONS HAVE BEEN FILED WITHIN THE TIME LIMITED BY THE BY-LAWS, THE ELECTION WILL BE PRO FORMA.**

Dated: Jamaica, N.Y.
February 11, 2023

Queens County Bar Association

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Real Property Committee presents a ZOOM CLE

LITIGATING ADVERSE POSSESSION AND EASEMENTS

Thursday, March 2, 2023 • 1:00 pm - 2:00 pm

Sponsored and Presented by:

Richard Apat, Esq.
Partner, Vishnick McGovern Milizio LLP

Etan Hakimi, Esq., *Moderator*
Co-Chair, Real Property Committee
Managing Director, Mitra Hakimi Realty

Vishnick McGovern Milizio LLP
Attorneys at Law

Mitra Hakimi - Realty Group -

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Application for Renewal has been filed and is currently pending.

Registration Form

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Name:_____ **Email:**_____

Must Register & Pay by March 1st to receive ZOOM access.
WWW.QCBA.ORG or EMAIL: CLE@QCBA.ORG
No Refunds/credits if registration is not canceled by March 1, 2023.

Making A Big Splash

- throwing a party snobbish guests could talk about

a human interest story

BY LEONARD L. FINZ

As winter comes with its snow and frosty winds, many of us pine for the warm and sunny climate of Florida. At least, I do-and you? All of which reminds me of the special times my dear late wife and I would pack our two children into our car, loaded with goodies for them, and head straight for I-95 South.

And when the tires made solid contact with the New Jersey Turnpike, we all experienced the joyous feeling that we were finally on our way to sunshine and warm breezes.

Driving for twelve hours with the usual brief rest stops, we crossed the state line into South Carolina (fictitious State), and to our overnight destination. After checking into a motel, we had dinner at a recommended food emporium, returned to our room, and put the children to bed.

During that time frame, I was writing an article that addressed the proposed initial civil rights legislation that was yet to be finalized by congress. As part of my research, I asked the motel manager if there were any properties reminiscent of the pre-Civil War South in the vicinity. To which he replied, "Well, there is the old Ramsey Plantation (fictitious name) just a few miles out from here. Buck Ramsey (fictitious name) lives there with his third wife and three children."

"*Interesting*," I thought. So, I started to do some research: I learned that Buck's grandpappy was the master of the 500-acre Ramsey Plantation in the 1800's and who owned hundreds of slaves, there, to pick cotton. That after Lincoln's Emancipation Proclamation, issued on January 1, 1863, the plantation was converted into a farm and ranch, but that the 25,000 square foot mansion with its dozens of majestic rooms was still intact.

So, who was Buck Ramsey? I learned that he was a pompous, arrogant, full of himself, bigoted, egotistical zillionaire who ruled the small town he lived in as if he was the king of the realm. Self-centered, imperious, greedy, gross, a blustering braggart, are just some of the negative adjectives that described him. Yep, obviously he was not an aw- shucks kind of guy. And not the kind you'd like to have a beer with!

Despite his irritating and obnoxious manner, but having been the beneficiary of a huge inheritance, he became the owner of three of the most money-making car dealerships in the State. And notwithstanding his very profitable enterprise, Buck Ramsey still operated the old plantation as a farm and ranch with dozens of cows and horses. It was a strategic move to receive the lowered tax benefits for those who "use their property for agricultural purposes."

Having set out Ramsey's repulsive personality and background, my memory is triggered to an exciting human-interest story that I will share. Are you ready? If your answer is yes, here it is…

I am told that Buck Ramsey hosted an over-the-top elaborate party for one hundred snobbish guests. It was to take place around his huge Olympic-sized pool. He engaged the finest caterer and booked Jay Harmon (fictitious name), and his fourteen-piece orchestra, one of the top high-society musical ensembles in Manhattan, to play at poolside. Harmon also had his own network radio show on a popular New York station. While there were many high-quality bands in the nearby big Southern city that he could have engaged, he would settle for nothing but the best, and was prepared to pay handsomely. And hiring a big-name New York City society orchestra headed by the famed Jay Harmon, is what he wanted so as to further impress his moneyed Southern guests. In fact, Ramsey even had the orchestra flown to his estate on one of the jet planes he owned.

In order to feature the orchestra, Ramsey had an elaborate elevated wood stage erected with ascending levels situated at the very edge of the pool where Harmon's fourteen-piece orchestra would be positioned and perform.

All was going beautifully well for the first hour or so with guests on the lavish poolside, decked out in designer formal attire, having cocktails under the stars. Sumptuous delicacies were offered by crisply uniformed servers as the orchestra led with the baton of Jay Harmon played the popular songs featured in the latest Broadway musicals, in addition to other popular standards.

Suddenly, a piercing voice about thirty feet from the orchestra, rang out. It was Buck Ramsey shouting, "Hey Jay, stop the music. Jay, stop the music! I wanna go up and lead the band!"

Harmon was totally startled. "*What is this guy up to?*" he kept repeating to himself. Within seconds, Ramsey trotted up to the makeshift bandstand and unceremoniously grabbed the baton from Harmon's hand. Harmon and the musicians were mystified and unnerved as to what was happening. Within seconds, the music faded and came to a stop.

Those guests dancing, and those seated were a bit shocked, but broke out in laughter. They were all too familiar with Buck Ramsey's usual clownish shtick and bullish behavior.

"Come on you guys, give me some hot music. I wanna lead the band," he blurted out repeatedly into the microphone.

Jay Harmon and every musician in the orchestra had a puzzled look combined with open-mouthed expressions that one would expect to see on a deer facing a car with bright headlights.

Getting no reaction from Ramsey's crude and loud cry that he wanted to play "hot music," Ramsey, kept stomping his right foot onto the first tier of the makeshift bandstand in a fast, pounding, and rhythmic pattern. "C'mon you guys, gimme the hot beat," he kept repeating, "Yeah, gimme the hot beat!"

Suddenly there was a crackling noise coming from the first rung of the elevated stage. Being assaulted repeatedly by Ramsey's foot, the timber under him collapsed. Within a millisecond, Buck Ramsey was tossed into the pool **MAKING A BIG SPLASH**. He wanted to throw a ***PARTY HIS SNOBBISH GUESTS COULD TALK ABOUT…***

Somehow, he got his wish!!

END OF STORY

Leonard L. Finz passed away on Wednesday, February 1 at age 98. He was a former New York State Supreme Court Justice, (Queens County); a decorated WWII Veteran (1st Lt., Field Artillery, Pacific War Zone, Philippines); inducted into the prestigious U.S. Army OCS Artillery "Hall of Fame"; and on July 23, 2022 inducted into the elite U.S. Army OCS "Hall of Fame" by order of the United States Department of Defense; the author of four published thriller novels; Peer-Reviewed as "One of America's preeminent lawyers". He was an active member of the QCBA for 68 years and regular contributor to the Queens Bar Bulletin; he submitted this final article a few weeks prior to his death. Judge Finz was the founder of Finz & Finz, P.C.

Have memories of Judge Finz?

Please send your thoughts and remembrances to jriegel@qcba.org **for inclusion in a special tribute in an upcoming edition of the *Queens Bar Bulletin*.**

The Practice Page

Converting Dismissal Motions To Summary Judgment

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

CPLR 3212(a) is clear that a party may not make a motion for summary judgment unless issue has been joined in an action. After all, carts are not supposed to be put before horses. But one thing that is consistent about law is that it often provides for exceptions. In fact, courts may entertain summary judgment prior to the defendant's service of an answer under three related circumstances, and under a fourth circumstance unrelated to the others. We attorneys and judges can appreciate the exceptions, though the mind of the horse might not be as known.

The three related circumstances all arise out of CPLR 3211 — the statute governing pre-answer motions to dismiss. Summary judgment is not available prior to a defendant's answer unless a CPLR 3211 motion is made to dismiss an action, for one or more of the several potential defenses set forth in the statute. Once the CPLR 3211 dismissal motion is made, the three related circumstances permitting its treatment as a motion for summary judgment may potentially arise. Indeed, CPLR 3211(c) states that upon the making of a pre-answer motion, "either party may submit any evidence that could properly be considered on a motion for summary judgment." That language is what authorizes dismissal motions to *morph* into ones for summary judgment.

Procedurally, the first of the three related circumstances where the dismissal motion may be treated as summary judgement is contained in CPLR 3211(c): "the court, after adequate notice to the parties, may treat the motion as a motion for summary judgment." This presumes that the court has examined the parties' papers either before or after the return date and determined the action proper for summary judgment. Whether before or after the return date, the court is under an obligation to give notice to the parties of its intention to treat the motion as one for summary judgment (*Mihloven v Grozavu*, 72 NY2d 506). The purpose of such notice is to afford the parties the due process opportunity to submit papers, or perhaps *additional* papers, addressing the issues and proof of the motion under the unique burdens and standards of summary judgment, which are different from motions to dismiss. However, formal notice is excused by decisional authority if the dispositive issue is strictly a matter of law that is argued by the parties (*Id.*). Whether a CPLR 3211 dismissal motion should be treated as a summary judgment motion is a determination that cannot be unilaterally forced upon the court by means of a premature summary judgment motion (*SHG Resources, LLC v SYTR Real Estate Holdings LLC*, 201 AD3d 610) or by cross-motion (*New York Bus Operators Compensation Trust v American Home Assurance Co.*, 71 Misc.3d 630).

The second circumstance, which is not actually identified in any statute, is when the parties jointly request that the motion be determined as summary judgment (*Hendrickson v Philbor Motors, Inc.* 102 AD3d 251). Under this scenario, the court need not advise the parties of its intentions with respect to summary judgment.

The third circumstance is when the parties, through their conduct in prosecuting or defending the dismissal motion, lay bare their respective proofs as to "deliberately chart a summary judgment course" (*Id.*). This exception is nuanced, because it requires the court to review the papers and infer, based upon the parties submissions and proof, that they are, in effect, treating the motion in summary judgment terms. Under this circumstance, the court should state in its decision/order its determination that the parties have charted a summary judgment course, and decide the motion accordingly.

The fourth means for raising summary judgment prior to the joinder of issue, which is unrelated to the other three, is when a plaintiff files a motion for summary judgment in lieu of a complaint under CPLR 3213. This procedure is limited to claims based upon an instrument for the payment of money only, or those made upon existing judgments (e.g. *Shulz v Barrows*, 94 NY2d 624).

Absent these exceptions, summary judgement must abide at least the joinder of issue.

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

Allen E. Kaye

Immigration Questions

Biden Administration Launches New Private Sponsorship Program for Refugees

Joseph DeFelice

On January 19, the Department of State announced the creation of Welcome Corps, a new private sponsorship program that allows people in the U.S. to help welcome refugees arriving through the U.S. Refugee Admissions Program (USRAP) and support their resettlement and integration into the United States. Under the program — reminiscent of a long-standing system in Canada — organizations or groups of at least five individuals will have the opportunity to sponsor refugees if they raise $2,275 per refugee, pass background checks, and submit a plan about how they will assist the newcomers.

Approved private sponsors will assist in resettlement for at least 90 days after a refugee's arrival, helping newcomers access housing and other basic necessities, such as food, medical services, education, and public benefits for which they qualify. In the first year of Welcome Corps, the Department of State will seek to mobilize 10,000 Americans to step forward as private sponsors to assist in the resettlement of at least 5,000 refugees.

Welcome Corps was launched amid low refugee resettlement numbers in recent years. In all of Fiscal Year 2022, the United States resettled only 25,465 refugees – roughly 80% short of the administration's FY 2022 ceiling of 125,000. However, the U.S. welcomed over 100,000 humanitarian migrants during FY 2022 via temporary humanitarian parole programs, including those that incorporated a private sponsorship element.

In a press release, Secretary of State Antony Blinken said that "the Welcome Corps will build on the extraordinary response of the American people over the past year in welcoming our Afghan allies, Ukrainians displaced by war, Venezuelans, and others fleeing violence and oppression. By launching the Welcome Corps, we build on a proud tradition of providing refuge and demonstrate the spirit and generosity of the American people as we commit to welcoming refugees in need of our support."

Biden Administration Launches Process that Allows Noncitizens to Report Labor Violations Without Fear of Retaliation

On January 13, the Department of Homeland Security (DHS) announced a new process by which noncitizen workers who witness labor violations can report them without fear of deportation or immigration enforcement consequences. DHS said that the new process would allow noncitizen workers to assert their rights and report violations without fear of immigration-related retaliation via grants of deferred action. Secretary of Homeland Security Alejandro Mayorkas said that "workers are often afraid to report violations of law by exploitative employers or to cooperate in employment and labor standards investigations because they fear removal or other immigration-related retaliation by an abusive employer."

To apply, migrant workers must show well-documented proof of their employment history and exploitation, including demonstrating why they need DHS support and providing proof of identity. If approved, those cooperating with a labor investigation can legally stay in the country temporarily for two years, subject to termination at any time, and apply for authorization to work during that period. They may also be eligible for subsequent grants of deferred action if a labor agency has a continuing investigative or enforcement interest in the matter identified in their original letter supporting DHS use of prosecutorial discretion.

The latest guidelines build upon an October 2021 memorandum, in which Secretary Mayorkas permitted the agency to consider requests for deferred action protection for migrants supporting labor enforcement investigations.

At Least 600 People from Venezuela, Nicaragua, Cuba, and Haiti Have Been Approved to Come to the US Under Recently Announced Parole Program

A January 13 CBS News report highlighted that at least 600 people from Venezuela, Nicaragua, Cuba, and Haiti had been vetted and approved to come to the United States under the recently announced parole program. The program — launched on January 5 — allows up to 30,000 individuals per month from these four countries to apply to come to the U.S. under parole. Under the new parole program, any individual with lawful status in the U.S. can serve as a sponsor for nationals of these countries as long as they file declarations of financial support for prospective beneficiaries and pass required background checks. The report noted that U.S. Citizenship and Immigration Services (USCIS) has received thousands of applications from prospective sponsors since the January 5 announcement.

The report also noted that according to an anonymous source from the Department of Homeland Security (DHS), irregular border crossings have declined since the measures were announced. According to the source, U.S. border agents are averaging 4,000 daily migrant apprehensions, down from a daily average of approximately 7,000 in November 2022.

Irregular travel by sea, however, has not diminished. On January 12, the US Coast Guard intercepted 177 Cuban migrants and returned them to their nation. The coastguard says that since October 1, it has intercepted and returned more than 4,900 Cubans at sea, compared with about 6,100 in the 12 months to September 30. In that regard, Secretary of Homeland Security Alejandro Mayorkas stressed that "Cubans and Haitians who take to the sea and land on U.S. soil will be ineligible for the parole process and will be placed in removal proceedings." He also warned that "irregular maritime migration aboard unseaworthy or overloaded vessels is always dangerous, and often deadly."

The U.S. and Mexico Sign Memorandums of Understanding on Labor Mobility and Protection of Migrant Children

On January 18, Mexico and the United States signed two memoranda of understanding (MOUs) on labor mobility and protection of unaccompanied minors in a situation of mobility. The MOUs are the result of a conversation last week between President Biden and Mexico's President Andrés Manuel López Obrador.

The first MOU, titled Labor Mobility and Protection of Participants in Temporary Foreign Worker Programs, is designed to strengthen the labor rights of Mexican workers in the United States. In it, the two governments committed to strengthening their joint efforts to

1. Ensure ethical recruitment of Mexican non-immigrant workers with H2 visas;
2. Collaborate to protect their wages and working conditions; and
3. Further facilitate the availability of H-2A visas for Mexicans.

In addition, this MOU includes quarterly meetings to prevent, monitor, and report violations of labor rights, such as fraud, abuse, and discrimination, and to stop measures that companies can take against those who file complaints for rights violations.

The stated goal of the second MOU on unaccompanied minors in a situation of mobility is to create bilateral mechanisms that strengthen the protection mechanisms of migrant children by Mexican and U.S. authorities. The goal is further to avoid contact between unaccompanied minors and criminal human trafficking and smuggling networks. Due to the transnational nature of migration, the MOU also seeks to assist other countries of the region in promoting international cooperation as part of their policies of protection for minors.

US Secretary of Labor Declares that America Needs Immigrants to Tackle Labor Shortage

On January 18 — during the World Economic Forum at Davos, Switzerland — U.S. Secretary of Labor Martin Walsh stressed that the United States needs immigrants to tackle the labor shortage. He said that "a lack of workers is the biggest threat to the U.S. economy in the long term and immigration is key to addressing the shortfall." Secretary Walsh added that students from around the world come to America to get educated but

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The Extraordinary Life of Judge Leonard L. Finz

He Will Be Remembered For Eternity

August 17, 1924 to February 1, 2023

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After four months of a grueling West Point-like course, only 32 graduated, Judge Finz being one of them, the other 68 dropped for various reasons. Being commissioned a 2nd Lieutenant in the Field Artillery was, as Judge Finz stated (except for his late wife of almost 68 years, children, grandchildren, and great grandchildren), "the greatest day of my life." Trained in beach landings, he boarded a troop ship heading for Okinawa and assigned to the first wave attack force upon the Japanese mainland where 400,000 Japanese were dug-in with Kamikaze aircraft support. Within days of the planned U.S. attack, atomic bombs were dropped and Japan surrendered. He was then shipped to Leyte, Philippines, and ordered into the office of his commanding officer, a full Colonel, who told him that more than 50 GIs were prisoners in the stockade waiting for months to be court-martialed for various crimes. Since no Judge Advocate General (JAG) lawyers were on the island, the commanding officer wanted to assign Judge Finz to the elite JAG branch (made up of college and law school graduates licensed to practice law) with the title of "Defense Counsel" to defend the GI prisoners at individual court martial trials. Despite informing his commanding officer that he never went beyond high school, the commanding officer pressed that he observed how Judge Finz interacted with others, that he read his personnel file, stressing he could do the job "since you're a damn good officer." There were dangers the commanding officer warned: Japanese snipers who refused to surrender were hiding in jungle caves, and Judge Finz would have to snake through jungle areas to locate witnesses in remote villages while driving in an open jeep armed only with a .45 caliber sidearm. Judge Finz (although only age 20) accepted the mission, and within six months, he defended every accused GI successfully. Further, archive research establishes that he was the only one out of 16 million Americans in uniform during WWII to have ever been assigned to JAG as Defense Counsel with only a high school diploma. For such "Distinguished," "Meritorious" and "Outstanding" service, Judge Finz was decorated with the coveted U.S. Army Commendation Medal at a formal flag and rifle ceremony held at the WWII Memorial in Washington, D.C. by order of the Secretary of the Army. He was also presented with the American flag that was flown in his honor for one full day atop the Capitol of the United States, in addition to being pinned with a half-dozen other military medals.

Promoted to 1st Lieutenant and discharged in 1946 after almost four years of active duty, he used the GI Bill to earn a Bachelor of Arts and law degree from New York University (NYU), where he was elected president of the entire law student body. On the lighter side, he returned to entertainment as a singer and songwriter under contract with Music Corp. of America (MCA), then the largest theatrical agency in the world, later the forerunner of Universal and Comcast. As vocalist, he recorded many songs under the stage name "Lennie Forrest," some recordings of which were charted by Billboard and Cash Box critics as "picks," thus propelling him on a national tour to many TV, radio, and nightclub venues throughout the United States, where he also performed with the Tommy Dorsey Orchestra. In addition, Judge Finz auditioned for the lead Hollywood role in the remake of "The Jazz Singer," which came down to two choices, Danny Thomas and Lennie Forrest. Thomas ultimately got the role. Judge Finz was also cast on the NBC soap opera "Another World."

Returning to law, he was active in politics. Judge Finz ran for the New York State Senate, United States Congress and was appointed Queens County campaign chairman for John F. Kennedy, Robert F. Kenney, Lyndon B. Johnson and others. He was elected the youngest New York City Civil Court Judge at the time, and later elected a New York State Supreme Court Justice. Leaving the bench, he became a partner in the firm of his former law professor. A top-tier trial lawyer, Judge Finz won record settlements and verdicts in Brooklyn, Queens, Nassau, Suffolk, Westchester, Rockland, Schenectady, Albany, Syracuse, and other areas of New York State, in addition to New Haven, Hartford and other jurisdictions. In all, he won countless millions of dollars for his clients.

As a former Queens College professor, he taught courses in "Business Law" and "Law in Response to Social Change." As a law school professor at New York Law School, he taught courses in "Trial Advocacy" and "Law and Medicine." He also served as a faculty member of the National Judicial College in Reno, Nevada, where he taught courses on "Medical Malpractice" and "Tactics in the Courtroom." Judge Finz also received many awards as an honoree of charitable, civic, professional, political, fraternal, veterans, religious, and other organizations. A prolific writer, Judge Finz wrote many articles that have been published in a host of publications. He wrote on such subjects as "Aiming for the Million Dollar Verdict," "Justice for DES Victims," "The Expert Witness in Medical Malpractice Litigation," "Accident Reconstruction – An Art and Challenge," "Art of the Opening Statement," "Summation – The Fire Power of Words," "The High-Low Contract – Where Both Sides Win" (the creation of the high-low contract by Judge Finz is still utilized in many forms throughout the state and national court system), and more.

After his retirement, Judge Finz authored four published thriller novels and became a motivational speaker with energy that had no limits and defied his age. He also starred in YouTube videos on numerous aspects of the law and continued to confer with Finz & Finz, P.C. trial lawyers and staff on legal issues and courtroom strategy, including providing advice on the prosecution of medical malpractice and personal injury cases.

In early 2022, Judge Finz was inducted into the U.S. Army Artillery OCS Hall of Fame, a select group of former artillerymen who demonstrated heroism, exceptional achievement, and outstanding contributions to the Nation. In July 2022, he was inducted into the exclusive and prestigious U.S. Army OCS Hall of Fame, earning a spot alongside such dignitaries as former Senator Bob Dole and former Commander of the U.S. Army Tommy Franks. During his induction ceremony, Major General John F. Hussey of the U.S. Army Reserve recognized Judge Finz for his superior combat leadership and distinguished public service. Also present during the induction were State Senators John Brooks and Anna M. Kaplan, and Assemblywoman Gina Silliti, who presented Judge Finz with resolutions adopted by the New York State Legislature honoring his achievements and devotion and contributions to the welfare of New York State. As further recognition of his extraordinary military service during WWII, Judge Finz was honored by having his military biography filed as a permanent record with the United States Library of Congress in Washington, D.C., which has now been archived and enshrined there for eternity.

With his extraordinary background and personal and professional achievements, Judge Finz was regarded as a living legend who was affectionately admired as a preeminent legal scholar, a loving grandfather, great grandfather, father, friend and mentor.

Have memories of Judge Finz?

Please send your thoughts and remembrances to jriegel@qcba.org for inclusion in a special tribute in an upcoming edition of the Queens Bar Bulletin.

Immigration Questions

Secretary of Labor Declares that America Needs Immigrants to Tackle Labor Shortage

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risk being sent back home if they fail to secure a work visa. "There are jobs available right now in the U.S. that we don't have enough people for," he said. "The threat to the American economy long-term is not inflation, it's immigration," he said. "It's not having enough workers."

Secretary Walsh's remarks come amid a severe labor shortage in the United States. In the last fifteen months, job vacancies have consistently surpassed 10 million while the number of hires averages only 6 million. In other words, there are only 60 workers available for every 100 job openings. Moreover, in the U.S., there are *nearly two job openings for each unemployed worker.*

BY ALLEN E. KAYE AND JOSEPH DEFELICE

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

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Flying South For The Winter

BY FRANK BRUNO, JR.

Some Elder Law odds and ends. First up, the Snowbird Client-a person who vacations in or moves to a warmer client during cold weather, specifically a person that migrates from colder New York to warmer Florida or southern locales typically during the winter. This term has been around for 100 years first being used in 1923 to describe seasonal workers and by 1979 was commonly used to reference retiree tourists who flocked south. When you practice Elder Law in New York you learn early on that a significant portion of your clientele travels and you learn Florida's southeast coast geography real fast. Many of our clients either leave New York, move South with their kids residing in New York, and/or the clients still live part-time in New York. The pattern has also changed slightly where the adult children are moving down south first and pulling their parents later. In writing this article, I found out that some find the word snowbird has a negative connotation and prefer to be tabbed a "Winter visitor" although I have not quite migrated my old habit to this new labeling.

While some lawyers practice law in both states, most of us in New York–or Florida–recognize the many differences between the two states. Many decide they can only provide excellent counsel by practicing law for their home state and bringing in counsel in the other state as appropriate. Oftentimes, when a client comes to their New York Elder Law Attorney, there is a possibility of moving to Florida later down the line. Likewise, the Southern Elder Law Attorney might plan for the possibility of their client moving back up to New York to be near family. With this in mind, there are paths for the conscientious attorney to pursue. There are opportunities for multi-state planning and ways to avoid unintentional issues for a client who moves from one state to another. While multi-state planning is a complicated issue, there are a few tips that have held over twenty years of clients moving to my colleagues in Florida. (The first tip is that these are clients whom I am glad to "lose," because they are moving for the realization of a lifelong plan or for beautiful weather or being closer to family, the number one determinant of higher quality of life!) If you have a client who splits their time between Florida and New York, make sure you inquire about residential status and the attorneys in either state are aware of the "snowbird" status and make sure they prepare their documents in a way that ensures all of your bases are covered should you decide it makes sense to make a move. Make Wills self-proving in both Florida and New York. Unlike New York, Florida law requires the Testator/Testatrix to sign the affidavit along with the witnesses. This, added to the New York affidavit, does not affect its use in New York while potentially saving the client additional cost and delay if the Will requires administration in Florida.

Allow the Health Care Proxy to wear a Florida hat. In Florida, the term "Proxy" references the default agent if the principal fails to appoint their health care agent. In Florida, they use the term "Surrogate" instead of "Proxy" to mean the appointed person. Occasionally, New York Health Care Proxy Designations create unnecessary confusion among healthcare providers. Despite "full faith and credit" of legal documents, practically, we can draft the client out of this problem. For your snowbird client, consider adding one sentence to your Health Care Proxy form: "This Health Care Proxy designation shall also act as a Health Care Surrogate Designation pursuant to Florida Statutes, Chapter 765, when the principal is in the State of Florida." Whether theoretically necessary or not, in practice, this helps eliminate issues.

Florida Elder Law Attorneys can use planning strategies to assist clients with Medicaid eligibility that are not accepted in New York. Some of these strategies need to be (or should be) enumerated in the Power of Attorney in case the agent needs to protect the principal's assets against the cost of long-term care. General grants of authority are often insufficient. Consider the following language: to "to prepare, sign, and amend a trust agreement on my behalf, authorizing a trustee to receive my income so as to allow for eligibility for Medicaid even though my income may exceed the state's applicable income limit including but not limited to a qualified income trust." or "I hereby waive any self-dealing prohibition that may apply to my attorneys-in-fact so that my attorneys-in-fact may enter into transactions with themselves." Adding even these basic additions for snowbird clients can have tremendous benefits.

For clients who are already likely to receive care in Florida, supplementing language is not enough. At that point, Florida counsel is required. Whether you are a New York resident who chases the best weather, or a Florida resident pondering a move back up North, discussing plans, reviewing documents can ensure the client has a solid strategy in place should there be a move in the future.

Second up, Elder Law attorneys handle a number of related and unrelated areas of practice all of which affect a senior population as compared to other attorneys that handle a subject irrespective of client age. As an example, a family law or criminal law attorney handles a specific field of study or subject matter- misdemeanor and felonies or custody, neglect and support and represent clients irrespective of age. An elder law attorney deals with issues that disproportionally affect an elderly demographic across a broad spectrum of legal needs. It combines knowledge of estate planning, long-term care options, guardianship, advance directives, end of life issues, Medicaid and ultimately may involve the Surrogates' Court in some way.

Death happens at any age and always tragic however statistically the average death age is older and so are the people that think of these things. Meaning, seniors come to me to prepare Wills and Trusts and come to an elder law attorney when thinking of end-of-life decisions. Unfortunately, they are the same population that passes away soon thereafter. Same for Article 81 guardianship practice - there is no age minimum or restriction rather the age of the litigant skews older as well. More elderly persons face the ravages of dementia, Alzheimer's and incapacity than do younger people, not exclusively but mostly. As part of my practice, regularly, I am appointed or involved in guardianship matters and disproportionally matters are abated due to death or soon after adjudication. Death although normal never becomes routine with the field of guardianship and elder law being on the periphery of an estate practice.

Third, here is a quick Surrogate Court overview. The Surrogate Court Clerk's offices are broken down into four departments: Probate (Appointment of an Executor when there is a Will); Administration (Appointment of an Administrator when there is no Will); Accounting (Issues involving distribution of the Estate, "show me the money!"); Guardianship (17a - dealing with minors, personally and financially); and Miscellaneous (various topics: locating a Will, entering an apartment, opening a safe deposit box, removing fiduciaries, etc.) Proud plug - The Young Lawyers Committee with the Surrogate's Court Committee has an upcoming program over a four-week period titled "The ABCs of Estates" that will provide a solid framework and understanding of the estate process and the work of the Surrogate's Court. The Hon. Peter J. Kelly, Surrogate, Queens County will be present each week, live on camera participating in the program, providing insight, guidance and best practice tips to navigate the Court process.

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.

Report on the NYSBA Annual Meeting

BY DAVID LOUIS COHEN, ESQ.

Vice President, 11th Judicial District, New York State Bar Association

The Annual Meeting of the State Bar was held, as an in-person event, at the Hilton Hotel in New York City on January 18-21. The following week, a number of virtual Section meetings and CLE programs were presented. This was the first attempt at an in-person Annual Meeting since the pandemic. The participation was less than pre-pandemic levels, but nonetheless, a large number of members attended the programming and the House of Delegates meeting. As we get further from the scourge of the pandemic, I hope members will become more comfortable with in person events and participation will increase.

The Executive Committee of the State Bar met in person and considered a number of important issues. A report from the Committee on the Constitution concerning Gubernatorial Succession and the appointment process to fill a vacancy in the Office of Lieutenant Governor was presented. The Executive Committee recommended that the House of Delegates adopt the report as Association policy.

A number of legislative proposals dealing with virtual proceedings were advanced by the Committee on the CPLR. The proposal to amend CPLR 4013, to permit virtual proceedings, without all party consent, was the most controversial. After much discussion it was agreed that criminal matters would be exempt. With that amendment the measure was approved by the Executive Committee. This enables the State Bar to lobby the legislature on behalf of this proposed legislation.

The Task Force on Racism, Social Equity and the Law presented its final report. The Report includes a history of racial discrimination and the impact of structural racism on people of color. The Report then goes on to recommend a number of areas where legal action should be taken to remedy the effects of structural racism. I suggest that if you are interested you go online and read the Report as it contains an extensive historical discussion of the legal underpinnings of racism and a number of proposed areas where legal or legislative action can be commenced to address these issues.

An informational report from the Task Force on Mental Health and Trauma Informed Representation was presented. No approval was required as the final Report will be presented for consideration at a subsequent meeting.

The Task force on Emerging Digital Finance and Currency also presented an informational report. I recommend to those of you with an interest in this emerging area of practice go online and follow these informative reports.

The House of Delegates, the policy making body of the State Bar, met in person on January 20th. The Nominating Committee presented the slate of officers for the 2023-24 year: President Richard Lewis; President Elect Dominick Napoletano; Treasurer Susan Harper and Secretary Taa R. Grays.

President Sherry Levin Wallach gave her Report highlighting the activities of the Association during the past year. President Wallach announced the creation of a Special Committee on the Selection of Judges to the Court of Appeals. This was in response to the controversy surrounding the State Senate's handling of the nomination of Judge LaSalle.

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Report on the NYSBA Annual Meeting

BY DAVID LOUIS COHEN, ESQ.

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She also highlighted the five new Task Forces she established: Task Force on Mental Health and Trauma Representation; Task Force on the US Territories dealing with the issue of the Insular cases and lack of US citizenship for the residents of US Territories; Task Force on the Modernization of the Criminal Practice; Task Force on the Ethics of Local Public Sector Lawyering; and the Task Force on Emerging Digital Finance and Currency.

The House was addressed by the President of the American Bar Association, Deborah Enix-Ross, who described herself to me as "a Queens Girl", having been born and raised in St. Albans.

The House, after presentations and discussions, adopted as Association policy the Report of the Committee on the New York State Constitution; the Task force on Racism, Social Equity and the Law; and the Report of the LGBTQ Law Section supporting the OCA Handbook on using Inclusive Language and Pronouns.

If you would like more information or details on anything mentioned in this article, please contact me at **david@davidlouiscohenlaw.com**.

Working Group on NY Courts' Pandemic-Related Practices Calls for Investment in Technology, Increased Staffing

NEW YORK – Acting Chief Judge Anthony Cannataro and Acting Chief Administrative Judge Tamiko Amaker announced on Wednesday, February 15 the release of a report from the Commission to Reimagine the Future of New York's Courts' Pandemic Practices Working Group's (PPWG). PPWG's report calls for, among other things, the expansion of remote proceedings, enhancement of the court system's technological capacity and an increase in court staffing. These measures will improve the delivery of justice going forward and better enable the courts to serve New Yorkers in the event of another public health crisis or other emergency. The report is the culmination of PPWG's extensive study of pandemic practices and policies implemented by the New York State courts as well as other jurisdictions.

Established in May 2022, PPWG is composed of a distinguished group of judges, lawyers, court administrators and others led by Judge Craig J. Doran of the Seventh Judicial District. The Working Group held all-day public hearings in Albany, New York City and Buffalo, conducted 30 remote listening sessions, heard testimony from over 300 people and organizations and reviewed thousands of pages of documents. Its mission was to examine the court system's response to the most disruptive event in its history, and evaluate which pandemic-related procedures worked well, which did not, and which should be retained and built upon going forward.

In addition to expanding and encouraging the use of virtual court proceedings, PPWG's proposals include:

- Bringing greater transparency and consistency to the use of virtual proceedings
- Improving the functioning of remote proceedings
- Expanding alternatives for court users to access virtual proceedings and other court resources
- Improving accessibility for people who require special accommodations
- Enhancing systems for communicating with and supporting court users, including revamping the Court System's website
- Ensuring that there is appropriate public access to virtual proceedings
- Expanding the use of electronic filing
- Investing in locally appropriate modernization projects that will permit courthouses to better support virtual, hybrid and in-person proceedings
- Improving training and technical support for judges, court staff and court users
- Developing a detailed plan for responding to a future pandemic or other court disruption and a system for testing, refining and deploying that plan
- Appropriating and earmarking supplemental funds for court modernization and emergency preparedness
- Creating a permanent working group of stakeholders, external experts and internal decision-makers to help implement the above recommendations and identify future needs

"One of the key lessons of the pandemic is that, going forward, we must be prepared for unforeseeable events that threaten to impede access to justice for the many who look to our courts for relief," said Judge Cannataro, calling the report a blueprint for the future and noting that a critical step will be restoring staffing to pre-pandemic levels. "Our judges and professional staff proved incredibly nimble when COVID caught us by surprise in early 2020 and keeping the courts functioning was a gargantuan achievement. As we work to enhance the delivery and quality of justice for all New Yorkers, I am grateful for the guidance provided by Judge Doran and the Working Group members."

Judge Amaker, who served on the Working Group in her capacity as Deputy Chief Administrative Judge for Management Support, said, "Members of the group represent many different perspectives but share the common goal of doing their best to ensure access to justice at all times and under all circumstances. This is a not a report that will sit on a shelf, but a working document and vital reference as we continue to reimagine the future of our courts."

"Having examined the court system's pandemic practices objectively and in microscopic detail, the Working Group's report is a clarion call that there is no going backwards. A fundamental lesson learned from the pandemic was that virtual proceedings, in appropriate circumstances, are a 'win-win' for all concerned. The court system cannot snap back like a rubber band to all pre-pandemic customs, habits and practices. We now know that the expansion of virtual proceedings, and additional investments in technology and staffing, will enhance access to justice, improve the experience of litigants, and save time and money," said distinguished attorney Hank Greenberg, who chairs the Commission to Reimagine the Future of New York's Courts.

"The Working Group reflects the professional, geographic and demographic diversity of our state. By holding three separate public hearings in very different parts of the state, as well as more than two dozen listening sessions attended by individuals in every region and from every viewpoint, the group was able to paint a clear and comprehensive picture of court operations during the pandemic and provide a roadmap for tomorrow and the day after tomorrow," said Judge Doran.

The report also noted that, though the virtual court model adopted out of necessity during the pandemic offered a significant benefit to court users and should be expanded for suitable matters, substantial challenges remain in addressing the needs of those lacking access to technology.

Additionally, with respect to the Working Group's proposal to devise a detailed plan for future emergencies, the report stated that "no plan to address the challenges and opportunities from the pandemic will be effective if there are not enough skilled people to implement it."

Further, the Working Group members in their final report paid tribute to the New York State court system judges and staff whose herculean efforts kept the courts running amid the pandemic, working "long hours, nights and weekends for months to ensure the most critical matters were addressed," also observing that the delay in processing "non-essential" matters "left thousands of New Yorkers effectively shut out of the court system, unable to pursue matters 'essential' to them."

The full report is available at online at https://www.nycourts.gov/LegacyPDFS/press/pdfs/NYCourtsPandemicPracticesReport.pdf

Co-op & Condo Law-Legislative Update

BY GEOFFREY R. MAZEL, ESQ.

As the legislative sessions in the New York City Council and New York State Legislature heats up, there has been a flurry of legislative initiatives that would material effect Co-ops if passed and enacted into law. In the New York City Council, February 2, 2023 saw the introduction of several bills that could have long lasting and profound impact on the Co-op community. Below is a brief summary of several of these initiatives.

Intro 913 – This legislative introduction was sponsored by Council Member Vickie Paladino. It is a relatively simple piece of legislation and is designed to push back the compliance and enforcement deadlines for Local Law 97 (the Climate Mobilization Act) for a period of seven (7) years from their current stated deadlines.

By way of background, the New York City Council passed Local Law 97 in May, 2019 to great fanfare. The so-called Climate Mobilization Act is landmark legislation requiring extensive retrofits in an effort to address global warming and climate change. This legislation is designed to combat climate change by setting strict caps on carbon emissions from real property and imposing substantial penalties on property owners throughout New York City. The goal of Local Law 97 is to reduce the emissions produced by the city's buildings by 20 percent in 2024; 40 percent by 2030 and 80 percent by 2050.

If a qualified building fails to meet these very difficult carbon reduction thresholds, that building would be subject to severe monetary penalties. In a recent study released by the Real Estate Board of New York, it was estimated that over 13,000 buildings would be subject to over $900,000,000.00 in annual penalties if no efforts were made to reduce carbon emissions. This potential fine is clearly one of the largest potential fines a municipality has ever assessed against its' citizens.

Since the passage of the law, the implementation has been delayed and confusing to Property Owners. In addition, the technology for building retrofits is still in its' relatively early stages. These retrofits are expensive and not reliable. Finally, the success of Local Law 97 is dependent on the electric grid being generated by 100% renewable sources in New York City. The electric grid today is under 20% renewable and its' expansion to 100% will take many years to develop. In light of these circumstances, the Co-op community and other property owners are supportive of the notion of pushing back the enforcement and

I**ntro 915 "Reasons Bill" –** This proposal is the reintroduction of the aptly called "Reasons Bill". A bill of this nature has been proposed at both the City and State levels for nearly a dozen years. Versions of this bill have passed and been implemented in Westchester County in recent years.

Under this bill if a prospective purchaser for a Co-op is not approved.is disapproved, the Board would be required to issue a "mandatory statement" with all of the reasons for withholding its consent, together with a certification by an officer of the corporation, sworn or affirmed under penalties of perjury, that the statement is true and complete. Further, this statement must list the reasons for the denial with "specificity". This statement must convey sufficient information to enable purchasers to remedy deficiencies in their applications and must set forth the number of applications in the last three (3) years received by the corporation, for which the corporation withheld consent, and for which the corporation did not make a decision.

The requirements of this bill are unrealistic and strongly opposed by Co-op Board members throughout the Co-op community. This bill imposes severe and draconian penalties for non-compliance. Failure to comply with any of these requirements would incur statutory damages from $1,000 to $25,000 to each purchaser and seller who commences or joins in an action. The amount of the damages would depend on the scope of non-compliance and the resources of the corporation. The New York City Commission on Human Rights may also initiate investigations in connection with a failure to comply with the requirements and may award additional civil penalties from $1,000 to $25,000. Many in the Co-op community fear that with such tremendous financial exposure in the Co-op application process, volunteer Board members would no longer want to serve on Board of Directors.

Intro 914 "Timing Bill" – This introduction will require a Co-op Board to acknowledge receipt of an application to purchase within ten (10) days of receiving materials, the corporation must provide a written acknowledgement of receipt, and within forty-five (45) days after the corporation first receives any of the required information the corporation must inform the purchaser whether its consent is granted unconditionally, granted conditionally, or denied.

The time for determination may be extended with the consent of the purchaser at any time for no more than fourteen (14) days after a completed application is submitted. Additionally, if a purchaser receives written notice from a corporation that sets out with specificity the ways in which the purchaser's submission did not comply with the list of requirements or a prior notice provided by the corporation, the time will be tolled until the corporation receives additional materials from the purchaser. However, the time period may not be tolled more than three times.

Once again, failure to comply with this law could have devastating effects on the Co-op. First, purchaser may treat a failure to comply with this law as a denial. Thereafter a purchaser or seller may sue the Co-op Board in order determine whether a violation has occurred. The legislation states that for each violation the court may assess statutory damages of $1,000 for failure to provide the corporation's standardized application or acknowledge receipt of the materials; $5,000 for failure to maintain a standardized application; and $10,000 for failure to provide notice of consent or denial within forty-five (45) days.

In addition, the court may award compensatory damages and attorney's fees to the purchaser. The New York City Commission on Human Rights may also initiate investigations in connection with a violation, and may award additional civil penalties from $1,000 to $25,000. These devastating penalties will further disincentivize volunteer from serving on a Co-op Board. This is also an extreme piece of legislation will have no discernible benefit, but will greatly hinder the ability of a Co-op Board to function properly.

Geoffrey Mazel, Esq., is the co-Chairperson of the Queens Bar Association Co-op & Condo Law Committee.

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– Wanda M.

I cannot recommend Etan highly enough. From the very beginning, we charted a sale plan and it worked flawlessly. Etan is extremely knowledgeable in navigating the complexities of selling a home and guided me every step of the way, I had a special situation where timing of the sale was critical. Etan worked exceptionally hard to ensure that we hit our targets. Aside from being an awesome professional. He's just a really nice guy and a pleasure to work with. A truly fantastic experience.

– Richard A.

I became the Executor of my Aunt's estate which included a condo she owned in Queens. Etan was recommended by our estate attorney to be our realtor. He was great from the very beginning! He was always very professional and extremely knowledgeable about the real estate market. I live in New Jersey and he made the difficult task of selling my Aunt's condo in Ridgewood NY an absolute pleasure. He helped me with every aspect of the entire process. With Covid entering the picture, it became a long process and he was wonderful every step of the way. He spent a lot of time answering numerous questions, always returning calls promptly and keeping me updated on different strategies to sell the condo. I would recommend him and his team very highly!

– Joan T.

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- ❑ Part 3 PROBATE: March 22, 2023, 1:00pm – Speaker: Louis Cannizzaro, Esq.
- ❑ Part 4 MISCELLANEOUS: March 29, 2023, 1:00pm – Speaker: Deidre Baker, Esq.

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Administrative Judge
Queens Supreme Court, Civil Term

HON. DONNA-MARIE E. GOLIA
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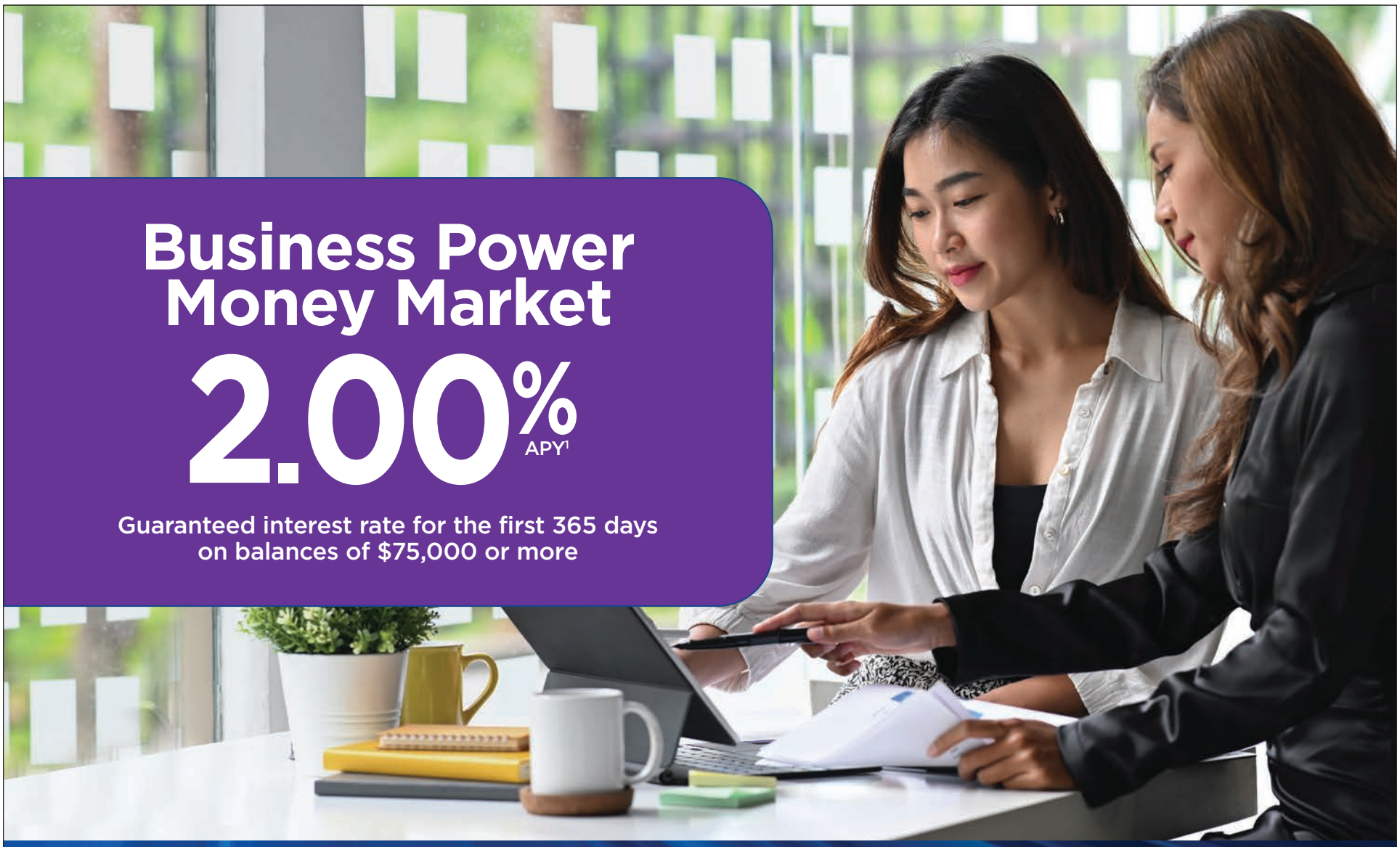

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