

Queens

BAR BULLETIN

Queens County Bar Association | qcba.org | 88-14 Sutphin Blvd., 3rd Floor, Jamaica, NY 11435 | 718-291-4500
February 2025 | Volume 92, No.4



Why the Permanent Co-op Carve-Out Bill Is Essential for New York’s Cooperatives

BY GEOFFREY MAZEL, ESQ.

The proposed Permanent Co-op Carve-Out Bill (NYS Senate S1745), introduced in the New York State Legislature by Senator Toby Ann Stavisky and Assembly Member Edward Braunstein, is a crucial step forward for protecting cooperative housing in New York. This legislation seeks to codify the exemption of cooperative corporations from laws designed to address traditional landlord-tenant relationships, such as the Tenant Protection Act (TPA) of 2019 and the Good Cause Eviction Bill. By doing so, it ensures that cooperatives remain distinct under the law, shielding them from the unintended consequences of regulations that are ill-suited for their unique housing model.

This article will explain why this bill is necessary, the benefits it provides to cooperative

housing, and the compelling reasons why it must be supported.

Cooperatives, or “co-ops,” are fundamentally different from rental housing. In a co-op, residents are shareholders in a corporation that owns the property. Instead of being tenants who rent their units, co-op shareholders hold shares in the corporation, coupled with a proprietary lease granting them the right to occupy their apartment.

This structure is inherently democratic, with residents electing a board of directors to manage the building and make decisions in the collective interest of the shareholders. Co-op boards are fiduciaries, responsible for maintaining financial stability and enforcing the community’s rules.

Unlike landlords, co-op boards do not generate profit from tenants. Instead, they oversee the cooperative’s financial and operational needs, funded entirely by maintenance fees paid by shareholders. This distinct model is not a traditional landlord-tenant relationship and should not be regulated as such.

The need for the Permanent Co-op Carve-Out Bill arises from a recurring problem: cooperatives have been unintentionally swept into legislation designed for rental housing. Two notable examples illustrate the problem:

The TPA was intended to protect tenants in rental housing from excessive rent increases, predatory eviction practices, and unfair security deposit requirements. However, the language of

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The Docket

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

CLE Seminar & Event listings

FEBRUARY 2025

Friday, February 7	Bridging the Gap-Law Student Ambassadors and Judges' Speaker Series 3 – 1:00 pm
Wednesday, February 12	<i>Lincoln's Birthday – Office Closed</i>
Monday, February 17	<i>Presidents' Day – Office Closed</i>
Friday, February 21	Bridging the Gap-Law Student Ambassadors and Judges' Speaker Series 4 – 1:00 pm
Tuesday, February 25	CLE: How These Two Top Errors Derail Your Retirement Settlement with TOVA QDRO & Retirement – 5:30 pm
Wednesday, February 26	CLE: Elder Law – A83 Program
Thursday, February 27	EVENT: Black History Month at St. John's Law School
Friday, February 28	Bridging the Gap-Law Student Ambassadors and Judges' Speaker Series 5 – 1:00 pm

MARCH 2025

Thursday, March 6	Judiciary Night, Past Presidents & Golden Jubilarian Night at St. John's Law School – 5:30 pm
Friday, March 7	Bridging the Gap-Law Student Ambassadors and Judges' Speaker Series 6 – 1:00 pm
Tuesday, March 11	CLE: Family Law/LGBTQ+ - Same Sex Couples Adoption

APRIL 2025

Tuesday, April 1	EVENT: NY Islanders Game
Wednesday, April 16	CLE: 2025 Equitable Distribution Update Pt 1
Thursday, April 17	CLE: Search & Seizure Update 2025 – 1:00 pm
Wednesday, April 23	CLE: 2025 Equitable Distribution Update Pt 2

MAY 2025

Thursday, May 15	Annual Dinner & Installation of Officers at Terrace on the Park
Monday, May 26	<i>Memorial Day – Office Closed</i>

Upcoming CLE's and Events

- Appellate Practice Update
- Ethics Update
- Search & Seizure Update
- The Trial – Part 5

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

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Publisher:
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Advertising Office:
Queens Daily Eagle
8900 Sutphin Boulevard, LL11,
Jamaica, Queens, NY 11435
(718) 422-7412

Send letters and editorial copy to:
Queens Bar Bulletin, 88-14 Sutphin Boulevard, 3rd Floor, Jamaica, NY 11435 • **Editor's Note:** Articles appearing in the Queens Bar Bulletin represent the views of the respective authors and do not necessarily carry the endorsement of the Association, the Board of Managers, or the Editorial Board of the Queens Bar Bulletin.

"Queens Bar Bulletin"
(USPS Number: 452-520) is published eight times annually by Queens Public Media, LLC, 8900 Sutphin Boulevard, LL11, Jamaica, NY 11435, under the auspices of the Queens County Bar Association. Entered as periodical postage paid at the Post Office at Jamaica, New York and additional mailing offices under the Act of Congress. Postmaster send address changes to the Queens County Bar Association, 88-14 Sutphin Boulevard, 3rd Floor, Jamaica, NY 11435

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Editor's Note

Protecting the Unisphere's Meaning

By Paul E. Kerson

The Unisphere, a sculpture of the entire planet Earth, was erected in Flushing Meadows Corona Park as the symbol of the 1964-1965 World's Fair. I remember its construction.

A large photograph of it hangs in the waiting room of my law firm's office. We want the meaning to be clear. Everybody from everywhere is welcome in our law office to vindicate their Federal and State constitutional and statutory rights.

Lately, the Federal Government has been threatening the very meaning of the Unisphere and the State and Federal Constitutional guarantees of Equal Protection and Due Process for all people residing or visiting the State of New York and the United States.

Lately, the Federal Government has threatened to remove undocumented school children from our New York public schools.

Such a move would be completely illegal under the United States Supreme Court's Decision in *Plyer v. Doe*, 457 U.S. 202, 102 S. Ct. 2382 (1982). In that case, the State of Texas passed a State Statute seeking to exclude undocumented Mexican children from Texas public schools.

The United States Supreme Court would have none of it and held as follows:

1. An undocumented child can claim the benefit of the Equal Protection Clause.
2. The Texas Statute which denied public school education to undocumented Mexican children cannot be considered rational.
3. The undocumented status of the children cannot constitutionally establish a sufficient rational basis for denying the benefits of a public education that the state afforded to its other residents.
4. There is no national policy that might justify Texas in denying undocumented children an elementary education.
5. The Texas Statute could not be sustained as furthering its interest in the preservation of the State's limited resources for education of its lawful residents.

Thus, if a potential client walks into your office claiming that his or her child is threatened with removal from a New York public school, an Order to Show Cause must be brought immediately on the authority of the United States Supreme Court's 1982 Decision in *Plyer v. Doe*, cited above.

Further, your Memorandum of Law on this subject must include a reference to *Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 100 S. Ct. 2035 (1980). In this case, the United States Supreme Court upheld a California state Constitution provision which allowed individuals to exercise their free speech and Petition rights on the private property of a shopping center which invited the general public to shop thereat. The United States Supreme Court found that the 50 State Constitutions could mandate constitutional rights that exceed Federal Constitutional rights.



Photo Credit: By Anthony Conti; scanned and published by PLCjr from Richmond, VA, USA - NY World's Fair 1964-1965, CC BY-SA 2.0

In *Pruneyard Shopping Center v. Robins*, cited above, the United States Supreme Court held that:

"Our reasoning... does not... limit the authority of the State to exercise its police power or its sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution. See 447 U.S. at 81.

The New York State Court of Appeals did precisely that in *People v. P.J. Video Inc.*, 68 N.Y. 2d 296, 508 N.Y.S. 2d 907 (1986). In that case, our New York State Court of Appeals found that

the New York State Constitution imposes a more exacting standard for the issuing of search warrants authorizing seizure of allegedly obscene material than does the Federal Constitution.

Successive New York City Mayors of both major political parties have established New York City as a sanctuary City for undocumented persons. Mayor Edward Koch issued an Executive Order prohibiting City agencies from sharing information about immigrants with Federal authorities unless they were suspected of criminal activity. Mayor Rudolph Giuliani issued a similar Order which the United States Congress attempted to overturn in 1986.

Mayor Michael Bloomberg issued a slightly different Order in 2003, which forbade City employees from asking anyone their immigration status, except in certain circumstances. In 2014, Mayor Bill DeBlasio expanded the scope of the sanctuary provisions by directing the New York City Police Department and New York City Corrections Department to refrain from assisting Federal Immigration and Customs Enforcement (ICE) agents seeking to deport undocumented immigrants. See *The New York Times*, January 19, 2025, Metropolitan Section, page 8, Luis Ferré-Sadurni, "The Evolution of New York Sanctuary Status".

It is clear from a reading of the United States Supreme Court's Decision in *Plyer v. Doe*, cited above, that Federal ICE agents are absolutely not permitted to remove New York school children from their schools. It is equally clear from the United States Supreme Court's Decision in *Pruneyard Shopping Center v. Robins*, cited above, that the several States' Constitutions can contain "liberties more expansive than those conferred in the Federal Constitution."

Our New York State Court of Appeals has done precisely that in *People v. P.J. Video Inc.*, cited above, and most certainly will uphold the Executive Orders

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Editor's Note

Protecting the Unisphere's Meaning

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of Mayors Koch, Giuliani, Bloomberg and DeBlasio concerning the undocumented immigrants who bring so much positive economic development to our City and State.

The values embodied in the Unisphere and the Statue of Liberty have been part of New York City and State for 400 years. This year, 2025 is the 400th anniversary of our City and State. Because of our unique geographic good fortune of being blessed with one of the world's deepest and most accessible natural harbors, we have been attracting boats from every country in the world for these last 400 years, far longer there has even been a United States.

Mayor Bloomberg was fond of saying that trying to stop immigration to New York is like trying to stop the tide. And what the tide has brought us! This was a City of less than 10,000 people in 1625 and now has more than 8 million. This was not because the first 10,000 had a lot of children. The greatest City in the

world was built by people who came here in search of opportunity for themselves and their children. The City University of New York (CUNY) has grown from four colleges and 10,000 students in 1946 to 25 colleges and 250,000 students today. It is the greatest experiment in low-cost higher education for everyone that the world has ever seen. CUNY attracts people from all over the world seeking low cost higher education for their children to better themselves and their families. That quest for human betterment makes us a better City and State every single day we receive a new arrival.

The Unisphere and the Statue of Liberty are artistic renderings of New York values that have been with us for 400 years. On our watch, we cannot let these values die.

When that frightened immigrant comes into your office, tell them you know all about *Plyer v. Doe*, *Pruneyard Shopping Center v. Robins*, and *People v. P.J. Video Inc.*, all cited above, and that you will not hesitate to go to Court on their behalf to enforce

these New York State Constitutional rights, Article I, Section 11 which provides for Equal Protection of the Laws for all persons in the State for any reason.

I would suggest filing the Order to Show Cause and the supporting papers in the Queens County Supreme Court citing the New York State Constitution's Equal Protection Clause, Article I, Section 11 and the ability of our State Courts to uphold the individual liberties in our State Constitution that are more expansive than those in the Federal Constitution under the authority of our New York State Court of Appeals Decision in *People v. P.J. Video Inc.*, cited above and the express permission to do so by the United States Supreme Court in *Pruneyard Shopping Center v. Robins*, cited above. This is likely to succeed because even with the current United States Supreme Court, they would be very reluctant to impose a new standard of federalism that does not allow State Constitutional Law to exceed the individual liberties of Federal Constitutional Law.



QUEENS COUNTY BAR ASSOCIATION

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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 7, 2025.

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:

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FOR ONE MEMBER OF THE BOARD OF MANAGERS FOR A TERM OF THREE YEARS AS IMMEDIATE PAST PRESIDENT (expiring May 31, 2028):

ZENITH T. TAYLOR

NOMINATING COMMITTEE

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THE ANNUAL MEETING of the Queens County Bar Association will be held at the bar association offices, 88-14 Sutphin Blvd., 3rd Floor, Jamaica, New York on FRIDAY, MARCH 7, 2025, at 12:00 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. The Board of Managers will nominate three (3) individuals to serve a three (3) year term on the Nominating Committee. Members of the Association may also nominate candidates to serve a three (3) year terms on the Nominating Committee by providing a written nomination addressed to the Secretary, signed by no fewer than twenty-five (25) members in good standing, no later than 4:59 PM on Monday, February 10, 2025. Members of the Association may also nominate candidates to serve a one (1) year terms in any officer position or a three (3) year term on the Board of Managers by providing a written nomination addressed to the Secretary, signed by no fewer than twenty-five (25) members in good standing, no later than 4:59 PM on Wednesday, February 5, 2025. If no additional nominations for Officer, Manager or Nominating Committee positions are received as specified in the Bylaws, the election will be pro-forma and the President shall cast one ballot in favor of the slate of candidates and that slate shall be elected.

Dated: Jamaica, N.Y.
January 31, 2025

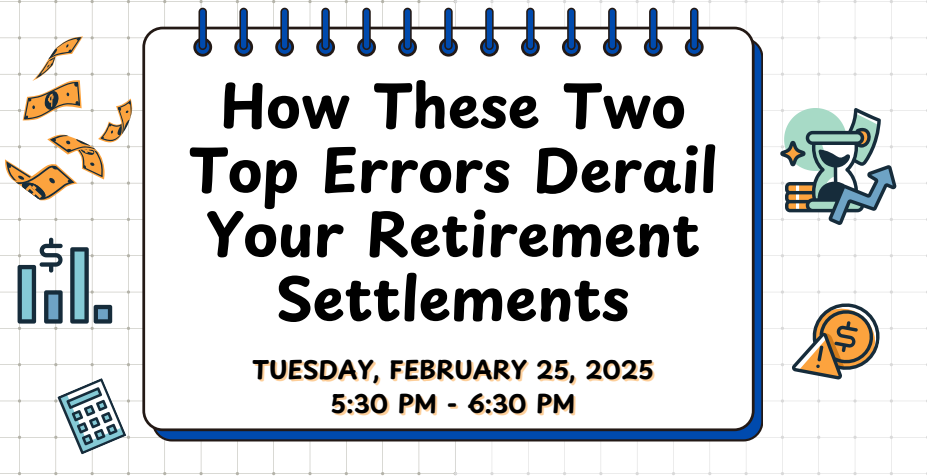


QUEENS COUNTY BAR ASSOCIATION

Family Law Committee

President: Zenith T. Taylor, Esq.





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TUESDAY, FEBRUARY 25, 2025
5:30 PM - 6:30 PM

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Law Office of Joshua R. Katz, P.C.
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Program:

In this 60-minute CLE Webinar, Denisa Tova-Liebman and Joshua R. Katz, Esq. will present a program on mastering the retirement settlements. It examines how the historical evolution of retirement plans necessitates updated practices and identifies the top two mistakes and how to avoid them.

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President

ANNUAL JUDICIARY, PAST PRESIDENTS AND GOLDEN JUBILARIAN NIGHT

Thursday, March 6, 2025
5:30 pm - 8:00 pm

Held at:
St. John's University School of Law
8000 Utopia Pkwy, Jamaica, NY 11439

GUEST SPEAKERS:

HON. MARGUERITE A. GRAYS Administrative Judge Queens Supreme Court, Civil Term Presiding Justice - Commercial Division	HON. MICHELLE A. JOHNSON Administrative Judge Queens Supreme Court, Criminal Term	KATHLEEN M. SWEET, ESQ. President-Elect New York State Bar Association
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Ceremony: 7:00 PM – 8:00 PM
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Introduction of Judiciary Members & Past Presidents
Recognition of Golden Jubilarians
Academy of Law Award
Court Appreciation Award

Cost:

Members:	Dinner & Ceremony \$ 60.00 Ceremony Only FREE
Non-Members:	Dinner & Ceremony \$120.00 Ceremony Only \$ 60.00
Judiciary:	Dinner & Ceremony FREE

Please register by Monday, March 3. Additional \$20 for registrations received after March 4.
No refunds or credits for cancellations after Sunday, March 2.

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REGISTER WWW.QCBA.ORG/EVENT-6041854

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President's Message

A New Year

By Zenith T. Taylor

Dear Members and Friends,

As we step into February and reflect on the changes within our government, it is essential to recall the oath each of us took as attorneys when we were admitted to practice law in New York.

We committed ourselves to upholding the Constitution of the United States, respecting the rule of law, and advocating for justice. In this time of transition, we have to stay the course and remain true to our oath by not allowing political discourse to divert us from our mission. Our nation is incredibly diverse, and the Queens County Bar Association proudly stands as the largest bar association in the most diverse county in the world.

We must respect one another and embrace our differences, regardless of political beliefs. By engaging in constructive conversations, we treat each other with dignity and understanding. Coming together allows us to contribute to society, drawing from diverse backgrounds, beliefs, and experiences. This diversity enriches our discussions and makes them more inclusive.

The month of January was an exciting month for our partnership and community outreach efforts

that kicked off with a great start. On January 15, 2025, we co-sponsored the inaugural Dr. Martin Luther King Jr. Day of Service, celebrating the legacy of Dr. King with the Office of Civic Engagement, the Franklin H. Williams Judicial Commission, the Supreme Court Civil Term, and the Ronald H. Brown Center for Civil Rights at St. John's Law School. Law students provided invaluable free legal assistance to our community. During our upcoming Black History Month event on February 27, 2025, we will recognize the law students and court personnel who participated in the MLK Day of Service.

Our collaboration with the Family Court's Equal Access to Justice Committee and other Queens County bar associations led to the huge success of the Gift of Life Program on January 23, 2025. There was outstanding participation from court personnel dedicated to this important cause. It was truly inspiring to witness such enthusiastic engagement within the court community.

On January 24, 2025, I was honored to be invited to participate in the Macon B. Allen Black Bar Association's MLK Day Program at the Queens Criminal Court. Borough President Donovan Richards

was the keynote speaker, and many court leaders and members of the Judiciary attended the event.

Lastly, on January 30, 2025, we, among other organizations, co-sponsored the Queens County Supreme Court Criminal Term Equal Justice Committee's Lunar New Year celebration. It was a truly festive event, and the keynote speaker was Hon. Lillian Wan, Associate Justice, Appellate Division, Second Department.

All things considered, even if we have differing opinions, ethnicities, or backgrounds, what truly matters is our shared commitment as attorneys to uphold the principles of democracy. By working together, we can strengthen and promote our democratic values, ensuring that justice and equity remain at the forefront of our efforts.

Let us move forward together with optimism and determination for the common good of all!

Looking forward to seeing you all at our upcoming events.



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— Details to Follow —

ANNUAL DINNER AND INSTALLATION

Thursday, May 15, 2025 | Terrace on the Park



Why the Permanent Co-op Carve-Out Bill Is Essential for New York’s Cooperatives

BY GEOFFREY MAZEL, ESQ.

CONTINUED FROM PAGE 16

the law inadvertently included cooperatives. This misapplication created unnecessary burdens for co-ops, such as requiring co-op boards to comply with notice requirements for “rent” increases, even though maintenance fees are not rent. The cooperative community had to invest significant resources to secure an exemption for co-ops from the TPA, which was ultimately granted.

The Good Cause Eviction Bill proposed limiting evictions and restricting rent increases in rental housing. If applied to co-ops, it would have severely hampered the ability of boards to enforce proprietary leases and collect maintenance fees. Cooperatives would have been unable to remove shareholders who fail to pay their fees or comply with house rules, threatening the financial health and governance of co-op buildings. Through

substantial advocacy, co-ops were carved out of this legislation.

These examples highlight a troubling pattern: laws designed for rental housing unintentionally encompassing co-ops due to broad or ambiguous language. Each time, co-op boards, shareholders, and advocacy groups have had to mobilize to correct these misapplications. This has consumed significant time and resources that could have been better spent improving and managing cooperative communities.

The Permanent Co-op Carve-Out Bill provides a fair, practical, and lasting solution. By codifying cooperatives’ exemption from laws like the TPA and Good Cause Eviction Bill, it ensures that co-ops are treated as distinct entities under New York law. Future legislation affecting landlord-tenant relationships would explicitly need to name cooperatives to apply to them.

This approach prevents future misapplications of rental housing laws to co-ops and eliminates the need for continuous advocacy to secure carve-outs. It strikes a balance by allowing lawmakers to regulate co-ops when necessary but only when they make that intention clear.

Co-op boards need the authority to manage their buildings effectively. They must be able to enforce proprietary leases, collect maintenance fees, and address shareholder conduct without the constraints of laws designed for landlord-tenant relationships. The bill protects this autonomy, allowing co-ops to continue operating democratically and efficiently.

Cooperatives rely on maintenance fees paid by shareholders to cover operating costs. Laws like the TPA or Good Cause Eviction Bill, if applied to co-ops, would limit boards’ ability to adjust these fees, jeopardizing the building’s financial health. The bill ensures that co-ops can manage their finances flexibly and responsibly.

The bill provides clarity for lawmakers, cooperative boards, and shareholders by formally recognizing the distinction between cooperatives and rental housing. This reduces the risk of future legislative overreach or unintended consequences.

The cooperative community has spent considerable time and energy lobbying for carve-outs from laws that should not have applied to them in the first place. The bill eliminates the need for repeated advocacy, allowing co-ops to focus on their communities rather than fighting unnecessary battles.

The Permanent Co-op Carve-Out Bill is not about granting co-ops special treatment—it is about fairness. It ensures that co-ops are only included in legislation when lawmakers specifically intend to regulate them. This aligns with principles of good governance, ensuring that laws are applied thoughtfully and deliberately.

The Permanent Co-op Carve-Out Bill is essential to protecting the unique and democratic nature of cooperative housing in New York. It codifies cooperatives’ distinct status, preserves their self-governance, safeguards their financial stability, and prevents future misapplications of landlord-tenant laws. By supporting this bill, lawmakers can provide clarity, fairness, and stability for the tens of thousands of New Yorkers who live in cooperatives.

This legislation is a reasonable and just solution that respects the cooperative model while ensuring legislative intent is clear. It deserves the full support of New York’s elected officials and legal community.



QUEENS COUNTY BAR ASSOCIATION

Elder Law Committee

PRESIDENT: ZENITH T. TAYLOR, ESQ.



ARTICLE 83
OF THE
MENTAL HYGIENE LAW

Interstate Adult Guardianship Issues Including
Transfers of Guardianship and Associated Litigation

WEDNESDAY, FEBRUARY 26, 2025
6:00 PM – 8:00 PM



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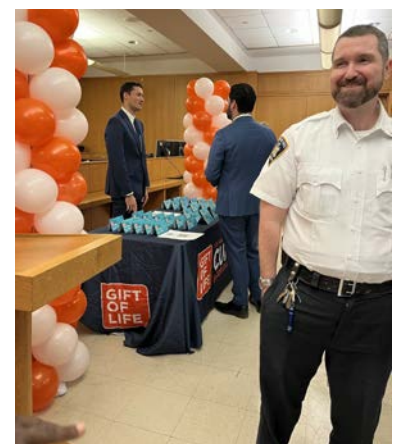


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GIFT OF LIFE EVENT

JANUARY 23, 2025

Members of the Queens legal community joined the Queens County Family Court Access to Justice Subcommittee on Racial and Unconscious Bias in supporting the Gift of Life Organization in collaboration with the NYS UCS—Civic Engagement to help save lives and increase donor registration for minority communities. GIFT OF LIFE believes “every person battling blood cancer deserves a second chance at life — and they are determined to make it happen by engaging the public to help get everyone involved in curing blood cancer, whether as a donor, a volunteer or a financial supporter. It all begins with one remarkable person, one life-changing swab and one huge win — finding a match and a cure.”





Getting Through Your Difficult Days

BY FRANK BRUNO, JR.

"Today was a Difficult Day," said Pooh. There was a pause.

"Do you want to talk about it?" asked Piglet.

"No," said Pooh after a bit. "No, I don't think I do."

"That's okay," said Piglet, and he came and sat beside his friend.

"What are you doing?" asked Pooh.

"Nothing, really," said Piglet. "Only, I know what Difficult Days are like. I quite often don't feel like talking about it on my Difficult Days either."

"But goodness," continued Piglet, "Difficult Days are so much easier when you know you got someone there for you. And I'll always be here for you, Pooh."

And as Pooh sat there, working through in his head his Difficult Day, while the solid, reliable Piglet sat next to him quietly, swinging his little legs...he thought that his best friend had never been more right.

This was not a quote from Winnie or from A. A. Milne, rather it is an internet misattribution, a meme if you will but the sentiment hits home. There have been some personal difficult days and difficult days shared with clients. Sitting silently with a loved one helps the most.

At the real estate closing: Often buyers and sellers feel overwhelmed – too many people shoved into a conference room; mortgage and transfer documents are signed; money is exchanged; a deed is tendered. The Seller always feels like they got less than they bargained for and the buyer always feels like they paid more than they were supposed to pay! The closing is a legal procedure where property ownership is officially transferred from the seller to the buyer. The entire transaction culminates at the closing table, and it's vital to understand what happens at the table.

Overview of the steps involved: Locate a buyer. Have the buyer make an offer and for the Seller to accept it. The realtor shall provide a deal sheet. Prep and sign the contract. The journey begins with the contract or maybe it begins when the Seller decides to sell. What comes first, the chicken or the egg?

There are open houses and prospective purchasers – maybe too few prospective purchasers or a bidding war, situations run the gamut. From an accepted offer to the Seller's attorney preparing a contract for the review of buyer. To the buyer's attorney making edits and returning the contract with a deposit check or wire; the buyer ordering a title search and the seller's attorney reviewing, every detail matters. The conjoined twins of buyer obtaining a mortgage and searching the title results in money for the end run and seller preparing transfer documents for the finale. In New York, buyers and sellers are required

to have legal representation during real estate transactions – and for good reason.

Here are just a few key responsibilities an attorney will handle: Title Search: Verifying that the seller has clear title & legal ownership of the property. Confirming the buyer is obtaining the property free of open mortgages, liens, violations and encumbrances. Document Prep & Review: Ensuring contract and closing documents are accurate. Obtaining mortgage net proceeds, preparing adjustments for RE taxes, water & sewer, rents, possession, credits and preparing a checklist for disbursement of funds. Managing the financial transaction to ensure everything is properly accounted respectively for each side – is there a realtor to be paid and a title closer to be tipped? And why is it a gratuity and not a closing attendance fee?

"Civil right to counsel" ensures that people who cannot afford lawyers in legal matters involving basic human needs, such as shelter, sustenance, safety, health, and child custody, have access to a lawyer at no charge. In certain family law matters, attorneys are assigned to indigent individuals who cannot afford to pay for a lawyer. I will be sharing some comments on the Queens Family Court Assigned Counsel Plan. The motivation is to bring awareness to the efforts of the 18B panel, highlight members, promote the program and attract new applicants as a result. I shall write about the work monthly in 2025 highlighting different aspects – the breadth of legal work across the Family Court Act; direct client interaction; cases from intake to conclusion while getting paid for your effort; significant Court time & trial experience plus the opportunity to represent and advocate for children that does not occur in private practice.

When asked about her involvement on the 18B Panel, Helen Bua, the Queens attorney extraordinaire, said, "The Assigned Counsel/Attorneys for Children panel is one of the best avenues for solo practice in the NYC legal landscape. There is a steady workflow, easily enough to sustain full-time hours, matched with the flexibility of maintaining one's own calendar. Panel attorneys can achieve the ever-elusive work-life balance, without sacrificing earning capacity.

"The collegiality and support among the panel attorneys is unparalleled...Even though we are adversaries on particular cases, and we fight hard for our clients, the conflict is confined to the courtroom, and I have enjoyed not just the respect and appreciation of my peers, but also kindness, humor and friendship. Most panel attorneys stay

on the panel for many years, often all the way to retirement, and we share in life's joys and sorrows along the way.

"Sometimes the work is challenging, even draining, but it always has meaning, and it always has value. At the end of every day...I provide legal representation to people who would otherwise not be able to afford it, and that, in my own small way, I am contributing to the larger project of justice for all."

Helen said it so perfectly I couldn't add anything more!

Dementia Cases to Double

Roughly two in five US adults over the age of 55 will develop some form of dementia during their remaining life span. Dementia is an umbrella term for a number of neurodegenerative conditions that cause loss of cognitive abilities, including Alzheimer's. Aging is the primary driver – but also issues like poor diet and lack of exercise contribute. Statistically a quarter of Americans are projected to be 65 or older by 2060 with the number of newly diagnosed cases to double from about 500,000 to about 1 million annually by then. Women are more likely to develop symptoms because on average they live five years longer.

Dementia refers to a collection of symptoms, including memory loss, cognitive impairment, and sudden behavior changes. (Alzheimer's accounts for about two-thirds of all dementia cases). The first case of Alzheimer's disease dates back to the turn of the 20th century when Dr. Alois Alzheimer came across 51-year-old Auguste Deter, struggling with sudden memory issues and aggressive, irrational behavior. After Deter's death, Alzheimer examined her brain and found a strange collection of molecular pileups. Scientists now know these "pileups" are created by two distinct molecular formations: plaques and tangles. In a twist of fate, or forgetfulness, Dr. Alzheimer's findings were lost until 1995, when they were rediscovered and published.

It is unknown which molecule – plaques or tangles (or both, or something else) – is the primary driver of Alzheimer's. As neurons lose their ability to communicate and die off, the brain shrinks. This shrinkage starts in the hippocampus, a part of the brain associated with memory and learning, and leads to impaired memory, communication, and decision-making. There is no cure for Alzheimer's, and there's no single test to detect

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Getting Through Your Difficult Days

BY FRANK BRUNO, JR.

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it. My mother had a rapid descent and an aggressive form of dementia not otherwise specified. She eventually passed due to complications with dementia. Among the saddest things in life is when your mother does not recognize you. Some days I laughed. Other days I welled up. Most days she did know me and sometimes she thought I was my father. One day, she said "I know who you are." I replied who? She said, "You're my dentist." I just hugged her.

"Sometimes, if you stand on the bottom rail of a bridge and lean over to watch the river slipping slowly away beneath you, you will suddenly know everything there is to be known."

— A.A. Milne

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



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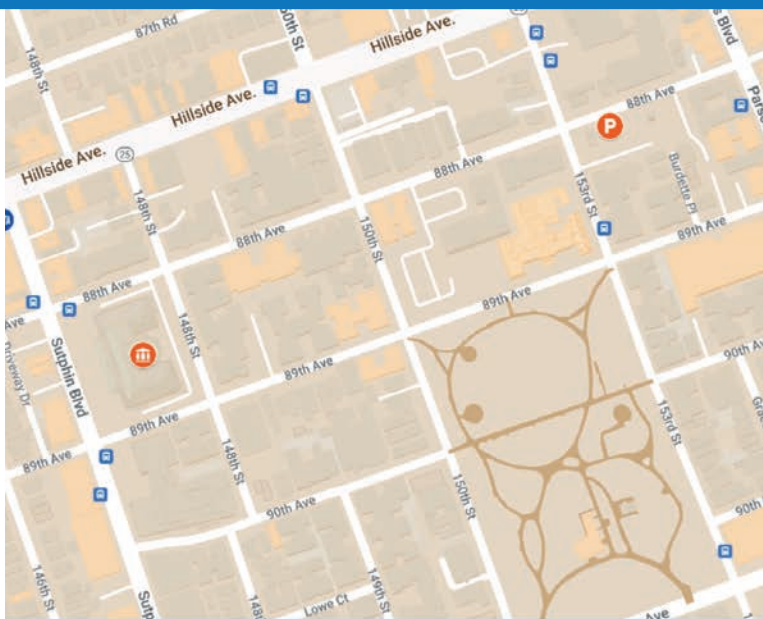
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The Practice Page

The Latest Procedural Amendments

BY HON. MARK C. DILLON

Serves on the Appellate Division, Second Department

This is an annual topic for this column, taking note of new or amended statutes and rules that affect practitioners in New York which have become effective during the past year.

CPLR 2106

Last year's column discussed the amendment to CPLR 2106, which allowed for affirmations to be used in lieu of an affidavit by any person, wherever made. That amendment, which became effective January 1, 2024 (2023 Sess. Law of N.Y., Ch. 585, sec. 1), widened the use of affirmations from the previous versions of the statute which had been restricted to use by attorneys, physicians, dentists, osteopaths, and other health care professionals. The affirmation language must substantially conform with language set forth in the then-amended statute for the affirmation to be effective. The CPLR uses the term "affidavit" over five dozen times, and questions have arisen over whether the affirmation procedure may be used in every instance in which the swearing of an oath is otherwise directed. For instance, Professor Patrick Connors of Albany Law School has questioned whether an Affidavit of Corrections to a deposition transcript must still be executed in affidavit form, to be consistent with the sworn oath administered to the witness by the stenographer at the outset of the same deposition. Aside from that, when public officials sign their oaths of office, may they merely affirm their loyalty to the federal and state constitutions and the execution of duties to the best of their abilities? May the amended version of CPLR allow for affirmations where "verifications" are called for, such as in pleadings? These questions, perhaps prickly but well-intentioned, first arose in the courts in an election proceeding last year given the expedited nature of the state's election calendar. The Appellate Division, Second Department, held in *Sweet v Fonvil*, 227 AD3d 849 (2d Dep't. 2024) that an election petition was properly "affirmed" under CPLR 2106 as amended.

Because of ongoing questions involving the earlier amendment, the state legislature has once again amended the law regarding the use of affirmations, though not in CPLR 2106 itself. The amendments were signed into law by Governor Hochul on Dec. 21, 2024. One is to State Administrative Procedure Act 302, which now allows affirmations to be used instead of affidavits at administrative proceedings. Another is to CPLR 3020(a), allowing for affirmations in verifying pleadings. That amended statute requires that the pleading be stated by the affiant to "be true to the knowledge of the deponent, except as to matters alleged on information and belief, and that as to those matters such deponent believes it to be true." Since verified pleadings may be used as affidavits under CPLR 105(u), and affirmations may now be used in lieu of affidavits under CPLR 2106, the logical

sylogism is that affirmed pleadings may now be used as affidavits as well. By extension, affirmations may likely be used for verifying bills of particulars and other documents as well.

Lawyers will love this. The procedure is liberalized. The concern is whether the lessening of the formalities might lessen the level of truthfulness and solemnity when making averments in litigation documents. The late Professor Siegel was never a fan of sworn affidavits, believing them to be no deterrent to the potential utterance of falsehoods. Tongue-in-cheek, he observed in 1978 that "[e]arlier in our legal history the requirement of swearing may have been underwritten by a genuine fear of Hell, but Hell has had little impact on New York practice. Quite the contrary." More clarifying legislation about the use of affirmations might be expected in the future.

Executive Law 297(5)

The statute of limitations for unlawful discrimination claims in the courts is three years (Executive Law 290; CPLR 214[2]). Yet, until last year, the statute of limitations for administrative claims of unlawful discrimination at the NYS Division of Human Rights was one year (the former Executive Law 297[5]). That anomaly has been corrected by an amendment to Executive Law 297(5), raising the limitations period for claims at the Division of Human Rights to three years. The amendment is effective only for claims which arose after the effective date of the statute.

Labor Law 201-i

An amendment to Labor Law 201-i should be of interest to employers, including law firms and other entities which employ attorneys (L.2023, c. 367, sec. 1). Labor Law 201-i, which became effective in 2024, provides that employers are permitted to research a job applicant on social media. However, they are not permitted to request or require from the applicant user names, passwords, or similar login information to access *private* social media accounts. If the person is already an employee, the employer is permitted to demand and have access to the employee's user name and passwords for accessing employee accounts on the employer's own computer or information systems. The statute also permits employers to restrict employees from accessing certain sites from employer-provided computer resources. The law attempts to balance the right of employers to investigate or monitor the activities of actual or potential employees from public sources, while protecting employee privacy where deserved. Exempted from this law is law enforcement, fire departments, corrections departments, and employers complying with other federal, state, or local law.

Grieving Families Act

On December 22, 2024, Governor Hochul vetoed the third legislative version of the Grieving Family

Act (A9232-b, S8485-b). The Act, if signed, would have updated the state's 177-year-old wrongful death statute to allow close family members to sue for emotional damages arising from their loved-one's death. Currently, compensatory damages are limited to economic or pecuniary loss resulting from the death, the related medical and funeral costs, and the value of parental guidance. The proposed law would have also expanded the statute of limitations from two years to three years measured from the decedent's death. The bill passed by the state legislature had strong support from the NYSBA. The Governor wrote in her veto message, "For the third year in a row, the legislature has passed a bill that continues to pose significant risks to consumers, without many of the changes I expressed openness to in previous rounds of negotiations." Perhaps, there will be a fourth proposed bill in 2025 addressing more of the Governor's concerns.

Executive Law 135-C(2)(b)

When the legislature adopted new statutes enabling notarizations to occur by remote electronic means, there was an expectation that new and stringent notarial record-keeping standards, imposed to protect consumers and litigants who were availing themselves of technological advancements, were to be applied only to remote notarization procedures. But when Executive Law 135-C(2)(b) was passed into law and became effective in mid-2023, its strict recordkeeping language applied to all notarizations, including traditional in-person ink versions. The NYSBA supported amendatory legislation that would have relaxed the recordkeeping standards for in-person notarizations, which the state legislature passed last year (A7142-a, S8663). However, the amendment was vetoed by Governor Hochul in late November 2024, on the ground that stringent recordkeeping for all notarizations were in the public interest.

Class Actions

For the second time, Governor Hochul vetoed legislation which would have, if signed, amended CPLR 902 to prevent courts from denying class action certifications solely on the ground that a case involves governmental operations (A8609, S9518). In her veto message on December 21, 2024, the Governor explained that courts have the discretion to address the issues contemplated by this legislation, which should not be disturbed.

On balance during 2024, more legislation affecting state procedural statutes was vetoed by the governor than signed into law.

Mark C. Dillon is a Justice of the Appellate Division, 2nd Department, an Adjunct Professor of New York Practice at Fordham Law School, and a contributing author of CPLR Practice Commentaries in McKinney's.



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Preserving Your Legacy: A Guide to Protecting Assets & Inheritance

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

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

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

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

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

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

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



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Should you retain a forensic (neuro)psychologist?

BY SANAM HAFEEZ, PSYD

At Comprehend the Mind, Dr. Sanam Hafeez and her group are forensic experts weighing in on a myriad of legal cases. While hiring such an expert can be time-consuming and costly, it is well worth the investment, as these assessments can be used to provide objective data and inform decision-making, awards, and even sentencing.

Neuropsychological assessments explore the connection between the brain and behavior, and thus consequences ranging from trauma, various deficits in functioning, and damages to self and others, as well as fitness as a parent, an employee, or even to stand trial.

Let's explore how neuropsychological assessments can apply to different legal avenues.

Immigration

Neuropsychological evaluations can be critical in immigration cases, especially those involving:

1. Asylum or hardship claims: Individuals seeking asylum often have experienced trauma or persecution in their home countries, which can lead to significant psychological distress and impairment. Neuropsychological evaluations can document the mental health consequences of these experiences, providing objective evidence to support asylum claims. *At Comprehend the Mind, Dr. Hafeez has been a longtime, successful advocate for such individuals using the evaluations, the data, and her clinical expertise applicable to immigration law.*
2. Waivers: In certain situations, individuals may be deemed inadmissible to a country due to specific health conditions, including neurological and mental health disorders. Neuropsychological evaluations can be essential to waiver applications since they assess the severity of the condition and its impact on the individual's ability to function, which ensures fair legal representation. *At Comprehend the Mind, we have been working with patients and their lawyers for the N-648 waiver and for citizenship tests and hearings.*
3. Competency to proceed: In removal proceedings, questions may come up regarding an individual's ability to understand the legal process and participate in their defense. A neuropsychological assessment can assess cognitive abilities and mental state to determine competency. *At Comprehend the Mind, the cognitive functioning component of the assessment is key in helping us make a case for whether an individual may be fit to stand trial.*

Custody

Child custody cases require careful consideration of the child's best interests. Evaluations conducted by a neuropsychologist can provide crucial information about:

1. Parenting capacity: an evaluation can examine if a parent's cognition and emotive and psychological functioning are sufficient to give the child adequate care. This could involve evaluating factors such as decision-making, impulse control, and stress management.

2. Child's needs: Is the child experiencing emotional or behavioral upheaval? A neuropsychological evaluation will help determine what kind of support the child may require.
3. Impact of parental conflict: evaluations can identify the psychological impact of parental dynamics on the child and influence custody arrangements that avoid further damage.

At Comprehend the Mind, Dr. Hafeez has been involved in several cases where custody is contested, helping the courts glean a clearer picture of the family, the child(ren), and their best interests.

Civil Personal Injury

Civil personal injury cases can often benefit from neuropsychological evaluation results. Several issues that neuropsychologists diagnose include:

1. PTSD, including secondary trauma; many cases either stem from emotional trauma or even physical trauma, where the unseen injuries are the worst outcome. They lead to feeling debilitated, a lack of intimacy or interest in life's joys, and a much more lasting impact long after the physical injuries have healed. Evaluating emotional distress is complex and requires an in-depth understanding of an individual from multiple angles.
2. Traumatic brain injuries: brain injuries can cause issues with memory, attention, executive functioning, and emotional regulation. Evaluations can determine the injury's severity.
3. Toxic exposures: evaluations can identify the cognitive effects of toxin exposure and can establish links between the exposure and the individual's impairments.
4. Other neurological conditions: a neuropsychological evaluation can diagnose cognitive issues related to stroke, dementia, MS, and more.

At Comprehend the Mind, civil injury cases have benefited greatly from an evaluation, leading to tens of millions of dollars in damages. Some instances of cases that Dr. Hafeez was an expert on included incapacitation from childbirth injury to child and emotional distress to the family, as well as a sexual abuse case that spanned charges from Florida to New York. Dr. Hafeez's evaluations and testimony were paramount to the decisions and awards rendered.

Special Education

Federal law mandates that children with disabilities receive a free and appropriate public education. Neuropsychological evaluations play a key role in:

1. Learning disabilities: neuropsychological assessments can determine whether a child has dyslexia or dyscalculia. If this is the case, a tailored individualized education program can be recommended.
2. Special education eligibility: an evaluation offers a comprehensive look into a child's cognitive, academic and therapeutic needs and whether a child is eligible for special Ed.

3. Progress monitoring and adjustments: An evaluation can track a child's development in special Ed and suggest adjustments if necessary, including continued private school setting at no or minimal cost to the parents.

The special educational evaluations conducted at Comprehend the Mind have placed hundreds of children in non-public settings, where the lawyers were able to negotiate free or low-cost tuition payable by the City of New York or the town/county of residence.

Emotional Damages

Legal cases that involve emotional distress or psychological harm can provide objective evidence of:

1. PTSD is a common and debilitating consequence of traumatic experiences, such as car accidents, assault, or natural disasters. Evaluations can examine the severity of PTSD symptoms, like flashbacks, nightmares, avoidance behaviors, or hyper-arousal. The tests also explore how these symptoms affect an individual's cognitive and emotional functions.
2. Depression and anxiety: evaluations look at how depression and anxiety affect how a person engages with work, relationships, and daily activities.
3. Chronic pain: A person's overall well-being can be significantly impacted by chronic pain and suffering, and a neuropsychological evaluation can provide further insights into how this pain affects an individual's daily activities.

At Comprehend the Mind, a lot of our forensic cases include an emotional damages component. In one such case, Dr. Hafeez testified in a jury trial in the Commonwealth of Philadelphia, explaining the 'Battered Wife Syndrome' to the court, resulting in an "undisclosed award in the millions" to the wife.

Forensic neuropsychology process

While the previous sections highlight neuropsychological evaluations in legal settings, it's important to understand the process itself. This understanding enhances the rigor and comprehensiveness of these evaluations, further solidifying their value in legal decision-making.

Referral and Records Review: The process typically begins with a referral from an attorney, judge, or other legal professional. Then, the neuropsychologist will gather relevant background information, including medical records, educational records, and legal documents. This review helps to understand the individual's history, the reason for referral, and the specific legal questions that need to be addressed.

Clinical Interview: A crucial component of the evaluation is the clinical interview, where the neuropsychologist meets with the individual and, if relevant, their family members. This interview provides an opportunity to gather information about the individual's

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Should you retain a forensic (neuro)psychologist?

BY SANAM HAFEEZ, PSYD

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current concerns, medical history, developmental history, educational background, and occupational history. The neuropsychologist also observes the individual's behavior, mood, and thought processes during the interview.

Neuropsychological Testing: The core of the evaluation involves administering a battery of standardized tests that assess various cognitive domains, including:

- Intelligence
- Attention and Concentration
- Memory
- Executive Functioning
- Language
- Motor skills and adaptive functioning
- Personality and Emotional Functioning

Interpretation and Report Writing: After completing the testing, the neuropsychologist analyzes the test results in the context of the individual's history and the referral question. This involves integrating the test data with information gathered from the clinical interview and records review. The neuropsychologist then prepares a comprehensive report that summarizes the findings, provides diagnoses and interpretations, and addresses the specific legal questions posed in the referral.

Expert Testimony: In some cases, the neuropsychologist may be called upon to provide expert testimony in court. This involves explaining the evaluation process, the test results, and their implications for the legal case. The neuropsychologist may also offer opinions on issues such as competency, capacity, and the extent of cognitive impairment.

Ethical Considerations: Neuropsychologists conducting evaluations for legal purposes must adhere to strict ethical guidelines. This includes maintaining confidentiality, obtaining informed consent, using appropriate assessment measures, and providing objective and unbiased opinions.

The process of a neuropsychological evaluation, as described above, underscores the systematic and comprehensive approach taken to assess an individual's cognitive, emotional, and behavioral functioning. This rigor and objectivity make these evaluations a valuable resource in legal proceedings, providing crucial information to aid in legal decision-making. By understanding the brain-behavior connection, neuropsychological evaluations help to illuminate the human experience in the context of the law.

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Dr. Sanam Hafeez received her doctorate from Hofstra University, with a research interest in PTSD and secondary trauma, and completed her post-doctoral work in neuro-developmental Psychology at Coney Island Hospital in Brooklyn, NY. She is a New York State licensed psychologist and a New York State certified school psychologist. • Dr. Sanam Hafeez is a pioneer in neuropsychological assessments, reshaping its clinical model and best practices. She founded Comprehend the Mind in 2006 and continues to serve as the director of her neuropsychological assessment center. • Dr. Sanam Hafeez is also a trusted media expert, and has appeared on CNN, MSNBC, ABCNews, and Fox News. Dr. Hafeez has contributed to the New York Times, The Washington Post, The Wall Street Journal, Harper's Bazaar, WebMD, Yahoo, Psychology Today, and serves on multiple boards as an expert in mental health and education.

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AS ABRAMS LAW GROUP P.C. CELEBRATES ITS 9TH ANNIVERSARY, IT RECOGNIZES ITS ACHIEVEMENTS AND CELEBRATES THE RESULTS THIS FIRM HAS OBTAINED FOR ITS CLIENTS. ABRAMS LAW GROUP P.C.'S ACHIEVEMENTS ARE: NOMINATION OF MELANIE ABRAMS ESQ BY THE ATTORNEY AND PRACTICE MAGAZINE AS TOP 10 PERSONAL INJURY ATTORNEY, FOR THE EXCELLENCE IN PRACTICE AND DEDICATION TO THE LEGAL FIELD AND COMMUNITY (2021, 2020).

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