Queens BAR BULLETIN

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

January 2023 | Volume 90, No. 4

QCBA Endorses LaSalle for Chief Judge

The Queens County Bar Association congratulates Hon. Hector D. LaSalle, Presiding Judge of the Appellate Division, Second Department, on his nomination to serve as the 39 th Chief Judge of the New York State Court of Appeals.

Throughout his lengthy career, Justice LaSalle has proven himself to be thoughtful, thorough and fair in deciding cases of great significance to the litigants. Since his appointment as Presiding Judge of the Second Department in May 2021, Justice LaSalle has been active in our Association, as well as our Affinity Bar associations, met with our members on numerous occasions and has shared his thoughts about the judiciary. We believe Justice LaSalle has the temperament, demeanor and vision to guide the New York State court system through the short-term and longer-term changes necessary to ensure an effective judicial system. We also note that Justice LaSalle's confirmation would be historic as he would be the first Chief Judge of the New York State Court of Appeals who is of Latino descent.

We endorse Justice LaSalle's candidacy for Chief Judge and encourage the New York State Senate to swiftly confirm his nomination.

Table of Contents

QCBA Endorses LaSalle for Chief Judge....1
Editor's Note....4
President's Message....7
Why Trying to Trademark Hate Speech Does Not Work....9, 10
The O-1 Visa – The Cream of the Crop, Rise to the Top!....11
The Practice Page....12
Immigration Questions....13
The Agonizing Quest For Justice....14, 16
Caring For A Loved One With Dementia....20
Judge Ventura Promoted • Judge Schiff Promoted....22

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

JANUARY 2023

Monday, January 2	*New Year's Day Observed – OFFICE CLOSED*
Monday, January 9	Supreme, Civil & Torts Committees Mtg - 1:00 pm
Tuesday, January 10	Diversity & Inclusion Committee Mtg - 1:00 pm
Wednesday, January 11	Academy of Law Committee Mtg - 1:00 pm
Thursday, January 12	**CLE:** Sale of Business Assets - 5:30 pm
Monday, January 16	*Martin Luther King, Jr. Day – OFFICE CLOSED*
Thursday, January 26	Our Family Wizard – Improving Communication Between Parents - 1:00 pm
Thursday, January 26	Nominating Committee Mtg - 5:00 pm
Tuesday, January 31	**CLE:** The Trial Series: Pt 3 – Direct Questioning

FEBRUARY 2023

Monday, February 13	*Lincoln's Birthday Observed – OFFICE CLOSED*
Wednesday, February 15	**CLE:** Animal Law Committee
Monday, February 20	*Presidents' Day – OFFICE CLOSED*
Wednesday, February 22	**CLE:** Litigating Adverse Possession & Easements - 1:00 pm
Tuesday, February 28	**EVENT:** Black History Month: Celebration of Judicial Excellence - 5:00 PM

MARCH 2023

Tuesday, March 21	**EVENT:** Judiciary, Past Presidents & Golden Jubilarian Night at St. John's Law School - 5:30 pm

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
Wednesday, May 17	Family Law Committee Dinner - 5:30 pm
Monday, May 29	*Memorial Day – OFFICE CLOSED*

JUNE 2023

Monday, June 19	*Juneteenth – OFFICE CLOSED*

New Members

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Irina Dularidze
Francesca Gaspari
Austin Idehen
Bryan Ramdat

Necrology

Harry H. Burstein
Hon. Ronald D. Hollie
M. Joseph Levin
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Editor's Note

Jump on the Jackie

By Paul E. Kerson

Jump on the Jackie (Robinson Parkway)
And in short order
You are in the newly rebuilt Kew Gardens Interchange of New York City.

Follow the Grand Central Parkway East to eastern Queens County
And the Northern State Parkway to Nassau and Suffolk Counties of Eastern Long Island.

Or follow the Grand Central Parkway West to
Fiorello LaGuardia Airport
and every city within 500 miles.

Or take the Van Wyck Expressway North to the Bronx, Westchester, Upstate New York, New England
and Interstate Route 95 and everywhere from Maine to Florida.

Or take the Van Wyck Expressway South to John F. Kennedy International Airport
and every city on Planet Earth.

Or take Queens Boulevard or Union Turnpike onto the streets of Queens to hear nearly every language known to Humanity and to cross the Edward I. Koch Queensborough Bridge to the United Nations world headquarters.

And you thought Queens County was an "outer borough".
"Forget about it."
You have entered the Crossroads of the World.
Jump on the Jackie
and the Whole World awaits your every hope, ambition and opportunity.

Jackie Robinson would have loved the newly rebuilt Kew Gardens Interchange of New York City.
As we travel together under, around and through it
we are all living in his dream.

Paul Kerson is a Past President of the Queens County Bar Association. His law firm, Leavitt, Kerson & Sehati has its law offices in the Forest Hills Tower (and you guessed it) adjacent to the Kew Gardens Interchange for the past 33 years.

QUEENS COUNTY BAR ASSOCIATION
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Real Property Committee present a **ZOOM CLE**

SALE OF BUSINESS ASSETS: What You Need to Know

Thursday, January 12, 2023 • 5:30 pm - 7:30 pm

Sponsored by:

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Registration Form

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Must Register & Pay by January 9th to receive ZOOM access.
WWW.QCBA.ORG or EMAIL: CLE@QCBA.ORG
No Refunds/credits if registration is not canceled by January 9, 2023.

President's Message

A New World of Networking Opportunities

By Adam Moses Orlow

Somewhere near the end of 2019, three long years ago, whoever could have thought what the next three years would look like? Things have changed so much since the Pandemic began that it is almost hard to recall what the practice of law used to be. Packed courtrooms? 100+ case calendar calls? Traveling for depositions? These things and more, once a part of the daily routine for so many of us are gone, some to slowly return and some to never be seen again.

One thing that was ever present in our past lives was the networking. The camaraderie. The socializing amongst attorneys. Every court appearance involved copious amounts of waiting and downtime inevitably spent shooting the breeze with our adversaries, catching up with long lost friends, running the latest legal quandary past colleagues for advice. Even at in person depositions the time both before and after and during breaks in between would be spent getting to know the other attorneys present. While the technological expediencies brought on by the pandemic have certainly come with many benefits, I do miss the in person dynamic it has replaced. In addition to enjoying the good fellowship, those interactions served a valuable purpose.

This makes me wonder about the newly admitted attorneys, particularly the ones who began practicing over the past 3 years. What must their experiences be like? Will they have opportunities to talk informally with their adversaries establishing relationships which will long outlive the case they are on but which also may aid in resolving the case they are on? Will they know who the regulars are in Queens Civil who know the courthouse intimately; the people they can approach with a question about a particular calendar call or a certain Judge's rules? Will they have a chance to learn about the children of the attorney sitting next to them at a calendar call or talk about their adversaries recent vacation over the holiday?

Here comes the shameless plug. There are so many great reasons to become active in the Queens County Bar Association; too many for me to recount in this message. Certainly, being active in our committees gives you a say in the way law is practiced in this County. But among the most important reasons is the networking opportunities we provide. Whether at CLE's, social events, committee meetings, charity events and so much more, this Association enables attorneys to meet old colleagues and create new ones. For all attorneys, but particularly for those beginning their careers and whose presence in the courthouse is a relatively new experience, appearing before judges can be somewhat intimidating and the cause of some apprehension. The opportunity to meet and greet members of the bench in informal settings, which our Bar Association offers throughout the year in a wide variety of programs and events, is the perfect antidote to those feelings of edginess and even foreboding. Make no mistake, there is no substitute for thorough preparation and appropriate demeanor before the bench but having "broken the ice" by having had some informal contact with judges, eases those initial forays into the courthouse.

At a time when in person appearances are rarer than before, the events this Association provides to meet each other face to face is something that none of us should take for granted and young attorneys more than any, should take advantage of these networking opportunities.

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PRESIDENT: Adam Moses Orlow

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our family wizard

Improving Communication Between Co-Parents

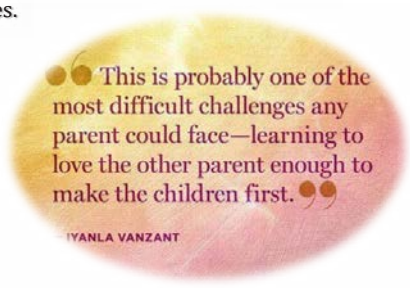
Thursday, January 26, 2023 1:00pm – 2:00pm
Via Zoom

Non-CLE Presentation from the Family Law Committee and OurFamilyWizard.

This presentation will advise family law professionals of communication technology ordered by the court in high conflict custody and visitation matters.

Professionals will learn how they can stay informed of co-parent communication through the use of online tools.

Each attendee will receive examples of agreements and court orders currently used to specify parent and professional use of OFW, as well as a full demonstration of the available features.



Free Presentation to QCBA Members (Non-members $15).
Must Register by January 23rd to receive ZOOM access.
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Why Trying to Trademark Hate Speech Does Not Work

BY TANEEM KABIR, ESQ., KABIR LAW PLLC

Mr. Kanye West has never been a stranger to public attention, but his recent antics at Paris Fashion Week seems to have attracted a new level of controversy. Mr. West, who legally changed his name to Ye a few years ago, hosted a private catwalk where he and others modeled t-shirts with the words "White Lives Matter" displayed in large block font.[1]

That phrase is categorized by the Anti-Defamation League as a white supremacist slogan that originated as a racist response to the Black Lives Matter movement.[2] Ye's stunt prompted Mr. Ramses Ja and Mr. Quinton Ward, two radio show hosts in Phoenix, to acquire ownership of a federal trademark application for the word mark "White Lives Matter" ("Ja Application").[3]

Ye and far-right personality Candace Ownes wearing White Lives Matter t-shirts at Paris Fashion Week. Photo Credit: https://bit.ly/3YvGMVk

Various news sources immediately circulated with headlines suggesting Mr. Ja and Mr. Ward (collectively, "Applicants") would now be able to limit Ye and others from using this disagreeable phrase to make money.

On the Cable News Network ("CNN"), for example, the headline was: "Kanye West Can't Sell 'White Lives Matter' Shirts Because Two Black Men Own the Trademark." CNN reported that the Applicants consider owning this trademark application as a "responsibility" that includes "making sure it doesn't end up in the wrong hands."[4] National Public Radio ("NPR") reported that the trademark "officially" belonged to Ja and Ward as of Oct. 28, 2022, and that such ownership gave them the "sole… right to sue anyone who uses the phrase for monetary gain."[5] *The Los Angeles Times* ("LA Times") opened their reporting by claiming that "when it comes to T-shirt sales, 'White Lives Matter' will not make a dime for Kanye West."[6] *Rolling Stone* asked Mr. Ja why had sought this trademark application, to which he replied: "The way the law works is either you're owning phrases, or it's up for grabs for people to make money off them."[7]

These headlines all but outright proclaim that do-gooders can simply file a trademark application over any controversial or disagreeable phrase to prevent bad actors from using it in common parlance or for profit. This is simply not true. A good guy with a trademark cannot preemptively stop a bad guy with an agenda.

Here's why:

1. The Ja Application confers no enforceable trademark rights to the Applicants because it is merely a request for trademark rights.

A trademark application is merely a request to the United States Patent and Trademark Office ("USPTO") to recognize that the applicant wishes to use a unique phrase, word, logo, or other mark to signal to consumers that the applicant is the source of a good or service.

Think of the Nike "swoosh" logo or the phrase "Just Do It." If you saw either of those on a pair of basketball shorts, you would know immediately they were made by Nike, Inc. and no one else. You would be foolish to try to sell your own brand of basketball shorts with similar marks on it. That is because the USPTO has long since approved trademark applications for Nike's "swoosh" graphical mark, which was granted in 1974, and the "Just Do It" word mark, which was granted in 1989.[8]

Here, the USPTO has not yet approved the Ja Application. The Ja Application has a filing date of Oct. 03, 2022. Its current status as of this writing is "Awaiting Examination" by a trademark examiner.[9] The current backlog at the USPTO for processing trademark applications is 13.8 months.[10] The Ja Application will likely remain in this pending state for at least another year.

During this time, the Applicants do not have any enforceable trademark rights. They cannot prevent Ye from making money by selling apparel with the phrase on it, and they certainly cannot prevent anyone else from using the phrase "White Lives Matter" in common parlance. Of course, they can send out all the cease-and-desist letters they can afford their lawyers to draft, but as long as the Ja Applicant is pending those letters are frivolous.

2. The Applicants are unlikely to demonstrate they intend to sell actual goods using the mark, a necessary element to obtaining federal trademark rights.

A trademark is a "mark" associated with your "trade," hence the word. You must use a mark in a "bona fide" way "in the course of trade."[11] You cannot get a trademark for "token use" or solely for the purpose of preventing others from using the mark.[12] "Use" is a mandatory element for establishing trademark rights in common law and at the state and federal levels.[13]

Common law trademark rights are acquired through means other than by filing any formal trademark application with any government office. The Supreme Court of the United States has held that a user's common law rights in their mark "are determined by the date of the mark's first use in commerce."[14]

State-level trademark rights are acquired by receiving approval of a trademark application filed with the relevant state's Secretary of State. All state governing offices explicitly require applicants to provide a date of "first use" for their mark in business.[15] State-level trademark applicants cannot leave this date blank. They must actually use their mark in their business at some point to get a state-level trademark.

Federal-level trademark rights are acquired by receiving approval of a trademark application filed with the USPTO. Federal trademark applicants "must specify the date of first use anywhere and the date of first use in commerce" of their subject mark.[16] Applicants must also identify at least one class of goods they used their subject mark on in commerce.[17] Such representations to the USPTO must be accompanied by a verified statement.[18] Willfully false declarations submitted jeopardize the validity of a trademark application.[19]

Here, the Applicants represented to the USPTO that they intend to sell products in the class of "jogging suits, shirts, sweatpants, sweatshirts, [and] tee-shirts".[20] They also represented that the date of first sale using the phrase was Oct. 16, 2022.[21] This is suspect. The Applicants have publicly expressed they have no intention to sell any physical goods using the applied-for mark: "Right now, based on everything that we know to be true, we have no intention of putting that shirt in any stores for people to buy."[22] None of the aforementioned news sources have reported anything about the Applicants' plan for actually manufacturing or designing apparel using this mark. When the USPTO ultimately assigns a trademark examiner to review the Ja Application, the Applicants' public statements and actions may become grounds for the examiner to deny or even rescind the mark's approval.[23]

3. The Applicants are unlikely to demonstrate they have placed a sufficient quantity of products in the stream of commerce to obtain or maintain trademark rights.

A mark owner must use their mark in commerce "in sufficient quantities," and not just in a "token manner."[24] The Trademark Law Revision Act of 1988 (TLRA) was passed primarily to address this question. The TLRA mandates that applicants must show a "*bona fide* use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark."[25]

Here, the Applicants cannot simply place a singular t-shirt using their mark into the stream of commerce. Doing so would be considered "token use" of a mark, or use that is made solely to attempt reserving rights in a mark.

Could the Applicants produce a sufficient quantity of products using their mark to obtain approval of their trademark application, and then drastically reduce quantity afterwards? Unlikely. The Lanham Act mandates that the Applicants' mark may be considered "abandoned" when their use of it falls appreciably below what is considered use in the "ordinary course

CONTINUED ON PAGE 10

Why Trying to Trademark Hate Speech Does Not Work

BY TANEEM KABIR, ESQ., KABIR LAW PLLC

CONTINUED FROM PAGE 9

of trade" with intent not to resume such use.[26] Such intent not to resume use may be inferred from the circumstances.[27]

Furthermore, when faced with the question of whether a trademark owner is adequately using their mark in commerce, the courts and the USPTO will evaluate the issue on a case-by-case basis. They will consider factors such as the applicant's nature of business, to what extent the applicant carries on their "trade," the commercial circumstances surrounding the applicant, the applicant's intent in selling their product using the mark, and the frequency and volume of the applicant's product sales.[28]

It would not be surprising if the Ja Application is deemed abandoned in due time. The nature of the Applicants' business is hosting a radio talk show, not in producing apparel. The commercial circumstances surrounding the Applicants are that they attempted to quickly gain exclusive domain over an increasingly popular mark to prevent bad actors from promulgating its abhorrent message. The Applicants do not operate an apparel production line. The Applicants have already made very public statements about their intention to not sell or promote their mark. And the frequency and volume of the Applicants' product sales appear to be non-existent.

4. Even if the Ja Applicant is granted despite the aforementioned legal deficiencies, the Applicants may still not be able to use their registered trademark to prevent others from using the phrase "White Lives Matter."

Words, designs and slogans generally cannot be splashed across a product in a way that would make a reasonable consumer think the mark is part of the ornamental aspect of the product itself. Such marks are considered merely "decorative" because they do not identify and distinguish the applicant's goods and, thus, do not function as a trademark.[29]

Imagine a tablecloth with a floral pattern on it. You would see that pattern from afar and think of it as the tablecloth's decoration, not as an indicator of who made it. You would have to look at the small label at the corner of the tablecloth to see who is the source of the product.

One of the major factors on the question of whether a mark is being used decoratively (and not as a trademark) is the size, location, and dominance of the proposed mark when applied to the goods.[30] A small, neat, and discrete word or design feature is generally considered to properly create the commercial impression of the product's trademark. A larger rendition of the same matter emblazoned across the front of a product may be perceived merely as a decorative or ornamental feature of the goods.[31] In *In re Lululemon Athletica Can. Inc.*, the applicant sought registration of a mark consisting of "a single line in a wave design that is applied to the front of a garment."[32] The examining attorney refused registration on grounds that the mark was merely ornamental, and the Trademark Trial and Appeal Board affirmed.

Another major factor is the mark's overall commercial impression. Marks that convey common expressions, messages, and terms of endearment are generally not perceived as registrable marks. For example, the peace symbol, "smiley face," or the phrase "Have a Nice Day" are all decorative and do not identify the source of the product.[33] In *LTTB LLC vs. Redbubble*, Lettuce Turnip the Beet LLC ("LTTB LLC") produced t-shirts, bags, and other items with the phrase "Lettuce Turnip the Beet" printed on them in big letters. LTTB LLC brought suit against Redbubble, Inc., an online marketplace, for allowing Redbubble's users to use their platform to sell similar products with the same phrase on it. The Northern District of California held, and the U.S. Court of Appeals for the Ninth Circuit affirmed, that consumers bought Redbubble's shirts not because they mistakenly believed they were buying a product made by the plaintiff, but rather because they enjoyed the apparent triple-pun.[34]

Here, the Applicants seek to prevent Ye from selling t-shirts with the words "White Lives Matter" splashed across the back in big block font. The large font size on Ye's shirts, the location of the text on the middle of the product, and the dominance of the text relative to the entirety of the t-shirt as a whole all strongly suggest Ye's use of the phrase was decorative and not for indicating the source of goods. Therefore, even if the Ja Application was approved, the Applicants could not prevent Ye's decorative use of the phrase.

The phrase "White Lives Matter" also carries a socio-political message, and not one conveying the source of the goods. So even if the Ja Application is approved, consumers could continue to primarily see the phrase as a decorative message rather than an indicator of the source of the merchandise. Under those circumstances, the Applicants would be powerless to stop others from using the phrase.

Trademark law is fundamentally consumer protection law. It is not a good tool for what Mr. Ja and Mr. Ward are trying to do. Trademarks do not prevent speech, no matter how abhorrent that speech may be.

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[1] Jess Cartner-Morley, *Kanye West Stirs Controversy in 'White Lives Matter' T-shirt at Paris Fashion Week*, The Guardian, (Dec. 17, 2022, 3:00PM), https://bit.ly/3hzV3Qi.

[2] *White Lives Matter*, Anti-Defamation League, (Dec. 17, 2022, 4:00PM), https://bit.ly/3WsniPD.

[3] USPTO Trademark Application Serial No. 97617868.

[4] Justin Gamble and Nicole Chavez, *Kanye West Can't Sell "White Lives Matter" Shirts Because Two Black Men Own the Trademark*, Cable News Network, (Dec. 16, 3:00PM), https://cnn.it/3uZsm2b.

[5] Matt Adams, *The Trademark 'White Lives Matter' Has Been Filed by 2 Black Radio Hosts*, National Public Radio, (Dec. 16, 3:00PM), https://n.pr/3WxBTcN.

[6] Christie D'Zurilla, *Kanye West's Tee is a Fashion Don't. Someone Else Owns 'White Lives Matter' Trademark*, The Los Angeles Times, (Dec. 16, 3:00PM), https://lat.ms/3v2SQzU.

[7] Tomas Mier, *Two Black Men Own the 'White Lives Matter' Trademark*, Rolling Stone, (Dec. 16, 3:00PM), https://bit.ly/3uYN2HR.

[8] Respectively, USPTO Trademark Registration No. 978952 and USPTO Trademark Registration No. 1875307.

[9] USPTO Trademark Application Serial No. 97617868.

[10] United States Patent and Trademark Office, *Current Trademark Processing Wait Times*, www.uspto.gov, https://bit.ly/3WgjtO4, (Dec. 16, 4:00PM).

[11] Trademark Manual of Examining Procedure Section 902.

[12] Trademark Manual of Examining Procedure Section 901.02.

[13] 1A Gilson on Trademarks Section 3.02 (2022).

[14] *Hana Financial, Inc. v. Hana Bank*, 574 U.S. 418, 419 (2015).

[15] United States Patent and Trademark Office, *State Trademark Information Links*, www.uspto.gov, https://bit.ly/3PC2LWy, (Nov. 20, 2022, 4:00PM).

[16] United States Patent and Trademark Office, *Dates of Use*, www.uspto.gov, https://bit.ly/3j2NvWz, (Nov. 20, 2022, 4:00PM); See also 37 C.F.R. §2.34(a)(1)(ii)-(iii) and Trademark Manual of Examining Procedure Section 903.

[17] United States Patent and Trademark Office, *Goods and Services*, www.uspto.gov, https://bit.ly/3Yy5EMk, (Nov. 20, 2022, 4:00PM).

[18] 37 C.F.R. § 2.20; Trademark Manual of Examining Procedure Section 901.

[19] 37 C.F.R. § 2.20.

[20] USPTO Trademark Application Serial No. 97617868.

[21] *Id.*

[22] Mouhamad Rachini, *2 Black Radio Hosts Now Wwn the "White Lives Matter" Trademark. Here's How They'll Use It*, Canadian Broadcasting Corporation, (Nov. 20, 2022, 4:00PM), https://bit.ly/3j4e2CU.

[23] Note that trademark examiners will generally not evaluate an applicant's good faith intention to sell products using their mark in their *ex parte* examination of the application. In the *ex parte* context, an applicant's submission of a sworn statement regarding having a *bona fide* intention to use the mark in commerce will generally be sufficient evidence of good faith. In an *inter partes* proceeding, such as when an outside party formally requests the examiner to scrutinize an application, the examiner will do so if presented with evidence clearly indicating that the applicant does not have a bona fide intention to use the mark in commerce. See, e.g., *M.Z. Berger & Co. v. Swatch AG*, 787 F.3d 1368, 114 U.S.P.Q. 2d 1892 (Fed. Cir. 2015); Trademark Manual of Examining Procedure Section 1201.02(b).

[24] 1A Gilson on Trademarks Section 3.02 (2022); Trademark Manual of Examining Procedure Section 901.02.

[25] Public Law 100-667, 102 Stat. 3935.

[26] 15 U.S.C. § 1127 (Lanham Act § 45); See, e.g., *Noble House Home Furnishings, LLC v. Floorco Enters.*, LLC, 118 U.S.P.Q.2d 1413, 1417 (T.T.A.B. 2016).

[27] 15 U.S.C. § 1127 (Lanham Act § 45).

[28] *Paramount Pictures Corp. v. White, 31 U.S.P.Q.2d 1768* (T.T.A.B. 1994); *Major League Baseball Properties, Inc. v. Opening Day Productions, Inc.*, 385 F. Supp. 2d 256, 74 U.S.P.Q.2d 1102 (S.D.N.Y. 2005); *Top Beverage Group v. Wildlife Brewing N.B., Inc.*, 338 F. Supp. 2d 827 (S.D. Ohio 2003); *Duffy v. Charles Schwab & Co.*, 54 U.S.P.Q.2d 1820 (D.N.J. 2000); *Natural Footwear, Ltd. v. Hart, Shaffner & Marx*, 760 F.3d 1383, 225 U.S.P.Q. 1104 (3d Cir. 1985); *Parham v. Pepsico Inc.*, 927 F. Supp. 177, 40 U.S.P.Q.2d 1060 (E.D.N.C. 1996); *La Societe Anonyme des Parfums le Galion v. Jean Patou, Inc.*, 495 F.2d 1265, 1274 (2d Cir. 1974) ("Trademark rights are not created by sporadic, casual, and nominal shipments of goods bearing a mark.").

[29] Sections 1, 2, and 45 of the Trademark Act; 15 U.S.C. Sections 1051, 1052, and 1127; Trademark Manual of Examining Procedure Section 1202.03.

[30] Trademark Manual of Examining Procedure Section 1202.03(a); *In re Hulting*, 107 U.S.P.Q.2d 1175, 1177-79 (T.T.A.B. 2013); *In re Dimitri's Inc.*, 9 U.S.P.Q.2d 1666, 1667 (T.T.A.B. 1988).

[31] Trademark Manual of Examining Procedure Section 1202.03(a).

[32] *In re Lululemon Athletica Can. Inc.*, 105 U.S.P.Q.2d 1684 (T.T.A.B. 2013).

[33] Trademark Manual of Examining Procedure Section 1202.03(a); See, e.g., *In re Peace Love World Live, LLC*, 127 U.S.P.Q.2d 1400, 1403 (T.T.A.B. 2018) ("The phrase 'I LOVE YOU' conveys a term of endearment comprising the bracelet and, thus, it is ornamental. It does not identify and distinguish the source of the bracelet, especially where there is so much jewelry decorated with the term I LOVE YOU in the marketplace.").

[34] Kyle Jahner, *Ye's 'White Lives Matter' Shirt and Trademark Law: Explained*, Bloomberg Law, (Dec. 16, 3:00PM), https://bit.ly/3WjV9ua; LTTB, LLC v. Redbubble, Inc., 385 F. Supp. 3d 916, 918 (N.D. Cal. 2019).

The O-1 Visa – The Cream of the Crop, Rise to the Top!

The O-1 nonimmigrant visa is a temporary work visa available for an individual who has an extraordinary ability or achievement. The O nonimmigrant visa can be divided into four different categories:

- O-1A: individuals with a special ability in the sciences, education, business, or athletics
- O-1B: individuals with a special ability in the arts or special achievement in the motion picture or television industry
- O-2: individuals who will join an O-1 nonimmigrant visa holder to assist in a specific event or performance. If an O-2 is assisting an O-1A visa holder their assistance must be an "integral part" of the O-1A's activity. If an O-2 is assisting an O-1B visa holder their assistance must be "essential" to the completion of the O-1B's production.
- O-3: dependents, spouse and children under the age of 21, of O-1's and O-2's.

To meet the requirements for an O-1 visa, an individual must show an extraordinary ability and the receipt of national or international acclaim for it. This visa is a temporary visa allowing an individual to continue work in the U.S. in the area of extraordinary ability. If an individual is applying for an O-1 visa in the motion picture or television industry, they must show some sort of special achievement coupled together with a degree of skill and recognition above that of an ordinary individual in the same field.

To apply for an O-1 visa the petitioner must file documentary evidence such as the contract between petitioner and beneficiary, an advisory opinion from a peer group or person with expertise in the beneficiary's area of ability, and other supporting documents should also be submitted. An O-1 visa petition can also be filed by an agent who may be the actual employer of the beneficiary, the representative of both the employer and the beneficiary, or the person or entity authorized by the employer to act for, or in place of, the employer as its agent. And, and O1 Visa Holder may apply on their own, depending on the circumstances as a self-petition.

Under this visa, individuals may live and work in the United States for an initial period of up to three years and then apply for an extension. USCIS will determine the time necessary for the extension to accomplish the initial event or activity in increments of up to one year. Any dependents of O-1 nonimmigrants, spouse and children under the age of 21, may be eligible for O-3 nonimmigrant status. However, dependents are not allowed to work but they may participate in full or part time study. O-3 status is granted for no longer than the period of time granted to the principal O-1/O-2 nonimmigrant.

After an O visa holder has completed their stay in the U.S. the employer is responsible for the reasonable cost of return transportation to the O nonimmigrant's last place of residence. If an agent filed the petition for the employer, then the agent and the employer would be equally responsible for paying the return transportation cost. However, if the O nonimmigrant voluntarily resigned from their employment then they will have to pay for their own cost of transportation back home.

The O-1 Visa is a fantastic type of visa to have and utilize for work and temporarily living in the United States for a person who qualifies. Moreover, a person who qualifies for an O-1 Visa will likely also qualify for an EB-1 Visa should they ever want to live permanently in the United States. If you or someone you know have gained widespread recognition in a particular field of study which you think fits into what we have described above, and are interested in finding out more, please consult with an experienced attorney.

BY DEV B. VISWANATH, ESQ.

The Practice Page

Short Service --- Jurisdictional Defect, Or Excusable Error?

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

CPLR 2214 sets forth the math for moving parties to follow when setting return dates on notices of motion. The options vary depending on the manner the moving papers are served upon the opposing party. The now-common use of NYSCEF e-filing removes many of the vagaries of mail service and delivery. That said, math errors sometimes occur, and when they do, the return date might provide less time than the responding party is entitled to under the CPLR, even with e-filing.

An adjournment of a return date will normally resolve the problem of "short service," and for that reason reduces the instances where short service is a true issue. Service of an amended notice of motion may do the trick as well. When short service occurs and is not corrected, is the defect a jurisdictional one where the court has no authority to decide the motion on its merits? Or, does the court have discretion to render a decision on it so long as there is no prejudice to the opposing party? Decisional authority appears to be split on this topic.

The Second Department has held that courts are without jurisdiction to entertain motions on their merits when papers are short served (*Bianco v Ligreci*, 298 AD2d 503). However, *Bianco* cited in support cases from the First, Second, and Third Departments where the underlying motions were defective not in terms of the number of days of notice, but from the manner of their service (*Adames v NYCTA*, 126 AD2d 462 [1st Dep't.]; *Welsh v State*, 261 AD2d 537 [2nd Dep't.]; *Burstin v Public Serv. Mut. Ins. Co.*, 98 AD2d 928 [3rd Dep't.]). In all of the foregoing cases, including Bianco, improper service provided a basis for vacating the motion default of the opposing party.

Where short service is the only defect in a notice of motion, the Third Department views it as a non-jurisdictional defect, allowing the trial court to reach the merits so long as the adversary party has submitted opposition papers and is not otherwise prejudiced (*Capolino v Goren*, 155 AD3d 1414). The Fourth Department agrees, having found that a trial court has discretion to disregard even the absence of a return date, if there is no prejudice to the opposing party (*Harrington v Brunson*, 129 AD3d 1581).

A special word of caution is in order for CPLR 3213 motions for summary judgment in lieu of a complaint. In a CPLR 3213 "motion-action," the return date has a double significance --- the date opposition papers are due, and also, the date by which the defendant must appear in the action. The time to appear on the motion can never be less than that provided for by CPLR 320(a), either 20 or 30 days depending on the manner of service of process. Therefore, a stronger argument may exist that short service of a CPLR 3213 motion should prohibit the trial court from entertaining the motion's merits (*e.g. Segway of New York, Inc. v Udit Group, Inc.*, 120 AD3d 789 [2nd Dept.] [short service coupled with incorrect courthouse address]; *Goldstein v. Saltzman*, 13 Misc.3d 1023). Yet, it is often impossible for plaintiffs to know exactly when service will be accomplished by a process server so that pre-selecting a CPLR 3213 return date is tricky to compute, and provides at least an arguable discretionary basis for the court to reach the motion's merits (*Brooklyn Fed. Sav. Bank v Crosstown W. 28 LLC*, 29 Misc.3d 1237[A]). Statewide authority is split on these issues as well. When discretion is exercised in favor of reaching the CPLR 3213 merits despite short service, the key factors appear to be whether the defendant has opposed motion and whether there is prejudice (*e.g. Imbriano v Seaman*, 189 Misc.2d 357).

CPLR 7804(c) requires that a notice of petition and petition be served at least 20 days before they are returnable. Short service of a petition is a jurisdictional defect in the Second Department (*Stream v Beisheim*, 34 AD2d 329) but not in the Third Department (*Brown v Casier*, 95 AD2d 574), further underscoring the split authorities. The law is unclear in the Fourth Department given conflicting decisions there (compare *Stoddard v Town Bd. of Town of Marilla*, 52 AD2d 1091 *with Harrington v Brunson, supra*).

The bottom line is to be careful of the math when calculating return dates, correct any error that may occur, and to otherwise be guided by the law of the department where the case is venued. If expedited return dates are needed, they may be obtained by order to show cause (CPLR 2214[d]) without complication, if the court is inclined to agree.

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

AILA's Advocacy Action Center

Joseph DeFelice

To provide some relief from rising EAD application processing times, on May 3, 2022, USCIS announced a Temporary Final Rule (TFR) that extended and expanded the automatic extension period for employment authorization for certain EAD renewal applicants from 180 days after expiration to up to 540 days after expiration. AILA welcomed this announcement, which adopts one of AILAs recommendations included in its March 2022 policy brief addressing the crisis level processing delays and backlogs hamstringing the agency and its stakeholders.

The agency published this TFR to take effect immediately because it believed a delay in publishing the rule would further exacerbate an already untenable circumstance that many employers and applicants find themselves in due to a combination of heightened workload, staffing shortages, and the resulting delays in adjudication. USCIS argued that it had good cause to forego a notice and comment period under the Administrative Procedure Act per 5 U.S.C. 553(b)(B) and (d)(3).

AILA supports this decision by USCIS but recognizes that publishing a rule without notice and comment can make it susceptible to litigation and a possible injunction. Therefore, comments showing why this TFR was needed without delay, bolstered by relevant client examples or stories, will be particularly helpful in ensuring that the TFR remains in effect.

This comment also presents an important opportunity to ensure that USCIS takes further action to reduce processing delays. While this is an important first step to relieve some individuals from the harms caused by the agency's crippling EAD application adjudication, this does not resolve the issue for many applicants not covered under the rule, nor is it a perfect solution. It is also just one of many steps needed to address the greater issue of the growing backlog and heightened processing times for many application and petition types.

AILA urges members and their clients to submit comments to provide your unique perspective on the TFR and its impact on you or your clients' ability to continue working, alongside additional recommendations and comments for agency consideration to take further steps to address the crisis-level backlog and processing delays. *Comments were due at 11:59 P.M. EST on Tuesday, July 5, 2022.*

Engagement Readout

The CIS Ombudsman's Webinar Series: Employment-Based Immigrant Visas - A Conversation with USCIS on the Statutory Framework and Pandemic Challenges

On May 26, 2022, the Department of Homeland Security's (DHS) Office of the Citizenship and Immigration Services Ombudsman (CIS Ombudsman) hosted a webinar about U.S. Citizenship and Immigration Services' (USCIS) efforts to use all available immigrant visa numbers, giving eligible employment-based adjustment applicants the opportunity to obtain a Green Card this fiscal year.

During this session, CIS Ombudsman Phyllis A. Coven and USCIS Chief of Staff Felicia Escobar Carrillo provided opening remarks. Then, staff from both offices engaged in a dialogue about topics such as immigrant visa priority dates, progress in processing employment-based Green Cards in different categories, as well as policy and operational initiatives aimed at maximizing visa usage and mitigating processing delays and their impact on USCIS' customers. A total of 1,080 stakeholders participated in this engagement [attorneys/legal representatives – 31%, advocacy groups – 2%, and others (applicants/petitioners and employers) – 67%]. Participants submitted more than 800 written questions. Below is a sample of the questions received:

- Will the [India] EB-3 category move forward this fiscal year?
- We are almost one quarter away from the end of this fiscal year. Are you still confident that we can utilize all of the employment-based visas available this year?
- Can we know, so far, how many employment-based visas have been adjudicated for fiscal year 2022?
- How can I confirm that my request for an underlying transfer of basis from EB-3 to EB-2 was received properly and that my case is being adjudicated in the EB-2 category?
- At what point during the fiscal year are the visa numbers spilled down from EB-1 to EB2? Does it happen every month? Every quarter? Or just in the fourth quarter? AILA Doc. No. 22052306. (Posted 6/17/22) 2
- How can I know if a visa is assigned to my form or me? When I have contacted Emma/USCIS, we are not provided with that information.
- Is it possible to ask USCIS to process applications in order, meaning making sure 2014 priority dates do not get Green Cards before 2011 priority dates?
- Is COVID-19 vaccination proof required for Forms I-693, Report of Medical Examination and Vaccination Record, submitted a year ago when the old forms did not have a section for COVID-19 vaccination?
- Do you foresee any spillover visas from family-based to employment-based categories starting in fiscal year 2023?
- What does Form I-485 Supplement J, Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j), approval mean in the context of interfiling? Does it mean that the interfiling from EB-3 to EB-2 is completed?
- Why are the applications filed in October 2020 not being prioritized? Can you confirm whether employment-based adjustment of status interviews are being universally waived?
- Can USCIS provide specific dates that applications will be transferred from the Nebraska Service Center (NSC) to the National Benefits Center (NBC)?
- Can USCIS explain why transfers from the NSC to the NBC are not happening?

Speakers Phyllis A. Coven, CIS Ombudsman, DHS Bertha Anderson, Chief of Public Engagement at the CIS Ombudsman, DHS Frederick Troncone, Senior Advisor at the CIS Ombudsman, DHS Felicia Escobar Carrillo, Chief of Staff, USCIS Douglas Rand, Senior Advisor, Office of the Director, USCIS Andrew Parker, Chief of the Residence and Admission Branch, Residence and Naturalization Division, Office of Policy and Strategy, USCIS.

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.

The Agonizing Quest For Justice

- the impossible dream

a human interest story

BY LEONARD L. FINZ

Most recently, while listening to a record on Sirius Radio, I heard, "The Impossible Dream" as performed by Robert Goulet. For those who weren't around in 1965, a blockbuster musical titled, "The Man of La Mancha" had made its big entrance onto the musical stage. In fact, "The Impossible Dream" was the principle song with a lyric that was nothing short of magical poetry. Being moved again by its poignancy and remarkable message, I was reminded of an incredible human interest story I discovered in my travels some years ago. But before I share the striking narrative, I will set the scene with two stanzas of this magnificent lyrical treasure as composed by Joe Darion (lyrics) and Mitch Leigh (music).

THE IMPOSSIBLE DREAM

"To dream the impossible dream
To fight the unbearable foe
To bear with unbearable sorrow
And to run where the brave dare not go

To right the unrightable wrong
And to love pure and chaste from afar
To try when your arms are too weary
To reach the unreachable star"

All of which takes me to the unimaginable drama that follows…

George (fictitious name) was in his middle 30's, married and with a son who at the time was eight years old. George had joined the U.S. Army as a volunteer and served his country well for several years after which he received an honorable discharge. Shortly thereafter, he, his wife, and son moved into an apartment that was part of a two-story multiple complex. With a modest savings account, George was able to rent a neighborhood store in which he opened a small print shop – a business he dreamed of starting when he was in the Army.

Reserved and relatively withdrawn, the family kept mostly to themselves, other than passing along a friendly "good morning" to a neighbor. Most folks were congenial in their response, except their neighbor, Joe, (fictitious name) who occupied the apartment next door to George. It was obvious that Joe, (in his forties), was a drinker. And with slurred tongue he would berate and insult George every time their paths crossed.

Joe would always levy harsh and bruising words attacking George's religious faith. George, in return, not wanting to escalate tensions raised by Joe's bigoted verbal assaults would turn his back and simply walk away. This mean and unforgiving behavior exhibited by Joe continued for almost two and a half years, and became most intolerable when Joe was drunk. During those ugly times, Joe's ethnic and religious insults would expand to a point where Joe would even challenge George to a fistfight. During those bitter encounters, George would respond by just walking away quickly.

But then, that fateful day arrived, when George and his wife were sitting in front of their apartment entrance.

Suddenly Joe came upon the scene, wearing a soiled undershirt, and started his usual verbal onslaught. Only this time, it went to a vicious extreme. Pointing at George's wife, and with a venomous tone, he called her a "whore," and their eight-year-old son, a "bastard." Being called such an ugly name, and hearing her son called a bastard, caused George's wife to stand up instinctively, ready to engage him verbally.

Without hesitation, Joe put his hands on her and forcibly shoved her aside. George, at this point, unable to contain himself any longer, confronted Joe and started to yell at him. Without pause, Joe removed the lit cigarette from his lips and thrust it forcefully into George's chest. The intensity of such wicked action resulted in both George and Joe punching each other with bare fists, as both wrestled violently to the ground. A fierce battle ensued surrounded by the desperate screams of George's wife. Sharp blows were exchanged. One caused Joe to roll over striking his head with enormous impact upon the nearby concrete curb. He remained motionless as blood started to pour from the wound he had just sustained. His eyes, closed. His body, still. His body, inert. His body, frozen. His body, lifeless. Joe, was dead!

Within fifteen minutes, three police cars with screaming sirens arrived. Ten minutes later, an ambulance escorted by two more patrol vehicles, came to sudden stops at where Joe's body was located. Two EMTs rushed out of the ambulance to Joe and tried to revive him with CPR and oxygen, but soon thereafter, flashed "thumbs down" to two police officers who had led the way.

Within minutes, two unmarked vehicles came to the scene in quick halts. Two Assistant District Attorneys got out of one, and a detective and photographer, out of the other.

George and his wife were seated in front of their apartment. Both appeared to be in a trance. Following a brief Q & A by the detective, George was placed under arrest and cuffed. He was then put into the rear of one of the police vans and taken directly to the stationhouse.

Having been given his Miranda rights earlier, George was charged with the commission of a crime. Brought before a Magistrate sometime later, bail was set at a sum that George could not meet. As such, he was delivered to the local prison detention center, there to remain behind bars until bail money could be raised, or until his trial would commence.

While incarcerated, George's frazzled wife retained a local attorney and advanced a small retainer which was the balance of money she and George had saved for the operation of his small print shop.

After the passage of many months, George was indicted and charged with manslaughter in the first degree based upon the District Attorney's firm accusation that Joe's death was brought about by George in his use of excessive force.

(Please note: All names, including the State and city in which the event took place, the venue, the Judge, and the names of all involved courts, are intentionally not disclosed, thus respecting the privacy of the principals involved.)

After the passage of months following the indictment, the trial day finally arrived before a criminal court Judge and jury.

Following one week of evidence and charge of law by the presiding Judge, the jury was sent out to deliberate its verdict. Two days later, the foreman reported that they were deadlocked. Despite the court's charge that under those circumstances they make further attempts to reach a verdict, the jury, through its foreman reported that they were hopelessly deadlocked. As such, the Judge had no choice but to declare a mistrial. He then set down a date for the trial that George would have to face for a second time.

Although a lowered bail was one that George was able to meet with money borrowed from a relative, his print shop remained closed. With bills piling up and no money coming in, George had to declare personal bankruptcy while awaiting anxiously for the second trial to begin.

A different criminal court Judge was assigned as the case proceeded to trial. This time however, the jury returned a verdict of "Guilty." According to the court records, an appeal was taken. Months later, the decision of the appellate court came down which affirmed the conviction without opinion. There was however, a sharp dissent by one of the appellate judges in which he urged a reversal and opined that a new trial should be held. In part, the dissenting Judge stated the following:

> ***"The theory of the prosecution was that the defendant used excessive force in repelling decedent's aggressions. In brief, that he should have realized when the right moment had come that he could safely withdraw from the fight without further risk of harm to himself and that had he done so, the decedent would not have been critically injured. From my point of view this is applying law in a vacuum. While there can be no doubt that a person may not take the law into his own hands to punish an aggressor, this does not mean that the law demands that one in the heat of battle not of his own seeking, make a fine distinction as to just exactly when the last blow is justified and the next blow will constitute excessive force. Such approach is suitable for a laboratory setting but is unsuitable for a world of real people where a person has been goaded beyond endurance and his own safety may have been in jeopardy if this bully had gotten the upper hand. Sometimes aggressive action is the only reasonable way to protect oneself and I believe that this the case here."***

George's quest for justice did not end there. He appealed the appellate court's affirmance of guilt to the highest court of the state. The basis of the appeal rested upon the alleged errors committed by the trial judge, thus depriving George of a fair trial.

Again, many months passed, but finally, the high court rendered its decision. Unanimously, it held that having found enumerated errors in the trial record, "the cumulative effect was to deprive the defendant of a fair trial."

CONTINUED ON PAGE 16

The Agonizing Quest For Justice

BY LEONARD L. FINZ

CONTINUED FROM PAGE 14

Accordingly, the court in its decision set the case down for a third trial.

More than five years had elapsed from the date that George was arrested to the date of the high court's decision.

While George felt some relief, his emotional structure was totally drained and almost destroyed. He had lost his savings! He had lost his print shop! He had lost his self-esteem! He had lost what was a positive marital relationship that he and his wife later suffered. What had been loving and close-knit became filled with toil, misgivings, and uncertainty! He was declared a bankrupt! He no longer could be a role model to his son! No longer, a mentor! He had lost the father – son relationship that should have been nurtured with joy and pride, instead of misery and self-doubt! But to top it all, he had lost his freedom to pursue a life of hope, free of overwhelming burdens he had to face every minute of each day that almost brought him to depressing thoughts of suicide! And with all that, George now had to face a third trial!

The case now came before another Judge. It was at this point, that George's lawyer who had been funded by the State in accordance with statutory law wherein a defendant charged with a crime was indigent, made a motion to dismiss the indictment in "furtherance of justice." While such a remedy can be found in the statutory books of most states, such a remedy is rarely sought. And when it is, it is usually denied.

Now, the Judge had to decide whether George should proceed to a third trial, or whether he could walk out of the courthouse, a free man.

The Judge adjourned the trial pending his decision. Finally, the day arrived when all parties were ordered to appear to receive the court's final decision on the motion brought on by the defendant to dismiss the indictment in the "furtherance of justice."

At 9:15 am, the district attorney's team was seated at the prosecution table. George and his attorney were seated at the defendant's table. George's wife, son, relatives and friends, were seated in the courtroom. There were others already seated who had been following the history of the case. In fact, most of the seats were occupied.

At exactly 9:30 am, the Judge made his entrance onto the bench. He greeted the participants and then stated that he had reached his decision and would read it in open court into the record.

In essence, the Judge stated that he had reviewed the transcripts of the first two trials; that he had read the documents of the appellate courts; that he was totally familiar with all of the facts and prior proceedings. He stated further that such a motion to dismiss in the "furtherance of justice" must "never be carelessly applied or extensively employed."

What follows are the conclusory statements taken from the Judge's decision which can be found in the reported case…

"Long and careful thought has been given to the many considerations entering into a decision of this kind. Instead of seizing on the facile escape to "Let the jury decide", this court has elected to face the question, "What is just and equitable?"

Perhaps Aristotle, who despite the erosion of time still emerges as the father of logic, reason and order, can best provide the answer: "Equity bids us to be merciful to the weakness of human nature; to think less about what he said than about what he meant; not to consider the actions of the accused so much as his intentions; nor this or that detail so much as the whole story; to ask not what a man is now but what he has always or usually been."

To any jurist who is daily involved in seeking the true application of equity and justice, the temptation to continue to pursue its many descriptions and definitions forever looms. This court, however, will not elaborate on this subject beyond the finding that in the "furtherance of justice" the indictment herein must be dismissed."

With those final words spoken, sobs broke out in the audience. George's wife and son ran up to George who appeared to be in shock. They all hugged tightly as their tears flowed freely amidst their cries of joy. The audience even started a quiet applause, and was directed by two court officers to stop. Interestingly, they exhibited wide cordial smiles.

Prior to the judge leaving the courtroom, George and his wife, together with George's attorney moved quickly to the bench. With tears streaming down his face, he spoke out, "Thank you your honor. Thank you." Hearing that, the judge responded, "You're a free man. You can now leave the courthouse. Go out and celebrate!"

I do not know where George or his family are today. But what I do know is that George and the other Georges of this world are specifically reflected in the following last two stanzas of, *"The Impossible Dream"*…

"And the world will be better for this
That one man, scorned and covered with scars
Still strove with his last ounce of courage
To reach the unreachable star."

And as for George, **"the agonizing quest for justice"** sent him on a long and hazardous journey. But in the end, he finally reached, **"the unreachable star."**

END OF STORY

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

Caring For A Loved One With Dementia

BY FRANK BRUNO, JR.

A new or existing client with a dementia diagnosis must understand that life is about to change for their family and friends. Caring for a loved one who is living with Dementia is a full-time job. Caring for a loved one can be demanding emotionally and physically; a full-time family caregiving project; an actual full-time job, cooking, cleaning, another elderly parent, a spouse, possibly elderly in-laws, keeping up with household chores, the laundry, sometimes kids, Boy Scouts, Little League, high school, running errands, work associations, community activities and doing the grocery shopping – of course so many caregivers feel burned out and depressed. You may feel overwhelmed, confused, or concerned that you are not doing enough while doing so much.

Years ago, helping my mother, we had been caregivers to my father who fell ill as a young man with Lou Gehrig's Disease and then later along with my wife and family we were caregivers to my mother when she was struck with the onset of dementia. I was a young newly married man and then later a working professional with three children. When they say it takes a village; they are correct. The Village has to assist, or the ends do not meet. When families come to me and present this situation, I tell them that we have to find a way to care for the 168 hours in the week. One family member can take weekends, another evenings or the college student part-time employee can pitch in for 15 hours per week with church members helping out and the neighbor for a few hours. Somehow, someway the weekly assist must be cobbled together. Most people do not have the support system to see this type of effort.

It is not uncommon for caregivers to experience high levels of stress, anxiety and depression when providing care to a loved one with physical ailments or dementia. These overwhelming expressions can cause the mind and body to become consumed with hopeless feelings of fear and grief. Too much stress or anxiety may adversely affect the caregiver's health and the quality of care being provided to the person living with dementia or other debilitating conditions. My parents have passed but my in-laws are in the throes of illness and age-related conditions. My mother-in-law has the aftereffects of cancer chemo and radiation while my father-in-law is a diabetic going through dialysis. The interactions are problematic and within the last six weeks there have been two weeklong hospital stays. Problems are plenty with few answers. Well, there are answers but few solutions. From this firsthand experience patience has grown and been tested, nerves have worn thin, and conviction frayed. Sometimes it can be a matter of having a mindset of putting your own oxygen mask on first before you help others. With strong family bonds, a lifetime of supporting others it is easier said than done.

The dementia diagnosed patient can be a handful and according to the Alzheimer's Association®, caregivers should seek advice from a doctor and/or a trained medical professional, if they experience any of the following signs and/or symptoms:

1. **Denial.** Not believing the diagnosis and the effect it has on the person i.e., "I know Dad is going to get better."
2. **Anger.** Shown towards the person who has been diagnosed with Alzheimer's or dementia because he or she cannot do the things previously done i.e., "He knows how to get dressed, he's just being stubborn."
3. **Social withdrawal.** No longer wanting to participate in the activities that once brought you joy i.e., "I don't care about bowling with friends anymore."
4. **Anxiety.** Not wanting to tackle the tasks of another day or constantly thinking about future challenges i.e., "What happens when he needs more care than I can provide?"
5. **Depression.** Difficulty getting out of bed in the morning or no longer finding happiness in life's moments or activities i.e., "I just don't care anymore."
6. **Exhaustion.** Constant feelings of being weary or having a lack of energy to complete even the smallest of tasks i.e., "I'm way too tired to deal with sweeping the floor today."
7. **Sleeplessness.** Cannot turn the mind off at night, instead a never-ending list of concerns continues to wreak havoc in your brain i.e., "What if he wanders away from home in the middle of the night or falls while going to the bathroom?"
8. **Irritability.** Always wanting to be left alone and experiencing extravagant mood swings i.e., "Get away from me – No, I'm not hungry and, no, I don't want to talk!"
9. **Lack of concentration.** Familiar and easy tasks become increasingly daunting or are completely forgotten i.e., "I was so busy, I forgot my dentist appointment."
10. **Health problems.** Inability to eat or receive the required amounts of nutrition or physical activity needed to maintain a healthy lifestyle i.e., "I can't remember the last time I went for a walk."

The caregiver and the elder law attorney have similar definitions. A caregiver is a person who tends to the needs or concerns of a person with short or long-term limitations due to illness, injury, or disability. As attorneys we sit in the unique position to tend to the injured and sick and to the providers of such care. Our mandate is to provide resources, assist with proper planning, forecast concerns, offer foresight and do it all with compassion and grace.

QUEENS COUNTY BAR ASSOCIATION

90-35 148th Street, Jamaica, New York 11435 • (718) 291-4500 • Fax: (718) 657-1789 • WWW.QCBA.ORG

The Nominating Committee is accepting applications to serve on the Queens County Bar Association Board of Managers

Please take notice that those members who wish to be considered for nomination as Members of the Board of Managers of the Queens County Bar Association should submit written requests and resumes highlighting your activities in the Association prior to January 11, 2023.

A virtual meeting of the Committee will take place on January 26, 2023, beginning at 5:00 P.M. All candidates must attend at their designated interview time.

You may present the names of the persons whom you desire to have considered by the Nominating Committee for nomination to offices to be filled at the Annual Meeting. A hearing will be held as indicated above for that purpose pursuant to the by-laws.

Kristen J. Dubowski Barba
Secretary

Please submit your requests in writing to the attention of the:

Nominating Committee
Queens County Bar Association
90-35 148 Street
Jamaica, N.Y. 11435

The Annual Election of Officers and Managers will be held on March 3, 2023. The newly elected Officers and Managers will assume their duties on June 1, 2023.

Dated: December 1, 2022
Jamaica, NY

Get involved! Can't commit to the Board as yet...join a committee! Call for more info.

Judge Ventura Promoted

Hon. Lourdes M. Ventura was named Associate Justice of the Appellate Term, Second Judicial Department for the 2nd, 11th and 13th Judicial Districts in an order signed by Hon. Tomiko Amaker, Acting Chief Administrative Judge of the New York Courts, on January 4, 2023. Judge Ventura was elected to the Supreme Court in 2019 and has served in that role since January 2020. Judge Ventura is a former member of the QCBA Board of Managers and Grievance Committee as well as a past president of the Queens County Women's Bar Association and Latino Lawyers Association of Queens County.

Also named to the Appellate Term were Hon. Lisa Ottley, currently a Supreme Court judge in Kings County, and Hon. Marina Mundy, currently a Supreme Court judge in Richmond County.

Judge Schiff Promoted

Hon. Alan J. Schiff was appointed Supervising Judge of the Civil Court, Queens County, succeeding Hon. Patria Frias-Colon, who was elected to the Supreme Court, Kings County.

Judge Schiff has served as a Civil Court judge in Queens County since February 2021 and previously served as a Criminal Court judge in Kings County from January 2020-January 2021. In addition, he has served as the Principal Law Clerk to Judge Bernice Siegel, Judge Denis Butler and Judge David Elliot.

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The Queens County Bar Association
Diversity and Inclusion Committee
invites you to

Black History Month Celebration of Judicial Excellence

February 28, 2023 at 5:30 pm
at the
Queens County Bar Association
Honorees and Guest Speakers to be announced.

CLE PROGRAMS ON DEMAND

Please contact QCBA office to order:
Phone **718-291-4500 ext. 232** • Fax **718-657-1789** • Email **CLE@qcba.org**

MP4 files are videos | ***MP3 files are audio only***

Seminar Title	CLE Credits	Member Price	Non-Member Price	Original Recording Date
No-Fault Litigation 2022 Update *(MP4)*	1.0 Prof Practice	$15	$50	12/08/2022
Fun with FOIL: FOIL for Defense Attorneys *(MP4)*	1.0 Prof Practice	$15	$50	12/07/2022
Electronic Filing in Surrogate's Court Update *(MP4)*	2.5 Skills	$38	$125	11/17/2022
Landlord & Tenant Update 2022 *(MP4)*	2.0 Prof Practice	$30	$100	11/15/2022
Business Valuation in The Pandemic Era: Reviewing Tax Returns *(MP4)*	1.5 Prof Practice	$23	$75	11/01/2022
Recent Significant Developments & Decisions-Highest NYS Appellate Courts 2022 *(MP4)*	2.0 Prof Practice	$30	$100	10/26/2022
THE TRIAL SERIES - Part 2 Opening Statement *(MP4)*	2.0 Skills	$30	$100	09/22/2022
How to Conduct a Divorce Trial *(MP4)*	2.0 Prof Practice	$30	$100	09/20/2022
The Impact of Filing a Personal Bankruptcy on Certain St and City Legal Actions *(MP4)*	2.0 Prof Practice	$30	$100	09/15/2022
When Hackers Attack Your Practice, Will You Be Prepared? *(MP4)*	1.0 Law Practice Management	$15	$50	07/20/2022
The Trial Series - Part 1: Jury Selection *(MP4)*	2.0 Skills	$30	$100	06/29/2022

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Large enough to help you.®

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

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