

Queens BAR BULLETIN

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

March 2022 | Volume 89, No. 6



Organized 1876

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Statement on Ukraine

The Queens County Bar Association strongly condemns the Russian Federation's unlawful and barbaric invasion of Ukraine. We urge the Russian Federation to immediately withdraw its armed forces from Ukraine, restoring Ukraine's territorial integrity and international borders.

As an organization of legal professionals in the most diverse county in the country, with over 138 languages spoken by residents from more than 150 countries, the Queens County Bar Association is committed to uphold the principles of international legal order.

The war in Ukraine is responsible for the greatest European refugee crisis since World War II. To date, more than 2 million people have fled Ukraine, seeking refuge in the neighboring countries. Countless others, including innocent women and children, have fallen victim to shelling and military aggression.

The Russian Federation has glaringly violated the United Nations Charter on the principles of fundamental freedom and respect for human rights and decency. The Queens County Bar Association joins the New York State Bar Association in calling upon the U.S. government and the international community to restore the rule of law and to prosecute any and all war crimes.

Sincerely yours,

FRANK BRUNO, JR.
President

March 9, 2022



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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

MARCH 2022

Wednesday, March 2	CLE: Real Property Series 2022 - Pt 5 - 1:00 pm
Thursday, March 3	Elder Law Committee Mtg - 1:00 pm Meeting ID: 885 4366 8513, Passcode: 192134
Thursday, March 3	CLE: EB5 Immigrant Visa - 5:30 pm
Friday, March 4	Meditation Friday with Diana The Happy Lawyer 1:10 pm Meeting ID: 817 2134 3753, Passcode: 734189
Thursday, March 10	CLE: ABC's of Divorce - 1:00 pm
Friday, March 11	Meditation Friday with Diana The Happy Lawyer 1:10 pm Meeting ID: 817 2134 3753, Passcode: 734189
Tuesday, March 15	CLE: LGBTQ+ Program on Trans Seniors - 6:00 pm
Friday, March 18	Meditation Friday with Diana The Happy Lawyer 1:10 pm Meeting ID: 817 2134 3753, Passcode: 734189
Wednesday, March 23	Family Court Committee Meeting - 1:00 pm Meeting ID: 845 1444 9922, Passcode: 080329
Thursday, March 24	CLE: Real Estate & Divorce - 1:00 pm
Friday, March 25	Meditation Friday with Diana The Happy Lawyer 1:10 pm Meeting ID: 817 2134 3753, Passcode: 734189
Tuesday, March 29	Judiciary Night, Past Presidents & Golden Jubilarian Night 5:30 pm
Wednesday, March 30	Women of the Court of Appeals Event

APRIL 2022

Friday, April 1	Meditation Friday with Diana The Happy Lawyer 1:10 pm Meeting ID: 817 2134 3753, Passcode: 734189
Tuesday, April 5	CLE: Equitable Distribution Update - Part 1
Friday, April 8	Meditation Friday with Diana The Happy Lawyer 1:10 pm Meeting ID: 817 2134 3753, Passcode: 734189
Tuesday, April 12	CLE: Equitable Distribution Update - Part 2
Wednesday, April 13	Academy of Law Committee Meeting - 1:00 pm
Wednesday, April 13	CLE: The Trial - 5:30 pm
Friday, April 15	<i>Good Friday – Office Closed</i>
Friday, April 22	Meditation Friday with Diana The Happy Lawyer 1:10 pm Meeting ID: 817 2134 3753, Passcode: 734189
Wednesday, April 27	CLE: Search & Seizure - 1:00 pm

MAY 2022

Tuesday, May 3	CLE: Ethics Seminar 2022 - Part 1
Thursday, May 5	Annual Dinner & Installation of Officers - Terrace on the Park
Friday, May 6	Meditation Friday with Diana The Happy Lawyer 1:10 pm Meeting ID: 817 2134 3753, Passcode: 734189
Wednesday, May 11	CLE: Ethics Seminar 2022 - Part 2
Friday, May 13	Meditation Friday with Diana The Happy Lawyer 1:10 pm Meeting ID: 817 2134 3753, Passcode: 734189
Wednesday, May 18	CLE: Update on Discovery 30.30 - 1:00 pm
Friday, May 20	Meditation Friday with Diana The Happy Lawyer 1:10 pm Meeting ID: 817 2134 3753, Passcode: 734189
Friday, May 27	Meditation Friday with Diana The Happy Lawyer 1:10 pm Meeting ID: 817 2134 3753, Passcode: 734189
Monday, May 30	<i>Memorial Day – Office Closed</i>

JUNE 2022

Monday, June 20	<i>Juneteenth – Office Closed</i>
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JULY 2022

Monday, July 4	<i>Independence Day – Office Closed</i>
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Queens Bar Bulletin

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Associate Editors: Stephen D. Fink and Richard N. Golden

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New Members

Vito Arango	Jeffrey Litman
Pallvi Babbar	Tonino Sacco
Jack E. Brackney	Shelby Salyer
Johanna Carmona	Eylan Schulman
Richard Alan Chase	May Shukri
Elias N. Fillas	Jessica Sin
Dale I. Fong-Frederick	William L. Teitler
Evelyn Gong	Kimon C. Thermos
Karen Lin	Stacey Woods



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Editor's Note

What Really Happened in Courtroom 25

By Paul E. Kerson

This past month, the famed television show, “Law and Order” introduced its first new episode in more than ten years. Assistant District Attorney Jack McCoy was promoted to Manhattan District Attorney. Of course, he is the hero of show, as is the District Attorney’s Office and the New York City Police Department.

The latest edition of “Law and Order” featured a Trial of a revenge killing wherein a rape victim killed the alleged rapist. Even though it was supposed to be a Manhattan case, the film production crew obtained permission to use Courtroom 25 at our Queens County General Courthouse at 88-11 Sutphin Blvd, Jamaica, NY 11435.

When I saw the fictional murder trial in our actual Courtroom, I was immediately transported, as if by a time machine, to an actual murder trial that I tried before the late Justice Seymour Lakritz in that exact Courtroom nearly 40 years ago.

While “Law and Order” continues to portray the District Attorney’s office and the Police Department as absolute heroes, what really happened in Courtroom 25 in 1982 was anything but that.

The Police Department, in their wisdom, arrested three neighborhood kids in Queens Village for the murder of a Special State Police Officer. The official version of this case was that the three teenagers somehow surrounded and shot to death a specially trained Special State Police Officer.

In 1982, I had been a lawyer for all of seven years. However, by that time, I had served as an Assistant District Attorney, and an Assistant State Attorney General in the predecessor section of the currently named Public Integrity Bureau.

Thus, I actually knew the Special State Police Officer who was killed. This was a coincidence beyond coincidence. I met the Defendant, Andy Smith (a pseudonym) because I was assigned to represent him in a juvenile delinquency case in the Queens County Family Court pursuant to Article 18 B of the County Law. I was his Public Defender. One year later, Andy Smith was wrongly accused of homicide. He was only 16 years old, and was being tried as an adult in the Queens County Supreme Court, Courtroom 25.

I immediately knew that the theory of the case of the Police Department and the District Attorney’s office was factually impossible. The deceased police officer was specially trained, was an expert in firearms, and was a first-class police officer. He was not about to be taken down by three neighborhood kids.

I moved for discovery. I got the usual police reports. I went back to the Court with the second discovery Motion. I said, now look, the District Attorney’s file and the Police Department file is not enough. I want the Attorney General’s file. The late Justice Joan O’Dwyer heard that Motion in the Kew Gardens Courthouse. She directed the District Attorney to produce the State Attorney General’s file. I wanted to know exactly what the victim of the crime was doing at the time he was killed. What was his assignment? There was no question in my mind but that whatever his assignment was on the day of his murder had something to do with the killing.

Sure enough, after vigorous oral arguments and much protestation by the District Attorney’s office, I received a one-page file. I thought this was ridiculous. I knew, from having worked as an Assistant State Attorney General, that the Attorney General’s office kept extensive files on all of its investigations. There were likely hundreds of pages of material on what the special state police officer was doing on the day he was killed.

However, the one page was quite enough. Here is what it said:

“Confidential informant (pseudonym) alleges that two women received \$2800 each that was to be given to John Doe (pseudonym) from upstate (pseudonym) and Bobby Doe (pseudonym) for a “hit” on special investigator Bradford (pseudonym) because Bradford was working on a big organized crime case.”

Once I received that one page of discovery, I knew I had my reasonable doubt for the jury. Several months later, the case went to Trial before the late Justice Lakritz in Courtroom 25.

Despite my protestations to the Assistant District Attorney on the case, he continued with the nonsensical theory that three neighborhood kids killed a highly trained Special State Police Officer. He insisted that a watch matching the description of Special Investigator Bradford’s watch had been found in one of the Defendant’s car and that meant all three of the Defendants were obviously guilty.

I continued to show him the Attorney General’s one page of discovery. I asked why don’t you do an investigation as to what Special Investigator Bradford was working on at the time of his death? Why don’t you find out exactly what happened? Why didn’t you tell me and Justice Lakritz and the jury exactly what

“big organized crime case” Special Investigator Bradford was working on at the time he was killed?

Well, the Assistant District Attorney in Courtroom 25 wasn’t listening to any of this.

I fought for Andy Smith as hard as I could before that jury in Courtroom 25. I waived around that one-page Attorney General’s report. I insisted to them over and over that three neighborhood kids cannot possibly have killed a Special State Police Officer who was investigating “a big organized crime case” on the day of his death.

Unsurprisingly, because of the wise ruling of the late Justice O’Dwyer, and the way the late Justice Seymour Lakritz conducted the trial, Andy Smith was acquitted.

After the Trial was over, Justice Lakritz gave me permission to speak to the jury. I asked him how they reconciled the Attorney General’s one page report of the planned “hit” on Special Investigator Bradford with the fact that one of the three teenaged Defendants had a watch matching the description of the deceased’s watch. The police did not figure this out. The District Attorney did not figure this out. The Attorney General did not figure this out. Justice Lakritz did not figure this out. I did not figure it out.

The jury figured it out. They decided that the three teenagers probably robbed the corpse of Special Investigator Bradford after he was killed by some organized crime hitman. This is why the jury system works better than any other system.

This is because 12 minds concentrating on the same facts for two weeks each and every day constitutes an intelligence far greater than anyone: Assistant District Attorney, Assistant Attorney General, Police Officer, Trial Court Justice and/or Public Defender. 12 minds working together have a certain kind of intelligence that no one person can ever have no matter how smart he or she is.

I saved my file all these years so I could quote to you from the Attorney General’s one page report some day. Well now the some day has come and the one-sided portrayal of the District Attorney’s office and the Police Department that has been shown on “Law and Order” all these years must be put to rest.

Who are the real heroes in our criminal justice system? There is but one answer. Public Defenders from all sources: Article 18 B Bar Association Appointees, the Legal Aid Society, Queens Defenders, and every private lawyer who takes a criminal case.

CONTINUED ON PAGE 13



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President's Message

By Frank Bruno, Jr.

"Until a woman is recognized as more than just a mother, a daughter and a sister and is valued for being an individual, I will continue working for our rights."

— Rukshanda Naz

We celebrate Women's History Month to remind ourselves of the accomplishments of women throughout the years to our culture and society. Family to science, from politics to law to aviation to every field of endeavor. It is our opportunity to commemorate the trailblazers who led the way for change. Septima Poinsette Clark. Claudette Colvin. Pauli Murray. Rosa Parks. Sylvia Acevedo. Lori Alvord. Dr. Janaki Ammal. Dr. Caroline Still Anderson to name a few.

Ada Kepley. Charlotte E. Ray. Rosalie Leow Whitney. Kate Stoneman. Georgia Hare. Ruth Whitehead Whaley. Jean H. Norris. Justine W. Polier. Jane Brolin. Dorothy Chin Brandt. Sandra Day O'Connor and many more.

Jeanne Labrosse. Sophie Blanchard. Aida de Acosta. Kwon Ki-ok. Mary Riddle. Amelia Earhart. Prem Mathur. Isabella Ribeiro de Cabral. Kuckie Low. Sally Ride. Jeannie Flynn and into the wild blue yonder.

I recommend you look up each pioneering woman named and applaud their efforts to move the needle. Celebrate them as individuals and celebrate your mother, friends, sisters, and daughters as more than a descriptive term; celebrate them as persons that aspire to greatness that are also women.

We believe in equal rights for all genders. Let us collectively promote the movement for gender equality, socially, politically, and economically. Join the Bar in our forward movement.

"If they don't give you a seat at the table, bring a folding chair", said Shirley Chisholm. The QCBA is supplying the table, pull up a chair and come on board.

Procrastination. Sometimes it can get the better of us. What to do? What to do? Tomorrow, I'll let you know tomorrow. Today, I can share that I have ideas for programs, articles and promotions that I still have to get to. I will start tomorrow. Mentioning procrastination, I do have a tip that can be implemented now. Here it is. Each day think about what you have been procrastinating about and tackle that task first.

Let that item percolate to the top and direct your activity for the day. It is called the procrastination priority list. Let me know if it helps.

If you have been putting off checking out the association website, I ask that everyone go to our website, qcba.org sign in, provide up to date information, register for a CLE and join a committee. It is chock full of information. We have a calendar feature that shows events for the balance of the month and the next several months. You can schedule our programs into your own personal calendar and adjust your time accordingly. You can learn about the Bar, the events, the latest updates, and news. You can search out colleagues, the Court and find information about our committees and programs.

We have been thrilled with the ABC's programs and an expansion of the ABCs series. Several years ago, we had a Nuts and Bolts, fundamentals 101 series and a Bridge the Gap series; the ABC's program is the latest branding and iteration of this program. The past three months there have been more than five hours of content with supporting material over five parts dedicated to taking a novice from no real estate experience to being able to competently handle a real estate transaction and closing. The series continues this month in partnership between the Young Lawyer's Committee, the Real Property Committee and the Family Law Committee as we move into issues related to selling a property while getting divorced. We also have an ABCs program on filing an uncontested divorce. We envision additional programs across a few practice areas with the commonality being a partnership with the Young Lawyers Committee lead by Sydney A. Spinner, K. Sebastian Karczmarczyk and Sean C. Acosta. We see future ABCs programs such as how to file a child support petition, how to defend a tenant in Civil Court, Housing Part; how to prepare a Will and more, limited only by our imagination and time. And since we have plenty of imagination and a CLE program schedule that defies time/can last years, we have a number of future programs on the horizon. Please offer suggestions for future programs.

We had a very successful live event in February celebrating Black History Month with our screening of *My name is Pauli Murray*. I recommend that you watch it on Amazon Prime-fifteen years before Rosa Parks refused to give up her bus seat, Pauli Murray

fought for social justice. A non-binary Black lawyer, activist, poet and priest, Murray influenced both Ruth Bader Ginsburg and Thurgood Marshall. I was glad to be part of the program and we thank Zenith Taylor, Jawan Finley and Sandra Munoz for their dedication and leadership in offering the event and having the program run so smoothly.

Please mark down your calendar for our next two live events. March 29, 2022, Judiciary Night. On this night at the Bar building we celebrate our Judges, we give out an award or two for service and we honor our Golden Jubilarians for their fifty years of longevity. There will be food and drink fit for a celebration.

May 5, 2022, is our Installation Dinner and we expect a really large turnout after two years away. People are clamoring for live events, and we seem to have the masks and illness in the rear-view mirror besides the current therapeutics and additional immunity afforded by scores of people getting Omicron. We are expecting big things with this event, and I envision 300 people in attendance.

Volodymyr Zelensky, President of Ukraine, multifaceted courageous leader of the besieged Ukrainian people has the support of all people with good will. Much is made of his comedy background, movie roles and starring sitcom role. His prescient television show *Servant of the People* turned into his political party of the same name. Often overlooked, President Zelensky is a law school graduate and licensed attorney in Ukraine. Maybe the world really does need more lawyers, at least lawyers like Zelensky. The Ukrainian people have benefited from his ability to galvanize the West and international allies. More could be done. As with all things bureaucratic, support, aid, financial assistance, and military support has been slow to arrive and sanctions both slow to be instituted and slow to reach effect. His crowd-pleasing speeches come from both his legal and comedic background. Let us endeavor in our personal dealings be so bold. It was reported that he went from Chaplin to Churchill. Quoting Winston Churchill: "This is no time for ease and comfort. It is time to dare and endure", and "Never give in, never give in, never, never, never, never...".

SAVE THE DATE

Annual Dinner and Installation of Officers and Board of Managers

Thursday, May 5, 2022 • Terrace on the Park • Invitation and Registration Details to Follow



H1B Updates!!!

The USCIS H1-B pre-registration process for fiscal year 2023 has started March 1st. Submissions will be allowed until March 18th at noon. We strongly encourage those interested to move ahead with the process as soon as possible. Once the process ends on the 18th, that will end any H1B petitions for this year for all first time cap-subject H1B opportunities. The 1st round picks will be notified on March 30th or April 1st that they have been selected and will have 90 days to submit their petition, after which their opportunity will be lost if not filed.

USCIS has received a sufficient number of petitions needed to reach the congressionally mandated 65,000 H-1B visa regular cap and the 20,000 H-1B visa U.S. advanced degree exemption, known as the master's cap, for fiscal year (FY) 2022.

The agency has completed sending non-selection notifications to registrants' online accounts. The status for registrations properly submitted for the FY 2022 H-1B numerical allocations, but that were not selected, will now show:

- Not Selected: Not selected – not eligible to file an H-1B cap petition based on this registration.

USCIS will continue to accept and process petitions that are otherwise exempt from the cap. Petitions filed for current H-1B workers who have been counted previously against the cap, and who still retain their cap number, are exempt from the FY 2022 H-1B cap. USCIS will continue to accept and process petitions filed to:

- Extend the amount of time a current H-1B worker may remain in the United States;
- Change the terms of employment for current H-1B workers;
- Allow current H-1B workers to change employers; and
- Allow current H-1B workers to work concurrently in additional H-1B positions.

If you have an interest in pursuing an H1B visa please do contact an experienced immigration professional. Attorney, Dev Banad Viswanath will be working with clients both in the United States and in India during the month of March to assist employers and employees on this year's H1b petitions.

BY DEV B. VISWANATH, ESQ.

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In Honor of Women’s History Month

CURRENT COURT OF APPEALS JUDGES



Chief Judge Janet Marie DiFiore

Nominated: December 1, 2015
Nominated By: Governor Andrew Cuomo

Senate Confirmed: January 21, 2016
Assumed Office: February 8, 2016

Term Expires: 2025 (*mandatory retirement*)

Education: C.W. Post College at Long Island University, 1977
St. John’s University School of Law, Juris Doctorate, 1981

Legal Experience:
Westchester County District Attorney’s office, 1981-1987
Private practice at Goodrich & Bendish, 1987-1994
Westchester County District Attorney’s office, 1994-1998
Judge, Westchester County Court, 1999-2002
Justice, New York State Supreme Court, 2003-2005
Westchester County District Attorney, 2006-2016

Chief Judge Janet DiFiore interned at Westchester County District Attorney’s office during college and law school...as district attorney, she instituted the use of DNA testing in criminal prosecutions and notably for the release of wrongfully convicted defendants...she was chairwoman of the New York Joint Commission on Public Ethics (2011-2013), member of a NYS juvenile justice commission and New York Justice Task Force.



Associate Judge Jenny Rivera

Nominated: January 15, 2013
Nominated By: Governor Andrew Cuomo

Senate Confirmed: February 11, 2013
Assumed Office: February 11, 2013

Term Expires: 2027

Education: Princeton University, 1982
New York University School of Law, Juris Doctorate, 1985

Columbia University School of Law, Masters of Laws, 1993

Legal Experience:
Clerk, United States Court of Appeals, Second Circuit, 1985-1986
New York City Legal Aid Society, 1986-1987
Puerto Rican Legal Defense and Education Fund, 1987-1992
Clerk, Judge Sonia Sotomayor, Southern District of New York, 1993-1994
Professor, Suffolk University Law School, 1994-1997
Professor, City University of New York School of Law, 1997-2013
New York Special Deputy Attorney General for Civil Rights, 2007-2008
Visiting Professor, American University Washington College of Law, 2011

Judge Jenny Rivera is the second Hispanic woman to serve on the Court of Appeals...she founded and served as director of the City of New York School of Law’s Center on Latino and Latina Rights and Equality...has a plethora of published articles and is the recipient of many awards including the Kay Crawford Murray Award in 2010, the New York State Bar Association’s Diversity Trailblazer Lifetime Achievement Award in 2012 and the Spirit of Excellence Award from the American Bar Association’s Commission on Racial and Ethnic Diversity in the Profession in 2013.



Associate Judge Madeline Singas

Nominated: May 25, 2021
Nominated By: Governor Andrew Cuomo

Senate Confirmed: June 8, 2021
Assumed Office: June 8, 2021

Term Expires: 2035

Education: Barnard College of Columbia University, 1988
Fordham University School of Law, Juris Doctorate, 1991

Legal Experience:
Queens County Assistant District Attorney, 1991-2006
Nassau County District Attorney Special Victims Bureau Chief, 2006-2011
Nassau County Chief Assistant District Attorney, 2011-2015
Nassau County Acting District Attorney, 2015
Nassau County District Attorney, 2016-2021

Judge Madeline Singas is the first Greek American to be elected Nassau County District Attorney...she created an Immigrant Affairs Office to focus on crimes against immigrants...she established the Nassau County School & Community Safety Task Force to enhance the security of schools, colleges, places of worship and public buildings...she was named Special Prosecutor to investigate sexual assault allegations by then-Attorney General Eric Schneiderman in 2018.



Associate Judge Shirley Troutman

Nominated: November 24, 2021
Nominated By: Governor Kathy Hochul

Senate Confirmed: January 12, 2022
Assumed Office: January 12, 2022

Term Expires: 2036

Education: State University of New York at Buffalo, 1982
Albany Law School of Union University, Juris Doctorate, 1985

Legal Experience:
Erie County Assistant District Attorney, 1986-1989
Assistant Attorney General, New York State Department of Law, 1989-1992
Assistant U.S. Attorney, Western District of New York, 1992-1994
Adjunct Professor, State University of New York at Buffalo Law School and Buffalo State College, 1994-2021
Judge, Buffalo City Court, Erie County, 1994-2002
Judge, County Court, Erie County, 2003-2009
Justice, Supreme Court, 8th Judicial District, 2010-2016
Justice, Appellate Division, Fourth Department, 2016-2022

Judge Shirley Troutman is the second African American woman to serve on the New York State Court of Appeals and was the first nomination by Governor Kathy Hochul...appointed co-chair of the Franklin H. Williams Judicial Commission, which educates and advises decision makers in the NYS court system on issues affecting both employees and litigants of color, and implements recommendations developed to address those issues...is a member of the NYS Advisory Committee on Judicial Ethics...chaired the Committee to Promote Public Confidence and Trust in the Courts, 8th Judicial District.

FORMER COURT OF APPEALS JUDGES



Chief Judge Judith Smith Kaye

Nominated: August 11, 1983 (*Associate Judge*)
Nominated By: Governor Mario M. Cuomo

Senate Confirmed: September 6, 1983 (*Associate Judge*)
Assumed Office: September 12, 1983 (*Associate Judge*)

Nominated: February 22, 1993 (*Chief Judge*)
Nominated By: Governor Mario M. Cuomo

Senate Confirmed: March 17, 1993 (*Chief Judge*)
Assumed Office: March 23, 1993 (*Chief Judge*)

Renominated: February 7, 2007 (*Chief Judge*)
Nominated By: Governor Eliot Spitzer

Senate Confirmed: March 6, 2007 (*Chief Judge*)
Assumed Office: March 19, 2007 (*Chief Judge*)

Left Bench: December 31, 2008 (*mandatory retirement age*)
Death: January 7, 2016

Education:
Barnard College, 1958
New York University School of Law, Juris Doctorate Cum Laude, 1962

Legal Experience:
Private practice at Sullivan & Cromwell, 1962-1964
IBM legal department, 1964-1965
Assistant to the Dean, New York University Law School, 1965-1969
Private practice at Olwine, Connelly, Chase, O'Donnell & Weyher, 1969-1983

Chief Judge Judith Kaye was named first female partner at Olwine, Connelly, Chase, O'Donnell & Weyher in 1975...she was the first woman to hold any seat on the state's highest court and the first woman to serve as the Chief Judge...she is the judge with the longest service on this prestigious bench...she was the first chief judge ever to complete a full fourteen-year term...she left the bench upon reaching mandatory retirement age saying experienced jurists were being forced from the bench to the 'great detriment' of the courts...she graduated high school at the age of 15 having skipped two grades...she was Associate Editor of the Law Review...she was one of only 10 women in a graduating class of nearly 300.



Associate Judge Carmen Beauchamp Ciparick

Nominated: December 1, 1993
Nominated By: Governor Mario M. Cuomo

Senate Confirmed: January 4, 1994
Assumed Office: January 4, 1994

Renominated: November 30, 2007
Nominated By: Governor Eliot Spitzer

Senate Confirmed: December 13, 2007
Assumed Office: December 13, 2007

Left Bench: December 31, 2012
(mandatory retirement age)

Education:
Hunter College of the City University of New York, 1963
St. John's University School of Law in Brooklyn, Juris Doctorate, 1967

Legal Experience:
Staff Attorney, New York City Legal Aid Society, 1967-1969
Assistant Counsel, New York State Judicial Conference, 1969-1972
Chief Law Assistant, New York City Criminal Court, 1972-1974
Counsel, New York City Administrative Judge, 1974-1978
Judge, New York City Criminal Court, 1978-1982
Judge, New York Supreme Court, 1982-1993
Private practice at Greenberg Traurig, 2013-present

Judge Carmen Beauchamp Ciparick was the first Hispanic and the second woman to sit on the Court of Appeals...she was the first Puerto Rican woman to serve on the bench in New York State when Mayor Ed Koch appointed her Judge of the New York City Criminal Court...she is co-chair of the New York Justice Task Force that examines the causes of wrongful convictions...she was appointed by former New York City Mayor Bill de Blasio to serve as Chair of the Mayor's Advisory Committee on the Judiciary...she serves as Chair of the New York State Board of Law Examiners.



Associate Judge Victoria A. Graffeo

Nominated: November 3, 2000
Nominated By: Governor George E. Pataki

Senate Confirmed: November 29, 2000
Assumed Office: November 29, 2000

Left Bench: December 31, 2014 (end of term)

Education:
State University of New York College at Oneonta, 1974

Albany Law School of Union University, Juris Doctorate, 1977

Legal Experience:
Private practice, 1977-1982
Assistant counsel, NYS Division of Alcoholism and Alcohol Abuse, 1982-1984
Counsel to Assembly Minority Leader Pro Tempore Kemp Hannon, 1984-1989
Chief Counsel to Assembly Minority Leader Clarence D. Rappleyea, Jr., 1989-1994
New York Solicitor General, 1995-1996
Justice, New York Supreme Court 3rd Judicial District, 1996-1998
Justice, New York Supreme Court, Appellate Division, 1998-2000
Private practice at Harris Beach, 2015-present

Judge Victoria Graffeo has earned numerous accolades and awards include Best Lawyers 2021 Appellate Practice Lawyer of the Year, New York Law Journal 2016 Lawyers Who Lead by Example Lifetime Achievement Honoree, Albany American Italian Museum 2015 Wall of Fame inductee and many more...she acts as a mediator or a neutral arbitrator in private dispute resolution situations and serves as a mediator for the U.S. District Court for the Northern District...her judicial appointments included chair of the New York State-Federal Judicial Council, chair of the Advisory Committee on the Pro Bono Scholars Program, co-chair of the Advisory Committee on New York State Pro Bono Bar Admission Requirements, chair of the Advisory Committee on Pro Bono Service By In-House Counsel In New York State and Court of Appeals Liaison to the New York State Board of Law Examiners.



Associate Judge Susan Phillips Read

Nominated: January 8, 2003
Nominated By: Governor George E. Pataki

Senate Confirmed: January 22, 2003
Assumed Office: January 22, 2003

Left Bench: August 24, 2015 (retirement)

Education:
Ohio Wesleyan University, 1969
University of Chicago Law School, Juris Doctorate, 1972

Legal Experience:
Legal Intern, United States Atomic Energy Commission, 1972-1974
Assistant Counsel, State University of New York, 1974-1977
Environmental Counsel, General Electric Company, 1977-1988
Private practice/partner at Schoeneck and King, 1988-1995
Deputy Counsel, Governor George E. Pataki, 1995-1998
Judge, New York Court of Claims, 1998-2003

When Judge Susan Phillips Read joined the Court of Appeals, it marked the first time in United States history that a majority of women comprised a state's highest court...she graduated Ohio Wesleyan University summa cum laude and Phi Beta Kappa...she was named a University of Chicago Law School's Floyd R. Mechem Prize Scholar...aside from being a long-standing member of several Bar Associations, she is active in the Saratoga Performing Arts Center, the New York City Ballet and its children's programs and the Tanglewood Music Center.

“The Women of the New York State Court of Appeals”

In Honor of Women’s History Month

FORMER COURT OF APPEALS JUDGES



Associate Judge Sheila Abdus-Salaam

Nominated: April 5, 2013
Nominated By: Governor Andrew M. Cuomo

Senate Confirmed: May 6, 2013
Assumed Office: May 6, 2013

Left Bench: April 12, 2017 (death)
Death: April 12, 2017

Education:
Barnard College, 1974
Columbia University Law School, Juris Doctorate, 1977

Legal Experience:
Staff Attorney, Brooklyn Legal Services, 1977-1980
Assistant Attorney General, New York State Department of Law, 1980-1988
General Counsel, New York City Office of Labor Services, 1988-1991
Judge, New York City Civil Court, 1992-1993
Justice, New York County Supreme Court, 1993-2009
Associate Justice, New York State Supreme Court, Appellate Division, First Department, 2009-2013

Judge Sheila Abdus-Salaam was the first Black woman nominated and confirmed to sit on the Court of Appeals...she may have been the first Muslim to serve as a judge of any court in the United States (there are conflicting reports whether she ever converted to Islam or simply adopted her husband’s last name)...she is one of two judges in the past 75 years – following Judge Theodore Jones, whom she succeeded – to die while sitting in the bench.



Associate Judge Leslie E. Stein

Nominated: October 17, 2014
Nominated By: Governor Andrew M. Cuomo

Senate Confirmed: February 9, 2015
Assumed Office: February 9, 2015

Left Bench: June 4, 2021 (retirement)

Education:
Macalester College, 1978
Albany Law School, Juris Doctorate Magna Cum Laude, 1981

Legal Experience:
Law Clerk, Schenectady County Family Court, 1981-1983
Private practice at McNamee, Lochner, Titus & Williams, 1983-1997
Judge, Albany City Court, 1997-2001
Administrative Judge, Rensselaer County Integrated Domestic Violence Part, 2006-2008
Judge, New York Supreme Court, Third Judicial District, 2001-2008
Associate Justice, New York State Supreme Court, Appellate Division, Third Department, 2008-2015
Director, Governance Law Center, Albany Law School, 2022-present

Judge Leslie Stein graduated MacAlester College Phi Beta Kappa...she transferred from Minnesota Law School to Albany Law School following her first year...she is co-chair of the NYS Unified Court System Family Violence Task Force...she is a founding member of the New York State Judicial Institute on Professionalism in the Law...she chaired the Third Judicial District Gender Fairness Committee from 2001 – 2005...she is a board member of the New York Association of Women Judges...she was recently named the Director of the Governance Law Center at Albany Law School.



Honorable Valerie Braithwaite Nelson Promoted

Associate Justice of the Appellate Division, Second Department, the Honorable Valerie Braithwaite Nelson, a long time Queens County Bar Association member and the Co-Chair of the QCBA Appellate Practice Committee, has been elevated to a senior seat on the court.

The Honorable Valerie Brathwaite Nelson of Queens County was appointed as an Associate Justice of the Appellate Division, Second Judicial Department in 2016. On January 1, 2022, Governor Kathy Hochul designated Associate Justice Brathwaite Nelson to a senior seat on the Court, known as the Constitutional Bench. Associate Justice Brathwaite Nelson now sits in a leadership position of Justice Presiding on the Appellate Division, Second Judicial Department.

We congratulate her and appreciate her continued involvement with the Queens County Bar Association.



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Allen E. Kaye

Immigration Questions

Overview Of The EB-5 Program

Part 2



Joseph DeFelice

This memo will attempt to briefly describe how to obtain U.S. permanent residence (a “green card”) through an investment in the United States through the “EB-5 program”.

Regional center investments are currently suspended.

The USCIS has authorized the creation of numerous of “regional centers” to receive investments through the EB-5 program. The advantage of investing in a regional center is first, that they are almost all located in areas already designated as targeted employment areas, so you can be assured that you need only invest \$900,000. Second, these centers are allowed to count jobs indirectly created by the money invested in them as well as jobs directly created in determining whether they satisfy the 10 job creation requirement. Finally, the regional center will take responsibility for managing your investment and creating the ten new jobs required without your active participation. Nevertheless, as a limited partner of the investing business you will satisfy the management requirement. As a consequence, it is normally much simpler to qualify for EB-5 classification by investing in a regional center.

The primary disadvantage of investing in a regional center is that once the investment is made you have no control over your money. Rather, you simply must wait until the regional center returns the money to you plus whatever interest you may be entitled to. This may be 6 years or longer after you have invested, or you may never be returned all – or any – of your investment at all, since it is an absolute requirement of the EB-5 program that you have at least a chance of losing your investment. Also, most regional centers assess an additional fee, typically in the vicinity of \$30,000 - \$50,000, for administrative purposes. This fee is not returned even upon successful completion of the case.

As a consequence, it is important when investing in a regional center to choose one which you are confident is likely to create ten direct or indirect full-time jobs per qualifying investment and eventually return the investors their money. The best indication that this is likely to happen is if the regional center has a long history of successfully obtaining permanent residency for its investors and returning their investment. Fortunately, we can assist you in locating companies that do have such a successful track history. However, we make no recommendations.

IN ANY EVENT THERE ARE CURRENTLY NO INVESTMENTS ALLOWED IN REGIONAL CENTERS PENDING CONGRESSIONAL ACTION EXTENDING THE LAW REGARDING REGIONAL CENTERS which expired on July 5, 2021.

Procedure:

An investor must file a petition with U.S. Citizen and Immigration Services (“CIS”) after making the necessary investment. **As of May 25, 2021 the approval of such petitions are taking from 32-77 months.** The investor gains no rights whatsoever to travel to, remain in or work in the United States unless and until his

petition is approved, he is issued an immigrant visa by a U.S. consulate, and arrives in the U.S. with that visa or, if he is legally in the U.S. when his petition is approved, he adjusts status in the U.S. At that point he will be a “conditional permanent resident.” See the discussion of conditional permanent residency below.

Unfortunately, it is entirely possible that an investor may not be able to immigrate to the United States even when a petition is approved upon his behalf. This is because in addition to a petition being approved upon his behalf, an immigrant visa must be “available” to him for him to immigrate to the United States. Visa availability depends upon the “visa cut off date” applicable to that investor’s “country of chargeability” when (or, in some cases, after) a petition is approved upon his behalf. The visa cut-off date for EB-5 immigrants appears in the “Visa Bulletin” currently found online here: <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>. As of May, 2021 this is an issue only for persons born in China or Vietnam, but that could easily change in the future.

Each month a new Visa Bulletin is published announcing the visa cut-off date for every preference immigrant visa classification and country of chargeability. One’s country of chargeability is the country you were born in or your spouse was born in, whichever’s visa cut-off date is later.¹ Currently, one’s visa cut-off date is determined by looking at the table labelled **“FINAL ACTION DATES FOR EMPLOYMENT-BASED PREFERENCE CASES”**, in the box contained in the column for your country of chargeability (or, if there is none, “All Chargeability Areas Except Those Listed”) and the row for “5th Non-Regional Center” or “5 Regional Center” depending upon whether you invested in a regional center or not. You can only immigrate to the U.S. after the later of the following 1) your petition is approved and 2) the applicable visa cut-off date becomes later than your “priority date” (the date your petition was approved).

But perhaps the most distressing consequence of this uncertainty is that it makes it impossible to say with certainty whether your children will be able to immigrate with you at all, although there is, again, good reason to believe that with the exception of immigrants chargeable to China or Vietnam, anyone whose children were under 21 when a petition is filed upon their behalf will be eligible to immigrate with their parents when a visa becomes available to their parents, provided that they are unmarried. Unfortunately, that may not be the case if there is no visa available to their parents when their petition is approved. At that point whether the child will be eligible to immigrate with his parents is dependent in a complex manner on the child’s age at the time of filing, how long it takes for a visa to become available to his parents and the length of time it took the petition to be approved. In any event, he must be unmarried to immigrate with his parents. Anyone with children, particular those approaching the age of 21, needs to discuss his particular situation with an attorney before investing.

The initial permanent resident status is “conditional” for two years. A conditional permanent resident has all the same rights as a regular permanent resident, in that he can enter the U.S. and work here, and return to the U.S. from trips abroad simply by showing his conditional permanent resident card. However, within the 90 days prior to the expiration of the two-year period, the conditional resident investor must file a petition (form I-829) with the CIS to request removal of the conditions on permanent residence. The petition should be granted if the investor demonstrates that:

- he invested or was actively in the process of investing the required money;
- the investor maintained the investment throughout the two-year period of conditional residence; and
- the investment created the required employment.

Once the form I-829 is approved the investor will become a regular permanent resident. Further there is no longer any requirement that he maintain his investment in the business after the I-829 is filed. Regional Centers often return the investment made in them soon the investor has filed a Form I-829. An investor may apply for citizenship after he has been a permanent resident for five years.

A permanent resident, whether conditional or not, should reside in the U.S. A detailed discussion of what constitutes “residing” in the U.S. is a complex matter beyond the scope of this memo. However, generally speaking one will not be considered to have abandoned one’s residency if one does not stay outside the U.S. for over a year at a time, unless one makes a pattern over a period of years of repeatedly leaving the U.S. for nearly a year and then departing again after only a brief stay.

A re-entry permit usually protects against abandoning residency. Those who expect to spend more than a year at a time, or over half of their time in total each year, outside the U.S. as a permanent resident should protect themselves against abandoning residency by applying for a “re-entry permit”. It has been held that a person who returns to the U.S. during the validity period of his re-entry permit will not be held to have abandoned his residency unless he obtained the permit by fraud. A re-entry permit is valid for up to two years at a time and is rarely denied so long as the resident is in the U.S. when he applies and returns to have his fingerprints taken when scheduled to do so by the CIS. Persons interested in this option should discuss it with their immigration counsel.

Disclaimers:

We do not offer tax advice. Investors should consult with tax advisers of their own choosing regarding the tax consequences of any investment and/or of becoming a U.S. permanent resident. We can refer qualified U.S. tax professionals upon request.

We do not offer financial advice. We offer no opinion on how any proposed investment is likely to perform. Most EB-5 investments are structured in such a way as to earn a return of 1-2 percent annually and most at least plan to return the investor’s principal after 5-6 years.

CONTINUED ON PAGE 15

¹ If you or your spouse were born in a country in which neither of your parents were residents of, then your country of chargeability becomes the country your parents born in.



The Bike-A-Thon Charity-A Tragedy

dark clouds of sadness and brief sunshine of joy
a human interest story

BY LEONARD L. FINZ

The year was 1936, twelve years after my birth when I saw an amazing movie. The title, *Modern Times*, penned and acted by Charlie Chaplin-an iconic Hollywood legend. The film’s theme portrayed a powerful and greedy factory boss. With his intention of maximizing every second of a worker’s time, he brought novel technology into his plant with the singular purpose of speeding up production even when the hundreds of his workers would have to eat while forced to work at breakneck speed without so much as a lunch break. And if a worker had to go to the bathroom (as did Chaplin), the menacing image of the irritated boss would be flashed upon the entire large bathroom mirror with his barking exhortation, “You’ve been here long enough. Now get back to work!”

The movie was released almost 90 years ago and as for Chaplin (who eventually was embroiled in much controversy), he did indeed demonstrate his genius for “reading the tea leaves.” Aside from his singularly famous slapstick, there was always an undercurrent message of pathos that was subtly delivered. *Modern Times* interestingly enough was no exception. And in addition to his comedic talents, Chaplin also was credited with composing the film’s background music.

Having started my formal music lessons on the saxophone when I was seven years old, Chaplin’s musical composition in *Modern Times* made an enormous impression upon me due to its beautiful, melodic, and emotional quality. Twenty-two years later, two extremely talented lyricists, Turner and Parsons, supplied both a title and words to Chaplin’s music. They labeled it, “Smile”, and created extremely touching, poignant, and sensitive lyrics that have such a unique and special meaning even to this day.

Here is the first moving stanza of “Smile” (the second meaningful stanza is set out later in this article)...

*Smile, though your heart is aching
Smile, even though it’s breaking
When there are clouds in the sky
You’ll get by
If you smile
Through your fear and sorrow
Smile and maybe tomorrow
You’ll see the sun come shining through for you*

Now, the story begins...

When I was a Judge, many of my colleagues were reluctant to perform marriage ceremonies for personal or other reasons. As a result, the clerk in charge would usually call upon me when a couple requested that a Judge officiate their nuptials. I would never say no, and usually conduct the sharing of marital vows in chambers. In fact, I would schedule the happy event during my lunch hour since I did not want to inconvenience litigants and lawyers by having them wait while I engaged in a wedding ritual. Those remembrances take me to a profoundly sad narrative that contains a brief sunshine of joy...

I received a call from the clerk who asked if I could perform a marriage. Obliging, I invited the young couple and the entire wedding party that consisted of

their parents and the sister of the bride to be (I’ll call the bride Mary (fictitious) and her sister Judy (fictitious), to chambers. What drew my attention when they all entered, was Mary’s father who was in a mechanical wheelchair. He maneuvered it by blowing into a tube. Sadly, he was a quadriplegic and looked to be in his late 40’s.

I performed the ceremony as smiles filled the chambers. Following the congratulations offered, but before the gathering left, Mary took me aside and described in detail what had changed her father from a strong athletic type into a quadriplegic. I listened intently as she emotionally described a freak accident that tragically changed the lives of her dear father and family forever...

As told to me, a recognized charity was holding a bike-a-thon to raise money for its cause. With the guidance of New York State, a two-lane State highway that ran adjacent to Jones Beach, Long Island, was selected where hundreds of cyclists would ride together over a designated route that covered about ten miles. For that purpose, the two-lane road, one going east, the other west, was shut down to auto traffic, to be used solely for the bike-a-thon. The composition of the roads was concrete, separated by a tar filled expansion joint.

Mary’s father, Richard (fictitious name) was among the hundreds of cyclists participating in the event. As earlier stated, he had two grown daughters, Mary and Judy. He started to ride with others in the large group when the front tire of his bicycle suddenly got stuck in a narrow expansion joint bringing his bike to a sudden halt. It propelled him airborne and striking the concrete road with such violent impact as to render him a quadriplegic. Richard’s family brought a suit against New York State on the theory that its agents had approved the state road to be used for the bike-a-thon despite its potential danger of expansion-joint narrowing which posed a special hazard to cyclists such as Richard. According to court documents, the case was ultimately settled for a sum that provided necessary care, comfort, and financial security to Richard.

About one year later, I received a call from Richard’s wife who told me that their younger daughter, Judy, was getting married, that she sent a letter to a special charity organization explaining her father’s most unfortunate situation and that she and her future husband could not afford a honeymoon. The news reached Ringling Brothers Barnum and Bailey Circus scheduled to begin a two-week run at the Nassau Veterans Memorial Coliseum in Uniondale, New York. Upon hearing their difficult plight, they offered to provide a luxurious honeymoon with all expenses paid, gifts, and cash, if they would hold their wedding on Saturday, the opening night of the circus to be held at the Coliseum. They were told that the circus performance would be halted for 20 minutes, at which time the wedding ceremony would be held in the center ring before thousands in the audience. For Judy and her husband to be, the Barnum and Bailey offer was a fabulous dream come true. It was everything a young couple could ever wish for. They needed a Judge however, to perform the wedding. Although I was no longer on the Bench, I still by law had the right to perform a marriage in New York State. My answer of

course was, “It would be my honor to do it.”

When Saturday arrived, I drove to the Coliseum, parked my car, and was escorted to the holding area within the huge arena. The circus was in full progress. Its typical sounds and spirited brassy music filled the air. And there, seated in a flower-decked chariot with two white horses and leather harnesses, were Richard’s daughter Judy and husband-to-be. They were outfitted beautifully, she in a stunning white wedding gown, he in a handsome white tailored tuxedo. I put on my black judicial robe and took a seat opposite them. Within moments, all the loud and exciting action of the circus came to a sudden halt as the ringmaster shouted out, “And here they come-the bride and groom.”

The big colorful band played Felix Mendelssohn’s traditional Wedding March as the horse drawn chariot made its way to the center ring amidst all of the spectacular spot lights, fanfare, shouts, whistles and applause.

I performed the wedding ceremony within the twenty minute time frame. And when I stated, “I now pronounce you man and wife”, the thousands in the packed arena went wild as balloons and confetti dropped from above while the large brass band played a well-known spirited Sousa march. After the ceremony, I congratulated the happy couple and then walked over to Richard who was seated in his wheelchair. Following my congratulations to him and his wife. I hugged the two of them for at least ten seconds or more as tears continued to flow down both their cheeks.

I left shortly thereafter and drove home. When I arrived, my dear and late wife Pearl, told me she had seen the entire proceedings on Channel 12, the local news station (there were also news clips on CBS, NBC, and ABC). We hugged and I could feel her tears that were mixed both with joy and sadness. I had terribly mixed feelings that night-saddened by the horrendous tragedy Richard and his family were living through but also contrasted by some measure of joy I had brought to such dear people who even for that short period in their terribly troubled lives could replace their long suffering with such heartfelt brief smiles. All of which takes me to the second stanza of “Smile”...

*Light up your face with gladness
Hide every trace of sadness
Although a tear may be ever so near
That’s the time you must keep on trying
Smile, what’s the use of crying
You’ll find that life is still worth while
If you’ll just Smile*

END OF STORY

Leonard L. Finz 97, is a former New York State Supreme Court Justice, (Queens County), a decorated WWII Veteran (1st. Lt., Field Artillery, Philippines), most recently inducted into the prestigious U.S. Army OCS “Hall of Fame”, the author of four published thriller novels, Peer-Reviewed as “One of America’s pre-eminent lawyers”, an active member of the QCBA for 67 years, and the founder of Finz & Finz, P.C.

What Really Happened in Courtroom 25

CONTINUED FROM PAGE 4

I was not appointed for Andy Smith in his homicide case. I had not tried any homicide cases when I was only seven years out of law school. However, Andy Smith's father was so impressed with how hard I fought for Andy Smith concerning his unrelated juvenile delinquency case in the Family Court, that he insisted that I take the case. I protested that I had not tried a homicide case and he really should get someone who had done so. He insisted that I do it. He also did not have any money. I found that to be extremely problematic.

However, I could see from the tears in his eyes and from his body movements that his right arm was severely injured. He could not move it. Mr. Smith explained to me that he injured his arm in an industrial accident and that he had a personal injury lawsuit pending with a different lawyer. He asked me if I would accept his son Andy's case in exchange for a lien on the personal injury file. I knew Andy Smith. I knew his father Mr. Smith. I saw the tears in their eyes. I accepted the case. I quoted Mr. Smith a very large fee for that time. He agreed immediately. Two years later, his personal injury case was settled, and I

received a large check from Mr. Smith.

I used it for the down payment of my first house.

That is what really went on in Courtroom 25. "Law and Order" should change its tune. They should tell these stories of the criminal justice system from the point of view of Public Defenders and private criminal defense lawyers who make it our business to catch the District Attorney, the Attorney General and the Police Department in their numerous mistakes.

It is Public Defenders who make the City of New York, the State of New York and the United States the democracy that it is. Every country has prosecutors and police officers. But it is we who have Public Defenders to make certain that the mistakes that are made are corrected.

After Andy Smith's acquittal, I appeared before our QCBA Bar Panels Committee and asked to be placed on the Homicide Panel of Article 18-B public defenders. I was, and spent the next 14 years defending homicide indictments. I achieved four additional acquittals in homicide or attempted homicide cases for a total of five. I believe that to be a State record. It is ironic that all of this came from the insistence of the District Attorney's office, Attorney General's of-

fice and Police Department on refusing to make an adequate investigation even when it was called to their attention repeatedly in Courtroom 25 both before the Trial, during the Trial and after the Trial.

I cannot adequately explain all the coincidences in this case. Of all of the Public Defenders in Queens County why was I assigned to Andy Smith on his juvenile delinquency case? Why did his father insist on hiring me for his later Homicide case? Why did I take the case for a lien on an unrelated personal injury case, rather than for payment at the time of the case? Why did I know the victim and his level of training and his character?

All I can tell you is this: 25 years later Andy Smith called me on the telephone. He told me he had a wife and two children and every day he is thankful for what I was able to do for him.

These are the stories "Law and Order" should tell, not that Jack McCoy is always right. The Jack McCoy's of the world are often wrong. Just ask Andy Smith.

BY PAUL E. KERSON, ESQ
EDITOR



- ELDER LAW
- WILLS AND TRUSTS
- ESTATE PLANNING
- MEDICAID PLANNING

- PROBATE
- ADMINISTRATION OF ESTATES
- SPECIAL NEEDS
- REAL ESTATE

Donna received her law degree from St. John's University of Law. She is currently the Chairperson of the Board of Directors of the Catholic Lawyers Guild of Queens and was past President of the Queens County Women's Bar Association, the Astoria Kiwanis Club, East River Kiwanis Club, and the Catholic Lawyers Guild of Queens.
Co-Chair of the Elder Law Section of Queens County Bar Assn. 2012-2019



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The Practice Page

Recent CPLR Amendments

BY JUSTICE MARK C. DILLON

Serves on the Appellate Division, Second Department

Recent amendments to the CPLR have been passed by the state legislature, some of which were signed into law by Governor Hochul, while others of interest have been vetoed by her.

CPLR 3101(f). New provisions of CPLR 1301(f) became effective December 31, 2021.¹ Previously, the subdivision required that defendant parties provide insurance information upon demand. The new statute is more aggressive, in requiring under subdivision (f)(1) that the contents of insurance agreements be automatically disclosed within 60 days of a party's answer, including primary, excess, and umbrella coverages. The disclosing party must provide copies of the insurance contracts' declarations, conditions, exclusions, and endorsements; contact information for claims adjusters for disclosed insurance contracts; the amount of available coverage per policy; insurance policy applications; and any other law suits and identified attorneys' fees that have reduced the amount of available coverage. CPLR 3101(f)(2) now also requires that the disclosing party update the accuracy and completeness of insurance information within 30 days of any change.

CPLR 4549. A newly-created CPLR 4549 became effective December 31, 2021 regarding the admissibility of statements by employees.² The statute relaxes the admissibility of the statements of an opposing party made in the course of employment, consistent to the rule already in effect in the Federal Rules of Evidence 801(d)(2)(D). Formerly, under state case law, employees not in charge of the business had no implied authority to speak on behalf of the employer and make admissions binding upon themselves. CPLR 4549 alters that rule and nullifies prior contrary case law, by allowing as evidence statements made in the scope of an existing employment relationship, if the statements relate to an activity that the employee was

charged to undertake. Thus, if an employee is driving a vehicle in the scope of employment, has an accident, and makes a statement at the scene that inculcates the employee or employer, that statement will now be admissible without the introducer having to prove that the employee was given authority by the employer to speak about the accident.

CPLR 5004. This interest-related statute is amended effective April 30, 2022.³ The incumbent version of the statute merely set the legal rate of interest at 9%. The amendment creates a carve-out provision, where judgments against a natural person arising out of consumer debt shall instead accrue interest at a rate of 2%. The statute is therefore consumer friendly. The statute applies to two sets of interest calculations. The first is for judgments entered after the statute's effective date. The second is for judgments entered prior to the statute's effective date, to the extent such judgments are unpaid as of April 30, 2022. CPLR 5004(b) defines the "consumer debt" that is within the scope of the new statute.

Governor Hochul vetoed an amendment to CPLR 5003 on December 29, 2021, proposed in Assembly Bill A2199 and Senate Bill S0473. CPLR 5003 directs that interest accrue on judgments upon their entry. Currently, if a court denies a plaintiff's motion for summary judgment and the court's order is later reversed on appeal, no interest accrues during the interim period when summary judgment was erroneously denied by the trial court. The proposed amendment would have changed that, to allow interest to retroactively compute to the entry of the original summary judgment determination. The veto of the bill by the governor leaves CPLR 5003 unchanged from the version that has been in effect since 1962.

On December 31, 2021, Governor Hochul vetoed the enactment of a newly-proposed CPLR 301-a and

the amendment of related statutes, Assembly Bill A7769 and Senate Bill S7253. Had it been enacted, foreign corporations registered to do business in New York would automatically be subject to the general jurisdiction of New York courts under the current version of CPLR 301, thereby nullifying the contrary holding on the subject by the Court of Appeals in *Aybar v Aybar*, 37 NY3d 274 [2021]. *Aybar* remains good law. The veto was out of concern that the new legislation would deter corporations from coming to New York to do business.

**Mark C. Dillon is a Justice of the Appellate Division, 2nd Judicial Dept., and adjunct professor of New York Practice at Fordham Law School, and a contributing author to the CPLR Practice Commentaries in McKinney's.*

¹ L.2021, ch. 832, sec. 2.

² L.2021, ch. 833, sec. 1.

³ L.2021, ch. 831, sec. 1.



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Immigration Questions

Overview Of The EB-5 Program

Part 2

CONTINUED FROM PAGE 11

However, we are aware of only two such programs that credibly claim have done so in hundreds or, in one case, thousands of times. We can introduce those programs to you but such an introduction is not an endorsement and we receive no commission from any program.

We offer legal advice on the immigration consequences of an investment on the assumption that the business which you invest in will comply with its business plan. We offer no opinion on how likely it is that the entity you invest in will actually do what it says it will do. However, a material failure by the business you invest in to comply with its plan could result in you ultimately losing permanent residency.

This memo is not legal advice. We only provide legal advice to our clients, after they have entered into a written agreement with us to provide services to them and paid the agreed upon fee.

This memo is not comprehensive. There are other requirements for the EB-5 investor program that deal with the filing and what must be presented to the USCIS. The list is long and is really not something that should or will be explained here. If and when we are retained by an investor then we will inform him in detail what the specific requirements are in his case.

Please feel free to contact us if you have further questions.

BY ALLEN E. KAYE AND JOSEPH DEFELICE

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



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BY HON. GEORGE HEYMANN

The “Humanization” of Animals and the Custody of Companion Pets When Couples Separate or Divorce

Former president Harry Truman famously stated that “if you need a friend in Washington get a dog”. Over the past 221 years, dogs, cats and other animals, including horses, cows, snakes, raccoons, birds, goats, sheep and even a small bear, have roamed the White House grounds.

Since FDR and his beloved dog Fala, the First Families have limited their companions of choice to dogs and cats, except for the Kennedys, whose daughter Caroline had a horse named Macaroni. These pets have become intertwined with the history of our presidents and their families as we’ve read about them, seen photographs of them and even watched them on television. Subsequent to FDR, the most notable were LBJ’s two beagles Him and Her; Nixon’s dog King Timahoe [and, of course, in his pre-White House days, his infamous dog Checkers, gifted to him while running in his first campaign for Vice President]; Ford’s dog Liberty; Reagan’s dogs Rex and Lucky; Bush 41’s dog Millie and her offspring, including Spot, who later became the only dog to live twice in the White House when he joined Bush 43’s other dogs Barney and Miss Beazely; Clinton’s cat Socks and Obama’s dogs Bo and Sunny. Currently, the Biden family enjoys the company of two German shepherds, Major and Commander and a cat named Willow.

Naturally, the ownership of animals is a worldwide phenomenon that extends far beyond the borders of the White House, and dates back thousands of years for people of all backgrounds and status in society. For example, the ancient Egyptians had a preference housing cats, whereas today in the USA it appears that dogs have become the pet *de jour*.

Notwithstanding one’s preference, the harboring of pets, where legal, no doubt brings much joy to their owners and families.¹ In New York City, other than private homes, many co-ops, condos and apartment buildings, especially those that are rent stabilized, have various covenants and restrictions on maintaining pets on the premises without prior consent. Failure to comply with no pet clauses could result in costly and time-consuming litigation for violating a substantial obligation of the lease or purchase agreement.

DEFINITIONS

Pursuant to the Agriculture and Marketing Law (AGM Law) section 350(1), “animals” in New York are defined as “every living creature except a human being”. Subparagraph 5 defines “companion animal” or “pet” as an “dog or cat, and shall also mean any other domesticated animal normally maintained in or near the household of the owner or person who cares for such other domesticated animal. ‘Pet’ or ‘companion animal’ shall not include a ‘farm’ animal [poultry, cattle, sheep, goats, horses swine, and fur bearing animals except dogs and cats] as defined in this section”.



While most household pets are typically dogs, cats, birds or fish in an aquarium, there exist outliers who harbor pets such as reptiles, snakes, monkeys, rabbits and even pigs in their premises, clearly in contravention to the law.

Although there are many individuals who let it be known that “I am not a pet person”, for those of us who take pride and pleasure in the company of our pets we treat them as part of our family like children. Oftentimes, most especially with dogs who are very interactive with people, we begin to think of them as being “human”.

HUMANIZATION

The concept of “humanization” [also referred to as “humanification” or “personhood”] of animals received notoriety in 2014 when the appellate courts in New York considered the novel question of whether two chimpanzees, Tommy and Kiko, were “persons ... entitled to the rights and protections afforded by the writ of habeas corpus”. (Matter of Nonhuman Rights Project, Inc. [on behalf of Tommy] v. Lavery, 124 AD3d 148, 150 [3rd Dept 2014], lv denied, 26 NY3d 902[2015]; Matter of Nonhuman Rights Project, Inc. [on behalf of Kiko] v. Presti, 124 AD3d 1334 [4th Dept 2015], lv denied, 26 NY3d 901 [2015]) Identical petitions were brought in each of the four appellate departments in the state arguing that said chimpanzees had the intelligence to be trained by humans, to act like humans, to enable then to fulfill certain duties and responsibilities.

However, the Appellate Division, Third Department, declined the petitioner’s request that the court “enlarge the common-law definition of ‘person’ in order to afford legal rights to an animal” and concluded that “a chimpanzee is not a ‘person’ entitled to the rights and protections afforded by the writ of habeas corpus”. (Matter of Nonhuman Rights Project, Inc. [on behalf of Tommy] v. Lavery, 124 AD3d at 149) Petitioner’s attempts to obtain orders to show cause in the Supreme Courts in the 2nd and 4th to departments were denied and the respective appellate divisions affirmed. (Matter of Nonhuman Rights Project, Inc. v. Stanley, 2014 NY Slip Op 68434 [2nd Dept 2014]; Matter of Nonhuman

Rights Project, Inc. v. Presti, 124 AD3d 1334 [4th Dept 2015], lv denied, 26 NY3d 901[2015])

The Third Department, in essence, viewed the matter as “the imposition of societal obligations and duties. Reciprocity between rights and responsibilities stems from principles of social contract, which inspired the ideals of freedom and democracy at the core of our system of government”. (Matter of Nonhuman Rights Project, Inc. v. Lavery, 124 AD3d at 151) The court further emphasized that “although the dispositive inquiry is whether chimpanzees are entitled to the right to be free from restraint such that they may be deemed ‘persons’ subject to the benefits of habeas corpus, legal personhood has consistently been defined in terms of both rights and duties”. (Id. at 151) Citing from Black’s Law Dictionary 1162 [7th ed 1999], regarding the word “person”, the court went on to state: “So far as legal theory is concerned, a person is any being whom the law regards as capable of rights and duties... Persons are the substances of which rights and duties are the attributes. It is only in this respect that persons possess judicial significance. And this is the exclusive point from which personality receives legal recognition”. (Id.)

Thus, the differentiation between chimpanzees, and/or any other species of animal, from humans is their “incapability to bear any legal responsibilities and societal duties that renders it inappropriate to confer upon chimpanzees [or any other animal] the legal rights ... that have been afforded to human beings”. (Id. at 152)

In the concluding paragraph of its decision, the court noted that its rejection of a rights paradigm for animals does not, however, leave them defenseless” as there are many “significant protections to animals subject to criminal penalties” already in the law for cruel and inhumane treatment. (Id.) (See, AGM Law, Section 353, *et seq.*; See also, Heymann, Animal Abuse and Medical Treatment, Queens Bar Bulletin, December 2016)

Notwithstanding that in the eyes of the law animals are not humans, in the eyes of many humans their household pets are treated as such and given the same love, admiration and care as children.

CUSTODY

Ownership of one or more pets by an individual, couple or family is one of choice, and multiple factors come into play in the decision to take on such responsibility. As a result of the recent pandemic, there was a major increase in the adoptions of household pets. On the downside, however, after two years of lockdown, often in close quarters, many relationships deteriorated which resulted in the breakup of partners and the uptick in the filings for divorce for married couples. A direct negative consequence in such situations can be

CONTINUED ON PAGE 18

¹. This article is dedicated to our recently departed dog “Casper”. (August 2004 - December 21, 2021), who, for 17 years [119 dog years], provided unconditional love, affection and joy to our entire family, especially our son Matt. May he rest in eternal peace in pet heaven.

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The “Humanization” of Animals and the Custody of Companion Pets When Couples Separate or Divorce

CONTINUED FROM PAGE 16

the difficult and heart-wrenching decision of who gets custody of the family pet[s] if both parties have a desire for possession. At times, the resolution of this issue can be no less contentious than that of seeking custody and visitation of minor children.

Historically, animals, whether domesticated or not, are considered chattel and can be treated as any other inanimate property. Thus, in court disputes, their interest as non-humans, albeit living and breathing creatures, do not rise to the level of humans. As such, they could be bought, sold or otherwise disposed of in the same manner, as, for example, a used car or a piece of furniture.

Unlike Biblical times, when King Solomon, in order to settle a child custody dispute, threatened to cut an infant in two, awarding half to each of the women alleging to be the birthmother, today’s court decisions may not be as drastic, yet they can be as equally emotional and complicated. Presently, the gold standard used by courts to decide which parent is awarded physical custody is “what is for the best interest of the child, and what will best promote its welfare and happiness” as stated by the Court of Appeals in *Eschbach v. Eschbach*, (956 NY2d 167, 171 [1982]) This seminal case, sets forth a series of factors to be considered by the Supreme and Family Courts in rendering decisions regarding child custody and visitation to provide guidance and uniformity statewide. Among the factors to be considered is whether a previous agreement was entered into between the parties as to which parent will have custody. While it should be accorded priority “as a weighty factor” it is not an absolute one if there exist extraordinary circumstances to warrant the court not to be bound by it. Other key considerations include “the quality of the home environment and the parental guidance the custodial parent provides for the child”; “the financial status and the ability of each parent to provide for the child”; “the ability of each parent to provide for the child’s emotional and intellectual development”; recognizing the needs of each child and “whether the custodial parent can continue to provide for the child’s various needs”. Finally, depending on the “age and maturity” of the child, his or her “expressed preference” as to as to which parent it “desires” to live with and whether, where there is more than one child, siblings should remain together or can be separated. (Id. At 171 -173) No one factor is determinative, and courts must fashion their decisions based on the totality of the circumstances which may include, if necessary, in-camera inquiry of the child[ren], testimony from a court appointed attorney/guardian-ad-litem for the child[ren], a child psychologist or psychiatrist and other forensic evidence.

Naturally, in pet custody matters the pet[s] in issue cannot provide the court with any “expressed preference” as to where it wants to live. However, inquiry generally focuses on whether the pet[s]

belonged to one partner before the relationship; did one partner tender it as a gift to the other; was it purchased or adopted jointly; which partner primarily provides the financial resources for food, veterinary expenses, and other sundry things; which partners spends the most time with the pet[s] providing care and emotional support. Clearly, such focus is still that of treating the pet[s] as property.

The first appellate decision in New York that sought to change the discourse of animal custody and to move away from treating household pets as mere chattel [“dechattelization”] was *Raymond v. Lachmann*, (264 AD2d 340 [1st Dept 1999]). In reaching a decision as to who was entitled to “ownership and possession of the subject cat, Lovey, nee Merlin”, the court succinctly stated: “Cognizant of the cherished status accorded to pets in our society, the strong emotions engendered by disputes of this nature, and the limited ability of the courts to resolve them satisfactorily, on the record presented, we think it best for all concerned that, given his limited life expectancy, Lovey who is now almost ten years old, remain where he has lived, prospered, loved and been loved for the past four years”. (Id. at 341 [emphasis added])

Here, the court acknowledged that the factors to be considered were subjective and personal, expressing concern for Lovey’s age, health and well-being in spending the remainder of his life “where he has lived, prospered, loved and been loved”. It’s determination as to what was “in the best interest for all concerned” was a major step in the direction of recognizing the needs of the pet itself, rather than merely what the parties in the dispute were seeking.

In *Travis v. Murray* (42 M3d 447, 2013 NY Slip Op23405 [S Ct, NY Co]), recently retired Justice Matthew F. Cooper had to resolve a “tug of war between two spouses in the midst of a divorce proceeding to end their extremely short and childless marriage” regarding their two and a half year-old miniature dachshund named Joey.

In a well-reasoned decision, expounding upon society’s evolving values and perception of household pets, especially dogs, away from “the traditional property analysis”, the court chose to apply the “best interest for all” standard, as set forth in *Raymond v. Lachmann* (supra), in reaching a determination of the dispute. The court informed the parties they would be given a full hearing, not to exceed one day because “while children are important enough to merit endless litigation as unfortunate as that litigation may be, dogs, as wonderful as they are, simply do not rise to the same level of importance”.

That “level of importance”, however, has now become law. On October 25, 2012, the governor signed legislation [S4248 / A5775], effective immediately, which amended the Domestic Relations Law, section 236B, subdivision 5, to incorporate the following new provision: “(15) In awarding the possession of a

companion animal, the court shall consider the best interest of such animals. ‘Companion animal’, as used in this subparagraph shall have the same meaning as in subdivision five of section three hundred fifty of the Agriculture and Markets Law” [as set forth above]. (Emphasis added)

As of this writing, the new law and its concomitant obligations on the trial courts has only been in effect five months since inception. Thus, it is premature to predict its success, especially with the backlog of cases caused by the pandemic. However, as I noted above, in reference to *Eschbach v. Eschbach*, this new provision will provide uniformity and guidance to the courts in custody proceedings involving household /companion pets by adopting the narrow “best interest of the animal” standard in lieu of “the best interest for all” approach in resolving such custody disputes. This new law has now moved New York yet another step closer to the “dechattelization” and “humanization” of pets.

HON. GEORGE M. HEYMANN

Judge Heymann, Chair of the Animal Law Committee of the Queens County Bar Association, is a retired Judge of the NYC Housing Court; an Adjunct Professor of Law, Maurice A. Deane School of Law at Hofstra University; a Certified Supreme Court Mediator; of Counsel, Finz & Finz PC and a member of the Committee on Character and Fitness, Appellate Division, Second Dept, 2nd, 10th, 11th & 13th Judicial Districts.



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— Joan T.

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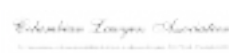
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