Queens BAR BULLETIN

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March 2025 | Volume 92, No.5

PRAISE FOR QVLP

The letter below was received by Mark Weliky, Executive Director of the Queens Volunteer Lawyers Project (QVLP). QVLP provides pro bono legal services to members of the Queens community in limited practice areas. The author is a client of QVLP and granted permission to publish her letter.

Dear Mr. Weliky,

This letter is long overdue. I am writing to express my heartfelt gratitude and deepest admiration for Kristen Dubowski, Esq., the exceptional lawyer who has been representing me through the Queens Volunteer Lawyers Project. Ms. Dubowski has been my rock, my guiding light, and my beacon of hope during one of the most challenging periods of my life.

From the very beginning, Ms. Dubowski has demonstrated a level of sensitivity, compassion, and empathy that is truly remarkable. I vividly remember my first day in court when I was asked if I needed a lawyer and I said yes. Little did I know that my life was about to change for the better. Ms. Dubowski, (I truly believe) my angel from heaven, "popped up" on my screen, and I explained my situation to her. From that moment on, she took charge, guided me through the complexities of the legal system, and carried me through the darkest of times.

KRISTEN DUBOWSKI

Her kindness, patience, and gentle approach have made a profound impact on me, and I will be forever grateful. Not only is Ms. Dubowski an extraordinary human being, but she is also an exceptional lawyer. Her intelligence, expertise, and strategic thinking have been invaluable in navigating the complexities of my case. She has worked tirelessly on my behalf, always keeping me informed and involved throughout the process.

Throughout my case, Ms. Dubowski has consistently demonstrated incredible instincts that have proven to be spot on at every turn. Time and again, she has acted on her intuition, making strategic decisions that have ultimately led to favorable outcomes. Her ability to read people, situations, and nuances has been uncanny, and her willingness to trust her instincts has been a game-changer. Whether it was anticipating the opposing side's moves, identifying key evidence, or knowing exactly when to push or pull back, Ms. Dubowski's instincts have guided her decision-making with remarkable accuracy. Her exceptional judgment and trust in her own instincts

CONTINUED ON PAGE 9

Table of Contents

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

APRIL 2025	
Tuesday, April 1	**CLE:** The Best of Both Worlds: Hybrid and Virtual Appearances for Efficient Court Proceedings
Tuesday, April 1	**EVENT:** NY Islanders Game
Wednesday, April 2	**CLE:** The Dynamics of Commercial Leases
Tuesday, April 8	**CLE:** Best Practices in Arbitration and Mediation
Tuesday, April 15	Soberlink – Lunch & Learn – 1:00 pm
Wednesday, April 16	**CLE:** 2025 Equitable Distribution Update Pt 1
Thursday, April 17	**CLE:** Search & Seizure Update 2025 – 1:00 pm
Friday, April 18	*Good Friday – Office Closed*
Wednesday, April 23	**CLE:** 2025 Equitable Distribution Update - Pt 2
Tuesday, April 29	**CLE:** Diversity Program – What does DEI Really Mean in the Workplace? – 1:00 pm
Wednesday, April 30	**CLE:** Ethics Update 2025 - Pt 1
MAY 2025	
Thursday, May 1	**CLE:** Appellate Practice Webinar – 1:00 pm
Wednesday, May 7	**CLE:** Ethics Update 2025 - Pt 2
Thursday, May 15	Annual Dinner & Installation of Officers at Terrace on the Park
Tuesday, May 20	**CLE:** Real Estate Nuts & Bolts - Pt 1 – 1:00 pm
Monday, May 26	Memorial Day – Office Closed
Wednesday, May 28	**CLE:** Real Estate: Breaking Up is Hard to Do - Pt 2 – 1:00 pm
JUNE 2025	
Thursday, June 5	**EVENT:** Family Law Committee Annual Dinner
Thursday, June 19	*Juneteenth – Office Closed*
JULY 2025	
Friday, July 4	*July 4 – Office Closed*

*If you are unable to attend a CLE that you are interested in, you may purchase it to view at home by contacting Sasha at cle@qcba.org.

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

For additional resources from the Lawyer's Assistance Committee, visit www.qcba.org

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Editor's Note

The US Law of NATO

By Paul E. Kerson

In 2023, then Senator Marco Rubio (R – Fla.) and Senator Tim Kaine (D – Va.) teamed up to lead the US Senate in passing 10 USC Section 1250A, the National Defense Authorization Act for Fiscal Year 2024.

This law provides that the US President cannot withdraw the US Government from the North Atlantic Treaty Organization (NATO) without a two-thirds vote of the US Senate or authorization from a new Act of Congress.

10 USC Section 1250A was specifically aimed at then-former President Trump, who often spoke of his goal of withdrawing the US Government from NATO.

NATO is the institutionalization of the Allied victory in World War II. Its main goal was to stop the Europeans from fighting bitter wars against each other, as they had done for 3000 years prior to 1945.

Just to name the most recent: World War II (1939-1945) World War I (1914-1918) ("the war to end all wars"), Second Balkan War (1913-1914), First Balkan War (1912-1913), Russian Revolution (1905-1917), Wars for German Unification (1862-1871), Crimean War (1853-1856), Wars for Italian Unification (1848-1870), Third French Revolution (1848-1849), Second French Revolution (1830-1831), Napoleonic Wars (1803-1815), French Revolution (1789-1799), Seven Years' War (1756-1763) and so forth back to Before the Common Era. See Wikipedia, European Wars.

For the past 80 years, our US Federal Government in Washington, DC has broken this pattern by leading NATO, a military alliance which integrates European militaries so they can't fight with each other. It would be completely impractical, as they train together under Washington's supervision.

Trump got himself re-elected in 2024, after having been out of office in 2020-2024, giving then-Senator Rubio and Senator Kaine a chance to literally save the world from the seemingly impossible scenario of an American President trying to break NATO.

But then, surprise of surprises, President Trump installs then-Senator Rubio as US Secretary of State, the public official who would be charged with withdrawing the US Government from NATO. What does this tell us about the relationship between now Secretary Rubio and President Trump?

It tells us that the new policy will most likely be to weaken NATO rather than withdraw from it, a dangerous move which could lead to Russian military advances on small NATO countries, and plunge Europe into a new war which would make the Ukraine conflict look small by comparison.

Just as he is trying to dismantle NATO, so President Trump has decided to name Elon Musk, owner of Tesla Motors, as head of the new Department of Government Efficiency (DOGE) to dismantle large sections of the Federal Government built by Congressional authorization of both major political parties over the decades.

Both President Trump and Elon Musk never held public office before their current positions.

Private sector skills have zero role in Government. By its nature, Government is designed to provide essential services that the private sector cannot. The Private sector, by its nature, must operate at a profit.

Government cannot make a profit. The US Postal Service's goal is to deliver mail to every business and household every day, no matter how remote. Amtrak's goal is to provide train service all over the country because private railroads could not make a profit at it, and national train service was and is too valuable for the nation to abandon it.

The goal of the Army, Navy, Air Force and Coast Guard is to protect the country from foreign threats, no matter what the cost. The goal of Medicare, Medicaid, Food Stamps and Social Security is to take care of our residents so no one in America dies from hunger or lack of medical care.

Dismantling all of this in the name of private sector "efficiency" ignores the career of one Robert Strange McNamara. (Yes, that is his real name).

Having graduated from the Harvard Business School in 1939, McNamara joined the Ford Motor Company soon after service in the US Army in World War II, part of a team of "Whiz kids" tasked with increasing the profitability of the company. See *Google, Wikipedia, Robert S. McNamara*.

With zero prior experience in civilian government, McNamara served as US Secretary of Defense from 1961 to 1968. He was the architect of the Vietnam War, the greatest failure in US Government history (until today) with more than three million dead for no good reason.

Why?

In his leading book on this subject, *The Best and the Brightest*, (Random House, NY, 1972), David Halberstam sums it all up with this story: President Lyndon Johnson was very impressed with the "glamour and intellect" of McNamara and his team. He told his friend, House Speaker Sam Rayburn as much. Rayburn replied, summing up the entire problem of American politics:

> "Well, Lyndon, you may be right and they may be every bit as intelligent as you say, but I'd feel a whole lot better about them if just one of them had run for sheriff once." (page 41)

The reasons McNamara failed in Vietnam? Halberstam sums it up in this finding:

> "In the late fall of 1965 Johnson learned the hard way that the slide rules and computers did not work, that the projections were all wrong, that Vietnam was in fact a tar baby..." (page 622).

For the uninitiated, Google defines "tar baby" as the summary of McNamara, Johnson, Nixon, Kissinger, Trump, Vance and Musk all rolled into one:

> "a problem that is exacerbated by attempts to struggle with it, or by extension to a situation in which mere contact can lead to becoming inextricably involved"

How did McNamara go down in history as leading the greatest failure of the US Government? He lived a long life (1916-2009), and he reflected on it towards the end. He wrote a book, *In Retrospect – The Tragedy and Lessons of Vietnam* (Vintage Books, NY, 1995) and he gave us reasons for the three million needless deaths:

CONTINUED ON PAGE 5

Editor's Note

The US Law of NATO

CONTINUED FROM PAGE 5

> "Part of the poison of Vietnam is that we ended it as badly as we fought it, and for that, I blame Richard Nixon and Henry Kissinger. Lies, lies, lies, right through the end. It has taken us years, while the poison has spread, to lanc e the wound and let the pus out." (page 404)

McNamara's book caused a sensation in 1995. It lead to a New York Times editorial on April 12, 1995 that is regarded by journalists as perhaps the greatest piece of newspaper writing in American History. I have it framed hanging on the wall of my study at home all this time:

> "Mr. McNamara's War
>
> ...His regret cannot be huge enough to balance the books for our dead soldiers. The ghosts of those unlived lives circle close around Mr. McNamara. Surely he must in every quiet and prosperous moment hear the ceaseless whispers of those poor boys in the infantry, dying in the tall grass, platoon by platoon, for no purpose. What he took from them cannot be repaid by prime-time apology and stale tears, three decades late.
>
> "Mr. McNamara says he weeps easily and has strong feelings when he visits the Vietnam Memorial. But he says he will not speak of those feelings. Yet someone must, for that black wall is wide with the names of people who died in a war that he did not, at first, carefully research, or in the end, believe to be necessary."

Will Trump and Musk go down in history with McNamara? Will weakening NATO and our Federal Government lead inevitably to deadly war in Europe, a war which will make Vietnam and Ukraine look like mere skirmishes?

In New York, one is required to have 10 years of service as a lawyer for most judgeships. See NY State Constitution, Article VI, Section 20(a). In our Federal Government, we ought to follow the wisdom of House Speaker Sam Rayburn: "I'd feel a whole lot better about them if just one of them had run for sheriff once."

Congress should enact a law requiring 10 years of service in elected office in local, state or federal government before serving as President, Vice President or Cabinet Secretary. Private sector service would not be banned, but with such a protective law, we will suffer no more McNamaras, Trumps or Musks.

Holding government office means attending endless meetings seeking to build consensus. It takes as long as it takes. Profit has nothing to do with it. Business people who think their experience in profit-making can help government had best read Robert McNamara's book and David Halberstam's book, to see what happens when a major company president takes charge of a major government department.

The results are deadly. Ask the Vietnamese.

In Memoriam

We sadly note the passing and fondly recall the many contributions of Queens County Bar Association Past Presidents

MICHAEL K. FEIGENBAUM
1986-1987

JANUARY 2, 1942 - MARCH 6, 2025

STEVEN WIMPFHEIMER
1999-2000

DECEMBER 5, 1941 - MARCH 5, 2025

We extend our sincere condolences to Mike and Steve's families and friends.

Please read next month's Bar Bulletin for full tributes to both men.

Thank You To Our 2025

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President's Message

Happy March, Everyone!

By Zenith T. Taylor

It is hard to believe that Spring is just around the corner. The days are getting longer, the weather is warming up, and we will soon celebrate another installation dinner together.

As we embrace the joys of spring, we should never forget our significant role as attorneys in maintaining a just and fair society. Our legal profession, legal services, community outreach, and judiciary profoundly impact the Queens community.

Queens County's colorful cultures, ethnicities, and traditions are a testament to the diversity that makes our Queens the best county in the world. Our collective commitment to justice and equality ensures that our community continues to thrive within the framework of our Constitution.

The Queens judiciary and the New York State judicial system have evolved significantly over the past two decades, thanks to our shared commitment to a diverse and representative judiciary. Today, the Queens bench reflects the rich diversity of our community, with judges bringing a wide range of backgrounds, experiences, and perspectives. We should not let the hard work and efforts to promote that diversity go to waste.

In the coming weeks, many bar associations throughout the state will issue statements separately and independently advocating for the rule of law. I believe issuing a statement in solidarity is an act of respect for our profession and dedication to our community, demonstrating our support to protect our democracy. While we respect all political affiliations, it is essential to uphold the rule of law and ensure that our self-governing republic remains strong.

I wish you all a wonderful spring and look forward to seeing you at upcoming events.

Best regards,

Zenith

QUEENS COUNTY BAR ASSOCIATION
Real Property Committee
PRESIDENT: ZENITH T. TAYLOR, ESQ.

THE DYNAMICS OF COMMERCIAL LEASES

WEDNESDAY, APRIL 2, 2025
1:00 PM – 2:15 PM

SPONSORED BY: MITRA HAKIMI REALTY GROUP

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- Terms
- Practical Tips
- NYC Government Benefits Related to Commercial Leases

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VIA ZOOM

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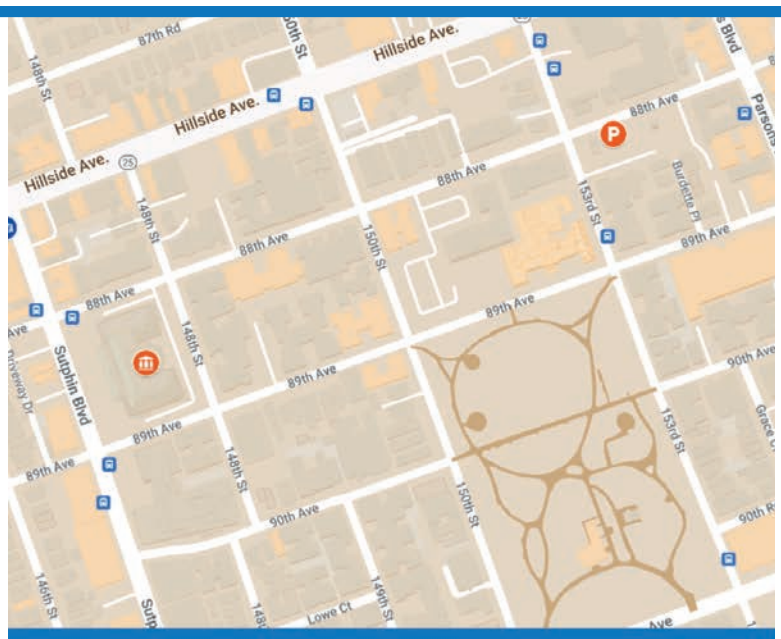

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SCAN ME

PRAISE FOR QVLP

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have been a source of comfort and confidence for me throughout this challenging process.

What makes Ms. Dubowski's dedication and expertise even more remarkable is that she has been providing her services to me pro bono through the Queens Volunteer Lawyers Project. Her selflessness and commitment to serving those in need are a testament to her outstanding character and professionalism.

Over the past almost two years, I have faced unimaginable challenges, including the threat of foreclosure, a financially devastating divorce, and the crushing and tragic loss of my 30-year-old daughter to Covid-19. Ms. Dubowski has been a constant source of support and guidance throughout this nightmare, always available to offer a listening ear, a comforting word, or a reassuring presence.

In short, Ms. Dubowski is a true gem, and I feel blessed to have had the privilege of working with her. Her exceptional skills, her compassionate nature, and her unwavering commitment to justice make her an invaluable asset to the Queens Volunteer Lawyers Project and to the community at large.

Please extend my deepest gratitude and thanks to Ms. Dubowski for all that she has done, and continues to do for me. I hope that you will recognize and reward her outstanding service, dedication, and compassion.

Thank you for providing a platform for exceptional lawyers like Ms. Dubowski to make a meaningful difference in the lives of those in need.

Sincerely,

Sheri P.

As many of you know, Kristen is QCBA's President Elect, and will serve as President for the 2025-2026 term. Please join us in congratulating Kristen on her outstanding work on this case – and so many others.

The Queens Volunteer Lawyers Project can use your help. Pro bono volunteers are needed for uncontested divorces, drafting/execution of simple wills, foreclosure settlement conferences and for the CLARO-Queens Consumer Debt Clinic (Friday afternoons). Contact Mark Weliky at MWeliky@QCBA.org.

Judiciary, Past Presidents and Golden Jubilarian Night

MARCH 6, 2025

PHOTOS BY WALTER KARLING

Judiciary, Past Presidents and Golden Jubilarian Night

MARCH 6, 2025

PHOTOS BY WALTER KARLING

The Ancient And Modern Marriage

BY FRANK BRUNO, JR.

"7H3 M345UR3 0V 1N73LL163NC3 15 7H3 481L17Y 70 CH4N63." 4L83R7 31N5731N

Marriage is a legally or socially binding union between two or more people, often—but not always, depending on cultural and historical context—between a woman and a man. It is accompanied by complex cultural obligations in terms of property ownership, child-rearing, social roles, emotional support, sexual access, and kinship. Social scientists have advanced theories explaining this elaborate bonding process. A functionalist view suggests that marriages supply social stability, a sexual outlet for adults, domestic labor, legitimate offspring, and a foundation for socializing children.

History of the Institution:

The oldest recorded marriage occurred in Mesopotamia around 2350 BCE. For thousands of years before that, anthropologists believe families probably consisted of small groups of 20 or 30 people with several males and females sharing resources while raising children and hunting and gathering. Agrarian society scholars believe that early marriages were primarily patriarchal and revolved around political alliances and owning property, including (sometimes multiple) wives and children, rather than affection.

Early recorded instances of marriage in Asia occurred much later, between 402 and 221 BCE in China. Ceremonies consisted of elaborate exchanges of gifts, astrological readings, and feasts. The bride and groom might not meet until the wedding day, and some reluctant brides were locked in wooden sedan chairs and carried to the groom's family estates. Ancient Hebrew men were permitted to take several wives. Historical African marital relationships are harder to generalize. Matrilineal societies, where lineage and inheritance are passed through the female line, exist across parts of central Africa. While monogamy is widely practiced, polygyny—the practice of marrying multiple wives, and polyandry, or multiple husbands per wife—has been permitted across large swaths of the continent.

Early on these were secular events. Religion became involved later. Christian churches stayed out of it until about the 8th Century and then it became a sacrament. No wedding ceremony is described in the Torah although marriage started with Adam and Eve. In Islam, marriage is a contract, not a sacrament and it conveys legal rights and obligations to each spouse. Common law marriage to legal marriage began with the church by the end of the Middle Ages. Massachusetts in 1639 started recording marriage licenses and by 1929 all U.S. states had laws on marriage licenses and it became a federal issue in 1913 with the married-couple income tax filings.

The linkage of love and marriage arose during the 18th-century Enlightenment and the search for individual happiness. Industrialization led to widespread urban migration, helping to decouple marriage from economic alliances and giving more people opportunities to seek love and fortune. Today, almost 90% of Americans see love as the key component of a successful marriage.

Same-sex marriage:

In 2000, the Netherlands became the first modern nation to legalize same-sex marriage and the US legalized it in 2015, although it was recorded in Rome around the first century, with the Roman emperor Nero marrying a non-consenting male slaves in a public ceremony. In the Americas, alternative partnerships were common before colonization.

Divorce has likely always existed alongside marriage. Historian Stephanie Coontz reports that divorce rates among hunter-gatherer groups and early agriculturalists resemble those of modern times. Separations and remarriage were around before the modern era.

Rules and Rituals:

In the US and many other countries, marriage is a legal institution regulated by state authorities with rules around marriage licenses, ceremonial authorities, and age limits. US states only recognize legal unions between two people. States have been stripped of some rights to regulate marriage. Those that previously prohibited interracial marriage had their anti miscegenation laws struck down by the Supreme Court in 1967.

Ritual practices are an inextricable part of courtship and weddings. From Ghana came the practice of sweeping away past strife with a broom and then jumping over it, which is still observed by African couples in numerous countries. Does the couple even need to be alive? Ghost weddings are practiced in China and other countries to ensure dead family members are not alone in the afterlife. They can unite two deceased partners or one living and one dead.

Modern Marriage:

The marriage rate in the US has plummeted by almost 60% since the 1970s. More than half of Americans believe marriage is important but not essential to leading a fulfilling life. On average, Americans are marrying later while women, now more financially independent, are more than twice as likely as men to file for divorce.

Social and economic factors, including higher costs of living, may be contributing to falling marriage rates. While rates among higher-income groups have remained steady, fewer middle- and working-class people, particularly men, have the financial means to marry and support a family.

As of 2024, divorce rates remain 40-50% for first marriages; 60-67% for second marriages and higher than 70% for third marriages. The rate of "gray divorces" involving spouses over 50 has roughly doubled since the 1990s. One famous divorce ended Catholic connections within England; started the Church of England and Reformation. The divorce was absolutely at the heart of the matter.

While marriage is not going away, some are content to explore alternative arrangements. As of 2021, one-quarter of 40-year-olds in the United States had never been married (up from 6% in 1980), while around one in five cohabited with a partner. Roughly 40% of Americans are pessimistic about the future of marriage. Many factors have driven a rise in couples therapy, which attempts to salvage broken relationships.

According to Forbes, nationwide in 2024, the average cost of a divorce ranges from $7,000 to $15,000 but this figure increases significantly in high-conflict or high asset cases. New York also tends to be higher cost; just google it. The average uncontested divorce in New York State costs $5,500 and a "routine" contested divorce costs between $15,000 to $50,000.

To avoid divorce, here are some old-fashioned yet still true tips. Show appreciation - validation shows your partner you recognize their contribution; Listen - two ears, one mouth and it takes effort. Listening demonstrates your support; Do not interrupt - listen, empathize, pause then speak; Show interest in your partner - make eye contact, lean in, smile, put the focus on your partner; Prioritize your marriage - watch your words during arguments; do not discount the position of your partner, do not diminish or invalidate; take a time out if necessary; pay attention to body language; Hug and kiss.

CONTINUED ON PAGE 13

The Ancient And Modern Marriage

BY FRANK BRUNO, JR.

CONTINUED FROM PAGE 12

Because of the passage of a new law (CPLR 515) effective 2/19/25, the county where a divorce action may be heard (venue) has been changed. It must now be heard in a county where one of the parties or one of the minor children of the marriage resides, unless one of their addresses is not a matter of public record or is subject to a confidentiality order. Plaintiffs filing for divorce should make sure to file their actions in compliance with the new law.

The 2025 CSSA Child Support Standards Chart was disseminated 3/1/25. In cases where the defendant has to be served, that is the chart that must be served along with the Summons + Notices.

In a sermon by Jarrett Stephens, he said that every battle we fight starts as a battle of the mind. In order to win this battle, we need to do three things: 1. Choose the right input into our mind; 2. guard our mind against the wrong input and 3. train our mind to create the right responses and habits that lead to the right actions. Take a second and rate yourself on a scale of 1-10 on these three questions: 1. I consistently and intentionally choose the right input into my mind. 2. I am vigilant and guard my mind against any input that is not pure and based on truth. 3. I am constantly training my mind to respond, not react, to the problems and challenges I face.

How did you do? If life is frustrating and you feel like you are stuck, consider working on Choosing, Guarding, and Training.

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

Important Medicaid Home Care Deadline

By Ronald Fatoullah, Esq.
Meltzer, Lippe, Goldstein & Breitstone, LLP

Most dual eligible (Medicare and Medicaid) individuals aged 65 or older are required to receive home care through Managed Long-Term Care (MLTC) plans. MLTCs are insurance plans that pay the same monthly rate per person, whether care is provided 4 hours per day or 24 hours per day. MLTCs took over the role that local Medicaid offices used to play, i.e., deciding whether an individual is eligible to receive home care and how many hours they are entitled to. Care is directly provided by a Personal Care Aide from a home care agency contracted with the MLTC.

Some individuals are enrolled in another program authorized by Medicaid – the Consumer Directed Personal Assistance Program (CDPAP). Individuals in need of care join CDPAP for several reasons. One reason is that a Personal Care Aide is not permitted to assist with skilled needs such as administration of medication and suctioning. Only informal support (family members or friends) or a care provider through CDPAP, known as a Personal Assistant, is permitted to perform skilled tasks. Hence, individuals with need for such skilled tasks will not be able to receive the care they need through MLTC plans.

When an individual is receiving care through CDPAP, an agency called a Fiscal Intermediary manages payroll and benefits for the Personal Assistant. The Fiscal Intermediary pays the Personal Assistant, monitors hours, administers benefits, processes tax information, checks immigration status, etc. In the CDPAP program, the Personal Assistant works for the individual rather than an agency. However, it is the Fiscal Intermediary that contracts with and is paid by the MLTC Plan.

Effective April 1, 2025, CDPAP is changing from working with over 600 Fiscal Intermediaries to a single Fiscal Intermediary called Public Partnerships LLC. The purported intention of the change is to protect home care recipients and caregivers from fraud and abuse.

All individuals currently enrolled with another Fiscal Intermediary are required to sign up with Public Partnerships LLC by phone, online, in-person, or with a facilitator by March 28, 2025. There are 31 facilitators who are currently available to assist in New York State.

All Fiscal Intermediaries other than Public Partnerships LLC must stop operating by April 1, 2025. Anyone not registered with Public Partnerships LLC will have their services stopped. Advocates have expressed concern that there is not enough time to transition all CDPAP individuals, and that they are not going to receive any notice of discontinuance prior to April 1, 2025.

Ronald Fatoullah, Esq. is Chair of the firms Elder Law Practice Group and a Partner in the firm's Trusts & Estates Practice Group. Ron and his team may be reached at 718-261-1700.

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BEST PRACTICES IN ARBITRATIONS AND MEDIATIONS

Tuesday, April 8, 2025
1:00 PM – 2:00 PM

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HON. DAVID ELLIOT
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Justice, Supreme Court of the State of New York, Queens County and Associate Justice, Appellate Term, Second Judicial Department, Second, Eleventh, and Thirteenth Judicial Districts (Ret.)

HON. JEREMY S. WEINSTEIN
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Alternative Dispute Resolution is an efficient option for the settlement of disputes and proper preparation is vital for a successful resolution. NAM Hearing Officers, the Hon. David Elliot (Ret.) and the Hon. Jeremy S. Weinstein (Ret.), will provide insight on best practices and preparations for arbitration and mediations.

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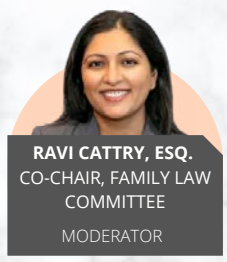

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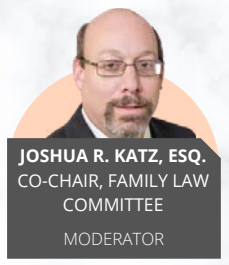

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The Practice Page

Responsive Pleadings, Like The Game Of Chess

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

There is a great case that illustrates the importance of thinking strategically about answers to complaints. It will be revealed in one relevant way below.

But let's first touch base with some basics. CPLR 3018 is the provision governing responsive pleadings. The "responsive pleading" is an umbrella term as it includes answers to complaints, answers to third party complaints, answers to interpleader complaints, and answers to cross-claims (CPLR 3011). Another form of responsive pleading is uniquely known as the Reply, which by definition responds only to a defendant's counterclaim (CPLR 3011). Answers to allegations which the party believes to be untrue are to be denied (CPLR 3018[a]). Allegations for which the party lacks knowledge or information sufficient to form a belief about their truth shall be specified, but in the interim has the effect of a denial (CPLR 3018[a]). If allegations or denials are not specifically stated to be made upon information and belief, they are regarded for all purposes as having been made upon personal knowledge, per the mandate of the infrequently-cited CPLR 3023. Significantly, all other statements are *deemed* admitted including statements for which the party fails to specifically provide a response (*Pacheco v Jabalera*, 214 AD3d 516[1st Dep't. 2023]; *U.S. Bank National Association v Saff*, 191 AD3d 733 [2nd Dep't. 2021]; *Offor v Zucker*, 185 AD3d 1187 [3rd Dep't. 2020]).

To avoid a default, responsive pleadings are due for all pleaded allegations but with one notable exception: If a cross-claim does not specifically demand an answer to it, the cross-claim is deemed denied in the absence of a response (CPLR 3011; *Giglio v NTIMP, Inc.*, 86 AD3d 301, 310). Parties interposing cross-claims therefore have no downside to demanding an answer to them, as is permitted by CPLR 3011, to determine the adversary's pleading response and to set up a potential default if the cross-claim is not answered. If an answer is specifically demanded to a cross-claim, the responding party must be sure to answer it.

A further consideration for attorneys in preparing responsive pleadings involves verifications — when they are or are not required. For that, practitioners should consult CPLR 3020. Generally, and subject to limited exceptions (CPLR 3020[b]), responsive pleadings must be verified if the pleading being responded to is itself verified (CPLR 3020[a]). And CPLR 3020(c) defines who may verify responsive pleadings.

Attorneys must of course examine allegations carefully when drafting the responsive pleading. Attorneys do so based on the facts presented to the attorney by the client, the relevant potential legal defenses, and the attorney's ethical obligation to certify that contentions in the responsive pleading are not frivolous (Rules of the Chief Administrator 130-1.1a[b][1]). Those considerations also include the inclusion of affirmative defenses, taking care that none be left out that would be waived if not specifically asserted (CPLR 3211[e]).

That all said, there is a terrific case on the subject of responsive pleadings, *Urraro v Green*, 106 AD3d 567, from 1984, long ago. *Urraro* involved a pedestrian knockdown from a car owned by a municipality while being operated by a municipal employee. As the bar knows, the statute of limitations for a negligence claim against a municipality is 1 year and 90 days (GML 50-i); but the statute of limitations against the employee-driver was either 1 year and 90 days or 3 years depending on whether the accident occurred while the employee was within or without the scope of employment. The limitations would be 1 year and 90 days if the employee was within the scope of employment, as in that instance the municipality would be vicariously liable and required to provide indemnification, rendering the municipality the real party at interest (*Urraro v Green*, 106 AD3d at 567; *Sinvany v Metropolitan Transit Authority*, 79 MIsc.3d 1243[A] *3). If the employee-driver operated the vehicle wholly and unforeseeably outside the scope of municipal employment, then the standard 3-year statute of limitations for negligence would apply as to the employee. The plaintiff's complaint in *Urraro* specifically alleged that the employee was operating the defendant's vehicle *within* the scope of his municipal employment. Quick on the uptake, defense counsel, representing both defendants from a single insurer, *admitted* in the answer that the accident occurred while the employee was within the scope of his employment. Why? Presumably, the admission was based upon the true facts. But notably, the action was commenced by the plaintiff beyond the 1 year 90 day statute of limitations but before the expiration of the 3 year statute of limitations. The admission to the allegation that the employee-driver was within the scope of employment removed it as a contested matter in the case (*Zegarowicz v Ripatti*, 77 AD3d 650, 653), and thereby brought the employee within the applicable 1 year 90 day statute of limitations of GML 50-i. Thereafter, defense counsel made the predictable motion to dismiss the *Urraro* action as to not one, but both defendants, on the ground that the entirety of the action was time-barred. Motion granted, case dismissed (*Urraro v Green*, 106 AD2d at 567).

The lesson from *Urraro* is that responsive pleadings be drafted with care and strategy. In preparing the answer in *Urraro*, the defendants' counsel was thinking in terms of a chess game, looking three moves ahead on the board. Doing so is a good approach for attorneys drafting responsive pleadings.

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

Queens County Bar Association

One Hundred Forty-Eighth Annual Dinner
Installation of the 2025-2026 Officers & Managers and Presentation of the 2025 Law School Scholarships

at

Terrace on the Park • Flushing, NY

Thursday, May 15, 2025

Installation of Officers and Managers

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Cocktails: 5:30 pm • Dinner & Program: 7:00 pm • Business Attire

Reservations: $190 per person / $1,725 per table of 10
Early Reservations: $165 per person / $1,500 per table of 10 through May 4
$135 per person for QCBA members admitted to practice 4 years or less (through May 4)
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