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Queens Bar Bulletin
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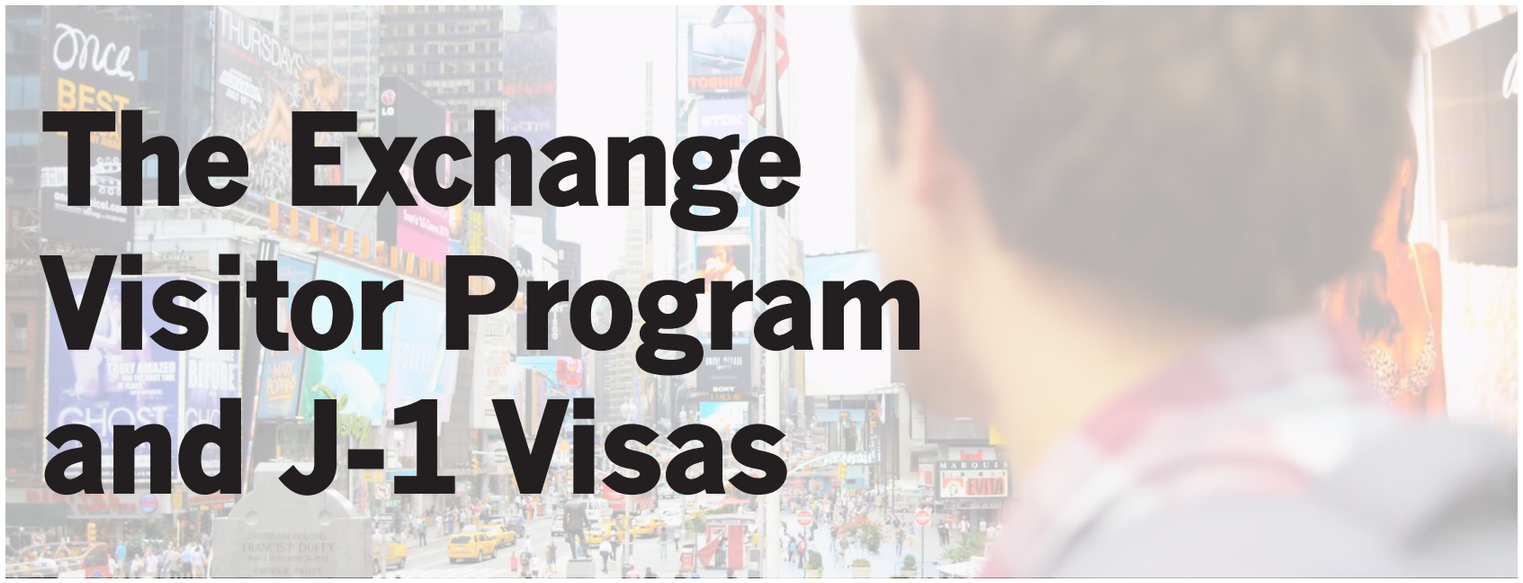
May2018, Volume 84 No. 7



The Exchange Visitor Program and J-1 Visas

By: Allen E. Kaye and Joseph F. DeFelice, Co-Chairs of the Immigration and Naturalization Committee

What is the Exchange Visitor Program (EVP)?c

The (EVP) was created as part of the Mutual Educational and Cultural Exchange Act of 1961 (The Fulbright–Hays Act) to allow foreign nationals to temporarily reside in the United States and participate in a variety of education or training programs and to promote cultural exchange between the United States and other countries. The program is grounded in U.S. public diplomacy efforts and its stated purpose is:

> to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations, and the contributions being made toward a peaceful and more fruitful life for people throughout the world; to promote international cooperation for educational and cultural advancement; and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world.

The program initially brought scholars to the United States to teach or conduct research. Today, there are 14 categories of programs through which EVP participants can teach, study, research, or receive training.

Au pairs • Young adults live with a host family for 12 months and experience U.S. culture while providing child care and taking courses at an accredited U.S. post-secondary institution.

Camp counselors • Post-secondary students, youth workers, or teachers interact with and supervise youth at U.S. camps.

College and university students • Foreign students enrolled in degree programs overseas study at American academic institutions or participate in an internship program facilitated by an academic institution.

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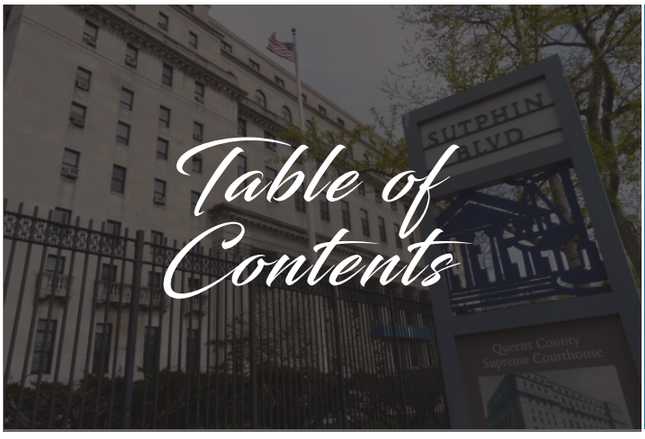

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The Docket

Being the official notice of the meetings and programs listed below, which, unless otherwise noted, will be held at the Bar Association Building, 90-35 148th Street, Jamaica, NY. 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

May 2018

Thursday, May 3	Annual Dinner & Installation of Officers
Monday, May 28	Memorial Day Observed - Office Closed
Wednesday, May 30	CPLR & Evidence Update 2018

June 2018

Wednesday, June 27 Representing Your Clients for Criminal Defense Attorneys
1:00 pm at Queens Criminal Court, 8th Fl Conference Rm

September 2018

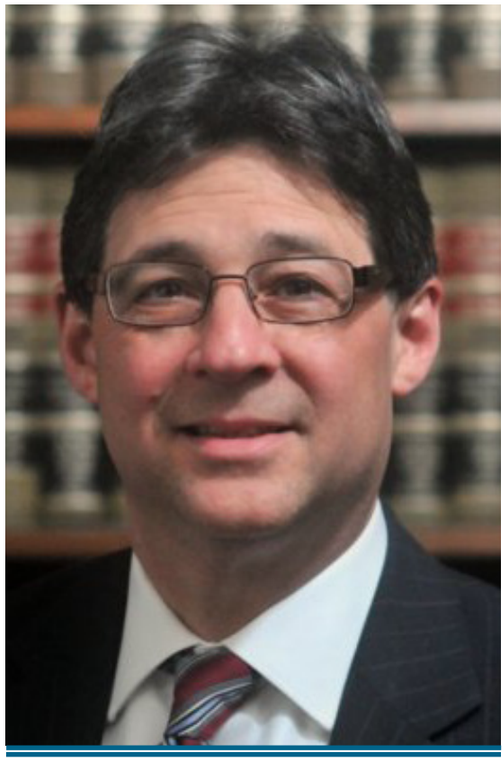
Monday, September 3	Labor Day - Office Closed
Monday, September 17	Golf & Tennis Outing at Garden City Country Club

New Members

Karnellia Brake
Laraib Butt
Sheridan Chu
Patrick Conklin
David A. Gabay
Alisa Gdalina
Quenten E. Gilliam
Soraya E. Hurtado
Fotini Lambrianidis
Daniel Lei
Joanna Lopez
Eran Regev
Elizabeth S. Sy
Kalten P. Walter
Jonathan I. Valle
Emilee G. Wyner

Necrology

John J. Howley



"It was my great honor to serve the Association as president for the past twelve months."

President's Message

Believe it or not, this is my final President's message. This year has truly flown by. It was my great honor to serve the Association as president for the past twelve months. After asking several of my predecessors for advice on what to expect during the year I tried to keep my goals reasonable and manageable. I tried to achieve as much as possible this year with the help of my Board of Managers. Many things are still in the pipeline and the work will continue seamlessly with the incoming president.

April 2018 saw the first major change to the motion calendar in Supreme Court in over five years. CMP is dead, and IAS is back! While we should expect some bumps in the road in the early stages of the transition, I am confident that the bench and bar will work together to smooth out any problems so that the calendars will run smoothly in the immediate future. The individual judges will now have more control over their caseload and calendars and this should lead to a more efficient system. Most lawyers are creatures of habit and any time changes are implemented much anxiety and worry ensued. One important positive to come from the change is that it stirred some attorneys to join the QCBA as well as the Supreme Court Committee so that their voices could be heard, and their input could be considered during the changeover.

This year we have also seen a new supervising Judge in Civil Court and thanks to the cooperation between the bench and the Civil Court Committee that transition has gone off without missing a beat. I was fortunate during my term to attend 8 induction ceremonies for incoming Judges. I met with each of the new inductees and saw some familiar faces as well as some new judges who I had never known before. I was also honored to be able to say goodbye to retiring Appellate Division Presiding Justice Eng and was equally delighted to welcome in our new Presiding Justice Scheinkman.

I want to publicly thank our executive director, Arthur Terranova for all his support and assistance. He, along with the staff of QCBA, are the ones who really manage the association day in and day out. I relied on his experience and wisdom on a constant basis throughout my term.

Congratulations to Hilary Gingold who will be sworn in as our next president. I can rest easy knowing that she will continue to carry the torch on the work we have started, and she will put her own stamp on projects that will benefit us all. While I will no longer be the president, I intend to stay active in the Association and will always be available for assistance in any way.

Best regards and thank you for the opportunity to serve,
Gregory J. Newman

Editor's Note:
The Attorney-Client Privilege and Prosecutorial Discretion

By Paul E. Kerson

A high federal elected official is involved in a scandal that took place before he took office. Campaign finance law violations are alleged. His private attorney may have been involved.

Does this mean the official's private attorney's office should be raided and all the attorney's files seized, including computer and paper files relating to other unrelated clients?

Thereafter, the names of the other unrelated clients and their own unrelated alleged wrongdoing are released to the press and published on the internet, radio, newspapers and television. Who released this information and why?

How many worthy candidates from all across the political spectrum now decide that running for elected office is no longer a good idea? What does this conduct by prosecutors mean for the Criminal Justice System and the conduct of elections down the road, whether a warrant was obtained or not?

Let's explore the rules, statutes and case law on prosecutorial discretion and attorney-client privilege to see if we can answer these questions for future generations and come up with some guidelines for protecting our clients' confidences in an era of run-away prosecutions.

The leading case on this subject is Upjohn Co. v. U.S., 449 U.S. 383, 101 S.Ct. 677 (1981). In that case, the Internal Revenue Service suspected Upjohn Co., a large drug manufacturer, of paying bribes to foreign government officials and deducting the bribes on their corporate tax returns. Upjohn's General Counsel conducted an internal investigation. IRS got a U.S. Magistrate Judge to sustain a subpoena for the General Counsel's files on the internal investigation of corporate bribery, a federal crime (a much more serious crime than campaign finance law violations, by the way).

No, no, said the U.S. Supreme Court, in an opinion by Justice William Rehnquist:

> "The notes and memoranda sought by the Government here, however, are work product based on oral statements. If they reveal communications, they are, in this case, protected by the attorney-client privilege. To the extent they do not reveal communications, they reveal the attorneys' mental processes in evaluating the communications.
>
> As (FRCivP) Rule 26 and *Hickman (v. Taylor, 329 U.S.* 495, 67 S.Ct. 385 1947)) make clear, such work product cannot be disclosed simply on a showing of substantial need and inability to obtain the equivalent without undue hardship." See 449 U.S. at 401.

In his opinion, Justice Rehnquist gave a moving account of the reasons for the attorney-client privilege, and why it is the cornerstone of our whole system of justice:

> "The attorney-client privilege is the oldest of the privileges for confidential communications known to the common law…Its purpose is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice. The privilege recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client." See 449 U.S. at 389.

So, why would any prosecutor, let alone the U.S. Attorney General's top deputies, direct the FBI to conduct such a raid on a private attorney's office?

> Because the very same U.S. Supreme Court let them get away with it in a similar, although not identical situation. In *Mitchell v. Forsyth, 472 U.S.* 511, 105 S.Ct. 2806 (1985), the facts were these: In 1970, U.S. Attorney General John N. Mitchell (a Jamaica High School graduate who later did 19 months in Federal prison for his part in the Watergate scandal) authorized a wiretap on the telephone of Prof. William Davidon, a Haverford College physics professor. Mitchell did not bother to get a warrant from a U.S. District Court.

Prof. Davidon was part of an antiwar group that allegedly made plans to blow up the heating tunnels connecting federal buildings in Washington, DC and to kidnap National Security Adviser Henry Kissinger. How accurate was this information? Was someone blowing off steam at a "teach-in," so popular among potential draftees in 1970? The opinion does not tell us. However, the wiretap picked up the unrelated conversations of one Keith Forsyth.

Forsyth then sued Mitchell for violation of his 4th Amendment rights and violation of 18 U.S.C. Sections 2510-2520, which sets forth rigid requirements for the use of wiretaps and electronic surveillance. Unbelievably, the U.S. Supreme Court let Mitchell get away with this:

"Hence, in the absence of contrary directions from Congress, Mitchell is immune from suit for his authorization of the Davidon wiretap nothwithstanding that his actions violated the Fourth Amendment." See 472 U.S. at 535.

Both Federal and State Prosecutors in New York are governed by the same rules and laws that govern all lawyers in New York. The Federal Rules of Evidence (FRE), Rules 501 and 502 set forth the attorney-client privilege. So does CPLR Section 4503. And most important, the Code of Professional Conduct (CPC), 22 NYCRR 1200 Rule 1.6 makes the attorney-client privilege the cornerstone of a free society:

> "A lawyer shall not knowingly reveal confidential information…or use such information to the disadvantage of a client or for the advantage of the lawyer or a third person."

What shall we do to protect the values underlying the attorney-client privilege of the common law, FRE Rules 501 and 502, CPLR Section 4503, CPC Rule 1.6 and the U.S. Supreme Court's opinion in Upjohn Co. v. U.S., cited above, in an era of prosecutors who pay no attention to these rules, laws and opinions?

Suggested guidelines:

1.When the client has something very confidential to discuss, do not use the internet, do not use e-mail, do not use the telephone, do not even write an ordinary U.S. Mail letter.

2. Instead, go back to the very beginning – before the internet, before e-mail, before telephones, before the U.S. Mail. Have the client come in to your office, close the door, and listen. Only take cryptic notes with a pen on a pad that do not reveal any confidences, but are enough to remind you what those confidences are.

3. Then, if your office is ever raided, or your files subpoenaed, you have been faithful to FRE Rule 501-502, CPLR Section 4503, CPC Rule 1.6 and the U.S. Supreme Court's opinion in *Upjohn Co. v. U.S.*, cited above.

If you follow these guidelines, you will be true to your oath to "preserve protect and defend the Constitution of the United States and the State of New York" even if the prosecutors have not.

The Exchange Visitor Program and J-1 Visas | continued from p.1...

Government visitors • Influential and distinguished foreign nationals are selected by U.S. federal, state, or local government agencies to participate in observation tours, discussions, consultations, professional meetings, conferences, workshops, and travel in order to strengthen professional and personal ties between key foreign nationals and Americans and American institutions.

Interns • College and university students or recent graduates gain exposure to U.S. culture by participating in an internship program in their specific academic fields.

International visitors • Foreign leaders are selected by the Department of State to participate in programs designed to enable the international visitors to better understand American culture and society and enhance American knowledge of foreign cultures.

Physicians • Foreign doctors participate in U.S. graduate medical education programs or training at accredited U.S. schools of medicine.

Professors and research scholars • These two programs promote the exchange of ideas, research, and linkages between research and academic institutions in the U.S. and abroad.

Secondary school students • Foreign high school students study at an accredited public or private high school and live with an American host family or at an accredited boarding school.

Short-term scholars • Professors, scholars, and other accomplished individuals travel on a short-term visit to lecture, observe, consult, train, or demonstrate special skills at research and academic *institutions, museums, and libraries across the U.S.*

Specialists • Experts in a field exchange ideas with their American counterparts.

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The Exchange Visitor Program and J-1 Visas | continued from p.6...

Summer work travel program: University and college students work and travel in the United States during the summer.
Teachers • Foreign educators teach full-time at a primary or secondary school in K-12 classrooms in the US.

Trainees • Foreign professionals with a degree, professional certificate, or relevant work experience gain exposure to U.S. culture and receive training in U.S. business practices through a structured and guided work-based program.

Regional and special initiatives. • The EVP promotes cultural exchange and engagement with visitors from specific countries or regions of the world. For example, in March 2015, the U.S. entered into a new initiative with Mexico – the Mexican Intern Exchange Program – which allows interns from Mexico to come to the U.S. through EVP and U.S. interns to go to Mexico. In recent years, pilot exchange programs have been initiated with countries including Australia, New Zealand, Belarus, Bulgaria, Moldova, Romania, Russia, and the Ukraine. Investing in cultural exchange extends beyond specific nation-state relationships, intersecting with broader cultural, linguistic and religious affiliations. In 2004, Congress declared that "the United States should commit to a long-term and sustainable investment in promoting engagement with people of all levels of society in countries with predominantly Muslim populations, particularly with youth and those who influence youth" through cultural exchange programs.

What is the J-1 Visa?

A J-1 is a temporary, nonimmigrant visa issued to an exchange visitor. There is no statutory cap on the number of J-1 visas available annually, but each year the Department of State allocates a pre-set number of Certificates of Eligibility (Form DS 2019) to program sponsors (see below) to issue to potential participants in exchange visitor programs across the country. This form, together with other necessary Department of State documents, permits the potential exchange visitors and their dependents to schedule an interview at a U.S. embassy or consulate to seek to obtain a J visa to enter the United States.

For the past decade, the number of exchange visitors admitted to the United States annually has been approximately 450,000 (see Figure 1). Prior to 2007, fewer than 400,000 were admitted per year. Currently, J-1 exchange visitors come from more than 200 countries and territories; 83 percent are younger than 30, and 54 percent are female.

The J visa is governed by specific regulatory requirements. For example,

• The duration of stay is determined by the specific EVP category and the school, employer, or other entity hosting the exchange visitor. For example, interns may remain in the United States for up to 12 months, and trainees may remain for up to 18 months. The host organization providing the internship or training determines whether the visitor will remain for the maximum or for some shorter period of time.

• J-1 visa holders who enter the United States on a work-based program (as a researcher, teacher, nanny, etc.) may apply for a Social Security number (SSN). They must pay taxes on any compensation they receive, but are exempt from paying Federal Insurance Contributions Act (FICA) taxes (for Medicare and Social Security).

• J-1 visas cannot be used for ordinary employment. EVP programs that have a work component are intended to provide bona fide training and experience for the exchange visitors and are not to supplant other workers.
The spouse and unmarried children under age 21 may apply for J-2 visas as dependents of the J-1 visa holder. Dependents on J-2 visas are eligible to apply for work authorization after their arrival in the United States.

• J-1 visa holders must obtain insurance to cover sickness and accidents. The insurance must cover themselves and all J-2 dependents for the entire period of J-1 status in the United States.

• Because the underlying purpose of the J-1 exchange visitor category is to share experiences and ideas in the home country, J-1 visa applicants must come to the United States intending to depart when they complete the program. However, some exchange visitors may be eligible to live and work in the United States after their exchange program ends, depending

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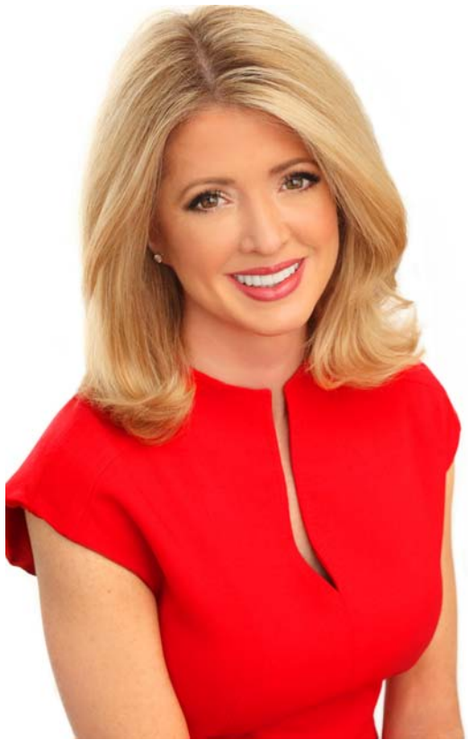
Don't Let the New Estate Tax Law Cause Your Family to Pay Unnecessary Capital Gains Taxes

By: Ann Margaret Carrozza



"The current estate tax threshold of ($11.18 million) means that we can unwind some of the old planning to allow more assets to pass through one's gross taxable estate, thereby deriving the capital gains benefits otherwise lost if we leave the documents as is."

You may have heard that the current federal estate tax threshold is $11.18 million. What, if anything does this mean for the 99% of Americans who are below this level? Can we happily tune out of the estate planning discussion? Not if you engaged in any type of estate tax planning during the past 20 years. Here's why:

Most estate tax planning has historically focused on reducing the amount of assets includible in a decedent's 'gross taxable estate." If, for example, we did estate tax planning in 2002, our goal was to reduce the gross taxable estate to $1.0 million. Anything above this would have been taxed at a rate of 40% upon death. Some people made a gift of the excess directly to children. Others- (wisely) concerned about the children's possible liabilities such as divorce, gifted the excess assets to various types of estate tax trusts. These moves were correct at the time, but triggered a lurking capital gains tax problem for the gifted assets.

The reason for this is that a completed gift (whether to a trust or outright to a person) results in what's called a 'carryover' basis. The original purchase price becomes the recipient's "floor" to measure future possible (capital) gain upon sale. Let's say I bought stock for $20 and gifted it to my son during my life. If it is worth $50 upon my death, he will have to pay capital gains taxes on the $30 difference when he sells. By contrast, if I keep the stock and Junior inherits it through my will, living trust, or beneficiary designation, he gets a so-called 'step-up' in cost basis to the fair market value ($50) as of my date of death. He would then pay no capital gains taxes upon sale of the asset. Specifically, the Internal Revenue Code (Sec. 1015) provides that assets includible in a decedent's gross taxable estate go to the new owner with a date of death cost basis.

To reduce capital gains taxes as much as possible, our goal was always to maximize what passed through the gross taxable estate without overshooting the mark. Remember that every dollar in excess of the applicable threshold incurred 40% estate taxes. We therefore, opted to move these 'excess' assets, even though doing so triggered a (historically 15-18%) capital gains problem. Using numbers to illustrate, if my estate was $1,100,000 in the year 2000, I wanted my children to avoid having to pay 40% tax on the $100,000 estate taxable amount. I would have been correct to gift the excess $100,000 to an 'estate tax' type trust even though doing this saddled them with built in (15-18%) capital gains tax consequences.

Fast forward to the present: The current estate tax threshold of ($11.18 million) means that we can unwind some of the old planning to allow more assets to pass through one's gross taxable estate, thereby deriving the capital gains benefits otherwise lost if we leave the documents as is. This is especially important now that the Capital Gains Tax rate has crept up in recent years.

The impediment to revisiting this planning is the widespread but mistaken notion that irrevocable trusts can't be changed. This is not true. Statutory reformation allows irrevocable trusts to be revoked or modified with the written consent of the grantors and beneficiaries. When the consent of a key player isn't possible, such as a Credit Shelter Trust of a now- deceased settlor, or a beneficiary that we may now seek to exclude, we can look to "Decant" trust assets into a new trust with more favorable provisions.

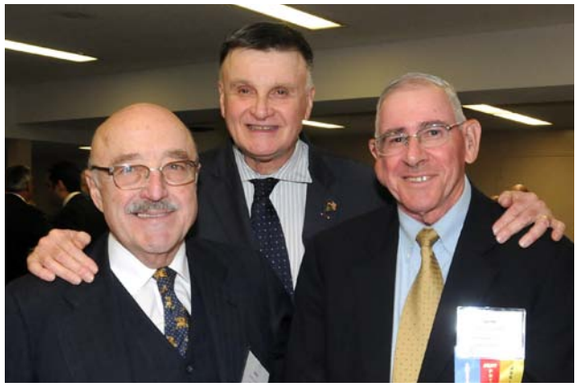
In addition to the tax savings motivation to amend old trusts, there are numerous other reasons to do so. We may wish to build in more comprehensive protections against long term care expenses. Amending an existing trust will also enable us to better protect a beneficiary with problems such as mental illness, substance abuse, compulsive spending, developmental disabilities or other family dynamic challenges.

The bottom line is that a fresh review of stale documents can yield tremendous benefits.

Ann Margaret Carrozza is a practicing Elder Law and Trusts and Estates attorney who also served as a NYS Assemblywoman for 14 years.

Judiciary, Past Presidents, &

Photos by Walter Karling



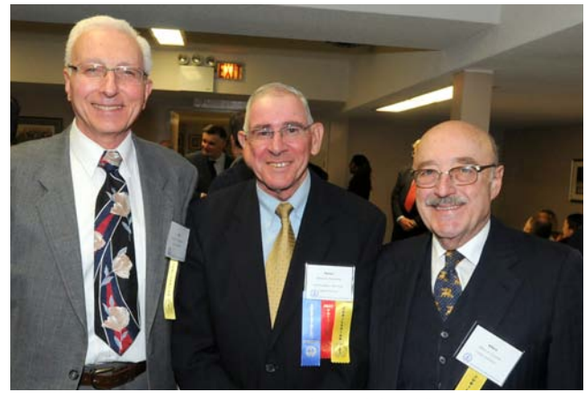
Al Gaudelli, Tom Principe and Spiros Tsimbinos

Allison Ageyeva, Greg Newman and Marie-Eleana First

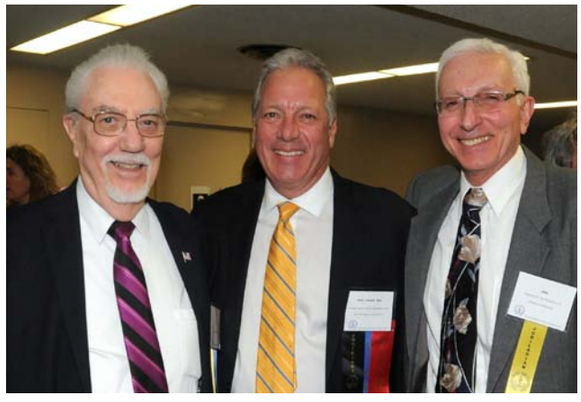
Gary Darche, Seymour James, David Adler and Hilary Gingold

Hon. Jeremy Weinstein, Hilary Gingold, Hon. Sid Strauss and Hon. Jodi Orlow Mackoff

Hon. Phyllis Orlikoff Flug, Hon. Joseph Zayas, Hon. Bernice Siegal, Hon. Lee Mayersohn and Hon. George Heymann



Jim De Franco, Spiros Tsimbinos and Al Gaudelli

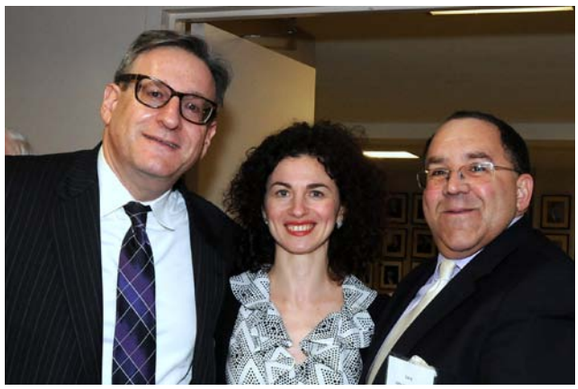


Jim Pieret, Hon. Joseph Risi and Jim De Franco

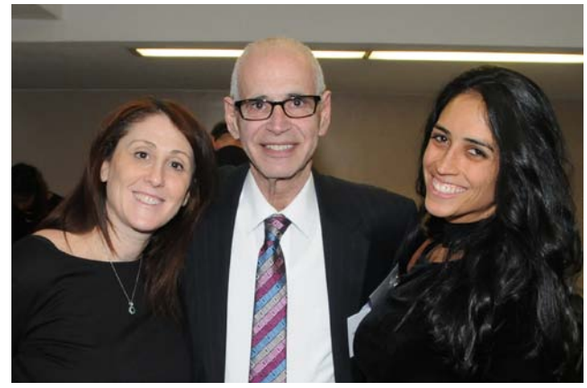
Justices Ulysses Leverett, Robert Kohm, Janice Taylor, Richard Latin and Stephen Knopf and Mrs. Muriel Kohm

Golden Jubilarian Night 3.26.18

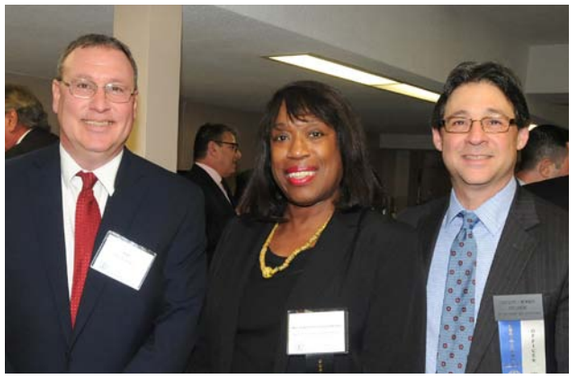
Photos by Walter Karling



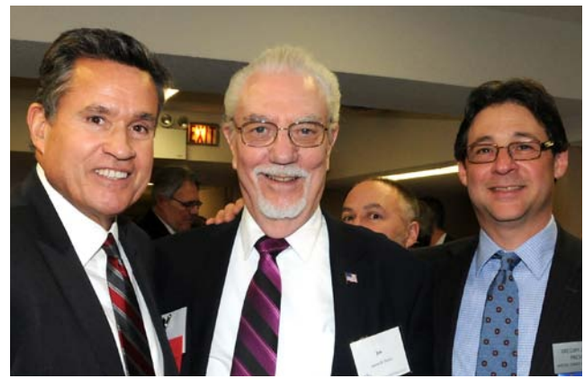
Mike Abneri, Allison Ageyeva and Gary Miret



Paul Kerson, John Dozier Hasty and Mike Nussbaum



Paul Robertson, Hon. Valerie Brathwaite Nelson and Greg Newman



Richie Gutierrez, Jim Pieret and Greg Newman

Sponsor Mike Pavlakos and Steve Ellsworth of East Coast Appraisal Service

Steven Orlow, Joe Carola and Jay Abrahams

Tom Principe, Gary Miret and Hon. Jerry Iannece

Tom Principe, Greg Newman, Hon. Valerie Brathwaite Nelson, Hon. Alan Scheinkman, Hon. George Heymann and Mike Kohan

The Exchange Visitor Program and J-1 Visas | continued from p.7...

on their own unique circumstances.

• Certain J-1 visa holders—for example, those with skills deemed necessary to the development of the home country—will be ineligible to receive certain other nonimmigrant visas or to become a lawful permanent resident (receive a green card) until they return to their home country for a total of two years following completion of their program (home residency requirement). J-2 visa holders are subject to the same requirements as the J-1 visa holder.

This home residency requirement may be waived in certain circumstances. For example, exchange visitors who can demonstrate their departure would cause exceptional hardship to U.S. citizen or legal permanent resident dependents may request a waiver.

How is the Exchange Visitor Program administered?

The EVP is administered by the U.S. Department of State, Bureau of Educational and Cultural Affairs, in partnership with host organizations and sponsors. The Departments of State and Homeland Security are responsible for monitoring compliance with the program.

A host organization is a school, business, camp, or other entity in the United States that provides the actual internship, training, or education program in which the exchange visitor participates. Hosts must show they have appropriate facilities, equipment, and personnel to provide the exchange experience. Hosts providing employment, an internship, or training experience must show that they will not engage the J-1 visitor in ordinary employment and will not use a J-1 visitor to fill a position that could be occupied by U.S. workers. Host organizations with fewer than 25 employees or less than $3 million in gross annual revenue are subject to a site visit before they may host an exchange visitor for the first time.
Sponsors are designated by the Secretary of State to conduct an exchange visitor program. Sponsors may be government agencies, academic institutions, educational and cultural organizations, or corporations. In some cases, the sponsors are also the hosts. However, in most cases, sponsors are third parties that work with the hosts, the Department of State, and the exchange visitors to administer an exchange visitor program and provide the necessary Certificate of Eligibility (DS-2019) to apply for the J visa. There are more than 1,400 designated sponsors that participate in the EVP program.

Sponsors are generally designated to administer a specific category of exchange program. For example, the American Immigration Council is designated by the U.S. Department of State to sponsor J-1 intern and trainee programs.

Sponsors are responsible for:

• Screening prospective hosts, which may require a site visit.
• Screening prospective exchange visitors to ensure that they are eligible for the program. Exchange visitors must meet all requirements, including being sufficiently proficient in English. Helping J-1 visa applicants submit the required application materials, including detailed information about the host and exchange program plan, and any required fees to the Department of State.

• Providing orientation on life and customs in the United States prior to visitors' arrival and ensuring that exchange visitors have clear information and materials about the requirements of their visa and all other procedures and rules that will be useful while they reside in the United States.

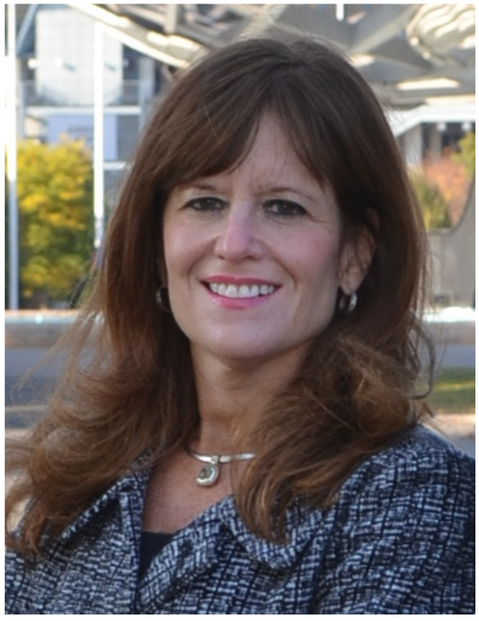
• Monitoring exchange visitors' participation in the exchange program and entering relevant data (name, address, and arrival and departure date) in the Student and Exchange Visitor Information System (SEVIS), which enables schools and program sponsors to transmit information and notifications electronically to the Departments of Homeland Security and State throughout a student's or exchange visitor's stay in the United States.

Sponsors who fail to comply with the requirements of the EVP can be penalized, and their designation can be suspended, or revoked.

Thanks to the American Immigration Council for allowing us to use this material.

A SIGNIFICANT DEVELOPMENT IN SPECIAL EDUCATION LAW

By Ronna Gordon-Galchus, Esq.



It's been a little more than a year since the Supreme Court of the United States unanimously vacated a judgment of the Tenth Circuit of the United States Court of Appeals in *Endrew F. v. Douglas County School District, 580 US___ (2017)* by holding that

> a student offered an educational program providing "merely more than de minimis" progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aim so low would be tantamount to "sitting idly awaiting the time when they were old enough to drop out." *Endrew citing Bd. of Ed. Of Hendrick Hudson Central School Dist., Westchester Cty. V. Rowley, 458 U.S. 176, 179 (1982).*

The Court's ruling in *Endrew F.* supports the position that a student's Individualized Educational Program (IEP) should actually mean something, and that a student should benefit and succeed with an IEP that is unique to that student's circumstances. The Tenth Circuit's decision, which was vacated by the U.S. Supreme Court, had held that an IEP need only provide an "educational benefit [that is] merely...more than de minimis," and that the subject child's IEP was "reasonably calculated to enable [him] to make some progress." *Endrew F. Ex Rel. Joseph F. v. Douglas County School District RE-1*, 798 F.3d 1329, 1338, 1342 (10th Cir. 2015). The Supreme Court in *Endrew F.* found that standard unacceptable.

An IEP is a legally driven document (20 USC §1414) which must establish a plan for the type of services and educational program a child with disabilities will receive, and what is necessary to assist and overcome such obstacles. The *Endrew F.* Court stated that "the IEP must aim to enable the child to make progress" and that it "is to set out a plan for pursuing academic and functional advancement."

Congress enacted IDEA, the Individual with Disabilities Education Act, so that children with disabilities would be given the opportunity to receive appropriate educational services. IDEA mandates that in order for states to receive federal funding, a state must provide a free and appropriate public education (FAPE). See 20 USC §1400 *et seq.* It is essential that students who receive special education and related services have plans which allow them to grow and reach goals, and it is through an IEP that parents and educators have the opportunity to devise a plan to meet these goals. As held by the Supreme Court, "an IEP is not a form document. It is construed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." *Endrew F.* establishes that children with disabilities should be given the opportunity to achieve educational success by addressing each student's individual circumstances and not using a "cookie cutter" formulaic program. In *Endrew F.*, the child was given the same IEP, with same goals, from year to year, with no progress shown. The Supreme Court held this stagnant IEP was not an acceptable form of education.

The law requires that children must be educated in the Least Restrictive Environment and are entitled to be educated in general education classes with the assistance of related services, to the fullest extent possible. There is a wide array of services for a child with an IEP. Examples are physical therapy, occupational therapy, speech therapy, orientation and mobility services, and special education teacher support services. In *Matter of Board of Education of Bay Shore Union Free School District v. Thomas K.*, 14 NY3d 289, 294 (2010), the New York Court of Appeals held that "the definition of services was intended to include a wide range of educational resources for students with disabilities." The Court held that a "teacher's aide" fell within the definition of "services," and although the aide was not providing direct instruction to the student, "the aide's contributions to the individual child's education are an integral part of his regular classroom experience." *Id*.

In the wake of *Endrew F.*, parents, advocates, lawyers and educators will now be empowered in creating an IEP which aims to establish progress and growth for a student. *Endrew F.* is a victory for students with special needs, as it prohibits the educational system from settling for lower goals for a child's advancement from year to year. For lawyers representing children, particularly in child protective proceedings and delinquency matters, it is critical to confirm that the child is receiving the appropriate educational setting and related services. This may also include counseling, and various types of classroom settings if the general educational classroom is not appropriate. Furthermore, with the new Raise the Age implementation, therapeutic intervention will be an important aspect of this new legislation. Thus, the child's appropriate school setting must also play a significant role in assuring that he or she will succeed. It should be expected that lawyers will be working with the child's family, the court, the Administration for Children's Services, the Department of Probation, and other agencies to make sure that a child is in a proper school setting, and that any current IEP actually is meaningful to the particular child.

Endrew F. has stirred a movement towards improving academic outcomes for children with disabilities. The United States Department of Education is reaching out to families, teachers, and other stakeholders for assistance in implementing new best practices. On December 17, 2017 the Department published a nine-page Q & A addressing *Endrew F.* and establishing the email address of EndrewF@ed.gov to solicit comments.

The response to *Endrew F.* is still a work in progress and time will tell how its implementation will evolve. However, it is clear that "merely more than (a) de minimis" standard is no longer acceptable, and this holding now offers children true opportunity to tap into their strengths and reach their goals. Endrew F. will allow children to emphasize their ability and not be defined by their disability.

Ronna Gordon-Galchus, Esq. is a partner in the firm of Galchus & Gordon, specializing in Criminal and Family Law and Appellate practice.

The F-1 Visa
Want to Study at a Fine US Institution?
Get a Student Visa!

By: Dev B. Viswanath, Esq. & Michael Phulwani, Esq.

The F-1 visa is a temporary nonimmigrant visa that is available to individuals who wish to come to the United States to attend an academic program or English Language Program at a U.S. college or university. In order to qualify for an F-1 visa an individual must meet the following requirements:

•Must be enrolled in an academic educational program or a language training program;
• The program or course of study must result in a degree, diploma, or certificate;
• The school which the individual plans to attend must be approved by the Student and Exchange Visitors Program (SEVP);
•The individual must be enrolled full time at the college or university;
•Must be proficient in English or be enrolled in courses to learn English;
•The individual must have enough financial support to finance themselves while in the U.S.; and
•Must maintain a foreign residence which the individual does not intend on giving up.

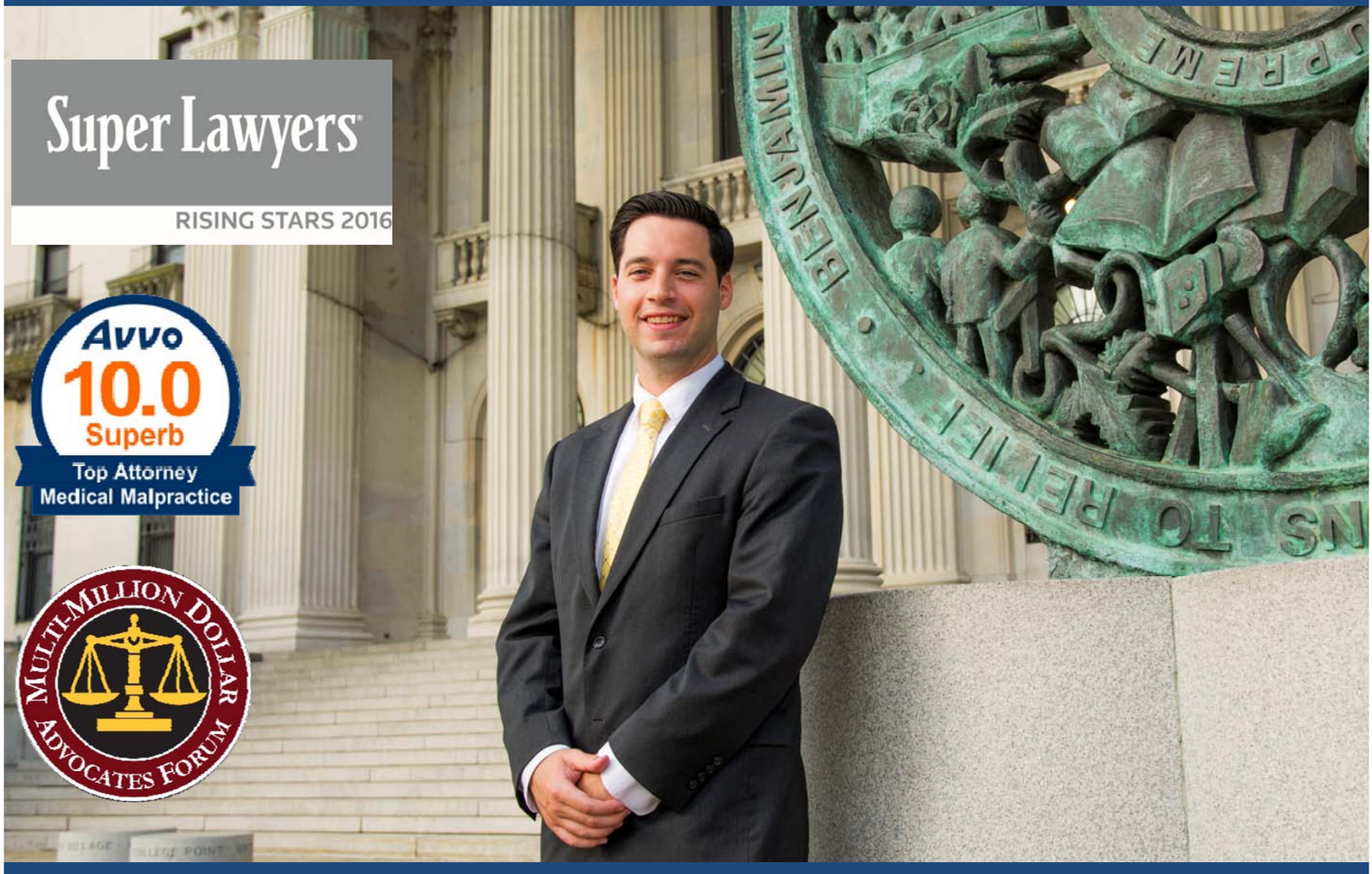
Only schools certified by the Student and Exchange Visitor Program (SEVP) can enroll nonimmigrant students. Once the school determines that the individual's application is complete and they are academically eligible, the school will issue an I-20 form for SEVIS to allow the individual to obtain the student visa. Students on an F-1 visa are generally not allowed to work off campus during their first academic year, but may be allowed to find employment on-campus depending on what they will be required to do. After the first year, the student may work off-campus but only in the following three categories

•Curricular Practical Training (CPT)
•Optional Practical Training (OPT)
•Science, Technology, Engineering, and Mathematics (STEM) Optional Practical Training Extension (OPT)

Any employment that an F-1 student finds off-campus must be related to their area of study and must be authorized by the Designated School Official (DSO) and USCIS before they start working. The Designated School Official is the person who is authorized to maintain the Student and Exchange Visitor Information System. The student must also attend all classes and maintain passing grades and complete the program by the date listed on their I-20. If they need additional time to complete their program, they will need to request a program extension. A student is also allowed to remain in the U.S. up to sixty days beyond the length of time it takes to complete their academic program (called a grace period) or apply to work under the OPT Program in order to stay for a longer period of time. OPT is usually given for 12 months under the F1 visa, unless the degree is a STEM degree, in which case an additional 17 months of OPT may be granted.

Any dependents of F-1 nonimmigrants, spouse and children under the age of 21, may be eligible for F-2 nonimmigrant status. However, a dependent spouse is not allowed to work or study, but dependent children are allowed to study. The F-2 status is granted for no longer than the period of time granted to the principal F-1 nonimmigrant.

ROBERT A. MIKLOS
Medical Malpractice & Personal Injury Attorney



CONTACT ROBERT NOW

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A Calendar of Events Within the Queens Legal Community

May 23, 2018, 6:00 pm
Catholic Lawyers Guild of
Queens County Annual Dinner
Immaculate Conception Center, Douglaston, NY
For information: Zenith T. Taylor (718) 268-1300
Donna Furey (347) 448-2549
Peter Lane (718) 298-0429
www.catholiclawyerguild.com

June 5, 2018, 6:30 pm
Hellenic Lawyers Assn Judiciary Night
Kellari Taverna, New York, NY
For information: Elena Ioannidis - liaison@hlany.org
http://www.helleniclawyersassociation.org

June 10, 2018, 9:30 am
Brandeis Assn Annual Scholarship Fund Brunch
Young Israel of Jamaica Estates
https://brandeisscholarshipfund.org/

June 14, 2018, 6:30 pm
Columbian Lawyers Assn Judiciary
and Installation Night
Leonard's Palazzo, Great Neck, NY
For information: Michael McSweeney (718) 298-1568
Claudia Lanzetta (718) 298-1608
www.columbianlawyers.net

June 24, 2018, 10:00 am
Brandeis Assn Trip to the Holocaust Museum
Edmond J. Safra Plz, New York, NY
https://brandeisassociation.org/upcoming-event/

June 26, 2018, 6:00 pm
Queens County Women's Bar Association
Annual Installation Dinner
Russo's on the Bay, Howard Beach, NY
https://qcwba.org

September 5, 2018, 6:00 pm
Multi-Bar Cruise
World's Fair Marina, Flushing, NY
For information: Mark Keller (718) 297-1890
https://brandeisassociation.org

On a Personal Note

Congratulations to Board member, Frank Bruno, Jr., being appointed as a member of the Committee on Character & Fitness for the 2nd, 10th, 11th & 13th Judicial Districts.

Congratulations to Jonathan H. Shim on his appointment as a Civil Court Judge of the City of New York. Judge Shim is sitting in the Family Court, Queens County.

Congratulations to Lisa J. Friederwitzer on her appointment as a Family Court Judge. Judge Friederwitzer is sitting in the Bronx County Family Court.

*If there is any news that you would like to impart to the membership, please send to Arthur N. Terranova at aterranova@qcba.org.

APPLICATION FOR MEMBERSHIP

QUEENS COUNTY BAR ASSOCIATION

90-35 148 STREET ◆ JAMAICA, N.Y. 11435
Tel: (718) 291-4500 ◆ Fax: (718) 657-1789 ◆ Website: www.qcba.org

I hereby apply for membership to the Queens County Bar Association:

_____
(Print Full Name) *(Date of Birth)*

Residence:

_____
(Street)

_____
(City or Town) *(State)* *(Zip + 4)*

_____
(Phone) *(Fax)* *(E-Mail)* *(Website)*

Firm Affiliation: _____
(Street)

_____
(City or Town) *(State)* *(Zip + 4)*

_____
(Phone) *(Fax)* *(E-Mail)* *(Website)*

Mailing Address: Residence ☐ Office ☐

Admitted to Practice on the _____ day of _____ in the year of _____

by the _____ Judicial Dept. _____

College: _____
(Name) *(Degree)* *(Year)*

Law School: _____
(Name) *(Degree)* *(Year)*

Have you ever applied for membership in this Bar Association? _____

Please indicate preference for committee participation, i.e. Torts, Surrogate's Court, Family Law, Criminal Court, etc.

_____

_____ _____
Date *Signature of Applicant*

$350 per year for Sustaining Membership (optional); **$300** per year for applicants admitted more than 10 years; **$225** per year for applicants admitted 5 years but less than 10 years; **$135** per year for applicants admitted less than 5 years but more than 1 year; applicants admitted less than 1 year are free **$60** per year for Associate Membership - office in other than First or Second Department; free for student applicants. Applicants working for a city/state agency (Judges, Corporation Counsel, Legal Aid, Queens Legal Services, Law Secretaries, et. al.) take 30% off from regular rate. 18B Assigned Counsel Plan Members pay 20% less than their respective rate. Applicants that are members of another Queens bar group, that have never been members of the QCBA, dues are prorated 30% less for their first year's dues, 15% for their second year's dues and by the third year paying regular rate.

TO ALL MEMBERS

ADDRESS CHANGES

In order to keep our listings up to date, please advise us of any changes in your address, telephone and fax numbers, email or website. Forward information to our office:

QUEENS COUNTY BAR ASSOCIATION
90-35 148th Street, Jamaica, N.Y. 11435 Attn**:** Mr. Arthur N. Terranova

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TO HELP FIGHT MENTAL HEALTH CRISIS IN GUYANA

Thanks to a $400,000 grant from the Jay and Sylvia Sobhraj Foundation, Guyana University's Tuchayen campus will soon have a state-of-the-art behavioural study, research and multi-purpose Centre. The Centre will offer a master's program in clinical psychology to aid in the battle [illegible]

[illegible]

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