

# QCBA

BULLETIN



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## IN THIS ISSUE

New Members .....	2
The Docket.....	3
Presidents Message .....	4
Board Listing.....	5
Editor's Note .....	6
Lawyers Assistance Committee .....	6
Culture Corner.....	7
Marital Quiz .....	9
Changing Your Name in NY.....	10
Vicious Propensities in Domestic Animals .....	11
S Corp Sales, Built-In Gain, and 2013 .....	13
Photo Gallery .....	14

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## NECROLOGY

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- 
- **Become a Member Today**
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## October 2013

Wed., Oct. 9 ..... Nursing Home Neglect - 1:00-2:00 pm  
 ..... **Members / Non-members**  
 Mon., Oct. 14 ..... Columbus Day - Office Closed  
 Tues., Oct. 22 ..... Recent Significant Decisions and  
 ..... Developments from our Appellate Courts  
 ..... **Program Only / Program & Dinner**  
 Wed., Oct. 23 ..... CLE – Advanced Criminal Law  
 ..... Seminar – Part I  
 ..... **Member Registration – Full Program 10/23 & 10/30**  
 .. **Non Member Registration – Full Program 10/23 & 10/30**  
 .... **Member Registration / Non Member Registration 10/23**  
 Thurs., Oct. 29 ..... Survival Tips for the  
 ..... Solo & Small Law Practice

..... **Non-member Registration / Member Registration**  
 Wed., Oct. 30 ..... Advanced Criminal Law Update

## November 2013

Tues., Nov. 5 ..... Election Day - Office Closed  
 Wed., Nov. 6 ..... QVLP Foreclosure Training Update  
 Monday, Nov. 11 ..... Office Closed  
 Tues., Nov. 12 ..... CLARO Training  
 Thurs., Nov. 28 ..... Thanksgiving Day - Office Closed  
 Fri., Nov. 29 ..... Thanksgiving Holiday - Office Closed

## December 2013

Thurs., Dec. 12 ..... QCBA Holiday Party

*QCBA is certified by the NYS Continuing Legal Education Board as an Accredited Legal Education Provider in NY. Meetings and programs are held at Bar Association Building, 90-35 148th St., Jamaica, NY. Changes are posted at [www.QCBA.org](http://www.QCBA.org).*



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## PRESIDENT'S MESSAGE *by Joseph F. DeFelice*

**A**s you will note, the current edition of our bulletin is an online digital version which substitutes for the bulletin's printed version due to high publishing costs. The new online bulletin will be published five times a year. However, the online bulletin is in PDF format and can be readily printed. Most organizations have already changed their newsletters to digital versions and the digital versions are, in any event, the wave of the future.

During the summer months your Bar Association has been active in preparing for the upcoming year. Various needed repairs and remodeling were accomplished at our building which should make for a more pleasant atmosphere for our meetings and gatherings.

In this regard, the Young Lawyers participated in a Fall Festivity at St. John's Law School and a program was conducted resulting in more than 60 new law students becoming members of our Bar Association. Future programs will be held at New York Law and CUNY Law Schools.

Later this month, on October 22<sup>nd</sup>, we will hold our annual Appellate Practice seminar which has in the past always been widely attended and I hope to see many of you there that evening. I am pleased to say that our special guest that evening will be one of the newly appointed Judges of the Court of Appeals, **Judge Sheila Abdus-Salaam. Program Only Registration, Program & Dinner Registration.**

We will also be hosting a two part CLE on Criminal Law to be held on the 23rd and 30th of October and on October 29th the Young Lawyers Committee has organized a CLE on "Flying Solo" which should be educational and of great interest especially to our younger members. That seminar is being sponsored by CBS Insurance and Lexis.

Also during the summer I had the pleasure of meeting with the President of the American Bar Association, James Silkenat, and we have joined with the ABA in urging Congress to support a Senate bill which will reinstate cuts in the funding for the Federal Courts. We have also been making efforts to meet with elected State officials in reference to funding for the State Court system and have tried to address issues which will affect the attorneys in the every day practice of law.

If you have any concerns, suggestions or comments, please do not hesitate to contact me at [jdefel4@gmail.com](mailto:jdefel4@gmail.com) or by calling the QCBA (718) 291-4500.

*Joseph F. DeFelice*

President

*Joe F. DeFelice is an attorney in private practice in Kew Gardens, NY handling Criminal, Immigration and Appellate matters. Email [jdefel4@gmail.com](mailto:jdefel4@gmail.com) or visit [www.defelicelaw.com](http://www.defelicelaw.com).*



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## What Happened to Our Country?

*(And What To Do About It – Proposed Amendment 4.5)*

In the New York Times edition of July 4, 2013, it was announced that the U.S. Postal Service has been photographing each envelope entrusted to it in each post box in America. The USPS keeps these images in computers, available to any law enforcement agency who requests them without a warrant.

Founding Father Ben Franklin was the first U.S. Postmaster General. What would he have to say about this?

Recent articles have informed us that the National Security Agency (NSA) keeps track of every telephone call's "telephony metadata" – that is, the numbers called and the time and date of each call. This information is also stored in computers and available to law enforcement without a warrant.

Here in New York City, the "Capital of Freedom", the Metropolitan Transportation Authority (MTA), a State Government instrumentality, keeps track of every time a motorist crosses a toll bridge through a sinister device called "E-Z Pass". Since New York City is built on numerous islands, this means a large portion of the population and its commerce is monitored by the State all of the time.

This could have been named by George Orwell, author of the 1949 classic novel, 1984, about a dastardly future approximately like the time we are now living in. 1984 described a future where everyone was under surveillance all the time, just as we are today in 2013.

There is nothing "E-Z" about "E-Z Pass". It is a way for State Government to keep track of our movements. And then there is "Metrocard". This all-seeing device allows the MTA to know each time a passenger enters a subway station and each time he or she exits.

***Read more at [qcba.org](http://qcba.org) »***

*The writer is a Past President of the Queens County Criminal Courts Bar Association, a past Acting Village Justice of the Ardsley, Westchester County, Village Court, and our current QCBA Vice President and Editor of this publication.*



FOUNDING FATHER BEN FRANKLIN WAS THE FIRST U.S. POSTMASTER GENERAL. WHAT WOULD HE HAVE TO SAY ABOUT THIS?



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**Gustavo Mercado's** powerful film **Saturnalia** had its New York City premiere at the wonderful **Chain Theatre** in Long Island City, in Queens County, half a block from the Court Square Diner, right off the Number 7 subway stop of "45th Road/Court House Square." *Saturnalia* is a gripping, well-acted, beautifully shot film, starring two excellent actors: **Tom Ashton** and **Virginia Dutton**. Tom Ashton, in a brilliantly acted role, plays a conflicted son, with an impulse for revenge, at odds with his confrontational and aggressive father. Virginia Dutton, in a role without words, gives a commanding tour de force performance as a homeless woman with a heart of gold. At a recent New York City Film Festival, *Saturnalia* won several awards, including Gustavo Mercado for Best Cinematography and Virginia Dutton, for Best Actress in a leading role.

### **Saturnalia—synopsis (short)**

Based on a shocking true event, *Saturnalia* tells the story of Edey, a homeless woman who manages to sneak in and live undetected in the house of a recently retired man after the sudden death of his wife.

### **Synopsis (long)**

After losing his job and the sudden death of his wife, Richard, a man in his late sixties, is determined to live under his own terms. Neil, his estranged slacker son, wants instead to have him declared unfit to live alone so that he can get the house for himself. Their plans are thwarted when Edey, a homeless woman with a history of mental illness, sneaks into Richard's house and manages to live in secret. As Edey becomes increasingly obsessed with filling the void left by Richard's wife while protecting him from Neil's schemes, father and son are unwittingly forced to escalate their conflict, with violent consequences. *Saturnalia* is based on the shocking true story of a homeless woman who managed to live for a full year in a man's house by hiding in an unused closet.

### **What is Saturnalia?**

**Find out at [qcba.org](http://qcba.org) »**

*Howard L. Wieder is the writer of both "The Culture Corner" and the "Books At The Bar" columns, appearing regularly in The Queens County Bar Bulletin, and is Justice Martin E. Ritholtz's Principal Law Clerk in Supreme Court, Queens County, Jamaica, NY.*



*Actor, Tom Ashton.*



*Actress Virginia Dutton in best actress award-winning role.*



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\*Accelerated Death Benefits: Receipt of accelerated death benefits may effect eligibility for public assistance programs and may be taxable. There is no administrative fee to accelerate death benefits. The accelerated amount is not discounted.

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### **Question #1**

May a court determine that a parent may not file further petitions for visitation rights until he or she completes, inter alia, therapeutic counseling, anger management classes and parenting skill classes?

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### **Question #2**

May a court order that a parent undergo counseling or treatment as a condition of further visitation?

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### **Question #3**

When child support is ordered for more than one child, does the emancipation of the oldest child automatically reduce the amount of support owed under an order of support for multiple children?

---

### **Question #4**

Is it permissible for the Family Court to require a parent to seek permission of the court prior to filing future custody or visitation applications?

---

### **Question #5**

In determining the parents' respective obligations towards the cost of college, should the court reduce the education costs by college loans for which the student is responsible?



*[Click here to see answers.](#)*

*\*Editor's Note: Mr. Nashak is a Past President of our Association and Vice-Chair of our Family Law Committee. He is a member of the firm of Ramo Nashak Brown & Garibaldi LLP*





# Changing Your Name in New York:

## *A Guide for Attorneys and the Self-Represented*

*By Gerald Lebovits and Taneem Kabir*

We are not always happy with the names our parents give us. Because we like to identify ourselves to others in different ways and for different reasons, we have used aliases, a/k/a's, stage names, pseudonyms, monikers, nicknames, and pen names since the Year One. Our names are our labels. And as Proverbs 22:1 advises, "A good name is rather to be chosen than great riches . . . ."<sup>1</sup>

This three-part article is designed to help lawyers and non-lawyers understand the rules and procedures surrounding how to get a new name in New York: the common-law way to change one's name; acquiring a name by filiation, adoption, marriage, and divorce; and the right to petition, or apply to, a court for leave to assume another name.

### **I. Common-Law Name Change**

Changing your name in New York is easy. New York recognizes the common-law right to change your name without having to petition the state. If you are a movie star — or a fan of one — you can change your name whenever you wish. Just make the conscious decision to do so. Then consistently hold yourself out to the world using your new name while managing all your regular business and day-to-day affairs, including entering into contracts, using your new name.<sup>3</sup> The only requirements are that you do this for a sufficiently long enough time and that using your new name does not result in fraud, confusion, or offense to common decency and good taste.<sup>4</sup>



***Read more at [qcba.org](http://qcba.org) »***

*Gerald Lebovits is a New York City Civil Court judge and an adjunct professor at Columbia, Fordham, and NYU law schools. Taneem Kabir, an associate attorney at DeToffol & Associates, is admitted to practice in New Jersey and before the United States Patent and Trademark Office. For their research help on all three parts of this article, the authors thank law students Aviva S. Kravitz and Todd M. Neuhaus from Cardozo School of Law and Natalie J. Puzio, an undergraduate at Villanova University.*



## Vicious Propensities in Domestic Animals

by Hon. George M. Heymann

In recent weeks there were two Appellate Division decisions that dealt with the issue of whether the plaintiffs, who sustained injuries caused by dogs, could recover damages on the theory of negligence.

This article will discuss these two decisions, *Bloom v. Lenten*, [AD 3rd Dept.] and *Doerr v. Goldsmith*, [AD 1st Dept.] as well as highlight the leading Court of Appeals cases that the lower courts relied on pertaining to injuries caused by domestic animals.

In *Bloom*, the plaintiff was a photographer and the defendants had a dog breeding business



at their home. In 2007, plaintiff went to defendants' home to photograph puppies of their English Labrador retriever, including a puppy named Delilah. Approximately three years later, the plaintiff again went to defendants' home to photograph new puppies.

While in the backyard on her second visit that year, three full grown dogs were running around playing and chasing after Delilah, who had now grown substantially and weighed about 50 pounds. As she was being chased, Delilah "ran into the back of plaintiff's leg, knocking her forward and onto the ground" causing plaintiff to sustain serious injuries.

[Read more at qcba.org »](http://qcba.org)

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# S Corp Sales, Built-In Gain, and 2013

By Louis Vlahos

Last year saw many taxpayers selling appreciated assets. The primary reason for this activity was the imminent increase, in 2013, of the long term capital gain rate, and the imposition (in some cases) of a 3.8% tax on net investment income, both of which would impact sales of assets owned directly by individuals or by pass-through entities owned by such individuals, including S corporations.

Notwithstanding the foregoing tax rate increases, 2013 may be a good time for certain S corporations to consider a sale of assets.

## Built-in Gain Tax

Unlike C corporations, S corporations generally pay no corporate-level tax. Instead, items of income and loss of an S corporation pass through to its shareholders. Each shareholder takes into account its share of these items on its individual income tax return. Thus, any gain recognized by an S corporation on the sale of assets is passed through and taxed to its shareholders.

There is an exception to this rule for asset sales by S corporations that were previously taxed as C corporations. Specifically, under Section 1374 of the Internal Revenue Code (the "Code"), a corporation level tax, at the highest marginal rate applicable to corporations (currently 35%), is imposed on that portion of an S corporation's gain that arose prior to the conversion of the C corporation to an S corporation (the "built-in gain" inherent in its assets at that time; "BIG") and that is recognized by the S corporation during a specified period of time following the conversion (the "recognition period").

**Read more at [qcba.org](http://qcba.org) »**

Lou Vlahos is a partner at the law firm of Farrell Fritz, P. C., where he leads the Tax practice group. Lou can be reached at [lvlahos@farrellfritz.com](mailto:lvlahos@farrellfritz.com) or at 516-227-0639.



2013 MAY BE A GOOD TIME FOR CERTAIN S CORPORATIONS TO CONSIDER A SALE OF ASSETS.

UNLIKE C CORPORATIONS, S CORPORATIONS GENERALLY PAY NO CORPORATE-LEVEL TAX.





## Annual Dinner & Installation of Officers & Managers



*Hon. Augustus Agate swearing in Joseph DeFelice as new President.*



*Joe DeFelice's friends and family.*



*Members of the Board being sworn in.*



*Hon. Larry Love accepting his gavel from Pres Joseph Risi.*



*Mark Weliky presenting Versely Rosales with the Law Student Scholarship Award.*



## Installation May 2, 2013 at Terrace on the Park



*Hon. Robert Caloras being presented his gavel from Pres Joseph Risi.*



*Mark Weliky with Julia Maeng, recipient of NYSBA Presidents ProBono Award.*



*Officers being sworn in.*



*Joseph Risi presenting Hon. Donna Golia with gavel set.*



*Joe DeFelice's office staff and close colleagues.*



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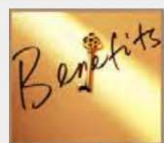
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