



A Social Security Disability Law Update: The Queens Office of Disability Adjudication and Review The Chief ALJ's voice on Heading into 2016



By: Marc A. Strauss*

Social Security Disability is a Federal Program. To be eligible it does not matter if the disability is work related and a combination of all injuries and illnesses are considered.

To be eligible for Social Security Disability Benefits (SSDB) an individual must meet the disability insured status and generally had to have worked and paid into the system five out of the last ten years, ending with the year that they became disabled. Additionally, the disability needs to be expected to last for at least one year or result in death. A "total disability" is determined based on the Social Security Regulations. The Social Security Administration considers a person's age, education and prior work experience.

The entire process can be a lengthy one. An individual can file an Initial Application for SSDB after being out of work five months with the

expectation that they will be out of work at least one year. It currently takes approximately six months to receive an Initial Application decision. Usually during this time medical records are obtained from a disability analyst and a medical consultative examination is scheduled. The majority of people are denied at the Initial Application level.

Once a denial is received, there is a sixty day time limit to request a hearing before an Administrative Law Judge at the Office of Disability, Adjudication and Review (ODAR). At this time it usually takes approximately eighteen months to obtain a hearing date from the time the case reaches ODAR. At the hearing, the claimant testifies regarding their medical impairments and their limitations. The ALJ may request a medical and/or vocational expert to be present to testify at the hearing. If the ALJ issues a favorable Notice of Decision, the payment center will determine any retroactive and future benefits that the claimant is entitled to. If the ALJ issues an unfavorable Notice of Decision, there is a sixty day limit to appeal the

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Eun Chong (EJ) Thorsen Elected President Of Queens County Women's Bar Association

Eun Chong (EJ) Thorsen, Esq. a litigation associate at Lake Success-based Vishnick McGovern Milizio LLP (VMM), has been elected the first Korean-American president of the Queens County Women's Bar Association, a chapter of the New York State Women's Bar Association. She was installed by Honorable Randall T. Eng, Presiding Justice, New York State Supreme Court, Appellate Division, Second Department, for the 2016-2017 term at a dinner held on June 21, 2016 at Russo's on the Bay.

ABOUT EUN CHONG (EJ) THORSEN

A resident of Forest Hills, Eun Chong Thorsen, known to all as EJ, represents individuals, families and businesses in a wide range of litigation matters. She counsels clients in disputes and appeals in matrimonial and family law, trusts and estate litigation, guardianships and commercial and employment law, serving clients in divorce, custody and support matters; orders of protection; Surrogate's Court will contests, trust litigation and guardianship proceedings; business, corporate and partnership disputes;

and wage and hour and discrimination claims. She is appointed by the Courts of New York to serve in Guardian ad Litem and in other fiduciary capacities.



Eun Chong (EJ) Thorsen

EJ was appointed by former Chief Judge Jonathan Lippman to the New York State Commission on Statewide Discipline in 2015. By appointment of Judge Eng, she serves on the Committee on Character and Fitness for

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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 Listing

October 2016

Monday, October 24	Family Law Committee Meeting - 5:00 pm
Monday, October 24	Young Lawyers Committee Mtg - 6:00 pm
Monday, October 26	Elder Law Committee Meeting - 6:00 pm
Thursday, October 27	Immigration/Juvenile Justice Comm Seminar

November 2016

Tuesday, November 8	Election Day - Office Closed
Friday, November 11	Veteran's Day - Office Closed
Tuesday, November 15	LGBT Committee Meeting - 5:30 pm
Wednesday, November 16	Landlord Tenant Seminar
Thursday, November 24	Thanksgiving Day - Office Closed
Friday, November 25	Thanksgiving Holiday - Office Closed

December 2016

Thursday, December 8	Holiday Party at Douglaston Manor
Monday, December 26	Christmas Day Observed - Office Closed

January 2017

Monday, January 2	New Year's Day Observed - Office Closed
Monday, January 16	Martin Luther King, Jr. Day - Office Closed

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Necrology

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Editor's Note

The Virtuous Cycle of QCBA Membership

By: Charles A. Giudice
Queens Bar Bulletin Editor

I'm glad to be able to announce the fall return of the Queens Bar Bulletin. Now that we have ironed out a publication schedule with our publisher, we hope to put out more frequent editions.

The end of the dreaded summer hiatus means that our Association is swinging back into gear. Our Board of Managers is once again working to attract new members and serve our existing membership.

If you are a new member receiving this publication for the first time, welcome. I hope the Bulletin will be useful to you as you get to know our Association as a whole. The Bulletin is, after all, a reflection of who we are, what we do and why we are here, at this moment in history.

We are here, as we have been since 1876, because, as then, lawyers recognize the benefits of associating together. Membership in our Association helps lawyers attract business, enhance their reputations and grow their profile. It is good for business.

Lawyers and judges speaking outside of a courtroom setting fosters understanding and trust between the bench and the bar.

A solo practitioner can get to know other lawyers in different practice areas. Newly admitted attorneys get to meet and interact with those who have been in practice for some time. They build their reputations in the professional community.

Now, the experienced attorneys know who is interested in taking on more work. Newer lawyers know where to turn for guidance when handling different types of cases for the first time.

Of course, generations of lawyers have attracted new business by joining bar panels. When laypeople need to hire a lawyer, and cannot find one through word-of-mouth, they call the local bar association. Callers are referred to an attorney that handles their type of matter. These are connections that most likely do not happen without membership in the Association, which is the prerequisite for subscribing to our Lawyer Referral Service.

As new attorneys gain experience, they become knowledgeable in their fields. Knowledgeable attorneys distinguish themselves by being members of panels that present our CLEs. Some have been invited by the court system to sit on committees that develop rules and procedures for practicing before our courts.

One way of demonstrating knowledge is to write an article for the Queens Bar Bulletin. Yes, this is a shameless plug, but it does work. Authorship is a way to get noticed and known within the local legal community. It can be a source of conversation at our events, and is definitely something to mention



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when interviewing for a new position. It could be the start of a virtuous cycle for your practice.

The deadline for submissions for our next edition is October 28. The next edition is scheduled to come out in mid-November. We are attempting to keep this pattern in place every month thereafter. With sufficient interest, we could even put out a summer edition next year.

Please send articles and inquiries to me at cgiudice@qcba.org. Word is the preferred format. No permission other than membership in good standing is needed to write.

I'll be sending out a further request for articles over email, but this is still a newspaper, so I wanted to be able to say that you heard it here first.

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President's Message



Recently our Executive Director conducted some research in the Association's records and informed me that I have the honor of being the Association's 120th President. This news caused me to pause and reflect on the Association's life - a life that has survived world wars, depressions, epidemics, "Red Scares," terrorist attacks and the digital age. It is a sobering thing to be Number 120, but as I look around I see that the goals and aims of the founding members are still very much being pursued by our active members today. I encourage you to become more active - it is good for the Bar, good for the Association - and good for you.

We have started the Association year on great footing. We have hosted several impressive CLE events. We have developed new initiatives to attract and retain more student members. To date these initiatives have resulted in approximately 80 new student members since August.

The Bulletin is one of the Association's means of direct contact with the membership. Some hurdles have been overcome and we are now planning to publish 8 editions between October and May. For the first time copies of the Bulletin will be distributed to every law school in New York State, thus increasing awareness of offerings in the law student population from Erie to Suffolk.

Once again the Mayor is out to trim the services provided by our 18-B Panel in the criminal law area. The present attack is on the Homicide Panel. The Mayor seeks bids from agencies to replace the services provided by the Panel. The Criminal Law Committee and the Board of Managers strenuously object to the Mayor's proposal and I wrote letter to this effect to the Mayor's Office, citing the high quality of representation currently provided by Panel members, all of which have tried many felony cases to verdict.

Your Board of Managers and I have many good ideas. What we do not have is time to pursue them all. These ideas may only require a few hours of a member's time to bear fruit. I know many of you may be able spare several hours to work on something with us. Contact me if you are considering it.

Yours truly,

Gregory J. Brown
President

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Eun Chong (EJ) Thorsen Elected President... continued from p.1

the Second, Tenth, Eleventh and Thirteenth Judicial Districts. Additionally, EJ is the Executive Vice President of the Korean American Lawyers Association of Greater New York (KALAGNY); board member of the St. John's University School of Law Alumni Association since 2015; and board member of the Judges and Lawyers Breast Cancer Alert since 2013.

Other past service, activities and honors include:

- 2016: Rising Star, Queens Chapter, Women's Bar Association of the State of New York
- 2014-2016: Advisory board member, Kupferberg Holocaust Resource Center and Archives
- 2013-present: Board member, Korean American Youth Foundation
- 2014-present: Pro Bono Clinic, Korean American Family Service Center,
- 2014: Queens Courier Rising Star
- 2010: Producer, Left Out in America: Legislating Love, Life and LGBT, recipient of New York International Independent Film Festival award.

EJ received her Juris Doctor degree from St. John's University School of Law and earned her Bachelor of Arts degree from Boston College. She served as a judicial intern with the Honorable Joseph F. Bianco of the Eastern District of New York and with the Honorable Patricia P. Satterfield of the Queens County Supreme Court. She is admitted to practice law in New York, New Jersey, the United States District Courts in the Southern and Eastern Districts of New York, the United States Court of Appeals for the Second Circuit and the US Supreme Court.

ABOUT VISNICK MCGOVERN MILIZIO LLP

Founded in 1969, Vishnick McGovern Milizio LLP (VMM) is a full service law firm with offices in Lake Success, New York City and New Jersey. The firm maintains a diverse legal practice with many relationships spanning 40 years or more. VMM clients include businesses, individuals and families, professionals, entrepreneurs, not-for-profits and others who rely on the collaboration among the firm's senior and junior attorneys and highly-skilled staff. Practicing in the areas of Trusts and Estates Planning, Administration and Accounting, Trusts and Estates Litigation, Guardianships, Charitable Bequest Management, Elder Law, Commercial Litigation, Alternated Dispute Resolution, Business and Transactional Law, Exit Planning for Business Owners, Employment Law, Matrimonial and Family Law, Real Estate Law and LGBT Representation, VMM attorneys hold prominent positions on boards of directors and in civic, charitable and professional organizations.

Tribute to the Recent Passing of Justice Duane Hart

By: Lauren Tucker



Unfortunately, on April 19, 2016, Queens County Supreme Court Justice Duane A. Hart suddenly passed away. His passing was a devastating loss for the legal community and the Queens Civil Court System. We truly lost an outstanding legal mind. But more significantly, for those who really knew Judge Hart, this is a time of intense mourning for the loss of such an exceptionally kind and compassionate man.

I had the privilege of interning with Judge Hart in the summer of 2015. As an Intern, I had the opportunity to witness him first-hand in the courtroom and interact with him on a daily basis. The knowledge and experience I gained from this internship will remain with me forever. I am so fortunate to have learned and observed such a great legal mind. One memory that I will always remember about Judge Hart is his enthusiastic and wholehearted commitment to each one of the interns who came through his courtroom doors. He personally sought for each intern to achieve his or her fullest potential. He wanted his interns to learn and succeed. Additionally, he also wanted us to be happy.

I had the privilege of interviewing him on January 14, 2016 and experiencing first-hand his unwavering commitment in the success of his interns. Upon concluding my interview with him, he began inquiring about my prospective summer jobs and if I had put anymore thought into what I wanted to do when I graduate. He would always take extra time out of his day to give me advice about the legal profession. His unwavering commitment to my success only served to encourage and motivate me to succeed and make him proud.

While some may describe him as having an "imposing demeanor" while in the courtroom, Judge Hart could not have been more compassionate and caring for the people who stepped foot into his courtroom. While he did bring his strong personality into the courtroom, he was always a constant professional, and knew the law like no other. Judge Hart had an incredible legal mind and aptitude. I would observe him in the courtroom in awe of his intellect and his astounding attention to detail. Judge Hart had a larger than life personality, and he was always genuine in everything that he did. He was a funny and gregarious man. He always wanted to make people smile. He will be remembered not only for his legal achievements, but also for the countless number of people that he has helped throughout his life. Personally, I will miss his animated sense of humor and his gentle heart.

Justice Duane Hart was not only an intelligent and exceptional jurist, but he was also an extraordinary person. His passing is a pronounced loss for the court system and also for the people who loved and admired him. The presence and knowledge that he brought to the courtroom can never be duplicated. In closing, I attribute this writing piece to the passing of a brilliant legal mind, Justice Hart, who did so much for myself and the legal community.

Cuomo Appoints Lebowitz to Screening Committee



Judge Jeffrey D. Lebowitz has been appointed by Governor Andrew M. Cuomo as Chairperson of the Second Department Judicial Screening Committee.

As a member of the Committee, Judge Lebowitz will assist in evaluating the qualifications of candidates for appointments or designations to judicial office in New York State. This includes certification of judges who reach age 70 and wish to extend their time in office, interim appointments to vacate judicial offices, appointments to the Appellate Division, as well as a position on the statewide panel that recommends appointments to the Court of Claims.

Based on a variety of considerations and thorough inquiries, the Committee will recommend to the Governor only those candidates who are highly qualified for judicial office.

Judge Lebowitz's term will run for three years. He also serves on the Queens County Board of Managers, Class of 2018.

During his judicial career Judge Lebowitz has presided over cases in the New York City Criminal, Civil and Family Courts and for the last fourteen years in the New York State Supreme Court. He is now of counsel to Jaspan Schlesinger, LLP in the firm's matrimonial and family law and litigation practice groups.

QUEENS COUNTY BAR ASSOCIATION SCHOLARSHIP FUND

Dear Member:

The Queens County Bar Association's Scholarship Fund was created in 2005 to offer financial assistance to law students who are residents of Queens County or who attend law school in Queens County.

The recipients of the QCBA Scholarship are carefully chosen based on academic achievement, community service and/or service to the Bar and financial need and is awarded at the Annual Dinner in May.

I know that times are hard, but I would hope that you could donate to this worthwhile purpose and your tax deductible donation (of any amount) will help to support and recognize a deserving law student(s). The assistance we provide to the future lawyers, many of whom are struggling with enormous debt, also enhances the good name of our Association.

As President of the Queens County Bar Association, I thank you for your support of this valuable community-based program.

Sincerely,
Gregory J. Brown
President

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A Social Security Disability Law Update: The Queens Office of Disability Adjudication and Review – The Chief ALJ's voice on Heading into 2016... Continued from p.1

case to the Appeals Council. Appeals are taking approximately eighteen months to be decided. The Appeals Council can reverse and grant, deny or remand the case for another hearing before the same ALJ. If a case is denied at the Appeals Council, an appeal can be filed at the Federal Court level within sixty days.

Supplemental Security Income (SSI) is a Federal program based on financial need which varies from state to state. It is for those individuals that do not meet the earnings requirement of SSDB. It has the same standards of disability as SSDB and is also available for minors based on household income and resources. Once a person is found disabled, the Social Security Administration evaluates their income and resources in determining eligibility. The application process is similar to that of pursuing a SSDB claim.

There have been many changes specifically at the Queens ODAR over the last several months. I recently had the opportunity to speak with Chief Administrative Law Judge (ALJ) Gal Lahat regarding changes in the Jamaica, Queens Office of Disability Adjudication and Review (ODAR) and his future goals as the new Chief ALJ. ALJ Lahat became an ALJ in June 2008 and was appointed as Hearing Office Chief ALJ in September 2014. As Hearing Office Chief Administrative Law Judge (HOCALJ), ALJ Lahat's goals for the Queens office are those of the Agency - exceptional public service with attention to waiting times for hearings, prompt issuance of decisions, courteous service and professionalism as well as a good rapport with the representative community.

One of the steps he has taken to help with pending workloads is designating a fee petition coordinator to address all pending fee petitions. ALJ Lahat is personally working on those that remain from retired/former judges. Another measure taken is periodically meeting with local representatives as a group to address common issues and to encourage the use of Appointed Representative Services (ARS) by representatives to avoid the need to repeatedly burn CD's. ARS is an online service developed by the Social Security Administration to use to file applications and appeals, to review all documents associated with a case and to locate case status. He also assigned a supervisor to be the point of contact for "on the record" requests for cases that have yet to be assigned to an Administrative Law Judge. An on the record decision would eliminate the need for the claimant and representative to attend a hearing.

In the last year, several ALJ's have retired from the Queens ODAR. ALJ Ifeoma N. Iwuamadi has recently started conducting hearings there. ALJ Michelle Allen, recently hired and transferred from Milwaukee, has also started holding hearings. ALJ Jacqueline Haber Lamkay, recent Hearing Office Chief Administrative Law Judge of Long Island Hearing Office started holding hearings in Queens in February.

Chief ALJ Lahat stressed that the office is constantly striving to make their workflow more efficient and he hopes to elicit representative support on issues that continue to be problematic, such as late filing of evidence and requests for last minute postponements due to a prolonged loss of contact with a claimant.

Chief ALJ Lahat answered some specific questions of mine. He advised that Congressional Inquiries are handled pursuant to Hallex I-1-6-1, under the Hearings, Appeals and Litigation Law Manual, with the inquiries receiving high priority. The response as well as follow up is provided pursuant to the Hallex provisions. ODAR management routinely monitors cases at all stages of the hearing process.

Secondly, claimants electing a Video Teleconference Hearing can speed up their hearing date scheduling. When a hearing office has a large number of cases pending, assistance may be provided by other offices or the National hearing Centers. Only cases that are electronic and do not have a video opt out are eligible for transfer.

Also, cases are assigned to the Judges in the order they are received and typically, the actual hearing sequence will depend on the ALJ's docket. Reasons for delay arise due to problems with the availability of expert witnesses, the representative, and the claimant, as well as the need to develop the record.

Hallex I-2-0-60 identifies good cause examples in instances where the request for hearing is not timely filed and is followed by the office. Additionally, the HA-4631 form (Claimant's Recent Medical Treatment) is used to request updated medical information if the information is not yet in the file. The HA-4632 (Claimant's Medications) and HA-4633 (Claimant's Work Background) are typically used in preparation for the hearing.

As a practitioner appearing at the Jamaica hearing office for many years, it is reassuring to have Chief ALJ Lahat in the position as Chief ALJ implementing changes that will assist claimants, ALJ's and attorneys alike.

**Editor's Note: Marc A. Strauss is a graduate of Boston University School of Law and is a partner at the law firm of Pyrros and Serres, LLP and heads the Social Security Disability Practice representing clients in their Social Security Disability and Supplemental Security Income cases throughout the tri-state area.*

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Annual Dinner & Installation of Officers

May 5, 2016



President Paul Kerson getting ready to give outgoing remarks.



Paul Kerson presenting newly inducted judge, Hon. Laurentina McKetney Butler with a commemorative gavel.



Paul Kerson presenting newly inducted judge, Hon. Jeannine Baer Kuzniewski with a commemorative gavel.



Outgoing President Paul Kerson with Incoming President Gregory Brown.



Newly Inducted President Gregory J. Brown remarks to attendees.



Newly inducted judge, Hon. Peter Vallone, Jr. accepting a commemorative gavel from President Paul Kerson.



Mark Weliky with Daniel Costigan, recipient of the 2016 NYSBA President's Pro Bono Award.



Installation of Officers - Richard Lazarus-Treasurer, Marie-Eleana First-Secretary, Hilary Gingold-Vice President and Gregory Newman-President-Elect.



Installation of Board of Managers, Class of 2019 - Michael Abneri, Frank Bruno, Kristen Dubowski Barba, Charles Giudice and Paul Kerson



Installation of Board of Managers, Class of 2018 - Michael Serres, Joseph Carola, Karina Alomar, Deborah Garibaldi and Hon. Jeffrey Lebowitz.



Installation of Board of Managers Class of 2017 - Joseph DeFelice, Lourdes Ventura, Paula Pavlides, Adam Orlow and Cliff Welden.



Arthur Terranova presenting newly inducted judge Hon. Ushir Pandit-Durant with a commemorative gavel.



Incoming President Greg Brown with family and friends.



George Nashak installing Gregory Brown as the 120th President of the Queens County Bar Association.

Judiciary , Past Presidents , and Golden Jubilarians Night

April 11, 2016



President Paul Kerson presenting Past President Joseph Carola his President's Scroll.



Past President Joseph Carola showing off his President's Scroll with President Paul Kerson.



Lawrence Herrmann announcing award recipients Hon. Daniel Lewis and Hon. Dorothy Chin-Brandt who are receiving the Legion of Honor Humanitarian Awards.



Hon. Duane Hart presenting Officer Garland Battle with the Employee Appreciation Award.



Past Presidents

Standing: Paul Kerson - 15-16, David Cohen - 07-08, Seymour James - 01-02, Chanwoo Lee - 10-11, Joseph Risi - 12-13, Herbert Rubin - 71-72 and George Nashak - 05-06 .. Seated: Joseph Carola - 14-15, Howard Stave - 82-83, David Adler - 98-99, Richard Gutierrez - 11-12, Joseph DeFelice - 13-14, Gary Darche - 89-90 and Steven Wimpfheimer 99-00.



NYSBA President-Elect Claire Gutekunst addressing the attendees.



Hon. Jeremy Weinstein presenting Principal Court Clerk Christopher L. Olsson with the Employee Appreciation Award.



Golden Jubilarians

Bruce E. Bushlow, Lawrence Murray Herrmann, Henry F. Locke, Jr., Peter E. Tommaso, Hon. Joseph G. Golia, M. Joseph Levin and Steven Wimpfheimer.

QVLP Increases Client Outreach Efforts

By: Justin Auslaender*

On March 30, 2016, the Queens Volunteer Lawyers Project, Inc., ("QVLP") stepped up its efforts to reach and assist more Queens County residents who are facing foreclosure, by staffing an information table for pro se litigants at the Queens County Supreme Court. QVLP will staff a table in front of Part 42A, Room 4001, of the Queens County Supreme Court on Wednesdays from 9:30 a.m. to 12:30 p.m.

QVLP Staff attorneys will be available to answer questions, offer free consultations, and assist with preparing pro se answers for pro se litigants who have settlement conferences scheduled on Wednesdays or coming up in the near future. "We encourage members of the bar who encounter individuals unable to afford their services to provide information about the table and the legal services organizations that may be available to assist them," said QVLP Staff Attorney Kristen Dubowski Barba.

QVLP hopes to match pro se litigants with volunteer attorneys as early as possible in the settlement conference process. Early intervention leads to less confusion for the pro se litigant and a better experience for volunteer attorneys. "Our goal is to improve the volunteer experience by screening cases

at an earlier stage and matching the client with a volunteer based on the complexity of issues involved and the experience of our volunteer attorney. We hope that by doing this, volunteers will be encouraged to take on more pro bono cases and we can help more Queens homeowners in need," said QVLP Foreclosure Conference Director Jason Gang. By being available to answer questions, the staff attorneys will be able to provide people with basic information that they need to understand their case, understand the modification process, and avoid common foreclosure scams that can create problems in obtaining a favorable settlement.

Settlement conferences are mandatory in foreclosure cases pursuant to CPLR § 3408, but borrowers often find the process confusing and can find themselves at a disadvantage when negotiating with the bank on their own. Volunteer attorneys can even the playing field and make sure that the plaintiff in a foreclosure case is complying with court directives, the law, and loss mitigation guidelines.

QVLP joins a number of other legal services providers that staff a table on other days of the week, including;

MFY Legal Services, Inc. on Mondays, Legal-Aid Society on Tuesdays, Brooklyn Legal Services on Thursdays, and Queens Legal Services or JASA on alternating Fridays. The services offered by legal services organizations vary, but all are provided on a pro bono basis.

Pro se litigants can also seek assistance from the Legal-Aid Society, Queens Legal Services, and JASA at the Foreclosure Clinic on Thursdays from 4:30 pm to 7:00 pm and Friday from 9:30 am to 3:15 pm, at the Queens County Civil Court in Room 160.

Attorneys interested in volunteering with QVLP can attend the annual training on June 1, 2016 from 6:00 p.m. to 9:00 p.m. at the Queens County Bar Association. The training will provide attendees with the tools they need to represent individuals in the foreclosure settlement conference part. All attendees will be expected to take on a volunteer case, for which they will receive CLE credits based on the number of hours spent providing services to QVLP clients.

***Editor's Note:** Justin Auslaender is a Foreclosure Prevention Staff Attorney at QVLP.



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MID-YEAR ABA MEETING

By: Joseph F. DeFelice*

The American Bar Association held its annual conference in San Francisco in August, 2016. The following is a summary of some of the business conducted at the meeting.

A resolution was passed to encourage the States to pass legislation which would make statements made by individuals to representatives of legal referral services confidential in nature. Passage was urged because many people facing criminal charges often call a Bar Association referral service seeking to locate an attorney who practices criminal law. During those conversations, statements may be made by the person which relate to a crime and which may assist a referral service representative to direct that person to an appropriate lawyer. There have been situations where prosecutors have subpoenaed the referral services to obtain information given by a person during the referral service consultation process. California has already recognized this and is the only State that has passed legislation extending the attorney-client privilege in this area. The ABA will seek to urge States and Federal authorities to extend this privilege in similar circumstances.

The Intellectual Property Law section was successful in having the House of Delegates approve a resolution which relates to the use of a trademark which may otherwise have a valid mark for registration from the U.S. Patent and Trademark Office and which may have had its federal registration cancelled or otherwise denied. Under the resolution the trademark would still have the protection under all the provisions of the Lanham Act and common law. In particular, this would relate to the use, for instance, of the Washington Redskins trademark which they continue to market.

The Special Committee on Hispanic Legal Rights was successful in having its resolution accepted which would urge government authorities to provide culturally, substantive and accurate translations of the Miranda warnings in Spanish. This is the result of a study indicating that many warnings given in Spanish have used the wrong terminology for words that are translated and can often convey a different meaning.



A resolution was also passed to propose to State and Federal authorities the need to have jury instructions developed that educate jurors to avoid implicit bias in their decision making process. California has already enacted such legislation.

Over much contention and disagreement, a resolution was passed to urge that law student clinics established for educational purposes also pay students for their time and service.

In a resolution which resolved disputes as to how each State, and how often each State, receives representation on the Board of Governors, the House of Delegates approved a resolution which realigned the various districts and added one additional district from which representation on the Board is obtained. In a related resolution representation in the House of Delegates was extended to provide the Virgin Islands with a Young Lawyers delegate.

Once again and for the sixteenth year in a row, the House of Delegates again postponed indefinitely a constitutional amendment to the ABA Constitution which would be supportive of the right to life for the unborn.

In regard to newly installed officers, Linda Klein, a former New Yorker, but now an attorney from the State of Georgia, took office as the next President of the American Bar Association. Hilarie Bass, a partner and co-president of Greenberg Traurig and an attorney from the State of Florida was elected President-Elect. Finally, Deborah Enix-Ross, who is a minority member at large from New York, has been elected to the position of Chair of the American Bar Association. Debra is a member of our New York delegation and we are all very pleased that she was selected for this prominent position and wish her the best during her term as Chair which is for two years.

*Joseph DeFelice is Past-President of the Queens County Bar Association and the Bar Association's representative to the ABA.

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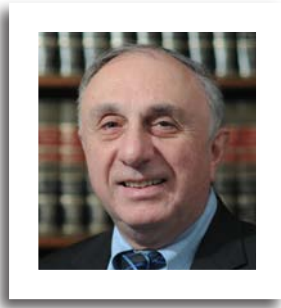
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DIZZY WITH DNA

By: Joseph F. DeFelice



It can make me dizzy
Make anyone dizzy,
All these alleles and DNA
Then there is Locard's Principle
transferring DNA in a number of ways

And then there is touch DNA
Is it different from wearer DNA? Or if I sneeze
Is my DNA aerosolized?
If so, I suppose I should wear a mask

And then I think of primary transfer
like cutting my hand and bleeding on my pants,
Or maybe secondary transfer
as when you touch my blood that fell on the ground

But how often and how long
And how roughly you touch an object
Does this also affect the amount you transfer?

Or am I a shredder?
One who rapidly sheds his cells Or does the weather affect it
Or the time of the year
Or does the surface affect the amount that is left? Or does the mixture in the
sample affect the results?

Yes dizzy as it is
I still love my DNA

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The Queens County Bar Association (QCBA) provides free confidential assistance to attorneys, judges, law students and their families struggling with alcohol and substance abuse, depression, stress, burnout, career concerns and other issues that affect quality of life, personally and/or professionally.

QCBA Lawyers Assistance Committee (LAC) offers consultation, assessment, counseling, intervention, education, referral and peer support. All communication with QCBA LAC staff and volunteers are completely confidential.

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Justice Leslie G. Leach Appointed to the Commission



Chief Judge Janet DiFiore has appointed Queens County Supreme Court Justice Leslie G. Leach to the New York State Commission on Judicial Conduct for a term ending March 31, 2020.

Justice Leach is a graduate of Queens College of the City University of New York, the Columbia University School of Law and the University of Massachusetts, where he earned a master's degree in labor studies. He previously served as a Judge of the New York City Criminal Court from 1993 to 2003, as an Acting Justice of the Supreme Court from 1995 to 2003, and as an elected Justice of the Supreme Court from 2004 to 2007, serving as the Administrative Judge of the Eleventh Judicial District, Queens County. In 2007, Justice Leach left the bench to serve as Executive Deputy Attorney General of State Counsel under then-Attorney General Andrew M. Cuomo. From 2011 to 2012, Justice Leach served as Appointments Secretary to Governor Cuomo, then taught as Distinguished Lecturer at Queens College. In 2015 he returned to the Supreme Court bench. Justice Leach succeeds Supreme Court Justice Sylvia G. Ash, who recently left the Commission and is now serving as Presiding Justice of the Commercial Division in Kings County.

Additional information on Justice Leach and the other members of the Commission can be found on the Commission's website: www.cjc.ny.gov.
Background on the Commission

The Commission was established in 1978 by the New York State Constitution to review complaints of misconduct and disability against judges and justices of the

State Unified Court System and, where appropriate, to discipline publicly those judges found to have engaged in misconduct.

The Commission is composed of 11 members, all of whom serve without pay. The Governor appoints four members (two of whom must be non-lawyers/non-judges), the Chief Judge of the State of New York appoints three members (all of whom must be judges) and the four leaders of the State Legislature appoint one each. There is currently one vacancy on the Commission, to be filled by the Governor.

The Commission has a full-time staff operating from offices in New York City, Albany and Rochester.

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Paul B. Harding, Esq., Vice Chair	Assembly Minority Leader Brian M. Kolb	March 31, 2017
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Vacant	Governor	March 31, 2017

Non-Judicial Separation May Not Be Enough to Disqualify a Surviving Spouse

By: Jeffrey Gorak



I recently represented a client ("Mr. H.") on a Surrogate's Court Administration Proceeding for his mother's estate. Mr. H. was the decedent's only child and the decedent's spouse had predeceased her. As such, Mr. H. inherited his mother's entire estate. At the conclusion of the Administration Proceeding, I met with Mr. H. to discuss his own estate plan. He explained to me that his plan was to have his only child inherit his entire estate the same way he inherited everything from his mother. Since Mr. H. apparently modeled his estate plan after his mother's, it might have seemed reasonable to assume that he was not married or that his wife was deceased. Nevertheless, I inquired as to his family tree and learned that, in fact, Mr. H. and his wife were merely separated and, even so, only physically; there was no separation agreement in place between them. Mr. H. mistakenly believed that his wife's departure at least 20 years ago—a non-judicial separation—automatically disqualified her as a surviving spouse, thereby allowing his only child to inherit his entire estate.

Under Section 5-1.2(a)(5) of the Estates, Powers, and Trusts Law (EPTL), a surviving spouse is disqualified from receiving an intestate share or exercising the right of election where the surviving spouse abandoned the deceased spouse, and such abandonment continued until the time of death. As articulated by the Court of Appeals in *In re Maiden*, to constitute abandonment, a spouse's departure from the marital home must be "unjustified and without the consent of the other spouse."¹ The same standard applies when abandonment is asserted as the grounds for divorce or separation in a matrimonial action. The distinction, however, lies in the difficulty in proving abandonment under the disqualification statute. In the estate context, the unavailability of the decedent makes it impracticable for the personal representative of the decedent's estate, with whom the burden rests,² to prove abandonment. Note that even if the burden rested with the surviving spouse, it would be an equally challenging task to disprove abandonment because much of the surviving spouse's testimony would be inadmissible under CPLR 4519, known as the Dead Man's Statute, which prohibits an interested witness from testifying about communications or transactions with a deceased person.³ As it stands, the small

amount of competent evidence that a personal representative is able to introduce is often insufficient to overcome the burden of proof for abandonment.⁴

Even in cases where evidence exists in admissible form, an additional concern in disqualification cases is the uncertainty of the outcome. For example, in *In re Morris*, the Appellate Division, Second Department, affirming the decree of the Kings County Surrogate's Court, held that the surviving spouse's departure from the marital residence with little contact with the decedent until the time of his death—a period in excess of 30 years—was insufficient to disqualify the surviving spouse because the objectants failed to prove that the "separation was without the consent of the decedent."⁵ In contrast, the Bronx County Surrogate's Court, in *In re Perkins*,⁶ held that a surviving spouse's departure from the marital residence without any further communication whatsoever until the decedent's death, except for a chance encounter on the subway, was sufficient for disqualification. Surrogate Holzman concluded that where, as here, the surviving spouse had nothing to do with the decedent for a period of 25 years, both the "law and equity dictate that he should now let the decedent rest in peace without having the right to profit from her demise."⁷

Since 2001, the Surrogate's Court Advisory Committee, aware of the unjust effects that often resulted from the EPTL's disqualification statute, has recommended a measure to disqualify spouses who receive marital benefits by being married in name only—often referred to as "laughing spouses."⁸ This measure, which has yet to be introduced in the New York State Legislature, would expand the scope of the statute by disqualifying a surviving spouse if he

or she continuously lived separate and apart from the decedent for at least one year before the decedent's death and the total time that the couple lived separately was more than the time they spent living together.⁹ However, a surviving spouse would not be disqualified if the reason for the separation was that (i) one spouse was ill or needed the care of a facility, (ii) an economic relationship existed between the spouses (i.e., voluntary, contractual or court-ordered support), despite their separation, or (iii) abuse by the decedent (or another member of the household) caused the surviving spouse to stop cohabitating with the decedent. Additionally, the surviving spouse would be able to testify as to matters ordinarily barred by CPLR 4519, the justification being that the surviving spouse may be the only person to establish abuse or the economic relationship. This measure is a practical supplement to the statute because a spouse who acts as if divorced for a significant period of time should not be permitted to reap the benefits of marriage.

There are a variety of reasons that spouses may choose to separate without judicial intervention, including the cost and time necessary to obtain a decree of divorce or separation. Many of these spouses, including Mr. H., mistakenly believe that a non-judicial separation alone is adequate to terminate the surviving spouse's rights with respect to their estates. However, as can be seen from case history, this leaves the decedent's representative with the heavy burden of proving that the surviving spouse abandoned the decedent. The Surrogate's Court Advisory Committee's proposed legislation recognizes this common, mistaken belief and accounts for it by providing that estranged spouses—those married in name only—should forfeit their marital rights in the estate of the other spouse under appropriate circumstances. However, under current law, it is especially critical that practitioners become fully familiar with the client's background and history for purposes of estate planning, which may necessarily include proceedings to dissolve a marriage.

¹ 284 NY 429, 432 (1940).

² *Matter of Rechtschaffen*, 278 NY 336 [1938].

³ See Jessica Baquet, Notes, Aiding Avarice: The Inequitable Results of Limited Grounds for Spousal Disqualification Under EPTL § 5-1.2, 23 St. John's J Legal Comment 843, 861 [2008].

⁴ *Id.*

⁵ 69 A.D.3d 635, 636 (N.Y. App. Div. 2d Dep't 2010).

⁶ NYLJ, January 8, 2003, at 19 col 3.

⁷ *Id.*

⁸ See *In re Gonzalez*, 2005 N.Y. Misc. LEXIS 3463, 10-11 (N.Y. Sur. Ct. 2005) ("The Surrogate's Court Advisory Committee to the Chief Administrative Judge of the Courts of the State of New York...in 2001 had proposed an amendment to Paragraph (a) of [EPTL] section 5-1.2").

⁹ See Report of the Surrogate's Court Advisory Committee, January 2015, available at <https://www.nycourts.gov/ip/judiciarylegislative/pdfs/2015-Surrogate'sCourt-ADV-Report.pdf>

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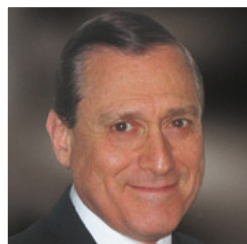
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Immigration Scams

Before Your Child Immigrates to the United States

By: Allen E. Kaye



Common Scams

On November 20, 2014, the President announced a series of executive actions to crack down on illegal immigration at the border, prioritize deporting felons not families, and require certain undocumented immigrants to pass a criminal background check and pay taxes in order to temporarily stay in the U.S. without fear of deportation.

These initiatives have not yet been implemented, and USCIS is not accepting any requests or applications at this time. Beware of anyone who offers to help you submit an application or a request for any of these actions before they are available. You could become a victim of an immigration scam. Subscribe to the USCIS Executive Actions on Immigration web page to get updates when new information is posted.

If you need legal advice on immigration matters, make sure that the person you rely on is authorized to give you legal advice. Only an attorney or an accredited representative working for a Board of Immigration Appeals-recognized organization can give you legal advice.

The Internet, newspapers, radio, community bulletin boards and storefronts are filled with advertisements offering immigration help. Not all of this information is from attorneys and accredited representatives. There is a lot of information that comes from organizations and individuals who are not authorized to give you legal advice, such as "notarios" and other unauthorized representatives. The wrong help can hurt. Here is some important information that can help you avoid common immigration scams.

Telephone Scams

Do not fall victim to telephone scammers posing as USCIS personnel or other government officials. In most instances, scammers will:

- request personal information (Social Security number, Passport number, or A-number);
- identify false problems with your immigration record; and
- ask for payment to correct the records.

If a scammer calls you, say "No, thank you" and hang up. These phone calls are being made by immigration scammers attempting to take your money and your credit card information. USCIS will not call you to ask for any form of payment over the phone. Don't give payment over the phone to anyone who claims to be a USCIS official.

If you have been a victim of this telephone scam, please report it to the Federal Trade Commission (FTC). Learn more about telephone scams and telephone scammers' techniques by visiting Federal Trade Commission-Telemarketing-Scams.

"Notario Publico"

In many Latin American countries, the term "notario publico" (for "notary public") stands for something very different than what it means in the United States.

In many Spanish-speaking nations, "notarios" are powerful attorneys with special legal credentials. In the U.S., however, notary publics are people appointed by state governments to witness the signing of important documents and administer oaths. "Notarios publico," are not authorized to provide you with any legal services related to immigration.

Please see the National Notary Association website "What is a Notary Public" for more information.

Local Businesses

Some businesses in your community "guarantee" they can get you benefits such as a:

- Visa
- Green Card
- Employment Authorization Document

These businesses sometimes charge you a higher fee to file the application than USCIS charges. They claim they can do this faster than if you applied directly with USCIS. These claims are false. There are few exceptions to the normal USCIS processing times.

Dot-com websites

Some websites offering step-by-step guidance on completing a USCIS application or petition will claim to be affiliated with USCIS. USCIS has its own official website with:

- Free downloadable forms
- Form Instructions
- Information on filing fees and processing times
- Do not pay for blank USCIS forms either in person or over the Internet.

Visa Lottery

Once a year, the Department of State (DOS) makes 50,000 diversity visas (DVs) available via random selection to persons meeting strict eligibility requirements and who come from countries with low rates of immigration to the United States. During this time, it is common for immigration scammers to advertise in emails or websites that reference either the:

- DV lottery
- Visa lottery
- Green Card lottery

These emails and websites often claim that they can make it easier to enter the annual Diversity Immigrant Visa Program, for a fee. Some even identify you as a DV lottery "winner."

These emails and websites often claim that they can make it easier to enter the annual Diversity Immigrant Visa Program, for a fee. Some even identify you as a DV lottery "winner"

These emails and websites are fraudulent. The only way to apply for the DV lottery is through an official government application process. DOS does not send emails to applicants. Visit the Department of State website to verify if you are actually a winner in the DV lottery or for information on how to submit an application for a DV lottery visa.

INS or USCIS?

To this day, some local businesses, websites and individuals make reference to the Immigration and Naturalization Service (INS). This agency no longer exists!

INS was dismantled on March 1, 2003, and most of its functions were transferred from the Department of Justice to three new components within the newly formed Department of Homeland Security. U.S. Citizenship and Immigration Services (USCIS) is the component that grants immigration benefits. The other two components are U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection.

All official correspondence regarding your immigration case will come from USCIS.

Form Filing Tips

It's important for you to understand how the USCIS application process works. Knowing the facts will help you avoid scams.

Top 10 Tips Before You File

1. The official website for USCIS is www.uscis.gov.
2. USCIS does not charge you a fee to download forms. Visit the USCIS Forms page to get free forms and learn more about filing fees.
3. Read the form instructions before completing the form. Remember to fill in all required fields and send in any required documentation.
4. You must sign your form before sending it to USCIS.
5. Before you sign an immigration form make sure that you understand it and that the information on it is true and accurate.
6. Never sign blank forms.
7. USCIS requires you to pay a filing fee for most forms. Please see the list of fees on our website.
8. You can pay filing fees with a money order, certified check or valid credit card.
9. Make sure you get a receipt for any payment you make to an attorney or accredited representative.
10. Keep copies of all forms and other documents that you file with USCIS.

Top 3 Tips After You File

1. USCIS will mail you a receipt after they receive your application. Make sure to keep the receipt for your records.
2. Use the receipt number on your receipt to track the status of your application online.
3. If you have questions about your application, you can make a free Infopass appointment to visit a

USCIS office and speak with an immigration officer.

Tips for Working with an Attorney or Accredited Representative

If you're working with an attorney, check with the state bar association to verify that the attorney is eligible to practice in—and is a member in good standing of the bar of the highest court of—any U.S. state, possession, territory or commonwealth, or the District of Columbia.

- If working with a non-attorney, verify whether the individual is an accredited representative of an organization recognized by the Board of Immigration Appeals (BIA).
- Know the law in your state. Some states have specific laws regulating immigration consultants.
- If you are unsure whether your immigration service provider is giving trustworthy advice, do not hesitate to seek a second opinion. When doing so, always work with a licensed attorney or BIA-accredited representative.

Learn the warning signs of immigration services scams by visiting the USCIS Common Scams page.

Before Your Child Immigrates to the United States

If the child you adopted or intend to adopt in the United States is residing abroad, the child will need an immigrant visa to enter the United States. Visas are issued by the U.S. Department of State (DOS) at the Embassy or Consulate in the foreign country where your child resides.

The type of visa your child is issued will determine what steps you need to take for the child to acquire U.S. citizenship. If your adopted child is already in the United States, visit the "Other Adoption Related Immigration page."

Visas

Visa types for Hague Adoptions:

- IH-3 visa: Issued for children with full and

final adoptions from a Hague Convention country.

- IH-4 visa: Issued when a child is coming to the United States from a Hague Convention country to be adopted.

Visa types for Orphan (Non-Hague) Adoptions:

IR-3 visa: Issued when a full and final adoption is completed abroad:

- Requires that the parent (if unmarried), or at least one parent (if married) physically see the child prior to or during the adoption proceedings.

IR-4 visa: Issued to a child that:

- is coming to the United States to be adopted.
- was adopted abroad by only one parent (if married).
- was not seen by the parent(s) prior to or during the adoption.

Visa types for Other Adopted Children:

- IR-2 visa: Issued to a child:
- adopted by a citizen if the child immigrates to the U.S. while unmarried and before his or her 21st birthday.
- after the child's 21st birthday, if he or she is treated under the Child Status Protection Act (as if he or she were still under 21).

Child Citizenship

For more information on the Child Citizenship Act see the Child Citizenship Act Information Fact Sheet.

Children with IR-3 and IH-3 visas automatically acquire citizenship if:

- they enter the United States prior to their 18th birthday.
- they are under 18 years old they are automatically U.S. citizens upon admission to the United States.
- they reside in the United States with their parents (U.S. government or military personnel assigned overseas may qualify as residing in the United States).

For IR-3 and IH-3 cases, we will automatically send your child's Certificate of Citizenship to your U.S. address without requiring additional forms or fees.

Children with IR-4 and IH-4 visas:

- do not acquire automatic citizenship upon entry to the U.S., but instead become Permanent Residents.

- will automatically receive a permanent resident card (green card).

- will automatically acquire citizenship on the date of their adoption in United States if the adoption occurs before the child's 18th birthday.

Children with IR-2 visas that are:

- under 18 years old automatically acquire U.S. citizenship upon entry to the United States if they reside in the United States with their parents (U.S. government or military personnel residing overseas may qualify as residing in the U.S.).

- over 18 years old become permanent residents and receive a green card.

- Children with IR-2 visas who did not automatically acquire U.S. citizenship can apply for naturalization when eligible.

Allen E. Kaye is the President of the Law Offices of Allen E. Kaye and Associates and Of Counsel to Pollack, Pollack, Isaac and DeCicco. He is a past National President of the American Immigration Lawyers Association and Co-Chair of the Immigration Committee of the Queens County Bar Association. He has been selected by Martindale-Hubbell as a 2014 "Top Rated Lawyer" in the practice of Labor and Employment (for Immigration).

Questions for publication may be sent to Mr. Kaye at 225 Broadway, Suite 307, and New York, N.Y. 10007 or by email at AllenEKaye5858@gmail.com or aek@ppid.com



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

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Sex Trafficking in the 21st Century

By: Juanita Headley

Human trafficking was one of the subjects of discussion at the Criminal Law VII Update panel on March 10th, 2016, with speakers Dr. Anita Ravi, founder of the Purpose, Listen and Engage Clinic (PurPLE), and Taina Bien-Aime Esquire, the Executive Director of Coalition Against Trafficking in Women (CATW).

Human trafficking is frequently described as a form of “modern-day slavery” where individuals are bought and sold for labor or sexual services.¹ This contravenes with the Universal Declaration of Human Rights that “[e]veryone has the right to life, liberty and security of person,”² and that “[n]o one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”³

Article 3(a) of the Palermo Protocol provides the following definition:

“[T]rafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include...the exploitation of the prostitution of others or other forms of sexual exploitation....”⁴

Sex trafficking is a rapidly growing criminal enterprise which is lucrative because of its hidden nature.⁵ It is an underground activity that often goes undetected because the exploited individual rarely identifies themselves as a victim, and the perpetrators frequently operate as part of an enterprise.⁶

As a result, there is an inability to accurately quantify the number of trafficked victims. However, the International Labor Organization estimates that 4.5 million individuals become victims of sex trafficking worldwide.⁷

Human trafficking does not discriminate but is a global problem affecting domestic and foreign victims both male and female.⁸ Women and girls are primarily sold into the commercial sex industry, where a high price is paid for the sale of their virginity.⁹ Whilst forced marriages and prostitution are some of the other forms of sexual exploitation experienced in India, S. America and Eastern Europe.¹⁰

Women and girls are the most susceptible to transnational sex trafficking as a result of gender based discrimination.¹¹ Poverty and lack of education are also contributory factors that lead to the influx of victims from the developing world to Western Europe, North America, and Western Asia.¹²

Trafficking in the U.S. can take many forms. It is not merely limited to pimps but can include criminals who are part of a highly organized syndicate that may extend beyond state and country borders.¹³

Traffickers prey upon those who are vulnerable, impoverished, abused and alone.¹⁴ This often includes runaway children who may have been exposed to substance misuse, are victims of domestic violence, sexual abuse and neglect.¹⁵ They are lured into the sex trade by a pimp who usually plays the role of a caring boyfriend, providing accommodation, giving gifts and demonstrating love and affection.¹⁶ This



then sets the stage for gentle persuasion into prostitution which may begin as a favor toward friends, and then progressing to patronizing strangers as a contribution to living expenses.¹⁷

Foreign victims however, if not abducted or kidnapped, are typically ensnared by traffickers and recruiters posing as reputable agents.¹⁸ Advertisements are strategically placed in newspapers or online giving false promises of overseas employment opportunities.¹⁹ The unsuspecting victims are then transported to the foreign country, stripped of their documentation, placed in deplorable conditions and forced into prostitution often to pay off an excessive debt.²⁰

Victims are frequently subjected to violence and threats of violence towards themselves and members of their family, as a means of a trafficker maintaining power and control.²¹ This is in addition to the introduction, use and withholding of drugs and alcohol that serves to pacify and numb the victims, while keeping them complicit.²²

The physiological effects created by drug and alcohol dependency, systematic physical abuse, solitary confinement, and inflicted trauma are likened to that of concentration camp inmates.²³ Therefore, unsurprisingly, studies have shown that an alarming number of victims experience post-traumatic stress disorder, memory loss, fatigue and mental health systems.²⁴ This is notwithstanding the gynecological disorders, including HIV/AIDS that are contracted as a result of sexual exploitation, which was a topic of discussion at the Criminal Law VII Update panel on March 10th, 2016.²⁵

Dr. Anita Ravi, founder of the Purpose, Listen and Engage Clinic (PurPLE), provided an overview of sex trafficking from a health perspective. Her work as a family physician working with survivors of sexual trauma including inmates at Rikers Island has been a tremendous success. She inspires hope and instills courage in her patients who have been at the brink of despair, isolated and criminalized by a justice system that blames the victims and not the initiators and recruiters of the crime.

Dr. Ravi's passion for the work she does was beyond evident during her speech which ricocheted throughout the meeting hall, leaving those in attendance with much food for thought. She provided a number of detailed accounts of victims' stories which were incredibly uncomfortable to hear, but made the reality of what many women face all the more real.

Taina Bien-Aime Esquire, the Executive Director of Coalition against Trafficking in Women (CATW), was another phenomenal panelist that evening. With a wealth of knowledge and over two decades of experience defending the rights of women and girls, she discussed the evolution of the trafficking legislation and the impact that it had made to the victims.

Ms. Bien-Aime began her discussion by defining human trafficking so as to immediately dispense of any myths or preconceptions the audience may have held. She then proceeded to explain the Trafficking Victims Protection Act and the amendments that led to the Justice for Trafficking of Victims Act. Her concluding remarks were state focused as she described the New York State Human Trafficking Act (2007) and New York State's Trafficking for Victims Protection and Justice Act (2015).

continued on p.25

1. Theodore R. Sangalis, *Elusive Empowerment: Compensating the Sex Trafficked Person Under the Trafficking Victims Protection Act*, 80 *FORDHAM L. REV.* 403, 407 (2011).
2. “The Universal Declaration of Human Rights,” article 1 (December 10, 1948) found at <http://www.un.org/en/documents/udhr/>
3. “The Universal Declaration of Human Rights,” article 4 (December 10, 1948) found at <http://www.un.org/en/documents/udhr/>
4. “The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” supplementing the United Nations Convention against Transnational Organized Crime, article 3 (a) (November 15, 2000) found at <http://www.20hchr.org/english/law/protocoltraff.html>
5. Jill L. Goodman, “Lawyer’s Manual on Human Trafficking: Pursuing Justice for Victims,” ed. Jill Laurie Goodman and Dorchon A. Heidholdt (), (2011), at 1
6. *Id.*
7. International Labor Organization (ILO), *ILO 2012 Global Estimate of Forced Labor: Executive Summary 1* (2012)
8. *Supra* note 5, at 2.
9. *Id.*
10. *Id.*
11. *Id.* at 7.
12. *Id.*

Book Review

Commercial Litigation in New York State Courts, Fourth Edition

By: Paul E. Kerson*



"Score another point for the QCBA in the preparation of the most comprehensive legal treatise of our time."

Once again, Bob Haig has made our entire profession proud. The Fourth Edition of Commercial Litigation in New York State Courts is actually a comprehensive treatment of the Law Itself. This ought to be required reading in every law school in the State.

There are chapters on every topic: Jurisdiction, Venue, Investigation, Case Evaluation, Complaints, Answers, Third Party Actions, Specific Performance and Rescission, Removal to Federal Court, Comparison with Federal Courts, Forum Selection Clauses, Choice of Law Clauses, Joinder, Consolidation and Severance, Coordination of State and Federal litigation, Issue and Claim Preclusion, Provisional Remedies, Parties, Foreign Companies as parties, Class Actions, Preliminary and Compliance Conference Orders, Bills of Particulars, Disclosure, Sealing Court Records, Depositions, Document Discovery, Interrogatories, Requests for Admissions, Experts, Motion practice, Summary Judgment, Calendar Practice, Referees and Special Masters, the Commercial Division, Settlements, Jury Selection, Motions in Limine, Trials, Trial preparation, Opening Statements, Presentation of the case, Cross-examination, Graphic evidence, admissibility, final arguments, Jury Verdicts and Instructions, Compensatory Damages, Punitive Damages, Trial and Post-trial motions, Judgments, Bankruptcy, Attorney's fees, Costs and Disbursements, Sanctions, Appeals, Enforcement of Judgments, Negotiations, Mediation, Arbitration, and International Arbitration.

You thought I was finished. We are only half-way through. Bob's got more chapters on: Litigation avoidance, Crisis Management, Streamlining litigation, Litigation management by corporations and law firms, litigation technology, pro bono, ethics, civility, contracts, insurance, reinsurance, Workers Compensation, Bank Litigation, Letters of Credit, Collections, Employment cases, Sale of Goods, Warranties, Bills and Notes, Secured Transactions, Agency, Partnerships, Trade Associations, Products Liability, Mergers and Acquisitions, Securities Litigation, Securitization and Structured Finance, Derivatives, Shareholder derivative actions, Director and Officer liability Non-for-Profit Institution litigation, Health Care Institution litigation, Broker-dealer cases, Professional liability cases, Medical malpractice, Franchising, Antitrust litigation, White collar crime, Commercial and Criminal litigation, Theft or loss of business opportunities, Misappropriation of Trade Secrets, Intellectual property, Licensing, Right of Publicity Claims, Privacy and Security, Commercial defamation, Consumer protection, E-commerce, Social Media, Information Technology litigation, Governmental entity litigation, CPLR Article 78 proceedings, Tax, Commercial Real Estate, Land Use Regulation, Commercial Leasing, Construction Dispute Resolution, Project finance and infrastructure, Entertainment, Sports, Energy, Environmental and Toxic Tort litigation and Surrogate's Court.

This work is a monumental achievement. No, Bob did not write this himself alone. It was a joint project of our sibling Bar Association, the New York County Lawyers Association and Thomson Reuters f/k/a West

Publishing Company. Various chapters were written by leading Judges, including former Chief Judge Jonathan Lippman, Judge Robert Smith, Judge Michael Mukasey, Justice Helen Freedman, Justice Linda Jamieson, Justice Deborah Karalunas, Justice Timothy Driscoll, Justice Saliann Scarpulla, Judge William Kuntz II, Judge Brian Cogan, Justice Cheryl Chambers, Justice John Curran, Justice Emily Pines, Judge George Bundy Smith, former Chief Judge Judith Kaye, Judge Barry Ostrager, Judge Lawrence Marks, Justice Richard Andrias, Justice Ellen Coin, Justice Eugene Fahey, Justice Elizabeth Hazlitt, Justice James Catterson, Justice Karla Moskowitz, Justice Thomas Dickerson, Judge Victoria Graffeo, Justice Alan Scheinkman, and Judge Colleen Duffy.

And now a point of Queens County Bar Association pride: Our member Justice Martin Ritholtz wrote Chapter 65 on "Techniques for Expediting and Streamlining Litigation." Actually, Justice Ritholtz summed up the whole idea on page 1186 of Volume 4A: "Justice Delayed is Justice Denied." He attributes this thought to British Prime Minister William Gladstone. (Special note: This idea, word for word, is in various editions of the Passover Haggadah, approximately 3000 years old).

Justice Ritholtz goes on to tell us: "The common law has long recognized that speed is essential to justice. A corporate defendant, which must list its exposure in its quarterly reports, may suffer as much from the pendency of litigation as from its conclusion." At page 1181, "the author also wishes to acknowledge the efforts of Howard L. Wieder, his Principal Law Clerk, who assisted in the legal research." Score another point for the QCBA in the preparation of the most comprehensive legal treatise of our time.

A third, fourth and fifth point of QCBA pride: Justice Orin Kitze co-wrote Chapter 120, Commercial Leasing. He discusses "strategic issues and substantive law governing disputes involving commercial leases of real property". See Volume 4E, page 597. And at page 649, Justice Kitze explains "Yellowstone injunctions" named for property on Yellowstone Boulevard in Forest Hills, where "a commercial tenant ...seeks to preserve the status quo when the landlord seeks to terminate the lease because of an alleged default by the tenant." See 21 N.Y. 2d 630 (1968).

And finally, at page 595, "Justice Kitze gratefully acknowledges Cassandra A. Johnson, Esq. as his principal law secretary, for her invaluable assistance and substantial contribution to this chapter."

Bob Haig has the profound thanks of the entire New York Bar for supervising the preparation of this nine volume masterpiece. Our members Justice Ritholtz, Justice Kitze, Howard Wieder and Cassandra Johnson bring honor to the QCBA for their contribution to this effort.

*Editor's Note: Paul E. Kerson is a Past President of the Queens County Bar Association and a partner in the firm, Leavitt & Kerson.

APPLICATION FOR MEMBERSHIP

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

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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:

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GOLF AND TENNIS OUTING

by David Louis Cohen, Chair Golf Outing



Attendees at Dinner of the Golf Outing.



David Cohen making announcements.



David Cohen with Frank Livoti, President of the Garden City Country Club.



Kathleen Gallo, one of two winners of the Closest to the Pin award with David Cohen.

The Annual Queens County Bar Association Golf and Tennis Outing was held on September 12, 2016, at the Garden City Country Club. This Outing helps to fund the Queens Volunteer Lawyers Project, which provides free legal services to residents of Queens County who cannot afford counsel in civil matters. Over 90 golfers, tennis players and dinner guests had a most enjoyable day. The weather cooperated and the staff at the Club made sure that a great time was had by all.

We are most grateful to our sponsors whose participation enables us to run a first class event. Investors Bank and Empire Bail Bonds sponsored the dinner and we are most grateful to them for their generous support. Thanks to Big Apple Abstract and the Orlow Law Firm for sponsoring the Brunch. Thanks also to Real Time Reporters for the "goody bags" that were given out at check-in. Thank you to Signature Bank, Deitz Court Reporting and Duffy and Posillico Court Bond Agency for donating prizes for our raffle. The Golf Committee offers a special thank you to Joseph Risi who arranged for the use of the Garden City Country Club and for his sponsorship of the Putting Contest.

Our Tee Sponsors were: Crowley & Kaufman, Esqs., Duffy & Posillico Court Bond Agency, NAM, Hankin & Mazel, Esqs., Flushing Bank, Phillip J. Rizzuto, Esq., Appeal Tech, Subin & Associates, Deitz Court Reporting, and East Coast Appraisals, Diamond Court Reporting, CBS Insurance, Applied Forensics, Zuniga & Rinaldi, Esqs., Donna Furey, Esq., KSL Funding and Litman & Litman, PC. Please, if you are able, utilize the services of our sponsors. We at the QCBA and all those who attended the Outing thank you for your continuing support of this event.

Our prize winners were:

President's Cup - Low Gross Member - Robert Miller
Low Gross Guest - Will Cheshire
Closest to the Pin - Joshua Katz and Kathleen Gallo
Long Drive - Jon Marciani and Kristen Reed

I hope you all had a wonderful time and we look forward to seeing you next year on September 11, 2017 - Garden City Country.



Robert Miller, winner of the President's Cup, and David Cohen.



President Greg Brown addressing the attendees of the Golf Outing.



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Sex Trafficking continued...

The uncertainty that enshrouded human trafficking is becoming a thing of the past as greater awareness is being raised amongst communities worldwide of this crime of exploitation. Globally more is being done to protect and assist foreign victims' who would experience re-victimization, prosecution and deportation. Victims are being given a voice and their stories are being heard.

The preconception that prostitution is glamorized "sex work" is slowly fading and the focus is being shifted towards the procurer and agent of prostitution. It is therefore the responsibility of legal professionals and policy makers to form a united front that will see the criminal justice system penalize the perpetrators of sex trafficking.

Education, research and the training of health care providers, social workers and law enforcement will aid in the identification and rescue of victims when they come in contact with the system. The exploited women will be humanized and no longer viewed as outcasts of society; instead they will be viewed as survivors, survivors of misfortune, mistreatment, and abuse.


It is the dream of these survivors and every trafficking activist to see the eradication of human slavery.

Bio

Juanita Headley is a volunteer attorney with ECPAT-USA (End Child Prostitution, Child Exploitation, and Trafficking of Children for Sexual Purposes). She also serves as a member of

the New York City Bar Association's Domestic Violence Committee and is Co-Chair of the Anti-Trafficking subcommittee. Miss Headley was educated in Switzerland and England, but dedicated to serve the indigent community around the world. She

has volunteered in Thailand teaching English, in Japan as a tsunami relief worker, and in the Philippines with child victims of sex trafficking. She is currently serving throughout India as a volunteer in various anti sex trafficking programs.



From Left: Taina Bien-Aime, Executive Director of Coalition against Trafficking in Women; Dr. Anita Ravi, Founder of the Purpose, Listen and Engage Clinic; Juanita Headley, Volunteer Attorney at ECPAT-USA.

13. Id. at 6
14. Id. at 9.
15. Id. at 8.
16. Id. at 9.
17. Id.
18. Id. at 8.
19. Id.

20. Id. at 9.
21. Id at 10.
22. Id. at 11.
23. Id. at 11-12.
24. Id. at 12.
25. Id.

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Anthony is a real estate professional with a core belief in integrity, professionalism and efficiency. He launched his career in the real estate industry after being a top negotiator for over 20 years with local unions. His flawless ability to rectify any and all contractual problems, renovations and construction timelines provides him with immediate results for his clients and customers. Anthony specializes in residential, commercial and new construction homes. He joined the board of directors for the Western Queens Chapter for the Long Island Board of Realtors in 2013.

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