

# Queens

## BAR BULLETIN

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

Oct. 2021 | Volume 89, No. 1

## Estate Update 2021

By David N. Adler



The year in Trusts and Estates was highlighted by the introduction of a new Power of Attorney Form, continuation of virtual witnessing of wills, and the ongoing viability of updating planning documents in light of anticipated changes in taxation.

### Power Of Attorney

After approximately ten (10) years of utilizing the current form, as of June 14, 2021 a new Power of Attorney form was effectively sanctioned. (GOL§5-1501) There had been numerous complaints with the older form, which contained shifting gift options requiring a separate Statutory Gift Rider, and different execution formalities for both the Power of Attorney and the Rider. In the present format some level of uniformity and continuity is maintained. There is only one document as the Statutory Gifts Rider has been abandoned. The basic format is similar to the prior form with the exception that any modifications expanding gift giving of any sort must be initialed and enumerated on the Power of Attorney form itself (generally section (g) certain gift transitions and section (h) modifications). In the event that no gifting modifications are specifically authorized, the agent's

authority to make gifts totaling \$5,000.00 in a calendar year is part of the basic document, an increase from the prior form's basic gifting amount of \$500.00.

The new statute indicates that substantially compliant language is permissible, instead of the exact statutory wording. Further, the new statute provides for permitting damages to be recoverable against those who unreasonably refuse to accept a valid Power of Attorney. Finally all Powers of Attorney properly executed by the principal prior to the date of the new form will be grandfathered in as valid.

Certain amendments to this new law are being proposed by the New York State Bar Association. The amendments, yet to be enacted, primarily affect default gifting provisions limiting the effect on beneficiaries of certain financial vehicles (bank accounts, insurance contracts, and retirement plans) unless specifically granted under the modifications section. The modifications section, may, as under the prior Statutory Gifts Rider, confer a broad range of gifting power, including the authority to create or terminate trusts, and make statutory elections, disclaimers and renunciations.

### Virtual Witnessing

The Virtual Witnessing law, originally introduced by Governor's Executive Order, and discussed in last year's Update, remains in full force and effect. The first will admitted to Probate under this law was the will in *Matter of Ryan* (2021 NY Slip OP 21010(Surrogate's Court, Broome County, January 25, 2021)) The Surrogate found that the remote execution ceremony satisfied the requirements of EPTL§3-2.1. Although the witnesses were not physically present in the same room as the testator, the utilization of a cell phone camera, and computer provided the statutory connection. The witnesses signed the attestation clause on the same date as the testator, and the publication requirement was clearly effected. Here, the witnesses signed the original signature page in the will, (as the attorney/draftsman's office was nearby), but the Executive Order would have permitted the witnesses to sign an electronically transmitted copy of the signature page in order to be valid.

### Taxation

The present federal exemption amount is \$11,700,000.

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# The Docket

Being the official notice of the meetings and programs listed below, which, unless otherwise noted, will be held at the Bar Association Building, 90-35 148th Street, Jamaica, NY. Due to unforeseen events, please note that dates listed in this schedule are subject to change. More information and changes will be made available to members via written notice and brochures. Questions? Please call 718-291-4500.

## CLE Seminar & Event listings

### OCTOBER 2021

Wednesday, October 6	CLE: Immigration Judicial Review - 5:30 pm
Monday, October 11	Italian Heritage/Indigenous People's Day - Office Closed
Wednesday, October 13	CLE: Immigration - U Visas - 5:30 pm
Tuesday, October 19	CLE: Recent Significant Developments from Our Highest NYS Appellate Courts
Thursday, October 21	Happy Lawyer Program by Professional Development Committee

### NOVEMBER 2021

Tuesday, November 2	Election Day - Office Closed
Thursday, November 4	CLE: No Fault Update - 1:00 pm
Thursday, November 11	Veteran's Day - Office Closed
Monday, November 15	CLE: Successfully Handling a Consumer Ch 7 Case 5:00 pm
Tuesday, November 16	CLE: Search Warrant & Subpoenas - 6:00 pm
Wednesday, November 17	CLE: Landlord & Tenant Update 2021 - 5:00 pm
Thursday, November 18	CLE: Estates Update - 1:00 pm
Tuesday, November 23	Friendsgiving Event
Thursday, November 25	Thanksgiving Day - Office Closed
Friday, November 26	Thanksgiving Holiday - Office Closed

### DECEMBER 2021

Wednesday, December 8	CLE: QDROS 5:00 pm
Friday, December 24-31	Office Closed

### JANUARY 2022

Monday, January 17	Martin Luther King, Jr. Day - Office Closed
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### UPCOMING SEMINARS

Family Law Committee CLE's  
Young Lawyers Committee Events

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# New Members

Sean C. Acosta	Jeffrey Greenwood	Mason T. Luke
Jeremy D. Barberi	Aimee Fournier Greer	Norma E. Ortiz
Kimberly Baylis	Turquoise Haskin	Sandra Perez
Johnathan E. Buckley	Barbara Jane Hutter	Jonathan R. Ratchik
Hardeep P. Chauhan	Paul A. Kalker	Fabiola Robles
Alexander J. Coffin	David Kravetz	Michael D. Siff
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Luis A. Flores	Sara Leston	
Fabiola J. Gilles	Robert Litwack	

# Necrology

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# President's Message: QCBA Goes Forward



Dear Members,

This happens to be my first written address for the Bar Bulletin and already a quarter of my term is complete. The surreal nature of the outside world gives us a unique perspective; the changes around us—whether social, political, technological, scientific, economic or otherwise—require that we help our clients navigate through new and increasingly complex legal landscapes, which profoundly impact the clients we serve. Things are weird and different and great all at once. Like life, things are messy and beautiful; off putting and magical.

As I enter my year as President, I notice that our Association has never been more relevant and important for those of us practicing in Queens.

In the year ahead, we will continue our Historical initiatives, as well as adding programming designed for the different stages of your career, for mental health and well-being, virtual programming, and events held in collaboration with other associations in the County and beyond.

As Summer ends and Fall begins, we have a beautiful season ahead, that is both rich in tradition and also promises new beginnings; a perfect time to reflect and embrace change. Masks on, we embrace the challenges that face us. In order to grow and move forward, it is important to be open to change. At the Association we are striving to honor our traditions and to embrace new ones. We are finding new ways to continue our work of fostering a sense of community, and to work on programs and initiatives that will serve to enrich our members. We are having in person events when possible and appropriate like our Young Lawyers Reception in July and our Annual Golf Outing in September which was the best attended event in years. We are forg-

ing ahead with Zoom CLE programs and monthly zoom meetings. We are having health and wellness events scheduled and Nuts and Bolts programs are already on the agenda.

On October 19, 2021, the Association will hold an annual stated meeting, "Recent Significant Decisions and Developments from our Highest Appellate Courts." Make sure that the Association has your current email as we send out notices of all our events. We are slowly rolling out CLE programs, sponsorship opportunities and fun social events.

I want to emphasize the good works of our 45 Committees and implore members to take active participation in one or several of the Committees that align with your interests. Seek to be part of the leadership, participate in meetings and attend CLE programs. Nearly all of the Committees have been revamped with new Chairs or Co-Chairs and the addition of Vice-Chairs from historically under-represented communities and in order to be more inclusive we need the active participation of all of our members. We have reignited the Bankruptcy Committee under the leadership of Co-Chairs James Pagano and Norma Ortiz; the Honorable Valerie Brathwaite-Nelson has graciously committed to be Co-Chair of the Appellate Practice Committee and is running the October program; Joseph Carola and Rich Gutierrez have become Co-Chairs of the newly created By-Laws Committee. And to round out our highlights, the Academy of Law is now spearheaded by new Dean Michael D. Abneri who replaced previous Dean Gary Miret when he was appointed a Court of Claims Judge! We also have newly appointed Associate Deans Hamid Siddiqui, Violet Samuels and Kristen J. Dubowski-Barba along with established Deans

Judge Gavrin and Les Nizin.

I wish to thank the members of our Judiciary Committee and Chair Les Nizin who coordinated the virtual interviews of judicial candidates that sought our qualification this past summer. Judiciary Committee members interviewed the applicants, contacted references and attorneys who appeared before or worked with the applicants and then reported on their findings. The entire committee met over several evenings during the past month. It is a huge undertaking that takes a good deal of time. All involved deserve our thanks for a job well performed.

Thank you, members, for your continued participation and enthusiasm in our professional community, and sponsors for your incredible support.

I want to give a special shout-out of appreciation to our new Executive Director, Jonathan Riegel for his tireless work on behalf of the QCBA.

I also want to thank our immediate past President Cliff Welden for his leadership and steady hand during an unprecedented term.

The Association is here to serve you, its members; without you we would not exist. As President, I am committed to welcoming, promoting and supporting people of diverse cultures, experiences, and backgrounds in our Association. The Association is the forum where you can come and share ideas, and get support to advocate for the well-being of yourselves and the members of the legal profession. We encourage you to come and participate and invite your colleagues. You are more than welcome.

Stay safe and well. Live in the magic.

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**FRANK BRUNO, JR. | PRESIDENT**





## Parkinson's Disease, Chase For A Cure, And Medical Malpractice - a human interest story

By Leonard L. Finz

Dr. Jones (a fictitious name), was a brilliant young neurosurgeon. He became a neurosurgical rock star overnight and was heralded as the scientist who finally developed the cure for Parkinson's disease (PD). PD is an insidious disease that affects the central nervous system caused by damage to nerve cells in the brain. From the 200,000 new victims each year, you will hear and see that there are multiple tremors, spontaneous spasms, and uncontrollable body movements. A fancy medical term for these responses is called dystonia. But enough of that! Back to Dr. Jones...

First described by James Parkinson in 1817 (although it dates back to ancient times), there has never been a cure. That is, not until Dr. Jones announced to the world (some years ago), that he uncovered the key that would unlock a debilitating neurological disease that cruelly so compromises the human body machine as to lead a victim of PD to an early death through its complications. As stated, there had never been a cure for PD, until Dr. Jones made his spectacular announcement to the scientific world, that finally, he had discovered one!

Invited to address dozens of neurological science groups throughout the world, he was like a gold medal champion Olympic runner who crossed the finish line while others were still far back. Yes, indeed! Dr. Jones was marveled as a genius who at last found the cure for Parkinson's disease. And here it is-but, was it a cure, or a curse?...

Briefly stated, after enormous research of that portion of the brain that controls body movements, Dr. Jones reached his remarkable conclusion. If he could destroy the specific brain cells that triggered the tremors, spasms, and uncontrollable body move-

ments, he would be on the right track toward finding a cure for PD. His theory was to destroy the bad acting cells, and, he postulated, it should then produce an extraordinary beneficial result. With that plan, he gathered a number of seriously affected PD volunteers to validate his theory. These severely compromised patients, all of whom gave their consent, made up the participants for his clinical trials. He began with one whose tremors were violent, and had him admitted to the hospital in which Dr. Jones had privileges. Once in the OR, Dr. Jones, with nurses and assistants, began his surgery as follows...

Using multiple intersecting cameras, he started with what was called stereotactic surgery. In essence, the cameras produced a series of intersecting lines all aimed at the bad target cells in the brain (almost akin to a bombardier of a B29). As he zeroed-in onto the precise spot, he then used a drill-like tool and drilled a hole through the skull that would line up exactly with the intended target. Once accomplished, he inserted a thin cannula (similar to a straw) into the hole opening until it made contact with the offending brain cells. The procedure was all guided by the various intersecting cameras. Next, he performed cryosurgery (frozen nitrogen) by introducing the frozen nitrogen into the cannula which showered the targeted brain cells in order to destroy those responsible for the Parkinson tremors.

Amazingly, within weeks, all such patients who received the experimental surgical procedure, reported that their tremors and uncontrollable body spasms had miraculously vanished. It was an incredible find enabling Dr. Jones to announce to the scientific world community that he discovered the cure for Parkinson's. Stardom followed! He was the talk of world re-

nowned scientists! Many called him a "boy wonder" and a sure candidate for the Nobel Prize!

But, now, the curse... after many months following cryosurgery, the tremors and uncontrollable body movements started to return- only worse than what the patients suffered prior to the surgery. Many developed garbled speech that was not understandable. In addition, some were unable to maintain their balance as a result of the new violent body movements they now encountered. Aside from these unfortunate results, those patients operated upon by Dr. Jones suffered the same disastrous results, many of whom brought malpractice suits against him. Eventually, a number of such cases proceeded through the court system. Research discloses that all were settled for fairly substantial amounts at the time.

With it all, and despite Dr. Jones's native brilliance and meritorious intentions, he had driven on the wrong side of the road that led him to an unfortunate destination. As such, with stardom that evaporated, he was withdrawn from scientific adulation. And as the final curtain dropped, the distressful truth remained- that even to this day there still is no cure for Parkinson's disease!

END OF STORY!

"A GOOD INTENTION DOES NOT DEFEND A BAD RESULT"

*Leonard L. Finz, age 97, is a former New York State Supreme Court Justice (Queens), a decorated WWII Veteran (1st. Lt., Field Artillery, Philippines), Peer-Reviewed as "One of America's Preminent Lawyers", and the Founder of Finz & Finz, P.C.*



## Editor's Note

# The Legal Solution to the COVID-19 Pandemic

By Paul E. Kerson

The nation is going in reverse. The COVID-19 Pandemic hit us hard in March 2020 and for many months thereafter.

The Federal Government subsidized a breathtaking research program by Pfizer-BioNTech, Moderna and Johnson & Johnson/Janssen, and these companies miraculously came up with vaccines that can successfully prevent a vaccinated person from catching the disease, and/or from its severity.

In an unbelievable turn of events, there are actually people who refuse to get this vaccine, thereby endangering all of the rest of us.

Even more unbelievable, the Governors of Florida and Texas are making every effort to prevent the use of these coronavirus vaccines in their states, two of the most populous in the nation.

The U.S. Congress is nearly evenly divided along partisan lines. Thus, the U.S. Justice Department cannot bring these craven governors to Federal Courts to seek Court Orders compelling them to attend to public health and safety. Because it is nearly impossible to impede interstate traffic, anti-vaccine governors are a threat to the entire nation's health and safety.

What to do when the Federal Executive Branch is paralyzed by political instability, and the public health of the nation hangs in the balance?

The private bar must step up to the plate, and hit this ball out of the park.

Health Commissioners, Medical School Deans and Hospital Presidents around the nation must be drafted as plaintiffs to seek enforcement of the clear instructions of the U.S. Government's Centers for Disease Control and Prevention (CDC):

"Vaccines are now widely available. In most cases, you do need an appointment. Do not wait for a specific brand. Learn how to find a COVID-19 vaccine so you can get it as soon as you can.

All currently authorized and recommended COVID-19 vaccines:

- \*are safe
- \*are effective, and
- \*reduce your risk of severe illness."

(See Google, CDC, COVID-19, Sept. 1, 2021) emphasis added.

Article I, Section 8 of the United States Constitution states that the U.S. Congress "shall have Power...to regulate Commerce with foreign Nations, and among the several States and with the Indian Tribes..."

The CDC was created by Congress. Where the U.S. Justice Department cannot enforce its public health instructions during a crisis, we Citizens must act.

In *The Great Atlantic & Pacific Tea Co. v. Cottrell*, 424 U.S. 366, 96 S.Ct. 923 (1976), a supermarket chain challenged Mississippi's wrongful effort to exclude Louisiana dairies from selling milk in Mississippi. The State of Mississippi refused to allow Louisiana dairies to sell milk in Mississippi unless the State of Louisiana signed a reciprocity agreement allowing Mississippi milk producers to sell milk in Louisiana.

No, no, Mississippi, said the U.S. Supreme Court: "...we hold that the mandatory character of the reciprocity requirement...unduly burdens the free flow of interstate commerce and cannot be justified as a permissible exercise of any state power." See 424 U.S. at 381.

In *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 79 S.Ct. 962 (1959), several private trucking companies challenged Illinois' statute requiring contour rear fender mudguards on interstate trucks, a requirement not imposed by other states.

No, no, Illinois, said the U.S. Supreme Court: "Yet the heavy burden which the Illinois mudguard law places on the interstate movement of trucks and trailers seems to us to pass the permissible limits even

for safety regulations." See 359 U.S. at 530.

Fred Darby was indicted by the U.S. Justice Department for refusing to pay minimum wages and refusing to pay overtime to workers in his Georgia lumber yard. The U.S. District Court in Georgia dismissed the indictment under the Fair Labor Standards Act, 29 U.S.C. Sec. 345.

No, no Mr. Darby, said the U.S. Supreme Court:

Congress can "exclude from interstate commerce goods produced...under conditions detrimental to the maintenance of the minimum standards of living necessary for health and general well-being..." See *U.S. v. Darby*, 312 U.S. 100 at 109-110, 61 S.Ct. 451 (1941).

In their rulings in *Great Atlantic & Pacific Tea Co.*, *Bibb and Darby*, cited above, the U.S. Supreme Court has made it perfectly clear that the Governors of Florida and Texas cannot get away with this official threat to the public health.

Darby especially makes it clear that "conditions detrimental to the maintenance of the minimum standards of living necessary for health and general well-being" will not be tolerated by our Court System where interstate commerce is concerned. See 312 U.S. at 109-110.

Our road map to national recovery is clear: Every State, City and County Health Commissioner, every Medical School Dean, and every Hospital President in the country must haul every anti-vaccination public official into their local U.S. District Court seeking a Court Order that the CDC's instructions to us all must be immediately enforced pursuant the U.S. Supreme Court's rulings in *Great Atlantic & Pacific Tea Co.*, *Bibb*, and *Darby*, cited above.

These lawsuits will undoubtedly increase the vaccination rate. The private bar and our U.S. District Courts must stand up to those public officials who would cause needless sickness and death among our fellow citizens and residents for no good reason at all.





## White House Announcement: President Biden To Remove Travel Bans in lieu of Covid-19 Vaccination Proof starting November, 2021

Today, announced that it is plans to ease travel restrictions on all international travelers coming into the United States in a move to deter the spread of COVID-19 based on individuals, rather than restrictions placed on entire countries or regions. This implementation should start beginning in early November 2021. The President will rescind the current country specific restrictions in place that affect many countries, including India, South Africa, The UK & Ireland and Schengen Countries. This is a smart and more effective way to handle the covid pandemic and balance the need for international travel to the United States.

All international travelers will be required to prove that they have been fully vaccinated against COVID-19, as well as provide proof of a negative COVID-19 test within three days of boarding a flight to the United States. Which vaccines will be accepted will be determined by the CDC and posted for the public.

Limited exceptions such as for children;

COVID-19 vaccine clinical trial participants; and humanitarian exceptions for people traveling for an important reason and who lack access to vaccination in a timely manner will be available. Individuals who are exempted from the vaccine requirement may be required to be vaccinated upon arrival.

The administration will also be making additional recommendations to stop the spread of COVID-19, including 1) continuing the mask mandate through January 18, 2022; 2) expanding pre-departure and post-arrival testing requirements; and 3) implementing a contact tracing order for airlines.

United States International Travel Implementations:

- Starting in early November, foreign nationals traveling to the United States will be required to be fully vaccinated and to show proof of vaccination prior to boarding an airplane;

- The current requirement for everyone to show proof of a negative test taken within 3 days of boarding a flight will remain in place for all fully vaccinated travelers.

ed travelers.

- CDC will continue to strongly recommend against air travel by Americans who are not fully vaccinated; however, all unvaccinated travelers who return to the United States and are not fully vaccinated will be required to, prior to boarding an airplane:

- o Provide proof of a negative test result taken within one day of their departure;

- o Provide proof that they have purchased a viral test to be taken after arrival.

- CDC will also issue a Contact Tracing Order that will require airlines to collect comprehensive contact information for every passenger coming to the United States and to provide that information promptly to CDC upon request, to follow up with travelers who have been exposed to COVID-19 variants or other pathogens.

- These requirements will apply globally to all travelers (minus exceptions).

BY DEV B. VISWANATH, ESQ.



**DEV BANAD VISWANATH, ESQ**

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## 9/11 Service to Clients and Country

By Thomas J. Principe



September 11, 2001 began for me on the day before, because 9/10 pre-determined my movements on 9/11. On September 10, 2001 I had been in the US Army, either Army Reserve or US Army National Guard, for 27 years. On September 10, 2001 I had also been a lawyer for 27 years. My “civilian” job was as a partner in the law firm of Kramer, Dillof, Livingston & Moore, located in the Woolworth Building, which by the following day, September 11th, would lie within the Ground Zero perimeter. At Kramer, Dillof, we are advocates for the injured, committed to helping our clients get the justice they deserve.

On the morning of September 10th I was assisting a client of our firm, a profoundly disabled young woman who had suffered severe injuries from a ‘slip of the knife’ during spinal surgery. Due to her injuries, this young woman was paralyzed on one side of her body, and she also had an additional condition wherein the slightest touch to the skin on the affected side of her body caused terrible pain. Not only was her ability to move freely severely compromised from these injuries, but she was also in her fifth month of pregnancy. Her injuries were such that her obstetrician was unsure how her pregnancy would progress and how her labor might be complicated due to her paralysis. For many reasons, our client was in a delicate condition. This young client lived in Florida, but had traveled to the New York area, where she was staying with her brother in Westchester, so that she could give testimony at an Examination Before Trial (“EBT”), in which a person is sworn to tell the truth as if they are in court and their testimony is taken down by a court reporter. This EBT was taking place in our firm’s offices, on the 45th floor of the Woolworth Building. The EBT, her sworn testimony, went on all day in our office, with the attorney for the defendant doctor who had operated on her, and the attorney for the hospital where the operation took place asking question after question, relentlessly.

When it was nearing 5:00pm, the defense attorney asked for the client to be brought back for more questioning the following day, September 11th. I said that I would not want her to go through the struggle of going to Westchester that night and coming back to the office in the morning, if the court reporter could stay and continue recording the testimony, I would like everyone to stay until the questioning was finished so that she would not need to return to our office. The court reporter said that she could stay, and both de-

fense attorneys agreed that they could stay, so the EBT continued until about 7:30pm, when my client could leave without needing to return. I was then given an assignment for the next day which would be on Long Island, where I reside, to appear in court at 1:00pm.

On the morning of September 11, 2001, a few minutes before 9:00am, our home telephone rang. It was our neighbor asking my wife “Where is your husband?” because she knew that I worked in lower Manhattan. My wife replied that I was at home, with an assignment on Long Island. Our neighbor said, “Turn on your television, a plane just flew into the World Trade Center.” We turned on the television and saw the second airliner fly into the World Trade Center South Tower at 9:03am in real time. After grappling with what we had just seen, I decided that I should call Headquarters of 53d Troop Command in Valhalla, New York to ask how I was needed for National Guard service. Phone service was disrupted in various ways, and the Troop Command Headquarters telephone was busy. After constant re-dialing for over two hours, the telephone was answered and Chief of Staff (second in command under BG Edward Klein, Commander) Colonel Robert Edelman (now Brigadier General Retired) said two words: “Come in.” I put on my uniform, got into my civilian vehicle, and began the drive to 53d Troop Command Headquarters in Valhalla, New York. Every roadblock allowed me passage because 1) I was wearing my uniform, and 2) I was driving away from Manhattan instead of toward it.

Troop Command Headquarters was grappling with severe communication problems. The Trade Center Towers had been an enormous hub for wireless communication and all cell phone service was cancelled for miles around. As a result of that, the land lines were jammed with incoming calls, it was nearly impossible to make an outgoing call, and many officers and soldiers, including Commanders, were isolated from Headquarters.

Upon arrival in Valhalla on the afternoon of 9/11, I had a lot on my mind. It was decided that there would be a briefing in Valhalla at 7:00am each morning. I had been hoping to go to the Park Avenue Armory (“Park Avenue”) at 643 Park Avenue in Manhattan, because I was also the JAG officer for the 107th Support Group (the “107th”), commanded by Colonel (now Major General Retired) Stephen R. Seiter, who were headquartered at Park Avenue. Because time was too

short to try to get to Park Avenue with the comprehensive transportation shut-down, I decided to stay in Valhalla overnight to be present for the 7:00am briefing on September 12, 2001. I had brought my military sleeping bag and my military cot in the car with me, and I slept by my desk in a small partitioned cubicle in the Valhalla office area. Personnel all around me were working through the night, so sleep was fitful, but necessary.

During the 7:00am briefing in Valhalla on September 12, 2001, it was reviewed which troops had been deployed to which locations. Following the briefing, I drove to the 107th at Park Avenue, and from Park Avenue to Ground Zero to visit 53rd Troop Command troops. Ground Zero was like a “nuclear winter,” to borrow the words of LTC Mario Castigliola, Commander of the 101st Cavalry, headquartered in Staten Island, NY. On September 12th at Ground Zero it was hot in our uniforms, hot wearing our facemasks, and difficult to breathe once the facemask, the face, and the uniform became coated with the Ground Zero “dust”. The smoke, the smell and the silt were overwhelming and seemed suffocating. The sun was shining, but not within the newly-designated Ground Zero perimeter, which was a thick, murky haze, with the “Pit,” where the Trade Center Towers had fallen, belching massive clouds of blinding smoke that would continue for 100 days.

Into that furnace marched our 53d Troop Command officers and soldiers on September 12, 2001 from the nearest point of entry at Battery Park. They had no communication capability until other soldiers, who happened to work for various telephone service providers in their civilian jobs, were able to establish a wireless network and issue Motorola “field-type” telephones which could attract a wireless signal from a great distance. As a JAG officer (a member of the Judge Advocate General’s Corps), I could not offer them a place to rest or a dust-free environment, but I could offer to relieve them of some of the problems which often assail most people: legal problems, court appearances, minor discipline problems, civilian employment problems, domestic relation issues, and other problems which became major thorns in their minds as they served their lonely duty. I adjourned their court appearances and civilian employers who were threatening to fire them

CONTINUED ON PAGE 9



## 9/11 Service to Clients and Country

### CONTINUED FROM PAGE 8

for not showing up at their 'regular' jobs. The problems could crop up for different officers or soldiers on any day, and I wanted to show that I was supporting their service and that I was there to help them, so I went to Park Avenue, Ground Zero, and the Javits Center (where they were sleeping) every day; I passed out hundreds of my business cards to let them know I was there for them and legal assistance was available.

It was not that I thought the officers and soldiers might leave their posts, it was that they were subjected to huge conflicts in that hostile environment: If there were more terrorist threats, shouldn't they be home defending their families? If they didn't know when they would get their national guard pay, how could they pay their rent and buy groceries for their families? If the economy collapsed, what would happen to their civilian jobs? I walked the Trade Center Security perimeter many days, and spoke with all of our soldiers posted along the perimeter for security.

The work of a New York Army National Guard JAG Officer (military attorney) is multi-tiered. There is command support and assistance, there is officer and soldier support and assistance, there are military proceedings and disciplinary actions, there is a need for setting forth the "do's and don't's of everyday conduct in the national guard, and sometimes there is a need for setting forth the rules of conduct for an active duty assignment.

I offer due respect, and that respect is both reverential and awestruck, with regard to the toil, devotion to mission, and sacrifice of the New York Police Department ("NYPD"), New York Fire Department ("NYFD") and the Port Authority Police Officers during 9/11. The NYPD and NYFD First Responders were accustomed to responding to disasters, although never before of this magnitude, and they were actively on a payroll and receiving the support of their chain of command. The National Guard First Responders were not initially on a payroll - they were sent into Ground Zero at a time when there was heightened concern that more terrorist acts might happen at any moment and at a time when it was not known whether they were being called up by the State of New York or by the Federal Government. The source of their pay was uncertain because those details needed to be put into action, indeed the entire economy of the United States was thought to be on the verge of collapse.

The massive influx of people trying to help, trying to see Ground Zero for themselves, and trying to be a part of the rescue effort swelled and took on relentless force during the days following 9/11. Ground Zero was too unstable and too dangerous to allow sight-seeing or to allow more workers into the Pit than were already on station. 53rd Troop Command tasked me with defining the role of the National Guard personnel for Commanders, Officers, and Soldiers. Were they police or were they not? If not, what were they? They were an Aid to Civil Authority. I wrote a memorandum

for Commanders, followed by Rules For Use of Force, which was distributed to all personnel taking part in the NYARNG Joint Task Force

Each day following the briefing in Valhalla, I visited Park Avenue, then visited troops at Ground Zero, and once the troops were being housed at the Jacob Javits Center, I also visited them there. I supervised other JAG Officers as they covered their troops and assisted their commanders. The New York Guard is a state volunteer force which augments and supports the New York National Guard with manpower and skills. New York Guard members are a volunteer, unpaid force which assists the National Guard in planning and executing state emergency support and disaster missions. There were many attorneys in the New York Guard who were willing to render legal assistance where needed; I supervised their supportive efforts as well.

I worried constantly that I wouldn't get everything done. On Sunday, September 16, 2001, I was entering the Jacob Javits Center to visit with troops when I saw Joe Torre, the Manager of the New York Yankees, coming out of the building. I greeted him and said how nice it was to meet him and thanked him for visiting the troops in the Javits Center. Mr. Torre said, "Wait until you see who I've got in the van." He escorted me over to the New York Yankees van which was parked at the curb and opened the side door - out stepped Derek Jeter, who had been inside the Javits Center with Mr. Torre only minutes before. That was a tremendous high point in the day of many officers and soldiers, myself included.

As mentioned previously, the location of my civilian offices, as a Partner at the law firm Kramer, Dillof, Livingston and Moore, was on the 45th and 46th Floors of the venerable Woolworth Building. All buildings within the Ground Zero perimeter, including the Woolworth Building, were without power on September 17, 2001, but my law firm needed me to get into our offices and get client information so that they could call our clients and tell them that their records were safe and they still had legal representation. Our firm was arranging temporary quarters on Long Island. On Monday, September 17, 2001, I climbed 45 flights of stairs in the Woolworth Building, half of the way in total darkness, to try to enter our offices. The doors had been jammed into the door frames by the shock wave of 9/11, but I was able to ram the door with my shoulder until it opened so that I could obtain the necessary information. I made that same dark climb again a few days later. If I had not been in my uniform with a WTC ID badge, there would have been no entry allowed into our offices for several more weeks.

Thursday, September 20, 2001 was the Jewish Holiday of Rosh Hashanah. When I visited Ground Zero that day with COL (now BG(R)) Robert Edelman, Chief of Staff of 53rd Troop Command, I saw National Guard Chaplain, Rabbi Jacob ("Jake") Goldstein, who wished to conduct a Jewish New Year service. Rabbi Goldstein asked COL Edelman to join

the minyan (minimum number of males (10) required to constitute a representative "community of Israel" for liturgical purposes) so that the Rabbi could begin the service.

Many soldiers began having difficulties with their civilian jobs; employers wanted to fire them, or promote other employees in preference to deserving employees who were serving in the National Guard. I was tasked by Command to write a memorandum regarding Employment Rights under State Active Duty so that all National Guard personnel could have an idea if their rights were being infringed, whether they were being unfairly harassed or threatened by their civilian employers, and whether they needed legal assistance.

My 9/11 service deployments were:

11 September 2001 to 24 September 2001

3 November 2001 to 18 November 2001

19 January 2002 to 1 February 2002

The November 2001 and January 2002 deployments were under the Command of Major General George T. Garrett, Operation Trade Center Joint Task Force 42.

I was awarded the New York State Medal for Meritorious Service for service rendered 11 September 2001 - 24 September 2001. The award states:

"COLONEL PRINCIPE greatly distinguished himself while serving as the JTF-1 Chief JAG during Operation Trade Tower. His outstanding efforts and sincere care for the soldier helped to maintain the morale of the activated force during an extremely difficult period. COLONEL PRINCIPE made himself available to all soldiers, anytime, day or night. He provided valuable guidance and assistance at all times. Additionally, COLONEL PRINCIPE successfully coordinated the efforts of all other command JAGS. His efforts are a credit to himself, his unit, and the New York Army National Guard."

Many months after September 11, 2001 I received a note of thanks from the severely injured and pregnant client I had been representing in our office on September 10, 2001. She thanked me for avoiding her return for more questioning on September 11, 2001, calling me her "guardian angel." Imagine my relief that we did not need to evacuate this disabled and delicate lady down 45 flights of stairs and through the streets of Manhattan on September 11, 2001. I replied that if I was her "guardian angel," she was also my "guardian angel." Because of her special needs, she was not in our office on 9/11 and neither was I: I was available to serve in the New York Army National Guard.

BG(R) Thomas J. Principe, Esq., has been a proud and loyal member of the Queens County Bar Association for 45 years and a Partner at Kramer, Dillof, Livingston & Moore for 32 years. He retired from the New York Army National Guard in 2006 with the rank of Brigadier General after 33 years of service. He was an Assistant District Attorney in Queens County for six years.



## The Practice Page

# Must Weight Of The Evidence Be Preserved For Civil Appeals?

For civil jury and non-jury trials, there is a difference between the sufficiency of evidence on the one hand and the weight of the evidence on the other, when an adverse judgment is appealed. For sufficiency, the standard of review is whether there is a valid line of reasoning and permissible inferences by which a rational trier of fact could find in favor of the plaintiff (Killon v Parrotta, 28 NY3d 101, 108). An argument of insufficiency must be preserved at the trial for review on appeal, typically by a post-trial motion to set aside the verdict (CPLR 4404[a]).

By contrast, an appeal of a verdict as against the weight examines whether the evi-

dence so preponderates in favor of a party that a contrary verdict could not have been reached on any fair interpretation of the evidence (Lolik v Big V Supermarkets, 86 NY2d 744, 746). Whereas sufficiency determinations look at whether the elements of causes of action were established with adequate proof at law (Killon v Parrotta, 28 NY3d at 108), an examination of weight looks at the qualitative nature of the trial evidence and is more of a factual, rather than legal, analysis (Cohen v Hallmark Cards, Inc., 45 NY2d 493, 498). If a party makes a post-trial motion to set aside a verdict on the ground of weight, the issue is preserved for appeal

by any party aggrieved party. But absent a weight-based post-trial motion, is an appellate court precluded from considering the issue for lack of preservation?

This question was examined in 2019 in an analytical opinion of Justice Fran Conolly of the Appellate Division, Second Department, in *Evans v New York City Transit Authority*, 179 AD3d 105. The uncomplicated facts of *Evans* involved an elderly plaintiff who sustained personal injuries while stepping off a city bus. The jury determined that the bus driver was negligent but that the negligence was not a substantial causative factor of the accident. The plaintiff's attorney

made no motion to set aside the verdict, but appealed the judgment on the ground that it was against the weight of the evidence. On the issue of preservation, Justice Conolly noted three factors warranting the conclusion that, despite recent precedent to the contrary, weight arguments need not be preserved. The first and perhaps most compelling was that case law between 1916 and 2002 uniformly did not require weight to be preserved for appeal (e.g. *Miller v Brooklyn Hgts. R.R. Co.*, 173 AD 910), until the Second Department inexplicably began applying a preservation rule (*Condor v City of New York*, 292 AD2d 332). Second, CPLR 5501(c) and its predecessor statute expressly authorizes appellate review of both law and facts, which necessarily includes weight. And third, CPLR 4404(a) authorizes the trial court to order a new trial upon motion of a party or at its own initiative, and an appellate court's authority is as broad as that of the trial court. Not mentioned in *Evans*, but of analogous value, is that weight of the evidence need never be preserved for

criminal appeals under CPL 170.15(5) (*People v Danielson*, 9 NY3d 342).

Until recently, the Fourth Department adhered to a long line of cases requiring that weight be preserved for appellate review (e.g. *Givens v Rochester City School Dist.*, 294 A.D.2d 898). On August 20, 2020, the Fourth Department expressly directed that its precedent no longer be followed, bringing its view into line with that of the Second Department in *Evans* that weight need not be preserved (*Defisher v PPZ Supermarkets, Inc.*, 186 AD3d 599, 601-02).

The First Department does not appear to require that weight be preserved (*Sims v Comprehensive Comm. Dev. Corp.*, 40 AD3d 256, 258, abrog. on other grounds, *Ornstein v NYCH&HC*, 10 NY3d 1).

The outlier is the Third Department, which requires that weight of the evidence arguments be preserved for appeal (*Creamer v Amsterdam High School*, 277 AD2d 647, 651). Time will tell whether that region of the state adheres to, or changes, its decisional reasoning on the issue.

BY HON. MARK C. DILLON  
APPELLATE DIVISION, 2ND DEPT.



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Frank Bruno, Jr., President



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# Greetings QCBA members!

By Jonathan Riegel, Executive Director



It seems difficult to believe that it has been nearly five months since I joined the Queens County Bar Association. Since circumstances have made it difficult to meet so many of you, I think the best place for me to begin is with a bit of an introduction. My journey to the bar association began shortly after college when I launched my own company selling promotional merchandise – pens, shirts, mugs and anything else emblazoned with a company or school logo. My clients were varied, from local businesses to fortune 500 companies, from schools and colleges to nonprofit organizations. Early in my career, I joined both the local and national trade associations and quickly began giving back to the industry that I fell in love with as a volunteer for both organizations.

In July 2001, I was selected to serve on the board of directors of the local trade association, the Specialty Advertising Association of Greater New York (SAAGNY). Little did I know at the time what we were all going to experience just weeks later. It was the first of several significant challenges our board and organization faced during my tenure but those experiences taught me much about organizational leadership during difficult circumstances and how to set the organization up for post-crisis success, lessons that are proving helpful today. Over the course of my volunteer service with SAAGNY, I was afforded additional and increasing leadership opportunities, culminating with my election as President in 2009. Throughout my volunteer service, I took a keen interest in organizational dynamics, governance and board optimization. If we could strengthen the volunteer experience and make the opportunities more compelling and rewarding, the organization and the individual would benefit.

During my term as board President, the board made the decision not to renew the contract of our long-time executive director. After 15 years on the job, the board felt a new voice, new ideas and a new direction would be helpful. We thought we had an able successor on staff and elevated our Assistant Executive Director to the top spot, understanding there might be some growing pains. Nearly 18 months later, the board reached the conclusion that our new Executive Director was not the right person for the job and determined a change was needed. Without the luxury of time to conduct a broad search (we had two significant events coming up, including our major trade show in just a few months), the board concluded that an interim executive director who could manage our trade show and our finances would be appropriate. Knowing I had those skills but no professional association

management experience, they asked if I would assume the role for one year while they conducted a formal search. I agreed and began my association management career on January 1, 2011.

The next six months were a blur, trying to get up to speed, execute a major trade show with nearly 1,000 booths and 5,000 attendees, manage our finances, supervise a staff that previously knew me only as a volunteer, work with a board of directors that only knew me as a colleague and friend but was now my employer and all of the other things that go into the day-to-day operations of a nonprofit organization. But as time progressed, I (and the board of directors) realized that I was leading the organization successfully and I was enjoying the opportunity. By that Fall, we mutually agreed to make this arrangement permanent and they discontinued their outside search for a new executive director. My success at SAAGNY led to another opportunity to manage another organization within the promotional products industry and I assumed that new role in mid-2017.

Throughout my tenures leading these two organizations, I joined and became an active participant in the American Society of Association Executives and the New York Society of Association Executives. I attended countless hours of educational programs, webinars and conferences to learn more about my role and responsibilities, best practices in association management, current trends and challenges facing associations nationwide and around the world, generational marketing and more. These skills and knowledge have proven invaluable and led to my earning the Certified Association Executive credential this past February. Within the association management community, this credential is very prestigious, attained by fewer than 4,500 of the 50,000+ people working in association management.

I am a strong believer in continuous education and have devoted a significant amount of time and money to ongoing learning over the years, first in the promotional products world, then the association management world and now in the bar association management community. I recently joined the National Association of Bar Executives and engage with bar leaders from across the country routinely. I have also opened lines of communication with bar executives throughout New York State and we are also in regular contact. The irony is that the same person who made it a point to hone my knowledge and skills to be successful professionally never completed my undergraduate studies. In the early 1990s, it was not a priority for me and I left

college about 40 credits shy of graduating. Several years ago, after extolling to my now 15 year old how important it was to study hard and achieve good grades, I had the gnawing feeling of being a hypocrite – after all, I turned out pretty well and I didn't complete college. I made a personal decision at the time to complete my degree and enrolled at SUNY Empire State College. My last class ended on August 27 and I am thrilled to have achieved another goal I set for myself. My next goal is to earn a Masters in Business Administration in Non-profit Management. My application has been submitted and I hope to begin the MBA program this coming January.

As for QCBA, my hopes and goals are varied. I have spent the first few months getting to know the staff, the board and some of our members. I am looking forward to the time when we can reopen the building, resume in-person events and I can meet so many more of you. I have and continue to scrutinize our policies and procedures and recommended modifications to the board where appropriate. I have carefully reviewed our finances and am seeking opportunities to maximize our revenues and minimize our expenses where possible. The staff and I have worked with our board, committee chairs and volunteers to develop the most robust schedule of events possible – by my count, we will have as many as 20 events and programs in the last third of this year. Our golf outing was a huge success (thank you David Cohen!); the Part 36 Guardianship training program was very well attended; we already have multiple sponsors committed to sponsoring the Court of Appeals Update and the Estates Update and I have no doubt those will also be very well attended. We will once again be holding a virtual Friendsgiving event, with all proceeds going to purchase toys for the children at St. Mary's Children's Hospital in Bayside. Those are just a few of the programs we are offering between now and the end of the year – I am confident that there is something for everyone and I encourage you to take advantage of all that we have to offer. We will continue to seek out opportunities and benefits for you to enhance your knowledge, improve your business and be more successful – if there is anything that you would like us to explore as a member benefit, please do not hesitate to reach out.

*I look forward to meeting all of you in the coming weeks and months. But until then, my phone and email box is always open – please contact me if there is anything we can do for you or just to introduce yourself – 718-291-4500, ext. 224 or [jriegel@qcba.org](mailto:jriegel@qcba.org).*



Allen E. Kaye

## Immigration Questions

### Practice Pointer: Utilizing a Reentry Permit to Avoid Admissions Issues for LPRs Impacted by COVID-19, and Other Considerations



Joseph DeFelice

Following is a practice pointer concerning how to utilize a reentry permit for a lawful permanent resident undertaking longer-term temporary travel as a result of the COVID-19 global pandemic, as well as advising conditional permanent residents and those eligible for naturalization.

**Practice Pointer: Utilizing a Reentry Permit to Avoid Admissions Issues for LPRs Impacted by COVID-19, and Other Considerations**

This resource is designed to cover some preventative steps in discussing current travel issues and other problems with Lawful Permanent Residents (LPRs) that have spent significant time abroad due to the COVID-19 global pandemic.

#### Using a Reentry Permit to Avoid LPR Status Issues

The COVID-19 global pandemic has created significant travel complexities for LPRs, including reduced flights, a range of travel and border restrictions, and otherwise upended the travel regime that existed before COVID-19 for the time being. As such, an LPR should consider applying for a Reentry Permit (Form I-327) before departing the U.S. if the LPR needs to undertake temporary travel abroad to a more remote part of the world, a longer travel duration of over six months and up to two years, the need for more than half of a two year period spent abroad, or if an immigration officer (generally CBP) has warned the LPR of a risk of abandonment.

The Reentry Permit may facilitate return travel to the U.S. within its validity period as affirmative evidence the LPR did not intend to abandon LPR status based upon solely travel outside of the U.S. for up to two years. In these cases, the LPR, if outside the U.S. for more than one year, does not have to obtain a returning resident visa (SB-1). Note that a Reentry Permit can also be used as a travel document in place of a passport for an LPR that does not want to obtain or cannot obtain a valid passport from their home country.

However, members are advised that a Reentry Permit does not exempt an LPR from compliance with any of the requirements of U.S. immigration laws. A Reentry Permit still requires the LPR to demonstrate evidence that they have not abandoned their status after a temporary trip abroad. The LPR, upon reentry to the U.S., still may need to prove that their absence was temporary in nature even with the Reentry Permit. Note that the Reentry Permit acts as solid evidence that the travel was temporary in nature and the LPR intended to return to the U.S. Also, the LPR in seeking admission to the U.S. beyond six months may be subject to inspection and admission to the U.S. This could include a review of inadmissibility grounds upon reentry.

#### What Is the Process for Requesting a Reentry Permit?

A Reentry Permit can be requested by filing Form I-131, Application for Travel Document with USCIS. An LPR must be physically present in the U.S. as a lawful permanent resident or conditional permanent resident. Given this, the applicant should continue to be physically present in the U.S. until USCIS accepts

the case for processing. Ideally, this means until USCIS issues the receipt notice, Form G-1145 text or email notice. Members are advised that there have been reports of USCIS refusing cases where the LPR was present when the I-131 was mailed but not when the application was received for processing. USCIS may check travel records as to when the LPR departs the U.S.

The I-131 Application should be submitted with some evidence related to the planned travel and demonstrate that the travel is temporary in nature. The evidence included in the application should also demonstrate that the LPR has otherwise maintained their permanent resident status in the U.S. One question in the I-131 consists of asking about how the LPR filed their U.S. income tax returns. A careful review of U.S. tax matters may be warranted for LPRs, especially for those with significant temporary travel overseas. This is an area where immigration lawyers should help with issue spotting and make referrals when necessary due to the intertwined nature of immigration and tax law.

Generally, USCIS must also collect biometrics from the applicant at USCIS offices in the U.S. It is best practice for the applicant to remain in the U.S. until biometrics are taken or be able to return to the U.S. for a biometrics appointment. As with many benefits requests, biometrics appointments may be requested to be rescheduled. However, failure to appear for biometrics may mean a denial of the I-131 Application. Biometrics can be requested to be expedited under certain circumstances, as noted in the I-131 Instructions. Note that during the COVID-19 global pandemic, USCIS has in certain circumstances reused biometrics. If biometrics will not be required, USCIS will send a notice indicating that biometrics will be reused.

In light of the COVID-19 pandemic, it is best to plan a Reentry Permit application well in advance. Before the pandemic, it was necessary to plan several months, generally at least 60 days, in advance (if possible) to file and undergo any biometrics before departure unless the LPR can quickly return to the U.S. from abroad to attend a biometrics appointment. Given the ongoing pandemic and resulting impacts and delays, AILA members should consider planning at least 5 to 6 months in advance, given current delays with scheduling biometrics and, in some cases, cancellations of biometric appointments.

While it is not required often, the I-131 application for a Reentry Permit may require an interview with USCIS. If the application is approved, the Reentry Permit may be sent to an address in the U.S. or sent to a U.S. consular post or USCIS office abroad.

#### Validity of a Reentry Permit for LPRs

A Reentry Permit is generally granted for up to two years of multiple entry travel. However, an LPR that has been outside of the U.S. for more than four of the last five years since becoming an LPR will generally only be granted a one-year Reentry Permit. There are a few exceptions for certain permanent residents, including:

- A civilian or military employee of the United States Government who was outside the United States

pursuant to official orders. This also includes an LPR spouse or child of such person who is preceding, accompanying, or following to join such employee within four months;

- Employees of the American University of Beirut;
- Those employed (or a spouse or child of such person) by a public international organization of which the U.S. is a member, and;
- A professional athlete who regularly competes in the U.S. and abroad.

Note that for those LPRs with Conditional Permanent Residence, the Reentry Permit can only be issued until the two-year date of admission listed on the Permanent Resident Card Form (I-551). An applicant can use a Reentry Permit after a Form I-751, Petition to Remove Conditions on Residence or Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status is filed, to facilitate travel for up to the automatic extension period granted by USCIS. Members should note that AILA has received reports of Reentry Permits issued for only 12 months even if the LPR received an 18-month automatic extension on the USCIS receipt notice. For this reason, careful planning is required for Conditional Permanent Residents in this context.

Members should note that a Reentry Permit can be applied for again as needed. However, note that where a prior document is still valid, a new I-131 application will be denied unless the applicant has returned the currently valid Reentry Permit to USCIS, or it was demonstrated as lost.

#### Challenges for Conditional Permanent Residents Abroad During the COVID-19 Global Pandemic

An LPR with conditional permanent residence provides its own set of unique challenges for an LPR that may be abroad related to COVID-19. As summarized in 9 FAM 202.2-2(c)(2):

[a] conditional resident alien automatically loses LPR status on the second anniversary of his or her date of admission as a resident if the form to remove the conditions is not filed by that date (Form I-751, Petition to Remove the Conditions of Residence, for family-based status and Form I-829, Petition by Entrepreneur to Remove Conditions on permanent resident status, for employment-based status). However, the law allows DHS to accept a late petition if, and only if, the alien can establish that the failure to file on time was for reasons beyond his or her control.

A conditional LPR outside the U.S. must still file the required Form I-751 or Form I-829 timely for adjudication with USCIS. Failure to do so may make it difficult for any U.S. travel without the corresponding Receipt Notice from USCIS noting an automatic extension of status to assist with any travel back to the U.S. after the conditional I-551 has expired. Furthermore, a conditional LPR may also be reviewed for any abandonment-related issues upon entry by CBP.

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## Immigration Questions

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#### Issued Related to Naturalization

Finally, readers should note that an LPR that travels outside of the U.S. for lengthy periods may impact their eligibility for naturalization. Temporary travel outside of the U.S. may affect basic Form N-400 naturalization requirements. These requirements include basic eligibility requirements of physical presence in the U.S. and continuous residency with the statutory period required for naturalization (generally five years, or three years for spouses of U.S. citizens).

Notably, USCIS issued recent guidance on November 18, 2020, in Policy Alert PA-2020-23 on the Prerequisite of Lawful Admission for Permanent Residence under All Applicable Provisions for Purposes of Naturalization. As part of that detailed new guidance, USCIS indicates a framework to review issues of permanent resident abandonment in relation to N-400s.<sup>16</sup> This new guidance should carefully be reviewed in advising an LPR abroad related to abandonment issues and naturalization.

#### Conclusion

For LPRs planning for longer-term temporary travel outside the U.S. in light of the COVID-19 global pandemic, it is important to carefully review issues related to maintaining Permanent Resident status with LPRs in advance of any planned travel. This includes careful planning on the use of Reentry Permits, planning for Conditional Permanent Residents, and reviewing eligibility for naturalization.

BY ALLEN E. KAYE AND JOSEPH DEFELICE

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



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# QCBA members link up on the links

By Jacob Kaye  
Queens Daily Eagle

The Queens County Bar Association returned to in-person events with a hole in one Monday. Gathering for the first large-scale event since the beginning of the pandemic over a year ago, the bar association hosted its annual golf outing on Sept. 13.

Held at the Garden City Country Club in Long Island, the golf outing had it's highest attendance in over a decade, according to the bar's president Frank Bruno.

"It was a really successful day on all levels," Bruno said. "I think there was pent up demand, because it was not held last year and I think people have cabin fever."

"It's out in the open air and in a dynamite setting, so really, soup to nuts, it was a great day," he added.

While the prevalence of the COVID-19 Delta variant and other potential variants puts a question mark over the possibility of future in person events, Bruno said he was confident people would return when it was safe to, judging from the success of Monday's outing.





## Estate Update 2021

### CONTINUED FROM PAGE 1

The present New York exemption amount is \$5,930,000. The federal law includes the concept of portability, as discussed previously here, where the first spouse to die's unused exemption amount may be accumulated and utilized by the surviving spouse (maximal benefit of \$23,400,000). New York State has no portability, and its exemption amount has limited benefits if exceeded. Any New York taxable estate that exceeds 5% of the exemption amount subjects the entire estate to New York estate taxation. New York does provide one benefit in that there is presently no gift tax. As such, with the condition that the donor survives three (3) years, a New Yorker may reduce their New York estate tax by lifetime gifting. The federal gift tax exclusion is limited to \$15,000.

There has been much speculation about the imminent lowering of the federal exemption amount. One of President Biden's initial tax plans proposed lowering the exemption significantly. As such, the interplay between New York and Federal tax planning requires constant re-evaluation and flexibility in planning. For many years, the use of disclaimer trusts (in which all money is left outright to a surviving spouse, with that spouse granted a right to disclaim any portion of said monies into a credit shelter type trust) has provided the equivalent of portability for New York estates, in that it maximized both spouse's New York exemption amounts. Due to such a high federal exemption amount, the focus has more recently been on New York estate tax planning.

Yet, as the numbers change, different options must be evaluated in light of national and local shifting tax scenarios. It is further anticipated that if the federal threshold is significantly lowered, New York may not be far behind.

#### Queens County

The Surrogate's Court has maintained ongoing and continuous operations throughout the pandemic. Our seminar on October 1, 2020, held virtually and very well attended, focused on the Court Protocols during Covid with respect to filing and procedure. Judge Kelly submitted a detailed outline delineating the present manner of operations of the Court, and then discussed that protocol in detail. Additionally, Lisa Rispoli of Grassi Advisors, discussed the Secure Act which significantly impacted retirement plan distribution rules.

We anticipate a November seminar this year focusing on Accountings, their requirements and preparation. If at all possible and safe, we may look to present the seminar at our Bar Association Building live! If not, we shall go virtual. We thank Judge Kelly, and his outstanding staff for their commitment to the legal community. I hope to see you all as soon as reasonably possible. Be well.



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