

Queens BAR BULLETIN

Queens County Bar Association | qcba.org | 88-14 Sutphin Blvd., 3rd Floor, Jamaica, NY 11435 | 718-291-4500
August/September 2025 | Volume 93, No. 1



In Memory of James P. Pagano, Esq. June 6, 1950 - July 17, 2025

BY THOMAS J. PRINCIPE

Past President

Columbian Lawyers Association of Queens County

James P. Pagano was an extraordinary bankruptcy attorney. He was experienced, communicative, well-regarded, and had a strong understanding of bankruptcy law and his clients' specific situations. He also had incredible insight into how debt affects and afflicts human beings, and he was compassionate and intuitive, yet plain-spoken when required, in trying to inform his clients of their duties and options. He practiced his specialty for over forty years with integrity and zeal.

Jim graduated from Monsignor McClancy Memorial High School in 1967. He was a co-editor of the McClancian Yearbook in the 1964-65 school year and was the second recipient of the McClancy Spirit Award in 1967. He went on to graduate from Fordham University, where he was Student Manager of the Fordham University Basketball Team, and then New York Law School, class of 1975. He was admitted to the Bar in the State of New York, Federal District Courts of the Southern and Eastern Districts of New York, the

Federal Second Circuit Court of Appeals, and the United States Supreme Court.

In the 1970's Jim served as an Assistant under New York Attorney General Louis Lefkowitz in the areas of Consumer Fraud, Protection, and Litigation. He was a confidant of AG Lefkowitz and aided in his re-election campaign in 1976.

Jim then practiced in the New York City firms of Fogelson, Fogelson & Collins and Barst, Mukamal & Babbit in the practice areas of Bankruptcy and Real Estate.

Jim was a member of the American Bar Association, New York State Bar Association,

New York County Lawyers' Association, where he was Co-Chair of the Bankruptcy Law Committee from 2012-2016, and since 2021, the Queens County Bar Association, for whom he also served as Co-Chair of the Bankruptcy Law Committee since 2021 and was a member of the Academy of Law, and the Columbian Lawyers Association, for whom he served as a Board

Member, President, Past President, and Scholarship Committee member, among other activities.

He was particularly active with the Columbian Lawyers Association of Queens County. Many times, he sang our national anthem at the opening of events. He proposed "The St. Francis of Assisi-Mother Frances Xavier Cabrini Award" for exemplary service to the organization, which was adopted and has been bestowed annually since 2021.

Jim often spoke, moderated, or hosted CLE and Non-CLE programs on Bankruptcy issues, sharing his legal acumen and wealth of experience.

Jim Pagano was a loyal friend to many, and was a gifted musician who entertained without charge in many venues. He was especially close to his sister Margaret and her husband Charlie, and his nephews Joseph and Steven and their families.

All who knew James P. Pagano will miss his warm greeting, his tremendous knowledge, his infectious smile, and his loyal friendship.



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The Docket

Being the official notice of the meetings and programs listed below. Due to unforeseen events, please note that dates listed in this schedule are subject to change. More information and changes will be made available to members via written notice and brochures. Questions? Please call 718-291-4500.

CLE Seminar & Event listings

SEPTEMBER 2025

- Monday, September 1

Tuesday, September 9

Tuesday, September 9

Wednesday, September 10

Wednesday, September 10
- Labor Day – Office Closed*

Golf Outing - The Woodside Club

Mammogram Screening Event - 9:00 am to 3:30 pm at 88-11 Sutphin Blvd, Jamaica, NY

Meet the Judge Series Pt 3: Hon. Ira Greenberg - 1:00 pm

Happy Hour Mixer - Austin’s Ale House - 5:30 pm - 7:30 pm

OCTOBER 2025

- Monday, October 13

Wednesday, October 22

Thursday, October 23
- Columbus Day Observed – Office Closed*

CLE: Landlord/Tenant Update 2025

Meet the Judge Series Pt 4: Hon. Ilene Fern - 1:00 pm

NOVEMBER 2025

- Tuesday, November 4

Tuesday, November 11

Thursday, November 20

Thursday, November 27

Friday, November 28
- Election Day – Office Closed*

Veterans Day – Office Closed

Friendsgiving at One Station Plaza in Bayside - 6:30 pm

Thanksgiving Day – Office Closed

Thanksgiving Holiday – Office Closed

DECEMBER 2025

- Thursday, December 11

Thursday, December 25

Friday, December 26-31
- Holiday Party at Jericho Terrace - 5:30 pm to 9:30 pm

Christmas Day – Office Closed

Christmas Week – Office Closed

JANUARY 2025

- Thursday, January 1

Monday, January 19
- New Year’s Day – Office Closed*

Martin Luther King, Jr. Day – Office Closed

Upcoming CLE’s and Events

- Appellate Practice Update

Bankruptcy Seminar

Equitable Distribution Update

Ethics Update

Judiciary Night, Past Presidents & Golden Jubilarian Night

LGBTQ+ Seminar

Surrogate’s Court Seminar

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

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

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Editor's Note

Is The Flushing River Alive?

By Paul E. Kerson

Does the Flushing River live?

It starts in two lakes, Meadow Lake and Willow Lake, and flows northward just past the Van Wyck Expressway, where it abruptly ends. It starts up again just north of the Fountain of the Planets in Flushing Meadows-Corona Park, past downtown Flushing and into Flushing Bay, feeding the natural spring water of Queens County into the East River and Long Island Sound.

How can a river just end? Once upon a time it was a river of commerce and trade for the Shinnecock and Lenape Indian tribes, the original Dutch and English settlers, and the 19th century farmers of Queens County to get their produce to market where the Flushing River flowed.

In preparation for the 1964 World's Fair, the Triborough Bridge and Tunnel Authority (TBTA) put the Flushing River in a pipe to make more land for the Fair Grounds, now part of Flushing Meadows-Corona Park. (See Google, Flushing River, History, Notes 121, 122 and 123:

- "Begin Work of Submerging Flushing River for the Fair," *NY Herald Tribune*, August 4, 1961, page 13.
- Robertson, Nan, "Burying of River Begun for '64 Fair; Moses Starts 'Dirt Flying' to Shift Flushing stream," *NY Times*, August 4, 1961.
- Gerard, Jane, "Moses Gives the Order, Waters Will Turn Aside," *Newsday*, August 4, 1961, page 16.)

Does a River belong in a pipe?

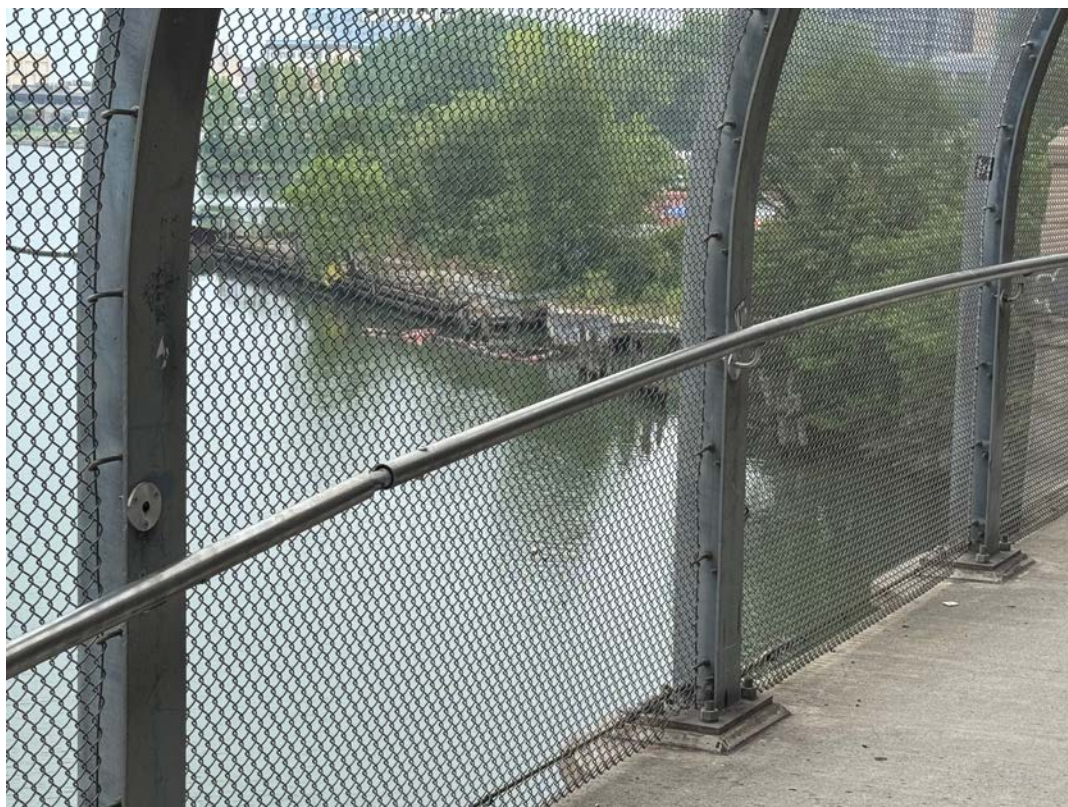
Is there something wrong with this picture?

This burying of part of the Flushing River was not Government's only offense against our River.

In 1960-63, the city, state and federal governments acted in concert with each other to build Interstate 678 (the Van Wyck Expressway) at water level on top of the Flushing River so it could go under the Roosevelt Avenue Bridge carrying the IRT #7 Flushing MTA train.

Rather than correctly building the highway above the train, by constructing I-678 below the train, they made the Flushing River unnavigable at that point to boat traffic other than small rowboats. (See photograph of the damage to our river by all three governments acting together improperly.)

If Planet Earth were one human being, its rivers would be its arteries and veins, with unrestricted flow of the lifeblood of very living thing and person on Earth – water. This philosophy is



Abandoned Flushing River docks as seen from the Roosevelt Avenue Bridge in July 2025 because the Van Wyck Expressway improper construction makes the Flushing River unnavigable.

explained in a new book by Robert Macfarlane, a Fellow of Emmanuel College of the University of Cambridge, England, United Kingdom, *Is a River Alive?*, W.W. Norton & Co., New York, NY 2025.

The original idea that a river had legal standing as an entity that could sue and be sued came from the late Prof. Christopher Stone (1938-2021) of the University of Southern California Law School in 1972. The late Prof. Stone was the son of the late Isidor Feinstein Stone (1907-1989), perhaps the leading journalist in the history of Washington, DC, who published his own newspaper read by nearly everyone in government, *I.F. Stone's Weekly*, which criticized and analyzed the federal government's activities. (See Google, In Memoriam: Prof. Christopher Stone; I.F. Stone.)

This idea of a river as a legal entity with standing to sue and be sued was adopted by the New Zealand Parliament in 2017 to protect the Whanganui River. (See Google, Whanganui River, Notes 4 and 5:

- Davison, Isaac, "Whanganui River given legal status of a person under unique Treaty of Waitangi settlement," *New Zealand Herald*, March 16, 2017

- Roy, Eleanor Ainge, "New Zealand river granted same legal rights as human being," *The Guardian*, London, United Kingdom, March 16, 2017.)

NY State Assembly Member Patrick Burke of West Seneca, Erie County, NY, near Buffalo, picked up on the ideas of Prof. Christopher Stone and the New Zealand Parliament. This term, he introduced Assembly Bill 2025 - A5156A, "The Great Lakes and State Waters Bill of Rights" currently pending before our State Legislature.

Section 1 of Assembly Bill 2025 - A5156A wisely states:

"...the watersheds and ecosystems throughout the State of New York shall possess the unalienable and fundamental rights to exist, flourish, naturally evolve, regenerate and be restored by culpable parties"

Alas, but who will go after the "culpable parties"? Specifically, who will take on the TBTA, now part of the Metropolitan Transportation Authority (MTA) and the New York City Parks Department (NYC Parks) for the horror of burying a river

CONTINUED ON PAGE 5

Editor's Note

Is The Flushing River Alive?

CONTINUED FROM PAGE 4

(TBTA-MTA) and doing nothing about this wrongdoing against the Earth itself all these last 64 years? TBTA-MTA did the wrongdoing. NYC Parks is the landowner who benefited from the wrongdoing and is the owner of the buried section of the Flushing River.

The Flushing River needs a Committee of Guardians so this kind of wrongdoing against our County does not happen again. I propose amendments - new Sections 4 and 5 to Assembly Member Burke's necessary Assembly Bill 2025-A5156A:

"4. Each river, creek, sound, strait, lake or other body of water in the State is entitled to a Committee of Guardians to be appointed by agreement of the Community Boards, Business Improvement Districts, Boroughs, Counties, Cities, Villages and/or Towns that include or border on each river, creek, sound, strait, lake or other body of water in the state to protect the rights listed above in proceedings in the Supreme Court of the State of New York pursuant to Civil Practice Law and Rules Article 78 wherein the said bodies of water exist upon notification, service and right to be heard by all affected adjacent property owners and tenants.

"5. The four-month time limitation of Civil Practice Law and Rules Section 217 for Article 78 proceedings shall not apply to proceedings brought by Guardians under this statute."

If we believe the Flushing River is alive, as Prof. Christopher Stone, the New Zealand Parliament, Prof. Robert Macfarlane and State Assembly Member Patrick Burke believe, then we must understand that we have locked it up in a pipe deliberately buried by TBTA-MTA in 1961 and wrongfully maintained it that way by NYC Parks for the past 64 years, long after the 1964-65 World's Fair was ended.

Certainly, there should be no Statute of Limitations for this kind of outrage perpetrated by

government itself or anyone else for that matter, be it individual or corporation.

We have locked up the Flushing River in the equivalent of Riker's Island for a so-far 64-year sentence and it wasn't ever even convicted of anything in its effort to give our county fresh water for drinking, fishing, boating and enjoying.

The shame is ours.

No one ever voted for this outrage in 1961 because the governments of the Village of Flushing, Town of Flushing, Village of Jamaica, Town of Jamaica and County of Queens were abolished in 1898 and 1899 – a really bad idea that is still haunting us to this day.

Ask yourself this question: If these local governments were in existence in 1961, would TBTA-MTA or NYC Parks have ever gotten away with burying part of the Flushing River in a pipe and leaving it that way for 64 years?

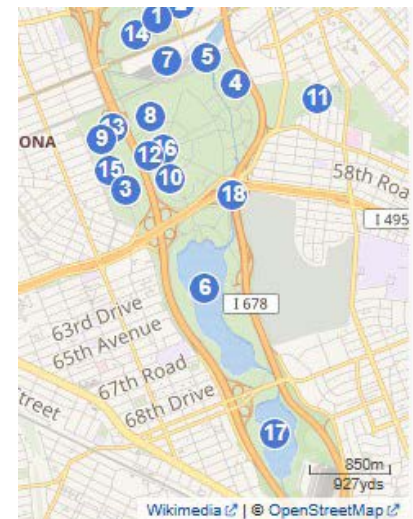
It is probably too late to get our local governments back, but it is not too late to see that Assembly Bill 2025 – A5156A as amended above is passed by our State Legislature and signed by our Governor.

Then our newly appointed Flushing River Guardians can bring a CPLR Article 78 petition against the TBTA-MTA and NYC Parks without reference to any Statute of Limitations in Queens County Supreme Court to get an Order directing them to release the Flushing River from its wrongful confinement in a pipe.

While recently in a traffic jam on the Van Wyck Expressway where it intersects with the Flushing River right before it goes into its TBTA-MTA-NYC Parks pipe, I saw a lone fisherman with rod, reel and net fishing under the graffiti-scarred Jewel Avenue overpass.

He should not be alone.

The Flushing River Guardians, New York State Legislature and Queens County Supreme Court should direct the restoration of our River for the use of future generations and not let it be hidden away in a pipe for the next 64 years.



view · talk · edit

Attractions and geographical features of Flushing Meadows—Corona Park:

- 1 Citi Field
- 2 Etihad Park (under construction)
- 3 Flushing Meadows Carousel and Queens Zoo
- 4 Flushing Meadows Corona Park Aquatics Center
- 5 Flushing River and Creek
- 6 Meadow Lake
- 7 Mets–Willets Point (LIRR and subway stations)
- 8 National Tennis Center and United States Pavilion (demolished)
- 9 New York Hall of Science
- 10 New York State Pavilion and Queens Theatre
- 11 Queens Botanical Garden
- 12 Queens Museum
- 13 Queens Night Market
- 14 Shea Stadium (demolished) and Metropolitan Park (proposed)
- 15 Terrace on the Park
- 16 Unisphere
- 17 Willow Lake
- 18 World's Fair station (demolished)

Note the Flushing River going underground at Point 17 and coming out from underground at Point 5

For additional resources
from the
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visit www.qcba.org

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2025 QCBA GOLF OUTING

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LLP

Lunch and Registration beginning at 12:00 pm

Shotgun start at 1:00 pm

***** Scramble Format *****

Long Drive Contest Closest to the Pin Contest

**** "Fun Par Five Hole" ****

We will have a professional long drive golfer at the tee on a par five. Each foursome will be able to "hire" the pro to hit the drive for the foursome. The foursome receives a birdie or eagle on their scorecard and the foursome will then hit their next shot from wherever that long drive lands. The grand prize is a trip for two to Pebble Beach if any member of the foursome holes out that second shot.

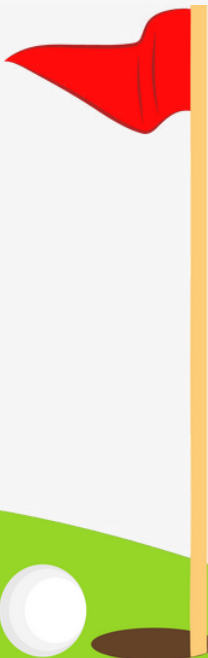
**NEW
DAY!**

TUESDAY, SEPTEMBER 9
WOODSIDE CLUB
225 Muttontown Eastwoods Road Muttontown, NY 11791

**NEW
LOCATION!**

This championship course has a diverse layout that will challenge all golfers. The tees are at 6,520 yards and will make players use every club in their bag. The course, designed by renowned architect William Mitchell in 1962, has withstood the test of time, offering challenging doglegs, tree lined fairways, and very well manicured greens. Woodside's layout wraps around our beautiful clubhouse which was built over 100 years ago, the James Burden Estate. The immaculately kept course will deliver an incredible golf experience. With a slope of 141 and a course rating of 71.9, the Woodside Club offers 18 holes of challenging golf on over 100 acres of pristine land. The practice facility, featuring an 18 bay driving range, practice green and short game area, will help bring your game to the next level.

TENNIS AND PICKLEBALL OUTINGS
beginning at 2:00 pm
Buffet Dinner and Awards beginning at 5:30 pm



REGISTRATION:

Golf & Cart, BBQ Lunch, Cocktails and Dinner - \$375

Golf Foursome with all above for each golfer - \$1,500

Golf Foursome plus tee box sponsorship and all above - \$1,650

Tennis or Pickleball, Courtside Refreshments, Cocktails and Dinner - \$250

Cocktails and Dinner only - \$175

****For those unfamiliar with a scramble format, everyone in the foursome hits a tee shot and then each golfer hits their next shot from the best tee shot. This continues until the ball goes into the cup. The score for the hole is a team score and no individual scores are recorded.****





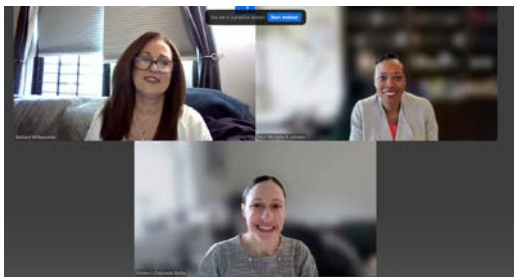
President's Message

Find Your Passion with the Queens County Bar Association

By Kristen J. Dubowski-Barba

As summer draws to a close and we prepare to embrace the fall season, there is no better time to ramp up your involvement with the Queens County Bar Association. Our Association offers a wealth of opportunities to connect, learn, and contribute—no matter your practice area or passion.

With dozens of committees covering every facet of the law, you are certain to find a place where your interests and professional goals align. Over the past season, our committees have been hard at work creating meaningful programming. The Family Law Committee hosted its annual Family Law Dinner, bringing together practitioners and the judiciary for networking, discussion, and shared insights.



The Criminal Court Committee led our Meet the Judges series, featuring in-depth conversations with Administrative Judge Michelle A. Johnson, Queens County Supreme Court, Criminal Term and Supervising Judge Edwin I. Novillo, New York City Criminal Court, Queens County. We celebrated Pride



Month in a big way with Pride and Justice, an event honoring LGBTQ+ pride in the court community. The Immigration Law Committee continued to provide timely updates and resources for practitioners navigating this ever-evolving field. We also offered an Animal Law CLE, sharpened professional skills with a LinkedIn training, and co-sponsored a program on Part 36 appointments, and our Bar

Association Spring Mixer. In addition, we are excited to introduce new committees to serve our members' diverse interests, including a revitalized Women in Law Committee, which is already planning a dynamic presentation for the coming year, and a Technology and the Law Committee, created to help us keep pace with our ever-changing world.

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President’s Message

Find Your Passion with the Queens County Bar Association

BY KRISTEN J. DUBOWSKI-BARBA

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Looking ahead, we invite you to join us for a multitude of events in the coming weeks. We kick off the Fall with a Mammogram Screening event in front of Queens Supreme Court, Civil Term and our Golf Outing at Woodside Club in Muttontown, both on September 9, followed by the third installment of our

“Meet the Judges” series featuring Civil Court Administrative Judge Ira R. Greenberg over Zoom and our Young Lawyers Happy Hour at Austin’s Ale House, both on September 10. We are planning many more programs, CLEs and networking opportunities throughout the fall. This is a season of energy, renewal, and fresh starts. Whether you are a seasoned attorney or new to the profession, there is a

committee, program, or event where you can share your skills, learn from peers, and make a meaningful impact.

So, find your passion—whether it’s mentoring, advocacy, education, or networking—and get involved. The QCBA is your professional home, and we can’t wait to see what we accomplish together this year.



To discuss
ideas and needs
or to get involved,
you can reach
Kristen through
president@qcba.org

QUEENS COUNTY BAR ASSOCIATION

PRESIDENT: KRISTEN J. DUBOWSKI BARBA, ESQ.

It's **HAPPY HOUR MIXER** time

WEDNESDAY, SEPTEMBER 10, 2025

5:30 PM – 7:30 PM

\$30.00 PER PERSON FOR MEMBERS OF THE HOSTS AND SPONSORS

\$45 AT THE DOOR/ \$50 NON-MEMBERS

2-HOUR OPEN BAR & APPETIZERS.

Austin's Ale House – 8270 Austin St, Kew Gardens, NY 11415
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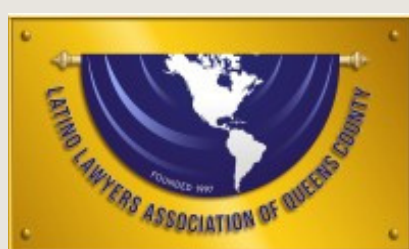
KICK OFF AUTUMN WITH US!

Join us as we welcome the new season and connect with our amazing Co-Hosts.

Enjoy light refreshments, great company, and the cozy vibes of fall!

Everyone is welcome—bring a friend and come mingle!

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RSVP – WWW.QCBA.ORG

Kosher food available courtesy of the Brandeis Association.

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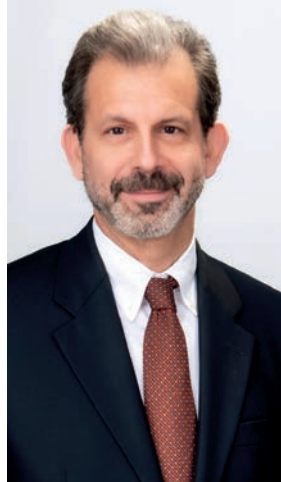
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MEET THE JUDGE SERIES

QUEENS COUNTY BAR ASSOCIATION

President: Kristen J. Dubowski Barba, Esq.

Academy of Law and Civil Court Committee



Join us on
**Wednesday, September 10, 2025 at
1:00 pm**
for the third of this series
featuring



Hon. Ira R. Greenberg
Supervising Judge of
Queens County Civil Court



Moderated by

Hamid M. Siddiqui, Esq.
Chair, Civil Practice Committee

This fireside chat will dive into
Judge Greenberg's work and impact
leading Queens Civil Court.



Via ZOOM
RSVP here:

<https://tinyurl.com/QCBAPart3>



Court of Appeals Restores Common Law Negligence

BY HON. GEORGE M. HEYMANN (RET)*

Part 2 of a 2 Part Series

Continued from the June edition of the Queens Bar Bulletin

HEWITT v. PALMER VETERINARY CLINIC¹

This case was one that created yet another “exception” to the *Bard* rule. The plaintiff was sitting in the lobby of defendant’s clinic holding her cat when one of the doctors or assistants brought out a big dog whose owner was waiting in the lobby next to the plaintiff. Allegedly, said dog was properly sedated while the owner was holding him getting ready to leave the clinic. Suddenly, without warning, the dog attempted to grab the cat on plaintiff’s lap. In doing so, his teeth got caught into the back of the plaintiff’s hair and neck. In trying to extricate himself, the dog ripped out some of plaintiff’s hair and scalp. In an unusual twist from the previous cases, the plaintiff did not sue the owner of the dog for “vicious propensities” but instead sued the veterinary clinic on the theory of negligence for its failure to protect those who entered upon its premises. In a surprise decision, the Court of Appeals ruled in favor of the plaintiff against the clinic, basically stating that who better than a veterinary clinic would understand a dog’s propensities and proclivity for being vicious, in addition to its responsibility to provide a duty of reasonable care to third parties upon its premises. Unfortunately, for future plaintiffs seeking this off ramp from *Bard* against property owner defendants, the Court made it clear that this “exception” only applied to veterinary clinics whose doctors and staff have appropriate training in dealing with dogs, cats and other domesticated animals and it would continue to adhere to *Bard*.

FLANDERS v. GOODFELLOW

With the passage of time, *Bard*’s “bright line” began to fade. The word “constrained” was used in almost every lower court decision that clearly wanted to rule in favor of the plaintiff. Common sense seemed to be a thing of the past, as case after case ignored the realities of the cause of injury before it.

Bard’s unworkable holding gave the Court in *Flanders* another opportunity to finally overrule it. If such were the case, New York would finally fall in line with the position adopted by most other states in accord with the Restatement of Torts, Second. In a unanimous opinion written by Judge Halligan, the Court discussed in depth the various cases highlighted above and the impact they have had on the public at large. “Experience has shown that this rule is in tension with ordinary tort principles,

unworkable, and, in some circumstances, unfair. Continued adherence to *Bard* therefore would not achieve the stability, predictability and uniformity in the application of the law that the doctrine of *stare decisis* seeks to promote. Accordingly, we overrule *Bard* to the extent that it bars negligence liability for harm caused by domestic animals and reinstate Flander’s negligence cause of action”.

The facts of this case are simple. The plaintiff, a postal carrier, was bitten by defendants’ dog while delivering a package to their home. As she was handing a package to one of the defendants, their dog slipped by him and lunged at plaintiff’s neck and bit her causing severe injury that required several surgeries and permanent scarring. She sought to recover for her injuries by commencing a dual cause of action, one for strict liability and the second for the defendants’ negligence. Both causes of action were dismissed in the lower courts. Plaintiff’s motion for summary judgment as to the dog’s “vicious propensities” and the defendants’ knowledge of same created a triable issue of fact, thus, no summary judgment on that ground. As to the cause of action regarding negligence, the lower court was barred by the holding in *Bard* and, therefore, dismissed that portion of the proceeding.

The Court of Appeals tackled the issues of precedence and *stare decisis* and how it would impact here and future cases of this sort. *Stare decisis* has been recognized as a “bedrock principle” and common-law decisions “should stand as precedents for guidance in cases arising in the future and that a rule of law once decided by a court will generally be followed in subsequent cases presenting the same legal problem.... Its purpose is to promote efficiency and provide guidance and consistency in future cases by recognizing that legal questions, once settled, should not be reexamined every time they are presented. In light of these concerns, we will overrule a prior decision only in the rarest of cases.” (Citations omitted)

“But rarely does not mean never. ‘*Stare decisis*’ not an inexorable command. Rather it is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable. (Citations omitted) Although a court should be slow to overrule its precedents, there is little reason to avoid doing so when persuaded by the lessons of experience and the force of better reasoning” (Citation omitted)

Bard was intended to be an “easy to apply bright-line that consistently proves fatal to negligence

claims” when the injuries are caused by domestic animals. Yet, over the years, this “bright-line” has been “eroding” due to the several “exceptions” that the Court carved out allowing for negligence claims. In the past, this Court has “held that if a recent precedent fits uncomfortably into our tort jurisprudence that tension may be a reason to abandon its decisional law. (Citation omitted) Also relevant is whether legal developments in the doctrine undermine an earlier decision. (Citation omitted) Finally, we may consider how courts grapple with a decision over time - for example, whether it is unworkable, creates more questions than it resolves, or no longer serves the ends of justice. (Citation omitted) Taking full account of these factors, along with the abiding values that *stare decisis* seeks to promote, we conclude that the time has come to set aside *Bard*’s rule that an owner of a domestic animal may not be held liable in negligence for harms caused by their animal”.

In sum, the Court acknowledged that, over the years, it created multiple exceptions for the sake of justice and with the passage of time it was proven that *Bard* failed to achieve the efficiency, consistency and uniformity in its application of the law which the doctrine of *stare decisis* seeks to promote. These considerations satisfied the Court that *stare decisis* does not counsel continued adherence to its restriction on negligence liability. Thus, to the extent that the Court previously held that a plaintiff may not assert a common law negligence cause of action against the owner of a domestic animal for harms caused by that animal that precedent is now, finally, overruled.

CONCLUSION

After almost two decades, Judge R. S. Smith’s prediction of the eventual “erosion” of the *Bard* rule by “ad hoc exceptions” has come full circle with the Court overruling that decision in *Flanders v Goodfellow*.

On a personal note, in the past 14 years since I retired from the bench, I have published numerous articles focusing on three different areas of law: landlord and tenant law; scaffold law and animal law. As to the latter, I have followed the case of *Bard* and its progeny and the various contortions of the Court’s rulings regarding the limited exceptions that were made.

As I noted in the footnote, I had the privilege to co-author an article with Matthew J Kaiser, Esq., an

CONTINUED ON PAGE 13

¹ See, “The ‘Vicious Propensities’ Rule And Property Owner Liability” by Hon. George M. Heymann & Matthew J. Kaiser, Esq., NYLJ, May 9, 2019. This article was cited in plaintiff’s brief to the Court of Appeals in which we encouraged the Court to abandon the ill-conceived and unjust rule enunciated in *Bard*.

Court of Appeals Restores Common Law Negligence

BY HON. GEORGE M. HEYMANN (RET)*

CONTINUED FROM PAGE 12

attorney who also has a great interest in animal cases. I had never met Matt in person but reached out to him over eight years ago when I read one of his articles. Our common interest bonded us immediately and we became close friends over the phone that continues to date. I thank him for his insight and feedback when writing these articles. I especially want to congratulate Matt as the attorney who handled the *Flanders* case all the way up through the Court of Appeals. He won a major victory for all New Yorkers who may have suffered an injury by a domestic animal whose owners or caretakers were negligent in their responsibilities of safeguarding others from harm. I also extend my kudos to Ms. Flanders for her determination to see this matter to its conclusion despite the headwinds going against her.

**Hon. George M. Heymann is a retired Housing Court Judge, a former Adjunct Professor of Law of the Maurice A. Deane School of Law at Hofstra University, of Counsel to Finz & Finz, PC and a member of the Committee on Character and Fitness, 2nd, 11th and 13th Judicial Districts of the Second Department.*

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The Practice Page

The Redaction of Confidential Personal Information

BY HON. MARK C. DILLON

Serves on the Appellate Division, Second Department

The Uniform Rules contain a number of procedural directives which supplement those found in the CPLR. Among them is Uniform Rule 202.5(e) regarding the redaction of personal information in public court filings.

The Uniform Rule provides that certain personal information “shall” be redacted in filed papers. Those redactions include taxpayer identification numbers and social security numbers except for the last four digits thereof; birth dates other than years; identifying numbers for bank, investment, credit card, and insurance accounts except for the last four digits thereof; and matrimonial documents or transcripts protected by DRL 235. The Uniform Rule is consistent with requirements found in GBL 399-ddd, which more broadly prohibits the public disclosure of persons’ confidential information.

The reason for Uniform Rule 202.5(e)’s redactive direction arises from the fact that court filings are, for the most part, records available to the general public. Just as each of us would not wish for our personal social security, credit card, bank account, or investment numbers to be freely available to the public on the internet or elsewhere, parties to actions and proceedings have the same legitimate desire not have such information disclosed through publicly-available litigation documents. For this reason, the Uniform Rule explicitly does not apply to documents filed in actions that already have built-in confidentiality or sealing such as MHL Article 81 proceedings, matrimonial actions, and certain surrogate proceedings. It instead applies to court filings that are otherwise available to the public. Attorneys who must mention personal information in court filings should redact all identifying numbers but for the last four digits. A social security number, therefore, may be properly reported as XXX-XX-0123, which would stymie any public reader of the document from an ill-intent.

A party’s disclosure of personal identifying information which is supposed to remain confidential may constitute a breach of fiduciary duty (*Daly v Metropolitan Life Ins. Co.*, 4 Misc.3d

887 [Sup. Ct. NY Co. 2004] [Tolub, J.]). The remedy for a violation of the Uniform Rule does not include monetary sanctions against the non-complying party, as sanctions are not provided for in the rule itself (*Axis Capital, Inc. v Jaina Systems Network Inc.*, 49 Misc.3d 350 [Sup. Ct. Nassau Co. 2015] [Marber, J.]). Instead, the remedy is for the court to require that redacted documents be filed as substitutes for non-compliant documents in accordance with the language of subdivision (e)(2) of the Uniform Rule (*Kelly D. v Niagara Frontier Transit Authority*, 177 AD3d 1261 [4th Dep’t. 2019]; *Doggart v Praeger*, 2025 WL 597522 [Civ. Ct. NY Co. 2025] [Malik, J.]).

When courts render decisions and orders which must reference account information, they shall likewise redact all information other than the last four digits of the larger number. The last four digits are enough for the parties and the court to identify and understand which specific account is being referenced.

Uniform Rule 202.5(e)(3) envisions a circumstance where the full confidential personal information may be material and necessary to the adjudication of the action or proceeding. In such an instance, the party may apply to the court for leave to serve and file, with the papers, a separate confidential affidavit or affirmation setting forth the full identifying information. Courts will assess whether the full identifying information is necessary as to warrant the granting of any such motion. If granted, the separate information remains unavailable to the public.

Consumer credit transactions receive special treatment, such as in actions to recover on defaulted credit card debt. In those instances, if a defendant appears in the action and denies responsibility for the account at issue, the plaintiff may, without leave of court, amend the pleading to add the full account number by submitting the amended pleading to the court, on notice to the defendant, for *in camera* use, or alternatively, file the full account information with the court under seal (Uniform Rule 202.5[e][4]).

Uniform Rules 202.5(e) applies whether an action or proceeding involves e-filing under NYSCEF or hard copy paper filings. While Uniform Rule 202.5(e) applies to the supreme and county courts within the state, parallel rules exist for the court of claims (Uniform Rule 206.5[e]), civil court (Uniform Rule 208.4[b]), city courts outside the city of New York (Uniform Rule 210.4[b]), and district courts on Long Island (Uniform Rule 212.4[b]).

If a judgment is rendered against a defendant and accounts are to be attached or garnished to satisfy the judgment debt, different rules apply. Judgment creditors may serve information subpoenas upon judgment debtors demanding information that will assist the creditor in collecting upon the judgment (CPLR 5223, 5224[a][3][i], 5240), which typically includes full identifying account information. In such circumstances, arrangements may be made by the parties, or ordered by the court, for responsive information to be provided to the judgment creditor’s counsel without being disseminated beyond the parties and counsel (*Alpert v Alpert*, 151 AD3d 541 [1st Dep’t. 2017]). Further, information subpoenas may be pared by the court to permit the confidential disclosure of bank account information as would assist in collection efforts, while quashing social security information or other personal information extraneous to those efforts (*Argon Elec. Corp. v Gomez*, 55 Misc.3d 140[A] [App. Term 2d, 11th and 13th Jud. Dists. 2017]).

As Sgt. Phil Esterhaus used to say near the beginning of every episode of the iconic *Hill Street Blues* television program in the 1980s, “Be careful out there.”

Mark C. Dillon is a Justice of the Appellate Division, 2nd Dep’t., is an Adjunct Professor of New York Practice at Fordham Law School, and is a contributing author of the “CPLR Practice Commentaries in McKinney’s”.



Put yourself on the path to something better

BY FRANK BRUNO, JR.

Magic is just spending more time on something than anyone else would reasonably expect. - Penn Jillette

PSA. If you want to live a long time, when you take your annual physical ask the doctor to check the following markers:

1. Fasting Glucose
2. Hemoglobin A1C
3. ApoB
4. Triglycerides
5. HDL & LDL Cholesterol
6. AST & ALT (Liver Enzymes)
7. Fasting Insulin
8. hs-CRP (C-reactive protein).
9. Functional Hormone Panel including Thyroid
10. Alzheimer's Blood Test-PrecivityAD2.

What you measure is what you manage. Thank me years from now.

Are you living a charmed life? Take a moment with the thought. Not just a surface-level "yes" or "no"...but consider: Why or why not? What makes a charmed life for you? Luck or having everything go your way; being in harmony with yourself, with the people around you, and with the vibration you choose to live in. It is working with the laws (more on that in a bit), and recognizing how you are rewarded by your attitudes of mind. When you change the way you look at things, everything around you changes. It is not magic. It's vibration.

Search out the 12 Laws of the Universe and the Hermetic Laws, as they share points of commonality and either they help you or you can tease me when we see each other. I believe that more is connected than we know. If the Laws are too woo-woo then go in a different direction and study Ben Franklin's 13 virtues - those are grounded & practical.

Running one mile has more in common with running a marathon than sitting at home. Investing \$100 has more in common with being a millionaire than being broke. Writing one sentence has more in common with writing a book than never writing one. It always feels small in the beginning and the big goals seem far away. It's easy to talk yourself out of the early attempts because they feel kind of meaningless. But every race starts with one step. Every fortune starts with a small deposit. Every book begins as one sentence. The real question is not "What

is my current position?" but rather, "What is my current trajectory?" Doing nothing builds nothing. Put yourself on the path to something better. Start small, but make sure you start

"You can't connect the dots looking forward. You can only connect them looking backwards."

For me, poetic and annoying. A Steve Jobs quote and we look at his story from the end but when you are in the middle of figuring out your life, a person wants a neon sign that says, "Keep going." Sometimes the dots in your life look like they belong to completely different pictures. You have to back up to see the forest for the trees. Love tech...and calligraphy. (Jobs). Poetry and sing and also care deeply about civil rights. (Maya Angelou.) Art, science and human anatomy. (Leonardo da Vinci.) Individually, random passions look like puzzle pieces from different boxes. Layer them. That is when genius shows up. Skill stacking. Pretty good lawyer, fairly well spoken, has some stories to share, smiles nicely-maybe you can be a social media star. How about understanding people, handling family court, guardianship and divorce experience; develop a niche as an attorney brought in as a Guardian ad litem or Special Counsel to the Guardian in divorce?

**Becoming proficient
in several areas can allow an
individual to stand out.
If I may say so, genius does
not live in one neat lane.
It lives in the intersections.**

Becoming proficient in several areas can allow an individual to stand out. If I may say so, genius does not live in one neat lane. It lives in the intersections. It is born when we let our different loves, skills, and curiosities talk to each other. When they start cross-pollinating ideas, something entirely new comes to life. Blend domains. Jim Koch took his Harvard Business degree and family Austrian Beer recipe to now have the largest American Brewery. Foreign companies own the rest. Brian Eno mixed music, theory, and technology to create the ambient revolution. Brene Brown combined research, storytelling, and empathy to launch a

global movement. Benjamin Franklin science, diplomacy, first memoir writer, Michelangelo we know his talent stack. A renaissance man, "a person can do all things if he will" Leon Alberti. The magic is not in picking one path and abandoning the others. It can be letting their paths collide. And the best part? You don't need to know how it all fits together right now. You just need to keep following the breadcrumbs of what excites you.

Each passion gives a different lens, a new way of seeing. Apply concepts from one domain say spiritual principles to another like how genius works it unlocks a whole new layer of understanding in both. If you feel like your interests are too scattered to make sense, remember it is not your job to connect the dots today. Your job is to collect them. The connections will happen on their own. Follow what excites you. Take the class. Try the thing. Explore the rabbit hole. Every passion you pursue is another dot on your map. One day, you will look back and see a picture that only you could have drawn. And it will make perfect sense.

Until then... keep collecting.

Smile. I'm inviting you to try a simple, science-backed practice that has been shown to lift your mood in just a few minutes. Research in embodied cognition, the idea that our body can influence our mind, shows that using the muscles involved in smiling can actually improve your emotional state. In other words: when you smile, even if it feels forced at first, your brain starts to believe you're happy.

The Practice: Each morning for the next week, try starting your day with a smile. If that feels hard, fake it. If that still feels like too much, place a pencil or pen horizontally between your teeth to gently force a smile. I know it sounds strange but stay with it for just 3-5 minutes. This physical cue sends a powerful signal to your brain that activates feel-good neurotransmitters like dopamine and serotonin. The result? A real shift in your mood.

Why It Works: This technique bypasses negative thinking and uses the body to influence the mind. Rooted in the science of embodied cognition, the idea is that movement can create or enhance emotion. While we often think emotions come first and actions follow, studies show it can work in reverse too. When you smile, you engage the same facial muscles used during

CONTINUED ON PAGE 17

Put yourself on the path to something better

BY FRANK BRUNO, JR.


CONTINUED FROM PAGE 16

genuine joy, and your brain responds by releasing mood-enhancing chemicals. Let this week be a gentle reminder that joy is not outside yourself. It begins within you, and it can be nurtured through simple, consistent practices. Just like everything in nature, joy is meant to flow. As an added bonus, hop up and down for a few minutes.

Visualization is a healing practice rooted in neuroscience. When paired with nervous system regulation, it becomes a tool to shift old beliefs, build confidence, and create safety around receiving what you desire. Air Force and Navy pilots practice it. What happens in your brain when you visualize. Visualization and mental rehearsal are forms of deep healing work rooted in neuroscience and nervous system regulation. The brain is the portal. Visualization works when we engage the unconscious mind and reprogram it for the task at hand advancing a position, flying a jet or living a good life. Think of your brain like a wet living computer. It is the hardware. It runs software, a program, a set of beliefs and patterns, based on everything you absorbed since birth. Unless you consciously update that programming, your brain will continue making choices based on the past. If you want to live courageously, you have to code differently. Visualization is about updating the internal programming that shapes what you feel and how to act.

Most frequently regretted sentiment: not saying “I Love You” more often to the people that mattered, followed by not making more time for people and activities they loved. Those are somewhat closely followed by being too quick to anger and unable to hold in those harsh words that were said and not saying sorry and moving on from petty grievances. Let us work on eliminating regret in advance.

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




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