

# Queens BAR BULLETIN

Queens County Bar Association | qcba.org | 88-14 Sutphin Blvd., 3rd Floor, Jamaica, NY 11435 | 718-291-4500

January 2026 | Volume 93, No. 4



## Organizing Your Finances For The People You Love

BY FRANK BRUNO JR.

*“Human beings can alter their lives by altering their attitudes of mind.”*

—William James

Many philosophies of thought have striking similarities. Ancient wisdom of the stoics or the teachings of the Budha, Lao-Tzu, Western religion and the New Thought movement speak to the very same issues of the human condition. Addressing Life: existence, love: values and how to act: knowledge. Mind, body spirit; head and heart. Your attitude is the composite of your thoughts (conscious mind), feelings (sub-conscious mind), and actions (Body). It is the lens through which you view and interact with the world.

Earl Nightingale taught the powerful reminder that “our attitude toward life determines life’s attitude toward us.” He emphasized that your attitude does not come from your circumstances; it comes from the meaning you attach to your circumstances. That meaning is shaped by your self-image. When you change how you see you, you change how you see everything else. (Rose colored glasses)

Good old Earl taught attitude is the foundation of all success. Please look him up on You Tube and watch “The Greatest Secret.” Some hocus pocus and some old-fashioned effort with new-fangled neuroscience. A positive attitude aligns you with the Law of Vibration, raising your frequency and attracting opportunities, people,

and circumstances that support your goals. Challenges are inevitable, but your attitude determines how you respond.

A tool for maintaining a good attitude is choosing a gratitude mindset. When you look for what is good and feel gratitude, you focus on solutions rather than problems. You build resilience and unlock creative ways to overcome obstacles. Like James Allen said “A mind may be likened to a garden, which may be intelligently cultivated or allowed to run wild.” When you are overwhelmed or tired, you do not have to leap straight from frustration to joy. Just find the next best attitude you can reach. Maybe calm, or hope. Take a deep breath and exhale longer and slowly. Small shifts change your state (vibration).

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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

### JANUARY 2026

Monday, January 19 *Martin Luther King, Jr. Day – Office Closed*  
 Tuesday, January 20 Small Firm, Solo Practice & Law Office Management Committee Mtg – 1:00 pm  
 Wednesday, January 21 Family Court Lunch & Learn – Our Family Wizard – 1:00 pm  
 Wednesday, January 21 Nominating Committee Meeting – 5:00 pm  
 Thursday, January 22 Technology in the Law Committee Mtg – 6:00 pm  
 Wednesday, January 28 Family Court Lunch & Learn – Our Family Wizard – 1:00 pm  
 Thursday, January 29 Elder Law Committee Mtg

### FEBRUARY 2026

Tuesday, February 3 Motions & Motherhood: Preet Gill – 1:00 pm  
 Wednesday, February 4 **CLE:** Marijuana/Cannabis – 1:00 pm  
 Thursday, February 5 Cup of Joe with Joe – 8:00 am at QCBA Office  
 Tuesday, February 10 Meet the Judge: Hon. Michael H. Goldman – 1:00 pm  
 Wednesday, February 11 Academy of Law Committee Mtg – 1:00 pm  
 Wednesday, February 11 The Trial – Pt 6: Arguments and Post Trial Motions – 5:30 pm  
 Thursday, February 12 *Lincoln's Birthday – Office Closed*  
 Monday, February 16 *President's Day – Office Closed*  
 Tuesday, February 24 Technology in the Law Committee Mtg – 6:00 pm

### MARCH 2026

Wednesday, March 4 Judiciary, Past Presidents & Golden Jubilarian Night at St. John's Law School – 5:30 to 8:00 pm  
 Thursday, March 12 **CLE:** Women in the Law Committee  
 Thursday, March 19 LGBTQ+ Committee Mtg – 1:05 pm

### APRIL 2026

Friday, April 3 *Good Friday – Office Closed*  
 Wednesday, April 15 **CLE:** Equitable Distribution Update 2026 – Pt 1 – 5:30 pm  
 Thursday, April 16 LGBTQ+ Holocaust Program – 5:30 pm  
 Wednesday, April 22 **CLE:** Equitable Distribution Update 2026 – Pt 2 – 5:30 pm  
 Thursday, April 23 **Event:** LGBTQ+ Social Mixer at The Gantry Bar – 5:30 pm  
 Wednesday, April 29 **CLE:** Ethics Update 2026 – Pt 1 – 5:00 pm Friday,

### MAY 2026

Wednesday, May 6 **CLE:** Ethics Update 2026 – Pt 2 – 5:00 pm  
 Thursday, May 14 Annual Dinner & Installation of Officers at Terrace on the Park – 5:30 pm  
 Monday, May 30 *Memorial Day – Office Closed*

\*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](mailto:cle@qcba.org).

More on upcoming seminars, CLE's and events, go to [qcba.org/CLE-Courses](http://qcba.org/CLE-Courses)

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## Editor's Note

# The Truth is in Philadelphia

By Paul E. Kerson

For our winter vacation, we decided to take our children and grandchildren to Philadelphia to see the Liberty Bell and the old Pennsylvania State House, also known as Independence Hall, where the Declaration of Independence was signed in 1776 and the United States Constitution was debated and drafted in 1787.



**The Liberty Bell**  
Philadelphia 2025.



**Old Pennsylvania State House**  
Site of the drafting of the Declaration of Independence (1776) and U.S. Constitution (1787)  
Philadelphia 2025

As impressive as these national monuments are, they paled in comparison to the University of Pennsylvania's Museum, locally known as the Penn Museum. This is how the Museum describes itself: "illuminating 10,000 years of human history, the Penn Museum is home to more than one million objects."

It is walkable and can be seen in one day. There are exhibitions on Rome, Greece, Etruscan Italy, Asia, the Eastern Mediterranean, Mexico and Central America, the Sphinx Gallery, Native North America and Africa.

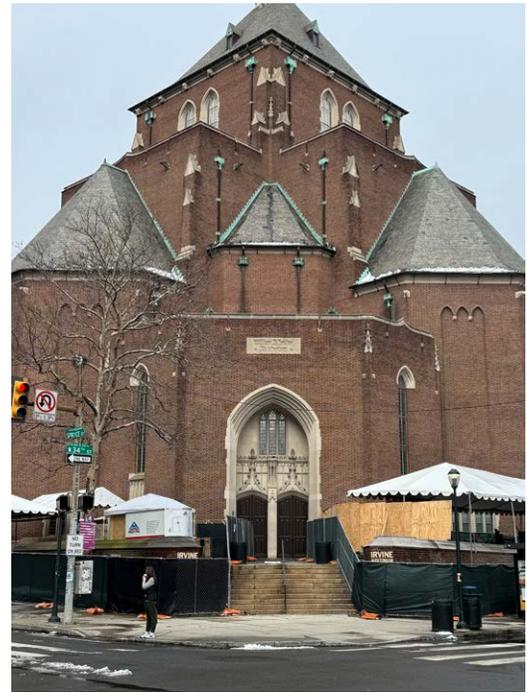
But most impressive of all is the Museum Shop's collection of books for sale. An interview with the staff of the Museum's Shop reveals that the Manager in charge carefully selects the books. They are not placed on the shelves at random or without thought.

This collection enhances our understanding of our world in a way that few other collections do.

"Between Two Rivers" (W.W. Norton & Company, Inc., NY 2005) by Prof. Moudhy Al-Rashid, associated with Wolfson College at Oxford University, describes the world's first city, Ur, and how its organization affects our world today.

In "The Greek Myths that Shaped the Way We Think" (Thames & Hudson Ltd., NY 2022), Prof. Richard Buxton, a Professor of Classics at the University of Bristol, UK, describes how ancient Greek myths are part of our culture in ways we rarely imagine. Consider the following: Pandora's Box, the Titanic ocean liner, the Apollo space program, the Amazon multinational corporation, Nike sportswear, Ajax disinfectant, Hérmes silk scarves, and the Heracles General Cement Company all take their names from ancient Greek myths.

Prof. Mary Beard, a Professor of Classics at Cambridge University has written "SPQR: A History of Ancient Rome" (W.W. Norton & Co. Inc., NY 2015). Prof. Beard explains that the Senatus Populus Que Romanus (the Senate and People of Rome) is still with us despite its alleged decline. She describes Rome as a "tiny and very unremarkable little village in central Italy" that came to dominate three continents. Her book, SPQR, describes how this was accomplished despite the fact that "the Romans did not start out with a grand plan of world conquest." (See page 17).



**Penn Museum**  
Philadelphia 2025

In "The Ottomans: A Cultural Legacy", Diana Darke, a scholar at the Middle East Institute of Washington, D.C., describes our societal debt to the Ottoman Empire (now Turkey), that governed much of Europe, Asia and Africa for 600 years. She also shatters the myth that this Empire was ultimately a failure when it was not.

In "1491: New Revelations of the Americas Before Columbus" (Random House, Inc., NY, 2005 and 2011), Journalist Charles C. Mann, describes what North and South America looked like before the Europeans arrived on Christopher Columbus' first voyage in 1492. Suffice it to say that he finds it was much more heavily populated than most historians will admit and that it contained a wide variety of civilizations, some of which were very advanced.

In "The Maya" (Thames & Hudson, Ltd., NY 1966, 2022), Prof. Michael D. Coe, a Professor of Anthropology at Yale University and Stephen Houston, a Professor of Social Sciences at Brown University describe the advanced complex Mayan civilization that existed in the Yucatan Peninsula of Mexico, and much of Belize, Guatemala, and the Mexican states of Tabasco and Chiapas. In "The Maya" Profs. Coe and Houston describe the discovery of ancient Mayan cities in this region that had been abandoned for hundreds of years.

CONTINUED ON PAGE 17



# QUEENS COUNTY BAR ASSOCIATION

## UPCOMING EVENTS JANUARY 2025

THU  
8

CLE: HOW PROPER LEGAL PLANNING & HOME OWNERSHIP CAN HELP YOUR CLIENTS AGE IN PLACE SAFELY



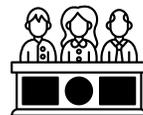
TUE  
13

COMMITTEE MEETING ~ LGBTQ+ COMMITTEE MEETING



WED  
14

COMMITTEE MEETING ~ WOMEN IN THE LAW COMMITTEE MEETING



THU  
15

NEW FINCEN RULE TO SAFEGUARD RESIDENTIAL REAL ESTATE



TUE  
20

COMMITTEE MEETING ~ SMALL FIRM, SOLO PRACTICE & LAW OFFICE MANAGEMENT COMMITTEE MEETING



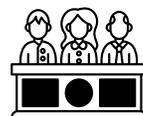
WED  
21

FAMILY CT LUNCH & LEARN: IMPROVING OUTCOMES FOR FAMILIES – HOW CO-PARENTING APPS CAN ENHANCE CLIENT COMMUNICATION AND ENSURE SUCCESS.



THU  
22

COMMITTEE MEETING ~ TECHNOLOGY IN THE LAW COMMITTEE MEETING



WED  
28

FAMILY CT LUNCH & LEARN: BEYOND BAC - ALCOHOL MISUSE CASES/COMPLIANCE & TAMPERING



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2nd Lunchtime Meeting of

# Motions & Motherhood

Presented by QCBA's Women In the Law Committee

**Tuesday, February 3, 2026**  
**1:00pm - 2:00pm**  
**via ZOOM**

A new network for moms who argue in court...and negotiate at home.  
 A space for candid conversation, mentorship, balance, and community.

Special guest speaker: **Preet Gill, Esq.** - Gill & Kadochnikov P.C.  
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Moderators:

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# President's Message

## Giving Thanks

By Kristen J. Dubowski Barba

As the new year begins, it is a time of reflection of the past and preparation for new beginnings. I am proud of what we have built as a Bar Association.

This year, we focused on growth in member engagement, programming, and attendance. By offering both virtual and in-person programs, we created greater opportunities for participation while accommodating our members' ever-changing schedules.

We have strengthened relationships between the Bench and the Bar as well as relationships with the law students, and our community. Communication between the Bar and the Bench

continues to be a priority, highlighted by the Supreme Court Committee's regular meetings with Administrative Judge Justice Grays, and our Civil Court meetings attended by the Supervising Judge. We also collaborated on several projects with the law students this year already including several service projects, reinforcing our commitment to mentorship and community service.

We remain committed to keeping our members informed on emerging issues, new technologies, and changes in the law, with committee meetings and CLE programming on topics such as artificial intelligence, cybersecurity, and cannabis law.

We had successfully launched and expanded several signature programs including Meet the Judges, which allows members to learn more about the judges before whom we appear; Motions & Motherhood where our members can have a safe space to share and connect, Breakfast with the president where new members can share their ideas make connections, and a wide range of committee initiatives that continue to enrich our membership experience.

As President, I promise to remain accessible and responsive to our members. I welcome your ideas, feedback, and suggestions, and I am committed to listening and evolving alongside you.

As we continue to pursue professional excellence, we must also remain mindful of personal well-being. The legal profession is demanding, and prioritizing mental health is essential to sustaining both individual success and a healthy profession. This year, the Bar Association is committed to expanding programming and resources to support attorneys who may be facing stress, burnout, isolation, or other challenges. Our goal is to ensure that QCBA remains not only a center for professional development, but also a supportive community where every member knows they are not alone.

I hope to continue to honor QCBA's history while modernizing its future.

I look forward to continuing this journey together and to building an even stronger Queens County Bar Association in the year ahead.

To discuss ideas and needs or to get involved, you can reach Kristen through [president@qcba.org](mailto:president@qcba.org)

### QUEENS COUNTY BAR ASSOCIATION

President: Kristen J. Dubowski Barba, Esq.

Family Law Committee Co-Chairs: Joshua R. Katz, Esq. and Ravi Cattry, Esq.



## FAMILY COURT LUNCH & LEARN

Held at  
Queens County Family Court - CVO  
151-20 Jamaica Ave, Jamaica, NY 11432

Wed., January 21, 2026  
1:00 pm - 2:00 pm

Improving Outcomes for Families —  
How co-parenting apps can enhance client communication and ensure success.



Racheal Howitz —  
OurFamilyWizard

Course Description:

The OurFamilyWizard app (OFW) is frequently included in parenting agreements as a way to reduce litigation and improve family outcomes. Learn how OFW can simplify co-parenting communication and streamline the work of practitioners.

Wed., January 28, 2026  
1:00 pm - 2:00 pm

Beyond BAC —  
Alcohol Misuse  
Cases/Compliance & Tampering



Mike Fonseca —  
Soberlink

Course Description:

This course is designed to give Family Law Court Officials specific knowledge on how to manage cases that involves one or both parents being accused of abusing alcohol while parenting child(ren).

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RSVP - <https://tinyurl.com/FamCt2026>

Lunch will be provided by the sponsors for those who RSVP by 1/20. NO CHARGE. Non-CLE.

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# Organizing Your Finances For The People You Love

BY FRANK BRUNO, JR.

## CONTINUED FROM PAGE 1

Same meaning different words. Climb the ladder gracefully just a little bit higher on the better feeling ladder.

Maintaining a positive attitude is a daily practice. Simple habits like gratitude journaling, visualization, and intentional self-talk can rewire your mind to operate from a place of abundance and confidence. Remember, your attitude not only shapes your reality but also inspires and influences those around you.

More than thirty years ago, as I was studying for the LSAT, I read a Tony Robbins book that had a meaningful impact on my life. I attribute the lessons learned in his book to helping me prepare for the exam. This week, I heard him on a podcast and I remarked to my family that I should have been listening to him this entire time. Probably along the way, I dismissed him as a late-night infomercial guy. Although you can think of him as a motivational speaker, he is really a performance strategist that has honed his philosophy of life and methodology for decades. I saw the four-story mansion he owns and his very own island. (a nice island to visit with no lists) He has a way of providing concrete methods to face the task or day ahead. I appreciate positive thinking and do my best to embody positive thinking but Tony's suggestions are not pie in the sky; rather clear actionable methods. Some takeaways, where focus goes, energy flows; identify your result and focus on that rather than the activity. Making small changes can have big results-the difference between safe at first or being out is less than a second; sometimes the difference between scoring a goal or not scoring a goal is millimeters. A small hinge can more large doors. He discusses managing emotional states and addressing the Six Basic Human Needs.

One of the lessons remembered from thirty years ago was coined using the metaphor "carrot and stick." You move towards a goal for pleasure or avoid the wrong path to avoid pain. Robbins varies the language now but utilizes the same concept as a key component of his Six Human Needs philosophy. He reframes it as a need for 1. Certainty/Comfort where a person has an assurance you can move toward reward and avoid punishment. This is a need for safety and stability and much of this comfort comes from certainty. Certainty that the car will start and water will flow from the tap. 2. Uncertainty/Variety, where a person requires new stimuli. This is a need for surprise and change. We want certainty yet crave variety. There needs to be enough variety to spice

up our lives. 3. Significance because everyone wants to feel unique, important, special or needed. The need to feel important. To think and believe that our lives matter. 4. Connection/Love where a strong feeling of closeness or union with someone or something. The need to belong. We want to be cared for and cared about. 5. Growth as an expansion of capacity, capability or understanding. The need to evolve. To become better, to improve our skills, to stretch and excel may be more evident in some than others, but it is there. 6. Contribution which is a sense of service and focus on helping, giving to and supporting others. The need to give. The desire to contribute something of value, to help others, to make the world a better place than we found it is in all of us.

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**Financial wellness is not just about numbers. It's about clarity, organization, and confidence that your wishes will be carried out when it matters most.**

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Let us examine a habit through this lens. One person might meet their needs on a strong level for certainty, variety, significance, and connection through smoking cigarettes. (a dying habit for sure) They can feel certain or comfortable from smoking cigarettes whether it is a habit they have had for a long time or because they feel they can relax from having a deep exhale. They feel variety because smoking a cigarette instantly changes your biochemistry and state. They can feel significant if they see smoking as a cool thing to do or being the guy or girl who offers someone a cigarette, and they can feel connection by smoking with others.

The same needs can address why a person has a bad habit or a beneficial habit at all. Another person can meet those same six human needs through daily exercise. They feel certain that they will feel great and energized from exercising. They can experience variety through mixing up workouts, through the biochemical change that takes place in their body, and through training different muscle groups. They can experience significance by being someone who values their body and by having a strong body. They can experience connection and love for themselves for

taking great care of their body and by exercising with others.

*"No matter how many mistakes you make or how slow your progress, you are still way ahead of everyone who isn't trying."* —Tony Robbins

## Organizing Your Finances for the People You Love

January is often a time when people focus on health, habits, and setting the tone for the year ahead. One area frequently overlooked but with a significant impact on your peace of mind is financial organization. A well-written trust is only effective if adequately funded and aligned with your financial accounts. That is where many families get stuck. Funding a trust means ensuring assets are titled or designated correctly so they pass in accordance with your estate plan, not outside. This process can feel overwhelming, especially when documents are scattered, institutions have different requirements, or paperwork is difficult to track down.

Providing a clear funding checklist. This checklist shows what has already been completed and what still needs attention, so nothing gets missed. Helping locate important documents. Locating existing paperwork and tracking down hard-to-find documents, such as insurance policies and property deeds.

Preparing letters to financial institutions. Draft letters to banks and other institutions that clearly outline the required actions, reducing confusion and saving clients time and stress. Aligning beneficiary designations. Review and coordinate beneficiary documents to ensure they align with the estate plan and does not unintentionally override the trust. Primarily, when homes or other real estate are involved, organize and address the necessary tax documentation related to those assets.

Knowing where your documents are, understanding what has been completed, and having a clear plan for what remains can make an enormous difference for you and for the people you love.

Financial wellness is not just about numbers. It's about clarity, organization, and confidence that your wishes will be carried out when it matters most.

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*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.*

# QCBA Annual Holiday Party

DECEMBER 11, 2025  
JERICHO TERRACE, MINEOLA

PHOTOS BY WALTER KARLING



# QCBA Annual Holiday Party

DECEMBER 11, 2025  
JERICHO TERRACE, MINEOLA

PHOTOS BY WALTER KARLING



# NY Cannabis Law FAQs

Wed., February 4, 2026  
1:00 pm - 2:00 pm



PRESENTER:  
**Jason A. Little, Esq.**  
*Bankruptcy & Restructuring, Cannabis,  
Commercial Litigation Attorney.*  
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## The Practice Page

# All To Know About Counterclaims, And More

BY HON. MARK C. DILLON

*Serves on the Appellate Division, Second Department*

There are procedural rules peculiar to counterclaims in the supreme court.

Counterclaims are typically served by the defendants upon plaintiffs with the defendants' answers. But they may, at the option of the pleader, be instead served as a stand-alone document. The subject matter of a counterclaim need not relate to the transactions or occurrences alleged by the plaintiff in the main complaint (CPLR 3019[a]). If a counterclaim's unrelatedness may complicate a trier of fact's assessment of the case, it may be severed from the plaintiff's action (*Herskovitz v Klein*, 91 AD3d 598 [2d Dep't. 2012]). The allegations in a counterclaim must meet the same notice pleading requirements as those which govern complaints generally; namely, statements which are sufficiently particular to give the court and the parties notice of the transaction, occurrence, or series of transactions or occurrences intended to be proved, and the elements of each cause of action (CPLR 3013; *Taxi Tours, Inc. v Go New York Tours, Inc.*, 41 NY3d 991 [2024]). Under CPLR 3011, a counterclaim must be "denominated as such," meaning that the pleading clearly assert the counterclaim separate from the paragraph-by-paragraph answer and its attendant affirmative defenses.

By its nature, a counterclaim is reactive. The plaintiff commences an action first. The defendant, who may or may not have planned on asserting any claim against the plaintiff, then chooses to do so because the plaintiff commenced the primary action.

What if the plaintiff commences an action within the applicable statute of limitations, but by the time the defendant is joining issue, the limitations period has expired on the potential counterclaim? May the counterclaim be interposed? CPLR 203(d) provides an answer, based on two scenarios. For statute of limitations purposes, a counterclaim relates back to the date the plaintiff's claims were interposed (i.e. the date the action was commenced). Therefore, under one scenario, if the counterclaim becomes untimely between the date of action's commencement and the date of the counterclaim itself, it is treated as timely since it would have been timely as of the date of the action's

commencement. The second scenario exists when the statute of limitations expired for the counterclaim before the plaintiff commenced the initial action on the plaintiff's cause of action. In that instance, the counterclaim is still allowed despite its untimeliness, but only if the counterclaim arises from the same transactions or occurrences which form the basis of the plaintiff's complaint, and with the further restriction that damages on the counterclaim be capped at whatever money is demanded in the plaintiff's complaint (*Getzel Schiff & Pesce, LLP v Shtayner*, 233 AD3d 758 [2d Dep't. 2024]; *Bloomfield v Bloomfield*, 97 NY2d 188 [2001]). In other words, damages on the counterclaim are a mere offset against the plaintiff's damages, with the defendant prohibited from obtaining an affirmative net recovery. The theory behind that "equitable recoupment rule" is to protect the defendant from where the plaintiff deliberately postpones a law suit to beyond the defendant's statute of limitations, to sucker punch the defendant into not asserting a timely claim at all. Moreover, just as complaints in actions for personal injury and wrongful death shall contain a prayer for only general relief without stating the specific monetary damages to which the plaintiff claims entitlement, the same rule applies to counterclaims (and also for that matter to cross-claims, interpleader complaints, and third party complaints) (CPLR 3017[c]). Where an "untimely" counterclaim is permitted to the limited extent of off-setting the plaintiff's award of damages, the defendant should serve upon the plaintiff a specific total damages demand, as permitted by CPLR 3017( c), to assess the extent of damages which the counterclaiming defendant will need to prove to potentially zero-out the plaintiff's recovery.

A counterclaim may be amended once as of right within the time limits of CPLR 3025(a). If that occurs, and for statute of limitations purposes, the amendment relates back to the time of the original counterclaim, which then further relates back to the date of the plaintiff's complaint (CPLR 203[f]; *Iacovangelo v Shepard*, 5 NY3d 184 [2005]).

FRCP 13(a) provides that in federal courts, a defendant's failure to interpose a counterclaim that would have related to the

subject matter of the plaintiff's complaint constitutes a waiver of the defendant's claim. The federal "compulsory counterclaim rule" is not the rule in state practice. But if there is a federal action where the related counterclaim is not interposed, followed by a state action for the federally "waived" claim, the state claim under those unique circumstances is waived as well by application of *res judicata* (*Paramount Pictures Corp. v Allianz Risk Transfer AG*, 31 NY3d 64 [2018]).

The plaintiff must interpose a reply to any counterclaim (CPLR 3011). The reply is to be served within 20 days of the service of the counterclaim (CPLR 3020[a]), which is not extended for e-filed cases under NYSCEF (Uniform Rule 202.5-b[f][2][ii], 202.5-c[c][1]) but which receives a five-day mailing extension for cases outside of NYSCEF (CPLR 2103[b][2]). The reply may not only respond to the counterclaim's allegations, but also set forth any applicable affirmative defenses as with any responsive pleading. Instead of a reply, the plaintiff may of course move to dismiss the defendant's counterclaim under CPLR 3211. A plaintiff who fails to either timely reply to a counterclaim or move to dismiss it is in default (*Rajaram v Singh*, 230 AD3d 809 [2d Dep't. 2024]). If the plaintiff defaults on a counterclaim, the defendant must take proceedings for a judgment within a year from when the reply was due as required by CPLR 3215( c), otherwise the counterclaim shall be dismissed as abandoned absent good cause shown (e.g. *Doe v Garfinkel*, 234 AD3d 929 [2d Dep't. 2025]). This is true even though the language of CPLR 3215( c) speaks only to the dismissal of "complaint[s]" (*Clemente v Clemente*, 16 Misc.3d 769 (Sup. Ct. Bronx Co. 2007) [Globerman, J.]). Logically, the plaintiff's reply cannot assert its own circular counterclaim against the defendant (*DeMille v DeMille*, 5 Misc.3d 355 [Sup. Ct. Nassau Co. 2004] [Falanga, J.]). If the plaintiff has any additional claims to assert at that point, it may be accomplished by amending the plaintiff's original complaint within the available timeframe of CPLR 3025(a) as of right, or by later leave of court under CPLR 3025(b).

The plaintiff may move for summary judgment after the defendant's answer, but

CONTINUED ON PAGE 18

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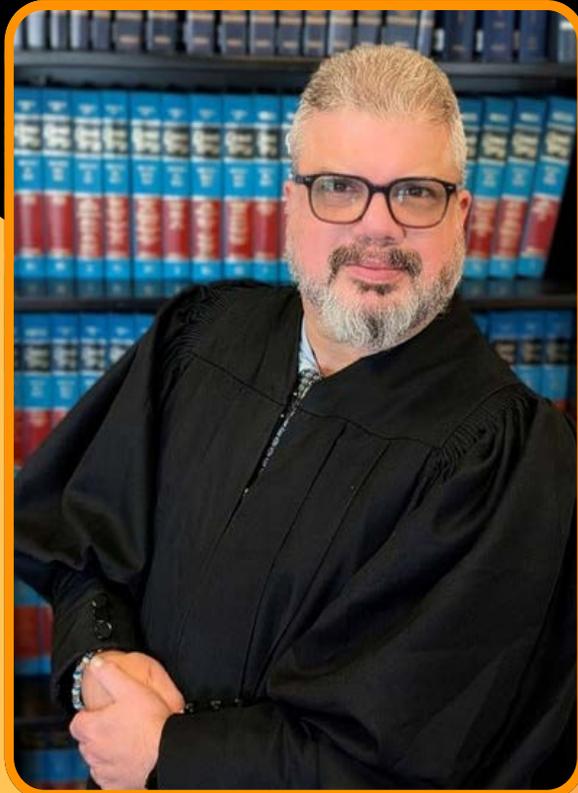
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### WHAT HAS HAPPENED TO PRELIMINARY CONFERENCE AND COMPLIANCE CONFERENCE ORDERS?

I have been practicing civil litigation for almost 40 years.

There is a systematic disregard of Preliminary Conference and Compliance Conference Orders. It is as if they do not exist. My office spends a significant part of the day trying to enforce Preliminary Conference and Compliance Conference Orders against the opposing party. As result, I have to resort to motion practice or further conferences to get compliance. Some courts have set up a compliance part to enforce compliance with the previous Ordered compliance. No disrespect to the compliance parts, but why should they have to deal with matters that already have multiple Orders. The compliance judges in Queens and their staff are doing wonderful work, but they could be trying cases which would reduce the trial calendar in Queens to six months.

What happened to the caselaw that says that a Preliminary Conference Order and the Compliance Conference Order is in fact an "Order of the Court."

I guarantee you that any New York attorney who files cases both in New York State Court and Federal Court would say that defying even one Federal Court Order is perilous.

In my opinion, there should be a "three strike rule". If a party violates a Court Order three times on the same issue, there should be severe consequences; ie, preclusion or striking part of or all of a pleading unless that noncompliant party can demonstrate a valid medical or family issue.

Until such time as trial court judges are backed up by the Appellate Divisions in enforcing such rule, we will continue to have motion and compliance after compliance. What a waste of resources!

Michael A. Cervini  
 Michael A. Cervini, P.C.  
 3312 86 Street  
 Jackson Heights, NY 11372

## Editor's Note | The Truth is in Philadelphia

### CONTINUED FROM PAGE 4

In "Native Nations: A Millenium in North America" (Penguin Random House LLC, NY 2024), Prof. Kathleen DuVal, a Professor of History at the University of North Carolina describes at length the myth that the American Indian Tribes "disappeared" when they are actually today thriving as never before. She describes a massive demonstration with 300 different Indian flags seeking to block the Dakota Access Pipeline in 2016.



**The Royal Tombs of Ur,**  
the world's first city  
Penn Museum, December 2025



Part of **The Royal Tombs of Ur,**  
the world's first city  
Penn Museum, December 2025

Prof. DuVal criticizes Prof. Howard Zinn's 1980 "A People's History of the United States", Dee Brown's 1970 "Bury My Heart at Wounded Knee", Jared Diamond's 2005 "Guns, Germs and Steel: the Fates of Human Societies" and Charles

Mann's "1491: New Revelations of the Americas Before Columbus" as all refusing to acknowledge that more than 300 American Indian nations are mistakenly called tribes when they have been, for thousands of years, and still are, independent nations within the United States generally treated with the same degree of independence as States, Cities and Counties.

In fact, one could clearly argue that an American Indian nation (tribe) recognized by the United States Department of Interior has far more autonomy and self-government than we do here in Queens County, NY where we are dominated by Albany, the Port Authority (Albany acting in concert with Trenton, NJ) and Manhattan. American Indian nations (tribes) suffer from no such domination. They have treasuries and property. We don't.



**Eastern Mediterranean Gallery**  
Penn Museum, December 2025



**Chinese statue of Buddha, 706 CE**  
Penn Museum, December 2025

This then leads us to Miguel León – Portilla's leading 1962 book, "The Broken Spears: the Aztec Account of the Conquest of Mexico" (Beacon Press, Boston, 1962, 1990) which tells the conquest of Mexico by Spain from the native Aztec point of view. It is fascinating to read that anonymous informants of Tlatelolco, believed, in 1528, that there were seven bad omens of the Spanish conquest including a flaming ear of corn in the sky, the temple Huitzilopochtli bursting into flames, a lightning bolt at Xiuhtecuhtli, fire flaming in the sky, wind lashing at water until it boiled, a weeping woman in the night, and a strange creature captured in fishing nets (pages 4 and 5).

In a rejoinder to Prof. DuVal, Prof. Dina Gilio-Whitaker, a lecturer in American Indian studies at California State University at San Marcos, has written "Who gets to be Indian? Ethnic Fraud, Disenrollment, and Other Difficult Conversations about Native American Identity" (Beacon Press, Boston 2025), a discussion of the problems of American Indian identity today because of intermarriage and tribal conflicts. Note that Beacon Press is "under the auspices of the Unitarian Universalist Association of Congregations", a leading American Protestant denomination.

In understanding our country, we must read the views of Prof. Dina Gilio-Whitaker at the same time we read the views of Prof. Kathleen DuVal.

And of course, in Prof. Jared Diamond's master work, "Guns, Germs and Steel: the Fates of Human Societies", we consider the theory as to how and why some civilizations grow and some die. Prof. Diamond, a Professor of Geography at the University of California at Los Angeles (UCLA) writes that he wrote this Pulitzer Prize winning book to answer what he calls "Yali's question."

Apparently, in July 1972, Prof. Diamond was exploring the tropical island of New Guinea when he interviewed a local politician named Yali. In New Guinea, modern inventions are called "cargo". Yali asked Prof. Diamond "Why is it that you white people develop so much cargo and brought to New Guinea but we black people had little cargo of our own?"

The entire Pulitzer Prize winning book, "Guns, Germs and Steel" is designed to answer Yali's question with the underlying idea that native human intelligence is spread equally among all groups of human beings. What external factors explain prehistoric living conditions in some places and artificial intelligence in others? We must read, "Guns, Germs and Steel" to find out.

Finally, there is Journalist Anthony Sattin's 2022 book, "Nomads: The Wanderers Who Shaped Our World" (WW Norton & Co., Inc., NY 2022, 2024), explaining the answer to Yali's question from Prof. Diamond's book: some people wander all over the world carrying new ideas with them

CONTINUED ON PAGE 18

## Editor's Note

## The Truth is in Philadelphia

## CONTINUED FROM PAGE 17

and spreading them to other societies. Anthony Sattin has tried to explain this to all of us with a famous idea from the writer James Baldwin:

*"History, as nearly no one seems to know, is not merely something to be read. And it does not refer merely or even principally, to the past. On the contrary, the great force of history comes from the fact that we carry it within us, are unconsciously controlled by it in many ways, and history is literally present in all that we do." (See James Baldwin, "The White Man's Guilt", Ebony, August 1965" and page 5 of "Nomads".*

When all is said and done, it appears that the Penn Museum is your best bet for trying to understand the diverse peoples of the planet we live on. As the Computer Revolution proceeds at a breakneck pace, this knowledge will become more and more important.

But what is missing from the comprehensive collection of objects and ideas that is the Penn Museum?

I dare to provide the answer: what is missing is a synthesis of what all this means – the growth of human kind in all different directions at the same time over a very long period of time.

I respectfully submit to you, the Bench and Bar of Queens County, NY, my readers of 46 years, (and all other readers) the synthesis is an examination and reflection on the life and career

of Norman Ernest Borlaug (1914 – 2009), a Professor of International Agriculture at Texas A & M University. Simply put, Prof. Borlaug and his teams of agricultural scientists figured out how to vastly multiply the world's food supply by tripling



Norman Borlaug

the edible output of each wheat plant and then actually doing so by distributing his new super-seeds world-wide.

He also invented the "Borlaug hypothesis":

*"That increasing the productivity of agriculture on the best farmland can help control deforestation by reducing the demand for new farmland."*

His work over a lifetime is credited with saving over one billion people from death by starvation. For this lifetime achievement he was awarded the Nobel Peace Prize, the U.S. Presidential Medal of Freedom and the U.S. Congressional Gold Medal. (See Google, Norman Borlaug, Wikipedia).

For this awe-inspiring achievement, it is said that Prof. Borlaug "saved more lives than any other person who has ever lived." (See Google, World Food Prize Foundation, the World Food Prize, About Norman Borlaug).

It is said that Prof. Borlaug was the founder of "the Green Revolution". (See Google, Norman Borlaug).

In his March 25th, 2014 blog Scott Elliot of the National Institute of Food and Agriculture of the U.S. Department of Agriculture set the future task for the Penn Museum and indeed all Museums that dare to tell the story of humanity:

*"Compared to storied politicians, creative industrialists or military heroes, Borlaug's accomplishments have never been the topic of discussions at the dinner table – he merely set the world's table. But what a table. The simple Iowa farm boy is credited with saving a billion people around the world from starvation and malnutrition." (See Google, Scott Elliot March 25th, 2014 blog).*

A monument and explanation of the life and work of Prof. Borlaug should be at the center of the hall when a visitor walks into the Penn Museum and all other Museums that seek to tell humanity's story.

How better to inspire University students and all who come to learn that the values that inspired Prof. Borlaug are the best way forward for us all.

## The Practice Page

## All To Know About Counterclaims, And More

## CONTINUED FROM PAGE 13

the defendant may not move for summary judgment on its counterclaim until after the plaintiff's reply (CPLR 3212[a]; *68 North 8 Street HDFC v Suarez*, 18 AD3d 732 [2d Dep't. 2005]).

If the defendant wishes to assert a counterclaim against the plaintiff and a *non-party* that may be liable on the same claim,

the defendant may do so under CPLR 3019(a). The defendant must file both a summons and the answer containing the counterclaim, and then serve the summons with the other papers upon the non-party to obtain personal jurisdiction over it (CPLR 3019[d]). The non-party — now a defendant in the caption — serves a responsive pleading also known as a "reply" since it is responsive to a pleading denominated as a counterclaim (*Id.*).

---

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



Kristen J. Dubowski Barba, Esq.  
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