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NCBA COMMITTEE MEETING CALENDAR
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SAVE THE DATE

NASSAU ACADEMY OF LAW BRIDGE THE GAP WEEKEND
March 14 and 15, 2020
Contact Jennifer Groh at (516) 747-4070 or jgroh@nassaubar.org.

WE CARE DRESSED TO A TEA
Thursday, March 26, 2020
See pg. 18 for details

LAW DAY
YOUR VOTE, YOUR VOICE, OUR DEMOCRACY
Wednesday, April 29, 2020
See insert for details

121ST ANNUAL NCBA DINNER DANCE
Saturday, May 9, 2020
See pg. 6 and insert for details

WHAT'S INSIDE

OF NOTE

NCBA Member Benefit - I.D. Card Photo
Obtain your photo for Secure Pass Court ID cards at NCBA Tech Center
Only For New Applicants
Cost $10 • April 7, 8, and 9
9:00 AM—4:00 PM

UPCOMING PUBLICATIONS COMMITTEE MEETINGS

Thursday, April 2, 2020 at 12:45 PM
Thursday, May 7, 2020 at 12:45 PM

NCBA Offers Membership to Paralegals and Legal Administrators

Do you have paralegals or legal administrators in your law office who wish to expand their skill sets in a welcoming and inclusive environment? The NCBA has opened membership to paralegals and legal administrators to accommodate these valuable professionals of the legal community. In addition, the NCBA has introduced two new committees to cater to their professional needs.

In coordination with the Paralegal and Legal Administrator Committees, the Nassau Academy of Law has planned a number of engaging programs and seminars this spring designed to develop and enhance the skills of your law office employees, while simultaneously allowing them to network with other Members of the NCBA.

Paralegals and legal administrators who wish to join the NCBA now have the opportunity to take advantage of special member rates, and begin an active membership in the Bar Association where they can learn and meet with other paralegals and legal administrators.

NCBA Paralegal Committee

The NCBA Paralegal Committee promotes the exchange of information between paralegals and attorneys and provides a networking opportunity between paralegals and other legal professionals. The Committee is lead by Chair Maureen Dougherty and Vice-Chair Cheryl Cardona.

NCBA Legal Administrators Committee

The NCBA Legal Administrators Committee provides a forum for legal administrators to share information, learn about updates to HR and labor law, gain knowledge about topics relevant to their position, and network with other administrators, while at the same time increasing visibility and understanding related to the administrator's role within law firms. The Committee is lead by Co-Chairs Dede S. Unger and Virginia A. Kawochka.

Join the NCBA as a Paralegal or Legal Administrator

If a paralegal or legal administrator wishes to join the NCBA to take advantage of the new committees and programs, please have them contact Donna or Stephanie in the NCBA Membership Office at (516) 747-4070. Special reduced rates are now available for these groups of members for the remainder of the 2019-2020 Bar year.

NCBA Kicks Off Annual High School Mock Trial Tournament

More than 100 NCBA members volunteered to serve as team advisors or trial judges during the first round of the Caryle Katz Mock Trial Competition on February 10 and 24 at the Nassau County Supreme Court. Members helped more than 600 students from 48 Nassau County high schools further their understanding of trial advocacy and the legal system. The final round in April will determine the Nassau County champion, which will go on to the New York State finals in Albany. The competition was renamed last year after the retirement of Caryle Katz, the Bar's longtime administrator of the tournament, for her years of dedication to the competition. Academy Director Jennifer Groh has since taken over coordinating the annual tournament. The mock trial competition is chaired by Hon. Marilyn K. Genoa, Peter H. Levy, and Hon. Lawrence M. Schaffer.

Jennifer C. Groh is the Director of Continuing Legal Education for the Nassau Academy of Law at the Nassau County Bar Association. The Nassau Academy of Law hosts numerous CLE programs throughout the year. For additional information, you may contact Jennifer at jgroh@nassaubar.org or (516) 747-4077.

Elder Law/Trust & Estates

All Hope Is Not Lost—Probating a Lost Will Pursuant to SCPA §1407

When confronted with the loss of an original will instrument, estate practitioners have traditionally responded with a briefcase containing affidavits explaining the circumstances behind the document's disappearance. It is therefore not surprising that such a loss can serve as a potential death knell for any probate proceeding. However, hope is not lost. In New York, probating a copy of a lost or destroyed will is, to quote a line from *The Godfather Part II,* "difficult, not impossible."

Pursuant to SCPA § 1407, a copy of a lost or destroyed will may be admitted to probate only upon (1) establishing that the will has not been revoked, (2) proving execution in the manner required for probate of an existing will, and (3) clearly and distinctly proving all of the provisions of the will by at least two credible witnesses or by a copy or draft of the will proved to be true and complete.

This threshold poses a daunting task for estate practitioners, particularly those seeking to probate copies of wills that are several decades old. If the proffered will is more than twenty years old, the drafting attorney and/or witnesses are often impossible to locate. They may well be deceased. Further, as time goes by memories tend to fade and documents tend to disappear.

Practitioners in some cases have resorted to the ancient document rule to successfully probate copies of wills that are several decades old. Most courts require the copy of the will to be a minimum of thirty years old in order for the ancient document rule to apply, however Nassau County Surrogate's Court has adopted the more lenient twenty-year-old federal rule.[1]

Andrew P. Nitkewicz

In these instances, the court will ascertain whether the location from which the copy was obtained constitutes a "natural place of custody" and will also examine the appearance of the document itself to determine whether the drafting language contained therein, or the physical state of the copy are suspicious in nature, before admitting the copy to probate.[2] If, however, the ancient document rule is inapplicable, the petitioner will be obligated to comply with the requirements of SCPA § 1407.

As a general rule, the second requirement of SCPA §1407, namely proving execution in the manner required for probate of an existing will, is easily surmountable. This is particularly true if there is evidence that the will was executed with attorney supervision, which in and of itself creates a presumption of due execution.[3] If any or all of the witnesses to the will are deceased, their testimony may be dispensed with pursuant to SCPA § 1405 regarding the due execution of the instrument, provided that the petitioner is able to submit handwriting samples for the testator and one witness.[4]

The first prong of SCPA §1407—establishing that the will has not been revoked, can be a bit more troubling. In most instances, a presumption of revocation arises when the original testamentary instrument, known to have been in possession of the testator prior to death, cannot be located after death.[5] When it is alleged that the decedent's will was destroyed during his lifetime, petitioners are required to provide proof that the testator, or someone acting at his direction, had not previously revoked the will.[6]

Accordingly, the practitioner is faced with the formidable task of proving a negative, that the testator did not revoke the will at any time since the date the subject will was executed. While it is entirely possible that proof exists that the testator formed such a bond with his existing estate plan that revocation would be seen as implausible, often such proof is wanting. Furthermore, witness testimony may be subject to dismissal for being either speculative or mere conjecture.

Some petitioners have managed to successfully probate a copy of the will with the submission of an affidavit from the drafting attorney. The submission may include a copy of the will that was executed. It may also set forth the attorney's personal recollection of the terms which were drafted in the original instrument, in an effort to confirm that they are identical to the terms set forth in the copy of the will now being submitted for probate.[7]

For the attorneys charged with the task of probating a lost or destroyed will, tracking down the drafting attorney is pivotal for a successful probate petition. If the drafting attorney is deceased or cannot be located, petitioners may still seek to probate a copy by submitting evidence establishing that it was the attorney-drafter who retained possession of the original will.

Evidence which has previously been accepted by the courts have included correspondence from the drafting attorney which indicates that the original will remained in their possession, or a "COPY" stamp affixed to the decedent's instrument to indirect-

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Seeking Solutions on Our Streets and in Our Jails

FROM THE PRESIDENT

Richard D. Collins

The news cycle was flooded recently with stories of repeat crimes committed by those freed without monetary conditions under New York's new bail reform law. One recent case involved a "homeless" man accused in several random attacks in Manhattan who had been released under the new law. Another involved a woman charged with slapping three Orthodox Jewish women in Brooklyn who was released, then rearrested a day later, for a new crime of hitting someone else.

Bail reform opponents predictably seized the opportunity to blame the new statute. Having served in the criminal justice system as a prosecutor and then a defense lawyer, I have a different take. Both of the individuals referenced above, along with thousands of people just like them living on the streets or languishing in our jails, are examples of our societal failure to deal with the underlying problem. We can talk endlessly about mass incarceration and the need for affordable housing, but until we get real about treating the mentally ill at our society's fringes, solutions will elude us.

How did we get here? Prior to the mid-1800s many Americans with serious mental illnesses ended up in jails. A movement for more humane treatment led to the creation of state "asylums" where patients (rather than "inmates") would have greater freedom of movement and receive rehabilitation instead of punishment.[1] By 1900, every state had a psychiatric asylum. But in the 1970s a movement for "deinstitutionalization" gained traction, fueled by civil rights advocates and media exposés of deplorable conditions in New York facilities like the Willowbrook State School. The laudable idea behind deinstitutionalization was to redirect patients to neighborhood group homes. However, when funding failed and communities balked (i.e., "not in my backyard"), the plan collapsed. As a result, persons with serious mental illness today fill our jails, prisons, streets and subways. In 1963, nearly 700,000 mentally ill Americans were confined in mental institutions; only 250,000 were incarcerated. But by 2017 we had less than 50,000 people in state mental hospitals and well over *one million* mentally ill people incarcerated.[2] Their crimes might never have happened if those individuals had received proper psychiatric evaluation and treatment. On any given night in America, some 350,000 people with mental illness are homeless and living on the streets.[3]

Overcrowded jails and homelessness are too often the consequence of untreated mental illness. The euphemized term "mental health" weakens the urgency of the crisis and diverts attention from those most in need of help. The problem for this population isn't imperfect health, it's serious illness—schizophrenia, depression, bipolar disease and/or post-traumatic stress disorder, very often combined with drug or alcohol addiction and symptoms like delusions, psychosis, or paranoia.

In his eye-opening book, "*Insane Consequences: How the Mental Health Industry Fails the Mentally Ill*," author DJ Jaffe, executive director of Mental Illness Policy Org, a nonpartisan thinktank, offers a set of solutions including civil commitment reforms and expanded mental health courts.[4] He is critical of misguided civil libertarian ideas that effectively protect a right to be psychotic. The late Charles Krauthammer wrote, "Rounding people up, taking them off the streets, and putting them into clean hospital beds where they can get food and shelter and appropriate medical care (and a gradual transition to halfway houses and perhaps back to family) is not an answer for the homeless who are merely poor. But it is an answer for the army of homeless who are mentally ill."[5] Krauthhammer's approach likely seemed misguided when deinstitutionalization appeared to be the path to a more humane landscape. For those on the streets and in jails, it hasn't. Those suffering from psychosis or narcotic or alcohol addiction will often resist coerced evaluation and treatment. But "resisted rescue" of these persons directly from the streets or at criminal court arraignments now appears to be the better choice than what we have currently.

In New York, involuntary commitment often requires "imminent dangerousness." Ours is one of a handful of states that does not have a gravely disabled/basic needs standard for commitment. Krauthammer continued, "Today you can intervene to help the homeless mentally ill only if you can prove that they are dangerous to themselves and/or others. That standard is not just unfeeling, it is uncivilized. The standard should not be dangerousness, but helplessness. Society has an obligation to save people from degradation, not just death."[6]

While most mentally ill people are not dangerous to others, those with serious mental illness need help and require evaluation and treatment. Current intervention policy options for police officers and the legal criteria for involuntary commitment in New York make it virtually impossible to rescue a psychotic person unless they are at the point where it can be too late to save the person or to prevent someone else from getting hurt (punched in the face, stabbed, or pushed onto subway tracks).

Statutes authorizing Assisted Outpatient Treatment (AOT) such as Kendra's Law (New York Mental Hygiene Law § 9.60) are generally helpful. The criteria to place someone in AOT are easier to meet than the "imminent dangerousness" standard often required for inpatient commitment in New York. However, AOT statutes don't target those having serious mental illness but no fixed address, nor do they help people who need hospitalization but are not imminently dangerous. As a result, the population of seriously mentally ill people on the streets and in the jails is growing nationwide.

Efforts to relax the standards for involuntary hospitalization meet aggressive challenges. Just this month in Hawaii, which has among the most significant homeless populations in the nation, a new bill (HB2680) was introduced in the House seeking to tackle the problem. State Representative Cynthia Thielen is a sponsor of the bill to restore the terms "gravely disabled" and "obviously ill" as standards for coerced care.[7] The bill's restoration of these terms, defining lesser standards than an imminent danger standard, was rejected in committee based on purported Constitutional concerns.[8]

While the immediate dangerousness standard protects civil liberties, it offers no help to the expanding population of homeless Americans with serious mental illness. "My response is that the [civil libertarians] took it too far," says Rep. Thielen. "They said hands off of everyone. You can't do that when a person is unable to take care of themselves."[9] Rep. Theilen acknowledges that psychiatric care facilities will need to be expanded to accommodate the policy change, but sees it as a necessary burden to help people who desperately need it. In an effort to help Rep. Thielen, I put her in touch with Lisa Dailey, a lawyer who serves as Director of Advocacy for the Treatment Advocacy Center in Virginia, who is trying to assist. I'm hopeful that Hawaii can restore the needed language to its law.

What about New York? Is it time to rethink the imminent dangerousness standard for those living on New York's streets? Can a lesser standard adequately protect due process rights and civil liberties? Instead of leaving people with untreated mental illness to live on the streets or languish in jails, legislation to provide broader rescue discretion coupled with an expanded system of safe, secure and professionally staffed treatment facilities (with safeguards against abuse such as surveillance monitors) seems like a much better option.

I have directed the Chairs of our NCBA Mental Health Committee and our Hospital and Health Committee to explore this subject in future committee meetings and to educate our membership, perhaps in a public town hall. There are experts and advocates with lots to say about the issues, including Lisa Dailey and also Elizabeth Kelley, a criminal defense lawyer with a nationwide practice defending persons with mental illness against criminal accusations, and NCBA member and nationally recognized mental health law attorney, Carolyn Reinach Wolf. They have all offered to speak for us at Domus. It is my hope that our association can help play a role in bringing care, compassion, and an eventual solution to this crisis.

1. *See* generally https://www.samhsa.gov/sites/default/files/civil-commitment-continuum-of-care_041919_508.pdf.
2. *See* https://www.treatmentadvocacycenter.org/storage/documents/treatment-behind-bars/treatment-behind-bars.pdf.
3. http://jhvonline.com/reelabilities-film-fest-why-many-people-with-mental-illness-end-up-on-t-p27160-153.htm#.Xj8gnyntm-4.linkedin; see, the documentary "Bedlam" by Kenneth Paul Rosenberg.
4. https://mentalillnesspolicy.org/insane-consequences.html
5. https://www.washingtonpost.com/archive/opinions/1988/12/23/the-homeless-who-dont-want-help/aed06c47-984a-468c-8596-d1d6c64302f8/
6. *Id.*
7. https://www.capitol.hawaii.gov/session2020/bills/HB2680_.HTM
8. https://www.capitol.hawaii.gov/session2020/CommReports/HB2680_HD1_HSCR237-20_.htm
9. https://www.khon2.com/top-stories/new-mental-illness-bill-aims-to-tackle-involuntary-hospitalization/

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Elder Law/Trust & Estates

My Spouse Cut Me Out of the Will—Now What?

The freedom to dispose of one's assets how he or she sees fit is one of the basic maxims of American society. Very few restraints are placed on the testamentary freedom of an individual. As long as he has capacity, Dad can leave all of his assets in trust for his prized parakeet, leaving nothing to his children.

One of the few restraints on alienation is the inability to completely disinherit a spouse. The ability of a surviving spouse to claim a portion of a decedent's estate when the decedent left him or her little or nothing is called the right of election.

The Elective Share

The statutory framework for the surviving spouse's right of election for decedents dying on or after September 1, 1992 is found in Section 5–1.1–A of the Estates, Powers and Trusts Law. The surviving spouse is entitled to the greater of $50,000 or one-third of the net estate.[1] The net estate is calculated by deducting debts, administration expenses and reasonable funeral expenses from the decedent's gross estate plus "testamentary substitutes." These are certain assets that were either gifted before death (with limitations), have a named beneficiary, or were held jointly with an individual.[2]

One-third of the net estate is considered the surviving spouse's elective share. The elective share is then reduced by the value of any interests that pass absolutely to the surviving spouse.[3] This could include one-half of the marital house, the joint bank accounts, or that small IRA which listed the surviving spouse as the beneficiary. Put simply, the surviving spouse is entitled to one-third of the net estate subtracting any estate assets that the surviving spouse received by operation of law or beneficiary designation.

Christina Lamm

Additionally, certain assets are set off for the benefit of the surviving spouse and/or children under the age of twenty-one.[4] These assets are not considered property of the estate, but vest in the surviving spouse and/or children upon death and they are not included in the calculation of the net estate. This family exemption includes, but is not limited to: household furnishings, clothing and jewelry of the decedent not exceeding $20,000; books, electronics, photos and videos not exceeding $2,500; one motor vehicle not exceeding $25,000 in value; and money not exceeding $25,000.

It is important to note that a surviving spouse may be barred from asserting his or her right of election if it can be established that one of the grounds for disqualification exist,[5] application of the "slayer rule"[6] is applicable, or a valid waiver or release of the right of election has been executed.[7]

Testamentary Substitutes

Testamentary substitutes play an important role in protecting the rights of surviving spouses. Without this "add back" of certain assets when calculating the net estate for elective share purposes, a decedent could gift his entire estate to someone the spouse never even heard of and the purpose of the statute would be defeated.

EPTL §5–1.1–A(b) lists the following as testamentary substitutes:

Gifts *causa mortis*, made in contemplation of death.[8]

- Gifts over the yearly gift tax exclusion, made within one year before death.9
- Totten Trust Accounts, bank accounts on deposit at death, held in the decedent's name in trust for another.10

Joint bank accounts (created after August 31, 1966) on deposit at death, held jointly by the decedent and another and payable on death to the survivor. The value of these accounts for the elective share calculation is the amount contributed by the decedent or, if the account is held jointly with the surviving spouse, one-half.[11]

Property held at death by the decedent and another as joint tenants with the right of survivorship or as tenants by the entirety (designated as such after August 31, 1966).[12] The value for elective share purposes is also the amount that the decedent contributed, unless the joint party is the surviving spouse, in which case the value would be one-half of the value at death.

Life Estates and Revocable Trusts, being any property disposed of by the decedent, after August 31, 1992, in trust or otherwise, in which the decedent retained either the right to enjoyment or possession, the right to income generated, or the right to revoke the transfer.[13]

Retirement accounts where the beneficiary designation was completed after September 1, 1992. Certain plans subject to IRC §401 and payable to the surviving spouse are only counted as a testamentary substitute up to half of the value.[14]

Property upon which decedent held a presently exercisable general power of appointment immediately before death, or released or exercised that power in favor of anyone other than the decedent or his or her estate within one year before death.[15]

Transfer of securities to a beneficiary before death.[16]

This exhaustive list can thwart the intentions of many attempting to disinherit his or her spouse. Noticeably absent from this list is life insurance. This presents a loophole in which the decedent can procure a large life insurance policy and name someone other

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Elder Law/Trust & Estates

Life Estate Deed: Pitfalls and Considerations

Deidre M. Baker

Clients commonly seek the advice of an elder law attorney so that they can protect and preserve their assets for their loved ones. Often, a client's largest asset is his or her home. There are a variety of estate planning tools available to accomplish the client's goal of protecting his or his home while ensuring that it is left to his or her loved ones. One such tool is a life estate deed. Although a life estate deed has its benefits, the attorney must also consider its drawbacks in relation to the client's personal circumstances before determining if it is the best plan for the client.

What is a Life Estate Deed?

A "life estate" refers to a present ownership interest in a piece of real property for the duration of an individual's life. The owner of the life estate is sometimes referred to as a "life tenant." The life tenant retains the ability to remain in the property for the remainder of his or her life.

The creation of a life estate is a relatively straightforward process. The property is conveyed by the grantor(s) to at least one other party by deed and includes special language allowing the grantor to retain a life estate in the property. The life estate deed establishes two forms of ownership for the same property: the life estate and the "remainderman's" interest. The remainderman has a future interest in the property. The remainderman will acquire full ownership of the property upon the termination of the life estate which typically occurs upon the death of the life tenant.

The life estate has a financial value that is calculated based on the life tenant's life expectancy and the fair market value or sale price of the property. As the life tenant's age increases, the value of the life estate decreases, and the remainderman's interest increases. Upon the death of the life tenant, the life estate is extinguished and the remainderman owns a fee simple interest in the property.

It is important to note that a life estate is more than a mere right to occupy the premises. While the life estate is not a form of fee ownership, the life tenant is the owner of the property and is entitled to all of the rights and obligations associated with ownership.[1] Courts have traditionally held that the life tenant, for example, is required to make necessary repairs, pay taxes, and prevent waste in the property.[2]

Benefits of a Life Estate Deed

There are several reasons why a life estate deed is an attractive estate planning vehicle for many people. First, the cost of preparing and filing a life estate deed is less expensive than executing a Medicaid trust, for example. Often, clients find life estate deeds to be cost-effective and ready faster than a Medicaid trust. While trusts can take weeks to prepare, review, and finalize, a deed and the supporting documents can take an estate lawyer a mere few hours to prepare.

Another benefit of a life estate deed is that it allows the property to pass outside the probate process. The remainderman automatically takes full legal ownership of the property upon the death of the life tenant. The property can be sold or transferred without waiting for the appointment of an estate representative. This same goal can be achieved with a Medicaid trust, but clients are often wary of the cost in preparing a trust document or may be intimidated by its language.

In addition, the life tenant has the right to collect all rental income during his or her life, akin to a Medicaid trust. The life tenant also enjoys the absolute right to reside in the property for the remainder of his or her life. The life estate also ensures that the life tenant retains any and all STAR exclusions and veterans' exemption for real estate tax purposes. Furthermore, the remainderman receives a stepped-up basis in the value of the property at the death of the life tenant, obviating the concern for capital gains taxes upon sale or transfer.

Drawbacks to a Life Estate Deed

While there are obvious benefits to a life estate deed, clients can also experience unforeseen pitfalls when these deeds are executed. Many individuals use life estate deeds to avoid probate and reduce the costs of administering the estate at death. Unfortunately, when someone uses a life estate deed, they risk losing control over the distribution of their property when things turn out differently than expected.

Most important, a life estate deed makes the grantor's financial interest in the property vulnerable to adverse circumstances of the remaindermen who often are the children of the life tenant. For example, if one of the remaindermen goes through a divorce, files bankruptcy, or has creditor issues, it is possible that a lien could be filed against their interest in the life tenant's property.

Another downside of a life estate deed often not considered at the time of transfer is that all of the owners, including the remaindermen, must agree to a future sale. Upon the creation of the life estate, the life tenant loses the right to solely control when and if the property is sold. If one of the remaindermen refuses to sign the deed or participate in the sale, the life tenant will be required to initiate a partition action in order to force a sale. Not only can this create family discord, but it could result in delays, additional legal proceedings, and potentially losing a prospective buyer who does not want to wait for the proceedings to be finalized.

In addition, there are potential tax consequences that may have not been considered at the time of the transfer. For example, if the home is sold during the life of the life tenant, he or she may not qualify for the full $250,000 capital gains tax exclusion ($500,000 if married and filing jointly). Rather, the life tenant would be entitled to a partial qualification relative to the value of the life estate. Additionally, the remaindermen are entitled to no tax exemptions, making the property as a whole more vulnerable to capital gains tax liability.[3]

Another common issue encountered with life estate deeds which is sometimes overlooked, is the impact that the deed transfer can have on the life tenant should he or she need long-term care in the future. In the event that a life tenant requires nursing home care within five years of establishing the life estate, Medicaid will consider the conveyance to the remaindermen as an uncompensated transfer and impose a penalty period. During the length of the penalty period, Medicaid will not finance the cost of the nursing home

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Elder Law/Trust & Estates

Drafting Estate Planning Documents for Non-English Speaking Clients

One communication barrier that some clients face is they speak very little or no English. A language barrier issue should not bar a competent client from making his or her own wishes known just like any other client. It is important for the attorney drafting estate planning documents for a client who does not speak English to take certain steps, as discussed herein, to not only ensure proper drafting and execution of the documents, but to also minimize the risk of the documents being challenged on grounds such as lack of testamentary capacity or undue influence or fraud, which could be based on a language barrier argument.

Last Will and Testament

In New York, every person eighteen years of age or over, of sound mind and memory, may execute a Will.[1] The potential issue that a non-English speaking client might face is demonstrating that he or she is of sound mind and does not lack testamentary capacity.

When confronted with a Will contest based on lack of testamentary capacity, courts look to the following factors: (1) whether the testator understood the nature and consequences of executing a Will; (2) whether the testator knew the nature and extent of the property he or she was disposing of; and (3) whether the testator knew those who would be considered the natural objects of his or her bounty and his or her relations with them.[2] It is imperative that an attorney be able to communicate with his or her client about what a Will is and how it operates, what the client's wishes are, who the client's family members are and what their relationship is with the client, and the nature and extent of the client's assets. This is problematic for the attorney who does not speak the same language as the client.

Lisa R. Valente

In addition, there are formalities for the due execution of a Will, which include the testator's signature at the end of the Will performed in the presence of at least two attesting witnesses, or acknowledged by the testator to the attesting witnesses, and the testator declaring to the attesting witnesses that the instrument is his or her Will.[3] The fact that a testator cannot speak, read, or write English does not preclude him or her from making a valid Will in the English language where the Will is drawn by an attorney pursuant to the client's instructions, and at the time of execution, the Will is first read to the client in English, and then those matters which the client does not understand are explained to him or her in his or her native tongue.[4] It is critical that the attorney establish that the non-English speaking client understands the nature and contents of the Will and communicates such understanding to the attesting witnesses.

To overcome these hurdles, the attorney should obtain the services of a certified translator who speaks the same language as the client. This step should be taken at the outset of the relationship during the initial meeting and followed through until execution of the documents. Furthermore, the attorney should be mindful to take impeccable notes to help support the validity of the Will should there ever be a challenge to it. In addition, the attorney should consider asking the translator for a transcript of the translation or an affidavit as to the circumstances surrounding the communications that took place.

Procedurally, New York's Surrogate's Court Procedure Act (SCPA) requires that the attesting witnesses to the signing of a Will be examined before the court prior to a Will being admitted to probate.[5] To avoid hauling the witnesses into court, it is common practice to have the attesting witnesses sign an affidavit in accordance with SCPA §1406, which sets out the circumstances of the execution of the Will. This affidavit should include language that "the testator at the time of execution was in all respects competent to make a will and not under any restraint."[6] In the case of a non-English speaking client, the attorney should modify the affidavit to reflect that the testator was under a restraint to communicate in the English language, but that such restraint was overcome by some other means of communication such as by using the services of a certified translator.

Living Trusts or Powers of Attorney

For one reason or another, lifetime trusts are often used to carry out a client's wishes as an alternative to a Will. Similar to the statutory requirements to create a Will, any person, over the age of eighteen, can dispose of real and personal property by lifetime trust.[7] However, a lifetime trust is often viewed more like a contract than a Will: thus, requiring a higher level of mental capacity to create than a Will.[8] This higher contract standard of capacity focuses on whether the person is able to understand the nature and consequences of a transaction and make a rational judgment concerning it.[9]

Again, it is important to establish that the client understands the terms of any trust document that he or she is signing. Since witnesses are not required for the creation of a lifetime trust in New York,[10] it is even more crucial that the attorney document the details of his or her conversations with the client. These duties imposed on the attorney are heightened when representing a non-English speaking client.

A Power of Attorney is another powerful and useful tool often used when drafting estate planning documents for a client. In simple terms, it allows the "principal," the client, to appoint an agent(s) to act on behalf of the principal should the principal be unable to make his or her own financial decisions. Depending on the client's wishes, it can grant very broad

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Elder Law/Trust & Estates

The SECURE Act and Its Effects on Estate Planning

Since it was introduced over 40 years ago, the individual retirement account (IRA) has been a popular choice for retirement savings and a core part of most estate plans. The recent Setting Every Community Up for Retirement Enhancement (SECURE) Act, which was integrated into the Further Consolidated Appropriations Act, 2020, made major changes to IRAs that attorneys should become familiar with. Those changes include increasing the age to start taking required minimum distributions (RMDs) to age 72, eliminating the age cap for contributions, and, most importantly for estate planning, eliminating the stretch IRA for most non-spouse beneficiaries.

Stretch IRAs

For the owner, an IRA is an essential tool to save for retirement and leave a legacy for heirs, while deferring taxes as long as possible. Under pre-SECURE Act law, non-spouse individual beneficiaries were generally able to rollover an IRA into an inherited IRA and take advantage of what is known as the "stretch IRA," which allowed for continuation of the tax deferral benefits of an IRA. The beneficiary would only be required to withdraw RMDs based upon the beneficiary's life expectancy, rather than that of the older original IRA owner. As a result, the IRA would continue to grow tax-deferred for the lifetime of the beneficiary. For a beneficiary much younger than the original owner, such as a child or grandchild, this deferral could last decades.

Now, under the SECURE Act, most non-spouse IRA beneficiaries are required to withdraw (and for a traditional IRA, pay income taxes on) the entire IRA within ten years of the original owner's death. The SECURE Act provisions on the stretch IRA are effective for dates of death starting January 1, 2020. If the IRA owner died before January 1, 2020, the prior rules apply.

Marcus O'Toole-Gelo

Beneficiaries who are not "eligible designated beneficiaries" (discussed below) will now have to carefully consider the timing of withdrawals from the inherited IRA over the required ten year period. The SECURE Act does not require the withdrawals to be spread evenly or that a withdrawal be taken each year. The only requirement is that the entire account be withdrawn within ten years. Beneficiaries should consider spreading the withdrawals over the course of the ten years to keep the withdrawals in lower marginal tax rate brackets, or timing withdrawals to offset losses. Tax planning considerations will now likely determine when withdrawals are made.

Eligible Designated Beneficiaries

Certain beneficiaries, referred to as "eligible designated beneficiaries," are exempt from the new ten year withdrawal rule. They include beneficiaries who are a surviving spouse, minor child, chronically ill, disabled, or no more than ten years younger than the deceased IRA owner.[1] Generally, these beneficiaries can use their own life expectancy to determine RMDs based upon the pre-SECURE Act rules.[2] The list of eligible designated beneficiaries is exclusive:

- A surviving spouse beneficiary is treated as if he or she were the original owner of the IRA, and is allowed a full rollover. The spouse can use the new increased age (72) for starting RMDs and can use his or her own life expectancy for calculating RMDs.[3] The spouse would not need to withdraw the account within ten years.
- A minor child of the IRA owner can take RMDs based upon the child's life expectancy until they reach majority. At majority (as determined under state law), the child is no longer exempt and the new rules apply, requiring them to withdraw the account within ten years thereafter.
- A disabled beneficiary is one who cannot engage in substantial gainful activity because of a physical or mental impairment that would be expected to result in death or continue for a long and indefinite period. The SECURE Act adopts the existing definition of disability contained in Internal Revenue Code (IRC) § 72(m)(7).[4] The disabled beneficiary does not need to be a child or even related to the IRA owner, and can be a supplemental needs trust (SNT) for the benefit of the disabled person, as discussed below.
- A chronically ill beneficiary is one who needs substantial assistance with activities of daily living or has a severe cognitive impairment. The SECURE Act adopts the existing definition of chronically ill contained in IRC § 7702B(c)(2), but adds that the condition is expected to be indefinite in length.[5] As with a disabled beneficiary, a chronically ill beneficiary does not need to be related to the IRA owner and an SNT can be used.
- The final eligible category is a beneficiary who is not more than ten years younger than the IRA owner, such as a sibling.

For most non-spouse beneficiaries, the elimination of the stretch IRA will result in beneficiaries paying increased taxes on their

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Elder Law/Trust & Estates

Irrevocable Trusts and Crisis Planning for Medicaid Benefits

For 2020, the New York State Department of Health has assessed the average monthly cost of nursing home care on Long Island at $13,407.[1] Without proper Medicaid planning, in just one year, over $150,000 of a lifetime of savings could be lost paying for nursing home care. Due to the five-year look back period, "Medicaid planning," is crucial to maximizing a client's estate by protecting assets from the cost of long-term nursing home care. While early Medicaid planning is best, all is not lost if a Medicaid crisis lands on your office doorstep.

Irrevocable Trusts and Medicaid

Utilization of an irrevocable trust is one valuable tool at the practitioner's Medicaid planning disposal. A "trust" is generally defined as "a legal instrument by which an individual gives control over his/her assets to another (the trustee) to disburse according to the instructions of the individual creating the trust."[2] Regardless of the type of trust created, all trust-related transfers are subject to the 60-month look back period.[3]

Two common types of trusts are the revocable and irrevocable trust. "A revocable trust is a trust created by an individual which the individual has the right to cancel."[4] Since Medicaid treats the "entire value of the trust" as an "available resource," revocable trusts do not assist in creating Medicaid eligibility.[5]

An irrevocable trust on the other hand, is "a trust created by an individual, over which the individual may or may not be able to exercise some control, but which may not be cancelled under any circumstances."[6] For Medicaid purposes, any portion of the principal of the trust, or the income generated from the trust that can be paid to or for the benefit of the Medicaid applicant/recipient (the "A/R"), is considered an available resource.[7] Accordingly, to be an effective Medicaid tool, the irrevocable trust must have certain basic provisions that restrict the trust principal (and, if desired, the trust income) from the A/R.

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On the most basic level, the grantor (A/R) cannot be the trustee. Moreover, to avoid the principal of the trust being deemed an available resource, the trust must prohibit invasion of the trust principal for the benefit of the A/R (or his or her spouse).[8] The trust should also provide a provision that waives the right of invasion by a court under EPTL 7-1.6(b). Absent the waiver of invasion, under certain circumstances, a court could invade the principal of the trust for the support of the A/R and the principal could become an available resource for the Department of Social Services.[9] Since access to the trust funds often becomes necessary, such trusts generally allow an invasion of principal for the benefit of a class of individuals, usually the children of the A/R.

Medicaid considers the funding of an irrevocable trust as a gift that would create a period of ineligibility based on the value of the assets funded into the trust.[10] As such, these trusts are most valuable when planning is done before the A/R becomes ill and needs long term care. Such a trust could be used at the eleventh hour in conjunction with the use of a Medicaid-compliant promissory note, as discussed below.

Crisis Planning for Medicaid

Crisis planning refers to planning that is done when the A/R is about to need or already is in need of Medicaid to fund long-term care expenses. Depending on the family makeup of the Medicaid applicant, an A/R in crisis seeking nursing home care can still protect between 40 to 100 percent of their assets.

Any asset, in any amount, can be transferred without penalty to:[12]

- the applicant's spouse, or to another for the sole benefit of the applicant's spouse;
- a blind or disabled child, or a trust established for the sole benefit of such child;
- a trust established solely for an individual under 65 years of age who is disabled.

Typically, the most valuable asset a client has is his home. Under the DRA, the primary residence occupied by the A/R is an exempt asset for purposes of Medicaid eligibility, up to a certain equity level. In New York, the equity limit in the homestead is $878,000. Homesteads with an equity above $878,000 would render an A/R ineligible. Homeowners can reduce their equity through a reverse mortgage or home equity loan, but not with medical bills.[13] Regardless of the equity, the homestead is exempt if a spouse, a child under 21, or a child who is blind or disabled resides in the home. In addition, the transfer of the homestead is an exempt transfer if made to any of the following individuals:[14]

- a spouse
- a minor child under age 21, or a blind or disabled child of any age
- a sibling of the individual who has an equity interest in the home and was residing in the home for at least one year immediately before the date of institutionalization.
- an adult non-disabled son or daughter, who was residing in the home for at least two years immediately before the date of institutionalization and who has provided care to the A/R

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Elder Law/Trust & Estates

Utilizing Life Insurance to Improve Your Client's Estate Plan

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Life insurance is a valuable asset, as it provides an insured's family with resources to cope with the adverse financial consequences of the death of a loved one. Beyond that, it can be an important tool when implementing one's estate plan. For the year 2019, approximately 57% of American adults owned life insurance, according to the 2019 Insurance Barometer Report;[1] of those consumers who inquired into purchasing life insurance, only 15% determined that they could not afford the cost of coverage.[2]

In fact, there is a general lack of knowledge regarding the cost of life insurance among many individuals, with a recent study showing that over half of respondents believed term life insurance premiums to be over three times more expensive than they actually are.[3] In the event coverage is affordable, practitioners should be coordinating with clients' insurance representatives to determine how life insurance can integrate with their estate plans.

Benefits of Life Insurance in Estate Planning

There are a number of estate planning benefits to owning a life insurance policy, some of which may vary depending on an individual's financial and personal situation. A significant benefit of life insurance for all individuals, regardless of asset level, is the ability for others to pay expenses after death. If an insured names a beneficiary on his or her policy, the beneficiary can put in a claim for the proceeds immediately upon the insured's passing, and receive the proceeds within weeks. This allows the beneficiary to be reimbursed for burial costs quickly, as well as pay for the cost of administering the estate.

Individuals without significant assets may seek to purchase life insurance in order to replace income for their heirs. This may be the case for parents seeking to replace wealth for young children, or a predeceased spouse seeking to replace wealth for a non-working surviving partner. Naming dependents as the beneficiaries of a life insurance policy provides the beneficiaries with income and wealth if the insured's passing would leave them financially stricken. Furthermore, wealthy individuals may seek to purchase life insurance in order for their heirs to conveniently pay federal and/or state estate taxes.

Without the benefit of life insurance proceeds, heirs may be forced to liquidate assets or otherwise reduce their inheritance. For the year 2020, at the federal level, estate tax is imposed on assets in excess of $11,580,000, at a maximum rate of 40%. In New York, an additional state estate tax is imposed on assets in excess of $5,850,000, at a maximum rate of 16%. In both situations, practitioners must understand the importance of recommending life insurance, either as income or wealth replacement for the insured's beneficiaries, or as liquidity for paying estate taxes.

The use of life insurance is also becoming more prominent for those clients owning closely held businesses. From 2017 to 2019, there was an 18% increase in those individuals purchasing life insurance for business purposes.[4] When structuring a client's estate plan, practitioners must get a full picture of the assets, including any business interests. When there are multiple owners in a business, the owners should consider the acquisition of life insurance to fund any potential buy-out or provide working capital. If one of the owners were to pass away, the remaining owner(s) would need to have enough liquid funds to compensate the deceased owner's family or estate. Additionally, the company would be faced with the burden of replacing the deceased owner, in the event there is an operating business.

If, however, there was available life insurance, those funds could be utilized to pay the deceased owner's estate with no negative monetary impact on the company. Either the owners or the company could be the owner(s) of the policy, and the coverage amount could be the basis for the valuation of the deceased owner's interest. Insurance is a valuable tool when planning the succession of one's business because it alleviates a financial burden upon an owner's passing. It also dictates who will succeed to the insured's ownership interest, based on the ownership structure of the life insurance. The interplay of utilizing life insurance for a client's business succession must be taken into consideration when building an estate plan.

Estate Planning Considerations for Life Insurance

When considering insurance as part of an estate or business succession plan, it is important to review the ownership of the policy. The value of an insurance policy owned by an individual will be included when calculating his or her asset value, and therefore may increase the client's taxable estate. Ownership of a life insurance policy by an Irrevocable Life Insurance Trust (an "ILIT"), can provide tax and other advantages when compared to the policy being owned individually.

An ILIT is a lifetime, irrevocable trust set up by the insured individual, that either purchases an insurance policy, or is the recipient of an insurance policy as a gift from the insured. If the ILIT purchases the insurance policy directly, the value of the death benefit is not includable in the insured's estate assets and therefore will not be used when calculating whether estate taxes are due. If, however, the insured makes a gift of the insurance policy to the ILIT, three years must elapse before the value of the policy is removed from the insured's taxable estate.

By utilizing an ILIT, upon the insured's passing, the terms of the trust determine how the proceeds are to be distributed, which is a valuable estate planning tool in a variety of situations. For example, proceeds can be held in trust for young beneficiaries, or for beneficiaries who otherwise need financial protection as a result of creditor issues or marital problems. In the case of a blended family, using an ILIT allows an insured's spouse to be named the beneficiary for his or her lifetime, but ultimately distribute the balance of the death benefit to the insured's descendants.

There are certain procedures that must be followed in order to ensure that the value of any policy transferred to an ILIT is removed from the insured's taxable estate. First, the trust must be irrevocable, and the insured cannot act as a trustee. Instead, an independent third party must act as trustee and administer the trust in the beneficiaries' best interests. Additionally, the trustee must make the premium payments on behalf of the insured from a trust bank account. Before each premium payment is made, the insured must transfer the premium amount to the trust bank account, and should simultaneously advise the beneficiaries of their right to withdraw a portion of the contributions from the trust within a certain time frame. This right of withdrawal ensures that the transfer to the trust is treated as a present interest gift, eligible for the annual gift tax exclusion ($15,000 per donee during 2020), enhancing the transfer tax benefits of the use of an ILIT.

Insurance policies are also flexible in the sense that the death benefit can be changed and the premiums adjusted, to adapt to a change in lifestyle. Additionally, there are different types of life insurance products, providing an insured with options. For example, an insured can choose between term insurance, which pays a death benefit only if the death occurs during the policy term, or whole life insurance, which pays a death benefit regardless of when the death occurs. Beyond that, some whole life insurance options also provide the insured with an investment vehicle to increase the ultimate death benefit. By supplementing the death benefit with an investment account, the insured may also borrow funds from the policy in times of need.

Aside from traditional life insurance, the market for combination products which contain long-term care coverage is growing as well. These policies include benefits for both long-term care needs during an insured's life, as well as a death benefit upon his or her passing. These policies are gaining popularity as the aging population is seeking to lower the possibility that their savings will be depleted as a result of needing long-term care. In the estate planning context, the emergence of these policies is extremely beneficial, as they are being used in conjunction with other asset protection methods, such as trusts, to ensure a client's wealth is preserved.

Don't Wait

Overall, insurance is a valuable asset for a number of reasons, especially when looking to develop one's estate plan. With recent changes in the world of estate planning, both clients and advisors should be emphasizing a renewed importance and focus on the ownership of life insurance. Attorneys cannot simply gather a client's asset information without considering the potential need for life insurance. Advisors must be more proactive in communicating to their clients the numerous benefits of purchasing life insurance, as well as in considering the ownership options and how it will coincide with a client's overall estate plan.

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1. James Scanlon, *2019 Insurance Barometer Report, Life Happens, 2019* at 23, available at www.shorturl.at/pxAD9.
2. *Id.* at 39.
3. *Id.* at 28.
4. *Id.* at 38.

General Law

New York Employers Dodge A Bullet: Governor Cuomo Vetoes New York State's "Sweat" Bill

Quietly, and without fanfare, on January 1, 2020, Governor Cuomo vetoed the Securing Wages Earned Against Theft (SWEAT) Act, which the New York State Senate and Assembly had both passed in mid-June 2019.[1] The veto was a relief for employers and their legal counsel, as the Act had the potential to radically alter the landscape of wage and hour litigation in New York State. The Act, if signed into law, would have implemented a number of changes to the New York Labor Law, New York State Lien Law, New York State Business Corporation Law, New York State Limited Liability Company Law, and the Civil Practice Laws and Rules that would have been highly advantageous to employees.

The central tenet of the Act would have allowed employees to file liens against the property of employers. Unlike a mechanic's lien in New York State, which can only be placed against real property, this bill would have allowed employees and former employees who believed they were owed wages to put a lien on an employer's real and personal property (the sole exception being "deposit accounts" or "goods," as those terms are defined in the Uniform Commercial Code) without first starting a legal action.[2-3]

Thus, employees or former employees would not have had to prove that they were actually owed the alleged unpaid wages prior to filing the lien; rather, they could file such a lien based on a mere allegation of unpaid wages. In addition, the New York State Department of Labor and New York State Attorney General would also have been able to obtain such liens against employers who were subjected to an investigation or a court or administrative action brought by the government on behalf of an individual employee or a class of employees.

The Act would have had a tremendous impact on wage-and-hour litigation in New York State, and would have tipped the scales even further in employees' favor. The threat of placing a lien upon an employer's real and personal property would have been another weapon in the negotiation arsenal of employees and their legal counsel. The hammer of an employee rightfully or wrongfully placing a lien on a business, a business owner and even on management's property would have compelled more settlements and earlier settlements, as well as more favorable settlements for employees. In addition, it would have increased attorneys' fees for employers, who would have been forced to either use their resources to post a bond in order to remove a lien or move in court to have the lien removed.

The Reasoning Behind the Proposed Legislation

According to the bill's Sponsor Memo, the justification for the bill was to increase the likelihood that victims of wage theft would be able to secure payment of wages due and owing from their employers. Further, in too many instances exploitative employers dissipate their assets or dissolve their businesses to avoid paying wages that they owe their employees. As a result, by the time an employee has filed a lawsuit and is awarded a judgment, there are few, if any, assets to be found. In addition, it is believed that plaintiffs' attorneys, who typically work on contingency when representing employees in wage-and-hour claims, are increasingly becoming hesitant to represent employees who may be owed small amounts of monies by small employers, due to the increasing difficulty of collecting against any judgment. Thus, the legislature hoped, this bill would have increased the ability of workers to secure and collect wages for work already performed.

David S. Feather

Governor Cuomo's Defense of the Veto

In his veto message, Governor Cuomo stated that while he supported the legislation's intent, he objected to allowing workers or the state to put a lien on employers' property before a court or state agency had issued a judgment against them. This, the Governor felt, raised issues of lack of due process, and he was concerned that the Act would not survive judicial scrutiny of its constitutionality. The Governor did, however, state that he planned to include revamped legislation in his executive budget this year.

What Legal Counsel Should Do Now

While the veto of the Act maintains the "status quo" of wage and hour law, it is anticipated that legislation to assist employees collect unpaid wages will be passed and signed into law in the foreseeable future. In the meantime, employees and their legal counsel will continue to face difficulties collecting on judgments rendered in their favor for unpaid wages, and, of course, employers will continue to face legal actions for allegedly failing to pay proper wages. Thus, there are things that both employee-side and employer-side legal counsel can and should be doing to protect and assist their clients.

Employee-side legal counsel should aggressively take advantage of Business Corporation Law §630 and Limited Liability Company Law §609.[4-5] Under those laws, the top ten shareholders and top ten members (by value of holdings) of privately held domestic and foreign corporations and limited liability companies operating in New York are personally liable for unpaid wages in the event the corporation or limited liability company cannot pay.[6]

For employees to hold any of the top ten shareholders or members of a privately held corporation or company liable under BCL §630 or Ltd. Liab. Co. Law §609, they must (1) give written notice to the applicable shareholder(s)/member(s) that they intend to hold liable within 180 days of the termination of the services performed in New York (or, if within such time period the employees demand an inspection of the corporation's records to determine the top ten shareholders, within 60 days of being granted such inspection); (2) seek to recover the amounts owed from the corporation/limited liability company and obtain a judgment against the corporation/limited liability company that remains unsatisfied prior to commencing an action against the shareholder(s)/member(s); and (3) commence such an action within 90 days after the judgment against the corporation/limited liability company is unsatisfied.

New York State Law currently allows plaintiffs in a legal action to obtain a prejudgment attachment of a defendant's property if the plaintiffs can show that the defendant is fraudulently transferring assets in order to prevent the plaintiffs from recovering monies if they are successful at trial.[7] To be successful in obtaining such an order of attachment, applicants must show (1) a high probability of success on the merits, (2) that defendant has the intent to defraud its creditors or frustrate the enforcement of a judgment that might be rendered in plaintiffs' favor, has assigned, disposed of, encumbered or secreted property, or removed property from the state, and (3) that the amount demanded from defendant is greater than the amount of all claims known to the parties seeking attachment.[8] Employee's legal counsel should take a good hard look at this statute and ascertain whether a motion to attach property prejudgment makes sense in any particular case.

Employer's legal counsel should assist their clients in regularly performing a self-audit *before* a legal action is instituted, in order to confirm that employees are being paid in accordance with federal, state and local wage and hour laws. Employer-side attorneys should also confirm that their client's employees are not misclassified as exempt, salaried employees when they should really be paid at an hourly rate, with overtime, and that workers are not misclassified as independent contractors, when they are actually employees and should be treated as such under state and federal wage laws. Finally, employer's legal counsel should periodically confirm that their clients are utilizing the correct and legally mandated wage-and-hour forms, such as the New York State Notice and Acknowledgement of Pay Rate and Payday.[9]

The Bottom Line

The inability to collect on wage-and-hour judgments is a serious and ongoing issue for employees in New York and their legal counsel. Despite Governor Cuomo's veto of the SWEAT Act, change, in the form of legislation to assist employees collect unpaid wages, is most likely going to occur. Employers, with the assistance of their legal counsel, would do well to make sure they are in compliance with the law prior to the institution of costly and time-consuming litigation.

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1. S2844B/A486B.
2. Lien Law §§ 3 and 4.
3. UCC §9-102.
4. BCL §630.
5. LLC Law §609(c).
6. LLC Law § 609(c) was recently amended to include foreign LLCs. This amendment is effective February 10, 2020.
7. CPLR §6201(3).
8. *JSC Foreign Econ. Ass'n Technostroyexport v. Int'l Dev. & Trade Servs.,* 306 F.Supp.2d 482 (S.D.N.Y. 2004).
9. Labor Law §195.1.

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which permitted the A/R to reside at home.

If a client does not have any of these exempt "transferees", all is not lost. If the A/R can show that the transfer/gift was done exclusively for a purpose other than to qualify for Medicaid, the transfer would not create a period of ineligibility for Medicaid.[15]

Two Crisis Planning Scenarios

The return of all or a portion of the amount gifted voids the gift and resulting penalty period, or reduces the length of the penalty period based upon the amount returned.[16] To reduce or void the penalty period, it is essential that the assets be returned directly from the person/entity to whom the gift was made. The following example illustrates this point. An applicant transfers title of her home to a revocable trust. This is not a gift and does not affect eligibility. However, when the A/R needs nursing home care, she transfers her interest in the trust to her husband. This transfer from the A/R's trust to a spouse is not an exempt transfer, however. To effectuate a proper return of this non-exempt transfer, the husband must deed title back to the wife's trust, then from the wife's trust back to the A/R (wife), and then from the A/R directly to the husband.

When an A/R does not have any exempt transferees and cannot show that the gift was done for a purpose other than to qualify for Medicaid, there is still a way to protect approximately half of the A/R's assets, depending upon the cost of the nursing home and the A/R's income. In such a case, the A/R would transfer some portion of his/her assets, keep the amount Medicaid allows (currently $15,750) while making a loan of the balance of the assets, pursuant to the terms of a Medicaid compliant promissory note.[17] The gift would create a penalty period, but the loan would not. The loan would then be repaid to the A/R, with interest, generally for a term that coincides with the penalty period. The A/R would then have funds, plus his/her monthly income, to pay the nursing home privately for the penalty period. One requirement for this plan to succeed is that the payment must be somewhat less than the actual private monthly cost.

The law provides many options for clients in need of Medicaid planning. A thorough understanding of the complexities of Medicaid law and the make-up of the A/R's family is essential for a successful plan.

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1. NYSDOH Office of Health Ins. Programs, Gen. Info. Serv., *Medicaid Regional Rates for Calculating Transfer Penalty Periods for 2020,* GIS 20 MA/01 (2020) ("GIS 20 MA/01").
2. NYSDOH Div. of Long-Term Care, Admin. Directive, *OBRA '93 Provisions on Transfers and Trusts,* 96 ADM-8 at 8 (1996) ("96 ADM-8").
3. Soc. Serv. Law § 366(5)(e)(1)(vi).
4. 96 ADM-8 at 10.
5. Soc. Serv. Law § 362(2)(b)(2)(i); 96 ADM-8 at 13.
6. 96 ADM-8 at 10.
7. *Id*. at 13.
8. Soc. Serv. Law § 360-4.5(b)(1)(ii).
9. *See Tutino v. Perales*, 153 A.D.2d 181 (2d Dept. 1990).
10. 96 ADM-8 at 13.
11. NYSDOH Office of Medicaid Mgmt., Admin. Directive: Deficit Reduction Act of 2005-- Long-Term Care Medicaid Eligibility Changes, 06 OMM/ADM-5 at 6 (2005) ("06 OMM/ADM-5").
12. 96 ADM-8 at 22.
13. 06 ADM-5 at 7.
14. 96 ADM-8 at 22.
15. *Id*. at 23.
16. 96 ADM-8 at 23.
17. O6 OMM/ADM-5 at 7.

ACADEMY CALENDAR

March 2, 2020
Forever Solutions to Forever Chemicals: Exploring Drinking Water Alternatives for Long Island
With the NCBA Environmental Law Committee and the NYSBA Environmental and Energy Law Section
Program 6:00–8:00 PM
Credits offered: 2 credits in professional practice

March 3, 2020
Champion Office Suites Lecture Series Presents: Dean's Hour: Practicing Law in the Cloud
Sponsored by NCBA Corporate Partners Champion Office Suites and Tradition Title Agency, Inc.
With the NCBA Legal Administrators and the General, Solo and Small Law Practice Committees
Program 12:45–1:45 PM
Credits offered: 1 credit in professional practice or skills

March 4, 2020
Dean's Hour: Debtor and Creditor Law Update: New York's New Voidable Transactions Act
Sponsored by NCBA Corporate Partner Dime Community Bank
With the NCBA Bankruptcy Law Committee
Program 12:45–1:45 PM
Credits offered: 1 credit in professional practice or skills

March 5, 2020
Purely Paralegal: E-Filing in Nassau County
With the NCBA Paralegal Committee
Program 6:00–7:00 PM
Credits offered: none

March 6, 2020
Dean's Hour: Holmes and the Crafting of American Constitutional Jurisprudence: The Ambiguous Legacies of Oliver Wendell Holmes, Jr.
Program 12:45–1:45 PM
Credits offered: 1 credit in professional practice

March 12, 2020
Champion Office Suites Lecture Series Presents: Dean's Hour: LGBTQ Issues in Employment Law
Sponsored by NCBA Corporate Partners Champion Office Suites, Dime Community Bank and Tradition Title Agency, Inc.
With the NCBA LGBTQ and Labor and Employment Law Committees
Program 12:45–1:45 PM
Credits offered: 1 credit in diversity, inclusion and elimination of bias

March 12, 2020
Aging in the Legal Profession: Be Aware and Be Prepared
With the NCBA Lawyer Assistance Program
Program 5:30–7:30 PM
Credits offered: 2 credits in ethics

Pre-r
Seating limited for those that do not pre-r
Please note that outside food is not per

March 14-15, 2020
Hon. Joseph Goldstein Bridge-the-Gap Weekend
Completely free to NCBA members. Sign-up for a class, a day, or the full weekend.

March 16, 2020
Champion Office Suites Lecture Series Presents: Dean's Hour: Religious Exemptions from Vaccines
Sponsored by NCBA Corporate Partners Champion Office Suites and Dime Community Bank
With the NCBA Civil Rights Committee
Program 12:45–1:45 PM
Credits offered: 1 credit in professional practice

March 18, 2020
Champion Office Suites Lecture Series Presents: Dean's Hour: Legal Responses to the Growing Menace of Cyberharassment, Digital Torts, and Identity Theft
Sponsored by NCBA Corporate Partner Champion Office Suites
With the NCBA Civil Rights Committee
Program 12:45–1:45 PM
Credits offered: 1 credit in professional practice or skills

March 24, 2020
Hon. Elaine Jackson Stack Moot Court Competition—Finals Round
Round begins at 7:00 PM in the Great Hall.
Come watch the next generation compete in the Academy's annual competition for law schools.
Credits offered: 1 credit in professional practice

March 27, 2020
Everything You Need to Know About Becoming a Judge
Franklin H. Williams Judicial Commission is pleased to partner with the Nassau County Bar Association in presenting this program. **The program will be held at the Maurice A. Deane School of Law at Hofstra University.**
Reception will follow program.
Program 9:00AM–1:00 PM
Credits offered: 3 credits in professional practice and 1 credit in ethics

Major topics include Election Law Overview and Related Ethical Requirements and Rules; Making the Ballot in Supreme, City, County, Town & Family Courts; Evaluation Processes; Appointment Process for Ne York State Court of Claims and for Federal Magistrate Judges and District Court Judges.

March 31, 2020
Cold Noses and Warm Hearts: Laws that Protect You and Your Pets
With the NCBA Community Relations and Public Education Committee and the NCBA Animal Law Committee
Light supper will be provided courtesy of Fass & Greenberg, LLP.
Program 5:30–8:30 PM
Credits offered: 3 credits in professional practice

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egister. Call (516) 747-4464 for ease of registration or email academy@nassaubar.org.
mitted at Dean's Hours. Lunch is available for purchase through in-house caterer.

April 2, 2020
Dean's Hour: Considerations in Negotiating Contractual Indemnification Clauses
With the NCBA In-House Counsel Committee
Program 12:45–1:45 PM
Credits offered: 1 credit in professional practice

April 2, 2020
Representation of the Child: A Collaborative Approach
Sponsored by NCBA Corporate Partner BST & Co.
With the NCBA Family Court Law and Procedure Committee and the Assigned Counsel Defenders Plan Inc. of Nassau County
Program 5:30–7:30 PM
Credits offered: 2 credits in professional practice

April 6, 2020
An Evening With the Tri-County Surrogates: What's Hot and What's Not (Cocktail Hour and Seminar)
Sponsored by NCBA Corporate Partners MPI Valuation and Sterling National Bank
With the NCBA Surrogate's Court Trusts and Estates Committee
Cocktail hour/Light supper 5:30–6:30 PM; Program 6:30–8:30 PM
Credits offered: 2 credits in professional practice
Registration fees: NCBA Member $50; Non-Member Attorney $100; Non-Attorney $25

April 7, 2020
'Til Death (or Divorce) Do Us Part: Understanding the Intersection of Divorce and Estate Planning (Networking and Seminar)
Sponsored by NCBA Corporate Partner MPI Valuation
With the NCBA Matrimonial Law Committee
Continental breakfast will be provided courtesy of NCBA Corporate Partner MPI Valuation
Program 8:00–9:30 AM
Credits offered: 1.5 credits in professional practice or skills

April 7, 2020
Purely Paralegal: Title Report Basics
Program presented by NCBA Corporate Partner Tradition Title Agency, Inc.
With the NCBA Paralegal Committee
Program 6:00–7:00 PM
Credits offered: none

April 8, 2020
Champion Office Suites Lecture Series Presents: Dean's Hour: #MeToo in the Healthcare Environment
Sponsored by NCBA Corporate Partner Champion Office Suites
With the NCBA Hospital and Health Law Committee
Program 12:45–1:45 PM
Credits offered: 1 credit in professional practice

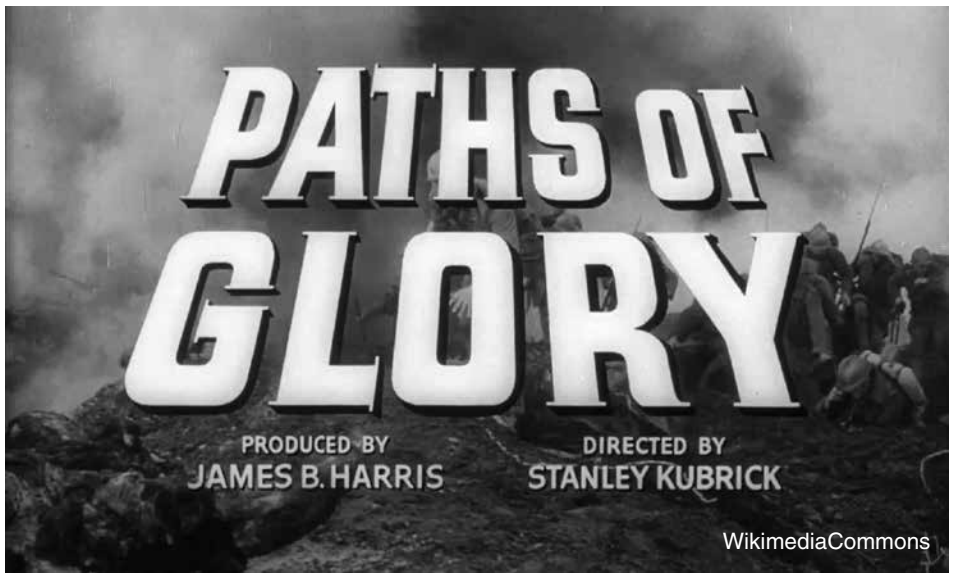
REVIEW

Kirk & Kubrick at the Court Martial

Gentlemen of the court, there are times that I am ashamed to be a member of the human race and this is one such occasion. It's impossible for me to summarize the case for the defense, since the Court never allowed me a reasonable opportunity to present my case….

The attack yesterday morning was no stain on the honor of France, and certainly no disgrace to the fighting men of this nation. But this court martial is such a stain and such a disgrace. The case made against these men is a mockery of all human justice.

Gentlemen of the court, to find these men guilty will be a crime to haunt each of you until the day you die. I can't believe the noblest impulse in man, his compassion for another, can be completely dead here. Therefore, I humbly beg you show mercy to these men.



Kirk Douglas as Colonel Dax, in *Paths of Glory*

Violence tragically has been the hallmark of our species and war the most visceral form of man's inhumanity to man. As well, the depiction of martial combat, be it on cave walls or on movie screens, has long captured the human imagination.

As a genre, war movies run the gamut from action epics to service comedies. Films have portrayed, at various times and in different ways, either valor or cowardice, victory or defeat, noble sacrifice or bitter pathos. Cinema is universal, and armed conflict is a recurring and pervasive theme.

Yet few films possess the power or the poignancy of Stanley Kubrick's 1957 film *Paths of Glory.*[1] Featuring towering performances from Kirk Douglas, Adolphe Menjou, and George Macready, the story is adapted from the novel by Humphrey Cobb.

Set during World War I, the audience is presented with the agonies of the Western front in stark and vivid terms. Incredibly, the memory of Kirk Douglas, who just passed at age 103, still remains very much with us and *Paths of Glory* can well-serve as a testament to his artistry.

It would be a cliché to simply label *Paths of Glory* as "anti-war." The film is a cinematic indictment of twentieth-century militarism. Its devastating portrait of the French Army is, in all actuality, a metaphor for the human condition, particularly its capacity for veniality and folly.

The film affirms the maxim that in war, "truth" is the first causality.[2] In quick succession, "truth" is followed on the causality list by any notion of justice. The events delineated in *Paths of Glory* dramatically demonstrate the machinations of those in positions of authority, wielding their power with casual regard for human life.

The law plays a prominent role in the story as it unfolds. For as gripping as the combat scenes are, the film's moral center revolves around the court martial of three soldiers wrongly charged with *"cowardice in the face of the enemy."* The trial of these unfortunates is on par with the brutalities visited them and their comrades on the battlefield.

Rudy Carmenaty

French and German forces are mired in a bloody stalemate. As the movie's opening narration informs the audience, "*By 1916, after two grisly years of trench warfare, the battle lines had changed very little. Successful attacks were measured in hundreds of yards and paid for by thousands of lives.*" This situation was untenable, both militarily and politically.

General Broulard (Menjou), of the French General Staff, initiates the film's action by manipulating a vain-glorious martinet, General Mireau (Macready), into attacking an impregnable German position, known fittingly as the "Ant-Hill." Mireau, ever hungry for promotion, in turn orders his field commander Colonel Dax (Douglas) to carry out these orders over Dax's own better judgement.

In spite of the valor of Dax's men, the offensive falters. Taking the Ant-Hill was not only impossible, it was foolish. Mireau, who views the failed assault as a personal affront to his ambitions, takes the extraordinary step of ordering a French artillery battery to fire on his own troops. The battery commander refuses to do so without a written order from the general.

The search for blame, more properly put, for scape-goats, begins almost at once. Ultimately three men,[3] one from each company, are selected to be court martialed. One is chosen by lot. Another is chosen because his company commander sees him as a social undesirable. And a third is chosen in order to keep him silent after witnessing his company commander's cowardice and incompetence.

Dax, the foremost criminal lawyer in France before the war, volunteers to represent the soldiers. Moreau, his reputation on the line, sees Dax as disloyal for taking on the case. He threatens to *"break him thru the ranks."* Dax is given only three hours to prepare his defense.

Moreau's chief-of-staff, Major Saint-Auban, is set to prosecute. During the trial, Mireau hovers on the periphery of the proceedings as an overbearing presence. With Mireau interjecting at will, the trial quickly degenerates into a farce.

No formal charges are filed nor is a written indictment presented in open court. No stenographic transcript is kept. The court's presiding officer adroitly restricts Dax in his every attempt to offer an effective defense. Dax is literally reduced to pleading for mercy on behalf of his clients. To call this a Kangaroo Court is to do a disservice to that noble animal.

The conviction of the soldiers is a foregone conclusion. Preparations for their executions are underway while the court is supposedly still deliberating. The men are sentenced to death by firing squad, the sentence to be carried out at dawn the following morning.

The machinery engendered by the court martial is determined to see the men convicted and executed as quickly as possible. Once set in motion, nothing will be permitted to interfere. When one of the men is severely injured in a jail-house brawl, he is strapped to a stretcher, lined up against the wall, and his checks pinched so that he can attain momentary consciousness before being shot.

Just prior to the executions, Dax obtains a sworn statement from the artillery officer charging that Mireau had given the order to fire on his own trenches. Dax takes the affidavits to Broulard in an eleventh-hour appeal for clemency. Broulard does nothing to stop the executions.

The following day however, Broulard cleverly uses the affidavits against Mireau, forcing his hand with talk of a public inquiry. Broulard, acknowledging that France cannot afford to have fools guiding her military destiny, then offers Dax Mireau's command.

Dax is taken aback. More in revulsion than in anger, he lashes out at Broulard calling him "*a degenerate, sadistic old man.*" Broulard, for his part, assumed that Dax was solely interested in succeeding Mireau. He is surprised to realize that Dax genuinely sought to spare the soldiers' lives.

Their ensuing confrontation reverberates long after the film is over. For his part, Broulard, ever the Machiavellian, compares Dax to the village idiot, pitying him for his idealism: *"We're fighting a war, a war we've got to win. Those men didn't fight, so they were shot. You bring charges against General Mireau, so I insist that he answer them. Where have I gone wrong?"*

The film concludes with Dax and his men being ordered to the front once more. This was the First World War in microcosm. It was a war of attrition carried out by the European powers or, if you will, a mutual suicide pact on the installment plan. The price being paid by the common foot soldier. A price the officers, it seems, never have to pay.

There is, however, one final denouement of pathos. In a crowded beer hall, a young German girl[4] is brought out to entertain the weary, battle-scarred men. To the initial wail of catcalls and wolf whistles, the room falls silent as the young woman's song, sung in German, touches their battered souls providing a brief moment of solace.

Paths of Glory is a remarkable film. Upon its initial release, it was not commercially successful. The movie ran afoul of many of the strictures of the 1950's, when the Cold War was at its height. The film was so controversial in fact, that it was not shown in France until 1974.[5]

This was Stanley Kubrick's first major film and a harbinger of things to come. It can rightfully be said that *Dr. Strangelove* (1964), *A Clockwork Orange* (1971), and *Full Metal Jacket* (1987) can trace their lineage within the director's oeuvre to *Paths of Glory.* For film aficionados, it was an auspicious beginning.

For the legal profession, *Paths of Glory* merits its repeated viewing.[6] It is a film which captures the law at its most debased. It shows that under such circumstances the law becomes not a search for truth, but instead a twisted incarnation of deceit and violence. The rigged court marital, Dax's ham-strung defense, and the merciless carrying out of the executions, all illustrate how the law can be manipulated to perverse ends.

Rudy Carmenaty is a Deputy County Attorney and the Director of Legal Services for the Nassau County Department of Social Services.

1. The films was produced by James B. Harris and released thru United Artists. The script is by Calder Willingham, Jim Thompson, and Kubrick.
2. This maxim was first attributed to Hiram Johnson (1866 – 1945).
3. Tim Carey, Ralph Meeker, and Joe Turkel render evocative performances as the doomed soldiers.
4. Played by Susanne Christian, she would subsequently become the wife of Stanley Kubrick.
5. Vincent LoBrutto, *Stanley Kubrick*, 155 (1st Ed. 1997).
6. The film's running time is 87 minutes.

LOST WILL ...

Continued From Page 3

ly establish that the original was retained by the drafting attorney. Also accepted are handwritten notations by the decedent which indicate that the original will is in the possession of the drafting attorney.

This sort of circumstantial evidence is helpful in establishing that the will was not revoked by the decedent, as the original remained with the attorney-draftsman, and that it was not destroyed by the decedent. An accurate copy of an instrument that was duly executed, establishing all of the provisions set forth in the original, also serves to evidence that the copy in the decedent's possession is a complete.[8] Additionally, whether the decedent had openly held out the copy of the will to be their last will and testament will bolster the application in those cases where the evidence establishing the third prong of SCPA § 1407 is circumstantial.[9]

For estate planning attorneys, it is important to keep the rigid requirements of SCPA § 1407 in mind when executing wills. If the client leaves the ceremony with a copy only in-hand, estate planners should distinctly mark the client's document as a "copy" and provide a cover letter to the client which confirms their retainment of the original. Maintaining a paper trail or paperless trail via email is vital. These small steps may serve to alleviate potential problems in the future, if the original will cannot be located at the time of the testator's death.

Andrew P. Nitkewicz is a partner at Cullen and Dykman LLP and Chair of the firm's Trusts & Estates Department. Andrew concentrates his practice in the area of Estate Litigation. He can be reached at Anitkewicz@Ccullenllp.com.

Fabiana Furgal is an associate in the Trusts & Estates Department at Cullen and Dykman and can be reached at Ffurgal@cullenllp.com.

1. *Matter of Cafferky*, 38 Misc.3d 1219(A) (Surr. Ct., Bronx Co. 2013).
2. *Matter of Brittain,* 54 Misc.2d 965 (Surr. Ct., Queens Co. 1967).
3. *Matter of Halpern*, 76 A.D.3d 429 (1st Dept. 2010).
4. *Matter of Derrick*, 88 A.D.3d 877 (2d Dept. 2011).
5. *See, e.g., Collyer v. Collyer*, 110 N.Y. 481 (1888).
6. *Matter of Fox,* 9 N.Y.2d 400 (1961).
7. *Matter of Castiglione*, 40 A.D.3d 1227 (3d Dept. 2007).
8. *Cafferky, supra* n.1; *Matter of Quinlan*, NYLJ (Oct. 13, 1993) at 24.
9. *Cafferky, supra* n.1; *Matter of Keane,* 65 Misc.3d 1229(A) (Surr. Ct., Kings Co. 2019).

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JANUARY 1, 2020

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JUDICIARY INDUCTION 2020

On January 24, 2020, the Nassau County Judicial Induction Ceremony was held in the Central Jury Courtroom at the Nassau County Supreme Court. The ceremony was presided over by the Hon. Norman St. George, Nassau County Administrative Judge.

(L-R) Hon. Gary M. Carlton; Hon. Norman St. George, Nassau County Administrative Judge; Hon. Karen L. Moroney; Madeline Singas, Nassau County District Attorney; Hon. David J. Gugerty; and NCBA President Richard D. Collins.

In Brief

Marian C. Rice

Steven Schlesinger, Co-Managing Partner of Jaspan Schlesinger LLP, has announced that **Jothy Narendran**, a Partner in the firm's Banking and Financial Services Practice Group, has been named Co-Managing Partner. Partner **Jessica M. Baquet**, a member of the firm's labor and employment, litigation, appellate, and trusts & estates practice groups, has been named to the Management Committee of the 60-member firm.

Marc L. Hamroff, managing partner of Moritt Hock & Hamroff, LLP, announced the appointment of **Julia Gavrilov,** an attorney with the firm's secured lending and equipment finance practice area and member of the Equipment Leasing and Finance Association, to the Equipment Leasing & Finance Foundation's Foundation Research Committee. Ms. Gavrilov, who is the sole attorney appointed to the Committee, will serve a two-year term.

Forchelli Deegan Terrana LLP is pleased to welcome **Jeremy M. Musella** to the firm's corporate mergers and acquisitions and veterinary practice groups as an associate.

Bond, Schoeneck & King is pleased to announce that **Emily E. Iannucci**, a management-side labor and employment law attorney from the firm's Garden City office who represents and counsels New York employers in both the public and private sectors, has been elected as a member (partner) of the firm.

Jay M. Herman, a partner at Herman Katz Cangemi & Clyne, LLP, is pleased to announce that the Wilkes Law Group, PLLC of Tarrytown, NY has merged its practice into the firm. The new firm name is Herman Katz Cangemi Wilkes & Clyne, LLP and will continue the statewide practice of property tax and eminent domain matters with offices in Manhattan, Melville and Westchester.

Ronald Fatoullah of Ronald Fatoullah & Associates had the honor of introducing AARP New York State Director, Beth Finkel who led a discussion of recent legislative updates and issues facing seniors in 2020. In addition, Mr. Fatoullah provided educational lectures to caregivers at PSS Circle of Care, R.A.I.N. Alzheimer's Link Program and the NYC Alzheimer's Association.

The In Brief column is compiled by Marian C. Rice, a partner at the Garden City law firm L'Abbate Balkan Colavita & Contini, LLP, where she chairs the Attorney Professional Liability Practice Group. In addition to representing attorneys for 35 years, Ms. Rice is a Past President of NCBA.

Please email your submissions to nassaulawyer@nassaubar.org with subject line: IN BRIEF

The Nassau Lawyer welcomes submissions to the IN BRIEF column announcing news, events, and recent accomplishments of its current members. Due to space limitations, submissions may be edited for length and content.

PLEASE NOTE: All submissions to the IN BRIEF column must be made as WORD DOCUMENTS.

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WE CARE 32nd Annual Children's Festival

Wednesday, February 19, 2020

Photos by Hector Herrera






SECURE ACT ...

Continued From Page 8

inherited IRA more quickly. As such, estate plans will need to take into account the new rules when planning for beneficiaries, and for trusts in particular.

Trust Beneficiaries

Trusts are commonly named as beneficiaries of IRAs, rather than an individual beneficiary, as part of a well-constructed estate plan. For a minor beneficiary, a trust allows the minor's inheritance to be managed on the minor's behalf until the minor reaches an appropriate age. For some adult beneficiaries, a lifetime trust is necessary due to concerns about creditors, bankruptcy, divorce, substance abuse, or other long term financial instability. For a disabled beneficiary, an SNT may be necessary to ensure that the inheritance does not compromise the beneficiary's eligibility for any means-tested government benefits, such as Supplemental Security Income (SSI) or Medicaid.

Under prior law, non-individual beneficiaries would generally have to withdraw the IRA within five years of the IRA owner's death. A trust would be considered a non-individual beneficiary unless it was a "see-through" trust, which requires that (1) the trust is valid under state law, (2) the trust is irrevocable, (3) the trust beneficiaries are identifiable in the trust document, and (4) the financial institution holding the IRA is provided a copy of the trust.[6] For purposes of determining the RMD, a see-through trust was disregarded, and the individual trust beneficiaries were considered beneficiaries of the IRA. For beneficiaries who were individuals, the life expectancy of the beneficiary (the oldest, if the trust had multiple) was used to determine the RMDs for the trust.

Trusts that were intended to be named as IRA beneficiaries were generally structured as either a conduit trust or an accumulation trust. The conduit trust required the trustee to withdraw the RMDs from the IRA at least annually and distribute it directly to the beneficiary. In an accumulation trust the trustee was still required to withdraw the RMDs, but could use his or her discretion on whether or not to distribute it to the beneficiary or keep it in the trust. The benefit of the conduit trust was that by distributing the RMDs to the beneficiary, the income taxes triggered by the RMD would be paid by the beneficiary rather than the trust, usually at a lower tax rate (trusts have compressed income tax brackets).

The SECURE Act did not change most of the rules pertaining to trusts. If a trust qualifies as a see-through trust, the characteristics of the trust beneficiary still apply to the trust. For example, if the sole trust beneficiary is an eligible designated beneficiary, then the trust is treated as an eligible designated beneficiary, and is not required to withdraw the IRA within ten years. Likewise, an SNT whose beneficiary is disabled or chronically ill is considered an eligible designated beneficiary, and will be allowed to withdraw RMDs from an IRA that named the trust as beneficiary based upon the beneficiary's life expectancy. However, if the beneficiary is not an eligible designated beneficiary, the ten year withdrawal requirement now applies.

Trust Planning Considerations

Existing estate plans with IRA trusts may need to be altered to account for the statutory changes and the elimination of the stretch IRA. Many wills contain conduit IRA trusts that will no longer function in the way they were intended, to pass through the RMDs to the beneficiary over their lifetime. With the new changes there is no annual RMD for beneficiaries who are not eligible designated beneficiaries. Depending on how the trust is drafted, this could lead to the entire account being withdrawn in one year (year ten) and distributed to the beneficiary, rather than being spread out over a lifetime. In addition to likely causing the beneficiary to pay more taxes by having the distribution all in one year, the balance of the account would then be left in the hands of the beneficiary outright, without the protection of a trust.

Conduit trusts will need to be rewritten, either to provide for more discretion and flexibility to the trustee (similar to accumulation trusts), or to have structured distribution provisions that take into account the elimination of the RMD for beneficiaries. For discretionary trusts, it will be essential to allow the trustee discretion in the timing of withdrawals from the IRA to minimize taxes.

Practitioners may also start running into trusts that can no longer be amended, including irrevocable trusts, possibly leading to unintended acceleration of distributions. One option may be to decant into a new trust using New York Estates, Power and Trusts Law § 10-6.6(b), depending on the discretion the trust document grants to the trustee. Trust reformation could also be considered on the grounds that the changes in tax law would frustrate the intent of the grantor or testator.

Every estate planner should become familiar with the SECURE Act and how it alters the planning landscape. While the SECURE Act may be seen as a benefit for IRA owners because it increases the starting age for RMDs to 72, it has the potential to hit certain beneficiaries hard, and the classic conduit trust is no longer a viable option. With the elimination of the stretch IRA for most non-spouse beneficiaries, more nuanced planning for IRA beneficiaries and trusts is now essential.

Marcus O'Toole-Gelo is a senior associate at Genser Cona Elder Law in Melville.

1. IRC § 401(a)(9)(E)(ii).
2. IRC § 401(a)(9)(H)(ii).
3. IRC § 401(a)(9)(B)(iv).
4. IRC § 401(a)(9)(E)(ii)(III).
5. IRC § 401(a)(9)(E)(ii)(IV).
6. Treas. Reg. § 1.401(a)(9)-4(c).

NCBA Committee Meeting Calendar
March 2—April 8, 2020

Questions? Contact Stephanie Pagano at (516) 747-4070 or spagano@nassaubar.org.
Please Note: Committee Meetings are for NCBA Members. Dates and times are subject to change. Check www.nassaubar.org for updated information.

ETHICS
Monday, March 2
6:00 p.m.
Matthew K. Flanagan

IN-HOUSE COUNCIL
Tuesday, March 3
6:00 p.m.
Tagiana Souza-Tortorella

MEDICAL-LEGAL
Wednesday, March 4
12:30 p.m.
Susan W. Darlington/Mary Anne Walling

CONDEMNATION LAW AND TAX CERTIORARI
Wednesday, March 4
12:30 p.m.
Douglas W. Atkins

HOSPITAL & HEALTH LAW
Thursday, March 5
8:30 a.m.
Leonard M. Rosenberg

CIVIL RIGHTS/WOMEN IN THE LAW
Thursday, March 5
12:30 p.m.
Robert L. Schonfeld—Civil Rights
Christie R. Jacobson/Jennifer L. Koo—Women in the Law

PUBLICATIONS
Thursday, March 5
12:45 p.m.
Christopher J. DelliCarpini/Andrea M. DiGregorio

COMMUNITY RELATIONS & PUBLIC EDUCATION
Thursday, March 5
12:45 p.m.
Joshua D. Brookstein

PLAINTIFF'S PERSONAL INJURY
Tuesday, March 10
12:30 p.m.
Ira S. Slavit

ALTERNATIVE DISPUTE RESOLUTION
Tuesday, March 10
12:30 p.m.
Marilyn K. Genoa/Jess Bunshaft

EDUCATION LAW
Wednesday, March 11
12:30 p.m
Candace J. Gomez

MATRIMONIAL LAW
Wednesday, March 11
5:30 p.m.
Samuel J. Ferrara

REAL PROPERTY LAW
Friday, March 13
12:30 p.m.
Mark S. Borten/Bonnie Link/Anthony W. Russo

SURROGATE'S COURT ESTATES & TRUSTS
Tuesday, March 17
5:30 p.m.
Jennifer Hillman/Lawrence N. Berwitz

BUSINESS LAW, TAX & ACCOUNTING
Wednesday, March 18
12:30 p.m.
Jennifer L. Koo/Scott L. Kestenbaum

COMMERCIAL LITIGATION
Wednesday, March 18
12:30 p.m.
Matthew F. Didora

ASSOCIATION MEMBERSHIP
Wednesday, March 18
12:45 p.m.
Michael DiFalco

DIVERSITY & INCLUSION
Thursday, March 19
6:00 p.m.
Hon. Maxine S. Broderick

DISTRICT COURT
Friday, March 20
12:30 p.m.
Roberta D. Scoll/S. Robert Kroll

WOMEN IN THE LAW
Wednesday, March 25
12:30 p.m.
Jennifer L. Koo/Christie R. Jacobson

CRIMINAL COURT LAW & PROCEDURE
Wednesday, March 25
12:30 p.m.
Dennis P. O'Brien

CONSTRUCTION LAW
Friday, March 27
12:30 p.m.
Michael D. Ganz

ELDER LAW, SOCIAL SERVICES, HEALTH ADVOCACY
Tuesday, March 31
5:30 p.m.
Katie A. Barbieri/Patricia A. Craig

APPELLATE PRACTICE
Wednesday, April 1
12:30 p.m.
Barry J. Fisher

MATRIMONIAL LAW
Wednesday, April 1
5:30 p.m.
Samuel J. Ferrara

COMMUNITY RELATIONS & PUBLIC EDUCATION
Thursday, April 2
12:45 p.m .
Joshua D. Brookstein

PUBLICATIONS
Thursday, April 2
12:45 p.m.
Christopher J. DelliCarpini/Andrea M. DiGregorio

LABOR & EMPLOYMENT
Monday, April 6
12:30 p.m.
Paul F. Millus

ETHICS
Monday, April 6
5:30 p.m.
Matthew K. Flanagan

EDUCATION LAW
Tuesday, April 7
12:30 p.m.
Candace J. Gomez

GENERAL, SOLO AND SMALL LAW PRACTICE MANAGEMENT
Wednesday, April 8
12:30 p.m.
Scott J. Limmer

Hon. Norman St. George, Administrative Judge of Nassau County, Receives Prestigious Norman F. Lent Memorial Award

(L-R) Hon. Norman St. George and F. Scott Carrigan, President of the Criminal Courts Bar Association of Nassau County

Hon. Norman St. George, Administrative Judge of Nassau County, was honored with the *Norman F. Lent Memorial Award* presented by the Criminal Courts Bar Association of Nassau County. The prestigious award was presented by the organizations President, F. Scott Carrigan, at the Association's Annual Dinner Dance on Thursday, January 23 at the Fox Hollow in Woodbury.

The award is presented each year to an individual who through actions and deeds has consistently maintained the highest standards of the legal profession. Judge St. George was recognized for his extraordinary and efficient leadership of the Nassau County Courts, his fairness, compassion, and judicial temperament.

As Administrative Judge of Nassau County, Judge St. George oversees the operations of all the courts in Nassau County, with direct supervision of nearly 90 judges and more than 900 non-judicial employees.

DEED ...

Continued From Page 6

care, resulting in a large nursing home bill for the family. Additionally, if the property is sold within five years of the life tenant requiring nursing home care, Medicaid will treat the life tenant's share of the proceeds as an available asset. This can impact Medicaid eligibility for the life tenant and require that some of the proceeds be spent on nursing home care.[4]

Alternative to Life Estate Deed

An alternative to the life estate deed is to transfer a client's property to a Medicaid trust. A Medicaid trust can be drafted to allow for all the benefits that a life estate deed provides, such as a stepped-up basis in the value of the property, while also avoiding the potential risks associated with a life estate deed. For example, property owned by a Medicaid trust, rather than the life tenant and remaindermen, is protected from potential creditors of a beneficiary and can make Medicaid eligibility simpler. Furthermore, the trustee of a Medicaid trust is in full control of the property and does not require the approval of others to sell the property.

A Medicaid trust, also referred to as an irrevocable trust, is commonly thought of as an instrument that is inflexible or rigid. During consultations, clients often refer to loss of control as a main deterrent to moving forward with this type of estate plan, however, this is a common misconception. A Medicaid trust may enable individuals to retain a significant degree of control over assets during their lifetime, while providing for protection from creditors, such as Medicaid, and reducing tax liability for his or her heirs at death. Putting assets into an irrevocable trust also may help to reduce the risk that a child's creditor or ex-wife will take the assets while the couple is alive.

A Medicaid trust may enable individuals to retain a significant degree of control over assets during their lifetime, while providing for protection from creditors

As with all estate planning, a client's specific circumstances must be evaluated to determine what plan best suits him or her. Some important considerations for determining which estate plan makes sense for a client includes the client's finances, the client's family dynamics, and whether the client will require long-term care in the future. Depending on these factors, a life estate deed may not always be the best option for the client.

Deidre M. Baker is an associate attorney with the Elder Law firm of Makofsky Law Group, P.C., located in Garden City. The firm concentrates its practice on trusts, estates, Medicaid planning, Medicaid applications, guardianships, and estate administration. The firm can be reached at (516) 228-6522.

1. *Matter of Heinlin*, NYLJ (May 21, 1996) at 35.
2. *Matter of Gaffers,* 254 A.D. 448 (3d Dept. 1938).
3. *See* I.R.S. Publication 523 (2018), *Selling Your Home*, found at https://www.irs.gov/publications/P523.
4. *See* NYSDOH Administrative Directive, *Deficit Reduction Act of 2005 – Long-Term Care Medicaid Eligibility Changes,* 06 OMM/ADM-5 (July 2006), available at https://on.ny.gov/2ubYT9z.

WILL ...

Continued From Page 5

than his or her spouse as the beneficiary, and the policy proceeds will not be included in the net estate.

Computing the Elective Share

While statutorily straightforward, computing the value of the surviving spouse's elective share and how much the surviving spouse is entitled to can prove complicated at times.

Example 1: Husband dies with no will, owning real property as tenants by the entirety with spouse, date of death value is $450,000; an individual account worth $24,000 at death; and a brokerage account, transfer on death to his brother, worth $625,000. Funeral expenses were $2,500, and estate administration expenses $6,000.

The net estate value will be $841,500 (half value of real property + brokerage account value – funeral and estate administration expenses). Note that the total value of the individual account is excluded from the calculation. This is because the individual account vests in the surviving spouse and is not an asset of the estate since it falls under the Exemption for the Benefit of the Family, as a cash exemption.[17]

One-third of the net estate is $280,500, which is the elective share amount. This amount is then reduced by the assets already passing to the surviving spouse (half value of real property), providing a net elective share amount of $55,500 due to the surviving spouse. The decedent's brother would be required to pay $55,000 to the surviving spouse.

Example 2: Wife dies with a will, owning real property owned individually worth $1.1 million at death with an outstanding mortgage of $300,000, bequeathed to her daughter; life insurance with a death benefit of $800,000 payable to the surviving spouse; jewelry valued at $15,000 at death, bequeathed to her daughter; a transfer-on-death account to her brother, worth $82,000 at death; and a residuary estate consisting of various accounts at financial institutions, worth $825,000 at death, with two-thirds left to her daughter and one-third to the surviving spouse. Estate administration expenses were $12,000 and valid debts were $20,000.

The value of the net estate is $1,665,000 (total value of real property – value of outstanding mortgage + jewelry + TOD account + residuary estate - $25,000 cash exemption – outstanding debts – estate expenses). Here, note that the total value of the life insurance death benefit is excluded from these calculations, and that $25,000 cash value from the residuary estate is also excluded under EPTL §5.3.1(a)(6).

One-third of the net estate is $555,000, which is the elective share amount. Again, this amount is reduced by the value of the assets already passing to the surviving spouse, which is one-third of the residuary estate, $266,666.67. The net elective share payable to the surviving spouse would be $288,333.33. This amount would be payable ratably between the decedent's daughter and her brother.

The actual value of the elective share must be calculated before the surviving spouse determines whether to exercise his or her right of election. The value of the assets received under a will may be higher than the amount that would be received pursuing the elective share. If it is determined that the surviving spouse would receive more under a will, then he or she may request that the court issue an order cancelling the election. The court may only grant such order, however, if there is no prejudice shown to the creditors and other parties interested in the estate.[18]

Exercising the Right of Election

The right of election is personal to the surviving spouse, with few exceptions. When authorized by the court having jurisdiction, the right can be exercised by the guardian of the property of an infant spouse; the committee of an incompetent spouse; the conservator of a conservatee spouse; the guardian ad litem for the surviving spouse; and a guardian authorized under Article 81 of the Mental Hygiene Law.[19]

The surviving spouse or such authorized person must file the notice of election with the court within six months from the date of issuance of letters testamentary or administration, but not later than two years after the date of decedent's death.[20] The notice must be served by mail on the personal representative of the estate, or the named executor if the will has not yet been admitted to probate.[21] The surviving spouse can request an extension of time to file, in six-month increments, so long as the original time to make the election has not expired.[22] If the original time to file has passed, then the surviving spouse may submit an application for relief from the default and for the extension provided there is reasonable cause.[23]

Once the notice of election has been filed, a petition to determine the validity of the right of election under Section 1421 of the Surrogate's Court Procedure Act will likely be filed by the personal representative of the estate, along with an order to show cause as to why the determination should not be made that the surviving spouse is a valid spouse and entitled to the elective share. If there is any property not in the hands of the estate representative, the value of which is required to satisfy the elective share, the petition can also request an order restraining the party holding the property from transferring said property. Process needs to issue to all persons interested in the question being posed.[24] For example, if a joint account with Son is held by Chase bank, the order to show cause will enjoin Chase bank from transferring the account and process will issue to both Son and Chase bank.

Conclusion

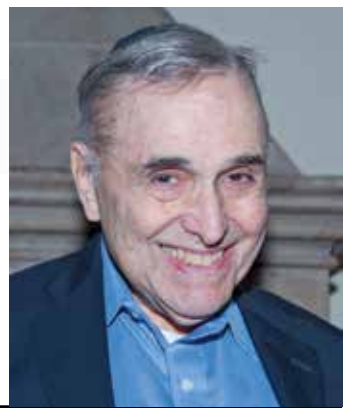
New York's right of election statute was enacted to provide a surviving spouse, typically the surviving homemaker wife, at the time, with some means of financial support when the deceased husband disinherited his wife. Although times have changed, the public policy behind the legislation has not.

There are many factors that go into determining whether or not a surviving spouse should exercise his or her right of election. Careful attention should be paid to this statute anytime a surviving spouse is left less than the full estate.

Christina Lamm is an associate at Makofsky Law Group, P.C., located in Garden City. The firm concentrates its practice on trusts, estates, Medicaid planning, Medicaid applications, guardianships, and estate administration.

1. EPTL § 5–1.1–A.
2. *Id.*
3. EPTL § 5–1.1–A(a)(4).
4. EPTL § 5-3.1.
5. EPTL § 5-1.2.
6. The slayer rule stands for the proposition that a person cannot profit from his or her fraud or crime. *See Riggs v Palmer,* 115 N.Y. 506 (1889).
7. In order for a waiver to be valid it must be in writing and "acknowledged or proved in the manner required by the laws of this state for the recording of a conveyance of real property." *See* EPTL § 5–1.1–A(e).
8. EPTL § 5–1.1–A(b)(1)(A).
9. EPTL § 5–1.1–A(b)(1)(B).
10. EPTL § 5–1.1–A(b)(1)(C).
11. EPTL § 5–1.1–A(b)(1)(D).
12. EPTL § 5–1.1–A(b)(1)(E).
13. EPTL § 5–1.1–A(b)(1)(F).
14. EPTL § 5–1.1–A(b)(1)(G).
15. EPTL § 5–1.1–A(b)(1)(H).
16. EPTL § 5–1.1–A(b)(1)(I).
17. EPTL § 5.3.1(a)(6).
18. EPTL § 5–1.1–A(c)(5).
19. EPTL § 5–1.1–A(c)(3)(A)-(E).
20. EPTL § 5–1.1–A(d)(1).
21. *Id.*
22. EPTL § 5–1.1–A(d)(2).
23. *Id.*
24. *See* SCPA § 1421.

Pro Bono Attorney of the Month



By Karen Marie Scaduto

Steven M. Bernstein

The Nassau County Bar Association (NCBA) is excited to honor Steven M. Bernstein as our Pro Bono Attorney of the Month for March 2020. Mr. Bernstein has enjoyed an impressive and fulfilling career since graduating from New York University School of Law in 1961 and joining the New York State and federal bars. He began his pro bono activities with the NCBA two years ago. This past year, he donated numerous hours at Foreclosure Settlement Conferences at the Nassau County Supreme Court, appearing with homeowners who are facing foreclosure, counseled them, and connected them with nonprofit housing counselors to pursue debt remediation options. Many of the homeowners he served secured settlements and discontinuances of their actions.

Mr. Bernstein is a seasoned expert in foreclosure matters and manages several conferences during each hectic court session. He has been an incredible asset to the program, calming frightened homeowners and guiding them to grasp realistic expectations and options to resolve their difficulties.

Mr. Bernstein is a native New Yorker, residing in Long Beach since the age of four. In 1958, Steven Bernstein graduated from the University of Pennsylvania, Wharton School of Finance and Commerce, with a B.S. in Economics. From there, he went on to New York University School of Law and earned an LLB in 1961. His article titled "*Collegiate Jurisdiction of the State Commission Against Discrimination,*" was published at 16 N.Y.U. Intra Law Review 286 (1961). His first honor was being chosen as a community ambassador to Israel in 1961. He had a fascinating two-month trip with the "Experiment in International Living." He returned home and briefed the community on his experiences living with an Israeli family, working on a kibbutz, and meeting judges of the Israeli Supreme Court.

Mr. Bernstein started his remarkable legal journey in private practice, gaining experience in litigation and developing advocacy skills to assist underserved and vulnerable populations. This was the beginning of a distinguished career and life-long commitment to civil rights and service to others. From 1968 through 1973, he served as a senior trial attorney, and then as the attorney in charge of the Civil Division of the Legal Aid Society in Rockaway, Queens.

In 1974, he became the founding project director for Legal Services, NYC at the Brooklyn Branch and served there through the end of 2009. Through his dedication and leadership, he nurtured a staff of excellent attorneys who protected the legal rights of countless Brooklyn residents and improved the lives of many who did not have the resources to secure private representation. His work involved civil litigation, including housing, consumer fraud, disability, and welfare rights. Mr. Bernstein clearly has a unique ability to connect with clients and understand their needs.

Shortly after his retirement, Mr. Bernstein began working for the New York Peace Institute as a certified mediator and continues to offer his time and expertise to this project. Fifty percent of conflicts brought before these mediators result in settlements that promote the beneficial interests of all parties. He began volunteering with the Nassau County Bar Association's Pro Bono Mortgage Foreclosure Project in September 2018 and remains an active and invaluable contributor. Somehow, he finds time to offer additional volunteer hours to Cordoza Law School as a judge for its Moot Court Program.

Steven Bernstein has been married to his beloved Gloria for 55 years and they have one son who is a paramedic. Throughout his life, he has also volunteered extensively with his religious communities, including the Lido Beach Synagogue and Young Israel of Long Beach. He served as President of the Lido Beach Synagogue and was involved in reframing its constitution and charter.

When he is not helping others, Mr. Bernstein enjoys walking on the boardwalk and traveling, especially cruising. The Mortgage Foreclosure Project and the Nassau County Bar Association are immensely grateful that this outstanding and generous attorney and truly wonderful human being has joined our mission to serve homeowners in Nassau County.

Karen Marie Scaduto was the Settlement Coordinator for the Mortgage Foreclosure Project and has relocated for an opportunity in Manhattan. We wish her all the best and know she will be missed. Anyone who wishes to volunteer can contact Gale D. Berg, Director of Pro Bono for the Nassau County Bar, at gberg@nassaubar.org.

CLIENTS ...

Continued From Page 7

powers to the agent. The General Obligations Law (GOL) governs the creation and use of a Power of Attorney and provides, in part, that it must be signed and dated by a principal with capacity.[11] The statute defines capacity as the "ability to comprehend the nature and consequences of the act of executing and granting, revoking, amending or modifying a power of attorney, any provision in a power of attorney, or the authority of any person to act as agent under a power of attorney."[12]

Given the extensive powers that can be granted to an agent under a Power of Attorney, it is important that the attorney feel confident that the client, the principal under the Power of Attorney, understands the nature and consequences of the document. This is even more important when interacting with a non-English speaking client. The attorney representing a non-English speaking client must exercise extreme caution when drafting and supervising the signing of a Power of Attorney to ensure that the client understands the nature and consequences of signing the Power of Attorney.

Again, retaining the services of a certified translator can assist the attorney is assessing the non-English speaking client's understanding of the documents and ensuring that the client is comfortable signing the documents.

Practice Tips

If the attorney representing the client speaks the same native language as the client, the attorney should keep detailed notes as to the attorney-client communications and demonstrate to the witnesses to the execution of the documents, if any, that the client understands what he or she is signing.

If the attorney is not fluent in the native language of the client, the services of a certified translator should be enlisted for the initial interview of the client and all following meetings with the client including the signing of the documents.

Do not use family members as translators! Not only could this create doubt as to what the family member is actually translating to the client, this could also be viewed as exerting undue influence on the signing party.

In the case of a Will, amend the SCPA §1406 affidavit of attesting witnesses to reflect that the testator acknowledged that his or her knowledge of the English language was limited and state the client's native language. Furthermore, state in the affidavit that the instrument was read aloud and translated to the testator in his or her native language by the translator. Finally, include in the affidavit that the testator was not under any restraint other than the inability to read, write, and converse in the English language.

Have the translator sign an affidavit as to his or her qualifications and the circumstances surrounding the attorney-client communications and the execution of the documents.

Keep *detailed notes* of all communications with the client including how the communications were exchanged. The attorney should take every step possible to ensure that the client's wishes are carried out and keeping detailed notes will help avoid any individuals unhappy with the documents from using the communication challenge as grounds for claims of lack of due execution, lack of testamentary capacity, undue influence, or fraud.

As a last resort, refer the client to another attorney who is fluent in the client's native language.

Conclusion

No statute pertaining to the making of a testamentary disposition, creation of a lifetime trust, or providing for the appointment of an agent requires the party making the disposition or appointment to read, write or speak English. Rather, the statutes require the party signing the instrument to be of sound mind or to have the requisite capacity; in other words, the signing party must have the capacity to *understand* and *comprehend* the document that he or she is signing. Making sure the non-English speaking client *understands* and *comprehends* what he or she is signing is key.

Lisa R. Valente is a bilingual attorney with a fluency in Portuguese at Makofsky Law Group, P.C. located in Garden City. The firm concentrates its practice on elder law, Medicaid, estate planning, guardianships, probate, and estate administration.

1. EPTL § 3-1.1.
2. *Estate of Kumstar*, 66 N.Y.2d 691(1985).
3. EPTL § 3-2.1.
4. *In re Watson*, 37 A.D.2d 897 (3d Dept. 1971).
5. SCPA § 1404.
6. SCPA § 1406.
7. EPTL § 7-1.14.
8. *Matter of Goldberg,* 153 Misc.2d 560 (Surr. Ct., N.Y. Co. 1992).
9. *Id*.
10. EPTL § 7-1.17(a).
11. GOL § 5-1501B(1)(b).
12. GOL § 5-1501(2)(c).

NCBA New Members

We welcome the following new members

Attorneys

Peter Ackerman

Amy Berkowitz-Orztiz

Matthew Albert Gray

Benjamin Kaplan
McLaughlin & Stern, LLP

Alanna Eileen McGovern
Miller & Milone, PC

Amanda Seelmann
Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP

Steven C. Stern
Sokoloff Stern, LLP

Students

Jade L. Garza

Angelica Morra

Jasmine Ann Vega

Committee Reports

Plaintiff's Personal Injury

Meeting Date: February 2020

Chair: Ira Slavit

Michael J. Langer

At the meeting held in February 2020, a CLE presentation was delivered by Nassau County Supreme Court Justice Randy Sue Marber and her Principal Law Clerk, Mili Makhijani, who spoke about pre-trial practice issues that they commonly encounter and best practices for lawyers to follow.

The next meeting is scheduled for Tuesday, March 10, 2020 at 12:30 PM, at which time guest speaker Mark Yagerman will present a lecture on various issues related to trial preparation, including how to get your evidence to court in admissible form and how recent amendments to the CPLR can help lawyers for plaintiffs.

Save the Date: Tuesday, May 5, 2020, 5:30 to 7:30 PM, at which time a CLE program entitled "Why Civility in the Practice of Law Matters," will be jointly presented by the Plaintiff's and Defendant's Personal Injury Committees and will feature a panel of judges and attorneys.

The Committee Reports column is compiled by Michael J. Langer, a partner in the Law Offices of Michael J. Langer, P.C. Mr. Langer is a former law clerk in the United States Court of Appeals for the Second Circuit, and a former Deputy County Attorney in the Office of the Nassau County Attorney. Mr. Langer's practice focuses on matrimonial and family law, estate and commercial litigation, and criminal defense.

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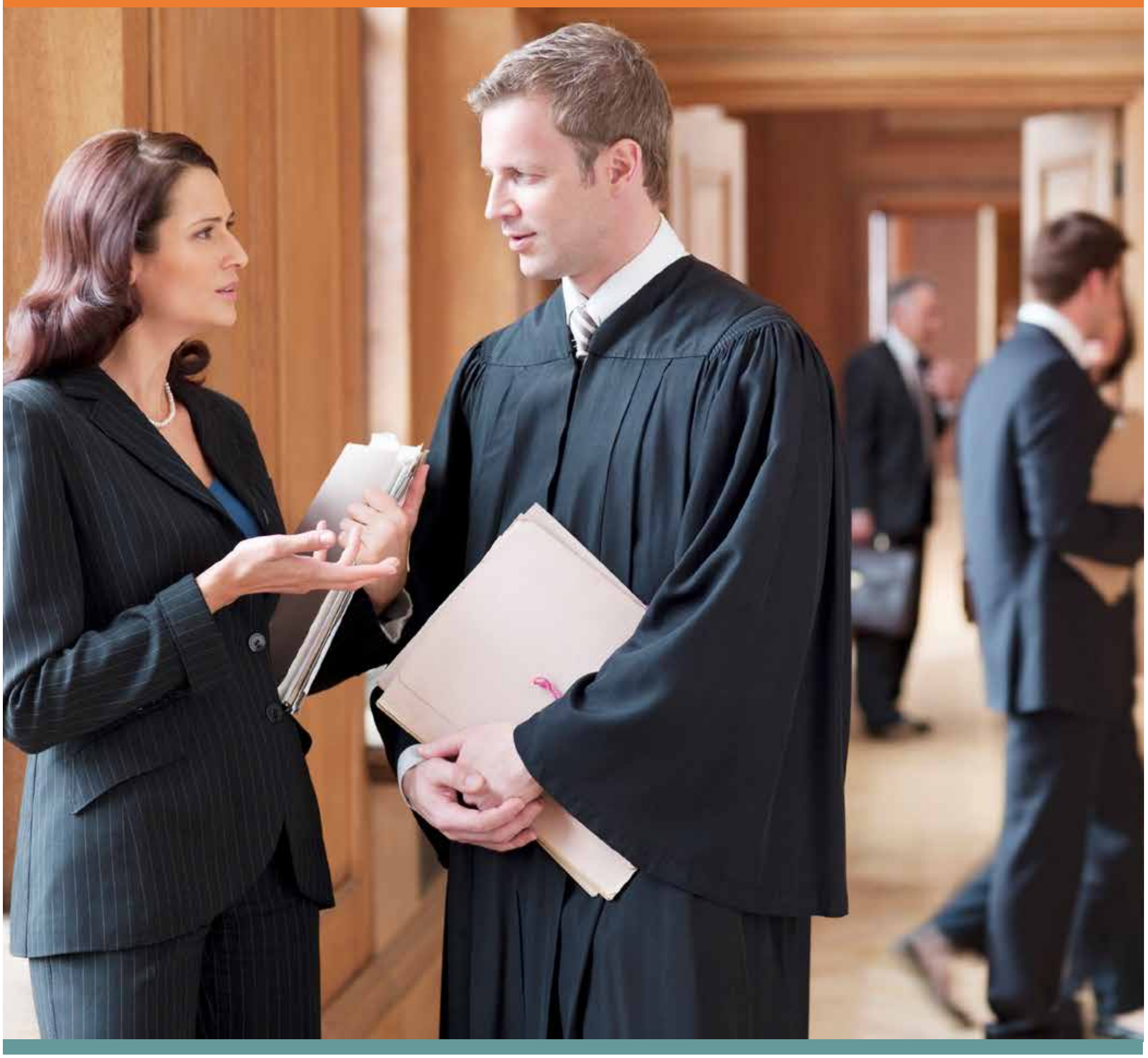

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