



NEW YORK WOMEN'S BAR ASSOCIATION

PRESIDENT'S MESSAGE

JUNE 2021

I am so proud of what the NYWBA has accomplished during one of the most challenging experiences many of us have faced in our professional careers. It has been a privilege to work alongside such fantastic attorneys and jurists as we collectively learned to navigate a new technological landscape that has altered the way we practice law, probably with continuing long-term impact. I am honored to have the opportunity to continue to serve as your NYWBA President for another term in 2021-2022 as we transition from crisis mode into shaping what will become our new "normal" together. I am excited about continuing to build upon the lessons we learned during the first year of the pandemic and hoping that we can come out of it stronger than ever.



Amanda B. Norejko

During the 2020-2021 year, the NYWBA has hosted more than 20 CLEs, as well as several health and wellness seminars, financial fitness workshops, virtual social events, and more than a dozen "Zoom with the Judge" events to help us maintain our sense of community, boost our spirits, enrich our minds, and keep us on the cutting edge of changes in the law and in the court system.

Each month, the NYWBA continues to provide a diverse range of CLE programs. In April, our Civil Courts Committee hosted an innovative two-part CLE mock trial titled, "Commercial and Residential Non-Payment Proceedings" presented by **Hon. John Zhuo Wang** and **Hon. Kathleen Waterman**. The Elder Law Committee presented a CLE on "Planning for Medicaid Home Care in 2021: WHAT YOU NEED TO KNOW NOW!" The International Women's Rights Committee presented a CLE examining the role of domestic and international whistleblowing laws in the protection, promotion, and support of human rights and civil society.

On April 15, 2021, we celebrated the new season and the end of our bar association year with the Spring Sing, a Zoom karaoke party jointly hosted by the NYWBA and the Bronx, Brooklyn, Queens, and Staten Island Women's Bar Associations. We have had a wonderful collaboration with our sister chapters of WBASNY which was facilitated by the virtual format we have all adopted over the last year. I hope that we

(Continued on Page 2)

Please join us to celebrate the

New York Women's Bar Association's 2021 Virtual Annual Awards and Installation Ceremony

The President's Special Award
will be presented to
Honorable Letitia A. James
New York State Attorney General

The Florence E. Allen Award
will be presented to
Honorable Rosalyn Richter

The Award of Recognition
will be presented to
Honorable Matthew F. Cooper

Thursday, June 10, 2021 at 6:00 p.m.

Zoom Cocktail Hour at 6:45 p.m.
Wine and Dessert Provided

Silent Auction to Benefit
the NYWBA Foundation

\$100 – for Members & Non-Members

For more information, go to
www.nywba.org/events/4606/1623348000/

President's Message (Continued from Page 1)

will be able to continue this great relationship as we transition back to more in-person events in the future.

On April 20, 2021, we held our Annual Meeting of the membership. After hearing a State of the Association address, attendees voted for a slate of Officers, Directors, and Delegates both for the NYWBA and WBASNY's Officers. Congratulations to all of the Officers, Directors, and WBASNY Delegates who will be taking office for the 2021-2022 year starting on June 1st. We have an energetic, hard-working, creative and diverse group of leaders with a lot of plans and ideas to help our Association succeed in its mission. I am also thrilled to announce that our Past President **Deborah G. Rosenthal** will be serving as WBASNY's President-Elect this year.

In what has become a great tradition, Frankfurt Kurnit Klein & Selz once again generously hosted a CLE program following our Annual Meeting of the membership on April 20, 2021. This year, for the first time, the Annual Meeting's CLE offered credits both in Ethics and in Diversity and Inclusion. A panel moderated by **Nicole Hyland** took on the timely and cutting-edge issue of "Legal Ethics of Harassment and Discrimination: Attorney Conduct Inside and Outside the Courtroom." Our panelists were **Hon. Judith J. Gische**, **Vishwanath Kootala Mohan**, and **Viviane Scott**. The presentation included a discussion about proposed amendment of the New York Rule of Professional Conduct 8.4(g) on discrimination and harassment in the practice of law.

During the last year, it was more important than ever to keep our membership informed through written communications in the absence of in-person networking events. I would like to commend our outstanding Newsletter Committee: **Gabriella Formosa** and **Katelyn M. Brack** and our Executive Director **Karen Lu** for their hard work producing attractive and informative publications month after month. The Newsletter Committee can always use more contributors and editors. Please reach out to volunteer if you are interested or simply send us your articles at newsletter@nywba.org.

I would like to extend my deepest gratitude to the 2020-2021 Officers – Vice Presidents **Magnolia D. Levy**, **Hon. Laura E. Drager**, and **Jocelyn L. Jacobson**; Treasurer **Sabrina E. Morrissey**; Recording Secretary **Melissa Ephron-Mandel**; Corresponding Secretary **Lisett Costa Ferreira**; and Immediate Past President **Virginia A. LoPreto** for their outstanding commitment to this Association as well as their creative ideas and vision for how to keep it strong. I would also like to thank the Board of Directors and Advisory Council whose breadth of knowledge and depth of wisdom have been so valuable to me.

It is now time to look ahead to the next year. The NYWBA will continue to be responsive to our membership as we consider how to begin safely moving back into an era where we can meet together in person again. Your thoughts and ideas about the next steps in that transition will be critically important, and I hope that you will share them with your Committee Chairs and the Board of Directors. In the meantime, we will continue to provide a virtual platform for our upcoming events.

I hope that you will join us for our virtual Annual Awards and Installation Ceremony on June 10, 2021, featuring our honorees: **New York State Attorney General Letitia James**, the **Honorable Rosalyn Richter**, and the **Honorable Matthew Cooper**. Our NYWBA Officers, new Board Members, and WBASNY delegates will be sworn in by **Myrna Felder** (NYWBA President 1976-1977). The event will also include an online auction to benefit the NYWBA Foundation. In addition, we will introduce our NYWBA Legacy Project. Please register for that event on our website as soon as possible.

I look forward to working together with our incoming NYWBA Officers for 2021-2022, Vice Presidents **Magnolia D. Levy**, **Jocelyn L. Jacobson**, and **Melissa Ephron-Mandel**, Treasurer **Sabrina E. Morrissey**, Recording Secretary **Lisett Costa Ferreira**, and Corresponding Secretary **Morgan Fraser Mouchette** as well as our Immediate Past President **Virginia A. LoPreto**, who will be continuing in that role during my second term as President.

It was a difficult year, but the NYWBA was able to flourish despite the challenges of the pandemic. The next year is full of opportunities to make a difference in our lives and in the world around us. We are always looking for future leaders to bring new voices and ideas to the NYWBA. If you are interested in becoming more involved and would like to speak to me personally about how you can use your talents to get the most out of your membership in the NYWBA, please reach out to me at president@nywba.org.

Thank you all for being part of the beautiful mosaic of talent and wisdom on my screen over the last 12 months. I look forward to our next year together.

"I can be changed by what happens to me, but I refuse to be reduced by it." – Maya Angelou

Amanda

Your Opinion Matters

NYWBA is seeking monthly opinions on legal matters. Please send your op-ed piece to opinions@nywba.org.



WELCOME NEW MEMBERS

Lauren Angelo	Janice Kwon
Melissa B. Brisman	Swatanter Ashley Polce
Zara Feingold	Sofia Rinvil
Jennifer Garrett	Juliet Giao Spile
Lorena Guzmán-Díaz	Mariann Sullivan
Deborah Innocent	Carrie C. Turner
Jennifer Jacobs	Laurence Waucampt
Melissa D. James	Michele Yankson
Amy J. Johannesen	

as of 06/01/2021

NOTES ON MEMBERS

Congratulations to **Yacine Barry-Wun** who has been elected as First Vice President of the Network of Bar Leaders for the 2021-2022 term.

The NYWBA would like to congratulate our board member, the **Hon. Judith J. Gische**, on being named as a candidate for the Court of Appeals.

The NYWBA congratulates our member, **Hon. Anthony Cannataro** on his appointment by Governor Cuomo to the New York State Court of Appeals.

Justice Cannataro is the Citywide Administrative Judge of the Civil Court of the City of New York and a Justice of the New York State Supreme Court.

Justice Cannataro's first judicial assignment after being elected to Civil Court in 2011 was as an Acting Judge of the Family Court in Kings County, where he sat from 2012 through 2013. He then sat in the Bronx County Civil Court from 2014 through 2015. In 2016, Judge Cannataro was appointed Supervising Judge of Civil Court in New York County. Justice Cannataro was elected to the Supreme Court in New York County in 2017 and, starting in 2018, was appointed as an Administrative Judge for the Civil Court of the City of New York.

Justice Cannataro serves as Co-Chair of the High-Volume Courts Subcommittee of the Chief Judge's ADR Advisory Committee and is a member of the Plain Language Committee of the Permanent Commission on Access to Justice. He is Co-Chair the Richard C. Failla LGBT Commission of the New York State Courts and serves on committees in several bar associations.

Has something noteworthy happened to you or another NYWBA member? Send your news to Newsletter@nywba.org.

SUSTAINING MEMBERS

With their generous contributions, our sustaining members make it possible for us to accomplish so much more. We honor and thank them for their support.

Jennifer P. Brown
Robert M. Kaufman
Magnolia D. Levy
Laurence D. Pittinsky
Steven W. Smollens

Zoom with a Judge Series By Sabrina E. Morrissey

The NYWBA had a Zoom with a Judge session on May 11th, with **Hon. Martin Shulman**, Associate Justice of the Appellate Division, First Department. Justice Shulman was appointed to the Appellate Division in July 2020. Before that, he was a Civil Court Judge and then Supreme Court Justice. He was also appointed to the Appellate Term, where he was a Presiding Justice.

The event was well-attended. Among the attendees were Manhattan Administrative Judge, **Deborah A. Kaplan** and our President, **Amanda Norejko**. Justice Shulman made an extensive presentation, covering work done over the past nine months at the Appellate Division during the COVID-19 pandemic and giving us insight into the inner workings of the Court. He praised the hard work and capabilities of the staff there.

We had time for a few questions at the end, which included how the panels of Justices are chosen for individual cases and how the Court works with pro se litigants. We feel very fortunate to have met with Justice Shulman and thank him for his support of our organization.



NYWBA wishes to acknowledge the generous gift from

**FOUNDER AND PAST PRESIDENT
HON. FLORENCE PERLOW SHIENTAG (1908-2009)**

Her financial bequest has helped to underwrite the cost of this Newsletter and many of our CLE programs.

In Memoriam

The New York Women's Bar Association mourns the loss of our respected and beloved member, **Hon. Paul G. Feinman**, Associate Judge of the New York Court of Appeals, who passed away on March 31, 2021. In addition to being a brilliant and knowledgeable jurist, Judge Feinman was widely known for his kindness, his compassion, and his ability to inspire others.

Judge Feinman began his legal career as a Staff Attorney with the Appeals Bureau of the Legal Aid Society. He later became a Law Clerk to Hon. Angela M. Mazzarelli. Judge Feinman was elected to the New York City Civil Court in 1996 and to the Supreme Court for the First Judicial District in 2007. He was appointed to the Appellate Division, First Department in 2012 and then to the New York Court of Appeals in June 2017.

Judge Feinman dedicated his professional life to public service and promoting the fair administration of justice. Throughout his distinguished career, Judge Feinman demonstrated the highest levels of integrity and commitment to justice and equality for all. He was a celebrated champion of LGBTQ rights, who served as a mentor to countless judges, attorneys, and law students. Judge Feinman performed key leadership roles in several professional associations. He was a Past President of the International Association of LGBT Judges and Past President of the Association of Supreme Court Justices of the State of New York. He was also a Past President of the LGBT Bar Association of Greater New York (LeGAL), which, in 2018, presented him with its highest honor for his lifetime of service.

Judge Feinman has left the court system and New York's legal community better for having had the benefit of his extraordinary contributions.

Our deepest condolences are extended to Judge Feinman's husband Robert Ostergaard, his family, his friends, and his colleagues.

Guardianship Mentoring Program

The **NYWBA Elder Law and Disabilities Committee** and the **Guardianship Diversity Initiative** have created a mentoring program for anyone who is interested in being appointed as Court Evaluator, Guardian or Counsel to Guardian. If you are new to the field or have interest in this area of law and would like to have an experienced attorney to help you with any one of these roles, or if you have questions about Mental Hygiene Law Article 81, please send an email to elderlawchairs@nywba.org.

Beverly Gross, NYWBA President 1977-78, passed away on February 5, 2021, at the age of 89 years old. She was predeceased by her husband, Philip Ross, former Industrial Labor Commissioner of New York State, who passed away 12 weeks earlier, at the age of 96.



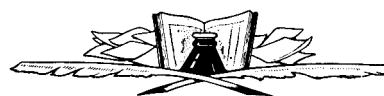
Ms. Gross graduated from NYU School of Law in 1969 and joined the NYWBA around the same time. She dedicated her legal career to civil rights and workers' rights. She worked as Assistant Corporation Counsel of New York City, and then as Associate General Counsel under Eleanor Holmes Norton at the New York City Commission on Human Rights. In 1975, Governor Carey appointed her as General Counsel of the New York State Division of Human Rights, where, in addition to her enforcement activities, she led successful efforts to support the Governor's office to get broader civil rights legislation passed. From there, she became General Counsel to DC 37 under Victor Gottbaum. Her final job was as benefits counsel to New York Telephone before she took an early retirement to work as a labor arbitrator and mediator, do pro bono work, and travel with her husband. During her long career, she also dedicated herself to work with the NYWBA and as a member of the International Women's Forum. In addition to her service to the NYWBA as President and in several other capacities, she also served as the NYWBA representative to the Panel on Admissions and Grievances for the United States Court of Appeals for the Second Circuit.

Ms. Gross is survived by two daughters, Julie Gross Gelfand (Darryl) and Barrie Gross, by her grandsons who she loved dearly, Jake Even Gelfand and Luke Corey Gelfand, by her sister Sandra Gitlin and her two children, and by scores of nieces, nephews and great-nieces and nephews from her late-sister, Blossom Saskill. Her daughter, Barrie Gross, worked one summer during high school for another past President of the NYWBA, and her family's daily life was surrounded by her mother's NYWBA friends. Barrie eventually followed in her mother's footsteps to become a lawyer herself.



Ms. Gross at the NYWBA 70th Anniversary Dinner in 2005.

Condolences may be sent to Barrie Gross, 2061 Greenwich Street, San Francisco, CA 94123.



Prospecting for Clients: How to Generate Competitive Intelligence with Legal Analytics

By Nicole Clark

Anticipating client needs has always been a key component of good lawyering,” observes Mary Che, Vice President of Marketing at Connell Foley. According to Che, the uncertainty of the coronavirus pandemic has only heightened this sentiment. “It was immediately evident to our firm that our role was to anticipate the questions and issues that our clients were going to face and provide them the information and resources they needed—before they could even ask the questions.”

Communication with existing and prospective clients takes time. In 2019, the Legal Trends Report discovered that the average lawyer dedicates less than three hours of their day to billable work. The remainder of their time is spent finding new clients and managing existing relationships. This is a heavy task, one on which the success of a law firm depends. And, until recently, much of this work relied on networking. That is, on meeting the right people, on fostering the right reputation. But what if there was another way?

Learning How to Prospect

Legal analytics platforms can help legal professionals glean the most relevant information about individual clients as well as their attorneys and their law firms. But how does this actually work? How do law firms know where to look to find prospective clients?

Christian Mammen, a partner at Hogan Lovells, describes a practice many commercial litigators use to tap into new business opportunities. Platforms like PACER, Trellis Research, and Bloomberg Law allow litigators to register for alerts that notify them whenever a new case has been filed against a company in their field of expertise.

While many law firms have already registered for alerts in order to monitor new filings, others have designed their own notification systems. Mike Mellor, the Director of Marketing and Business Development at Pryor Cashman, explains some of the initiatives his law firm has undertaken in order to find new clients. According to Mellor, the really successful law firms use the same datasets to which their competitors have access, but they use those data points to curate their own predictive legal analytics. “We’ve developed formulas to create metrics before the Bloomberg

alerts hit,” he recounts. “[We] put [our] own spin on it to perhaps beat others to the punch.”

Beating others to the punch is key. As soon as one of these alerts ring, a deluge of calls floods the in-house legal teams of the affected companies. These calls often contain pitches, snippets of advice on venue and strategy as well as commitments to provide the best possible defense.

Prospecting with Numbers

But what does it mean to tell a prospective client that your law firm is the best law firm? How can you convince a potential client that you have the experience, the expertise, and the skills needed to successfully handle their legal matters in a cost-effective manner?

In the past, this wasn’t always easy. There was no simple way for an attorney to quantify their relevant experience. An attorney needed to persuade prospective clients with anecdotal evidence about their familiarity with particular types of cases, venues, or judges. Things are different now. These days, a successful pitch contains more than vague references to ‘intuition’ or ‘experience’. Prospective clients want metrics. They want to compare and contrast the strengths and weaknesses of different law firms by looking at the numbers, the hard data.

Legal tech companies are remapping the ways attorneys conduct legal research on their clients, on their competitors, and on themselves. They mine state court records, aggregating data in ways that allow users to search through—and collect information about—virtually any variable of their choosing. With this information, an attorney can learn the ins and outs of the people involved in each case. They can then develop their own law firm analytics, constructing side-by-side comparisons of different law firms that display a range of data about win rates, case timing, and damages history.

This is the kind of information that can be easily presented to prospective clients. These days, a typical pitch deck is filled with charts and graphs, easy-to-grasp visualizations that demonstrate how law firms compare with their competitors. How many times have they handled certain types of cases? How often do they settle right away? How often do they go to trial? How long do their cases typically last? All these questions

can be answered with exact numbers, precise figures that have been culled from thousands of data points.

And it seems to work. According to one recent survey by Lexis-ALM, attorneys cite legal analytics as one of the most valuable tools they have available for demonstrating their competitive advantage to prospective clients.

Keeping the Clients and the Context

Legal analytics help attorneys identify emerging legal trends, keeping them abreast of the latest legal filings and judicial rulings. With this information, litigation attorneys can stay proactive, blending their everyday legal research practices with business development opportunities.

But not every path paved with legal analytics necessarily leads to golden opportunities. “I think when you have some of these tools, you can tend to view them in a bubble without a wider context behind the scene,” Mellor explains. “For example, we were talking about the use of win rates as they pertain to judges. If someone sues someone for \$100 million and gets \$1 million, who wins?” Meredith Slawe, a partner at Akin Gump, echoes these words. “Data viewed in isolation can be misleading,” she warns. “[T]he perspectives of the folks closest to this information remain quite important; they are often necessary to paint a full and complete picture.”

While numbers can be a convincing way to get your law firm in the door, they aren’t always what is needed to keep the door open. Retaining clients also requires ascertaining the needs that sit behind the numbers and the alerts, the needs that can only be learned through meaningful conversations, through careful listening and open dialogue. The numbers derived from legal analytics are just a starting point, a fruitful way to begin these discussions.

Nicole Clark is CEO and co-founder of Trellis Research. Trellis is an AI-powered legal research and analytics platform that gives state court litigators a competitive advantage by making trial court rulings searchable, and providing insights into the patterns and tendencies of your opposing counsel, and your state court judges.

Reader Perk: Trellis is providing NYWBA readers with complimentary 14-day access to its platform. Go to <https://trellis.law/plans> to start your free trial today.

*NYWBA Criminal Law Committee
presents*


***Virtual Manhattan DA
Democratic Candidates' Forum***

Moderators:

Hon. Laura E. Drager
Lee Anav Chung White Ruger & Richter

Fran R. Hoffinger
The Hoffinger Firm, PLLC

June 8, 2021 at 6:00 p.m.
By Zoom (link will be provided upon RSVP)
RSVP to CrimLawChairs@nywba.org



10% discount for NYWBA members

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Save the Date

SAVE THE DATE – Free Webinar!



NYWBA
NEW YORK WOMEN'S BAR ASSOCIATION

***What It's REALLY Like to
Practice Law As a Woman™***

July 14, 2021
5:00 pm Eastern / 2:00 pm Pacific

A diverse panel shares personal experiences working in firms, at companies, as solo practitioners, and in non-profit & government positions. Join us as they discuss issues that affect women in the profession, provide tools for success, and answer your questions! Program includes tips for new lawyers & law students.

Panelists:

Moderator: **Hon. Saliann Scarpulla** – Justice of the New York Supreme Court, Appellate Division, First Dept.; former Senior Counsel to the FDIC and big firm litigator

- ❖ **Prof. Maleaha Brown** – Professor at Southwestern Law School, Los Angeles, CA; President of Ms. JD
- ❖ **Rennée R. Dehesa** – Partner, Jones, Lester, Schuck, Becker & Dehesa, LLP, Santa Paula, CA; Past President, Mexican American Bar Association; President, Ventura County Women Lawyers; bilingual attorney concentrating on estate planning and administration
- ❖ **Amy Dunn** – Partner, Amy Dunn, PC, Houston, TX
- ❖ **Pam Kohli Jacobson** – Partner & Firmwide Practice Group Coordinator of Intellectual Property Procurement and Portfolio Management, K&L Gates, Seattle, WA; Past President, Washington Women Lawyers

Host: **Elizabeth A. Bryson**, Vice President of the National Conference of Women's Bar Associations; Past President, New York Women's Bar Association

Further Details & RSVP Form Coming Soon!

NYWBA Federal Practice Committee
presents a CLE Program:

***Recent Developments in Fraudulent
Transfer and Preference Law and
How They May Impact Your Clients***
WEBINAR

Speakers:

Elyssa S. Kates, BakerHostetler
Rocco A. Cavaliere, Tarter, Krinsky & Drogin

Date: June 24, 2021

Time: 12:30 p.m. – 1:30 p.m.

Place: Zoom Webinar

CLE: Credits 1.0*

Cost: Free – NYWBA/WBASNY Members**
\$25 – Non-Members

RSVP: Email FederalPractice@nywba.org

Info: Email FederalPractice@nywba.org

* 1.0 CLE credits (Professional Practice): The NYWBA is an accredited CLE provider. Approval of CLE credit is pending in accordance with the requirements of the NYS CLE Board for the above-listed credit hours for established attorneys and as transitional credit hours for newly admitted attorneys.

** Free NYWBA members, \$25, non-members: Full and partial scholarships based on financial need are available. For info on the guidelines and to apply, contact CLE Co-Chairs at cle@nywba.org or 212-216-1135. All requests are confidential.

NYWBA Immigration Law Committee
presents a CLE Program

This CLE will focus on aspects of humanitarian, family-based, and employment-based immigration and is intended as 101-level CLE for practitioners in all practice areas who have an interest in immigration law, as well as for current immigration practitioners. Areas of particular interest to the NYWBA will include domestic violence petitions under VAWA, how divorce can impact immigration processes, and immigration updates under the Biden administration.

Date: July 15, 2021

Time: 5:00 p.m. – 6:30 p.m.

Place: Zoom

CLE: Credit TBD*

Cost: Free – Current members
\$25 – Non-Members**

Info: Email CLE@nywba.org or
immigrationchairs@nywba.org

RSVP: <https://bit.ly/3ijP6EW>

*CLE Credits: TBD. The NYWBA is an accredited CLE provider. Approval of CLE credit is pending in accordance with the requirements of the NYS CLE Board for the above-listed credit hours for established attorneys and as transitional credit hours for newly admitted attorneys.

** Free NYWBA and WBASNY members, \$25 non-member: Full and partial scholarships based on financial need are available. For info on the guidelines and to apply, contact CLE Co-Chairs at cle@nywba.org or 212-216-1135. All requests are confidential.

It's Time to Renew Your Membership

If you have already renewed, THANK YOU!

If you haven't, it's time to RENEW your membership for 2021-2022.

The NYWBA fiscal year is **June 1 to May 31**. Be sure to renew your membership and enjoy all NYWBA benefits, including FREE NYWBA CLE PROGRAMS, our award-winning Mentoring Circles, networking events and Committee meetings, access to the "Members Only" sections of our website, access to our Newsletters online, and other benefits.

Save paper & mailing costs and expedite your renewal by using our secure online membership form at <http://membership.nywba.org>. You can also email Executive Director Karen Lu (ED@nywba.org) to confirm your member status or request a paper membership form by email.



New York's 2021 Power of Attorney Legislation

By Antonia J. Martinez

New York's new Power of Attorney ("POA") statute, governed by the General Obligations Law, Title 15, takes effect on June 13, 2021. See <https://www.nysenate.gov/legislation/bills/2021/s888> and <https://www.nysenate.gov/legislation/bills/2021/A2353>.

A well-drafted and properly executed POA is paramount in estate planning and Medicaid planning. The successful re-titling, restructuring and transfer of assets is often contingent upon the authority granted in the POA. If the Agent lacks proper authority to carry out the principal's estate plan or does not include Medicaid planning techniques, the principal may be precluded from restructuring assets in the event of an emergency situation.

Legislative History

In 1997, the General Obligations Law ("GOL") permitted unlimited gift giving authority to an agent, merely requiring that the principal's signature be notarized. On September 1, 2009, the legislature, perceiving many abuses, made it much more difficult to make gifts of a principal's assets. The following year, on September 12, 2010, the legislature required a Statutory Gifts Rider (GOL 5-1514) whenever the principal authorized an agent to make gifts in excess of \$500 per calendar year. In addition, the Gifts Rider, a separate document, required two witnesses.

Simplification

Under the 2021 law, the Statutory Gifts Rider is repealed. The new Statutory POA will require only one document and all gifting authority will be included in the Modifications Section. Having only one document minimizes potential complications when, for example, a client or agent misplaces the Gifts Rider or keeps the POA and Gifts Rider in separate places.

The 2021 statute requires "substantial conformity" rather than exact wording as the former statute required. Under the old law, when one word from the statute was missing the financial institution could and did rightfully refuse to honor the POA. In one example, a lawyer omitted the word "the" and the bank refused to honor the POA. Be mindful that different banking institutions have different company rules that lead to different results and diverse outcomes.

Changes to Signing Requirements

Two witnesses are required on the 2021 POA New York Statutory Short Form, one of whom can be the notary. No witness can be listed as a gift recipient or designated agent or successor agent. Each witness must acknowledge that:

- the principal has signed the document voluntarily
- the principal has stated the POA accurately reflects his or her wishes
- the witness is NOT a gift recipient
- the witness is NOT a designated agent

The POA can be signed by a third party at the request of the principal. When this occurs, the principal must inform the witness that the signature on the POA is made at his or her direction. This scenario may apply to situations in which the principal is a stroke victim or is unable to write as a result of Lou Gehrig's disease.

Other 2021 Changes

GOL 5-1502I: Personal and Family Maintenance

An agent can make gifts up to \$5,000 during one calendar year. The expiring law, in the absence of a Gifts Rider, limits the total aggregate amount to \$500 in one calendar year.

5-1502K: Health Care Financial Matters

GOL 5-1502K specifically authorizes the agent to engage in financial health care matters. This section recognizes the difference between agent's payment of an outstanding medical bill as distinct from the agent's authority to make medical decisions concerning the principal's medical treatment, for which a Health Care Proxy is required.

5-1502L: Retirement Benefits

In order for the agent to properly make changes to beneficiary designations on a principal's retirement accounts, the Modifications Section must expressly grant this authority.

Damages

A properly executed POA in accordance with the laws in effect at the time of execution is entitled to a presumption of validity and should be honored. GOL 5-1504 delineates the procedure for recovery of damages for "unreasonable" third party refusal to honor the POA and can include damages, court costs, and attorney's fees.

Within ten (10) business days after presentation of a duly acknowledged and witnessed POA, the third party must either:

- a) Honor the POA
- b) Reject the POA in writing, setting forth the reasons for the rejection to the principal and the agent at the address listed on the POA or
- c) request the agent to sign an affidavit that the POA is in full force and effect.

The banking institution or third party asked to accept the POA can request:

- 1 - agent's Certification
- 2 - Opinion of counsel as to any matter of law concerning the POA

The third party can properly reject the POA when there is a missing signature, an invalid notarization, or where an agent acted as a witness.

Within seven business days of the bank's receipt of written response to the rejection the entity must honor or reject the POA and state the reason in writing.

Practice Tip: Have an agent test the POA while the principal is well. If the financial institution has an issue, you will know about it now, while the principal can remedy it.

Antonia J. Martinez, Esq. devotes her professional time to Trusts & Estates and Elder Law matters. She is principal of Antonia J. Martinez, LLC. Ms. Martinez is Co-Chair of the Elder Law & Disabilities Committee of the New York Women's Bar Association, a member of the Executive Committee of the NYSBA Elder Law & Special Needs Section serving as Co-Chair of its Elder Abuse Committee. Ms. Martinez is a speaker at Continuing Legal Education programs as well as community programs. Her articles in The Elder Law Times, Professional Planning for Wealth & Lifestyle Preservation are distributed to the general public.

Goodbye Stretch IRA, Hello Life Insurance Opportunities

By Rachelle Gayer and James Licata

For generations, life insurance has been a significant part of the overall financial planning process. The ability to provide for others when a loved one dies continues to be one of the most important aspects of the product. According to LIMRA, the top three reasons Americans give for owning life insurance are to:

- Cover burial and final expenses (91 percent)
- Help replace lost wages/income of a wage earner (66 percent)
- Transfer wealth or leave an inheritance (63 percent)¹

In addition to life insurance, clients utilize other assets in their portfolio to transfer wealth or leave an inheritance. Most notably, Individual Retirement Accounts (IRAs) or employer-sponsored retirement plans (e.g., 401(k) plans) are used in this capacity. The Required Minimum Distribution (RMD) rules have, to date, permitted non-spouse beneficiaries of these accounts to take distributions over their life expectancies. Commonly referred to as “stretching” the account, this enabled beneficiaries to spread not only the distributions, but also the income taxes.

However, the passage of the Setting Every Community Up for Retirement Enhancement Act (SECURE Act) in December 2019 changes the wealth transfer landscape. Now, IRAs and defined contribution plans become much less attractive wealth transfer vehicles. Non-spouse beneficiaries can no longer stretch their inherited IRA asset distributions (and taxes) over their lifetimes.

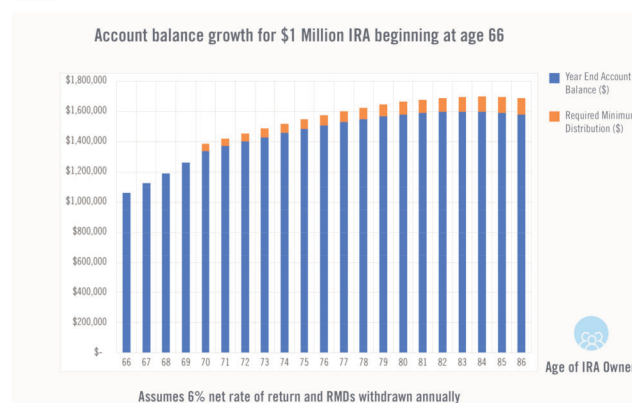
These assets, with a few limited exceptions, can pass to a spouse without facing this tax but on the spouse's death, the tax will be due. All inherited IRA assets by a non-spouse beneficiary, with limited exceptions (including those who are minor children or disabled), must be distributed within ten years of death of the IRA owner. Consequently, these assets will frequently become a huge deferred tax liability since those ultimately inheriting the funds (which will often be the children) are likely to see their assets taxed at very high marginal rates. For example, a married New Jersey couple earning \$200,000 who inherits a \$500,000 IRA in 2027, can be projected to pay approximately 40% in a combined federal and state tax rate when the assets come to them. The after-tax value of the \$500,000 account thus sinks to \$300,000. In addition, the inherited assets could force other investment income to become subject to the 3.8% Medicare tax. If the beneficiaries were Medicare eligible, the inheritance could also trigger much higher Medicare premiums.

The Value of a Stretch IRA

Let's look at the landscape that existed prior to the SECURE Act. IRAs can increase substantially over a retiree's lifetime as solid investment growth can exceed the RMDs taken. As shown in Figure 1, \$1 million at age 66 will increase by 47% to \$1.47 million by age 86 if 6% growth is assumed. Under prior law, the full amount of \$1.47 million could then be stretched by the next generation who inherited the account and only RMDs would need to be withdrawn based on the life expectancy of the inheritor.

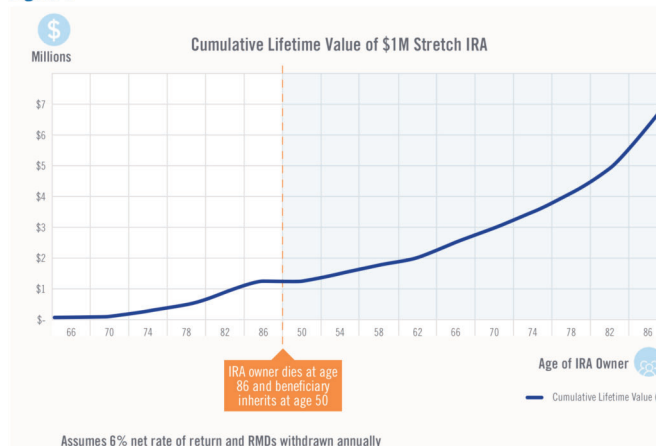
With an adult child inheriting the account at age 50, who subsequently lives 36 years and dies at age 86, the lifetime value of the \$1 million account becomes approximately \$7 million at an assumed 6% annual

Figure 1



investment return. The delay in taxation allows the assets to grow exponentially. It's no surprise the government wished to curb the use of Stretch as significant tax revenue was lost, at least in the short term. See Figure 2.

Figure 2



Life Insurance to Pay Death Taxes

Estate planning will once again involve the use of life insurance to pay death taxes, but this time, it will be federal and state income taxes on IRAs and defined contribution plans, as opposed to federal estate taxes. For married couples, a second-to-die life insurance policy may be appropriate to reduce the premiums but also to recognize that the income tax will be paid not when the spouse inherits an IRA or defined contribution plan, but when the children do.

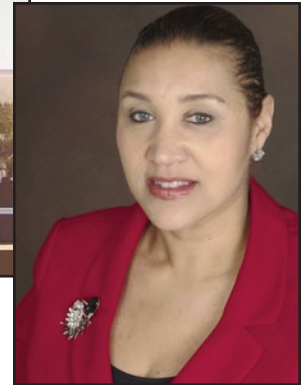
Look at what happens over time to the \$1 million account shown in Figure 1 under the new law. While RMDs start at age 72 effective in 2020 (as opposed to 70 1/2 under prior law), a significant amount of taxes is now due within 10 years of the death of the owner. If the IRA has grown to \$1.58 million at the IRA owner's death and the beneficiary chooses to pay the taxes upon inheritance, the tax bite is \$632,000 at an assumed 40% tax rate. The beneficiary may choose instead to let the IRA grow the maximum amount of time to capitalize on tax deferral. If the account

(Continued on Page 10)

Congratulations to the incoming WBASNY Officers, including NYWBA Past President Deborah G. Rosenthal, who was sworn in as WBASNY President-Elect tonight. Congratulations to incoming WBASNY President Dawn Reid-Green.



Deborah G. Rosenthal



Dawn Reid-Green

Stretch IRA (Continued from Page 9)

grows at 6%, the account has grown to \$2.8 million and \$1.1 million would be due in taxes at a 40% rate.

An added benefit of life insurance which is put in place to pay income taxes is that the IRA or defined contribution plan may not have to be liquidated to pay taxes due during a bear market. Conversely, children inheriting such an account without life insurance coverage in place may be forced to lock in losses and liquidate a significant portion of the account to pay taxes due.

The question thus arises, "just how common is it that retired IRA owners just take the RMD?" According to the Investment Company Institute (ICI), it is quite common. Ninety-four percent of traditional IRA investors over age 70 who took withdrawals in 2018 took just the RMD amount.²

Life Insurance Funded by an IRA

With a projected tax liability time bomb on their IRA or retirement plan ahead, creative planning will likely also involve healthy older account holders making larger withdrawals from their accounts, paying taxes due (at a rate lower than their children would eventually pay on the inherited IRA), and then using the net proceeds to pay the premium on a life insurance policy. A tax-free death benefit can be provided to heirs in lieu of an account that will be taxed at high marginal rates.

Permanent Life Insurance as an Alternative and Complement to 401(k) Investing

Since the value of 401(k) investing is now more limited, financial advisors have the opportunity to sell more permanent life insurance as a

wealth building alternative. For example, a 50 year-old earning \$150,000 who has accumulated \$300,000 in her 401(k) may wish to diversify her portfolio with permanent life insurance because, assuming a 6% rate of return, her 401(k) will be expected to grow to \$762,000 by age 66 and then, ignoring RMDs, by 221% more (to \$2,444,000) by the time she is 86. At a 40% tax rate, her heirs are already facing a projected \$977,000 tax bill if they pay the tax upon inheritance and an even larger amount if they defer taxes an additional ten years.

Needless to say, the opportunities for permanent life insurance sales have grown exponentially as the landscape has shifted. Opportunities have risen and financial advisors who capitalize first may see the greatest advantage in building their practice.³

Endnotes:

1. LIMRA, "Facts About Life 2018", September 2018.
2. Investment Company Institute, "The Role of IRAs in US Households' Saving for Retirement, 2019", ICI Research Perspective, Vol. 25, No. 10, p. 27, December 2019.
3. Prudential calculations.

Rachelle Gayer [914-272-3856/rachelle.gayer@prudential.com] and **James Licata** [914-272-3935/james.licata@prudential.com] offer financial planning and investment advisory services through Pruco Securities, LLC (Pruco), under the marketing name Prudential Financial Planning Services (PFPS), pursuant to separate client agreement. Offering insurance and securities products and services as a registered representative of Pruco, and an agent of issuing insurance companies.

Zoom with a Judge: Hosted by Fran Hoffinger, Featuring Judge Cori Weston, Manhattan Drug/Diversion Court By Jessica Horani with Olivia Sohmer

Amid political unrest and pandemic uncertainty, the Criminal Law Committee held its first meeting of 2021 via Zoom on a hopeful note. Chair Emerita **Fran Hoffinger** hosted the January 11 "Zoom with a Judge" with our guest speaker, the **Hon. Cori Weston** of Manhattan Drug/Diversion Court. For all who attended, the evening was a reminder of what is working in the criminal court system and the lives positively affected by the promise of help and healing even during a pandemic.

Judge Weston comes to the bench with a long career in public defense, first as an attorney at the Legal Aid Society and then at New York County Defender Services. She took over as the presiding judge of part 92 in Manhattan Supreme Court, the diversionary drug court part in January 2020. Even as COVID-19 almost immediately imposed unexpected closures and limitations on the court, Judge Weston has had to oversee the diversionary drug court to continue to serve as an opportunity for select individuals to resolve their criminal justice involvement through drug treatment and rehabilitation.

Eligibility for drug court diversion is governed by statute: CPL 216.05 lays out the general requirements and procedures for screening and acceptance, but the Court and the District Attorney's Office still have latitude to consider an individual who may not qualify per statute when the district attorney's office consents to pre-screening. When a defense attorney requests screening for Drug Court on behalf of their client, the case will be reviewed by one or more of the six Assistant District Attorneys and one Special Narcotics assistant who staff the New York County diversion part. The prescreening process is based on interviews with the individual and results in a recommendation to the court. The court will ultimately decide if diversion will be granted in a particular case.

Due to the COVID-19 pandemic which led to facilities shutting down and changed the ability of our courts to operate as usual, the Diversion Part has had to deal with a backlog of requests for screening. Keeping the needs of the most vulnerable clients at the forefront, the court has arranged first to address qualified persons who are currently incarcerated, then to review referrals from pre-pandemic indictments in order by the age of the case. Although the mechanism by which the court hears cases and case managers conduct interviews has changed from in-person to virtual, the substance is still the same. After being prescreened for eligibility, the individual will move on to screening, where a case manager interviews them about their drug history, community contacts, and more. Case managers often will request and require certain psychiatric and medical records as well. Defense counsel who know they will be requesting Drug Court at the beginning of a case can work to assemble these records in advance in order to expedite the process.

Based on the screening, a recommendation is provided to the court as to whether the client meets the criteria of a substance use disorder. As Judge Weston explained, the court still has to determine if the individual meets further statutory criteria for Drug Court eligibility, such as whether there is a nexus between the individual's substance abuse and their criminal behavior (see CPL 216.05[3][b][iii]). All sides are heard from in regards to an individual's request for Drug Court admission and the court ultimately makes the decision whether or not to accept the person into the program. Continued advocacy from the defense bar is an important aspect of this process, since either party may request a hearing on the issue of whether the eligible individual should be offered a treatment program in Drug Court (CPL 216.05[3]). Judge Weston stated that based on evidence presented at such a hearing, the court may possibly change an initial decision as to a person's admissibility or inadmissibility.



Once accepted for diversion, an individual is required to review the Drug Court Contract with their counsel as well as the Drug Court Handbook. These items can now be sent electronically, allowing counsel to review them with the client in a remote manner before any plea. An individual's agreement on the record or in writing to the release conditions of Drug Court is required by statute (CPL 216.05[5]). Typically a plea in Drug Court anticipates dismissal of all charges upon successful completion, but it is also possible that in certain instances a successful completion could result in something other than a complete dismissal. A review of the terms of the Drug Court Handbook is important prior to entering the plea so that the client is made fully aware of the requirements of Drug Court. Programs are typically 12 to 24 months in length and can be even longer if a client loses time for infractions. Successful completion is not limited to program participation; compliance conditions may include obtaining employment or enrolling in educational programs, as well as other requirements.

Because of pandemic restrictions and protocols, an escort is required if an individual is released from pre-trial detention to a program. If the individual is produced to court and an order signed by the court, the Sheriff's Office will pick the individual up from the courthouse and bring them to the program. Attorneys should alert the clients that, although released from jail, they will still have to be handcuffed in the Sheriff's custody during transport.

If the person chooses to withdraw from the treatment program, or does not succeed in diversion, they will be subject to sentence pursuant to the plea that was entered. Judge Weston noted, however, that even during this pandemic, people do successfully complete Drug Court diversion programs, and there are more successful completions than people may think. Judge Weston finds those completion proceedings to be the highlight of the court's day. The clients, their advocates, the prosecutors, and the court all recognize the changes in a person's life as a result of receiving treatment and support services rather than incarceration. As Judge Weston explained, these are often deeply personal moments that the clients choose to share and involve such milestones as getting a credit card for the first time in their lives. Graduation is seen as a success by everyone in the courtroom, and at times prosecutors may speak as glowing of the person's achievements as their own advocate will.

Attorneys who have additional questions about Drug Court are encouraged to speak to Debra Hall-Martin, Project Director of Manhattan Treatment Court. For female-identifying clients, Criminal Law Committee member Valentina Morales of The Women's Project can be a helpful resource.

Jessica Horani and Olivia Sohmer are two of the three Co-Chairs of the Criminal Law Committee. Jessica is a senior trial attorney in the Homicide/Major Case Defense Unit of the New York County Defender Service; Olivia is a Court Attorney in Richmond County Criminal Court.

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