

USING ZOOM TO REMOTELY EXECUTE FREE WILLS AND HEALTH CARE PROXIES FOR OUR CLIENTS: "THE NEW NORMAL"

Prior to the Covid-19 pandemic, Barasch & McGarry prepared free Wills and Health Care Proxies for over four thousand of our clients and active-duty firefighters. During the height of the pandemic we began a program to continue to provide this valuable service and keep everyone safe by using video-conferencing technology. We are happy to report that our remote will signing program using Zoom has been a rousing success. We've been able to perform hundreds of will signings while our clients have all remained safe in their homes. This 'new normal' not only avoids the risk of

being exposed to the virus, it is efficient and effective and provides a valuable service to those most impacted by the virus.

There's no greater satisfaction for a lawyer than putting a client's mind at ease. 91 year old retired FDNY firefighter Francis Fagan and his loving daughters (pictured) give us an enthusiastic thumbs-up after his free Will & Healthcare Proxy signing was performed remotely using Zoom.

If you haven't already taken advantage of this free service, it's as easy as sending an email to Lorena@baraschmcgarry.com.



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a VCF claim on his behalf. We spent the remainder of our conversation discussing his health care options and the resources at his disposal, as well as a potential disability pension option after his treatment and recovery. He could focus on his health, and he did not have to worry about gathering evidence for the claim. This exemplifies why we urge all FDNY 9/11 first responders to call us for a free 9/11 consultation regardless of their present health status. You should think of registering with the VCF as an insurance policy – something that you hope you'll never need, but are grateful to have if you do need it.

So many of my fellow 9/11 first responders have described feeling like a ticking time bomb due to their exposure, and I echo that sentiment. The most important thing that we all can do right now aside from regular health examinations is to protect our legal rights. My special note to retired 9/11 volunteers is: God forbid you are diagnosed with or die from a 9/11 related illness, your witnesses may not be available to sign an affidavit on your behalf. So, act now to protect yourself and your family.

In conclusion, I'd like to make one final point to remind everyone to schedule a full-body skin exam with a dermatologist. Non-melanoma basal cell and squamous cell along with melanoma skin cancers have become the most common cancers in our 9/11 community. Since the WTC Health Program is not able to screen for this it is imperative to use your city health insurance or Medicare to schedule this on your own. Fortunately the Victim Compensation Fund recognizes skin cancer as 9/11-related and compensates those affected. I wish all my friends and colleagues good health and safety going forward and please feel free to call me or any of our dedicated legal staff with any questions you may have.

RECENT SETTLEMENTS FOR INJURED FIREFIGHTERS

Getting injured in the line of duty isn't just "part of the job". New York State laws provide broad protection for firefighters who were injured as a result of someone else's negligence.

During our 40 years of representing NYC's Bravest, we have heard every excuse from injured firefighters justifying their reluctance to file a claim to preserve their rights to protect their families. All too often it appears that a minor injury turns into a career-ending injury, after the 90-day or 3-year statute to file a claim has expired. Consulting with an attorney can protect your rights!

Here are some examples of recent verdicts and settlements for injured firefighters:

- \$2.8 million for a Brooklyn firefighter who suffered disabling head and neck injuries as a result of a ceiling collapse at a warehouse fire.
- \$2.25 million from the City of New York on behalf of an FDNY Lieutenant who injured his back and ultimately lost his career after stepping onto the pavement of a poorly maintained schoolyard while exiting his rig.
- \$1.75 million on behalf of a fire captain who injured his neck and back at an apartment fire started by contractors using welding equipment and who ultimately lost his career.
- \$1.25 million for Bronx firefighter who injured dominant hand while responding to a manhole fire, resulting in multiple surgeries and loss of his career.
- \$988,000 pain and suffering award to a fireman who fell on his back while fighting a construction debris pile fire negligently started by demolition workers.
- \$800,000 for Staten Island firefighter who injured his knee resulting in multiple surgeries and loss of his career.

These recoveries are not a guarantee for future results.

This is the 87th Edition of the Barasch McGarry Salzman & Penson Newsletter—attorney advertising which presents topics of interest to firefighters. For question, additional copies, or more information about topics raised in this newsletter, call or write:

BARASCH & McGARRY

11 Park Place, Suite 1801, New York, NY 10007

Toll-free No. 1-888-FIRELAW (1-888-347-3529) or 212-385-8000

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FIREFIGHTERS' NEWSLETTER



THE CLOCK IS TICKING FOR 9/11 VICTIMS

TIME RUNS OUT IN JULY FOR FAMILIES WHO LOST LOVED ONES TO DISEASES LINKED TO 9/11 TOXINS AND FOR THOSE WITH CERTIFIED CANCERS

An estimated 100,000 police officers, firefighters, EMTs, construction workers, and volunteers participated in the World Trade Center rescue and recovery efforts. As we know all too well, more responders have now died of 9/11 illnesses than were lost on 9/11. Thousands of others have already been certified with serious respiratory illness and cancers.

There is help for 9/11 victims and their families, but so many still don't know it. Approximately 80% of the active responders have registered for the free nationwide Health Program, while less than 7% of civilians and volunteers have enrolled. Hundreds of retired firefighters and cops have still not enrolled. And hundreds of widows have yet to register claims to protect their right to compensation.

The good news is that the Health Program and the Victim Compensation Fund (VCF) have both been extended for 70 years. The bad news is that there are strict deadlines for registering with the VCF and hundreds, if not thousands of people

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PREPARING A CD-72 THE RIGHT WAY

You already know that your CD-72 can mean the difference between an accident-disability pension and an ordinary-disability pension. But firefighters and officers are given surprisingly little guidance on how to fill out a CD-72 in a way that takes your legal rights into account. There are so many new firefighters on the job. This article is intended to give you some pointers.

No injury is too minor for a well-prepared CD-72

Every time you are injured, even if you feel it's minor, a CD-72 must be completed, and it must be done carefully, accurately, and descriptively. The long-term implications of your injuries will likely not be immediately apparent, and you may be creating the (many of them the widows of responders)

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(continued "The Clock is Ticking for 9/11 Victims" from Front)

have likely missed the 2-year deadline to register.

Deadline to Register Extended

The law requires bereaved family members to register with the VCF within 2 years of their loved one’s death in order to qualify. The law also requires those with certified illnesses (usually pulmonary or cancer) to register within 2 years. But, so many people didn’t register in time. Many people weren’t aware that there is a presumption that certain illnesses, including 68 cancers, are linked to WTC toxins, which means that victims do not need medical proof of the cause of the illness to substantiate the claim. It doesn’t matter if there is a family history of cancer. Many others told us that they knew of the VCF but didn’t register because “I only had skin cancer. I didn’t want to take money from others who were sicker than me.”

Fortunately, Congress permanently extended and fully funded the VCF! In turn, the Special Master of the VCF has made a compassionate, albeit temporary, change in the rules. She has opened a window for those who missed the 2-year deadline to register a claim for the death of a loved one and for those who failed to register their certified illnesses. Now, every family who missed the original 2-year deadline has another chance to register a claim.

This means that the registration deadline for a death (or certified 9/11 illness), that happened more than 2 years ago is now July 29, 2021. Thereafter, family members, including spouses or dependents of those who die as result of 9/11 illness, will have only 2 years from the date of death to register.

Please do not let anyone miss this extension to register. For those who developed permanent respiratory illnesses or cancers, and even for those who were exposed but who are currently healthy, we urge you to register and secure your proof of exposure now.

I HAVE NO 9/11 CONDITIONS- IS THERE ANYTHING I SHOULD DO NOW?
by Richard Alles, Deputy Chief FDNY, ret

Active and retired members often reach out to me after their yearly medical exams to let me know that they are well and to ask whether there is anything that they should do proactively to protect their legal rights in case they get sick in the future. I always answer with a resounding YES!

When Congress permanently reauthorized the 9/11 Victim Compensation Fund (VCF), the deadline to “file” a claim was extended to the year 2090. The deadline to “register”, however, is still 2 years from WTC Health Program “certification” of an illness, or from the date of death of a victim. In other words, registration with the VCF is a necessary legal prerequisite to filing a claim for personal injuries or for the wrongful death of a loved one due to 9/11 disease.

The problem is that hundreds of firefighters were indeed certified by BHS many years ago for minor illnesses and didn’t realize it. They missed the 2-year deadline. Thankfully, as you have read in this newsletter’s lead article, the deadline for these members has been extended to July 27, 2021. Register yourself with the VCF whether or not you have been certified and even if

The Health Program and the VCF require evidence that a claimant was in the exposure zone. For every year that passes, it will be more and more difficult to secure employer documentation and find witnesses to sign affidavits attesting that you or your loved one were there. The hardest claims to prove are for the volunteer responders, the retirees who came back to help, and the office workers.

Why We Take This Personally.

As advocates for over 20,000 members of the 9/11 community, this is personal. Our office was and still is just 2 blocks from the World Trade Center site. Like many of you, we also trusted the federal EPA leadership when Christine Todd Whitman assured us that the air was “safe to breathe.”

Like so many others, we moved back into our office in October while the buildings and debris continued to burn...while many of you were still detailed or volunteering at the site. As a result of our daily exposure, half of our staff has battled cancer, and two of our paralegals have died, both at the age of 47. A dozen young men and women who work at the firm are the children of 9/11 victims. We know all too well that the action you take to register with the VCF and the Health Program is about protecting your family should you ever become seriously ill.

As the coronavirus has swept through our nation, the 9/11 community is particularly vulnerable due to their underlying 9/11 respiratory illnesses and cancers, which have compromised their immune systems. In fact, more than 100 of our 9/11 clients have died of COVID-19 since March, 2020. It is truly heart-breaking. The VCF special master has announced that she will consider these 9/11-related deaths.

Thank you for helping us spread the word about the impending July 29th deadline. Let’s make sure that no retiree or widow misses this new deadline to register.

you are healthy.

Anyone who was at Ground Zero, in the NYC exposure zone, at the Staten Island Landfill, or at a City Morgue on 9/11, or during any part of the following eight months, even if they are healthy, should register. In fact, we think it’s so important that we do this as a courtesy for anyone who was exposed, even if they aren’t sick.

Once our law firm registers the member with the VCF, we submit the associated paperwork to prove your presence in the exposure zone. In the case of *retired* FDNY firefighter/officer volunteers, this means eyewitness affidavits from colleagues or other witnesses who were with you. In the case of *active* FDNY firefighters/officers on 9/11, this means a Notice of Participation (NOP) which is on file at the FDNY Pension Unit.

About a year ago, I spoke to an active FDNY firefighter who was doing well. He was healthy, and had no 9/11 conditions. After a thorough discussion of the issues involved he requested that our firm send him the necessary paperwork and sign him up. Almost six months later he called me again to say that he had unfortunately just been diagnosed with prostate cancer. His very first question to me was “what do I have to do legally?” My answer was “nothing!” I told him that since we already had all of his paperwork on file, we would now immediately submit

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report that the pension boards will scrutinize in determining your pension rights, or that a jury will see when it decides whether you are entitled to compensation for your injuries. Every time you prepare or review a CD-72, remind yourself that this is an extremely important record of the injuries and the accident.

The Injuries

When it comes to identifying your injuries, the biggest mistake that you can make on your CD-72 is leaving out an injured body part.

When someone injures more than one body part in an accident, they tend to focus on the areas that hurt the most, and to ignore areas that feel less serious. People also mistake where their pain is coming from. Pain in your hip can actually mean a problem in your back. Pain in your shoulder may actually happen because of a problem in your neck. Pain is tricky – it can radiate and it can be diffuse. Pain may not be immediately apparent, it may come on over hours or even days. But there are things that you can do to minimize the risk of leaving an injury out of your CD-72.

Take a head-to-toe inventory. If you feel pain, tenderness, discomfort, stiffness, achiness, numbness, tingling, throbbing, pressure, tightness, soreness, or anything unusual to any body part, no matter how minor, include that body part in your CD-72. It’s better to err on the side of inclusion.

If you aren’t sure where your pain is coming from, list all possibilities. For example, if you feel pain in your shoulder, consider including your neck as well. If you leave the neck out, it may be difficult to relate a neck injury to the accident later on.

If you realize that you did not list an injury in your CD-72, you certainly want to consider an amendment. This should be done as soon as possible after you recognize the problem.

The Accident Description

The most common problems that we have seen in the accident description section of the CD-72 is inadequate detail and errors in the description of the accident. The errors often happen because the report is not adequately reviewed or corrected by the member. If you are not filling out the accident description yourself, and chances are you won’t be, you must review it carefully, and you must not let it go in with mistakes.

For pension purposes, the difference between an “accident” and an “incident” can turn on the level of detail in the accident

description. You may have heard that New York courts define an accident as a “sudden fortuitous mischance, unexpected, out of the ordinary, and injurious on impact.” But you cannot just use those words. In fact, you should not use those words. Rather, you must specifically describe what it was about the accident that made it sudden, unusual and unexpected.

Nothing about your job is routine. It’s up to you to describe the unique circumstances that caused your injury. We have an acronym that can help you to think through your accident description: M.I.C.E. (Movement, impact, conditions, emergency care).

STOP READING – TAKE OUT YOUR SMART PHONE – TAKE A PHOTO OF THE “M.I.C.E.” SECTION BELOW - SAVE IT IN YOUR PHONE, SO YOU HAVE IT HANDY THE NEXT TIME YOU HAVE TO FILL OUT A CD-72

Movement: Describe the movement involved in the accident. Was it caused by twisting, falling, or jerking? Was it caused by a striking blow? Or a crushing impact?

Impact: Note any body parts that received an impact and describe the chain of events leading to the impact.

Conditions: Note any condition that contributed to the injury such as heavy smoke, ice, poor lighting, a hole in the floor, a broken step, a loose floor tile, a collyer’s mansion, a falling object, a missing railing, defective equipment, etc.

Emergency Care: Describe any emergency care and anything immediately noteworthy. Did you go to the ER? Did you see an FDNY physician? Were you removed from the scene on a backboard?

Beyond the CD-72: Don't Suffer in Silence

While your CD-72 is an extremely important document, your medical records are equally important. You must be careful how you describe your accident and your injuries to your physicians. When a doctor or nurse asks what happened to you, be accurate and thorough. Moreover, if you are experiencing pain or other symptoms, you must let the doctor know. If you are having problems, your medical records should reflect that. Never go in for a follow-up appointment and say you are doing well if you are still having problems.

PUTTING A FACE TO A VOICE

We pride ourselves on providing a personal experience for our clients. This has become more difficult in the age of Covid, when face-to-face meetings rarely occur. If you’re curious to see who is on the other end of the phone, you can learn more about us on our website. We are proud to announce the launch of our revamped website, which can be found at firelaw.com. Until we can meet in person, we encourage you to explore our website, learn about our lawyers and staff, access our prior firefighter newsletters, read our blogs and visit our other websites at post911attorneys.com and personalinjuryjustice.com.

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