

IF YOU ARE GOING THROUGH A DIVORCE, IT'S ALWAYS A GOOD IDEA TO CONSULT WITH A FAMILY LAW ATTORNEY

By Veronica Mandel, Esq.

As an attorney with thirty-five years of varied legal experience, I was asked, by Michael Barasch, what was my "biggest" advice for his clients.

Without hesitation, I immediately responded that too many people do not seek legal consultation or representation from an attorney whose practice focuses in one area of law nor do people inquire and learn their rights before they enter into negotiations or settlements with opposing sides.

If you are going through a divorce or separation, you will need to make the best decision you can at a time that you are emotional, vulnerable, hurt, scared, and/or angry. It is imperative that you make informed decisions, as your decisions will necessarily affect you and your family for years to come.

Many clients choose not to go see an attorney, even for advice, thinking they do not want to spend money or they can handle the case themselves. As a result, many attorneys then have to "clean up the mess" that the client agreed to when unrepresented.

Many people go through the dissolution of a marriage without contemplation of the implications of the distribution of assets, such as their pension, annuities, variable supplement, deferred compensation, and death

benefit funds. Issues of custody, maintenance, and child support must be considered if the parties decide not to stay married. If so, one's overtime and second job income will be considered in child support, maintenance, and equitable distribution.



Both parties need to know the law which pertains to their current situation before they act and plan ahead, before it comes back to haunt either one of them in court.

If you choose to consult or hire an attorney, my advice is to select an attorney that is knowledgeable and practices in family law. Too often, people go to someone who their friends recommend but who is not a specialist. At that point, it becomes harder and more expensive to fairly dissolve the marriage.

You need an attorney that you trust, respects you, listens to you, supports you, and advocates for you. Most importantly, someone who is realistic and honest with you as to the law. Plainly, your attorney needs to explain the law in its totality, no matter how frustrated and emotional you are. This is not easy, but it must be done. Attorneys aren't doing you or your spouse any favors by telling you what they think you want to hear.

In closing, do not be afraid to ask questions and be willing to negotiate after being informed. Arriving at a quick and fair settlement is much better than "winning" after years of contentious litigation. If you have any questions about family law, feel free to reach out to me directly at vmandelesq@aol.com.

BARASCH & MCGARRY PARTICIPATES IN TUNNEL TO TOWERS CLIMB

Barasch & McGarry was proud to support the Tunnel to Towers Foundation at this year's Tower Climb on June 5th. This organization honors our first responders and military who continue to make the supreme sacrifice of life and limb for our country. Our very own ret. FDNY Deputy Chief Richie Alles competed as part of our good friend Shelli Sunstein's Q104.3 team.

Richie and Shelli went step for step together to complete the climb in a personal best of 29.59. The team was the 4th highest fundraiser for this incredible event!



Q104.3's Shelli Sunstein pictured with ret. FDNY Deputy Chief Richie Alles

This is the 94th Edition of the Barasch & McGarry 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:

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FIREFIGHTERS' NEWSLETTER



Barasch & McGarry joined the Uniformed Fire Officers Association for its annual retiree meeting and seminar in Howard Beach, Queens

KNOW YOUR RIGHTS! Special Law Exists to Protect Injured Firefighters

We New Yorkers are incredibly proud of New York's Bravest. We know firefighting is dangerous, and we know the importance of having laws to protect you and to encourage citywide compliance with fire safety. When people fail to comply with the law, it makes your already dangerous job more dangerous. Even owners of high-end, luxury buildings take shortcuts that put you at risk. An especially memorable example involved one of the most opulent residential buildings in the city.

It began in a huge, empty 10,000 square-foot apartment undergoing renovation on the tenth floor. Workmen had improperly left behind rags soaked in lacquer that combusted during the night. The fire smoldered for many precious minutes undetected. It triggered smoke alarms, but no one heard them. As flames erupted, they spread through the apartment. By the time the fire was detected, it had consumed much of the apartment's interior, and when firefighters arrived, its windows had begun to blow out. Then, as the first firefighters entered the building, chaos ensued.

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MIKE BARASCH JOINS THE BOARD OF THE FIREFIGHTER CANCER SUPPORT NETWORK

Managing Partner Mike Barasch, who has been fighting for NYC's Bravest for 41 years and for firefighters across the country since 9/11, has been invited to join the Board of the national Firefighter Cancer Support Network (FCSN).

The mission of the FCSN is to assist firefighters and EMT's who have been diagnosed with cancer. The Support Network pays special attention to family members. All too often, people forget that cancer can affect an entire family—not just the patient.

"I am incredibly honored to be asked to join this wonderful organization which provides 'badge to badge' support, training and guidance," Mike responded.

If any firefighters or their families need their assistance, please call [866-994-3276](tel:866-994-3276). Tell them that Mike Barasch referred you.



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The building staff couldn't direct the firefighters to the apartment. They weren't sure which apartment it was or in which of the building's different wings. Minutes were wasted waiting for reports to come back from building staff who had been dispatched to find the fire. When they finally reported the apartment number, because the stairwells were mislabeled, the firefighters went up the wrong wing. Meanwhile the fire burned and spread.

As the search for the fire took place inside, firefighters outside prepared to hook up to the standpipe and stretch hoses. But they, too, encountered problems. The standpipe cap was painted shut. One of the engine chauffeurs struggled to remove it before giving up and returning to his rig to get a spanner wrench. The delay would prove to be disastrous. When he returned with the tool to resume his work, hunched over the standpipe, another window exploded ten floors above him. The broken glass rained down on him, and one large shard went right through his coat and back, transecting a part of his spine. Fortunately, he survived, but he had to be rushed to the hospital to undergo emergency surgery, and it spelled the end of his career, as well as permanent disability.

The incident never should have occurred. If the law had been followed, the rags would have been placed in a fireproof container, the stairways would have been properly labeled, the firefighters would have been directed to the

right destination, the standpipe cap would not have been clotted with paint. In short, the fire never would have occurred, and even if it did, it would have been found and extinguished faster, either preventing or minimizing the risk of injury that resulted.

What happened to the injured firefighter, who was our client, can never be undone. His personal-injury case was successful. He received a substantial settlement and his accident-disability pension, but that is no replacement for his career or loss of health.

On the other hand, his case, brought under General Municipal Law section 205-a, which was enacted to protect firefighters, served to make fellow firefighters safer. By compelling the building to answer for his injuries in court, he also made the building more careful about protecting firefighters. When the fire department returned recently to the same building because of another significant fire, a fire that caused several fatalities to tenants, the code violations of the past were gone. The stairwells were properly labeled, the building staff directed the firefighters quickly and correctly to the fire, and the standpipe was appropriately accessible. The law did what it was designed to do. By imposing liability on the building, it pushed the building to comply with fire safety requirements, affording greater protection for our firefighters.

Barasch & McGarry client and member of the Presidents Medal of Honor Review Board, BC John A. Joyce, is pictured above with Attorney General Merrick Garland at the White House on May 16, 2022, where FDNY Firefighter Abraham Miller (L-23) was one of only six recipients to receive the prestigious annual award. Congratulations to all recipients and their families and especially Miller.



BARASCH & MCGARRY'S BRIDGET GORMLEY RECEIVES HUMANITARIAN AWARD

Congratulations to Bridget Gormley, Barasch & McGarry Outreach Coordinator, on being chosen as this year's recipient for the Friends of Firefighters Humanitarian Award.

In addition to working with us as an advocate for the 9/11 community, Bridget directed *Dust: The Lingering Legacy of 9/11*, a documentary and tribute to her father Billy Gormley of Ladder 174, who died of 9/11-related bladder cancer.

In September 2021, Bridget hosted a private screening of *Dust* with a Q&A featuring filmmaker Gerry Sievers and co-Producer, Steve Buscemi. All proceeds of the event were donated to Friends of Firefighters. We are so proud and fortunate to have her as part of our team.



Bridget Gormley, daughter of FDNY Billy Gormley and Director of *Dust: The Lingering Legacy of 9/11*

ACCIDENT VS. INCIDENT Filling Out a CD-72 The Right Way

It may seem unfair to you, but how an accident is described on your CD-72 can mean the difference between a disability ¾ pension and a straight service pension. We are constantly advising our clients to understand that the CD-72 is a critically important document for protecting their rights to a disability pension and their ability to obtain compensation if they bring a lawsuit. More often than not, it is not immediately apparent that an injury is career-ending. Instead, the complete medical picture emerges over time. In other words, you likely will not know whether the CD-72 you are filling out is for the accident that will end your career. You can be sure that the words you use to describe the accident will be the subject of intense scrutiny, so treat each CD-72 like it is your last.

One of the most important factors to be considered is the distinction between an "incident" and an "accident." If you sustained your career-ending injury as a result of an accident, then your CD-72 must demonstrate this. Injuries sustained while performing routine duties but not a result of unexpected events will not be deemed an accident but an incident. An accident, for pension purposes, has been defined by the courts as a "sudden, fortuitous mischance, unexpected, out of the ordinary and injurious in impact." Simply adding those words to your narrative will not guarantee an accident finding. In fact, we suggest you do not use these words when filling out your CD-72. These words act as a red flag to the reviewer and don't explain why the accident was sudden, unexpected, or out of the ordinary.

So how can you properly fill out a CD-72 to ensure the reviewer understands that you were injured in an accident and not an incident? You become a storyteller. You must be as descriptive as possible in your narrative. The reviewer must understand how you got injured and how it was sudden, unexpected and not a risk inherent in your duties as a firefighter. Use phrases such as:

- Member responded to an active fire/emergency situation for...
- Member's position was...
- Member was doing "xyz" immediately prior to injury
- Member was operating under the following conditions [zero visibility, high heat, etc]
- Member was using the following PPE and equipment...
- Member was operating on "x" exposure or "x" floor....
- Describe when and at what point did the injury occur [while searching, while connecting to a hydrant, while overhauling, etc.]
- Member was injured by... Use as many details as possible. Describe what body parts were injured in the narrative. Describe what care was given.

Another word to the wise, while you have the right to amend your CD-72 after it is submitted, think twice before doing so. If you amend your CD-72, it leaves an electronic fingerprint that the Board of Trustees can see. They can see your original CD-72 and compare it to your amended one. Of course, if your original CD-72 has a glaring error or omission, then you should make the appropriate amendments. Just be prepared to explain why you did so if asked down the line.