# Nassau Lawyer

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## WHAT'S INSIDE



**Domus is closed from December 24 to January 1.**

**Have a Happy Holiday and Healthy New Year!**

## SAVE THE DATE

**ANNUAL HOLIDAY CELEBRATION**

**THURSDAY, DECEMBER 5**

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THE CONSTITUTION'S PROMISE: OUT OF MANY, ONE LAW DAY 2025

**LAW DAY 2025**

**THURSDAY, MAY 1**

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# Expand Your Practice with the Lawyer Referral Information Service

The Nassau County Bar Association (NCBA) offers a unique opportunity for attorneys to grow their practice and connect with potential clients through its Lawyer Referral Information Service (LRIS). This service not only introduces individuals facing legal challenges to experienced attorneys but also serves as an excellent platform for lawyers to expand their client base.

### Why Join the LRIS?

The LRIS is designed to match clients with attorneys who have the necessary expertise in specific legal areas. The Referral Service is beneficial for attorneys from all practice areas and firm size looking to increase their exposure.

"The program has been a good source of frequent referrals of negligence and medical malpractice cases from local residents," says Rockville Centre attorney Michael Goldberg. "Being a part of the Nassau County Bar panel has been a great marketing tool for prospective clients. When I interview new clients, I tell them that I am on the New York City and Nassau County Bar referral panels, which is highly selective about the attorneys that they refer cases to. This seems to reassure them about my strong qualifications. Given the huge cost of attorney advertising and/or large referral fees paid to other attorneys, joining the Nassau County Lawyer Referral Program is a no brainer!"

"In my over 30 years of practice, I have received more clients from the NCBA Lawyer Referral Service than any other source," adds NCBA Past President Gregory S. Lisi, head of the Forchelli Deegan Terrana LLP Employment & Labor practice group, and Chair of the LRIS Committee. "It is just another example of how this Bar Association has helped me to build my practice."

### Satisfied Panel Members

Many attorneys who have joined the LRIS have experienced significant benefits. Daniel S. Drucker appreciates the business growth facilitated by the LRIS after opening a new office in Nassau County. "I joined the lawyer referral panel a few years ago after opening a satellite office in Syosset. I am an immigration attorney who also handles general litigation and wanted to attract new clients from Nassau County. So far, I am very happy with the program and recommend it to any practitioners looking to expand their practice."

Veteran personal injury attorney Robert Rovegno, who was recognized by the NCBA in 2023 for his fifty years' admission to the practice of law, notes, "All during this time, I have been a participant in the Legal Referral panel and have been glad to render legal services to various members of the lay public of our community, sometimes be it simple legal advice over the phone and on some occasions have been retained to assist them in legal matters.

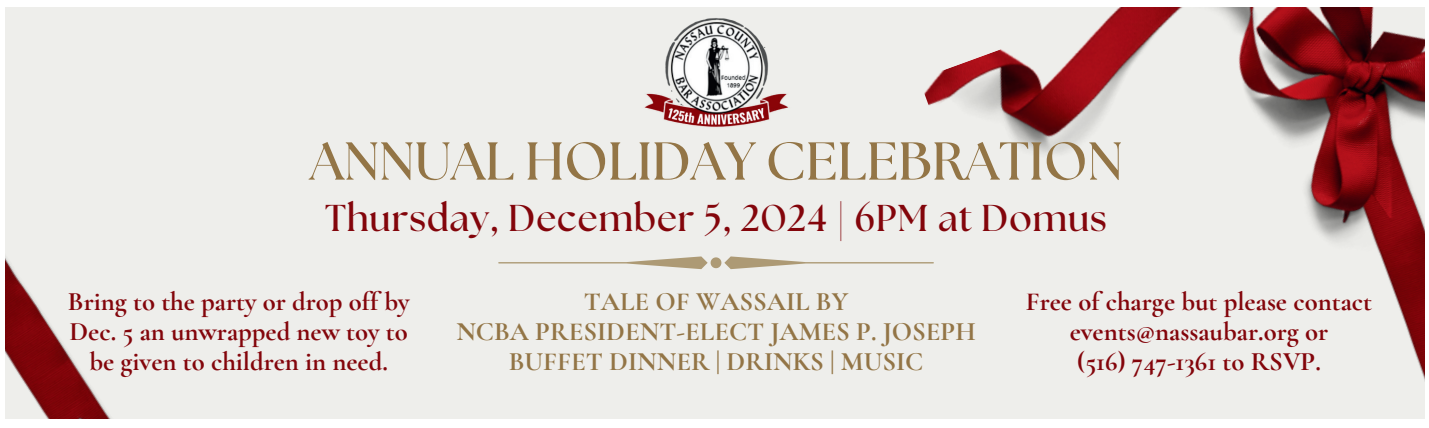
"I have found, however, that a number of referrals pertained to matters out of my field—like labor law, civil rights, and immigration, to name a few. This circumstance would seem to present an opportunity for others in such disciplines to not only assist our Nassau County clientele but to obtain cases and build a client base, especially Spanish speaking and young attorneys, and reach out to our constituents."

### Join the Panel

Membership on the LRIS Panel is open exclusively to active members of the NCBA. Professional insurance coverage is required. The annual registration fee is $250, with additional costs for select panels such as Matrimonial, Torts, and Trusts and Estates. When a panel member is retained by a client, the attorney pays the LRIS 10% of the fees received in excess of $1,000.

There is currently a need for additional LRIS panel members who practice labor law, immigration, civil rights, education law, reduced-fee matrimonial, and workers' compensation. Additionally, attorneys who are bilingual—particularly in English and Spanish—find the LRIS to be an invaluable marketing tool, attracting a diverse client base. The LRIS could be particularly beneficial to attorneys who are bilingual or specialize in one of the high-demand areas of law.

To join the LRIS, download the application and agreement at www.nassaubar.org/lawyer-referral-application. For assistance, contact LRIS Coordinators Carolyn Bonino at cbonino@nassaubar.org or (516) 666-4852, or Stephanie Rodriguez at SRodriguez@nassaubar.org or (516) 747-4146.

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**FOCUS: APPELLATE LAW**

# A Momentous, But Bittersweet, Pension Law Court of Appeals 'Victory'

**Chet Lukaszewski**

The New York State Court of Appeals—with its decision in *Matter of Rawlins v. Teachers' Retirement System of the City of New York*, 2024 WL 23317142024 N.Y. Slip Op. 02840 (May 2024)—made clear that purposeful acts committed against city and state workers in the line of duty can be "accidents" for disability pension purposes. In presenting this case to the courts, school shootings were referenced at length over the course of the Article 78 proceeding and appellate process. Other hypotheticals presented included an EMS worker or nurse in a city or state hospital lured to a location under a false pretense and sexually assaulted, or a young prosecutor or public defender brutally attacked outside a courthouse by the dissatisfied family of a client they'd been assigned to represent. These and countless others, thankfully rare, but very real and possible situations and scenarios, now unquestionably can be deemed "accidents" for pension purposes by the New York State and City Retirement Systems and Pension Funds, and if need be, the courts.

*Rawlins* is a tremendous victory for municipal and civil service workers. The *Rawlins* ruling will protect the pension rights of New York City and State workers injured in the most heinous of manners in the line of duty. Sadly, Ms. Rawlins, a former New York City public school principal, who became psychologically disabled for that position as the result of a stalker whose criminal efforts were perpetrated upon her whilst in the performance of her job duties, was found not to have been disabled by an "accident" by the justices of the Court of Appeals ("COA"). Thus, while perhaps the 'war' was won, and a momentous pension law decision secured, the 'battle' was lost, making the decision a bittersweet success.

With the *Rawlins* decision, a rule of law was established that will provide pension safeguards for others, but not compensate Ms. Rawlins, the person whose fortitude and funding brought it to fruition. Securing a positive COA decision is a feather in the cap of any lawyer. For a disability pension attorney, to bring about the holding in *Rawlins*, is a great personal achievement, knowing that good hard-working people who have very bad things happen to them while simply doing their jobs will be financially protected as a result of your efforts and advocacy. However, to succeed for many others, but not the person you were directly advocating on behalf of, is difficult to come to grips with.

In *Rawlins*, the Supreme Court, New York County, and then the Appellate Division, First Department, both found for the New York City Teachers' Retirement System ("TRS"), ruling that a purposeful act could not be an accident for pension purposes. The COA, though, definitively held there is no prohibition on purposeful acts being "accidents" for pension purposes. This ruling ensures that those disabled by such events who have different levels of pensions available to them, will receive the higher level of an Accident Disability Retirement ("ADR") pension, as opposed to a lesser Ordinary Disability Retirement ("ODR"), should such a tragic occurrence befall them. This group includes principals and teachers, but is primarily comprised of emergency service occupations—like police officers and fire fighters, and EMS and corrections personnel (often referred to as a 'uniformed job title')—who generally receive a 2/3's or 3/4's final average salary ("FAS"), tax-free pension on ADR, versus 1/3 or 1/2 on ODR.

*Rawlins* also ensures that 'non-uniformed' job titles, which encompass most city and state civilian employees—who generally receive a 1/3 FAS disability pension on both ADR and ODR—will receive a pension if disabled by such a purposeful act in the line of duty event, with less than ten years of service time. Without that much time on the job, one must be disabled by an "accident" to receive a disability pension. Disability pensions also include medical benefits, making them that much more invaluable to a worker who is so badly injured that they are permanently disabled for doing their job.

The COA has come to define an "accident" for disability pension purposes as a "sudden, fortuitous mischance, out of the ordinary and injurious in impact," with "sudden fortuitous mischance" being generally interpreted as "unexpected."[1] However, there is unquestionable ambiguity as to what does and does not fit the accidental criteria. Chief Justice Rowan Wilson has repeatedly denounced the lack of clarity and has called upon the Legislature to act to remedy the situation. Statements by the Chief Justice as to the current problems with the accident disability pension laws that require legislative attention, include: "[m]uch of the problem is due to the structure and history of (accident disability pension statutes)… Our case law consistently documents this absurd unfairness."; "[t]he results often defy common sense"; "[i]deally, the legislature would act to provide some clear rules"[2]; "[i]njured governmental employees and their employers would greatly benefit from a standard that produced clear, intelligible, predictable and fair results. In the wake of the courts' inability to do so, that task falls to the legislature… Our precedents have failed to provide guidance allowing for predictability and consistency…"[3]

Examples of events which the courts have deemed to be "accidents," after municipal retirement systems found them not to be, include falling as the result of a wet floor with no warning signs,[4] an injury caused by piece of machinery or equipment malfunctioning,[5] and a self-defense training exercise being held in an overly crowded location.[6] Some events found not to be accidents by the courts which befell pensioners include getting a uniform or equipment snagged while exiting a vehicle,[7] a chair suddenly sliding out whilst getting up,[8] slipping on wet pavement after a rainstorm,[9] and bearing witness to a gruesome accident scene when accident scene response is a standard job duty.[10] Hopefully, one day, the Legislature will act to give more instruction and clarity as to what in fact and definitively constitutes an "accident" for disability pension purposes.

The TRS premised its denial of ADR to Ms. Rawlins on the COA's *Walsh v. Board of Trustees* decision, in which it held that it was not an "accident" where a firefighter was disabled in a fight with another during an unsanctioned New Year's celebration in the firehouse, while both were technically on duty.[11] However, as was argued at every level

of *Rawlins*, the decision in *Walsh* was premised upon the injurious event not being germane to the disabled pensioner's actual job duties. The *Walsh* court specifically wrote: "Consequently, we need not consider and do not decide whether, or under what circumstances, injuries caused by the intentional act of a third party are accidental…" In *Rawlins* the COA held the TRS' basis for denying ADR was legally incorrect, making clear there is no rule that a purposeful act cannot be an "accident" for pension purposes.

The *Rawlins* decision was a tremendous victory for any worker, and their family, disabled in the future by the intentional act of another, in the line of duty. Unfortunately, the COA did not feel Ms. Rawlins' disabling event met its definition of an "accident." It found that she was disabled by a series of occurrences, over time, involving the man who she came to realize was stalking her, which included past dealings that involved his poor and erratic behavior as a school employee, despite her being unaffected by the same, and merely considering those to be normal job tasks at the time. The COA did not agree with the position that Ms. Rawlins' disability resulted from the singular event, when she came to realize she was being stalked—wherein her stalker, a former school cook, returned to her school, and in a crazed manner, sought her out individually, and gained near direct contact with her whilst trying to force his way past school security—causing her to flee the building and never return to work because of the resulting psychological trauma. Ms. Rawlins' stalker was arrested, and the New York City Criminal Court issued her a multi-year order of protection. Unfortunately, the COA felt the prior happenings contributed to Ms. Rawlins' disability, despite her having no psychological issues until the day in question. On that basis, it determined she was not disabled by an "accident" for disability pension purposes.

Ultimately, in *Rawlins*, the COA disagreed with the lower court's holding that Ms. Rawlins was not entitled to ADR because her disability was the result of a purposeful act, and thus not an "accident," but she nevertheless was denied ADR by the court. It has always seemed rather unfair that a person harassed and/or discriminated against by their coworkers to the point of a disability for full duty in their job title, is not eligible for ADR, but one who slips and falls because of something like water on a bathroom floor, is. Perhaps someday that too will change.

The COA's decision means Ms. Rawlins, as a divorced woman (the strain of this situation as a whole contributed to the end of her marriage), in her late 40s, with two children, permanently impaired by a psychological trauma, will be forced to live on a 1/3 ODR pension, rather than the 2/3's ADR would have provided. If Ms. Rawlins had had less than ten years of pensionable service time, she would have received no pension at all. The fact Ms. Rawlins herself won't benefit from the protections provided by the *Rawlins* decision seems like an injustice. When other events deemed to be "accidents" for pension purposes are considered, it seems that she too ought to be receiving the financial protections of ADR.

*Rawlins* is pursuing a 'one-person bill,' granting ADR via the enactment of a statute that applies only to her. It's a rare and difficult thing to secure, but the hope is her local elected officials can demonstrate to the Legislature that the small annual fiscal cost is justified by the equitable outcome it would provide, particularly in light of the protections that have been put in place by the *Rawlins* decision. Unless that happens, the *Rawlins* case will always feel like more of a loss, than a win, bittersweet indeed.

1. *Matter of Lichtenstein v. Board of Trustees*, 57 N.Y.2d 1010 (1982); *Matter of McCambridge v. McGuire*, 62 N.Y.2d 563 (1984); *Matter of Starnella v. Bratton*, 92 N.Y.2d 836 (1998); *Matter of Kelly v. DiNapoli*, 30 N.Y.3d 674 (2018); *Matter of Rizzo v. DiNapoli*, 39 N.Y.3d 991 (2022).
2. *Matter of Kelly v. DiNapoli*, 30 N.Y.3d 674 (2018).
3. *Matter of Rizzo v. DiNapoli*, 39 N.Y.3d 991 (2022).
4. *Matter of Starnella v. Bratton*, 92 N.Y.2d 836 (1998).
5. *Matter of Gakhal v. Kelly*, 135 A.D.3d 406 (1st Dep't 2016); *Matter of Loia v. DiNapoli*, 164 A.D.3d 1513 (3rd Dep't 2018).
6. *Matter of Carr v. Ward*, 119 A.D.2d 163 (1st Dep't 1986).
7. *Matter of Cassarino v. New York City Employees' Retirement System*, 69 A.D.3d 713 (2nd Dep't 2010); *Matter of Dalton v. Kelly*, 16 A.D.3d 200 (1st Dep't 2005).
8. *Matter of Clarke v. Murray*, 85 A.D.3d 1536 (3rd Dep't 2011).
9. *Matter of Kenny v. DiNapoli*, 50 A.D.3d 1445 (3rd Dep't 2008).
10. *Matter of Whitton v. Spinnato*, 143 A.D.2d 274 (2nd Dep't 1988).
11. *Matter of Walsh v. Scoppetta*, 18 N.Y.3d 850 (2011).

**Chet Lukaszewski,** Ms. Rawlins's attorney, has 25 years of disability pension law experience. He formed Chet Lukaszewski, P.C. in 2008, assisting hundreds of civil service and municipal workers to secure disability pensions. He's also consulted with federal and state government officials, media outlets, labor unions, and other groups, and published multiple articles on disability pension law topics. He can be reached at chet.l@chetlaw.com.