

# Exhibits for the Complaint and Declaratory and Injunctive Relief

**JOHN F. KENNEDY**

*35th President of the United States: 1961 - 1963*

## **Executive Order 11098—Amending the Selective Service Regulations**

March 14, 1963

By virtue of the authority vested in me by the Universal Military Training and Service Act (62 Stat. 604), as amended, I hereby prescribe the following amendments of the Selective Service Regulations prescribed by Executive Orders No. 10001 of September 17, 1948, No. 10008 of October 18, 1948, No. 10202 of January 12, 1951, No. 10292 of September 25, 1951, No. 10420 of December 17, 1952, No. 10469 of July 11, 1953, No. 10594 of January 31, 1955, No. 10659 of February 15, 1956, No. 10714 of June 13, 1957, No. 10735 of October 17, 1957, No. 10809 of March 19, 1959, and No. 10984 of January 5, 1962, and constituting portions of Chapter XVI of Title 32 of the Code of Federal Regulations:

1. Section 1621.9 of Part 1621, *Preparation for Classification*, is amended to read as follows:

"§ 1621.9 *Mailing Classification Questionnaire (SSS Form No. 100)*.

(a) Except as provided in paragraph (c) of this section, the local board shall mail a Classification Questionnaire (SSS Form No. 100) to each registrant to whom it has not previously mailed such questionnaire in strict accordance with the dates of birth of the registrants of the local board, in chronological order, commencing with the registrant having the earliest date of birth. Whenever a registrant registers after his date of birth has been reached in the mailing of Classification Questionnaires (SSS Form No. 100), his questionnaire shall be mailed immediately.

"(b) The date upon which the Classification Questionnaire (SSS Form No. 100) is mailed shall be entered on the Classification Record (SSS Form No. 102).

"(c) Whenever the local board determines that a registrant who is on active duty in the Armed Forces of the United States may be classified properly from information available to it, the Classification Questionnaire (SSS Form No. 100) need not be mailed to the registrant until he is separated from active duty."

2. (a) Paragraph (a) of section 1622.13 of Part 1622, *Classification Rules and Principles*, is amended by striking out "persons referred to in paragraph (a) of this section, or".

(b) (1) Paragraph (a) of section 1622.30 of Part 1622, is amended to read as follows:

" (a) In Class III-A shall be placed any registrant who has a child or children with whom he maintains a bona fide family relationship in their home and who is not a physician, dentist, or veterinarian."

(2) Paragraph (c) of section 1622.30 is amended to read as follows:

"(c) (1) The term 'child' as used in this section shall include a legitimate or an illegitimate child from the date of its conception, a child legally adopted, a stepchild, a foster child, and a person who is supported in good faith by the registrant in a relationship similar to that of parent and child but shall not include any person 18 years of age or over unless he is physically or mentally handicapped.

" (2) As used in this section, the term 'physician' means a registrant who has received from a school, college, university, or similar institution of learning the degree of doctor of medicine or the degree of bachelor of medicine, the term 'dentist' means a registrant who has likewise received the degree of doctor of dental surgery or the degree of doctor of dental medicine, and the term 'veterinarian'



means a registrant who has likewise received the degree of doctor of veterinary surgery or the degree of doctor of veterinary medicine.

"(3) No registrant shall be placed in Class III-A under paragraph (a) of this section because he has a child which is not yet born unless prior to the time the local board mails him an order to report for induction which is not subsequently canceled there is filed with the local board the certificate of a licensed physician stating that the child has been conceived, the probable date of its delivery, and the evidence upon which his positive diagnosis of pregnancy is based."

3. Paragraph (a) of section 1625.3 of Part 1625, *Reopening and Considering Anew Registrant's Classification*, is amended to read as follows:

" (a) The local board shall reopen and consider anew the classification of a registrant upon the written request of the State Director of Selective Service or the Director of Selective Service and upon receipt of such request shall immediately cancel any Order to Report for Induction (SSS Form No. 252) or Order to Report for Civilian Work and Statement of Employer (SSS Form No. 153) which may have been issued to the registrant."

4. (a) Paragraph (a) of section 1626.2 of Part 1626, *Appeal to Appeal Board*, as amended to read as follows:

"(a) The registrant, any person who claims to be a dependent of the registrant, any person who prior to the classification appealed from filed a written request for the current occupational deferment of the registrant, or the government appeal agent may appeal to an appeal board from the classification of a registrant by the local board."

(b) Paragraph (a) of section 1626.26 of Part 1626 is amended to read as follows:

"(a) The appeal board shall classify the registrant, giving consideration to the various-classes in the same manner in which the local board gives consideration thereto when it classifies a registrant."

5. (a) Sections 1628.1, 1628.2, and 1628.3 of Part 1628, *Physical Examination*, are amended to read as follows:

"§ 1628.1 *Purpose of medical interview.*

"The Surgeon General of the Department of the Army shall, from time to time, prescribe or approve a list enumerating various medical conditions or physical defects that disqualify registrants for service in the Armed Forces. A medical interview of certain registrants by the medical advisor to the local board shall be accomplished for the purpose of screening and disqualifying at the local board those registrants who have conditions or defects enumerated in the list."

"§ 1628.2 *Registrants to be given medical interview.*

"(a) Whenever the local board is of the opinion that a registrant in Class I-A, Class I-A-O, or Class I-O has one or more of the disqualifying medical conditions or physical defects which appear in the list described in section 1628.1, it shall order the registrant to present himself for medical interview at a specified time and place by mailing to such registrant a Notice to Registrant to Appear for Medical Interview (SSS Form No. 219).

"(b) Whenever a registrant who is in Class I-A, Class I-A-O, or Class I-O claims that he has one or more of the disqualifying medical conditions or physical defects which appear in the list described in section 1628.1, the local board shall order him to present himself for interview with the medical advisor to the local board at the time and place specified by the local board by mailing to such registrant a Notice to Registrant to Appear for Medical Interview (SSS Form No. 219).

"(c) Whenever because of a medical condition or physical defect, a registrant is unable personally to present himself for medical interview, a reputable physician may file an affidavit, or an authorized



representative of a Federal or State agency may file an official statement with the local board, stating (1) the character of the condition or defect, (2) that the physician has personal professional knowledge thereof, or that the representative has official knowledge thereof, and (3) that the registrant is unable personally to present himself for medical interview due to the character of the condition or defect. The local board shall refer such affidavit or official statement which it receives to the medical advisor to the local board for review."

"§ 1628.3 *Duties of medical advisor to local board.*

"(a) When the registrant is referred to the medical advisor to the local Board for medical interview, the medical advisor shall make only such examination as he deems is necessary to determine whether the registrant has one or more of the disqualifying medical conditions or physical defects which appear in the list described in section 1628.1. No laboratory or X-ray work shall be authorized but reports of laboratory or X-ray work performed previously and presented by the registrant may be given consideration by the medical advisor. It shall be the duty of the registrant to present himself to the medical advisor to the local board at the time and place designated and to submit to examination.

"(b) The medical advisor to the local board shall (1) give each registrant who presents himself for medical interview such examination as he deems necessary or (2) review each affidavit of a reputable physician or official statement of a representative of a Federal or State agency referred to him by the local board. From such examination or review, the medical advisor to the local board shall determine whether the registrant has one or more of the disqualifying medical conditions or physical defects which appear in the list described in section 1628.1 and shall record his findings in Section II of the Record of Induction (DD Form No. 47) ."

(b) Paragraphs (d) and (e) of section 1628.4 of Part 1628 are amended to read as follows:

"(d) If the local board determines that the registrant has a disqualifying medical condition or physical defect which appears in the list described in section 1628.1, the following action shall be taken:

(1) The local board shall file the original and one copy of the Record of Induction (DD Form No. 47) in the registrant's Cover-Sheet (SSS Form No. 101) and forward two copies of the Record of Induction (DD Form No. 47) to the State Director of Selective Service who shall forward one copy to the Surgeon General, Department of the Army, Washington, D.C., and retain one copy.

(2) The local board shall review the classification of the registrant and if it finds under the provisions of Part 1622 of this chapter that he should be placed in some other class, reopen his classification and classify him anew and mail him a Notice of Classification (SSS Form No. 110).

(3) The local board shall cancel any Order to Report for Armed Forces Physical Examination (SSS Form No. 223) which it has mailed to the registrant and advise him in writing of such cancellation.

(4) The local board shall note in the 'Disposition' column of the Physical Examination List (SSS Form No. 225), if the registrant's name appears thereon, that he has been found not qualified for service in the Armed Forces.

"(e) If the local board determines that the registrant does not have a disqualifying medical condition or physical defect which appears in the list described in section 1628.1, or if the local board has any doubt concerning the existence of any such condition or defect, the local board shall order the registrant to report for armed forces physical examination as provided in section 1628.11."

(c) Paragraph (b) of section 1628.17 of Part 1628 is amended to read as follows:

"(b) As each registrant's name is called he shall be observed by a member or clerk of the local board. If the member or clerk of the local board knows or sees a registrant who he believes may be disqualified for service in the Armed Forces because of a medical condition or physical defect which



appears in the list described in section 1628.1, the registrant shall not be forwarded for armed forces physical examination on that day but shall be given a local board medical interview as provided in section 1628.2 and if after such medical interview it is determined that the registrant is not disqualified he shall then be forwarded for an armed forces physical examination."

6. Part 1629, *Disqualifying Obvious Defects and Manifest Conditions*, is revoked.

7. (a) Subparagraph (3) of paragraph (a) of section 1631.7 of Part 1631, *Quotas and Calls*, is amended to read as follows:

" (3) Nonvolunteers who have attained the age of 19 years and have not attained the age of 26 years in the order of their dates of birth with the oldest being selected first."

(b) Subparagraph (4) of paragraph (a) of section 1631.7 is revoked and subparagraphs (5) and (6) of paragraph (a) are redesignated as subparagraphs (4) and (5), respectively.

(c) Paragraph (b) of section 1631.7 is revoked and paragraph (c) of section 1631.7 is redesignated as paragraph (b) .

JOHN F. KENNEDY

THE WHITE HOUSE,

March 14, 1963

John F. Kennedy, Executive Order 11098—Amending the Selective Service Regulations Online by Gerhard Peters and John T. Woolley, The American Presidency Project  
<https://www.presidency.ucsb.edu/node/236060>





CERTIFICATE OF DEATH

STATE OF CALIFORNIA—DEPARTMENT OF HEALTH  
OFFICE OF THE STATE REGISTRAR OF VITAL STATISTICS

LOCAL REGISTRATION DISTRICT AND CERTIFICATE NUMBER  
0150-059345

STATE FILE NUMBER		OFFICE OF THE STATE REGISTRAR OF VITAL STATISTICS		LOCAL REGISTRATION DISTRICT AND CERTIFICATE NUMBER	
1a. NAME OF DECEASED—FIRST NAME <b>Thomas</b>		1b. MIDDLE NAME		1c. LAST NAME <b>Proctor</b>	
2a. DATE OF DEATH—MONTH, DAY, YEAR <b>12-24-76</b>		2b. HOUR <b>1530</b>			
3. SEX <b>Male</b>		4. COLOR OR RACE <b>Cauc.</b>		5. BIRTHPLACE (STATE OR FOREIGN COUNTRY) <b>Kansas</b>	
6. DATE OF BIRTH <b>12-23-13</b>		7. AGE (LAST BIRTHDAY) <b>63</b>		IF UNDER 1 YEAR: MONTHS, DAYS; IF UNDER 24 HOURS: HOURS, MINUTES	
8. NAME AND BIRTHPLACE OF FATHER <b>Unk. Proctor - Unk.</b>			9. MAIDEN NAME AND BIRTHPLACE OF MOTHER <b>Unk. Unk. - Unk.</b>		
10. CITIZEN OF WHAT COUNTRY <b>U.S.A.</b>		11. SOCIAL SECURITY NUMBER <b>241-12-2447</b>		12. MARRIED, NEVER MARRIED, WIDOWED, DIVORCED (SPECIFY) <b>Widowed</b>	
13. NAME OF SURVIVING SPOUSE (IF WIFE, ENTER MAIDEN NAME) <b>none</b>		14. LAST OCCUPATION <b>Unk.</b>		15. NUMBER OF YEARS IN THIS OCCUPATION <b>Unk.</b>	
16. NAME OF LAST EMPLOYING COMPANY OR FIRM (IF SELF-EMPLOYED, SO STATE) <b>Unk.</b>		17. KIND OF INDUSTRY OR BUSINESS <b>Unk.</b>			
18a. PLACE OF DEATH—NAME OF HOSPITAL OR OTHER IN-PATIENT FACILITY <b>L.A. County-U.S.C. Medical Ctr.</b>		18b. STREET ADDRESS—(STREET AND NUMBER, OR LOCATION) <b>1200 N. State Street</b>		18c. INSIDE CITY CORPORATE LIMITS (SPECIFY YES OR NO) <b>yes</b>	
18d. CITY OR TOWN <b>Los Angeles</b>		18e. COUNTY <b>Los Angeles</b>		18f. LENGTH OF STAY IN COUNTY OF DEATH (YEARS) <b>Unk.</b>	
18g. LENGTH OF STAY IN CALIFORNIA (YEARS) <b>Unk.</b>		19a. USUAL RESIDENCE—STREET ADDRESS (STREET AND NUMBER OR LOCATION) <b>415 S. Union Avenue</b>		19b. INSIDE CITY CORPORATE LIMITS (SPECIFY YES OR NO) <b>yes</b>	
19c. CITY OR TOWN <b>Los Angeles</b>		19d. COUNTY <b>Los Angeles</b>		19e. STATE <b>California</b>	
20. NAME AND MAILING ADDRESS OF INFORMANT <b>Public Adm. L.A. County 1625 W. Olympic Blvd. Los Angeles, Calif. 90011</b>		21a. CORONER: I HEREBY CERTIFY THAT DEATH OCCURRED AT THE HOUR, DATE AND PLACE STATED ABOVE FROM THE CAUSES STATED BELOW AND THAT I HAVE HELD ON THE REMAINS OF DECEASED AS REQUIRED BY LAW OR AS REQUESTED. <b>INVESTIGATION</b>		21b. PHYSICIAN: I HEREBY CERTIFY THAT DEATH OCCURRED AT THE HOUR, DATE AND PLACE STATED ABOVE FROM THE CAUSES STATED BELOW AND THAT I ATTENDED THE DECEASED FROM [ ] TO [ ] AND [ ] LAST SAW THE DECEASED ALIVE ON [ ] ENTER MONTH, DAY, YEAR.	
21c. PHYSICIAN OR CORONER—SIGNATURE AND REGISTRATION NUMBER <b>THOMAS J. NOBUCHI, M.D. CORONER</b>		21d. DATE SIGNED <b>2/11/77</b>		21e. PHYSICIAN OR CORONER—ADDRESS <b>1104 N. MISSION RD. LOS ANGELES, CALIF. 90033</b>	
22a. SPECIFY BURIAL, ENTOMBMENT OR CREMATION <b>Burial</b>		22b. DATE <b>2-15-77</b>		23. NAME OF CEMETERY OR CREMATORY <b>Holy Cross Cemetery</b>	
24. EMBALMER—SIGNATURE (IF BODY EMBALMED) LICENSE NUMBER <b>Harry O. Fox # 3140</b>		25. NAME OF FUNERAL DIRECTOR (OR PERSON ACTING AS SUCH) <b>Utter McKinley Wilshire</b>		26. IF NOT CERTIFIED BY CORONER, WAS THIS DEATH REPORTED TO LOCAL REGISTRAR (SPECIFY YES OR NO)	
27. LOCAL REGISTRAR—SIGNATURE <b>Liston A. Witherill</b>		28. DATE RECEIVED FOR REGISTRATION LOCAL REGISTRAR <b>FEB 14 1977</b>			
29. PART I. DEATH WAS CAUSED BY: ENTER ONLY ONE CAUSE PER LINE FOR A, B, AND C					
IMMEDIATE CAUSE (A) <b>ASPIRATION PNEUMONIA.</b>		DUE TO, OR AS A CONSEQUENCE OF			
(B) <b>CARCINOMA OF LEFT SUBMANDIBULAR SALIVARY GLAND WITH DYSPHAGIA.</b>					
(C)					
30. PART II: OTHER SIGNIFICANT CONDITIONS—(FIRST LISTING IS DEATH CAUSE, BUT NOT RELATED TO THE CAUSE LISTED IN PART I)					
31. WAS OPERATION OR BIOPSY PERFORMED FOR ANY CONDITION IN ITEMS 29 OR 30? (SPECIFY OPERATION AND OR BIOPSY) <b>No</b>		32A. AUTOPSY (SPECIFY YES OR NO) <b>No</b>		32B. IF YES, APPLICABLE NUMBER OF SIDES EXAMINED (STATE NUMBER AND CAUSE OF DEATH)	
33. SPECIFY ACCIDENT, SUICIDE OR HOMICIDE		34. PLACE OF INJURY (CITY, NAME, FARM, FACTORY, OFFICE, RESTAURANT, STREET, ETC.)		35. INJURY AT WORK (SPECIFY YES OR NO)	
36A. DATE OF INJURY—MONTH, DAY, YEAR		36B. HOUR			
37A. PLACE OF INJURY (STREET AND NUMBER OR LOCATION AND CITY OR TOWN)		37B. DISTANCE FROM PLACE OF INJURY TO USUAL RESIDENCE (FEET OR MILES)		38. WERE LABORATORY TESTS DONE FOR DRUGS OR TOXIC CHEMICALS (SPECIFY YES OR NO) <b>No</b>	
39. WERE LABORATORY TESTS DONE FOR ALCOHOL? (SPECIFY YES OR NO) <b>No</b>		40. DESCRIBE HOW INJURY OCCURRED (ENTER SEQUENCE OF EVENTS WHICH RESULTED IN INJURY. NATURE OF INJURY SHOULD BE ENTERED IN ITEM 29)			
STATE REGISTRAR		A.		B.	
		C.		D.	
		E.		F.	
				<b>01-8-3-122</b>	

THIS IS A TRUE CERTIFIED COPY OF THE RECORD FILED IN THE COUNTY OF LOS ANGELES DEPARTMENT OF HEALTH SERVICES IF IT BEARS THIS SEAL IN PURPLE INK.

APR 1 1977 FEE \$2.00

Liston A. Witherill  
Liston A. Witherill, Director of Health Services and Registrar





STATE FILE NO.		CERTIFICATE OF LIVE BIRTH				REGISTRATION DISTRICT NO.
1A CHILD'S FIRST NAME		1B MIDDLE NAME		1C LAST NAME		Gonzales
THIS CHILD (TYPE OR PRINT NAME)	2 SEX	3A THIS BIRTH IS NONE, TWIN, OR 2ND LEFT		3B THIS BIRTH IS NONE, TWIN, OR 2ND RIGHT	4A DATE OF BIRTH—MONTH, DAY, YEAR	
	Male	Single			July 22, 1955	
PLACE OF BIRTH	5A COUNTY		5B CITY OR TOWN		4B HOUR	
	LOS ANGELES		LOS ANGELES		6:45 A	
USUAL RESIDENCE OF MOTHER (PRINT FULL NAME)	5C FULL NAME OF HOSPITAL OR INSTITUTION				5D ADDRESS (PRINT FULL NAME OF HOSPITAL OR INSTITUTION, STREET OR RURAL ADDRESS OR LOCATION TO WHICH IT IS REFERRED)	
	LOS ANGELES COUNTY GENERAL HOSPITAL				1200 NO. STATE STREET	
MOTHER OF CHILD	6A STATE	6B COUNTY	6C CITY OR TOWN		6D STREET OR RURAL ADDRESS (PRINT FULL NAME)	
	California	Los Angeles	Los Angeles 12		226 North Beaudry Avenue	
FATHER OF CHILD	7A MAIDEN NAME OF MOTHER—FIRST NAME		7B MIDDLE NAME		7C LAST NAME	
	Mary		Rae		Lopez	
INFORMANT'S CERTIFICATION	8 AGE OF MOTHER (AT TIME OF THIS BIRTH)		9 BIRTHPLACE (STATE OR FOREIGN COUNTRY)		10 MAILING ADDRESS OF MOTHER (PRINT FULL NAME AND ADDRESS)	
	37 YEARS		Colorado			
ATTENDANT'S CERTIFICATION	12A NAME OF FATHER—FIRST NAME		12B MIDDLE NAME		12C LAST NAME	
	Paul				Gonzales	
REGISTRAR'S CERTIFICATION	14 AGE OF FATHER (AT TIME OF THIS BIRTH)		15 BIRTHPLACE (STATE OR FOREIGN COUNTRY)		16A USUAL OCCUPATION	
	35 YEARS		Texas		Repairman	
INFORMANT'S CERTIFICATION	11 BY THIS CERTIFICATE I HEREBY CERTIFY THAT THE ABOVE STATED INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.		17A SIGNATURE OF PARENT OR OTHER INFORMANT (PRINT NAME AND SIGNATURE)		17B DATE SIGNED BY PARENT OR OTHER INFORMANT	
			<i>Mary Rae Lopez</i>		July 23, 1955	
ATTENDANT'S CERTIFICATION	13 I HEREBY CERTIFY THAT I ATTENDED THIS BIRTH AND THAT THE CHILD WAS BORN ALIVE AT THE HOUR, DATE AND PLACE STATED ABOVE.		18A NAME OF ATTENDANT (PRINT NAME AND SIGNATURE)		18B ADDRESS	
			<i>Raymond D. Wright M.D.</i>		L.A. County General Hospital	
REGISTRAR'S CERTIFICATION	19 DATE RECEIVED BY LOCAL REGISTRAR		20 SIGNATURE OF LOCAL REGISTRAR		21 DATE ON WHICH NAME INDEXED BY CLERK (MONTH, DAY, YEAR)	
	AUG 2 1955		<i>George W. White, Jr.</i>			

This is to certify that this document is a true copy of the official record filed with the Registrar-Recorder

*Conny B. McGormack*

CONNIE B. MCGORMACK  
 Registrar-Recorder/County Clerk

This copy not valid unless prepared on engraved border displaying the Seal and Signature of the Registrar-Recorder/County Clerk.





LAST WILL AND TESTAMENT

-of-

JOHN F. KENNEDY

I, JOHN F. KENNEDY, married, and residing in the City of Boston, Commonwealth of Massachusetts, being of sound and disposing mind and memory, and mindful of the uncertainty of life, do hereby make, publish and declare this to be my Last Will and Testament.

J.F.K.

FIRST

I hereby revoke any and all other Wills, Testaments, and Codicils heretofore made by me.

SECOND

I direct that all of my just debts and funeral expenses be paid as soon after my decease as may be convenient.

THIRD

I give and bequeath unto my wife, JACQUELINE B. KENNEDY, if she survives me, the sum of Twenty-Five Thousand (\$25,000.00) Dollars, together with all of my personal effects, furniture, furnishings, silverware, dishes, china, glassware and linens, which I may own at the time of my death.

FOURTH

During my life, I have made substantial contributions to divers charities, causes and institutions of all faiths, both individually and through The Joseph P. Kennedy Jr. Foundation, which was established in honor of my late beloved brother. I am certain that the contributions which I and other members of my family have made to the Foundation will be applied after my death without bias or discrimination to the fulfillment of the Foundation's eleemosynary purposes.

FIFTH

I hereby direct my Executors to divide into two equal shares all of the rest, residue and remainder of my property, real, personal, and of any nature whatsoever and wheresoever situate, of which I shall die seized and possessed, and to which I shall be entitled at the time of my death, including without limitation any gifts and bequests heretofore made by me which may fail or lapse, and any property over which I may have the right of testamentary disposition, and I hereby give, devise, bequeath and dispose of the said two equal shares as follows:

[A] As to One of Such Equal Shares - (Hereinafter Called "The First Equal Share")

1. If my wife, JACQUELINE B. KENNEDY, survives me, then I give, devise and bequeath the First Equal Share unto my Executors and Trustees hereinafter named, In Trust, nevertheless, for the benefit of my said wife, to invest, reinvest and keep the same invested, and to collect and receive the rent, income and profits therefrom, and after deducting all proper reserves and expenses, to pay to my said wife, in each calendar year, all of the net income thereof; such payments to be made in semi-annual or sooner installments, as my Trustees in their sole discretion may determine.

2. Upon the death of my said wife, the Trustees shall pay over the principal of the trust as it shall then exist, to such person or persons, including her own estate, and in such proportions as my said wife designates or appoints in and by her Last Will and Testament, under and by specific reference to this paragraph; and in default of such designation or appointment, the Trustees shall divide the same into as many equal parts as there shall be living at the death of my wife, children of mine and issue (taken collectively) of any predeceased child of mine, and shall pay one such



equal part unto each such child, and one such equal part, in equal shares, per stirpes, unto such issue; and in default of all thereof, the same shall be paid to those persons to whom and in those proportions in which the same would have been distributed had I died immediately after the death of my wife, seized and possessed of said principal in my own right, intestate, domiciled in the Commonwealth of Massachusetts, and not survived by my father or mother.

3. Notwithstanding anything to the contrary in this Will contained, during the life of my said wife, the Trustees in their sole discretion may from time to time pay to my said wife out of the principal of the trust set up for her benefit, such sum or sums as the Trustees in their sole discretion may deem necessary to insure her health, welfare, or comfort, or to enable her to maintain the standard of living to which she is accustomed; provided, however, that such payments out of principal shall not aggregate in any one calendar year more than ten percent (10%) of the principal of the trust as it existed on the first day of said calendar year and computed at market or appraisal value as of the first day of said calendar year; and provided, further, that if said principal as so computed shall be less than One Thousand (\$1,000.00) Dollars on the first day of said calendar year, the Trustees may in their sole discretion and without regard to said limitation of ten percent (10%), pay to my said wife all of said principal, even though such payment may terminate the trust.

The Trustees may exercise the discretion in this Paragraph "[A]-3" provided without regard to any other income or resources which my said wife may have from time to time, and without in anywise being accountable for the exercise of such discretion, but the Trustees may not be compelled to exercise such discretion.

4. In setting up the trust for the benefit of my said wife as in this Paragraph "[A]" provided, I direct that such First Equal Share shall be constituted of assets of my estate as are classified as "deductible" under the provisions of the United States Internal Revenue Code (Section 812(e), and the Regulations thereto (as the same or similar statutes and regulations may provide at the date of my death), before resort is had to "non-deductible" assets for such purpose.

5. If my said wife, JACQUELINE B. KENNEDY, does not survive me, then I direct that the First Equal Share shall be added to the Second Equal Share bequeathed and devised in Paragraph "[B]" of this Article "FIFTH", and shall be disposed of as part thereof.

J.D.K.

[B] As to the Remaining Equal Share - (Hereinafter Called "The Second Equal Share")

I give, devise and bequeath the Second Equal Share, or if my said wife, JACQUELINE B. KENNEDY, shall not survive me, then also the First Equal Share, unto my Executors and Trustees hereinafter named, In Trust, nevertheless, to divide said Equal Share(s) into as many sub-shares as I shall leave me surviving children and issue (taken collectively) of any of my children who shall have predeceased me, and to hold and dispose of such equal sub-shares as follows:

1. To pay over one such equal sub-share, in equal parts, unto the issue living at the time of my death of any of my children who shall have predeceased me, such issue to take per stirpes and not per capita.

2(a). To set aside one such equal sub-share for the benefit of each of my children, and to invest, reinvest, and keep the same invested, and to collect and receive the rents, income and profits therefrom, and after deducting all proper reserves and expenses, to pay the net income thereof in each year to the child for whom such equal sub-share is so held



in trust, in annual or sooner installments, as my Trustees in their sole discretion may determine, as long as such child shall live.

(b). Upon the death of such child, the trust for his or her benefit shall come to an end, and the principal of the trust as it shall then exist shall be paid unto the issue of such child living at his or her death, in equal shares, per stirpes and not per capita; and in default of such issue, the same shall be paid in equal shares unto my other children living at the termination of the trust and unto the issue then living of any of my children who shall have died prior to the termination of the trust, such issue to participate equally per capita in one equal share; and in default of all of the foregoing, such principal shall be paid unto those persons to whom and in those proportions in which the same would have been distributed had I died immediately upon the termination of the trust seized and possessed of said principal in my own right, intestate, domiciled in the Commonwealth of Massachusetts, and not survived by my father or mother.

(c). Notwithstanding anything to the contrary in this Will contained, and in addition to all other powers and authorities vested in the Trustees, I hereby empower the Trustees in their sole discretion, out of the principal of a trust set up herein for the benefit of a child of mine, to expend from time to time, for the benefit, health, welfare, or comfort of such child, or to enable him or her to maintain the standard of living to which such child may be accustomed, such sums as the Trustees in their sole discretion may determine; provided, however, that such expenditures out of principal shall not aggregate in any one calendar year more than twenty percent (20%) of the principal of said trust as it existed on the first day of said calendar year, and computed at market or appraisal value as of the first day of said calendar year; and provided, further, that if said principal as

30.6

so computed shall be less than Five Hundred (\$500.00) Dollars on the first day of said calendar year, the Trustees may in their sole discretion and without regard to said limitation of twenty percent (20%), expend all of said principal, even though such expenditure may terminate the trust.

*d.k.*  
The Trustees may exercise their discretion as in this Paragraph "[B]-2(c)" provided, without regard to any other income or resources which said child may have from time to time, and without in anywise being accountable for the exercise of such discretion, but the Trustees may not be compelled to exercise such discretion.

(d). In the event that a child of mine for whom a trust has been set up herein shall be a minor, then during the minority of such child, the Trustees shall from time to time apply so much of the net income of the trust as the Trustees in their sole discretion may determine, to the maintenance, support, education and welfare of such child, accumulating the balance of the net income until such child attains his or her majority, at which time all of the accumulated income shall be paid unto such child. Upon the death of such child before attaining his or her majority, the accumulated income shall be paid unto the persons and in the same proportions, manner and events provided in Paragraph "[E]-2(b)" of this Article "FIFTH" for the payment of principal upon the termination of the trust.

(e). In making any expenditure out of principal as provided in Paragraph "[E]-2(c)" of this Article "FIFTH", and in applying the net income during the minority of a child, as provided in Paragraph "[B]-2(d)" of this Article "FIFTH", the Trustees may in their sole discretion make such expenditure or application direct or in the form of a payment to the parent, or to the guardian appointed under any jurisdiction either of the person or property of said child, or to an adult

person with whom the child for whose benefit the trust is set up resides; or if such child is over the age of eighteen (18) years, then to such child; and the receipt of such parent, guardian, adult person, or child, as the case may be, shall discharge the Trustees and they shall not be responsible for the application of the principal or income by such parent, guardian, adult person, or child.

8. G. K.  
3. In the event that my wife, JACQUELINE B. KENNEDY, survives me, but I am not survived by any children or by any issue of a deceased child, then I give, devise and bequeath the Second Equal Share unto my said wife, to have and to hold unto herself absolutely and forever.

[C] In the event that neither my said wife, JACQUELINE B. KENNEDY, nor any of my children, nor any issue of my children survive me, then I give, devise and bequeath the First and Second Equal Shares to those persons to whom, and in those proportions in which the same would have been distributed had I died intestate, a widower, seized and possessed of such shares in my own right, domiciled in the Commonwealth of Massachusetts, and not survived by my father or mother.

[D] In the event that any part of my estate or of the principal of the trusts provided for in this Will shall become or be payable to a person under the age of twenty-one (21) years, said part shall vest absolutely in such person, notwithstanding minority.

During the minority of such person, and unless otherwise prevented by law, such part shall, in the sole discretion of the Executors or Trustees, remain in the custody of the Executors or Trustees, as Donees under a power of trust, until such minor attains the age of twenty-one (21) years. The Donees shall apply so much of the income or principal as the Donees, in their sole discretion, may deem necessary or



advisable for the benefit of said minor, irrespective of any other source of support or maintenance or any other property which said minor has or may from time to time have.

The Donees are empowered to apply principal and income directly to the use of such minor, or to make any payment of principal or income to such minor, or to the parent, or to the guardian appointed under any jurisdiction of the person or property of such minor, or to an adult person with whom such minor resides. The receipt of such minor, parent, guardian, or person (as the case may be) shall discharge the Donees and they shall not be responsible for the application of the principal and income by such parent, guardian, person or beneficiary.

J.D.K

The Donees shall have all the investment and administrative powers conferred upon the Trustees hereunder. The Donees shall be entitled to receive as compensation the same commissions in respect of income and principal as are allowed to the Trustees, and they may deduct their commissions without judicial authorization.

SIXTH

I hereby authorize and empower my Executors and Trustees, as the case may be:

(a) In their sole discretion, to retain any and all property in the form they may receive it hereunder, although the same may not be of a character permitted for the investment of trust funds by the laws of any state.

(b) To invest, reinvest and keep invested all or any part of the principal of the trusts herein created in such property, real, personal and mixed, as in their sole discretion they may determine, although the same may not be of a character permitted for the investment of trust funds by the laws of any state, specifically including, but without limitation, the right to invest and reinvest in common and preferred

J.P.K.

stock, secured and unsecured debenture bonds or notes, mortgages, securities of every nature and description, oil, gas and mineral explorations and interests of all kinds and description, property of a speculative or wasting nature, and including further, but without limitation, the right in their sole discretion to invest, reinvest and keep invested such principal or any part thereof in the form of loans, secured or unsecured, to such persons, enterprises and entities and upon such terms and conditions as the Trustees or Executors may deem advisable.

(c) With reference to any real property which, or an interest in which, at any time constitutes part of my estate, or of the trusts herein created, to manage, control and protect the same; to dedicate streets, highways or alleys and to vacate any subdivision or part thereof; to subdivide and resubdivide such property as often as desired, to construct buildings or other improvements on such property, to repair, remodel, tear down and rebuild or enlarge any building at any time thereon, to contract to sell, or grant options to purchase, to sell on any terms and to convey the same or any part thereof to a successor or successors in trust, and to grant to such successor or successors in trust all the title, estate, powers and authorities vested in the Trustees, to lease said property or any part thereof from time to time, to commence in praesenti or in futuro and upon any terms and for any period or periods of time, even for periods extending beyond the duration of the trusts, and to renew or extend the leases upon any terms and for any period or periods of time, and to amend, change or modify leases and the terms and provisions thereof at any time or times hereafter.

(d) To retain any property at any time held by them without regard to the proportion such property or property of a similar character so held may bear to the entire amount of the trust estates.

(e) To invest the principal of each trust hereby created separately, or to invest the principal of two or more such trusts together.

(f) To hold uninvested any moneys constituting part of my estate or the trust funds for such time as in their discretion they may deem advisable, without any liability to pay interest thereon and without any liability for not investing such moneys.

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(g) To create such reserves out of income, as in their sole discretion they may deem advisable, for depreciation, obsolescence, amortization, or to insure the prompt payment of taxes and other obligations, and to restore to income such reserves as may be unused.

(h) To charge losses, deductions and expenses or any part thereof to principal or to income, as in their sole discretion they may determine to be advisable or proper.

(i) In their sole discretion, to distribute income at any time during the administration of my estate, and to pay interest on any bequest or devise made herein, at such rate as in their sole discretion they may determine.

(j) To associate themselves and to become and act as copartners, general or limited, or as joint adventurers, in any copartnership, venture or enterprise, with and at the risk of the assets of my general estate or the trusts, or any thereof, herein created; to incorporate under any jurisdiction any business or enterprise which I may own or in which I may be engaged at the time of my death, or to join with others in the incorporation in any jurisdiction of any business or enterprise in which I may have an interest at the time of my death, or in which my estate or the trusts or any thereof may from time to time have an interest, and to hold and treat the shares of any such corporation as an asset of my estate or as part of the principal of any trust herein created; to continue and to participate in, manage, operate and engage in any



business, venture or enterprise which I may own or in which I may have an interest at the time of my death, or in which I may be associated with others, even though to do so, the Executors or Trustees may be, become and act as copartners, general or limited, or as co-adventurers or otherwise; and in connection with any and all of the foregoing, to borrow funds from time to time for the use and benefit of such business, and to pledge, mortgage, hypothecate and encumber any and all assets of said business, my estate, and the principal of the trusts herein created, as security for such loan or loans, this power to borrow money being in addition to and not in limitation of the power and authority to borrow which the Executors or Trustees may otherwise have under this Article "SIXTH".

P.D.K.

(k) In their sole discretion, to retain as principal or to credit to and pay out as net income hereunder all or any part of the net gains and profits derived from the sale, exchange, or other disposition of any property belonging to said trusts, as the Trustees in their sole discretion may from time to time determine. Any part of such net gains and profits not credited or paid out as net income hereunder pursuant to such discretion shall be and remain principal hereunder.

The discretions and directions herein given to the Trustees shall be in addition to and not in limitation of the discretions given in Paragraphs "[A]-3" and "[E]-2(c)" of Article "FIFTH" hereof.

(l) From time to time, to borrow such sum or sums of money as they may deem necessary or proper (i) to provide moneys with which to pay any transfer, legacy, succession or inheritance taxes or death duties to whomsoever payable; (ii) in connection with the administration of my estate; (iii) for the maintenance, protection, or advancement of any property which may form part of my estate or the principal

X.K.K.  
of the trusts herein created, including any shares of stock of any corporation or any interest of any nature or description whatsoever in any enterprise; or (iv) for the use or benefit of any business operated by the Trustees--all upon such terms and conditions as in their discretion the Executors and Trustees may determine; and for the sum or sums so borrowed, to execute and deliver promissory notes or other obligations in such form as they may determine, and to secure the payment of any amounts so borrowed by mortgage, pledge, hypothecation, or encumbrance of any real or personal property of which I may die seized or possessed, or which at any time may form part of my estate or the trusts herein created.

(m) From time to time to sell, lease, exchange, or otherwise dispose of, at public or private sale, any real or personal property, or any interest therein, which may at any time belong to my estate or to the trusts herein created, upon such term or terms, including credit, secured or unsecured, as they may determine in their sole discretion to be for the best interests of my estate or of such trusts, and to accept in payment or exchange, property, cash, securities, bonds, notes, or mortgages--although the same may not be of a character permitted for the investment of trust funds by the laws of any state; and to execute, acknowledge, and deliver any good or sufficient deeds, conveyances, leases, assignments and other instruments that may be necessary with respect to the sale, lease, exchange or disposition of property.

(n) To renew or extend the time of payment of any obligation, secured or unsecured, payable to or by my estate, for as long a period or periods and on such terms as they may determine, and to settle, adjust, compromise and arbitrate claims or demands in favor of, or against, my estate or the trusts herein created--all upon such terms as they may deem advisable.

*J. PK.*

(o) With respect to any securities forming part of my estate or the trusts herein created, to vote upon any proposition or election at any meeting, and to grant proxies, discretionary or otherwise to vote at any meeting; to join in or become parties to any reorganization, readjustment, merger, voting trust, consolidation or exchange, to deposit any such securities with any committee, depository, trustee or otherwise; and to pay out such fees, expenses or assessments incurred in connection therewith, and to charge the same to principal or income of my estate or the trusts to which such securities may belong, as the Executors or Trustees may determine; to exercise conversion, subscription or other rights, or to sell or abandon such rights; and to receive and hold any new securities or other property issued or delivered as a result of any such reorganization, readjustment, merger, voting trust, consolidation, exchange or exercise of conversion, subscription, or other rights, although the same may not be of a character permitted for the investment of trust funds by the laws of any state; and generally, to take all action in respect of any securities belonging to my estate or the trusts hereunder, as the Executors or Trustees might or could do as absolute owners thereof.

(p) Unless otherwise prevented by law, to cause any securities or other property to be held in bearer form, or to be registered and held in the name of a nominee.

(q) To advise with counsel, who may be counsel for any person interested in the estate or in the trusts herein created, and the Executors or Trustees shall not be liable for any action taken or omitted to be taken upon the advice of counsel.

(r) If they so deem it advisable, to assign, transfer and convey all or any part of the property belonging to my estate or to the trusts herein created, to a corporation or-



ganized by them in any jurisdiction, in exchange for the stock, bonds, debentures, notes or securities of such corporation, and to distribute, hold or retain the same in accordance with the provisions made by me herein for the disposition of the property so assigned, transferred or conveyed to said corporation.

Ykk.

(s) To make any division or distribution of my estate, or the principal of the trusts herein created, in kind at the then market value of the property, or partly in kind and partly in money, and to cause the respective shares to be composed of property similar to or different from other shares.

(t) In their sole discretion, and insofar as permitted by law, to file Federal or State Income Tax Returns jointly with my wife, JACQUELINE B. KENNEDY.

(u) Notwithstanding anything to the contrary in this Will contained, with respect to the trust set up for the benefit of my wife, JACQUELINE B. KENNEDY, in Paragraph "[A]" of Article "FIFTH" hereof (a) the Trustees shall and are hereby directed to convert into income-producing property any unproductive property forming part of the principal of said trust within a reasonable time after the same becomes unproductive, or if unproductive at the time of the receipt thereof by the Trustees, then within a reasonable time after such receipt; and (b) the Trustees shall not hold uninvested beyond a reasonable time, moneys belonging to the principal of said trust.

SEVENTH

(a) The Executors or Trustees shall make no deduction from, nor addition to, income by reason of the purchase or sale of securities at a premium or discount.

(b) All dividends received by the Executors or Trustees in stock of a corporation or association declaring the same and declared in respect of any stock constituting

YAG.

any part of my estate or the principal of the trusts hereunder, all liquidating dividends, and all rights to subscribe to new or additional stock or other securities, and the securities of other property received upon the exercise of any such rights, and the proceeds of the sale of any such rights, shall be deemed principal. All other dividends received by the Executors or Trustees shall be treated as income and distributed accordingly. The Executors or Trustees shall have power to determine whether, and if at all, to what extent, any dividend received by them is a liquidating dividend.

(c) Persons dealing with my estate or the trusts herein created shall be under no obligation to see to the proper application of money paid or property delivered to the Executors or Trustees, or to inquire into the authority of the Executors or Trustees as to any transaction, and the receipt of the Executors or Trustees for any money or thing paid or transferred or delivered to them shall be a sufficient discharge to the person or persons paying, transferring or delivering the same; or from all liability to see to the application thereof.

(d) Every deed, trust deed, mortgage, lease, contract or other instrument executed by the Trustees in relation to any property belonging to the trusts herein shall be conclusive evidence in favor of every person relying upon or claiming under any such conveyance, lease or other instrument (i) that at the time of the delivery thereof the trusts created in this Last Will and Testament were in full force and effect; (ii) that such conveyance or other instrument was executed by the Trustees in accordance with the terms, conditions and limitations contained in this Last Will and Testament, and is binding upon all beneficiaries thereunder; (iii) that the Trustees were duly authorized and empowered to execute and deliver such deed, trust deed, mortgage, lease,



contract or other instrument; and (iv) if the conveyance is one made by or to a successor or successors in trust hereunder, that such successor or successors in trust have been properly appointed and is or are fully vested with all the title, estate, rights, powers, authorities, duties and obligations of its, his or their predecessors in trust.

EIGHTH

I direct that all estate, inheritance, succession, legacy, transfer taxes or other taxes of the same nature, which may be payable by reason of my death, including interest and penalties thereon, with respect to property or assets comprising my estate for such tax purposes, whether or not such taxes are payable by my estate or by any devisee, legatee, recipient or beneficiary of any such property or assets, shall be paid entirely as an administration expense out of such part of my residuary estate as passes to my Trustees in Paragraph "[B]" of Article "FIFTH" of this Last Will and Testament, without any right of reimbursement from any devisee, legatee, recipient or beneficiary of such property or assets.

F.R.K.

NINTH

I hereby nominate, constitute and appoint my wife, JACQUELINE B. KENNEDY, and my brothers, ROBERT F. KENNEDY and EDWARD M. KENNEDY, as Executors of, and Trustees under, this my Last Will and Testament; and if for any reason at any time any one of them does not qualify or is unable or unwilling to serve as such Executor or as such Trustee, I hereby nominate, constitute and appoint the following, in the order named, as Executrix or Trustee of this my Last Will and Testament (as the case may be) to fill any such vacancy: my sisters, EUNICE K. SHRIVER, PATRICIA LAWFOL and JEAN KENNEDY.

I direct that no bond be required of the Executors or


Trustees in this or any other jurisdiction, and that no inventory of my estate need be filed.

Insofar as may be permitted by law, no Executor or Trustee shall be liable for any act or omission in connection with the administration of my estate or of the trusts herein created, or the exercise of any of the powers and discretions hereinbefore provided for, nor for any loss or injury to any property held in or under my estate or said trusts, except for his or her actual fraud, and no Executor or Trustee shall be responsible for any act or omission of any other Executor or Trustee.

Any Executor or Trustee acting under this Will may at any time and from time to time, by revocable power of attorney executed under seal, delegate to the other Executors or Trustees (as the case may be) full exercise of all or any of the powers vested in such delegating Executor or Trustee.

I hereby direct that the Executors and/or Trustees, unless otherwise prevented by law, shall act by a majority vote.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal to this, my Last Will and Testament, this 18<sup>th</sup> day of June, in the year one thousand nine hundred fifty-four.

John F. Kennedy 

The foregoing instrument, consisting of this and sixteen (16) preceding pages, was subscribed by JOHN F. KENNEDY, the Testator, in the City of Washington D.C., on the 18<sup>th</sup> day of June, in the year one thousand nine hundred and fifty-four, in the presence of us and each of us, and at the same time and place was subscribed, published and declared by him to be his Last Will and Testament, and we, at his request, and in his presence, and in the presence of each other, signed our names hereto as subscribing witnesses hereof.

T. J. Keavelon Jr. Residing at 3134 Dunbar Ave N.W.  
Washington, D.C.

Theodore C. Sorenson Residing at 1105 57<sup>th</sup> Ave. S.E.  
Washington, D.C.

Evelyn L. Keavelon Residing at 3132-16<sup>th</sup> St. N.W.  
Washington 10, D.C.





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## BOTH JFKS FROM JEWISH ROOTS

Friday, July 4, 2014

LOS ANGELES (July 4, 2004) The Fourth International Conference on Diversity in Organisations and Nations hardly seems the place for a historical bombshell to fall about America's famous Kennedy family. Organized by Australian academics, this year's gathering in a leafy precinct of UCLA will bring together several hundred participants from all walks of life around the planet to present learned papers on themes ranging from Al Jazeera to Zee TV, from corporate diversity programs to Third World ethnic policy. Among the presenters is Donald Panther-Yates, a Georgia professor who owns a genetics consulting business and claims the Kennedy name in Ireland can be traced to **Jewish** ancestry in France.

The magazine Reform Judaism broke the story last fall that Sen. John Kerry, who has the same initials as the 35th president of the United States, had a *Jewish* paternal grandfather, Frederic Kerry, born in the tiny northeast Czech town of Horni Benesov as Fritz Kohn in 1873. Subsequently, a Czech historian traced Kerry's lineage to the family of Rabbi Judah Loew (1525-1609), also known as the Maharal and creator of the Golem of Prague.

DNA testing and surname research, like politics, can produce some strange bedfellows, says Yates, who will conduct a workshop Tuesday on researching your ethnicity and mapping your family origins with DNA. Often the matches we find to a person's genetic signature in world databases confirm oral traditions passed down in the family.

Retired Gen. Wesley Clark, for instance, told *The Jewish Week* in 1999 that though he was raised a Southern Baptist and later converted to Roman Catholicism, his father, Benjamin Kanne, an Orthodox *Jewish* lawyer and Democratic activist, was descended from a long line of rabbis, members of the priestly caste of Kohanim (Cohens).   (HTTPS://DNAACCOUNT/)

DNA analyses have suggested that the Scottish Kennedys and their American descendents are likely of Sephardic Jewish ancestry from France, where their name was Canady. We propose their original name may have been Candiani — from Candy, the old name for the Turkish capital of Crete, says Panther-Yates. Genealogies of the Irish branch of Hyannisport, Massachusetts, do not go farther back than Patrick Kennedy, a prosperous farmer of Dunganstown, County Wexford, Ireland, who was born about 1785 and whose son emigrated to America. However, there is no reason to rule out a possible French origin before the family became Irish. Both Cassel (a sect of Clan Kennedy pointing to a region in southern France) and Canady appear on a list of refugee French Huguenots to Ireland.

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Speaker 3 (04:58):

Next case on the calendar is Kennedy vs. Trustees.

Paul Dalnoky (05:11):

Good afternoon. Your honor, may it please the court, my name is Paul Dalnoky. I represent the opponent, John Kennedy.

Paul Dalnoky (05:21):

Illegitimate, fearless, [inaudible 00:05:24] bastard. Ironically, the police would have the court roll back the clock to that time in which a non marital child had no rights to the estate of the father. The district court relied on misuse of the fiduciary trust. In that case, there was ... they created a presumption that the non marital child had no rights in the estate of the father. However, a presumption may be rebutted. It is not an insuperable bar, which is what is required for a motion under 12(b)(6).

Paul Dalnoky (06:10):

Moving onto the second branch of the court's decision, in which it applied the probate exception to the diverse jurisdiction of the court. The martial decision-

Guido Calabresi (06:24):

But didn't Massachusetts change its law prospectively only?

Paul Dalnoky (06:28):

I'm sorry, didn't it change-

Guido Calabresi (06:31):

Didn't Massachusetts change its law prospectively only? Only for wills that were written-

Paul Dalnoky (06:40):

I-indeed, your honor. And Powers V. Wilkinson. It reversed that presumption prospectively only and now there is a presumption that a non marital child has an interest in the estate of the father.

Guido Calabresi (06:55):

[crosstalk 00:06:55] that they left the presumption as it was with respect to previous.

Paul Dalnoky (07:00):

Exactly, right.

Guido Calabresi (07:01):

It remains the same, doesn't it? Or are you arguing that in doing that they also weakened the prior presumption?

Paul Dalnoky (07:10):

Well, my argument ... First of all, my argument is two-fold. The misuse case was never a very strong precedent. The misuse case and the misuse case is a mere presumption. And a mere presumption may be rebutted. It is not an insuperable bar to relief.

Guido Calabresi (07:29):

Old law?

Paul Dalnoky (07:30):

The old law.

Guido Calabresi (07:31):

Which, uh, many of us would think was silly, was very strongly against children out of wedlock. And the presumption was very strongly against that. That came to be very unpopular and thought to be wrong and so it was turned around. But the question then is does the fact that it was turned around change anything as to what the law was before or should we now go back and say, "Gee, they didn't really like it so we should weaken that and the illegitimacy recognition presumption?" And I don't see any action really in either Massachusetts or other states that have had similar experiences in that direction.

Paul Dalnoky (08:26):

Again, your honor. The-the misuse case as I-I respectfully disagree.

Guido Calabresi (08:33):

Excuse me.

Paul Dalnoky (08:34):

I respectfully disagree that the misuse case creates a strong presumption. It ... the misuse case does create a presumption and again, a presumption does not create an insuperable bar. It does not create bar. It creates a presumption. A presumption may be rebutted. I believe that we have shown a great deal of evidence in the will itself that even though you don't consider the facts in 12(b)(6) motion, if you look at the will, the will constantly refers to children. Child. "Each child of mine." And the testament had no children at that time in fact. But again, my main point ... my two main points is that the misuse ... misuse is not as strong ... is not as strong ... does not create a strong presumption against. It creates a presumption. A presumption may be over turned. Maybe rebutted. Maybe overcome. And a presumption does not create an insuperable bar to relief that is-

Speaker 3 (09:43):

And to make sure I understand your argument, it's ... you're asserting that the presumption is overcome in this case because the will itself refers to children?

Paul Dalnoky (09:51):

Well, your honor ... my main, my main argument is, again, for the 12(b)(6) motion you need an insuperable bar. An insuperable bar, not a presumption. A bar, an absolute bar to the relief sought. Misuse doesn't create that. Misuse creates a presumption. And yes, your honor, by looking at the terms of the will each time it's refer ... uh, it refers to children. "Each child of mine." I believe, about 30 times or so, when it's a direct descendant. When it's the next line of inheritance, it refers to issue of children.



So I believe the test data was very clear along with all the evidence and the historical record that the test data made sure that other non marital children would be considered children of their father, when they came to the veterans of Vietnam. Certainly, if it was good for the rest of them, I believe it was good ... good enough for he. That he intended that his children take-

Guido Calabresi ([10:59](#)):

[inaudible 00:10:59] Massachusetts case, in which someone who wrote a will referring to children than he or she did not yet have, would by that fact be treated as including out of wedlock children? Are there any ... can you cite us anything in Massachusetts that suggests that Massachusetts court read the use of the word children before children where born? Is that rather than foreseeing the birth of the kid?

Paul Dalnoky ([11:39](#)):

Well, your honor, there is not case on point. However, the odd case is that we cite in our previous that shows that if you can show something, some evidence then you can ... you can look further into the issue.

Guido Calabresi ([11:54](#)):

[inaudible 00:11:54] I know the cases you cited [inaudible 00:11:56].

Paul Dalnoky ([11:57](#)):

We don't have the [inaudible 00:11:58] case directly on point, yeah. On that point. I believe my time is up. Uh, I'll turn it over the [inaudible 00:12:16].

Guido Calabresi ([12:15](#)):

Way up. Way up.

Harlan Levy ([12:15](#)):

Way up. How far does it go, your honor?

Paul Crotty ([12:18](#)):

You may be at the limit right now.

Harlan Levy ([12:20](#)):

The limit? Thank, thank, thank you.

Harlan Levy ([12:23](#)):

Good afternoon. May, may it please the court, my name is Harlan Levy of the firm of Boies, Schiller, and Flexner counsel for the trustees for the last will and testament of President Kennedy.

Harlan Levy ([12:37](#)):

Uh, there are two issues on this appeal. Uh, the first issue is whether the probate exception to diversity jurisdiction applies to plaintiff's inheritance claim. The district court held that it does apply. There's no-

Guido Calabresi ([12:52](#)):

If we were to decide for you on the second issue, the first issue wouldn't matter, would it? That is, if we were to decide that this will did not provide ... for the reasons the district court held the second part, then the question of whether the probate court except ... the probate court exception as we define by the supreme court is way or not is [inaudible 00:13:19].

Harlan Levy ([13:21](#)):

Your honor, there, there ... I can't really answer that right now. I haven't thought about that, but I-I can tell that it's one of the number of will-

Guido Calabresi ([13:30](#)):

The will does not provide for this.

Harlan Levy ([13:33](#)):

The, the will does ... yeah. The, the will does not provide, therefore, there's no fiduciary duty. Uh, therefore, uh, there's no, uh, there's ... it is not a child as defined by ... he's not a child defined by the will. Uh, and he's not ... he's not covered. That's right. There's also to some extent-

Paul Crotty ([13:57](#)):

Before there, before you get to answer that question don't you have to have jurisdiction? I mean if there's no ... if there is a probate exception to jurisdiction, we shouldn't be answering the second question.

Harlan Levy ([14:06](#)):

The, the, um, the way that Judge Polly sliced this, and I think it's the correct way to, to slice it, uh, Judge Polly focused on diversity jurisdiction with respect to the inheritance claim. And he said there was diversity jurisdiction, uh, as to the inheritance claim, but that there was no right inheritance under ... excuse me, that there was no diversity jurisdiction on the inheritance claim. But he then did separately address the claim for breach of fiduciary duty.

Harlan Levy ([14:42](#)):

That was, that was his, his division in, uh, in analyzing, uh, this. And, uh, his, his view and it's the view that, that we are for here, uh, your honor, is that the probate exception applies because under Massachusetts law, uh, testamentary trusts are always under the jurisdiction of the Massachusetts probate court and under the New York law, if it's New York that applies lifetime testamentary trust also fall within the jurisdiction of the probate court. And therefore, uh, there is no jurisdiction as to the inheritance claim. The complaint was not structured in terms of laying out the course of action of inheritance on one hand. Or in the other hand laying out a cause of action for breaching fiduciary duty, but those two concepts were, were intermingled in the pleading. And Judge Polly essentially analyzed each other separately, uh, in, in assessing this.

Harlan Levy ([15:41](#)):

So he, he definitely did start with a premise that the lack of diversity jurisdiction, uh, applied, uh, simply to the inheritance claim, but he did adjudicate the, uh, the, the, uh, question whether there was a fiduciary duty. And the case is properly here for that, for that purpose.



Harlan Levy (16:01):

Uh, with, with regard to, uh, fiduciary duty, the district court held that the trustees had no fiduciary duty, uh, to this plaintiff, and dismissed, uh, the plaintiff's claim. The will establishes a testamentary trust for the benefit of President Kennedy's children, and any breach of fiduciary duty would be predicated on plaintiff being child of President Kennedy, uh, under his will, uh, and person out of wedlock was not a child, uh, as defined by both the relevant New York and the relevant Massachusetts law.

Harlan Levy (16:35):

I briefly addressed the argument that somehow there's a meaningful difference between, uh, the word issue on one hand, uh, and the word children on the, on the other hand. I think there's distinction without that difference. Uh, I think it's very hard if we try to pass it to which one is, is, uh, broader and which one is, uh, narrower. Uh, and uh, the case law in Massachusetts in fact says that words of this type are treated interchangeably, and I think that's the only reasonable way to think about these words. That they're interchangeable words. In, in Massachusetts, under Massachusetts law prior to 1987, words such as children are issues meant only persons in the class who were born in wedlock, and is, your honor, point that out in 1987 that rule was overruled by Powers which specifically said that the rule only applies instruments that are executed perspective.

Harlan Levy (17:34):

Uh, President Kennedy's will was executed in 1954, long before the 1987 decision, uh, empowers. Uh, and the case of Massachusetts stated that if there was going to be a manifestation of contrary intent that it had to be, uh, an obvious and unequivocal manifestation of contrary intent.

Guido Calabresi (17:56):

By any wild chance, um, the [inaudible 00:17:59] of James Landis's great article on the effect of wrongful death statutes in the 19th century, um, the meaning of children born out of wedlock at common law for inheritance and the change that those statutes made in the common law and the change in the common law what that did to some prior statutes? Um, it changed, according to Landis's 1936 article, it was [inaudible 00:18:35] about relation to common laws statutes about how presumptions way of looking at things which were fixed before were, nonetheless, changed by the fact of statutory changes introspectiveness only. The very interesting and controversial thing, which could add some flare ...

Harlan Levy (19:02):

I'm, I'm not familiar with the article, uh, your honor.

Guido Calabresi (19:10):

James Landis became dean at Harvard, joined the New Deal and came to a bad end.

Harlan Levy (19:16):

Um ... your honor, I did not know, uh, any of ... that, but I will educate myself. Thank, thank you. All right...

Speaker 3 (19:24):



But your argument might be that the change effected by Powers in '87, even assuming it had some effect cases decided in the '70s, might not be relevant to a will executed in the '50s?

Harlan Levy ([19:35](#)):

My, my argument is that under Massachusetts law that, uh, that, that Powers says specifically it's perspective. Powers says that, uh, on its face, and New York specifically says that it's the law that's in effect at the time of the testators' death that governs the interpretation of this intent. Uh, and that those who would be the precedence that we would, uh, rely, rely on. Uh, also, very briefly, uh, the two additional grounds that support affirmance, uh, the statute of limitations. This plaintiff changed his name to John Fitzgerald Kennedy in 1994. Uh, the claim was asserted, uh, in 2008. And under a Twombly and Iqbal, uh, the, uh, plaintiff relies solely on photos, which he claims how a sample ... a family resemblance. Thank you.

Paul Dalnoky ([20:38](#)):

Very briefly, your honor. Misuse did not create a rule, it created presumption. Presumptions can be overcome. A presumption is not bar. It is not an insuperable bar to relief, which is required in a 12(b)(6). In fact, it ... it ... the presumption applied to issue. It didn't apply to ... it defined the class of issue. We all know who the child is. We all know who the child is, your honors.

Paul Dalnoky ([21:09](#)):

Uh, finally ... finally, with the thought to these, uh, probate exceptions to the diversity jurisdiction of the district court, there is no testamentary trust exemption to the diversity of the district court. No court has ever ruled-

Guido Calabresi ([21:29](#)):

You keep saying a presumption can be overcome. What is it that you bring us, that you proffer which would cause this presumption to be?

Paul Dalnoky ([21:37](#)):

Well-

Guido Calabresi ([21:39](#)):

Of course presumptions can be overcome. They're not overcome just because they don't disappear [inaudible 00:21:44].

Paul Dalnoky ([21:44](#)):

But in fact, we go into the will in detail and we show how the first lineal descendants are referred to as children. "Each of my children, to a child of mine." The next line is referred to as issue. Uh, we refer to the, uh, executive order in which President Kennedy made all non marital children children of their fathers. I don't know what law we can give this court than-

Guido Calabresi ([22:14](#)):

The military in a completely different context as president for political reasons.

Speaker 3 ([22:22](#)):

And years after the will was executed.

Paul Dalnoky (22:26):

Right, when he was president, correct. Uh, correct. But that shows ... that shows his feeling towards children, non marital and marital. Uh-

Guido Calabresi (22:37):

So politically, this was an appropriate thing for him to do, but there many people who take political stance that they don't live in their private lives, lord knows. We've seen a few examples recently.

Paul Dalnoky (22:50):

That's true. That's true, thank you very much, your honor.

Speaker 3 (22:57):

Thank you both.

633 F. Supp. 2d 77 (2009)

**John Fitzgerald KENNEDY, Plaintiff,**

**v.**

**The TRUSTEES OF the TESTAMENTARY TRUST OF the Last WILL and Testament OF President John F. KENNEDY, Defendants.**

No. 08 Civ. 8889 (WHP).

**United States District Court, S.D. New York.**

June 19, 2009.

\*79 Paul B. Dalnoky, Esq., New York, NY, for Plaintiff.

Marcy Ressler Harris, Esq., Schulte Roth & Zabel LLP, New York, NY, for Defendants.

## **MEMORANDUM AND ORDER**

WILLIAM H. PAULEY III, District Judge:

In this action, Plaintiff John Fitzgerald Kennedy<sup>(1)</sup> ("Plaintiff") alleges that he is the son of President John F. Kennedy and Marilyn Monroe. Although lacking any documentary or corroborating proof of this assertion, Plaintiff attaches pictures of himself to the Complaint, which he presumably believes reveals his resemblance to President Kennedy. Plaintiff brings this action against the Trustees of the Testamentary Trust of the Last Will and Testament of President John F. Kennedy (the "Trustees") for breach of fiduciary duty. In his Complaint dated October 16, 2008 ("Compl." or "Complaint"), Plaintiff sought an order directing genetic testing of two members of the Kennedy family—Robert Fitzgerald Kennedy, Jr. and Congressman Patrick Joseph Kennedy—and upon the confirmation of his claim through such genetic testing, an order compelling the Trustees to honor their fiduciary duties. The Trustees moved to dismiss under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

After that motion was fully briefed and argued, Plaintiff filed the First Amended Complaint dated June 3, 2009 ("Am. Compl." or "Amended Complaint"), purportedly addressing the issues raised by the Trustees' motion to dismiss. While Plaintiff no longer seeks genetic testing, he requests an order compelling the Trustees to investigate his claim of kinship and upon proof of that claim, his inheritance. The Trustees request that this Court treat their motion to dismiss the Complaint as a motion addressed to the Amended Complaint as well without further briefing. \*80 For the following reasons, the Trustees' motion to dismiss the Amended Complaint is granted.



## ***BACKGROUND***

On August 7, 2008, Plaintiff sent the Trustees Edwin A. Schlossberg and Martin L. Edelman a letter setting forth his claim that he is one of President Kennedy's children and demanding his inheritance. (Am. Compl. ¶ 20.) The Trustees did not respond.

Plaintiff's August 7, 2008 letter to the Trustees lists a residence in New York, New York (the "New York Residence")<sup>[2]</sup>. (Compl. Ex. B: August 7, 2008 letters to Schlossberg and Edelman.) Beginning in April 2007, Plaintiff's landlord at the New York Residence served him with multiple notices of termination of his lease. (Affirmation of Odella Woodson, Esq. dated May 4, 2009 ("Woodson Aff.") ¶¶ 5, 10, 14.) In the summer of 2008, the landlord commenced a holdover proceeding in Queens Housing Court. (Woodson Aff. ¶ 11.) Plaintiff applied for an apartment at 105 Metropolitan Ave., Atlantic City, New Jersey, 08401 (the "New Jersey Residence") on or around September 23, 2008 and signed a lease for that apartment on or around October 14, 2008. (Am. Compl. ¶¶ 6, 9.) This action was filed on October 16, 2008. Plaintiff's son and a friend continue to live at the New York Residence on a month to month basis without a lease. (Woodson Aff. ¶ 16.)

At the time he filed his complaint, Plaintiff had a New York driver's license. Plaintiff applied for a New Jersey driver's license after he received his first utility bill, as required under New Jersey law. (Am. Compl. ¶ 11.) Plaintiff and his wife filed a 2008 New Jersey tax return for the period they resided in New Jersey. (Am. Compl. ¶ 11, Ex. B: 2008 New Jersey tax return.) While Plaintiff was registered to vote in New York, he did not vote in the November 2008 elections. (Am. Compl. ¶¶ 15.) Plaintiff was not able to register to vote in New Jersey because the cut-off date was October 6, 2008 and 30 days of residence in New Jersey is required. (Am. Compl. ¶ 13.)

The Trustees are residents' of New York. (Am. Compl. ¶¶ 4-5.)

## **DISCUSSION**

### **I. Diversity Jurisdiction**

In deciding a motion to dismiss for lack of subject matter jurisdiction pursuant to Fed.R.Civ.P. 12(b)(1), "a court must accept as true all material factual allegations in the complaint." *Shipping Fin. Servs. Corp. v. Drakos*, 140 F.3d 129, 131 (2d Cir.1998). It is the plaintiffs responsibility to affirmatively establish subject matter jurisdiction. *Makarova v. U.S.*, 201 F.3d 110, 113 (2d Cir.2000). A party's citizenship for purposes of diversity jurisdiction is a mixed question of fact and law, which is properly resolved by the district court. *Palazzo ex rel. Delmage v. Corio*, 232 F.3d 38, 41-42 (2d Cir.2000); *Katz v. Goodyear Tire & Rubber Co.*, 737 F.2d 238, 243 n. 2 (2d Cir.1984) ("The question of jurisdiction need not be submitted to a jury."). The determination can be made based on affidavits and other supporting materials. *Marine Midland Bank, N.A. v. Miller*, 664 F.2d 899, 904 (2d Cir.1981). Those documents must be construed in the light most favorable to plaintiff. \*81 *Marine Midland Bank*, 664 F.2d at 904.

#### **A. Domicile**

The plaintiff bears the burden of establishing that diversity jurisdiction existed at the time the action was commenced. *Linardos v. Fortuna*, 157 F.3d 945, 947 (2d Cir.1998). For purposes of diversity jurisdiction, citizenship is based on domicile. *Linardos*, 157 F.3d at 948. "Domicile is the place where a person has his true and fixed home and principal establishment, and to which, whenever he is absent he has the intention of returning." *Linardos*, 157 F.3d at 948. Domicile is not synonymous with residence; a party can reside in one place and be domiciled in another. *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 47-49, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989). "A party alleging that there has been a change of domicile has the burden of proving... intent to give up the old and take up the new [domicile], coupled with an actual acquisition of a residence in the new locality. . . ." *Corio*, 232 F.3d at 42 (internal quotations marks and citations omitted). A "party alleging a change of domicile faces a contrary presumption and must establish the change by clear and convincing evidence." *Kleiner v. Blum*, No. 03 Civ. 3946(NRB), 2003 WL 22241210, at \*1 (S.D.N.Y. Sept. 20, 2003); *Bank of India v. Subramanian*, No. 06 Civ. 2026 (WHP), 2007 WL 1424668, at \*5 (S.D.N.Y. May 15, 2007); see also *Gold v. Katz*, No. 90 Civ. 7726 (RLC), 1991 WL 237807, at \*3 (S.D.N.Y. Nov. 4, 1991).

"Factors frequently taken into account [in determining domicile] include current residence, voting registration, driver's license and automobile registration, location of brokerage and bank accounts, membership in fraternal organizations, churches, and other associations, places of employment or business, and payment of taxes." *Bank of India*, 2007 WL 1424668, at \*3. Courts also consider "whether a person owns or rents his place of residence, the nature of the residence (i.e., how permanent the living arrangement appears) ... and the location of a person's physician, lawyer, accountant, dentist, stockbroker, etc." *Nat'l Artists Mgmt. Co. v. Weaving*, 769 F. Supp. 1224, 1228 (S.D.N.Y.1991). No single factor is determinative, and courts must consider the "totality of the evidence." *Weaving*, 769 F.Supp. at 1228.



Plaintiff established his residence in New Jersey at the time he brought this action. While the timing of the filing of this action two days after signing a lease for the New Jersey Residence is suspicious, Plaintiff applied for the apartment in September 2008. Moreover, the fact that Plaintiff's landlord commenced a proceeding in Housing Court to remove him from the New York Residence in the summer of 2008 suggests that Plaintiff did not acquire the New Jersey Residence to create diversity jurisdiction. That Plaintiff applied for a New Jersey driver's license as soon New Jersey law permitted, and filed taxes in New Jersey, suggest that he does intend to make New Jersey his domicile. Accordingly, construing the facts in Plaintiff's favor, the Court finds that Plaintiff's domicile is New Jersey and diversity jurisdiction is proper.

### ***B. Probate Exception***

The probate exception to diversity jurisdiction "reserves to state courts the probate or annulment of a will and the administration of a decedent's estate... [and] precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court." *Marshall v. Marshall*, 547 U.S. 293, 311-12, 126 S. Ct. 1735, 164 L.Ed.2d \*82 480 (2006). "[S]o long as a plaintiff is not seeking to have the federal court administer a probate matter or exercise control over a res in the custody of a state court, if jurisdiction otherwise lies, then the federal court may, indeed must, exercise it." *Lefkowitz v. Bank of New York*, 528 F.3d 102, 106 (2d Cir.2007).

Plaintiff styles his claim as a breach of fiduciary duty. To the extent Plaintiff seeks an order compelling the Trustees to investigate Plaintiff's claim that he is President Kennedy's son, the probate exception to diversity jurisdiction does not apply because such an order would not require the court to administer a probate matter or exercise control over a res in the custody of a state court. *See, e.g., Lefkowitz*, 528 F.3d at 108 (claims for breach of fiduciary duty, while "intertwine[d] with the litigation proceeding in probate court," did not require control of the res in a state probate proceeding). However, since Plaintiff seeks his inheritance under President Kennedy's will, if his kinship claim is confirmed, the probate exception applies because the claim requires this Court to exercise control over a res in the custody of a state court. *See, e.g., Lefkowitz*, 528 F.3d at 107 (claims that sought funds that remained under the control of the probate court were subject to the probate exception); *Lamica v. LaPierre*, 05 Civ. 964 (FJS)(GJD), 2006 WL 3423861, at \*1 (N.D.N.Y. Nov. 28, 2006) (plaintiff's claim seeking to invalidate decedent's second will and receive his inheritance under the first will were subject to the probate exception).

Accordingly, this Court does not have jurisdiction over Plaintiff's claim for his inheritance under President Kennedy's will, if his assertion that he is President Kennedy's son is confirmed. The Trustees' motion to dismiss that portion of the Amended Complaint is granted.



## II. Rule 12(b)(6) Motion

On a motion to dismiss, the Court must accept the material facts alleged in the complaint as true and construe all reasonable inferences in the plaintiffs favor. *Grandon v. Merrill Lynch & Co.*, 147 F.3d 184, 188 (2d Cir.1998). Nonetheless, "factual allegations must be enough to raise a right of relief above the speculative level, on the assumption that all of the allegations in the complaint are true." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (requiring plaintiff to plead "enough fact[s] to raise a reasonable expectation that discovery will reveal evidence of [his claim]"): see also *Ashcroft v. Iqbal*, 556 U.S. \_\_\_\_, 129 S. Ct. 1937, 1953, 173 L. Ed. 2d 868 (2009) ("Twombly expounded the pleading standard for all civil actions.") (internal quotation marks and citations omitted).

Because Plaintiffs claim is for breach of fiduciary duty, this Court must first consider whether the Trustees owe him a fiduciary duty if he is President Kennedy's son. Where a federal court sits in diversity, it must apply the choice of law rules of the forum state. *Lazard Freres & Co. v. Protective Life Ins. Co.*, 108 F.3d 1531, 1538 (2d Cir.1997). Section 3-5.1 of the New York Estates, Powers & Trusts Law ("EPTL") provides that "[i]nterpretation of a testamentary disposition of personal property shall be made in accordance with the local law of the jurisdiction in which the testator was domiciled at the time the will was executed." President Kennedy was domiciled in Massachusetts at the time his will was executed. (Compl. Ex. A: Last Will and Testament of John F. Kennedy.) Accordingly, the Court must apply Massachusetts law.

Until 1987, under Massachusetts law, "such words as issue, children, descendants, \*83 and so forth ... in the absence of anything indicating a contrary intent, meant only persons of the class who were born in lawful wedlock." *Powers v. Wilkinson*, 399 Mass. 650, 506 N.E.2d 842, 844 (1987) (quoting *Fiduciary Trust Co. v. Mishou*, 321 Mass. 615, 75 N.E.2d 3 (1947)). In 1987, the Massachusetts Supreme Judicial Court reversed that rule, holding that given current "social mores and modern legal developments ... the word 'issue' absent clear expressions of a contrary intent, must be construed to include all biological descendants." *Powers*, 506 N.E.2d at 846, 848. However, the court only applied the rule to trust instruments executed after the date of the opinion. *Powers*, 506 N.E.2d at 849. Here, the trust instrument was executed long before 1987, and there is nothing in President Kennedy's will to suggest he intended to include non-marital children as beneficiaries. Therefore, even if Plaintiffs assertion that he is President Kennedy's son could be substantiated, he would not be entitled to inherit under the will. Accordingly, the Trustees could not owe him a fiduciary duty.

While Plaintiff attempts to recast his breach of fiduciary claim as a tort, New York choice of law requires application of New York law, and the result is no different. Pursuant to New York EPTL, "the rights of individuals who may have an interest in a decedent's estate are fixed as of the date of death." *Matter of Malavase*, 133 A.D.2d 759, 520 N.Y.S.2d 49, 50 (1987). Under New York law, at the time of President Kennedy's death, "a child born out of wedlock could share in the distribution of his intestate father's estate only if (1) a court of competent jurisdiction had made an order of filiation during the father's lifetime, or (2) the father had signed an instrument acknowledging paternity." *Malavase*, 520 N.Y.S.2d at 50. Because Plaintiff cannot satisfy either of these conditions, he could not share in any distribution from President Kennedy's estate, even if he could establish that he is President Kennedy's son.

## ***CONCLUSION***

For the foregoing reasons, Defendants' motion to dismiss the Amended Complaint is granted and this action is dismissed. The Clerk of the Court is directed to mark this case as closed.

SO ORDERED.

## **NOTES**

[1] Plaintiff changed his name from John Ruben Burton to John Fitzgerald Kennedy in 1994. (Affidavit of Yocheved Cohen dated Apr. 14, 2009 Ex. A: Petition for Change of Name dated July 8, 1994.)

[2] The zipcode (11385) and street address (1672 Grove Street) Plaintiff identifies in the August 7, 2008 letter are found in Queens, not Manhattan. At oral argument, Plaintiff's counsel acknowledged that Plaintiff traveled from his Queens address, where he had spent the night, to attend the hearing. (Transcript dated May 22, 2009 at 13.)

09-3043-cv

*Kennedy v. The Trustees of the Testamentary Trust of the Last Will and Testament of President John F. Kennedy*

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

Summary orders do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this court's Local Rule 32.1.1. When citing a summary order in a document filed with this court, a party must cite either the Federal Appendix or an electronic database (with the notation "summary order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.

1 At a stated term of the United States Court of Appeals for the Second Circuit, held at the  
2 Dimiel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on  
3 the 28th day of October, two thousand ten.

4  
5 PRESENT: GUIDO CALABRESI  
6 DEBRA ANN LIVINGSTON,  
7 *Circuit Judges,*  
8 PAUL A. CROTTY,  
9 *District Judge"*

10  
11  
12 JOHN FITZGERALD KENNEDY,  
13 *Plaintiff-Appellant,*

14  
15 -v.-

No. 09-3043-cv

16  
17 THE TRUSTEES OF THE TESTAMENTARY TRUST OF THE LAST WILL AND TESTA-  
18 MENT OF PRESIDENT JOHN F. KENNEDY,  
19 *Defendants-Appellees. \*\**

20  
21  
22 Paul Benjamin Dalnoky, New York, NY, for Plaintiff-  
23 Appellant

24  
25 Harlan A. Levy, Boies, Schiller & Flexner LLP, New York, NY, for  
26 Defendants-Appellees.  
27

\_\_\_\_\_  
\*The Honorable Paul A. Crotty, of the United States District Court for the Southern District of New York, sitting by designation.

\*\*The Clerk of the Court is directed to amend the official caption to conform with the caption above.



1 UPON DUE CONSIDERATION, it is hereby ORDERED, ADJUDGED, AND DECREED  
2 that the judgment of the district court be AFFIRMED.

3 Plaintiff-Appellant John Fitzgerald Kennedy appeals from a judgment of the District Court  
4 entered on June 19, 2009 (Pauley, J.), dismissing his Amended Complaint based on the probate  
5 exception to the federal courts' diversity jurisdiction and on Federal Rule of Civil Procedure  
6 12(b)(6). Plaintiff alleged that he was a biological son of the late President Kennedy and that the  
7 Defendants breached fiduciary duties to him in their handling of his demand to share in the proceeds  
8 of the testamentary trust established by the late President for the benefit of his children. We assume  
9 the parties' familiarity with the underlying facts, the procedural history of the case, and the issues  
10 on appeal.

11 With respect to the dismissal of one of Plaintiff's claims due to the "probate exception" to  
12 diversity jurisdiction,"[ w]e review questions of subject-matter jurisdiction *de novo*." *Lefkowitz v.*  
13 *Bank of New York*, 528 F.3d 102, 107 (2d Cir. 2007). We apply the same *de novo* standard of review  
14 to the dismissal of the remainder of his complaint for failure to state a claim under Rule 12(b)(6).  
15 *Kuck v. Danaher*, 600 F.3d 159, 162 (2d Cir. 2010). "[A]s a matter of substance, '[t]o survive a  
16 motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a  
17 claim to relief that is plausible on its face."' *Id.* (alteration in original) (quoting *Ashcroft v. Iqbal*,  
18 12-> S.Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007))).

19 As this Circuit has recently noted,"[ t]he 'probate exception' is an historical aspect of federal  
20 jurisdiction that holds 'probate matters' are excepted from the scope of federal diversity  
21 jurisdiction." *Lefkowitz v. Bank of New York*, 528 F.3d 102, 105 (2d Cir. 2007). In *Marshall v.*  
22 *Marshall*, 547 U.S. 293 (2006), the Supreme Court clarified the scope of this exception, stating that

1 it "reserve to state probate courts the probate or annulment of a will and the administration of a  
2 decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in  
3 the custody of a state probate court. But it does not bar federal courts from adjudicating matters  
4 outside those confines and otherwise within federal jurisdiction." *Id.* at 311-12. We have thus found  
5 that the exception applied to claims in which the plaintiff sought "in essence, disgorgement of funds  
6 that remain under the control of the Probate Court," *Lefkowitz*, 528 F.3d at 107, but not to claims  
7 of breach of fiduciary duty in which the defendant sought "damages from Defendants personally  
8 rather than assets or distributions from [an] estate." *Id.* at 107-08.

9 The district court found that the exception applied to Plaintiffs' request for an order  
10 compelling Defendants, upon proof of his claim to being a beneficiary of a class gift in President  
11 Kennedy's will, to pay to him funds from the testamentary trust representing his past, present, and  
12 future entitlement under the will. It found that the exception did not apply, however, to his request  
13 for an order that would compel Defendant Edelman to investigate Plaintiff's claim. We agree with  
14 respect to both claims. The Supreme Court has noted that "while a federal court may not exercise  
15 its jurisdiction to disturb or affect the possession of property in the custody of a state court, it may  
16 exercise its jurisdiction to adjudicate rights in such property where the final judgment does not  
17 undertake to interfere with the state court's possession save to the extent that the state court is bound  
18 by the judgment to recognize the right adjudicated by the federal court." *Markham v. Allen*, 326  
19 U.S. 490, 494 (1946) (citations omitted). Unlike in *Markham*, in which the federal court simply  
20 declared the plaintiff was entitled to share in the estate in dispute, the Plaintiff in this case is seeking  
21 not simply a declaration of entitlement to funds from the testamentary trust, but rather a court order  
22 compelling payment to the extent he is found to be so entitled. Thus, while Plaintiffs' first claim

1 seeks only to compel Defendant Edelman to perform his purported fiduciary duty to investigate  
2 Plaintiff's claim, the second asks the Court "to dispose of property that is in the custody of a state  
3 probate court," *Marshall*, 547 U.S. at 293, in this case, the court administering the testamentary  
4 trust, and thus falls within the exception. As a result, while the probate exception does not bar  
5 consideration of the first claim, we are without jurisdiction to consider Plaintiff's second claim.

6 With respect to the first claim, that Defendants breached a fiduciary duty to Plaintiff in  
7 failing to investigate his claim, we affirm the District Court's dismissal under Rule 12(b)(6). The  
8 parties agree and the plain terms of the will reflect that the testamentary trust in President Kennedy's  
9 will was established for the benefit of his "children." In order for the Defendants-Trustees to owe  
10 the Plaintiff a fiduciary duty as a beneficiary of this trust, then, he must fall within the meaning of  
11 the term "children" in the will. The Plaintiff alleges that he made a demand for his share of the  
12 inheritance, in a letter to each of the Defendants, pursuant to his status as a purported biological son  
13 of the late President. As the letters to each trustee, attached to his complaint, reflect, however, he  
14 does not claim to be a legitimate child of the President but rather an illegitimate son of the President  
15 and the late actress Marilyn Monroe. The district court held that under Massachusetts law at the  
16 time that President Kennedy's will was executed, "in the absence of anything indicating a contrary  
17 intent," words like "issue" or "children" referred only to "persons of the class who were born in  
18 lawful wedlock." *Kennedy v. The Trustees of the Testamentary Trust of the Last Will and Testament*  
19 *Of President John F. Kennedy*, No. 08 Civ. 8889 (WHP), slip op. at 7 (S.D.N.Y. June 19, 2009)  
20 (quoting *Powers v. Wilkinson*, 506 N.E.2d 842, 844 (Mass. 1987)). Finding no such indicia of  
21 contrary intent in the will, the court dismissed Plaintiff's claim.



1 As an initial matter, we agree with the district court that Massachusetts law applies to the  
2 construction of the will at issue in this case. Sitting in diversity, we apply the choice-of-law rules  
3 of the forum state, here New York. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496-97  
4 (1941). Under New York law, "[i]nterpretation of a testamentary disposition of personal property  
5 shall be made in accordance with the local law of the jurisdiction in which the testator was domiciled  
6 at the time the will was executed." N.Y. Estates, Powers and Trusts Law § 3-5.1. As President  
7 Kennedy's will indicates he was domiciled in Massachusetts at the time of its execution, we look to  
8 Massachusetts law in construing its terms.

9 As the district court noted, under Massachusetts law applicable to wills executed before  
10 1977, terms like "children" were presumed to include only marital children to the exclusion of any  
11 non-marital children. *Powers*, 506 N.E.2d at 844. Even with that presumption, however, "[i]t is  
12 fundamental that a trust instrument must be construed to give effect to the intention of the donor as  
13 ascertained from the language of the whole instrument considered in the light of circumstances  
14 known to the donor at the time of its execution." *Id.* at 843 (quoting *Groden v. Kelley*, 415 N.E. 2d  
15 850 (Mass. 1981)). However, in seeking to establish that intention, Plaintiff alleges only that  
16 President Kennedy used variants of "child" rather than "issue" in describing the class gift to his  
17 children, that he never used a more specific phrase to limit the class gift to children of his marriage,  
18 and that an Executive Order signed almost nine years after his will was executed defined "child" for  
19 the purposes of the Selective Service Regulations as including both legitimate and illegitimate  
20 children. Manifestly, none of these allegations suffice even to suggest intent on the part of President  
21 Kennedy to provide for non-marital children through the use of the term "children" in his will.  
22 While presumptions may be overcome, the lack of anything in President Kennedy's will indicating

1 an intent to include non-marital children as beneficiaries and the failure to allege any facts that  
2 could, if true, overcome the presumption makes dismissal for failure to state a claim appropriate in  
3 this case. As the Massachusetts Supreme Court, construing the word "issue" held, "Because nothing  
4 indicates an intent by the donor to include nonmarital issue, precedent requires us to presume that  
5 the donor intended, in accordance with the law extant at the time the instrument was executed, to  
6 exclude nonmarital descendants from the class denoted by [the] use of the word 'issue.'" *Powers*,  
7 39} Mass. at 654.

8 We have considered Kennedy's other arguments on appeal and find that they are without  
9 merit or moot. For the foregoing reasons, the judgment of the district court is hereby AFFIRMED.

10

11

12

FOR THE COURT:

13

Catherine O'Hagan Wolfe, Clerk

14

15

16



PARTNER

# Harlan Levy



**New York**

55 Hudson Yards  
 20th Floor  
 New York, NY 10001  
 Phone 212 446 2360

**PROFILE**

**Harlan Levy is a leading attorney practicing in governmental investigations and litigation, business litigation, and white collar criminal defense.**

He recently represented the Commonwealth of Kentucky in a case alleging price-gouging by gasoline suppliers in the wake of Hurricane Katrina, resulting in a \$22.5 million settlement. He successfully defended Delta Air Lines against BP in a breach-of-contract case. He represented Centene in connection with approval by the New York Attorney General's Office of its \$3.75 billion acquisition of Fidelis Care. He successfully represented the New York City Mayor's chief fundraiser in year-long criminal public corruption investigations by federal and state prosecutors.

A partner in the firm from 2000-2010 and since 2015, Harlan served as the second-ranking official in the New York State Attorney General's Office from 2011-2015, as First Deputy Attorney General, and then Chief Deputy Attorney General and Counsel to the Attorney General. He oversaw many of that office's most significant investigations and litigations. Earlier in his career he served as an Assistant District Attorney in the Major Offense Bureau of the Manhattan DA's Office, where he was an accomplished trial lawyer and tried 18 felony jury cases to verdict. He was a law clerk to Judge Leonard Moore of the United States Court of Appeals for the Second Circuit.

Harlan is a member of the Board of Directors of the Association of the Bar of the City of New York, former Chair of the Association's Council on Criminal Justice, and former President of the Federal Bar Council American Inns of Court. His published articles include most recently "NY Data Security Law Will Dramatically Expand AG's Reach," Law 360 (2020), and he authored a popular book about DNA in the courtroom published in hardcover by Basic Books/HarperCollins, and also as a mass

**PRACTICES**

- Antitrust
- Product Liability
- Securities Litigation
- Banking and Financial Services
- Global Investigations and White Collar Defense
- Crisis Management and Government Response

**EDUCATION**

- Columbia Law School**, J.D., *Charles Evans Hughes Fellow*; *Executive Editor, Columbia Human Rights Law Review*
- Amherst College**, B.A., *magna cum laude*; "*First Citizen of the College*" Prize; *Class Day Speaker, Commencement*

**ADMISSIONS**

- Bars**
- New York
- U.S. Court of Appeals: Second Circuit
- U.S. District Court: Southern District of New York
- U.S. District Court: Eastern District of New York

**AWARDS AND ASSOCIATIONS**

- Board of Directors, Association of the Bar of the City of New York (2018-2022)
- Law Power 50 City and State (2019)



He has been named one of New York City and State's most influential lawyers (City & State 2020 Law Power 100, City & State 2019 Law Power 50) and one of the 500 Leading Lawyers in America (Lawdragon 2017-2020). His leadership has been recognized with the John J. McCloy Award from the Fund for Modern Courts and Citizens Union's Public Service Award. At Amherst College he received the Psi Upsilon or "First Citizen of the College" prize and was Class Day Speaker at Commencement.

President, Federal Bar Council Inn of Court (2017-2018)

Lawdragon 500 Leading Lawyers in America (2017-2020)

John J. McCloy Award, Fund for Modern Courts (2016)

Public Service Award, Citizens Union (2016)

Chair, Council on Criminal Justice, New York City Bar Association (2009-2011)

New York Super Lawyers (Business Litigation and White Collar Criminal Defense)

**PUBLICATIONS & PRESENTATIONS**

**Publications**

**NY Data Security Law Will Dramatically Expand AG's Reach,** Law360 (2020)

A Playbook for State AGs to Defeat Trump, New York Daily News (2017)

The New World of Campus Sexual Assault, Huffington Post (2016)

Making Experts Matter, Litigation Magazine (American Bar Association: 2008)

Protecting the Innocent: A Proposal for New York, New York Law Journal, H. Levy and S. Wilson (2008)

**Caught Up in DNA's Growing Web,** New York Times (2006) (named Best Column in the United States by the magazine The Week)

Chapter on DNA, Cases and Materials on Evidence, Waltz and Park (Foundation Press: 1999)

Stolen and Smuggled Art, New York Law Journal, H. Levy and C. Lowenthal (1997)

And the Blood Cried Out: A Prosecutor's Spellbinding Account of the Power of DNA (Basic Books/ HarperCollins: 1996) (hardcover); (Avon Books: 1997) (mass market paperback); (Hara Shoba: 1998) (Japanese) ("Superb," The Wall Street Journal; "Riveting," Publishers Weekly)

OJ v. DNA, Chapter in J. Abramson, Postmortem: The OJ Simpson Case (Basic Books/HarperCollins: 1996)

Jury Selection in Criminal Cases, published both in New York County District Attorney's Office Trial Advocacy Manual and New York State Basic Course for Prosecutors (1992)

DNA Evidence in Rape and Homicide Cases, New York County District Attorney's Office Homicide Manual (1992)

DNA: Race, Ethnicity and Statistical Evidence, New York Law Journal (1990)

DNA Evidence, New York Law Journal (1989)

**Presentations**

**CLERKSHIPS**

Hon. Leonard P. Moore, U.S. Court of Appeals: Second Circuit

# Schulte Roth & Zabel LLP

## MARCY RESSLER HARRIS



Partner

919 Third Avenue  
New York, New York 10022  
United States of America  
P: +1 212.756.2271  
E: [marcy.harris@srz.com](mailto:marcy.harris@srz.com)

Marcy Ressler Harris concentrates her practice in the areas of securities enforcement and regulatory investigations and litigation for financial services industry clients, including hedge funds and funds of funds. Marcy also has an active litigation practice involving family disputes, will contests and other Surrogate's Court matters, contested guardianships, and matters involving claims of undue influence, incapacity and breach of fiduciary duty. Since December 2008, she has been actively involved defending former customers of Bernard L. Madoff Investment Securities LLC against clawback litigation in the SIPA Bankruptcy case and in related proceedings, including Jeffrey M. Picower, his estate, executor and affiliated parties. Previously, Marcy successfully defended several funds within the Sterling Stamos fund of funds group against clawback litigation brought by the receiver for the Bayou Group, LLC and Bayou Superfund, LLC. Marcy has represented numerous individuals and fund managers in SEC enforcement matters and investigations related to insider trading, market manipulation, disclosure, pricing and valuation issues, and various other types of alleged securities fraud. During more than 25 years at the firm, she has litigated in federal and state courts in New York and elsewhere, conducted trials, arbitrations and mediations, provided ongoing litigation and regulatory compliance counseling, and represented companies, officers, directors and board committees in connection with activist litigations, failed corporate and derivatives transactions, and internal investigations related to accounting fraud, conflicts of interest, insider trading and internet abuse.

Marcy graduated *magna cum laude* from Yale University with a B.A. degree and received her J.D. degree from New York University School of Law. Formerly a professional journalist, she is a member of the bars of Connecticut and New York, the U.S. District Courts for the Southern and Eastern Districts of New York, and the U.S. Court of Appeals for the Second Circuit.

### SELECTED REPRESENTATIONS

#### Bankruptcy and Securities Litigation

*Picard v. Picower, et al.* (Bankr. S.D.N.Y.): Represented largest individual investor in SIPA liquidation proceeding involving Bernard L. Madoff Investment Securities LLC, resulting in largest SIPC settlement in history.

*Bayou Superfund, LLC v. Sterling Stamos Security Fund, L.P., et al.* (Bankr. S.D.N.Y.): Survived Bayou receiver's motion for summary judgment which sought to avoid investors' pre-petition redemption payments upon Court finding that investors' good faith defense raised fact questions requiring jury determination. Ruling led to successful settlement for client.

*Arbor Place, LP, et al. v. Weiss, et al.* (Del. Chancery Ct.): Defended former hedge fund investors against current investors' claims of unjust enrichment and fraudulent transfer, leading to voluntary dismissal of case with prejudice.

*Alteram S.A., et al. v. Beacon Hill Asset Management LLC, et al.* (S.D.N.Y.): Obtained dismissal of offshore hedge fund administrator from litigation related to failure of Beacon Hill hedge funds.

#### Civil Litigation

*Kerr-McGee Corp. v. Carl C. Icahn, et al.* (W.D. Okla.): Defended multibillion dollar hedge fund in

### PRACTICES

- 1 Litigation
- 1 Bankruptcy & Creditors' Rights Litigation
- 1 Nonprofit
- 1 Regulatory & Compliance
- 1 Securities Enforcement
- 1 Securities Litigation

proxy contest against oil and gas company, resulting in favorable settlement for client and adoption by Kerr-McGee of client's corporate initiatives.

*John Fitzgerald Kennedy v. The Trustees of the Testamentary Trust of the Last Will and Testament of John F. Kennedy* (S.D.N.Y.): Obtained dismissal of claims for genetic testing and to recover inheritance by purported non-marital child of the late President Kennedy and Marilyn Monroe. Judgment affirmed by Second Circuit.

*ACG Credit Company, LLC v. Berry-Hill Galleries, Inc., et al.* (Sup. Ct. N.Y. Co.): Defended family-owned art gallery against loan default claims.

*Brooklyn Navy Yard Cogeneration Partners, L.P. v. PMNC, et al.* (Sup. Ct. Kings Co.): After full discovery, obtained favorable settlement on behalf of joint venture in breach of contract and professional negligence action relating to design and construction of cogeneration power plant.

*In re ABN AMRO Bank, N.V.* (Sup. Ct. N.Y. Co.): Obtained permanent stay of arbitration based on lack of NYSE jurisdiction over foreign bank.

*Farberware, Inc. v. William Groben, et al.* (S.D.N.Y.): Following internal investigation, prosecuted civil RICO and fraud action against corporate vice president and vendors related to kickback and invoice inflation scheme. Obtained judgments, insurance recovery and restitution award.

#### **Health Care and White Collar**

*United States v. Maloney, et al.* (D. Mass.): Obtained acquittal for chairman and CEO of medical devices manufacturer on charges of conspiring to defraud the FDA following eight-week jury trial.

Obtained immunity from prosecution for chairman and CEO of major clinical laboratory in connection with investigation into laboratory billing practices.

Represented senior manager of national blood testing laboratory in connection with allegations of test-tampering.

*United States v. Freidin* (2d Cir.): Obtained reversal of conviction for personal income tax evasion on behalf of lawyer and then "Big-Six" accountant.

#### **Pro Bono**

*Cabrera v. AM Realty Co., Inc., et al.* (E.D.N.Y.): Investigated and prosecuted housing discrimination action resulting in jury finding that landlords may be liable for employing real estate brokers engaged in racial steering. Decision affirmed by Second Circuit.

Obtained political asylum for individuals fleeing persecution in China and Togo.

Ongoing work with Human Rights First on internet freedom and privacy matters.

#### **SELECTED PUBLICATIONS**

"Regulation Fair Disclosure," *Insider Trading Law and Compliance Answer Book* (Practising Law Institute), 2011-2016 (co-author)

"Cross-Examining the Accomplice Witness," *Litigation*, Vol. 14, No. 1, Fall 1987 (co-author); republished in *The Art of Cross-Examination, Essays from the Bench and Bar* (American Bar Association), August 2014

*SRZ Insider Trading Developments Newsletter*, Summer 2014 (contributor)

[More](#)

#### **SELECTED SPEAKING ENGAGEMENTS**

"Role of Expert Witnesses in Complex Litigation," Practising Law Institute Expert Witness, New York, June 2016

"Role of Expert Witnesses in Complex Litigation," Practising Law Institute Expert Witness, New York, June 2015



(TYPE OR PRINT, BLACK INK ONLY)

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS)  JOHN BURTON 343 s. Detroit st. Apt #101 Los Angeles, California, 90036  Attorney(s) For	TELEPHONE NUMBER          (FOR COURT USE ONLY)  <p style="text-align: center; font-size: 1.2em;">ORIGINAL FILED</p> <p style="text-align: center;">JUL 08 1994</p> <p style="text-align: center; font-size: 1.2em;">LOS ANGELES SUPERIOR COURT</p>
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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

IN THE MATTER OF THE PETITION OF (NAME):  JOHN RUBEN BURTON HILDA TOBIAS BURTON WILLIAM HENRY BURTON  FOR CHANGE OF NAME.	CASE NUMBER <p style="text-align: center; font-size: 1.5em;">BS024422</p> PETITION FOR CHANGE OF NAME HEARING DATE: <u>Sept. 9, 1994</u> TIME: <u>9:00</u> DEPT.: <u>1A</u>
---	---

Petitioner (name): JOHN RUBEN BURTON, HILDA TOBIAS BURTON, & WILLIAM HENRY BURTON  
(PRESENT NAME OF PERSON WHOSE NAME IS TO BE CHANGED)

and if under 18 years of age by \_\_\_\_\_  
(NAME OF PARENT OR GUARDIAN)  
 (relationship to petitioner) \_\_\_\_\_ declares:  
(STATE RELATIONSHIP)

1. Petitioner \_\_\_\_\_ is:
  - over 18 years of age.
  - under 18 years of age. Date of birth: 07-22-55, 3-31-32, & 08-07-77  
(MONTH, DAY, YEAR)
2. Petitioner's place of birth: Los Angeles USA, the Republic of Guatemala, & Los Angeles USA.
3. Petitioner's present address: 343 s. Detroit street #101, Los Angeles, CA., 90036  
(STREET, CITY AND COUNTY)
4. Petitioner's present name: JOHN RUBEN BURTON, HILDA TOBIAS BURTON, WILLIAM HENRY BURTON
5. Petitioner's proposed name: JOHN FITZGERALD KENNEDY, HILDA TOBIAS KENNEDY, WILLIAM HENRY KENNEDY.

6. Reason for proposed change of name: The parties herein have retained an Attorney to correct the determined biological names of these petitioning. Such as John R. Burton is the legitimate offspring of Marilyn Monroe and President John F. Kennedy and said Attorney and others acknowledge this statement, and from that point, the relationship of each of these Burton's right to the Kennedy name. -And the mentioned Attorney has not acted satisfactorily and in good conscious, the petitioned do, under penalty of perjury.

ATTORNEY OR PARTY WITHOUT ATTORNEY  
(NAME AND ADDRESS)

TELEPHONE NUMBER

(FOR COURT USE ONLY)

JOHN BURTON  
543 s. Detroit st. Apt #101  
Los Angeles, California, 90036

**FILED**  
LOS ANGELES SUPERIOR COURT  
FO SEP 09 1994  
EDWARD M KRITZMAN, CLERK  
BY M WIGGINS, DEPUTY

Attorney(s) For

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

IN THE MATTER OF THE PETITION OF (NAME):

CASE NUMBER

JOHN RUBEN BURTON  
HILDA TOBIAS BURTON  
WILLIAM HENRY BURTON

**BS029422**

**DECREE CHANGING NAME**

HEARING DATE: Sept 9, 1994

TIME: 9:00 A.M.

DEPT.: 1A

FOR CHANGE OF NAME.

The petition of JOHN RUBEN BURTON, HILDA TOBIAS BURTON, AND WILLIAM HENRY BURTON

(PRESENT NAME)

for an order of court changing THEIR name(s) to JOHN FITZGERALD KENNEDY, HILDA TOBIAS

(MIS. HER, THEIR)

KENNEDY, AND WILLIAM HENRY KENNEDY.

(PROPOSED NAME(S))

in place of THEIR present name(s) came on regularly to be heard in Department

(MIS. HER, THEIR)

1A of the above-entitled court on Sept 9, 1994, and proof having been made

(MONTH, DAY, YEAR)

to the satisfaction of the court that notice of hearing was given in the manner and form required by law and order of this court, and no objections having been filed by any person, and evidence having been produced on behalf of petitioner(s) in support of the petition, and the court being satisfied that there is no reasonable objection to the petitioner(s) assuming the name(s) proposed; and it appearing to the satisfaction of the court that all the allegations of the petition are true and that the order sought should be granted;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that petitioner(s) name(s) of

John Ruben Burton, Hilda Tobias Burton, William Henry Burton

is/are hereby changed to John Fitzgerald Kennedy, Hilda Tobias Kennedy, William Henry Kennedy

Dated:

**SEP 09 1994**

Judge/Commissioner of the Superior Court

RC 154/3-83

MURRAY GROSS  
COMMISSIONER

405

Appendix J.



PARTY WITHOUT AN ATTORNEY (Name and Address): John Burton, Hilda Tobias Burton, and William Henry Burton. 343 South Detroit Street, Apartment Number 101 Los Angeles, California, 90036-0542  In Pro Per	TELEPHONE NO.   FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF: Los Angeles. STREET ADDRESS: 111 North Hill Street, Department 1A. MAILING ADDRESS: 111 North Hill Street, Department 1A. CITY AND ZIP CODE: Los Angeles, 90012 BRANCH NAME: Los Angeles.	
IN THE MATTER OF THE APPLICATION OF:  John Ruben Burton, Hilda Tobias Burton, and William Henry Burton.	
PROOF OF SERVICE (NAME CHANGE)	CASE NUMBER: BS029422

I declare that:

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My business or residence address is: 361 Salem St #5 Glendale CA 91203
3. I served copies of the Order to show Cause for Change of Name in the manner shown (check either a or b below):

a.  Personal Service. I personally delivered these papers to:

- (1) Name of person served:
- (2) Address where served:

- (3) Date served:
- (4) Time served:

b.  Certified mail, return receipt requested. I deposited these papers in the United States mail, in a sealed envelope with postage fully prepaid. I used certified mail and requested a return receipt. The envelope was addressed and mailed to:

- (1) Name of person served: U.S. Ambassador to Ireland, Jean Ann Kennedy Smith.
- (2) Address to which documents were mailed: The United States Embassy in Ireland, 42 Elgin Road, Ballbridge Dubland, Ireland, Europe.
- (3) Date documents were mailed: July 26, 1994.
- (4) City and State where mailing occurred: Los Angeles, California.
- (5) The signed return receipt is attached. Postal Identification: [R-324-232-705]

4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 9/17/94

Pedro Reyes  
 (Type or Print Name of Process Server)

  
 Signature of Process Server

NP

PROOF OF SERVICE (NAME CHANGE)

Appendix



is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- Addressee's Address
- Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:  
 To Honorable Sen. Edward M. Kennedy,  
 409 J.F.K. Federal Building  
 Boston, Massachusetts,  
 02203

4a. Article Number  
 P025940 277

4b. Service Type  
 Registered  Insured  
 Certified  COD  
 Express Mail  Return Receipt for Merchandise

7. Date of Delivery  
 7/28/94

5. Signature (Addressee)  
 Beth Duchon

6. Signature (Agent)  
 RF

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1991 U.S. GPO: 1992-322-714 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- Addressee's Address
- Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:  
 Jean Ann Kennedy Smith  
 220 East 62nd Street  
 New York City, New York, 10021-8209

4a. Article Number  
 P025940 277

4b. Service Type  
 Registered  Insured  
 Certified  COD  
 Express Mail  Return Receipt for Merchandise

7. Date of Delivery

5. Signature (Addressee)  
 [Signature]

6. Signature (Agent)  
 [Signature]

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1991 U.S. GPO: 1992-322-402 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

PARTY WITHOUT AN ATTORNEY (Name and Address): John Burton, Hilda Tobias Burton, and William Henry Burton. 343 South Detroit Street, Apartment Number 101. Los Angeles, California, 90036-0542  In Pro Per	TELEPHONE NO.	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF: Los Angeles. STREET ADDRESS: 111 North Hill Street, Department 1A. MAILING ADDRESS: 111 North Hill Street, Department 1A. CITY AND ZIP CODE: Los Angeles, 90012 BRANCH NAME: Los Angeles.		
IN THE MATTER OF THE APPLICATION OF:  John Ruben Burton, Hilda Tobias Burton, and William Henry Burton.		
PROOF OF SERVICE (NAME CHANGE)		CASE NUMBER BS029422

I declare that:

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My business or residence address is: 341 Salem St #5 Glendale CA. 91203
3. I served copies of the Order to show Cause for Change of Name in the manner shown (check either a or b below):

a.  Personal Service. I personally delivered these papers to:

- (1) Name of person served:
- (2) Address where served:

(3) Date served:

(4) Time served:

b.  Certified mail, return receipt requested. I deposited these papers in the United States mail, in a sealed envelope with postage fully prepaid. I used certified mail and requested a return receipt. The envelope was addressed and mailed to:

- (1) Name of person served: The Honorable Senator Edward Moore Kennedy.
- (2) Address to which documents were mailed: 409 J.F.K. Federal Building, Boston, Massachusetts, 02203.
- (3) Date documents were mailed: July 26, 1994.
- (4) City and State where mailing occurred: Los Angeles, California.
- (5) The signed return receipt is attached. Postal Identification Number: (P-025-940-277).

4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 9/17/94

Pedro Reyes  
 (Type or Print Name of Process Server)

Pedro Reyes  
 Signature of Process Server

NP

PROOF OF SERVICE (NAME CHANGE)

Appendix

PARTY WITHOUT AN ATTORNEY (Name and Address): John Burton, Hilda Tobias Burton, and William Henry Burton. 343 South Detroit Street, Apartment Number 101 Los Angeles, California, 90036-0542  In Pro Per	TELEPHONE NO:          FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF: Los Angeles. STREET ADDRESS: 111 North Hill Street, Department 1A. MAILING ADDRESS: 111 North Hill Street, Department 1A. CITY AND ZIP CODE: Los Angeles, 90012 BRANCH NAME: Los Angeles.	
IN THE MATTER OF THE APPLICATION OF:  John Ruben Burton, Hilda Tobias Burton, and William Henry Burton.	
PROOF OF SERVICE (NAME CHANGE)	CASE NUMBER: BS029422

I declare that:

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My business or residence address is: 241 Salem St #5 Glendale CA 91203
3. I served copies of the Order to show Cause for Change of Name in the manner shown (check either a or b below):


a.  Personal Service. I personally delivered these papers to:

- (1) Name of person served:
- (2) Address where served:
- (3) Date served:
- (4) Time served:

b.  Certified mail, return receipt requested. I deposited these papers in the United States mail, in a sealed envelope with postage fully prepaid. I used certified mail and requested a return receipt. The envelope was addressed and mailed to:

- (1) Name of person served: Jean Ann Kennedy Smith.
- (2) Address to which documents were mailed: 220 East 62nd Street, New York City, New York, 10021-8201.
- (3) Date documents were mailed: July 26, 1994.
- (4) City and State where mailing occurred: Los Angeles, California.
- (5) The signed return receipt is attached. Postal Identification: [P-025-940-279]

4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Pedro Reyes 9/17/94   
 (Type or Print Name of Process Server) Signature of Process Server

NP PROOF OF SERVICE (NAME CHANGE)



PARTY WITHOUT AN ATTORNEY (Name and Address): John Burton, Hilda Tobias Burton, and William Henry Burton. 343 South Detroit Street, Apartment Number 101 Los Angeles, California, 90036-0542  In Pro Per	TELEPHONE NO.           FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF: Los Angeles. STREET ADDRESS: 111 North Hill Street, Department 1A. MAILING ADDRESS: 111 North Hill Street, Department 1A. CITY AND ZIP CODE: Los Angeles, 90012 BRANCH NAME: Los Angeles.	
IN THE MATTER OF THE APPLICATION OF:  John Ruben Burton, Hilda Tobias Burton, and William Henry Burton.	
PROOF OF SERVICE (NAME CHANGE)	CASE NUMBER BS029422

I declare that:

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My business or residence address is: 361 Salem St #5 Glendale CA. 91203
3. I served copies of the Order to show Cause for Change of Name in the manner shown (check either a or b below):

a.  Personal Service. I personally delivered these papers to:

- (1) Name of person served:
- (2) Address where served:

(3) Date served:

(4) Time served:

b.  Certified mail, return receipt requested. I deposited these papers in the United States mail, in a sealed envelope with postage fully prepaid. I used certified mail and requested a return receipt. The envelope was addressed and mailed to:

- (1) Name of person served: The Honorable Senator Edward Moore Kennedy.
- (2) Address to which documents were mailed: 315 Russell Building, Washington D.C., 20510-0505.
- (3) Date documents were mailed: July 26, 1994.
- (4) City and State where mailing occurred: Los Angeles, California.
- (5) The signed return receipt is attached. Postal Identification Number: 1 P-025-940-2781.

4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 9/17/94

Pedro Reyes  
 (Type or Print Name of Process Server)

Pedro Reyes  
 Signature of Process Server

NP

PROOF OF SERVICE (NAME CHANGE)

Appendix