

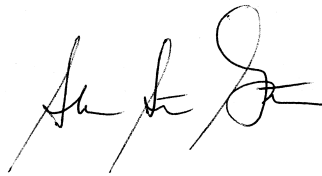
April 3, 2018

To: Members of the House of Delegates

Re: April 14, 2018 meeting

Enclosed are the agenda and related background materials for the upcoming meeting of the House of Delegates scheduled to begin at 9:30 a.m. on Saturday, April 14, 2018 at the Bar Center in Albany.

We look forward to seeing you in Albany.



Sharon Stern Gerstman
President



Michael Miller
President-Elect



**NEW YORK STATE BAR ASSOCIATION
MEETING OF THE HOUSE OF DELEGATES
BAR CENTER, ALBANY, NEW YORK
SATURDAY, APRIL 14, 2018 – 9:30 A.M.**

AGENDA

1. Call to order, Pledge of Allegiance, and welcome 9:30 a.m.
2. Approval of minutes of January 26, 2018 meeting 9:35 a.m.
3. Report of Treasurer – Mr. Scott M. Karson 9:40 a.m.
4. Election of Nominating Committee and State Bar
Delegates to ABA House of Delegates – Mr. Glenn Lau-Kee. 9:55 a.m.
5. Report and recommendations of Criminal Justice Section –
Ms. Leah Rene Nowotarski 10:05 a.m.
6. Report of President – Ms. Sharon Stern Gerstman 10:30 a.m.
7. Report of Committee on Membership – Mr. Thomas J.
Maroney 10:45 a.m.
8. Report and recommendations of Committee on Diversity and
Inclusion – Ms. Lillian M. Moy 11:00 a.m.
9. Report and recommendations of Committee on Families and
the Law – Ms. Susan B. Lindenauer and Ms. Angela O. Burton 11:20 a.m.
10. Report of The New York Bar Foundation – Mr. John H. Gross 11:45 a.m.
11. Administrative Items – Mr. Michael Miller 12:00 p.m.
12. New Business 12:10 p.m.
13. Date and place of next meeting:
Saturday, June 16, 2018
The Otesaga, Cooperstown, New York

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
NEW YORK HILTON MIDTOWN, NEW YORK CITY
JANUARY 26, 2018**

.....

PRESENT: Aaron; Abramson; Alcott; Alomar; Alvarez; Barclay; Barreiro; Bennett; Berman; Billings; Block; Bloom; Bowler; Braunstein; Brown Spitzmueller; Brown, T.A; Bruno; Buholtz; Burke, J.; Burns; Castellano; Chambers; Chandrasekhar; Chang, V.; Christensen; Christopher; Cilenti; Clarke; Cohen, C.; Cohen, D.; Cohen, O.; Cohn; Connery; Davis; Denton; DiFalco; Disare; Doxey; Eberle; Edgar; Effman; Fennell; Fernandez; Ferris; Finerty; First; Fishberg; Foley; Fox; Freedman; Frumkin; Gaddis; Gallagher; Galligan; Genoa; Gensini; Gerbini; Gerstman; Gische; Gold; Goldfarb; Goldschmidt; Grays; Greenberg; Griesemer; Grimaldi; Grogan; Gutekunst; Gutenberger Grossman; Gutierrez; Hack; Haig; Heath; Heller; Hetherington; Himes; Hoffman; Hollyer; Hyer; Jackson; Jaglom; James; Jochmans; Kamins; Karson; Kase; Kean; Kelly; Kiernan; Kiesel; King, B.; Kobak; Koch; Krausz; Lamberti; Lanouette; LaRose; Lau-Kee; Lawrence; Leber; Lessard; Levin Wallach; Levin; Levy; Madden; Madigan; Mancuso; Mandell; Margolin; Mariano; Marinaccio; Maroney; Martin; May; McCann; McGinn; McNamara, C.; McNamara, M.; Meisenheimer; Miller, C.; Miller, M.; Millett; Millon; Minkoff; Miranda; Moretti; Moskowitz; Murphy; Napoletano; Nowotarski; Onderdonk; Ostertag; Owens; Pappalardo; Perlman; Pitegoff; Poster-Zimmerman; Prager; Pruzansky; Quartaro; Richardson; Richman; Richter; Rivera; Rodriguez; Rosner; Russell; Ryan; Safer; Samuels; Santiago; Schofield; Scott; Schraver; Schriever; Schub; Sciocchetti; Shamoan; Sharkey; Shautsova; Sigmond; Silkenat; Singer, C.; Singer, D.; Sonberg; Spicer; Sppirer; Spitler; Standard; Starkman; Steinhardt; Stieglitz; Stong; Strenger; Sullivan; Sweet; Tarver; Tennant; Tesser; Triebwasser; Tully; Udell; Vigdor; Vitacco; Weathers; Weiss; Weston; Whiting; Whittingham; Wicks; Wildgrube; Williams; Wolff; Young; Younger.

Mr. Miller presided over the meeting as Chair of the House.

The meeting was opened with a rendition of the National Anthem by Michael F. Donegan, Counsel of the Commission on Correction, and an invocation by Hon. Milton A. Tingling, Chief Clerk, Supreme Court, New York County.

1. Approval of minutes of November 4, 2017 meeting. The minutes were deemed accepted as distributed.
2. Report of the Treasurer. The Treasurer's report for the preceding fiscal year, which had been presented by Treasurer Scott M. Karson to members of the Association at the Annual Meeting, was received with thanks.
3. Report of the Nominating Committee and election of officers and members-at-large of the Executive Committee. Glenn Lau-Kee, chair of the Nominating Committee, reported that the Committee had nominated the following individuals for election to the indicated offices for the 2018-2019 Association year: President-Elect: Henry M. Greenberg, Albany; Secretary: Sherry Levin Wallach, White Plains; Treasurer: Scott M. Karson, Melville; and Vice Presidents: First District – Taa R. Grays and Carol A. Sigmond, New York City; Second – Aimee L. Richter, Brooklyn; Third – Robert T. Schofield IV,

Albany; Fourth – Matthew R. Coseo, Ballston Spa; Fifth – Jean Marie Westlake, East Syracuse; Sixth – Richard C. Lewis, Binghamton; Seventh – David H. Tennant, Rochester; Eighth – Norman P. Effman, Warsaw; Ninth – Michael L. Fox, Newburgh; Tenth – Peter H. Levy, Jericho; Eleventh – Karina E. Alomar, Ridgewood; Twelfth – Steven E. Millon, New York City; Thirteenth – Jonathan B. Behrins, Staten Island. Nominated as members-at-large of the Executive Committee were Mark A. Berman, New York City; Earamichia Brown, New York City; Evan M. Goldberg, New York City; Erica M. Hines, Albany; Rona G. Shamon, New York City; and Tucker C. Stanclift, Queensbury.

There being no further nominations, a motion was made and carried unanimously to elect the above-named individuals as officers and members-at-large of the Executive Committee.

4. Presentation of awards by Committee on Bar Leaders of New York State. Marne Onderdonk, chair of the committee, presented the Bar Leaders Innovation Awards, which recognize how bar associations adapt to the needs of their members and the community at large by introducing new programs, ideas and methodologies. The Large Bar recipient was the New York County Lawyers Association for its Pro Bono Program on Certificates of Release and the Small Bar recipient was the Greater Rochester Association for Women Attorneys for its Lawyers Coalition on Racial Justice.
5. Presentation of the Ruth G. Schapiro Memorial Award. Ms. Gerstman presented the annual Ruth G. Schapiro Award to past president Bernice K. Leber in recognition of her leadership, lifelong contributions on behalf of women, and commitment to championing equal opportunities for all.
6. Address by Hon. Janet DiFiore, Chief Judge of the State of New York. Chief Judge DiFiore addressed the House of Delegates with respect to the status of Unified Court System initiatives. She provided an update on the Excellence Initiative; the upcoming State of the Judiciary address; the Judiciary's budget request; criminal justice reform; civil legal services; the Judicial Task Force on the New York State Constitution; uniform practice rules for the Appellate Division; and the New York Practice Committee. The report was received with the thanks of the House.
7. Report of Executive Subcommittee on Association Publications. Michael L. Fox, chair of the subcommittee, presented an informational report on Association-wide publications and recommendations to utilize content marketing strategies to increase the reach and value of the publications' content, promote increased readership, and build search engine optimization. The report was received with thanks.
8. Report of President. Ms. Gerstman highlighted items contained in her written report, a copy of which is appended to these minutes.
9. Report and recommendations of Committee on Immigration Representation. Camille Mackler, chair of the committee, presented a report urging that the U.S. Immigration and Customs Enforcement (ICE) include courthouses as a "sensitive location" in its Sensitive Locations Policy and that Congress pass the Protecting Sensitive Locations Act and

amend the Immigration and Nationality Act to codify ICE's Sensitive Locations Policy. After discussion, the following resolution was adopted:

WHEREAS, the New York State Bar Association (NYSBA) has long supported and encouraged equal access to justice and to our courts of law for all, including immigrants residing in New York State; and

WHEREAS, in the past, NYSBA has actively promoted and participated in efforts to provide immigrants in New York with access to justice by promoting access to legal representation through the establishment of a committee specifically for that purpose, as well as through partnerships with Governor Cuomo's Liberty Defense Project; and

WHEREAS, since the beginning of 2017 advocates have noticed an increase in the presence of Immigration and Customs Enforcement (ICE) agents in New York's courthouses, with a study by the Immigrant Defense Project (IDP) showing a eight-fold increase in arrests of immigrants on civil immigration charges within our State's courthouses; and

WHEREAS, the same study by IDP showed that 75% of immigration legal service providers in New York have worked with clients who have expressed fears of going to New York courts, including to resolve criminal charges against them, to act as witnesses, or to obtain orders of protection; and

WHEREAS, leading law enforcement voices in New York, including New York State Attorney General Eric Schneiderman and Kings County Acting District Attorney Eric Gonzalez have spoken of the chilling effect these tactics have had by ICE on immigrants seeking justice in our courts; and

WHEREAS, NYSBA believes that true access to justice includes the ability to appear, defend oneself, and obtain protection from our courts free from the fear of ancillary punishment;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association hereby urges Immigration and Customs Enforcement (ICE) to include courthouses as a "sensitive location" in its Sensitive Locations Policy, which enumerates the places in which ICE will not conduct enforcement actions barring exigent circumstances.

RESOLVED, that the New York State Bar Association also urges Congress to pass the "Protecting Sensitive Locations Act" and to amend Section 287 of the Immigration and Nationality Act to codify the Sensitive Locations Policy and to include courthouses as a sensitive location therein.

10. Report of Task Force on School to Prison Pipeline. Sheila A. Gaddis and John H. Gross, co-chairs of the Task Force, presented an informational report on the Task Force's work to date in reviewing current practices in and law relating to school discipline, with a view

to recommending policy and best practices in discipline and restorative justice. The report was received with thanks.

11. Report of Committee on Membership. Thomas J. Maroney, chair of the Committee on Membership, reported on recent membership developments, including automatic membership renewal via credit card and the planned development of regional membership groups for local focus. The report was received with thanks.
12. Report and recommendations of NYSBA/WBASNY Domestic Violence Initiative. Amy Schwartz-Wallace, co-chair of the Initiative, reviewed the Initiative's work during the past year in the areas of educating attorneys about domestic violence, the need for representation of victims and ensure access to training and education; expanding the pool of volunteer attorneys and opportunities for volunteer service to victims; considering legislation that seeks to protect domestic violence victims. After discussion, the following resolution was adopted:

WHEREAS, domestic violence is ongoing, purposeful behavior aimed at exerting power and control over one's intimate partner and can be psychological, physical, sexual or economic in nature. Women and men who leave abusive relationships frequently have limited resources. Many desperately need legal assistance in seeking orders of protection against their abusers and in dealing with legal issues such as housing, child custody, support and visitation, and divorce; and

WHEREAS, to help address the scourge of domestic violence in New York State, in the summer of 2016 the then-Presidents of the New York State Bar Association (NYSBA) and the Women's Bar Association of the State of New York (WBASNY) created a joint NYSBA/WBASNY Domestic Violence Initiative (the Initiative) to enhance access to legal services by victims of domestic violence in our state; and

WHEREAS, high-quality civil legal assistance plays a vital role in protecting the health and well-being of victims and their children. Research has shown that access to legal services is one of the most effective interrupters of domestic violence, even more effective than access to shelters, hotlines, or counseling. Legal services are the most expensive support services for domestic violence victims, and the services to which the fewest victims have access, yet they are essential to ending the cycle of violence and making a victim whole. Despite tremendous efforts by legal services lawyers and pro bono volunteers, the need dwarfs the available resources. To increase access to justice for domestic violence victims, the Initiative worked with legal service providers, courts, law schools, governmental agencies, local bar associations and pro bono attorneys to educate, recruit and train additional volunteer attorneys; and

WHEREAS, in broad terms, the mission of the Initiative was to help educate attorneys around the state about domestic violence and the need for pro bono representation of victims, expand the existing pool of volunteer attorneys and opportunities for volunteer service to victims of domestic violence; and examine and make recommendations concerning pending or proposed legislation that seeks to protect domestic violence victims; and

WHEREAS, in its final report, the Initiative has made specific recommendations with respect to: 1) education and training, 2) expanding pro bono opportunities and resources for attorneys and bar associations, and 3) legislative advocacy, all in order to better protect and serve victims of domestic violence; and

WHEREAS, recognizing the importance of institutionalizing NYSBA's efforts to continue the work of the Initiative, then-President Gutekunst and leaders of NYSBA's Family Law Section collaborated to create a Domestic Violence Committee within the Section; and

WHEREAS, the Initiative has requested that the New York State Bar Association approve its final report and recommendations;

NOW, THEREFORE, IT IS HEREBY

RESOLVED, that the New York State Bar Association hereby approves the final report and recommendations of the Domestic Violence Initiative; and it is further

RESOLVED, that the officers of the Association are hereby authorized to take such action as they may deem appropriate to publicize the final report and recommendations and to implement the recommendations.

13. Report of Committee on Standards of Attorney Conduct. Profs. Roy D. Simon and Barbara S. Gillers, co-chairs of the committee, provided an update on the committee's comprehensive review of the New York Rules of Professional Conduct. They noted that the proposed changes will fall into three categories: rules changes requiring Appellate Division approval; commentary changes that are contingent on Appellate Division approval of rules changes; and commentary changes that are independent of rules changes. It is anticipated that the committee's report will be presented to the House in November 2018 and/or January 2019. The report was received with thanks.
14. Administrative items. Mr. Miller reported on the following:
 - a. NYSBA delegates to ABA House of Delegates. At the April 14, 2018 meeting, the House would be requested to elect six of the Association's 11 delegates to the American Bar Association House of Delegates. The Nominating Committee had nominated the following individuals: Sharon Stern Gerstman, Buffalo; Henry M. Greenberg, Albany; Kathryn Grant Madigan, Binghamton; David P. Miranda, Albany; Kenneth G. Standard, New York City; and Natasha Shishov, Garden City (Young Lawyer Delegate).
15. New Business.

Report and recommendations of Criminal Justice Section. Tucker C. Stanclift, chair of the section, reviewed a proposed resolution to address bail/pretrial detention reform.

After discussion, a motion was adopted to endorse the following resolution for favorable action by the House:

WHEREAS, more than 60 percent of people in state jails in 2016 were pretrial defendants; and

WHEREAS, cash bail has created a two-tiered criminal justice system that puts an unfair burden on the economically disadvantaged; and

WHEREAS, variations in court practices across the state have resulted in a bail system where the location of an arrest often defines whether or not a person is released pre-trial; and

WHEREAS, New York Governor Andrew Cuomo recently released a framework for a bail reform package¹ that would:

- Create a presumption that defendants facing misdemeanor and non-violent felony charges be released without cash bail, either on their own recognizance (R.O.R.) or with non-monetary conditions imposed by the court, such as supervised release monitored by a pretrial services agency, absent of a record of bench warrants for non-appearance;
- Allow monetary bail, but does not require its use, in remaining cases, after an individualized assessment of the nature of the case and the defendant's personal and financial circumstances;
- Require the court, in cases when bail is set, to give the defendant a choice between cash or bail industry bonds and an alternative form of bail that the judge will set, such as an unsecured or partially secured bond;
- Allow the court, in cases involving domestic violence or other serious violence, or if, while on pretrial release, a defendant commits a crime or willfully fails to come to court, to order a defendant to be held in jail pretrial if the court finds, after due process, that the defendant poses a high risk of not returning to court or poses a current threat to the physical safety of a reasonably identifiable person or persons; and

WHEREAS, the Criminal Justice Section recognizes that many courts rely solely on cash bail or insurance company bond to secure a defendant's future appearances despite the availability of multiple alternatives set forth in the Criminal Procedure Law; and

WHEREAS, the Governor's proposal balances the need to keep our communities safe while minimizing financial hardship;

BE IT THEREFORE RESOLVED, the Office of Court Administration and the Chief Administrator of the Courts are urged to enhance and increase the training and

¹ Governor Andrew Cuomo, *State of the State Book* (2018), pp. 59-60, available at <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2018-stateofthestatebook.pdf>.

education of judges and courtroom personnel and the Bar to the availability of alternatives to cash bail including, but not limited to unsecured and partially secured bonds, as well as (i) simplify and make available forms compliant with the Criminal Procedure Law facilitating secured, partially secured and unsecured (non-financial) release, and (ii) suggest that judges not impose financial conditions unless the arrested person is charged with a crime of violence or there is a likely risk that the arrested person will not appear in court; and be it further

RESOLVED, Supervised Release should be added to Article 530 of the Criminal Procedure Law as a recognized form of recognizance for the release of an arrested person; and be it further

RESOLVED, the Criminal Procedure Law should be amended to provide that the court may not impose financial conditions upon a defendant in a criminal action or proceeding unless the defendant is charged with a crime of violence or there is a likely risk that the defendant will not appear in court; and be it further

RESOLVED, Section 500.17(b) of the Criminal Procedure Law, requiring the “double valuing” of real estate posted to secure release, should be amended to require that the value of posted real estate be at least the amount as the total undertaking (addressing *People ex. Rel. Hardy v. Seiff*, 79 N.Y.2d 618, 620-21 [1992]); and be it further

RESOLVED, Section 70.25(2)b of the Penal Law should be amended to add the term, “supervised release”; and be it further

RESOLVED, the Criminal Justice Section urges the State Bar to support the Governor’s 2018 framework for bail reform proposal and to work with the Governor and the State Legislature to pass reform based on these principles.

16. Date and place of next meeting. Mr. Miller announced that the next meeting of the House of Delegates would take place on Saturday, April 14, 2018 at the Bar Center in Albany.
17. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,



Sherry Levin Wallach
Secretary

Sharon Stern Gerstman

President, New York State Bar Association

716-856-3500

sgerstman@magavern.com

**REPORT OF THE PRESIDENT
TO THE HOUSE OF DELEGATES
January 26, 2018**

CONSTITUTIONAL CONVENTION

We were disappointed that New York will not hold a constitutional convention to make badly needed changes to the State Constitution. However, we will take advantage of the momentum created by advocating for issues that could have been addressed by a convention to support discrete amendments to the Constitution. Areas for consideration include lifting barriers to voter participation; reform of New York's court structure; addressing the balance between local and state government decision-making; and government ethics. Our Committee on the New York State Constitution will continue its work in identifying amendments to address these crucial issues.

SEXUAL HARASSMENT AND WOMEN IN THE LEGAL PROFESSION

The #MeToo movement has brought to the fore the prevalence of sexual harassment in a number of professions. Sadly, the legal profession has not been immune, as evidenced by the case of a Federal judge who stepped down after a number of accusations of harassment from former clerks and others with whom he interacted in the courts. An increasing number of members of the profession are recognizing the need for more women in positions of power in law firms and in the courts. The report of our Commercial and Federal Litigation Section on achieving equality for women attorneys in the courtroom and alternate dispute resolutions settings, approved by our House of Delegates in November 2017 and which will be presented to the ABA House of Delegates in February 2018, sets forth steps that law firms, judges, and ADR providers can take to ensure that women have an increased presence in litigation and in ADR.

LEGISLATIVE INITIATIVES

As we enter 2018, we are actively advocating on the Association's state and federal legislative priorities. Those activities included meeting with the new Chair of the Assembly Judiciary Committee, Jeffrey Dinowitz, and a full day of meetings with legislators and staff on January 17 to highlight the Association's budget priorities. Further, we have been involved with continuing

efforts, including discussions with the New York Bankers Association, to reform the law on Power of Attorney. As you know, in June the Assembly passed the Association's legislation by a vote of 141 – 0.

The proposed 2018-2019 Executive Budget was released on January 16. As was the case with last year's proposal, one issue could adversely affect every lawyer admitted to practice in New York – a proposal to increase the Biennial Attorney Registration Fee by \$50. Again this year, the proposed increase would link additional state funding for indigent defense services and implementation of the settlement of *Hurrell-Harring v. State of New York*, in order to bring the services up to a constitutional level statewide.

We have for many years advocated in support of an improved public criminal defense system. However, we strongly object to this proposed increase, and we have communicated that position to key legislators and the Governor's office. Providing indigent criminal defense is a constitutional mandate. It is a state obligation and a societal responsibility, and it should be paid from the General Fund, not by a surcharge on lawyers. Immediately after the proposed budget was released I wrote to the NYSBA membership, urging the use of the Association's advocacy web page to contact their individual legislators and oppose the linkage of the registration fee with funding to implement *Hurrell-Harring*. In addition, I have reached out to county bar association presidents across the state and asked that they join our effort by co-signing with me a letter to legislators from their county.

As the state legislative and budget process continues, we will maintain strong advocacy on this and our other priorities.

At the federal level, we are planning meetings in February with the New York Congressional Delegation, and I will report to you more fully on that in April.

OTHER ACTIVITIES

I have continued our outreach to county and local bar associations. In November, the Bar Association of Nassau County and the Suffolk County Bar Association held a joint meeting which I attended as a guest. Earlier this month, I attended a meeting of the presidents of the county bars in New York City. In addition, I attended formal dinners hosted by the Brooklyn Bar Association Foundation and the New York County Lawyers' Association.

The next meeting of the House of Delegates will take place on Saturday, April 14, 2018 at the Bar Center in Albany. I look forward to seeing you there.

A handwritten signature in black ink, appearing to be "John J. ...", written in a cursive style.



Staff Memorandum

**HOUSE OF DELEGATES
Agenda Item # 3**

Attached for your reference are the Association's financial statements through February 28, 2018.

**NEW YORK STATE BAR ASSOCIATION
2018 OPERATING BUDGET
TWO MONTHS OF CALENDAR YEAR 2018**

REVENUE

	2,018 BUDGET	ADJUST- MENTS	2018 BUDGET AS ADJUSTED	UNAUDITED RECEIVED 2/28/2018	% RECEIVED 2/28/2018	2017 BUDGET	UNAUDITED RECEIVED 2/28/2017	% RECEIVED 2/28/2017
MEMBERSHIP DUES	10,050,000		10,050,000	8,745,309	87.02%	10,925,000	8,910,827	81.56%
SECTIONS:								
Dues	1,341,574		1,341,574	1,136,135	84.69%	1,411,600	1,143,557	81.01%
Programs	2,894,561		2,894,561	782,112	27.02%	2,763,550	768,489	27.81%
INVESTMENT INCOME	477,000		477,000	-12,910	-2.71%	345,000	-15,290	-4.43%
ADVERTISING	296,000		296,000	28,868	9.75%	133,000	8,937	6.72%
CONTINUING LEGAL EDUCATION	3,635,000		3,635,000	914,798	25.17%	3,900,000	693,296	17.78%
USI AFFINITY PAYMENT	2,262,000		2,262,000	366,128	16.19%	2,269,000	367,493	16.20%
ANNUAL MEETING	930,000		930,000	826,543	88.88%	869,500	905,447	104.13%
HOUSE OF DELEGATES & COMMITTEES	211,500		211,500	34,265	16.20%	108,100	52,395	48.47%
PUBLICATIONS, ROYALTIES AND OTHER	296,500		296,500	31,327	10.57%	274,200	14,163	5.17%
REFERENCE MATERIALS	1,310,000		1,310,000	117,906	9.00%	1,350,000	126,568	9.38%
TOTAL REVENUE	23,704,135	0	23,704,135	12,970,481	54.72%	24,348,950	12,975,882	53.29%

EXPENSE

	2,018 BUDGET	ADJUST- MENTS	2018 BUDGET AS ADJUSTED	UNAUDITED EXPENDED 2/28/2018	% EXPENDED 2/28/2018	2017 BUDGET	UNAUDITED EXPENDED 2/28/2017	% EXPENDED 2/28/2017
SALARIES & FRINGE	10,105,550		10,105,550	1,446,719	14.32%	10,409,950	1,504,350	14.45%
BAR CENTER:								
Rent	287,000		287,000	31,766	11.07%	305,000	28,477	9.34%
Building Services	238,250		238,250	27,164	11.40%	283,250	26,075	9.21%
Insurance	142,000		142,000	33,298	23.45%	142,000	24,105	16.98%
Taxes	5,250		5,250	0	0.00%	5,250	789	15.03%
Plant and Equipment	904,600		904,600	132,604	14.66%	858,500	117,911	13.73%
Administration	607,600		607,600	103,206	16.99%	543,500	247,563	45.55%
SECTIONS	4,198,850		4,198,850	568,084	13.53%	4,171,175	595,059	14.27%
PUBLICATIONS:								
Reference Materials	389,050		389,050	29,374	7.55%	430,150	76,034	17.68%
Journal	378,200		378,200	89,964	23.79%	431,200	49,152	11.40%
Law Digest	187,800		187,800	31,642	16.85%	187,800	28,591	15.22%
State Bar News	242,300		242,300	22,227	9.17%	247,300	51,822	20.96%
MEETINGS:								
Annual Meeting	345,800		345,800	1,374,874	397.59%	348,200	1,458,984	419.01%
House of Delegates, Officers and Executive Committee	526,950		526,950	107,712	20.44%	520,600	113,423	21.79%
COMMITTEES:								
Continuing Legal Education	1,711,950		1,711,950	208,615	12.19%	1,767,875	117,591	6.65%
LPM / Electronic Communication Committee	72,800		72,800	9,896	13.59%	86,250	23,217	26.92%
Marketing / Membership	798,100		798,100	142,297	17.83%	971,200	154,075	15.86%
Media Services	98,900		98,900	17,630	17.83%	115,300	23,398	20.29%
All Other Committees and Departments	2,556,410		2,556,410	310,539	12.15%	2,489,075	411,975	16.55%
TOTAL EXPENSE	23,797,360	0	23,797,360	4,687,611	19.70%	24,313,575	5,052,591	20.78%
BUDGETED SURPLUS	(93,225)	0	(93,225)	8,282,870		35,375	7,923,291	

NEW YORK STATE BAR ASSOCIATION
STATEMENTS OF FINANCIAL POSITION
AS OF FEBRUARY 28, 2018

<u>ASSETS</u>	<u>UNAUDITED</u> <u>2/28/2018</u>	<u>UNAUDITED</u> <u>2/28/2017</u>	<u>UNAUDITED</u> <u>12/31/2017</u>
<u>Current Assets:</u>			
General Cash and Cash Equivalents	13,522,757	13,215,910	13,900,890
Accounts Receivable	162,632	155,241	139,894
Prepaid expenses	729,268	577,900	1,212,640
Royalties and Admin. Fees receivable	327,667	317,983	710,605
Total Current Assets	14,742,324	14,267,034	15,964,029
<u>Board Designated Accounts:</u>			
<u>Cromwell Fund:</u>			
Cash and Investments at Market Value	2,352,388	2,144,006	2,365,477
Accrued interest receivable	0	0	0
	2,352,388	2,144,006	2,365,477
<u>Replacement Reserve Account:</u>			
Equipment replacement reserve	1,117,056	1,116,692	1,117,002
Repairs replacement reserve	794,002	793,744	793,964
Furniture replacement reserve	219,849	219,778	219,839
	2,130,907	2,130,214	2,130,805
<u>Long-Term Reserve Account:</u>			
Cash and Investments at Market Value	22,951,474	20,656,590	22,901,794
Accrued interest receivable	0	0	123,864
	22,951,474	20,656,590	23,025,658
<u>Sections Accounts:</u>			
Section Accounts Cash equivalents and Investments at market value	3,604,633	3,540,231	3,629,262
Cash	1,350,163	1,316,987	76,245
	4,954,796	4,857,218	3,705,507
<u>Fixed Assets:</u>			
Furniture and fixtures	1,380,096	1,340,918	1,377,127
Leasehold Improvements	1,368,781	1,368,781	1,368,781
Equipment	8,292,022	8,605,338	8,270,647
Telephone	107,636	107,636	107,636
	11,148,535	11,422,673	11,124,191
Less accumulated depreciation	8,892,286	8,602,169	8,839,286
Net fixed assets	2,256,249	2,820,504	2,284,905
Total Assets	49,388,138	46,875,566	49,476,381
<u>LIABILITIES AND FUND BALANCES</u>			
<u>Current liabilities:</u>			
Accounts Payable & other accrued expenses	1,427,572	1,273,554	1,247,871
Deferred dues	15	0	7,717,027
Deferred income special	884,615	1,115,384	923,076
Deferred grant revenue	34,630	33,725	34,630
Other deferred revenue	67,624	88,632	852,291
Unearned Income - CLE	22,441	20,883	47,819
Payable To The New York Bar Foundation	7,007	67,162	0
Total current liabilities & Deferred Revenue	2,443,904	2,599,340	10,822,714
<u>Long Term Liabilities:</u>			
Accrued Pension Costs	0	0	0
Accrued Other Postretirement Benefit Costs	7,601,026	7,262,723	7,512,723
Accrued Supplemental Plan Costs and Defined Contribution Plan Costs	369,739	427,444	309,739
Total Liabilities & Deferred Revenue	10,414,669	10,289,507	18,645,176
<u>Board designated for:</u>			
Cromwell Account	2,352,388	2,144,006	2,365,477
Replacement Reserve Account	2,130,907	2,130,214	2,130,805
Long-Term Reserve Account	14,980,709	12,966,423	15,079,332
Section Accounts	4,954,796	4,857,218	3,705,507
Invested in Fixed Assets (Less capital lease)	2,256,249	2,820,504	2,284,905
Undesignated	12,298,420	11,667,694	5,265,179
Total Net Assets	38,973,469	36,586,059	30,831,205
Total Liabilities and Net Assets	49,388,138	46,875,566	49,476,381

New York State Bar Association
Statement of Activities
For the Two Months Ending February 28, 2018

	<u>February 2018</u>	<u>February 2017</u>	<u>December 2017</u>
REVENUES AND OTHER SUPPORT			
Membership dues	\$8,745,309	\$8,910,827	\$10,053,580
Section revenues			
Dues	1,136,135	1,143,557	1,306,781
Programs	782,112	768,489	2,464,057
Continuing legal education program	914,798	693,296	3,154,300
Administrative fee and royalty revenue	391,199	379,993	2,475,953
Annual meeting	826,543	905,447	897,247
Investment income	4,181	1,166	1,034,947
Reference Books, Formbooks and Disk Products	117,906	126,568	1,204,335
Other revenue	89,495	49,891	167,602
	<u>13,007,678</u>	<u>12,979,234</u>	<u>22,758,802</u>
PROGRAM EXPENSES			
Continuing legal education program	351,184	217,742	2,449,563
Graphics	323,719	348,606	1,795,789
Government relations program	82,839	103,602	614,867
Law, youth and citizenship program	13,277	36,871	181,679
Lawyer assistance program	16,486	28,645	173,693
Lawyer referral and information services	18,977	28,034	173,154
Law practice management services	4,762	44,179	94,752
Media / public relations services	69,477	81,110	424,720
Meetings services	4,173	10,798	0
Marketing and Membership services	297,451	292,777	1,554,945
Pro bono program	41,504	31,277	222,562
Local bar program	16,804	23,216	103,500
House of delegates	105,740	111,897	480,754
Executive committee	1,972	1,526	57,647
Other committees	56,757	66,423	589,813
Sections	568,084	595,059	3,694,593
Section newsletters	20,401	25,371	144,813
Reference Books, Formbooks and Disk Products	120,055	178,604	965,600
Publications	143,832	129,564	789,495
Annual meeting expenses	1,374,874	1,458,984	338,205
	<u>3,632,368</u>	<u>3,814,285</u>	<u>14,850,144</u>
MANAGEMENT AND GENERAL EXPENSES			
Salaries and fringe benefits	499,312	509,994	3,893,223
Pension plans and other employee benefit plan costs	111,026	110,966	647,436
Rent and equipment costs	133,952	141,261	1,047,999
Consultant and other fees	170,074	284,672	1,004,809
Depreciation and amortization	112,600	92,400	722,019
Other expenses	28,276	99,026	312,701
	<u>1,055,240</u>	<u>1,238,319</u>	<u>7,628,187</u>
CHANGES IN NET ASSETS BEFORE INVESTMENT TRANSACTIONS AND OTHER ITEMS			
Realized and unrealized gain (loss) on investments	8,320,070	7,926,630	280,471
	(167,197)	920,406	2,790,613
CHANGES IN NET ASSETS	8,152,873	8,847,036	3,071,084
Net assets, beginning of year	<u>30,820,606</u>	<u>27,749,522</u>	<u>27,749,522</u>
Net assets, end of year	<u><u>38,973,479</u></u>	<u><u>36,596,558</u></u>	<u><u>30,820,606</u></u>



Staff Memorandum

HOUSE OF DELEGATES Agenda Item #5

REQUESTED ACTION: Approval of the report and recommendations of the Criminal Justice Section.

Attached is a report from the Criminal Justice Section on criminal justice issues in town and village courts. The report addresses counsel at first appearance; education and training of justice court staff; and centralization (court consolidation, specialty courts, and centralized arraignment). The report then makes recommendations for improvements that could be made.

With respect to counsel at first appearance, the report reviews the process that takes place at arraignment as well as the constitutional, statutory and regulatory framework governing assigned counsel and existing town and village justice courts. It also reviews the effect that provision of counsel at first appearance and centralized arraignment have had on indigent defense.

Part II of the report addresses training an education of justice court staff, including current statutes and regulations that govern training and previous reports' recommendations. The section concludes that although there are many resources available, some justice courts do not provide constitutionally mandated due process.

Part III of the report addresses centralization, and covers the ability of town courts in the same county to combine, the use of district courts, and specialty courts.

The report makes the following recommendations:

- All counties should adopt a counsel at first appearance plan that fulfills the vision and goals of *Hurrell-Harring*.
- All arraignments should include defense counsel and district attorneys.
- All arraigning judges shall use the Language Line for foreign-speaking defendants.
- All justice courts shall have access to the proper paperwork relating to all forms of bail and be better trained in all forms of bail.

- All counties shall adopt a centralized arraignment plan.
- All justice court judges and clerks should be trained in diversity and inclusion.
- Each judge's written and/or recorded work should be audited randomly for compliance with training.
- Records should be kept of justice court judges' and court clerks' attendance at trainings, as well as training materials.
- A public access database should be created to track judges' disciplinary records.
- "Misdemeanor Courts" should be established as a specialty court for jurisdiction over criminal matters where the highest crime charged is a misdemeanor.

The report was submitted in January 2018 and posted in the Reports Community. No comments have been received to date.

The report will be presented at the January 26 meeting by Leah Rene Nowotarski, co-chair of the section's Town and Village Justice Courts Committee.



Town & Village Justice Courts Report

**Update Regarding Counsel at
First Appearance, Training & Education,
and Centralization**

**REPORT AND RECOMMENDATIONS OF
THE CRIMINAL JUSTICE SECTION**

2018

LIST OF INDIVIDUALS ASSISTING WITH AND CONTRIBUTING TO THIS REPORT

Criminal Justice Section

Sherry Levin Wallach, Esq.
Chair, Criminal Justice Section 2015-2017

Leah Rene Nowotarski, Esq.
Co-Chair, Town & Village Justice Courts Committee
Report's Author

Clare J. Degnan, Esq.
Co-Chair, Town & Village Justice Courts Committee

Hon. Jonah Triebwasser
Criminal Justice Section Alternate Delegate,
NYSBA House of Delegates

Eugene Frenkel
Liaison, Law Student Committee

Natasha Pooran
Member, Law Student Committee

Priyanka Verma
Member, Law Student Committee

Nishat Tabassum
Member, Law Student Committee

Daniela Parra
CUNY Law School, 3L

Michelle Tarangelo
CUNY Law School, 3L

Robert Jereski
CUNY Law School, 3L

Public Defender Offices

Tina Sodhi, Esq.
Assistant Public Defender, Albany County

Barbara Kelley, Esq.
Public Defender, Allegany County

Jay L. Wilber, Esq.
Public Defender, Broome County (Retired)

Mark S. Williams, Esq.
Public Defender, Cattaraugus County

Lloyd E. Hoskins, Esq.
Assigned Counsel Administrator, Cayuga County

John P. Brennan, Esq.
Conflict Defender, Chemung County

Robert Linville, Esq.
Public Defender, Columbia County (1999-2017)

Thomas N. Angell, Esq.
Public Defender, Dutchess County

James Auricchio, Esq.
Counsel at First Appearance Coordinator, Bar Association of Erie County Assigned Counsel

Jerry Ader, Esq.
Public Defender, Genesee County

Angelo F. Scaturro, Esq.
Public Defender, Greene County

Paul Hadley, Esq.
Public Defender, Madison County

Timothy P. Donaher, Esq.
Public Defender, Monroe County

Frank J. Nebush, Jr., Esq.
Public Defender, Oneida County

Sandra McCarthy, Esq.
Conflict Defender, Rensselaer County

James D. Licata, Esq.
Public Defender, Rockland County

Oscar Schreiber, Esq.
Public Defender, Saratoga County

Stephen M. Signore, Esq.
Public Defender, Schenectady County

Scott B. Goldie, Esq.
Assigned Counsel Administrator, St. Lawrence County

Julia P. Hughes, Esq.

Assigned Counsel Coordinator, Tompkins County

Andrew Kossover, Esq.
Public Defender, Ulster County

Marcy I. Flores, Esq.
Public Defender, Warren County

Andrew D. Correia, Esq.
First Assistant Public Defender, Wayne County

Clare J. Degnan, Esq.
Executive Director, Legal Aid Society of Westchester County

Norman P. Effman, Esq.
Public Defender, Wyoming County

Edward J. Brockman, Esq.
Public Defender, Yates County

Professional Associations

Jonathan Gradess, Esq.
Executive Director, New York State Defenders Association (1978-2017)

Susan Bryant, Esq.
Special Counsel, New York State Defenders Association

Christopher Farber
President, New York State Sheriffs' Association

Alex Wilson
President, New York State Sheriffs' Association

Hon. Sherry Davenport
President, New York State Magistrates Association

Gillian Koerner
President, Court Clerks Association

Office of Indigent Legal Services

Hon. Deborah Schneer
Hurrell-Harring Coordinator

Other

Kenneth Carlson, Esq.
Assistant Deputy Counsel, Office of Justice Court Support

Hon. Nancy Sunukjian
Director, Office of Justice Court Support
Special Counsel to the Deputy Chief Administrative Judge

Amy Monachino
Town & Village Court Liaison, 7th Judicial District

Table of Contents

Introduction.....	1
I. Counsel at First Appearance	2
A. What happens at an arraignment.....	2
B. Constitutional and statutory background	6
C. <i>Hurrell-Harring v State of New York</i>	11
D. Existing Town and Village Justice Courts.....	13
E. Counsel at First Appearance awards.....	68
F. Counsel at First Appearance programs	71
G. Effects of counsel at first appearance	100
H. Centralized arraignments	106
I. Professional associations’ opinions	113
J. Approved and proposed legislation	117
K. Summary.....	124
II. Training and Education.....	126
A. What happens during a criminal calendar.....	126
B. Existing statutory and regulatory background	128

C. Previous reports’ findings	130
D. Training for judges.....	142
E. Training for court clerks	147
F. Office of Justice Court Administration and Resource Center	153
G. Approved and proposed legislation	156
H. Summary	159
III. Centralization.....	160
A. Previous recommendations	160
B. Court consolidation.....	165
C. Specialty courts	172
D. Centralized arraignments	174
E. Approved and proposed legislation	175
F. Summary	177
IV. Conclusion	178
V. Recommendations	179
1. All counties shall adopt a counsel at first appearance plan that fulfills the vision and goals of <i>Hurrell-Harring</i> .	

2. All arraignments should include defense counsel and district attorneys.
3. All arraigning judges shall use the Language Line (or a similar service) for foreign-speaking defendants.
4. All justice courts shall have access to the proper paperwork relating to all forms of bail and be better trained in all forms of bail.
5. All counties should adopt a centralized arraignment plan.
6. All justice court judges and clerks should be trained in diversity and inclusion.
7. Each judge's written and/or recorded work should be audited randomly for compliance with training.
8. Records should be kept of justice court judges' and court clerks' attendance at trainings, as well as training materials (agendas, written materials, recorded materials, etc.).
9. A public access database should be created to track judges' disciplinary records.
10. "Misdemeanor Courts" should be established as a specialty court for jurisdiction over criminal matters where the highest crime charged is a misdemeanor.

Introduction

In June 2015, the Criminal Justice Section created the Town & Village Justice Courts Committee to study and report on hot topics in the justice courts, to educate the legal community about those topics, and to make recommendations regarding them. The committee has been studying Counsel at First Appearance, Training and Education in the Courts, and Centralization. It will inform the New York State Bar Association's Members about those topics' previous studies and recommendations, as well as their current state of affairs, finally recommending how the justice court system should be modified to promote the effective and efficient administration of criminal justice.

Part I of the report reviews counsel at first appearance ("CAFA" – attorneys at arraignment). It discusses the arraignment process; previous reports' comments and recommendations about arraignments; *Hurrell-Harring*; existing justice courts; requests for proposals ("RFP"), & CAFA programs currently implemented; effects of counsel at first appearance; centralized arraignments; and professional associations' opinions.¹

Part II reviews training and education of justice court staff (judges, court clerks, and the office of justice court support). It discusses statutes and regulations governing training; previous

¹ The Office of Indigent Legal Services is conducting its own intensive study of counsel at first appearance (CAFA). The study is not complete, but it is expected to include an extensive analytical study of the effectiveness of CAFA, recommendations for statewide implementation of CAFA, along with a complete statistical report of five counties with the program.

reports' comments and recommendations about training; specific training courses; and educational resources.

Part III reviews centralization. It discusses previous reports' comments and recommendations about centralization; court consolidation; specialty courts; and centralized arraignments. Each section also lists proposed and approved legislation relevant to its topic.

Part IV is a conclusion and a summary of the findings.

Part V provides recommendations as to how to change the justice court system to promote a more efficient administration of criminal justice.

I. COUNSEL AT FIRST APPEARANCE

A. What happens at arraignment

New York State has more than 1,200 local justice courts. The experiences of the parties can be as varied as the number of courts. However, there are some common experiences shared by many defendants across the length of our state. The following descriptions of what one could encounter at an arraignment is a meshing of the experiences of the parties from all over the state and is an amalgam of an arraignment in some, but by no means all, justice courts.

At arraignment, the arresting officer brings the defendant into the courtroom. Defense counsel must consult with the defendant and gather relevant information for a bail argument (employment, living situation, criminal history, probation/parole status, pending cases,

community ties, amount available for bail, and other factors listed in Criminal Procedure Law § 510.30 [2] [b]). Cognizant of the attorney-client privilege, counsel prefers to consult with her client privately in a closed, conference room; however, that convenience may be unavailable because many courtrooms do not have conference rooms. Furthermore, many arresting officers do not allow the defendant out of their sight. All too frequently, counsel must settle for the back of the courtroom and speak quietly or as far out of earshot from the arresting officer as possible.²

The judge, defendant, counsel, and arresting officer are present. Rarely does the district attorney (“DA”) appear (perhaps she will appear in a high publicity case). The judge will ask the defendant for his pedigree information (name, address, telephone number, employment, marital status, prior convictions). The judge is required to inform the defendant of the charges and of his right to be represented by an attorney.³ If counsel is present, then the judge may read the charges unless counsel waives a reading of them. Then, the judge may ask for entry of a plea. Counsel also reviews the accusatory instrument for accuracy and argues to dismiss it for facial insufficiency, when applicable.

This process lasts 30 minutes or more, and the defendant becomes more nervous as time passes, wanting to explain what happened to say anything to get out of the courtroom and back home. If counsel is not present, a defendant unfamiliar with the process may explain the situation resulting in his arrest or request to pay simply a fine to resolve the matter. Alternatively, wanting

² The issues of attorney-client communication are further complicated when the defendant does not speak English.

³ CPL §170.10(2) & CPL §170.10(3).

to resolve the matter quickly without having to return to court, he may ask what happens if he pleads guilty, learns something about a portion of the penalty (but nothing else), and pleads guilty immediately without consulting counsel or knowing anything about the collateral consequences or legal process.⁴ He also may consult the judge for advice and stand dumbfounded when the judge explains he cannot advise him. The defendant may not understand the gravity of the situation and the necessity for an attorney.

Then the judge asks for a bail recommendation. The arresting officer may state “the DA’s recommendation.”⁵ Counsel then advocates on the defendant’s behalf, emphasizing the purpose of bail: to ensure the defendant’s appearance at court based on flight risk - not to punish him for his criminal history or current arrest. Relying on an available NYSID (rap sheet), as well as the factors discussed with the defendant, counsel also explains reasons why the defendant is not a flight risk.

Finally, the judge either sets bail or releases the defendant on recognizance. If bail is set, then it must be set in, at least, two forms.⁶ There are nine types of bail:

⁴ Town and Village Justices have been trained to discourage guilty pleas at arraignment.

⁵ The bail statute, CPL Article 500, requires the principal(s) in a proceeding be accorded the opportunity to be heard regarding the nature and type of order of recognizance or bail. {See CPL §510.20(2)}. Often, when an Assistant District Attorney will not appear at the arraignment in person, the arresting officer will inform the Court of the prosecutor’s recommendation regarding the amount and form of bail.

⁶CPL 520.10 (2) (b).

- a. cash;
- b. insurance company bail bond;
- c. secured surety bond;
- d. secured appearance bond;
- e. partially secured surety bond;
- f. partially secured appearance bond;
- g. unsecured surety bond;
- h. unsecured appearance bond; and
- i. credit card.⁷

Although nine different types of bail are available, counsel ask usually either for release on recognizance, release under supervision (including electronic monitoring, where available), or the lowest amount of cash bail. Judges often set bail in either cash or bond (occasionally credit card in lieu of bond). Counsel often knows the particular proclivities of some judges in setting bail for certain types of offenses regardless of the defendant's flight risk. Often neither counsel nor judges are aware of less common forms of bail (forms d through h) and these forms of bail remain unused or underutilized.

With foreign-speaking defendants, judges may call Language Line 24 hours a day, 7 days a week. They may call that hotline to have an interpreter interpret the judge's and counsel's words to the defendant in his language (if an interpreter of his language is available). Some

⁷CPL 520.10 (1).

judges are unaware of that hotline or do not have the telephone number for it;⁸ whereas other judges are under the impression that they cannot call that interpretation service because it is unknown who is on the other end of the line or what information they give to defendants. As a result, they allow defendants to call an English-speaking relative to translate as best as possible. In some jurisdictions, there are judges who believe that certain groups of defendants (such as Spanish-speaking migrant workers or defendants who speak broken English) fake misunderstanding English and really understand English, so they proceed with the arraignment in English, requiring the defendants to read, understand, and respond to charges in a language that they actually do not understand.

When a defendant is arraigned on a felony complaint, the judge may schedule a felony hearing under CPL Article 180. Some judges do not schedule those hearings without the DA's consent. Some judges never schedule those hearings unless counsel requests them.

There have been instances where a defendant languishes in jail. When counsel is not present for the arraignment, a defendant may remain incarcerated for days or weeks before he is ordered produced back to court, an attorney is assigned to represent him, or an attorney first communicates with him.

B. Constitutional, Statutory, and Regulatory Background

The State of New York has a Constitutional obligation to provide effective representation to individuals who have been charged with a crime or threatened with the loss of their children

⁸ At least one justice court dials 1-800-523-1786 to access Language Line.

and who cannot afford to pay for counsel to represent them.⁹ This obligation begins at the critical stages of criminal proceedings against a defendant—at arraignment. A defendant has the right to the aid of counsel at arraignment and at every subsequent stage in the proceedings.¹⁰ When counsel is not present, the arraignment may be adjourned for counsel, and the court may appoint counsel for indigent defendants.¹¹

In addition to those constitutional and statutory rights, in 2005, then Chief Administrative Judge Jonathan Lippman¹² promulgated a court rule regarding arraignments.¹³ It directed that, following an arrest, when an unrepresented defendant is brought before a justice court for arraignment, the arraigning judge shall make an initial determination as to the defendant's eligibility for assigned counsel. If the judge determines that the defendant is unable to obtain counsel financially, then the judge shall assign counsel before issuing a securing order. If counsel is not present in court to receive the assignment, then the judge may issue a securing order in counsel's absence; however, the judge shall notify by telephone or fax the appropriate public defense organization, for immediate assignment of counsel, and pretrial service agency within

⁹*see Gideon v Wainwright*, 372 U.S. 335 [1963]; *People v Witek*, 15 NY 2d 392 [1965]; and *In re Ella B.*, 30 NY 2d 352 [1972].

¹⁰Criminal Procedure Law §§ 170.10 (3); 180.10 (3).

¹¹*Id.*

¹²*The State of the Judiciary 2005*, <https://www.nycourts.gov/admin/stateofjudiciary/soj2005.pdf> (accessed Apr. 2, 2017).

¹³22 NYCRR § 200.26 (c).

the next 24-48 hours. The judge shall note the defendant's name, the names of any co-defendants, the charge or charges contained in the accusatory instrument, the docket or case number, if available, the adjourn date and time, the terms of the securing order and such other information as the court deems appropriate, as well as attach copies of the accusatory instrument.¹⁴

Historical studies of our criminal justice system reported that despite the Constitution, statute, and subsequent court rule, counsel continued to be absent at some arraignments. It was found that in some justice courts, judges would not arraign or set bail on a defendant until an attorney was present, thus remanding the defendant into the custody of the arresting officer; as a result of counsel's absence, some defendants negotiated directly with prosecutors. In other cases, some judges simply were unaware of or misconstrued a defendant's right to counsel; they did not know under which cases counsel was supposed to be appointed. In courts with large dockets, judges did not have the time to explain to each defendant the right to counsel; instead, they explained briefly to all persons sitting in the courtroom at once, and under those circumstances, defendants either did not hear of their rights, or their rights were misstated. Some judges refused to appoint counsel even when the law required it: one judge believed that "defendants are 'savvy' about negotiating their own cases and do not need counsel." Judges refused to appoint

¹⁴*Id.*

counsel for misdemeanors or for college students because their parents could pay for counsel. Some judges were unaware of 22 NYCRR § 200.26 (c).¹⁵

It also was found that some judges were not timely assigning counsel for indigent defendants (for example, some defendants were arraigned off-hours without an attorney and remanded without bail until they were “discovered” by a public defender). Prosecutors, defense lawyers, and judges expressed that it would not be feasible to require that counsel be present for off-hours arraignments in justice courts; however, neither was it in the defendants’ best interests to sit in custody until they could appear for arraignment with an attorney. Prompt arraignment (and the prospect of immediate release) was best. It was recommended that the new court rule be studied carefully to ensure that all incarcerated defendants who need assigned counsel in a justice court obtain it promptly after arraignment.¹⁶

Action plans were developed to address the issues identified by these 2006 reports. Education of the judges was paramount. Local judges needed information as to when the right to counsel attached, what that right entailed, and when and how to conduct indigency determinations. The judges had limited training in those areas, and without staff attorneys, full-

¹⁵All of the information in this paragraph was found in The Spangenberg Group, *Status of Indigent Defense in New York: A Study for Chief Judge Kaye’s Commission on the Future of Indigent Defense Services* (June 2006).

¹⁶All of the information in this paragraph was found in Commission on the Future of Indigent Defense Services, *Final Report to the Chief Judge of the State of New York* (June 2006).

time administrative staff, integrated case management systems, and other resources that full time judges relied on, it was a daunting task.¹⁷

Despite recommendations, the problems persisted. A year later, it was found that some local judges often did not understand the law on the right to counsel, or they ignored it. According to questionnaire responses, neither the prosecutor nor defense counsel was present for off-hours arraignments; however, the prosecutor often was called for a bail recommendation, and bail often was set. Even if arraigned without counsel, judges would set a return date for the next court session, felony hearing, or next “DA night.” Even prosecutors agreed that a serious problem existed when defendants remained in jail after arraignment without counsel; no counsel was provided either because the sheriff failed to give the required notice to the public defender, and 22 NYCRR § 200.26 (c) was not implemented. Although detained defendants received an application to request assignment of counsel, they were unable to complete that form without assistance.¹⁸

Although several other reports have addressed local courts, neither the 1975 Court Reform in New York State; 2007 NYSBA Town and Village Task Force on Town and Village

¹⁷All of the information in this paragraph was found in Justice Courts Advisory Group, *Action Plan for the Justice Courts* (Nov. 2006).

¹⁸All of the information in this paragraph was found in New York City Bar Task Force on Town and Village Courts, *Recommendations Relating to Structure and Organization* (Oct. 2007).

Justice Courts; 2007 Special Commission Report on the Future of New York State Courts; nor 2007 New York City Task Force on Town and Village Courts (Memorandum on Justice Court Technology) addressed counsel at arraignments.

C. Hurrell-Harring v State of New York

The Constitutional and statutory right to counsel at arraignment remained unrealized in most justice courts in our State. A class action lawsuit was initiated against New York State and five counties by the NYCLU on behalf of 20 clients in 2007 for the State of New York's failure to create and support a public defense system that ensured indigent criminal defendants would receive meaningful and effective assistance of counsel .¹⁹

Hurrell-Harring v State of New York,²⁰ questioned whether the state met its constitutional obligation to provide counsel.²¹ In *Hurrell-Harring*, 10 of 20 defendants stood unrepresented at their arraignments.²² Eight of those defendants had bail set on them in amounts that they could

¹⁹ Hurrell-Harring et al. V. State of New York (Challenging New York State's Failure to Provide Adequate Public Defense Services, <https://www.nyclu.org/en/cases/hurrell-harring-et-al-v-state-new-york-challenging-new-york-states-failure-provide-adequate> (accessed Jan. 29, 2018).

²⁰15 NY 3d 8 (2010) (Pigott, J, dissenting).

²¹*Id.* at 23.

²²*Id.* at 19.

not afford.²³ One of those defendants remained unrepresented for five months.²⁴ Once counsel was appointed to represent the defendants, counsel barely conferred with them, ignored their inquires (even while incarcerated), and failed to consult with them before making decisions or waiving legal rights.²⁵ Sometimes counsel missed court appearances or appeared unprepared.²⁶ The small sample of complainants represented more widespread practices.²⁷ Judge Lippman explained that the State shifted the “process” of its constitutional obligation to provide counsel to defendants to the counties. The state, however, did not fund the counties for its obligation; therefore, providing counsel to defendants became an “unfunded and politically unpopular mandate upon local government.”²⁸ The Court reasoned that “a criminal defendant, regardless of wherewithal, is entitled to “the guiding hand of counsel at every step in the proceedings against him[,]’ ”²⁹ and “[t]hat right attaches at arraignment and entails the presence of counsel at each

²³*Id.*

²⁴*Id.*

²⁵*Id.*

²⁶*Id.* at 19-20.

²⁷*Id.* at 22.

²⁸*Id.* at 15.

²⁹*Id.* at 20, quoting *Gideon v Wainwright*, 372 US 335, 345 (1963).

subsequent “critical” stage of the proceedings.”³⁰ Arraignment is a critical stage of the proceedings.³¹ The Court reinstated the formerly-dismissed complaint and remitted it to the court below.³²

D. Existing Town & Village Justice Courts

Hurrell-Harring sampled 5 of New York’s counties. New York has 62 counties containing over 1,200 Town & Village Justice Courts located in over 925 towns and 325 villages. Those courts include:

1. Albany County. Albany County has 13-14 justice courts and 3 city courts.³³ The justice courts include Altamont Village Court; Berne Town Court; Bethlehem Town Court; Coeymans Town Court; Colonie Town Court; Green Island Town Court; Guilderland Town Court; Knox Town Court; Menands Village Court; New Scotland Town Court; Ravena Village Court;

³⁰15 NY 3d at 20, quoting *Rothgery v Gillespie County*, 554 US 191 (2008); *Montejo v Louisiana*, 556 US — (2009).

³¹15 NY 3d at 20-21.

³²*Id.* at 27.

³³NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/Albany_county_courts.htm (accessed Apr. 19, 2017); Court Reference: Albany County New York Court Directory, <http://www.courtreference.com/Albany-County-New-York-Courts.htm> (accessed Apr. 19, 2017).

Rensselaerville Town Court; Voorheesville Village Court; and Westerlo Town Court.³⁴ The city courts include Albany, Cohoes, and Watervliet City Courts.³⁵ The county covers 533 square miles and has a population of about 305,455.³⁶

2. Allegany County. Allegany County has 35-36 justice courts.³⁷ The justice courts include Alfred Town Court; Alfred Village Court; Allen Town Court; Alma Town Court; Almond Town Court; Amity Town Court; Andover Town Court; Andover Village Court; Angelica Town Court; Angelica Village Court; Belfast Town Court; Belmont Village Court; Birdsall Town Court; Bolivar Town Court; Bolivar Village Court; Burns Town Court; Caneadea Town Court; Centerville Town Court; Clarksville Town Court; Cuba Town Court; Friendship Town Court; Genesee Town Court; Granger Town Court; Grove Town Court; Hume Town Court; Independence Town Court; New Hudson Town Court; Richburg Village Court; Rushford Town

³⁴*Id.*

³⁵*Id.*

³⁶New York State: Capital-Saratoga Albany, <http://www.ny.gov/counties/albany> (accessed Apr. 20, 2017).

³⁷NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/allegany_county_courts.htm (accessed Sept. 28, 2017); Court Reference: Allegany County New York Court Directory, <http://www.courtreference.com/Allegany-County-New-York-Courts.htm> (accessed Jan. 24, 2018).

Court; Scio Town Court; Ward Town Court; Wellsville Town Court; Wellsville Village Court; West Almond Town Court; Willing Town Court; and Wirt Town Court.³⁸ The county covers 1,034 square miles and has a population of about 48,357.³⁹

3. Bronx County. Bronx County has 1 city court.⁴⁰ The city court is New York City Criminal Court.⁴¹ The county covers 57 square miles and has a population of about 1,418,733.⁴²

4. Broome County. Broome County has 19 justice courts and 1 city court.⁴³ The justice courts include Barker Town Court; Binghamton Town Court; Chenango Town Court; Colesville Town

³⁸*Id.*

³⁹New York State: Chautauqua-Allegany Alleghany, <http://www.ny.gov/counties/allegany> (accessed Sept. 28, 2017).

⁴⁰Court Reference: Bronx County New York Court Directory, <http://www.courtreference.com/Bronx-County-New-York-Courts.htm> (accessed Sept. 28, 2017).

⁴¹*Id.*

⁴²New York State: New York City Bronx, <http://www.ny.gov/counties/bronx> (accessed Sept. 28, 2017).

Court; Conklin Town Court; Deposit Village Court; Dickinson Town Court; Endicott Village Court; Fenton Town Court; Johnson City Village Court; Kirkwood Town Court; Lisle Town Court; Maine Town Court; Nanticoke Town Court; Sanford Town Court; Triangle Town Court; Union Town Court; Vestal Town Court; and Windsor Town Court.⁴⁴ The city court is Binghamton City Court.⁴⁵ The county covers 715 square miles and has a population of about 200,600.⁴⁶

5. Cattaraugus County. Cattaraugus County has 36-37 justice courts and 2 city courts.⁴⁷ The justice courts include Allegany Town Court; Allegany Village Court; Ashford Town Court;

⁴³NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/broome_county_courts.htm (accessed Mar. 21, 2017); ⁴³Court Reference: Broome County New York Court Directory, <http://www.courtreference.com/Broome-County-New-York-Courts.htm> (accessed Jan. 24, 2018).

⁴⁴*Id.*

⁴⁵*Id.*

⁴⁶New York State: Central New York Broome, <http://www.ny.gov/counties/broome> (accessed Apr. 20, 2017).

⁴⁷NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/cattaraugus_county_courts.htm (accessed Apr. 17, 2017); Court Reference: Cattaraugus County New York Court Directory,

Carrollton Town Court; Coldspring Town Court; Conewango Town Court; Dayton Town Court; East Otto Town Court; Ellicottville Town Court; Ellicottville Village Court; Farmersville Town Court; Franklinville Town Court; Freedom Town Court; Great Valley Town Court; Hinsdale Town Court; Humphrey Town Court; Ischua Town Court; Leon Town Court; Limestone Village Court; Little Valley Town Court; Lyndon Town Court; Machias Town Court; Mansfield Town Court; Napoli Town Court; New Albion Town Court; Olean Town Court; Otto Town Court; Perrysburg Town Court; Persia Town Court; Portville Town Court; Portville Village Court; Randolph Town Court; Red House Town Court; Salamanca Town Court; South Dayton Village Court; South Valley Town Court; and Yorkshire Town Court.⁴⁸ The city courts include Olean and Salamanca City Courts.⁴⁹ The county covers 1,310 square miles and has a population of about 80,317.⁵⁰

<http://www.courtreference.com/Cattaraugus-County-New-York-Courts.htm> (accessed Apr. 17, 2017).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ New York State: Chautauqua-Allegany Cattaraugus, <http://www.ny.gov/counties/cattaraugus> (accessed Apr. 20, 2017).

6. Cayuga County. Cayuga County has 27 justice courts and 1 city court.⁵¹ The justice courts include Aurelius Town Court; Brutus Town Court; Cato Town Court; Conquest Town Court; Fleming Town Court; Genoa Town Court; Ira Town Court; Ledyard Town Court; Locke Town Court; Mentz Town Court; Meridian Village Court; Montezuma Town Court; Moravia Town Court; Moravia Village Court; Niles Town Court; Owasco Town Court; Port Byron Village Court; Scipio Town Court; Sempronius Town Court; Sennett Town Court; Springport Town Court; Sterling Town Court; Summerhill Town Court; Throop Town Court; Venice Town Court; Victory Town Court; and Weedsport Village Court.⁵² The city court is Auburn City Court.⁵³ The county covers 864 square miles and has a population of about 80,026.⁵⁴

⁵¹NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/cayuga_county_courts.htm (accessed Mar. 23, 2017); Court Reference: Cayuga County New York Court Directory, <http://www.courtreference.com/Cayuga-County-New-York-Courts.htm> (accessed Jan. 24, 2018).

⁵²*Id.*

⁵³*Id.*

⁵⁴New York State: Finger Lakes Cayuga, <http://www.ny.gov/counties/cayuga> (accessed Apr. 20, 2017).

7. Chautauqua County. Chautauqua County has 31 justice courts and 2 city courts.⁵⁵ The justice courts include Arkwright Town Court; Brocton Village Court; Busti Town Court; Carroll Town Court; Charlotte Town Court; Chautauqua Town Court; Cherry Creek Town Court; Clymer Town Court; Dunkirk Town Court; Ellery Town Court; Ellicott Town Court; Ellington Town Court; Fredonia Village Court; French Creek Town Court; Gerry Town Court; Hanover Town Court; Harmony Town Court; Kiantone Town Court; Mina Town Court; North Harmony Town Court; Poland Town Court; Pomfret Town Court; Portland Town Court; Ripley Town Court; Sheridan Town Court; Sherman Town Court; Silver Creek Village Court; Stockton Town Court; Villenova Town Court; Westfield Town Court; and Westfield Village Court.⁵⁶ The city courts include Dunkirk and Jamestown City Courts.⁵⁷ The county covers 1,500 square miles and has a population of about 134,905.⁵⁸

⁵⁵NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/chautauqua_county_courts.htm (accessed Sept. 28, 2017); Court Reference: Chautauqua County New York Court Directory, <http://www.courtreference.com/Chautauqua-County-New-York-Courts.htm> (accessed Jan. 24, 2018).

⁵⁶*Id.*

⁵⁷*Id.*

⁵⁸New York State: Chautauqua-Allegany Chautauqua, <http://www.ny.gov/counties/chautauqua> (accessed Sept. 28, 2017).

8. Chemung County. Chemung County has 13-14 justice courts and 1 city court.⁵⁹ The justice courts include Ashland Town Court; Baldwin Town Court; Big Flats Town Court; Catlin Town Court; Chemung Town Court; Elmira Heights Village Court; Erin Town Court; Horseheads Town Court; Horseheads Village Court; Southport Town Court; Van Etten Town Court; Veteran Town Court; and Wellsburg Village Court.⁶⁰ The city court is Elmira City Court.⁶¹ The county covers 411 square miles and has a population of about 88,830.⁶²

⁵⁹NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/chemung_county_courts.htm (accessed Mar. 22, 2017); Court Reference: Chemung County New York Court Directory, <http://www.courtreference.com/Chemung-County-New-York-Courts.htm> (accessed Jan. 24, 2018).

⁶⁰*Id.*

⁶¹*Id.*

⁶²New York State: Finger Lakes Chemung, <http://www.ny.gov/counties/chemung> (accessed Apr. 20, 2017).

9. Chenango County. Chenango County has 25 justice courts and 1 city court.⁶³ The justice courts include Afton Town Court; Bainbridge Town Court; Columbus Town Court; Coventry Town Court; Earlville Village Court; German Town Court; Greene Town Court; Greene Village Court; Guilford Town Court; Lincklaen Town Court; McDonough Town Court; New Berlin Town Court; North Norwich Town Court; Norwich Town Court; Otselic Town Court; Oxford Town Court; Oxford Village Court; Pharsalia Town Court; Pitcher Town Court; Plymouth Town Court; Preston Town Court; Sherburne Town Court; Sherburne Village Court; Smithville Town Court; and Smyrna Town Court.⁶⁴ The city court is Norwich City Court.⁶⁵ The county covers 899 square miles and has a population of about 50,477.⁶⁶

⁶³Court Reference: Chenango County New York Court Directory, <http://www.courtreference.com/Chenango-County-New-York-Courts.htm> (accessed Oct. 24, 2017).

⁶⁴*Id.*

⁶⁵*Id.*

⁶⁶New York State: Central New York Chenango, <http://www.ny.gov/counties/chenango> (accessed Oct. 24, 2017).

10. Clinton County. Clinton County has 15-18 justice courts and 1 city court.⁶⁷ The justice courts include Altona Town Court; Ausable Town Court; Beekmantown Town Court; Black Brook Town Court; Champlain Town Court; Champlain Village Court; Chazy Town Court; Clinton Town Justic [sic] Court; Dannemora Town Court; Dannemora Village Court; Ellenburg Town Court; Keeseville Village Court; Mooers Town Court; Peru Town Court; Plattsburgh Town Court; Rouses Point Village Court; Saranac Town Court; and Schuyler Falls Town Court.⁶⁸ The city court is Plattsburgh City Court.⁶⁹ The county covers 1,118 square miles and has a population of about 81,654.⁷⁰

⁶⁷NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/clinton_county_courts.htm (accessed Sept. 28, 2017); Court Reference: Clinton County New York Court Directory, <http://www.courtreference.com/Clinton-County-New-York-Courts.htm> (accessed Jan. 24, 2018).

⁶⁸*Id.*

⁶⁹*Id.*

⁷⁰New York State: Adirondacks Clinton, <http://www.ny.gov/counties/clinton> (accessed Sept. 28, 2017).

11. Columbia County. Columbia County has 21-22 justice courts and 1 city court.⁷¹ The justice courts include Ancram Town Court; Austerlitz Town Court; Canaan Town Court; Chatham Town Court; Chatham Village Court; Claverack Town Court; Clermont Town Court; Copake Town Court; Gallatin Town Court; Germantown Town Court; Ghent Town Court; Greenport Town Court; Hillsdale Town Court; Kinderhook Town Court; Kinderhook Village Court; Livingston Town Court; New Lebanon Town Court; Philmont Village Court; Stockport Town Court; Stuyvesant Town Court; Taghkanic Town Court; and Valatie Town Court.⁷² The city court includes Hudson City Court.⁷³ The county cover 648 square miles and has a population of about 62,499.⁷⁴

⁷¹NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/columbia_county_courts.htm (accessed Sept. 21, 2017); Court Reference: Columbia County New York Court Directory, <http://www.courtreference.com/Columbia-County-New-York-Courts.htm> (accessed Jan. 24, 2018).

⁷²*Id.*

⁷³*Id.*

⁷⁴New York State: Hudson Valley Columbia, <http://www.ny.gov/counties/columbia> (accessed Sept. 21, 2017).

12. Cortland County. Cortland County has 15-17 justice courts and 1 city court.⁷⁵ The justice courts include Cincinnatus Town Court; Cortlandville Town Court; Cuyler Town Court; Freetown Town Court; Harford Town Court; Homer Town Court; Homer Village Court; Lapeer Town Court; Marathon Town Court; McGraw Village Court; Preble Town Court; Scott Town Court; Solon Town Court; Taylor Town Court; Truxton Town Court; Virgil Town Court; and Willet Town Court.⁷⁶ The city court is Cortland City Court.⁷⁷ The county covers 502 square miles and has a population of about 49,474.⁷⁸

⁷⁵NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/cortland_county_courts.htm (accessed Sept 28, 2017); Court Reference: Cortland County New York Court Directory, <http://www.courtreference.com/Cortland-County-New-York-Courts.htm> (accessed Jan. 24, 2018).

⁷⁶*Id.*

⁷⁷*Id.*

⁷⁸New York State: Finger Lakes Cortland, <http://www.ny.gov/counties/cortland> (accessed Sept. 28, 2017).

13. Delaware County. Delaware County has 23 justice courts.⁷⁹ The justice courts include Andes Town Court; Bovina Town Court; Colchester Town Court; Davenport Town Court; Delhi Town Court; Deposit Town Court; Franklin Town Court; Hamden Town Court; Hancock Town Court; Hancock Village Court; Harpersfield Town Court; Kortright Town Court; Masonville Town Court; Meredith Town Court; Middletown Town Court; Roxbury Town Court; Sidney Town Court; Sidney Village Court; Stamford Town Court; Stamford Village Court; Tompkins Town Court; Walton Town Court; and Walton Village Court.⁸⁰ The county covers 1,468 square miles and has a population of about 47,276.⁸¹

⁷⁹NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/delaware_county_courts.htm (accessed Sept. 28, 2017); Court Reference: Delaware County New York Court Directory, <http://www.courtreference.com/Delaware-County-New-York-Courts.htm> (accessed Jan. 24, 2018).

⁸⁰*Id.*

⁸¹New York State: Catskills Delaware, <http://www.ny.gov/counties/delaware> (accessed Sept. 28, 2017).

14. Dutchess County. Dutchess County has 26 justice courts and 2 city courts.⁸² The justice courts include Amenia Town Court; Beekman Town Court; Clinton Justice Court; Dover Justice Court; East Fishkill Justice Court; Fishkill Town Justice Court; Fishkill Village Justice Court; Hyde Park Justice Court; LaGrange Justice Court; Milan Town Justice Court; North East Town Court; Pawling Town Justice Court; Pawling Village Court; Pine Plains Justice Court; Pleasant Valley Justice Court; Poughkeepsie Town Justice Court; Red Hook Town Justice Court; Red Hook Village Court; Rhinebeck Town Justice Court; Rhinebeck Village Justice Court; Stanford Town Court; Tivoli Village Justice Court; Union Vale Town Court; Wappinger Justice Court; Wappingers Falls Justice Court; and Washington Justice Court.⁸³ The city courts include Beacon and Poughkeepsie City Courts.⁸⁴ The county covers 825 square miles and has a population of about 297,322.⁸⁵

⁸²Court Reference: Dutchess County New York Court Directory, <http://www.courtreference.com/Dutchess-County-New-York-Courts.htm> (accessed Mar. 21, 2017).

⁸³*Id.*

⁸⁴*Id.*

⁸⁵New York State: Hudson Valley Dutchess, <http://www.ny.gov/counties/dutchess> (accessed Apr. 20, 2017).

15. Erie County. Erie County has 35-37 justice courts and 3 city courts.⁸⁶ The justice courts include Akron Village Court; Alden Town Court; Alden Village Court; Amherst Town Court; Angola Village Court; Aurora Town Court; Blasdell Village Court; Boston Town Court; Brant Town Court; Cheektowaga Town Court; Clarence Town Court; Colden Town Court; Collins Town Court; Concord Town Court; Depew Village Court; Eden Town Court; Elma Town Court, Evans Town Court; Farnham Village Court; Grand Island Town Court; Hamburg Town Court, Hamburg Village Court; Holland Town Court; Kenmore Village Court; Lancaster Town Court; Lancaster Village Court; Marilla Town Court; Newstead Town Court; North Collins Town Court; Orchard Park Town Court; Orchard Park Village Court; Sardinia Town Court; Springville Village Court; Tonawanda Town Court; Wales Town Court; West Seneca Town Court; and Williamsville Village Court.⁸⁷ The city courts include Buffalo, Lackawanna, and Tonawanda City Courts.⁸⁸ The county covers 1,227 square miles and has a population of about 919,086.⁸⁹

⁸⁶NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/erie_county_courts.htm (accessed Mar. 21, 2017); Court Reference: Erie County New York Court Directory, <http://www.courtreference.com/Erie-County-New-York-Courts.htm> (accessed Mar. 30, 2017).

⁸⁷*Id.*

⁸⁸*Id.*

⁸⁹New York State: Greater Niagara Erie, <http://www.ny.gov/counties/erie> (accessed Apr. 20, 2017).

16. Essex County. Essex County has 19 justice courts.⁹⁰ The justice courts include Chesterfield Town Court; Crown Point Town Court; Elizabethtown Town Court; Essex Town Court; Jay Town Court; Keene Town Court; Lake Placid Village Court; Lewis Town Court; Minerva Town Court; Moriah Town Court; Newcomb Town Court; North Elba Town Court; North Hudson Town Court; Schroon Town Court; St. Armand Town Court; Ticonderoga Town Court; Westport Town Court; Willsboro Town Court; and Wilmington Town Court.⁹¹ The county covers 1,916 square miles and has a population of about 38,961.⁹²

17. Franklin County. Franklin County has 20 justice courts.⁹³ The justice courts include Bangor Town Court; Bellmont Town Court; Bombay Town Court; Brandon Town Court; Brighton Town

⁹⁰Court Reference: Essex County New York Court Directory, <http://www.courtreference.com/Essex-County-New-York-Courts.htm> (accessed Oct 24, 2017).

⁹¹*Id.*

⁹²New York State: Adirondacks Essex, <http://www.ny.gov/counties/essex> (accessed Oct. 24, 2017).

⁹³Court Reference: Franklin County New York Court Directory, <http://www.courtreference.com/Franklin-County-New-York-Courts.htm> (accessed Oct 24, 2017).

Court; Burke Town Court; Chateaugay Town Court; Constable Town Court; Dickinson Town Court; Duane Justice Court; Fort Covington Town Court; Franklin Town Court; Harrietstown Town Court; Malone Town Court; Moira Town Court; Santa Clara Town Court; Tupper Lake Town Court; Tupper Lake Village Court; Waverly Town Court; Westville Town Court.⁹⁴ The county covers 1,697 square miles and has a population of about 51,795.⁹⁵

18. Fulton County. Fulton County has 11 justice courts and 2 city courts.⁹⁶ The justice courts include Bleecker Town Court; Broadalbin Town Court; Broadalbin Village Court; Caroga Town Court; Ephratah Town Court; Johnstown Town Court; Mayfield Town Court; Northampton Town Court; Oppenheim Town Court; Perth Town Court; and Stratford Town Court.⁹⁷ The city

⁹⁴*Id.*

⁹⁵New York State: Adirondacks Franklin, <http://www.ny.gov/counties/franklin> (accessed Oct. 24, 2017).

⁹⁶NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/fulton_county_courts.htm (accessed Sept. 28, 2017); Court Reference: Franklin County New York Court Directory, <http://www.courtreference.com/Fulton-County-New-York-Courts.htm> (accessed Jan. 24, 2018).

⁹⁷*Id.*

courts include Gloversville and Johnstown City Courts.⁹⁸ The county covers 533 square miles and has a population of about 54,925.⁹⁹

19. Genesee County. Genesee County has 14-16 justice courts and 1 city court.¹⁰⁰ The justice courts include Alabama Town Court; Alexander Town Court; Alexander Village Court; Batavia Town Court; Bergen Town Court; Bethany Town Court; Byron Town Court; Corfu Village Court; Darien Town Court; Elba Town Court; Leroy Town Court; Leroy Village Court; Oakfield Town Court; Pavilion Town Court; Pembroke Town Court; and Stafford Town Court.¹⁰¹ The city court is Batavia City Court.¹⁰² The county covers 495 square miles and has a population of about 59,977.¹⁰³

⁹⁸*Id.*

⁹⁹New York State: Capital-Saratoga Fulton, <http://www.ny.gov/counties/fulton> (accessed Sept. 28, 2017).

¹⁰⁰NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/genesee_county_courts.htm (accessed Sept. 28, 2017); Court Reference: Genesee County New York Court Directory, <http://www.courtreference.com/Genesee-County-New-York-Courts.htm> (accessed Jan. 24, 2018).

¹⁰¹*Id.*

¹⁰²*Id.*

20. Greene County. Greene County has 16-18 justice courts.¹⁰⁴ The justice courts include Ashland Town Court; Athens Town Court (two of them); Athens Village Court; Cairo Town Court; Catskill Town Court; Catskill Village Court; Coxsackie Town Court; Durham Town Court; Greenville Town Court; Hunter Town Court; Hunter Village Court; Jewett Town Court; Lexington Town Court; New Baltimore Town Court; Prattsville Town Court; Tannersville Village Court; and Windham Town Court.¹⁰⁵ The county covers 658 square miles and has a population of about 48,673.¹⁰⁶

¹⁰³New York State: Greater Niagara Genesee, <http://www.ny.gov/counties/genesee> (accessed Sept. 28, 2017).

¹⁰⁴NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/greene_county_courts.htm (accessed Sept. 18, 2017); Court Reference: Greene County New York Court Directory, <http://www.courtreference.com/Greene-County-New-York-Courts.htm> (accessed Jan. 24, 2018).

¹⁰⁵*Id.*

¹⁰⁶New York State: Catskills Greene, <http://www.ny.gov/counties/greene> (accessed Sept. 28, 2017).

21. Hamilton County. Hamilton County has 9-10 justice courts.¹⁰⁷ The justice courts include Arietta Town Court; Benson Town Court; Hope Town Court; Indian Lake Town Court; Inlet Town Court; Lake Pleasant Town Court; Long Lake Town Court; Morehouse Town Court; Speculator Village Court; and Wells Town Court.¹⁰⁸ The county covers 1,808 square miles and has a population of about 4,778.¹⁰⁹

22. Herkimer County. Herkimer County has 22-27 justice courts and 1 city court.¹¹⁰ The justice courts include Cold Brook Village Court; Columbia Town Court; Danube Town Court; Fairfield

¹⁰⁷NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/hamilton_county_courts.htm (accessed Sept. 28, 2017); Court Reference: Hamilton County New York Court Directory, <http://www.courtreference.com/Hamilton-County-New-York-Courts.htm> (accessed Jan. 24, 2018).

¹⁰⁸*Id.*

¹⁰⁹New York State: Adirondacks Hamilton, <http://www.ny.gov/counties/hamilton> (accessed Sept. 28, 2017).

¹¹⁰NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/herkimer_county_courts.htm (accessed Sept. 28, 2017); Court Reference: Herkimer County New York Court Directory, <http://www.courtreference.com/Herkimer-County-New-York-Courts.htm> (accessed Jan. 24, 2018).

Town Court; Frankfort Town Court; Frankfort Village Court; German Flatts Town Court; Herkimer Town Court; Herkimer Village Court; Ilion Village Court; Litchfield Town Court; Little Falls Town Court; Manheim Town Court; Middleville Village Court; Mohawk Village Court; Newport Town Court; Newport Village Court; Norway Town Court; Ohio Town Court; Poland Village Court; Russia Town Court; Salisbury Town Court; Schuyler Town Court; Stark Town Court; Warren Town Court; Webb Town Court; and Winfield Town Court.¹¹¹ The city court is Little Falls City Court.¹¹² The county covers 1,458 square miles and has a population of about 64,508.¹¹³

23. Jefferson County. Jefferson County has 30-34 justice courts and 1 city court.¹¹⁴ The justice courts include Adams Town Court; Adams Village Court; Alexandria Bay Village Court;

¹¹¹*Id.*

¹¹²*Id.*

¹¹³New York State: Central New York Herkimer, <http://www.ny.gov/counties/herkimer> (accessed Sept. 28, 2017).

¹¹⁴NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/jefferson_county_courts.htm (accessed Sept. 28, 2017); Court Reference: Jefferson County New York Court Directory, <http://www.courtreference.com/Jefferson-County-New-York-Courts.htm> (accessed Jan. 24, 2018).

Alexandria Town Court; Antwerp Town Court; Brownville Town Court; Brownville Village Court; Cape Vincent Town Court; Carthage Village Court; Champion Town Court; Chaumont Village Court; Clayton Town Court; Clayton Village Court; Dexter Village Court; Ellisburg Town Court; Evan Mills Village Court; Glen Park Village Court; Henderson Town Court; Hounsfield Town Court; Le Ray Town Court; Lorraine Town Court; Lyme Town Court; Orleans Town Court; Pamela Town Court; Philadelphia Town Court; Philadelphia Village Court; Rodman Town Court; Rutland Town Court; Theresa Town Court; Theresa Village Court; Watertown Town Court; West Carthage Village Court; Wilna Town Court; and Worth Town Court.¹¹⁵ The city court is Watertown City Court.¹¹⁶ The county covers 1,857 square miles and has a population of about 120,262.¹¹⁷

¹¹⁵*Id.*

¹¹⁶*Id.*

¹¹⁷New York State: Thousand Islands Seaway Jefferson, <http://www.ny.gov/counties/jefferson> (accessed Sept. 28, 2017).

24. Kings County. Kings County has 2 city courts.¹¹⁸ The city courts include New York City Criminal Court and New York City Criminal Court - Red Hook Community Justice Center.¹¹⁹ The county covers 96.9 square miles and has a population of about 2,592,149.¹²⁰

25. Lewis County. Lewis County has 19-20 justice courts.¹²¹ The justice courts include Copenhagen Village Court; Croghan Town Court; Denmark Town Court; Diana Town Court; Greig Town Court; Harrisburg Town Court; Lewis Town Court; Leyden Town Court; Lowville Town Court; Lowville Village Court; Lyonsdale Town Court; Martinsburg Town Court; Montague Town Court; New Bremen Town Court; Osceola Town Court; Pinckney Town Court;

¹¹⁸Court Reference: Kings County New York Court Directory, <http://www.courtreference.com/Kings-County-New-York-Courts.htm> (accessed Oct 24, 2017).

¹¹⁹*Id.*

¹²⁰New York State: New York City Kings, <http://www.ny.gov/counties/kings> (accessed Oct. 24, 2017).

¹²¹NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/lewis_county_courts.htm (accessed Sept. 28, 2017); Court Reference: Lewis County New York Court Directory, <http://www.courtreference.com/Lewis-County-New-York-Courts.htm> (accessed Jan. 24, 2018).

Port Leyden Village Court; Turin Town Court; Watson Town Court; and West Turin Town Court.¹²² The county covers 1,290 square miles and has a population of about 27,224.¹²³

26. Livingston County. Livingston County has 23 justice courts.¹²⁴ The justice courts include Avon Town Court; Avon Village Court; Caledonia Town Court; Caledonia Village Court; Conesus Town Court; Dansville Village Court; Geneseo Town Court; Geneseo Village Court; Groveland Town Court; Leicester Justice Court; Lima Town Court; Livonia Town Court; Mount Morris Town Court; Mount Morris Village Court; North Dansville Town Court; Nunda Town Court; Nunda Village Court; Ossian Town Court; Portage Town Court; Sparta Town Court;

¹²²*Id.*

¹²³New York State: Adirondacks Lewis, <http://www.ny.gov/counties/lewis> (accessed Sept. 28, 2017).

¹²⁴Court Reference: Livingston County New York Court Directory, <http://www.courtreference.com/Livingston-County-New-York-Courts.htm> (accessed Oct 24, 2017).

Springwater Town Court; West Sparta Town Court; and York Town Court.¹²⁵ The county covers 640 square miles and has a population of about 64,810.¹²⁶

27. Madison County. Madison County has 20-21 justice courts and 1 city court.¹²⁷ The justice courts include Brookfield Town Court; Canastota Village Court; Cazenovia Town Court; Cazenovia Village Court; Chittenango Village Court; De Ruyter Town Court; Eaton Town Court; Fenner Town Court; Georgetown Town Court; Hamilton Town Court; Hamilton Village Court; Lebanon Town Court; Lenox Town Court; Lincoln Town Court; Madison Town Court; Madison Village Court; Morrisville Village Court; Nelson Town Court; Smithfield Town Court; Stockbridge Town Court; and Sullivan Town Court.¹²⁸ The city court is Oneida City Court.¹²⁹ The county covers 662 square miles and has a population of about 72,382.¹³⁰

¹²⁵*Id.*

¹²⁶New York State: Finger Lakes Livingston, <http://www.ny.gov/counties/livingston> (accessed Oct. 24, 2017).

¹²⁷NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/madison_county_courts.htm (accessed Sept. 28, 2017); Court Reference: Madison County New York Court Directory, <http://www.courtreference.com/Madison-County-New-York-Courts.htm> (accessed Jan. 24, 2018).

¹²⁸*Id.*

28. Monroe County. Monroe County has 22-23 justice courts and 1 city court.¹³¹ The justice courts include Brighton Town Court; Brockport Village Court; Chili Town Court; Clarkson Town Court; East Rochester Town Court; Fairport Village Court; Gates Town Court; Greece Town Court; Hamlin Town Court; Henrietta Town Court; Honeoye Falls Village Court; Irondequoit Town Court; Mendon Town Court; Ogden Town Court; Parma Town Court; Penfield Town Court; Perinton Town Court; Pittsford Town Court; Riga Town Court; Rush Town Court; Sweden Town Court; Webster Town Court; and Wheatland Town Court.¹³² The city court is Rochester City Court.¹³³ The county covers 1,366 square miles and has a population of about 747,813.¹³⁴

¹²⁹*Id.*

¹³⁰New York State: Central New York Madison, <http://www.ny.gov/counties/madison> (accessed Sept. 28, 2017).

¹³¹NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/monroe_county_courts.htm (accessed Mar. 21, 2017); Court Reference: Monroe County New York Court Directory, <http://www.courtreference.com/Monroe-County-New-York-Courts.htm> (accessed Mar. 30, 2017).

¹³²NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/monroe_county_courts.htm (accessed Mar. 21, 2017).

¹³³*Id.*

29. Montgomery County. Montgomery County has 12 justice courts and 1 city court.¹³⁵ The justice courts include Amsterdam Justice Court; Canajoharie Town Court; Canajoharie Village Court; Charleston Town Court; Florida Town Court; Glen Town Court; Minden Town Court; Mohawk Town Court; Palatine Town Court; Root Town Court; St. Johnsville Town Court; and St. Johnsville Village Court.¹³⁶ The city court is Amsterdam City Court.¹³⁷ The county covers 410 square miles and has a population of about 49,941.¹³⁸

¹³⁴New York State: Finger Lakes Monroe, <http://www.ny.gov/counties/monroe> (accessed Apr. 20, 2017).

¹³⁵Court Reference: Montgomery County New York Court Directory, <http://www.courtreference.com/Montgomery-County-New-York-Courts.htm> (accessed Oct. 24, 2017).

¹³⁶*Id.*

¹³⁷*Id.*

¹³⁸New York State: Central New York Montgomery, <http://www.ny.gov/counties/montgomery> (accessed Oct. 24, 2017).

30. Nassau County. Nassau County has 61 justice courts, 2 city courts, and 1 district court.¹³⁹

The justice courts include Atlantic Beach Village Court; Baxter Estates Village Court; Bayville Village Court; Bellerose Village Court; Brookville Village Court; Cedarhurst Village Court; Centre Island Village Court; Cove Neck Village Court; East Hills Village Court; East Rockaway Village Court; East Williston Village Court; Farmingdale Justice Court; Floral Park Village Court; Flower Hill Village Court; Freeport Village Court; Garden City Justice Court; Great Neck Estates Village Court; Great Neck Plaza Village Court; Great Neck Village Court; Hempstead Village Court; Hewlett Bay Park Village Court; Island Park Village Court; Kensington Village Court; Kings Point Village Court; Lake Success Village Court; Lattingtown Village Court; Laurel Hollow Village Court; Lawrence Village Court; Lynbrook Village Court; Malverne Village Court; Manorhaven Village Court; Massapequa Park Village Court; Matinecock Village Court; Mill Neck Village Court; Mineola Justice Court; Munsey Park Village Court; Muttontown Village Court; New Hyde Park Village Court; North Hills Village Court; Old Brookville Village Court; Old Westbury Village Court; Oyster Bay Cove Village Court; Plandome Heights Village Court; Plandome Manor Village Court; Plandome Village Court; Port Washington North Village Court; Rockville Centre Village Court; Roslyn Estates Village Court; Roslyn Harbor Village Court; Roslyn Village Court; Russell Gardens Village Court; Saddle Rock Village Court; Sands Point Village Court; Sea Cliff Village Court; South Floral Park Village Court; Stewart Manor Justice Court; Upper Brookville Village Court; Valley Stream Village Court; Westbury Village

¹³⁹Court Reference: Nassau County New York Court Directory, <http://www.courtreference.com/Nassau-County-New-York-Courts.htm> (accessed Oct. 24, 2017).

Court; Williston Park Village Court; and Woodsburgh Village Court.¹⁴⁰ The city courts include Glen Cove City Court and Long Beach City Court.¹⁴¹ The district court is Nassau County District Court.¹⁴² The county covers 453 square miles and has a population of about 1.349 million.¹⁴³

31. New York County. New York County has 3 city courts.¹⁴⁴ The city courts include New York City Criminal Court (in two locations) and New York City Criminal Court - Midtown Community Court.¹⁴⁵ The county covers 33.77 square miles and has a population of about 1,626,159.¹⁴⁶

¹⁴⁰*Id.*

¹⁴¹*Id.*

¹⁴²*Id.*

¹⁴³New York State: Long Island Nassau, <http://www.ny.gov/counties/nassau> (accessed Oct. 24, 2017).

¹⁴⁴Court Reference: New York County New York Court Directory, <http://www.courtreference.com/New-York-County-New-York-Courts.htm> (accessed Oct. 24, 2017).

¹⁴⁵*Id.*

¹⁴⁶New York State: New York City New York, <http://www.ny.gov/counties/new-york> (accessed Oct. 24, 2017).

32. Niagara County. Niagara County has 12 justice courts and 3 city courts.¹⁴⁷ The justice courts include Cambria Justice Court; Hartland Town Court; Lewiston Justice Court; Lockport Justice Court; Newfane Justice Court; Niagara Town Court; Pendleton Justice Court; Porter Justice Court; Royalton Town Court; Somerset Justice Court; Wheatfield Town Court; and Wilson Justice Court.¹⁴⁸ The city courts include Lockport City Court; Niagara Falls City Court; and North Tonawanda City Court.¹⁴⁹ The county covers 1,140 square miles and has a population of about 215,124.¹⁵⁰

¹⁴⁷Court Reference: Niagara County New York Court Directory, <http://www.courtreference.com/Niagara-County-New-York-Courts.htm> (accessed Oct. 24, 2017).

¹⁴⁸*Id.*

¹⁴⁹*Id.*

¹⁵⁰New York State: Greater Niagara, <http://www.ny.gov/counties/niagara> (accessed Oct. 24, 2017).

33. Oneida County. Oneida County has 35 justice courts and 3 city courts.¹⁵¹ The justice courts include Annsville Town Court; Augusta Town Court; Ava Town Court; Boonville Town Court; Boonville Village Court; Bridgewater Town Court; Camden Town Court; Deerfield Town Court; Florence Town Court; Floyd Town Court; Forestport Town Court; Kirkland Town Court; Lee Town Court; Marcy Town Court; Marshall Town Court; New Hartford Town Court; New Hartford Village Court; New York Mills Village Court; Oriskany Village Court; Paris Town Court; Remsen Town Court; Sangerfield Town Court; Steuben Town Court; Sylvan Beach Village Court; Trenton Town Court; Vernon Town Court; Vernon Village Court; Verona Town Court; Vienna Town Court; Waterville Village Court; Western Town Court; Westmoreland Court; Whitesboro Village Court; Whitestown Town Court; and Yorkville Village Court.¹⁵² The city courts include Rome, Sherrill, and Utica City Courts.¹⁵³ The county covers 1,257 square miles and has a population of about 324,878.¹⁵⁴

¹⁵¹Court Reference: Oneida County New York Court Directory, <http://www.courtreference.com/Oneida-County-New-York-Courts.htm> (accessed Apr. 1, 2017).

¹⁵²*Id.*

¹⁵³*Id.*

¹⁵⁴New York State: Central New York Oneida, <http://www.ny.gov/counties/oneida> (accessed Apr. 20, 2017).

34. Onondaga County. Onondaga County has 28 justice courts and 1 city court.¹⁵⁵ The justice courts include Baldwinsville Village Court; Camillus Town Court; Cicero Justice Court; Clay Town Court; DeWitt Town Court; East Syracuse Village Court; Elbridge Town Court; Fabius Town Court; Fayetteville Village Court; Geddes Town Court; Jordan Village Court; LaFayette Town Court; Liverpool Justice Court; Lysander Town Court; Manlius Town Court; Manlius Village Court; Marcellus Town Court; Minoa Village Court; North Syracuse Village Court; Onondaga Justice Court; Otisco Town Court; Pompey Town Court; Salina Town Court; Skaneateles Justice Court; Solvay Village Court; Spafford Justice Court; Tully Town Justice Court; and Van Buren Town Court.¹⁵⁶ The city court is Syracuse City Court.¹⁵⁷ The county covers 806 square miles and has a population of about 467,026.¹⁵⁸

¹⁵⁵Court Reference: Onondaga County New York Court Directory, <http://www.courtreference.com/Onondaga-County-New-York-Courts.htm> (accessed Mar. 30, 2017).

¹⁵⁶*Id.*

¹⁵⁷*Id.*

¹⁵⁸New York State: Finger Lakes Onondaga, <http://www.ny.gov/counties/onondaga> (accessed Apr. 20, 2017).

35. Ontario County. Ontario County has 17 justice courts and 2 city courts.¹⁵⁹ The justice courts include Bristol Town Court; Canadice Town Court; Canandaigua Town Court; Clifton Springs Village Court; East Bloomfield Town Court; Farmington Town Court; Geneva Town Court; Gorham Town Court; Hopewell Town Court; Manchester Town Court; Naples Town Court; Phelps Town Court; Richmond Town Court; Seneca Town Court; South Bristol Town Court; Victor Town Court; and West Bloomfield Town Court.¹⁶⁰ The city courts include Canandaigua and Geneva City Courts.¹⁶¹ The county covers 662 square miles and has a population of about 108,519.¹⁶²

36. Orange County. Orange County has 33-34 justice courts and 3 city courts.¹⁶³ The justice courts include Blooming Grove Town Court; Chester Town Court; Chester Village Court;

¹⁵⁹Court Reference: Ontario County New York Court Directory, <http://www.courtreference.com/Ontario-County-New-York-Courts.htm> (accessed Mar. 30, 2017).

¹⁶⁰*Id.*

¹⁶¹*Id.*

¹⁶²New York State: Finger Lakes Ontario, <http://www.ny.gov/counties/ontario> (accessed Apr. 20, 2017).

¹⁶³NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/orange_county_courts.htm (accessed Sept. 28, 2017); Court Reference:

Cornwall Town Court; Crawford Town Court; Deerpark Town Court; Florida Village Court; Goshen Town Court; Goshen Village Court; Greenville Town Court; Greenwood Lake Village Court; Hamptonburgh Town Court; Harriman Village Court; Highlands Town Court; Maybrook Village Court; Minisink Town Court; Monroe Town Court; Monroe Village Court; Montgomery Town Court; Montgomery Village Court; Mount Hope Town Court; New Windsor Town Court; Newburgh Town Court; Otisville Village Court; Tuxedo Park Village Court; Tuxedo Town Court; Unionville Village Court; Walden Village Court; Wallkill Town Court; Warwick Town Court; Warwick Village Court; Washingtonville Village Court; Wawayanda Town Court; and Woodbury Town Court.¹⁶⁴ The city courts include Middletown, Newburgh, and Port Jervis City Courts.¹⁶⁵ The county covers 839 square miles and has a population of 372,813.¹⁶⁶

Orange County New York Court Directory, <http://www.courtreference.com/Orange-County-New-York-Courts.htm> (accessed Jan. 24, 2018).

¹⁶⁴*Id.*

¹⁶⁵*Id.*

¹⁶⁶New York State: Hudson Valley, Orange, <http://www.ny.gov/counties/orange> (accessed Sept. 28, 2017).

37. Orleans County. Orleans County has 10 justice courts.¹⁶⁷ The justice courts include Albion Town Court; Barre Town Court; Carlton Town Court; Clarendon Justice Court; Gaines Justice Court; Kendall Town Court; Murray Justice Court; Ridgeway Town Court; Shelby Town Court; and Yates Town Court.¹⁶⁸ The county covers 817 square miles and has a population of 42,883.¹⁶⁹

38. Oswego County. Oswego County has 23 justice courts and 2 city courts.¹⁷⁰ The justice courts include Albion Town Court; Amboy Town Court; Boylston Town Court; Central Square Village Court; Constantia Town Court; Granby Justice Court; Hannibal Town Court; Hastings Town Court; Mexico Town Court; Minetto Town Court; New Haven Justice Court; Orwell Town Court; Oswego Town Court; Palermo Town Court; Parish Town Court; Redfield Town Court; Richland Town Court; Sandy Creek Town Court; Schroepel Justice Court; Scriba Town Court;

¹⁶⁷Court Reference: Orleans County New York Court Directory, <http://www.courtreference.com/Orleans-County-New-York-Courts.htm> (accessed Oct. 24, 2017).

¹⁶⁸*Id.*

¹⁶⁹New York State: Greater Niagara Orleans, <http://www.ny.gov/counties/orleans> (accessed Oct. 24, 2017).

¹⁷⁰Court Reference: Oswego County New York Court Directory, <http://www.courtreference.com/Oswego-County-New-York-Courts.htm> (accessed Oct. 24, 2017).

Volney Town Court; West Monroe Town Court; and Williamstown Town Court.¹⁷¹ The city courts include Fulton City Court and Oswego City Court.¹⁷² The county covers 1,312 square miles and has a population of about 122,109.¹⁷³

39. Otsego County. Otsego County has 25 justice courts and 1 city court.¹⁷⁴ The justice courts include Burlington Town Court; Butternuts Town Court; Cherry Valley Town Court; Decatur Town Court; Edmeston Town Court; Exeter Town Court; Hartwick Town Court; Laurens Town Court; Maryland Town Court; Middlefield Town Court; Milford Town Court; Morris Town Court; New Lisbon Town Court; Oneonta Town Court; Otego Town Court; Otsego Town Court; Pittsfield Town Court; Plainfield Town Court; Richfield Springs Village Court; Richfield Town Court; Roseboom Town Court; Springfield Town Court; Unadilla Town Court; Westford Town

¹⁷¹*Id.*

¹⁷²*Id.*

¹⁷³New York State: Thousand Islands Seaway Oswego, <http://www.ny.gov/counties/oswego> (accessed Oct. 25, 2017).

¹⁷⁴Court Reference: Otsego County New York Court Directory, <http://www.courtreference.com/Otsego-County-New-York-Courts.htm> (accessed Oct. 25, 2017).

Court; and Worcester Town Court.¹⁷⁵ The city court is Oneonta City Court.¹⁷⁶ The county covers 1,015 square miles and has a population of about 62,259.¹⁷⁷

40. Putnam County. Putnam County has nine justice courts.¹⁷⁸ The justice courts include Brewster Village Court; Carmel Town Court; Cold Spring Village Court; Kent Town Court; Nelsonville Village Court; Patterson Town Court; Philipstown Town Court; Putnam Valley Town Court; and Southeast Town Court.¹⁷⁹ The county covers 246 square miles and has a population of about 99,710.¹⁸⁰

¹⁷⁵*Id.*

¹⁷⁶*Id.*

¹⁷⁷New York State: Central New York Otsego, <http://www.ny.gov/counties/otsego> (accessed Oct. 25, 2017).

¹⁷⁸NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/putnam_county_courts.htm (accessed Sept. 28, 2017); Court Reference: Putnam County New York Court Directory, <http://www.courtreference.com/Putnam-County-New-York-Courts.htm> (accessed Jan. 24, 2018).

¹⁷⁹*Id.*

¹⁸⁰New York State: Hudson Valley, Putnam, <http://www.ny.gov/counties/putnam> (accessed Sept. 28, 2017).

41. Queens County. Queens County has one city court.¹⁸¹ The city court is New York City Criminal Court.¹⁸² The county covers 178 square miles and has a population of about 2,296,175.¹⁸³

42. Rensselaer County. Rensselaer County has 16-17 justice courts and 2 city courts.¹⁸⁴ The justice courts include Berlin Town Court; Brunswick Town Court; Castleton-on-Hudson Village Court; East Greenbush Town Court; Grafton Town Court; Hoosick Falls Village Court; Hoosick

¹⁸¹Court Reference: Queens County New York Court Directory, <http://www.courtreference.com/Queens-County-New-York-Courts.htm> (accessed Oct. 25, 2017).

¹⁸²*Id.*

¹⁸³New York State: New York City Queens, <http://www.ny.gov/counties/queens> (accessed Oct. 25, 2017).

¹⁸⁴NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/rensselaer_county_courts.htm (accessed Mar. 29, 2017); Court Reference: Rensselaer County New York Court Directory, <http://www.courtreference.com/Rensselaer-County-New-York-Courts.htm> (accessed Mar. 30, 2017).

Town Court; Nassau Town Court; Nassau Village Court; North Greenbush Town Court; Petersburg Town Court; Pittstown Town Court; Poestenkill Town Court; Sand Lake Town Court; Schaghticoke Town Court; Scodack Town Court; and Stephentown Town Court.¹⁸⁵ The city courts include Rensselaer and Troy City Courts.¹⁸⁶ The county covers 665 square miles and has a population of about 159,429.¹⁸⁷

43. Richmond County. Richmond County has one city court.¹⁸⁸ The city court is New York City Criminal Court.¹⁸⁹ The county covers 59 square miles and has a population of about 472,621.¹⁹⁰

¹⁸⁵*Id.*

¹⁸⁶*Id.*

¹⁸⁷New York State: Capital-Saratoga Rensselaer, <http://www.ny.gov/counties/rensselaer> (accessed Apr. 20, 2017).

¹⁸⁸Court Reference: Richmond County New York Court Directory, <http://www.courtreference.com/Richmond-County-New-York-Courts.htm> (accessed Oct. 25, 2017).

¹⁸⁹*Id.*

¹⁹⁰New York State: New York City Richmond, <http://www.ny.gov/counties/richmond> (accessed Oct. 25, 2017).

44. Rockland County. Rockland County has 20-22 justice courts.¹⁹¹ The justice courts include Airmont Village Court; Chestnut Ridge Village Court; Clarkstown Town Court; Grand View-on-Hudson Village Court; Haverstraw Town Court; Haverstraw Village Court; Hillburn Village Court; Montebello Village Court; New Hempstead Justice Court; New Square Village Court; Nyack Village Court; Orangetown Town Court; Piermont Village Court; Ramapo Town Court; Sloatsburg Village Court; South Nyack Village Court; Spring Valley Village Court; Stony Point Town Court; Suffern Village Court; Upper Nyack Village Court; Wesley Hills Village Court; and West Haverstraw Village Court.¹⁹² The county covers 199 square miles and has a population of about 311,687.¹⁹³

¹⁹¹NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/rockland_county_courts.htm (accessed Apr. 12, 2017); Court Reference: Rockland County New York Court Directory, <http://www.courtreference.com/Rockland-County-New-York-Courts.htm> (accessed Apr. 12, 2017).

¹⁹²*Id.*

¹⁹³New York State: Hudson Valley Rockland, <http://www.ny.gov/counties/rockland> (accessed Oct. 25, 2017).

45. Saratoga County. Saratoga County has 21-22 justice courts and 2 city courts.¹⁹⁴ The justice courts include Ballston Spa Village Court; Ballston Town Court; Charlton Town Court; Clifton Park Town Court; Corinth Town Court; Day Town Court; Edinburg Town Court; Galway Town Court; Galway Village Court; Greenfield Town Court; Hadley Town Court; Halfmoon Town Court; Malta Town Court; Milton Town Court; Moreau Town Court; Northumberland Town Court; Providence Town Court; Saratoga Town Court; Schuylerville Village Court; Stillwater Town Court; Waterford Town Court; Wilton Town Court.¹⁹⁵ The city courts are Mechanicville and Saratoga Springs City Courts.¹⁹⁶ The county covers 822 square miles and has a population of about 222,133.¹⁹⁷

¹⁹⁴NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/saratoga_county_courts.htm (accessed Sept. 28, 2017); Court Reference: Saratoga County New York Court Directory, <http://www.courtreference.com/Saratoga-County-New-York-Courts.htm> (accessed Jan. 24, 2018).

¹⁹⁵*Id.*

¹⁹⁶*Id.*

¹⁹⁷New York State: Capital-Saratoga Saratoga, <http://www.ny.gov/counties/saratoga> (accessed Sept. 28, 2017).

46. Schenectady County. Schenectady County has six justice courts and one city court.¹⁹⁸ The justice courts include Duanesburg Town Court; Glenville Town Court; Niskayuna Town Court; Princetown Town Court; Rotterdam Town Court; and Scotia Village Court.¹⁹⁹ The city court is Schenectady City Court.²⁰⁰ The county covers 210 square miles and has a population of about 154,727.²⁰¹

47. Schoharie County. Schoharie County has 18 justice courts.²⁰² The justice courts include Blenheim Town Court; Broome Town Court; Carlisle Town Court; Cobleskill Town Court;

¹⁹⁸NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/schenectady_county_courts.htm (accessed Sept. 28, 2017); Court Reference: Schenectady County New York Court Directory, <http://www.courtreference.com/Schenectady-County-New-York-Courts.htm> (accessed Jan. 24, 2018).

¹⁹⁹*Id.*

²⁰⁰*Id.*

²⁰¹New York State: Capital-Saratoga Schenectady, <http://www.ny.gov/counties/schenectady> (accessed Sept. 28, 2017).

²⁰²Court Reference: Schoharie County New York Court Directory, <http://www.courtreference.com/Schoharie-County-New-York-Courts.htm> (accessed Oct. 25, 2017).

Conesville Town Court; Esperance Town Court; Fulton Town Court; Gilboa Town Court; Jefferson Town Court; Middleburgh Town Court; Middleburgh Village Court; Richmondville Town Court; Schoharie Town Court; Schoharie Village Court; Seward Town Court; Sharon Town Court; Summit Town Court; and Wright Town Court.²⁰³ The county covers 626 square miles and has a population of about 32,749.²⁰⁴

48. Schuyler County. Schuyler County has 11 justice courts.²⁰⁵ The justice courts include Catharine Town Court; Cayuta Town Court; Dix Town Court; Hector Town Court; Montour Town Court; Montour Falls Village Court; Odessa Village Court; Orange Town Court; Reading

²⁰³*Id.*

²⁰⁴New York State: Central New York Schoharie, <http://www.ny.gov/counties/schoharie> (accessed Oct. 25, 2017).

²⁰⁵Schuyler County New York: Local Court, <http://www.schuylercounty.us/789/Local-Courts> (accessed Mar. 22, 2017).

Town Court; Tyrone Town Court; and Watkins Glen Village Court.²⁰⁶ The county covers 342 square miles and has a population of about 18,343.²⁰⁷

49. Seneca County. Seneca County has 11 justice courts.²⁰⁸ The justice courts include Covert Town Court; Fayette Town Court; Junius Town Court; Lodi Town Court; Ovid Town Court; Romulus Town Court; Seneca Falls Town Court; Tyre Town Court; Varick Town Court; Waterloo Town Court; and Waterloo Village Court.²⁰⁹ The county covers 391 square miles and has a population of about 35,251.²¹⁰

²⁰⁶*Id.*

²⁰⁷New York State: Finger Lakes Schuyler, <http://www.ny.gov/counties/schuyler> (accessed Apr. 20, 2017).

²⁰⁸Court Reference: Seneca County New York Court Directory, <http://www.courtreference.com/Seneca-County-New-York-Courts.htm> (accessed Oct. 25, 2017).

²⁰⁹*Id.*

²¹⁰New York State: Finger Lakes Seneca, <http://www.ny.gov/counties/seneca> (accessed Oct. 25, 2017).

50. St. Lawrence County. St. Lawrence County has 33 justice courts and 1 city court.²¹¹ The justice courts include Brasher Town Court; Canton Town Court; Clare Town Court; Clifton Town Court; Colton Town Court; De Kalb Town Court; De Peyster Town Court; Edwards Town Court; Fine Town Court; Fowler Justice Court; Gouverneur Town Court; Hammond Town Court; Hermon Town Court; Hopkinton Town Court; Lawrence Town Court; Lisbon Town Court; Louisville Town Court; Macomb Town Court; Madrid Town Court; Massena Town Court; Massena Village Court; Morristown Town Court; Norfolk Town Court; Oswegathchie Court; Parishville Town Court; Piercefield Town Court; Pierrepont Town Court; Pitcairn Town Court; Potsdam Town Court; Rossie Town Court; Russell Town Court; Stockholm Town Court; and Waddington Town Court.²¹² The city court includes Ogdensburg City Court.²¹³ The county covers 2,821 square miles and has a population of about 111,944.²¹⁴

²¹¹Court Reference: St. Lawrence County New York Court Directory, <http://www.courtreference.com/St-Lawrence-County-New-York-Courts.htm> (accessed Mar. 30, 2017).

²¹²*Id.*

²¹³*Id.*

²¹⁴New York State: Thousand Islands Seaway St. Lawrence, <http://www.ny.gov/counties/st-lawrence> (accessed Apr. 20, 2017).

51. Steuben County. Steuben County has 38 justice courts and 2 city courts.²¹⁵ The justice courts include Addison Town Court; Avoca Town Court; Bath Town Court; Bath Village Court; Bradford Town Court; Cameron Town Court; Campbell Town Court; Canisteo Town Court; Canisteo Village Court; Caton Town Court; Cohocton Town Court; Cohocton Village Court; Corning Justice Court; Dansville Town Court; Erwin Town Court; Fremont Town Court; Greenwood Town Court; Hartsville Town Court; Hornby Town Court; Hornellsville Town Court; Howard Town Court; Jasper Town Court; Lindley Town Court; Painted Post Village Court; Prattsburgh Town Court; Pulteney Town Court; Rathbone Town Court; Savona Village Court; Thurston Town Court; Troupsburg Town Court; Tuscarora Town Court; Urbana Town Court; Wayland Town Court; Wayland Village Court; Wayne Town Court; West Union Town Court; Wheeler Town Court; and Woodhull Town Court.²¹⁶ The city courts include Corning City Court and Hornell City Court.²¹⁷ The county covers 1,404 square miles and has a population of about 98,990.²¹⁸

²¹⁵Court Reference: Steuben County New York Court Directory, <http://www.courtreference.com/Steuben-County-New-York-Courts.htm> (accessed Oct. 25, 2017).

²¹⁶*Id.*

²¹⁷*Id.*

²¹⁸New York State: Finger Lakes Steuben, <http://www.ny.gov/counties/steuben> (accessed Oct. 25, 2017).

52. Suffolk County. Suffolk County has a West End District Court, West End Village Court, and four East End Justice Courts.²¹⁹ There are 31 justice courts, and they include Amityville Village Court; Asharoken Village Court; Babylon Village Court; Belle Terre Village Court; Bellport Village Court; Brightwaters Village Court; East Hampton Town Court; Head of the Harbor Village Court; Huntington Bay Village Court; Islandia Village Court; Lake Grove Village Court; Lindenhurst Village Court; Lloyd Harbor Village Court; Mastic Beach Village Court; Nissequogue Village Court; Northport Village Court; Ocean Beach Village Court; Old Field Village Court; Patchogue Village Court; Poquott Village Court; Port Jefferson Village Court; Quogue Village Court; Riverhead Town Court; Saltaire Village Court; Shelter Island Town Court; Southampton Town Court; Southampton Village Court; Southold Town Court; Village of the Branch Justice Court; Westhampton Beach Village Court; and Westhampton Dunes Village Court.²²⁰ The county covers 2,373 square miles and has a population of about 1,493,350.²²¹

²¹⁹Telephone interview with Deborah Schneer, ILS *Hurrell-Harring* Coordinator (Feb. 22 and Mar. 3, 2017).

²²⁰Court Reference: Suffolk County New York Court Directory, <http://www.courtreference.com/Suffolk-County-New-York-Courts.htm> (accessed Mar. 30, 2017).

²²¹New York State: Long Island Suffolk, <http://www.ny.gov/counties/suffolk> (accessed Apr. 20, 2017).

53. Sullivan County. Sullivan County has 18 justice courts.²²² The justice courts include Bethel Town Court; Bloomingburg Village Court; Callicoon Town Court; Cochection Town Court; Delaware Town Court; Fallsburg Town Court; Fremont Town Court; Highland Town Court; Liberty Town Court; Liberty Village Court; Lumberland Town Court; Mamakating Town Court; Monticello Village Court; Neversink Town Court; Rockland Town Court; Thompson Town Court; Tusten Town Court; and Woodridge Village Court.²²³ The county covers 997 square miles and has a population of about 77,547.²²⁴

²²²NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/sullivan_county_courts.htm (accessed Sept. 28, 2017); Court Reference: Sullivan County New York Court Directory, <http://www.courtreference.com/Sullivan-County-New-York-Courts.htm> (accessed Jan. 24, 2018).

²²³*Id.*

²²⁴New York State: Catskills Sullivan, <http://www.ny.gov/counties/sullivan> (accessed Sept. 28, 2017).

54. Tioga County. Tioga County has 12 justice courts.²²⁵ The justice courts include Barton Town Court; Berkshire Town Court; Candor Town Court; Candor Village Court; Newark Valley Town Court; Nichols Town Court; Owego Town Court; Owego Village Court; Richford Town Court; Spencer Town Court; Tioga Town Court; and Waverly Justice Court.²²⁶ The county covers 523 square miles and has a population of about 51,125.²²⁷

55. Tompkins County. Tompkins County has 11 justice courts and 1 city court.²²⁸ The justice courts include Caroline Town Court; Cayuga Heights Village Court; Danby Town Court; Dryden Town Court; Enfield Town Court; Freeville Village Court; Groton Town Court; Ithaca Town Court; Lansing Town Court; Newfield Town Court; and Ulysses Town Court.²²⁹ The city court is

²²⁵Court Reference: Tioga County New York Court Directory, <http://www.courtreference.com/Tioga-County-New-York-Courts.htm> (accessed Oct. 25, 2017).

²²⁶*Id.*

²²⁷New York State: Finger Lakes Tioga, <http://www.ny.gov/counties/tioga> (accessed Oct. 25, 2017).

²²⁸Town of Ulysses, New York: City-Town-Village Courts of Tompkins County, <http://www.ulysses.ny.us/departments/departments-justice/justice-citytownsvillagecourtsoftompkinscounty> (accessed Mar. 22, 2017).

²²⁹*Id.*

Ithaca City Court.²³⁰ The county covers 492 square miles and has a population of about 101,564.²³¹

56. Ulster County. Ulster County has 21-22 justice courts and 1 city court.²³² The justice courts include Denning Town Court; Ellenville Village Court; Esopus Town Court; Gardiner Town Court; Hardenburgh Town Court; Hurley Town Court; Kingston Town Court; Lloyd Town Court; Marbletown Town Court; Marlborough Town Court; New Paltz Town Court; Olive Town Court; Plattekill Town Court; Rochester Town Court; Rosendale Town Court; Saugerties Town Court; Saugerties Village Court; Shandaken Town Court; Shawangunk Town Court; Ulster

²³⁰*Id.*

²³¹New York State: Finger Lakes Tompkins, <http://www.ny.gov/counties/st-lawrence> (accessed Apr. 20, 2017).

²³²NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/ulster_county_courts.htm (accessed Mar. 22, 2017); Court Reference: Ulster County New York Court Directory, <http://www.courtreference.com/Ulster-County-New-York-Courts.htm> (accessed Mar. 30, 2017).

Town Court; Wawarsing Town Court; and Woodstock Town Court.²³³ The city court is Kingston City Court.²³⁴ The county covers 1,161 square miles and has a population of about 182,493.²³⁵

57. Warren County. Warren County has 11 justice courts and 1 city court.²³⁶ The justice courts include Bolton Justice Court; Chester Town Court; Hague Town Court; Horicon Town Court; Johnsbury Town Court; Lake George Town Court; Lake Luzerne Town Court; Queensbury Town Court; Stony Creek Town Court; Thurman Town Court; and Warrensburg Town Court.²³⁷

²³³*Id.*

²³⁴*Id.*

²³⁵New York State: Hudson Valley Ulster, <http://www.ny.gov/counties/ulster> (accessed Apr. 20, 2017).

²³⁶Court Reference: Warren County New York Court Directory, <http://www.courtreference.com/Warren-County-New-York-Courts.htm> (accessed Oct. 25, 2017).

²³⁷*Id.*

The city court is Glens Falls City Court.²³⁸ The county covers 932 square miles and has a population of about 65,707.²³⁹

58. Washington County. Washington County has 22 justice courts.²⁴⁰ The justice courts include Argyle Town and Village Court; Cambridge Town Court; Cambridge Village Court; Dresden Town Court; Easton Town Court; Fort Ann Town Court; Fort Edward Town Court; Fort Edward Village Court; Granville Town Court; Granville Village Court; Greenwich Town Court; Greenwich Village Court; Hampton Town Court; Hartford Town Court; Hebron Town Court; Jackson Town Court; Kingsbury Town Court; Putnam Town Court; Salem Town Court; White

²³⁸*Id.*

²³⁹New York State: Adirondacks Warren, <http://www.ny.gov/counties/warren> (accessed Oct. 25, 2017).

²⁴⁰Court Reference: Washington County New York Court Directory, <http://www.courtreference.com/Washington-County-New-York-Courts.htm> (accessed Oct. 25, 2017).

Creek Town Court; Whitehall Town Court; and Whitehall Village Court.²⁴¹ The county covers 837 square miles and has a population of about 63,216.²⁴²

59. Wayne County. Wayne County has 18 justice courts.²⁴³ The justice courts include Arcadia Town Court; Butler Town Court; Galen Town Court; Huron Town Court; Lyons Town Court; Macedon Town Court; Marion Town Court; Newark Village Court; Ontario Town Court; Palmyra Town Court; Palmyra Village Court; Rose Town Court; Savannah Town Court; Sodus Town Court; Walworth Town Court; Williamson Town Court; Wolcott Town Court; and Wolcott Village Court.²⁴⁴ The county covers 1,384 square miles and has a population of about 93,772.²⁴⁵

²⁴¹*Id.*

²⁴²New York State: Capital-Saratoga Washington, <http://www.ny.gov/counties/washington> (accessed Oct. 25, 2017).

²⁴³Court Reference: Wayne County New York Court Directory, <http://www.courtreference.com/Wayne-County-New-York-Courts.htm> (accessed Sept. 18, 2017).

²⁴⁴*Id.*

²⁴⁵New York State: Finger Lakes Wayne, <http://www.ny.gov/counties/wayne> (accessed Sept. 18, 2017).

60. Westchester County. Westchester County has 35-38 justice courts and 6 city courts.²⁴⁶ The justice courts include Arsdley Village Court; Bedford Town Court; Briarcliff Manor Village Court; Bronxville Village Court; Buchanan Village Court; Cortlandt Town Court; Croton-on-Hudson Village Court; Dobbs Ferry Village Court; Eastchester Town Court; Elmsford Village Court; Greenburgh Town Court; Harrison Town Court; Hastings-on-Hudson Village Court; Irvington Village Court; Larchmont Village Court; Lewisboro Town Court; Mamaroneck Town Court; Mamaroneck Village Court; Mount Kisco Town Court; Mount Pleasant Town Court; New Castle Town Court; North Castle Town Court; North Salem Town Court; Ossining Town Court; Ossining Village Court; Pelham Manor Village Court; Pelham Town Court; Pleasantville Village Court; Port Chester Village Court; Pound Ridge Town Court; Rye Town Court; Scarsdale Town Court; Scarsdale Village Court; Sleepy Hollow Village Court; Somers Town Court; Tarrytown Village Court; Tuckahoe Village Court; and Yorktown Town Court.²⁴⁷ The city courts include

²⁴⁶NY JusticeCourts.org: Justice Courts Directory by County, http://nyjusticecourts.org/westchester_county_courts.htm (accessed Mar. 30, 2017); Court Reference: Westchester County New York Court Directory, <http://www.courtreference.com/Westchester-County-New-York-Courts.htm> (accessed Mar. 30, 2017).

²⁴⁷*Id.*

Mount Vernon; New Rochelle; Peekskill; Rye; White Plains; and Yonkers City Courts.²⁴⁸ The county covers 450 square miles and has a population of about 968,802.²⁴⁹

61. Wyoming County. Wyoming County has 21 justice courts.²⁵⁰ The justice courts include Arcade Town Court; Arcade Village Court; Attica Town Court; Attica Village Court; Bennington Town Court; Castile Town Court; Covington Town Court; Eagle Town Court; Gainesville Town Court; Genesee Falls Town Court; Java Town Court; Middlebury Town Court; Orangeville Town Court; Perry Town Court; Perry Village Court; Pike Town Court; Sheldon Town Court; Silver Springs Village Court; Warsaw Town Court; Warsaw Village Court; and

²⁴⁸*Id.*

²⁴⁹New York State: Hudson Valley Westchester, <http://www.ny.gov/counties/westchester> (accessed Apr. 20, 2017).

²⁵⁰Court Reference: Wyoming County New York Court Directory, <http://www.courtreference.com/Wyoming-County-New-York-Courts.htm> (accessed Mar. 30, 2017).

Wethersfield Town Court.²⁵¹ The county covers 596 square miles and has a population of about 42,155.²⁵²

62. Yates County. Yates County has 11 justice courts.²⁵³ The justice courts include Barrington Town Court; Benton Town Court; Dundee Village Court; Italy Town Court; Jerusalem Town Court; Middlesex Town Court; Milo Town Court; Penn Yan Village Court; Potter Town Court; Starkey Town Court; and Torrey Town Court.²⁵⁴ The county covers 338 square miles and has a population of about 25,156.²⁵⁵

E. CAFA awards

²⁵¹*Id.*

²⁵²New York State: Greater Niagara Wyoming, <http://www.ny.gov/counties/wyoming> (accessed Apr. 20, 2017).

²⁵³Court Reference: Yates County New York Court Directory, <http://www.courtreference.com/Yates-County-New-York-Courts.htm> (accessed Apr. 5, 2017).

²⁵⁴*Id.*

²⁵⁵New York State: Finger Lakes Yates, <http://www.ny.gov/counties/yates> (accessed Apr. 20, 2017).

As a result of *Hurrell-Harring*'s groundbreaking decision, the New York State Office of Indigent Legal Services (“ILS”) issued a Request for Proposal (“RFP”) in 2012 to relieve the burdens preventing counsel from representing defendants at arraignment. The competitive RFP would disburse \$12 million over a 3-year period for CAFA. Twenty-five counties applied for those grants:

1. Albany	6. Dutchess	11. Niagara	16. Rensselaer	21. Tompkins
2. Broome	7. Erie	12. Oneida	17. Rockland	22. Ulster
3. Cattaraugus	8. Herkimer	13. Onondaga	18. Schuyler	23. Westchester
4. Cayuga	9. Monroe	14. Ontario	19. St. Lawrence	24. Wyoming
5. Chemung	10. Nassau	15. Oswego	20. Suffolk	25. Yates

Those counties included four counties within the *Hurrell-Harring* settlement (Onondaga, Ontario, Schuyler, and Suffolk), as well as counties outside of the settlement.

ILS also established new eligibility guidelines for defendants applying for public defense and 18B representation. Under the new guidelines, “[a]n applicant shall be eligible for assignment of counsel when the applicant’s current available resources are insufficient to pay for a qualified attorney, release on bond, the expenses necessary for a competent defense, and the

reasonable living expenses of the applicant and any dependents. Applicants are presumptively eligible for assignment of counsel if their net income is at or below 250% of the Federal Poverty Guidelines.”²⁵⁶ As a result of the new guidelines, eligibility for “assigned counsel” has been raised from 125% to 250%, and it is expected that more defendants will qualify for and be represented by court-appointed attorneys and likely mandated representation caseloads will increase.

New RFPs for CAFA were released for competitive application in January 2017. The grants will last three years, again, and it is expected that \$2.25 million more will be available for disbursement. Knowing that those amounts of money may not be enough for the influx (and approval) of applicants, ILS has requested a budget increase of \$8 million for CAFA.²⁵⁷ Thirty-seven counties applied; however, only 30 were approved:²⁵⁸

1. Albany	7. Columbia	13. Madison	19. Oswego	25. St. Lawrence
-----------	-------------	-------------	------------	------------------

²⁵⁶*Criteria and Procedures for Determining Assigned Counsel Eligibility*, NYS Office of Indigent Legal Services (Apr. 4, 2016).

²⁵⁷ ILS Budget Request for FY 2017-2018.

²⁵⁸Second Counsel at First Appearance Tentative Awardee’s, NYS Office of Indigent Legal Services, <https://www.ils.ny.gov/files/Hurrell-Harring/Counsel%20At%20Arrest/Second%20Counsel%20at%20First%20Appearance%20Counties.pdf> (accessed May 10, 2017).

2. Allegany	8. Dutchess	14. Monroe	20. Putnam	26. Tompkins
3. Broome	9. Erie	15. Montgomery	21. Rensselaer	27. Warren
4. Cattaraugus	10. Fulton	16. Nassau	22. Rockland	28. Wayne
5. Cayuga	11. Genesee	17. Niagara	23. Saratoga	29. Westchester
6. Chemung	12. Greene	18. Oneida	24. Schenectady	30. Wyoming

F. CAFA programs

In each grant application, the counties outlined their plans to implement CAFA. Several different plans currently exist:

1. Albany County. (1) The Public Defender Office administers the RFP. It groups 18 of its attorneys (down from 24-26 at the program’s inception) into teams of 3 attorneys each. Each team is on call for one week at a time. Each team covers arraignments 24 hours a day, 7 days per week.

(2) Court clerks and judges notify attorneys of arraignments by calling their personal cell phones. Court clerks notify during business hours, and judges notify after business hours. Each

Friday, the office distributes a list to all clerks and judges of the team of attorneys on call for the next week along with their contact information.

(3) The attorneys on call for the week receive a bonus added to their regular salaries, regardless of the number of arraignments they attend. They are not compensated additionally for mileage.²⁵⁹

2. Allegany County. (1) The Public Defender Office administers the RFP. It will hire an attorney whose sole responsibility will include covering after-business-hours and weekend arraignments. That attorney will not have a regular caseload until the office assures that the attorney is not overwhelmed or exhausted by after-business-hours calls. It has not begun covering those arraignments, yet, because it is accepting applications, but it has not received many.²⁶⁰

3. Broome County. (1) The Assigned Counsel Program implements the RFP. The Public Defender Office handles arraignments during regularly scheduled PD court dates or when assigned counsel is unavailable.

²⁵⁹All of the information about Albany County's CAFA program was provided via a telephone interview with Tina Sodhi, Assistant Public Defender, Albany County (Apr. 19, 2014).

²⁶⁰All of the information about Allegany County's CAFA program was provided via a telephone and email interview with Barbara Kelley, Public Defender, Allegany County (Oct. 3, 2017).

(2) Attorneys cover felony arraignments on a weekly, rotating basis from 5 p.m. to 7 a.m.

As a result, each attorney covers about 4 weeks per year.

(3) One attorney is assigned to city court for weekday arraignments. City court also dedicates Saturdays 8 a.m. -10 a.m. for weekend arraignments.

(4) Courts call either of two dedicated telephone numbers during regular business hours to notify attorneys of arraignments.

(5) Attorneys are paid for mileage; however, they receive no additional compensation to cover 24/7 arraignments. Attorneys are paid only up to 37½ hours per week.²⁶¹

3. Cattaraugus County. (1) The Public Defender Office administers the RFP. The office's seven attorneys participate in arraignments; however, the RFP was used to hire one attorney, one investigator, and part-time clerical assistance.

(2) Six of the seven attorneys are on a weekly on-call schedule, 24/7. The seventh attorney serves as back-up. The city courts have regular Saturday morning arraignment sessions for defendants who are arrested Friday evening, overnight, or Saturday morning.

²⁶¹All of the information about Broome County's CAFA program was provided via a telephone and email interview by Michelle Tarangelo with Jay L. Wilber, Public Defender, Broome County (Mar. 7, 2014).

(3) City police notify attorneys of arraignments in city courts, the Allegany Town Court Judge notifies them of arraignments in his court, and the Sheriff's Department notifies of arraignment in all other justice courts. During business hours, they call the Public Defender Office, but after business hours, they notify by dialing a designated telephone number, and those calls are forwarded to the on-call attorney's personal cell phone. The designated telephone number was distributed to each court and police agency, as well as printed into business cards.

(4) Business-hours and on-call arraignments are part of the attorneys' job descriptions; therefore, they do not receive additional compensation for it.²⁶²

4. Cayuga County. (1) The Assigned Counsel Program implements the RFP. Eight attorneys rotate on an on-call basis from 9 a.m. to 4 p.m. Monday through Friday to handle arraignments in Auburn City Court. Off-hours arraignments occur without counsel.

(2) The attorney-of-the-day appears in court each morning to handle any arraignments from arrests overnight. The Assigned Counsel Coordinator gives the court a monthly calendar of which attorney is assigned to which day, along with each attorney's personal cell phone number to contact that attorney, and the court will use that list to notify the on-call attorney of any arraignments that occur after the morning.

(3) Each attorney is paid \$200 per day.

²⁶²All of the information about Cattaraugus County's CAFA program was provided via an email interview with Mark S. Williams, Public Defender, Cattaraugus County (Apr. 13, 2017).

(4) In the next round of RFP applications, the county will apply for funding to include arraignment coverage 24/7 countywide.²⁶³

5. Chemung County. (1) The Conflict Defender implements the RFP. The Public or Conflict Defender Offices handle daytime arraignments. An “Arraignment Bureau” handles arraignments from 4:30 p.m. to 8:30 a.m. Monday through Friday, weekends, and holidays.

(2) Four part-time attorneys and one clerical assistant staff the bureau (former or current employees of the public or conflict defender offices). The attorneys rotate an on-call schedule.

(3) Courts contact the regular Public or Conflict Defender Office during regular business hours to notify of arraignments. Law enforcement or courts call a designated Google telephone number, and when called, it forwards directly to the attorney’s private telephone. The attorney responds to the court, interviews the defendant, and then, appears for arraignment.

(4) The four attorneys are paid a salary for their services based on their rotation hours. The attorney working every Monday and Tuesday night, as well as one weekend per month earns the most. The two attorneys who work every other Wednesday and Thursday night, as well as

²⁶³All of the information about Cayuga County’s CAFA program was provided via a telephone and email interview by Robert Jereski with Lloyd E. Hoskins, Assigned Counsel Administrator, Cayuga County (Mar. 22 and 23 2017).

one weekend per month each earn about one-half as the first. The attorney who works one weekend per month earns about one-quarter as the first.²⁶⁴

6. Columbia County. (1) The Public Defender office administers the RFP. Originally (three to four years ago), staff attorneys would have received a stipend to cover arraignments after business hours; however, the county's comptroller refused to authorize stipends for salaried attorneys.

(2) Instead of appearing at arraignments in person, staff attorneys were provided with arraignment cell phones. Each attorney carried the phone one week at a time, and judges notified attorneys of arraignments by calling the telephone number after business hours.

(3) Attorneys spoke with defendants over the phone, then, they conferenced the matter with judges.

(4) Now, the new grant proposes for one attorney to work on cases and appeals overnight. That attorney would appear in person for arraignments at any of five selected arraignment courts (courts selected based on high arraignment values).²⁶⁵

²⁶⁴All of the information about Chemung County's CAFA program was provided via a telephone and email interview by Robert Jereski with John P. Brennan, Conflict Defender, Chemung County (Mar. 21, 2017).

²⁶⁵All of the information about Columbia County's CAFA program was provided via a telephone and email interview by Sherry Levin Wallach with Robert Linville, Public Defender, Columbia County (Sept. 18, 2017).

7. Dutchess County. (1) The Public Defender Office implements the RFP. Three full-time staff attorneys cover arraignments county-wide 24/7. Other staff attorneys provide back-up to cover arraignments when those three attorneys are unavailable.

(2) Less than 1% of arraignments occur without an attorney, as a result of the arraigining court not calling or not waiting until the attorney arrives.

(3) Courts call designated telephone numbers to notify the attorney of an arraignment.

(4) Further information about Dutchess County's program is available from a report being prepared by SUNY Albany.²⁶⁶

8. Erie County. (1) The Assigned Counsel Program implements the RFP. Assigned Counsel covers the justice courts and city courts (other than Buffalo City Court, which is covered by Legal Aid Bureau of Buffalo Criminal Defense Unit under a separate contract). There are two programs: Attorney of the Day ("AOD") and Attorney on Call ("AOC").

(2) Under AOD, attorneys are assigned only to the most congested day courts. Attorneys are re-trained on procedures regarding arraignment and bail in local courts, and submit a

²⁶⁶All of the information about Dutchess County's CAFA program was provided via a telephone and email interview by Michelle Tarangelo with Thomas N. Angell, Public Defender, Dutchess County (Feb. 24, 2017).

summary of the arraignments along with copies of accusatory instruments within 24 hours of each arraignment. They verify 24 hours in advance whether they will be needed for a regularly scheduled court calendar.

(3) The balance of the courts receives AOCs. Erie County is arbitrarily divided into geographical zones. At least one AOC is available 24 hours a day, 7 days a week per zone. Judges or court clerks contact the AOC at least 1 hour before arraignments occur; court personnel call a special line (which is reset once weekly) which connects to the attorney's personal cell phone. 18B panel members have volunteered to handle specific courts, and they are rotated weekly by agreement among themselves.

(4) At first, AOCs received an iPad mini with 4G data service to access an online portal to enter on-call cases. AOCs also were provided a special cell phone. As of July 2015, however, use of the iPads, special cell phones, and web portal became unnecessary and cost prohibitive; therefore, the iPads and cell phones have been discontinued.

(5) AODs are paid hourly for time spent in court; however, they were capped at 2-4 billable hours. AOCs are paid by quarterly stipend based on the number of cases they handled and mileage traveled. In July 2015, the 2-4 cap disappeared, as some less congested day courts required AODs to remain several hours for regular arraignment dockets.

(6) Assigned Counsel holds regular meetings to set coverage calendars in each court.²⁶⁷

9. Genesee County. (1) The office will rely on a list of qualified attorneys from the 18B panel of the local and six adjoining counties. Those attorneys would cover arraignments one week at a time on a rotating basis.

(2) Judges or law enforcement will notify the attorneys of arraignments by contacting them by a designated telephone number. The attorneys will rotate that designated cell phone. They would have to appear in court for arraignment within a reasonable amount of time.

(3) The attorneys will rotate a smart phone and iPad, equipped with the necessary apps to advocate zealously for defendants. They also may contact the public defender by telephone at any time for additional assistance.

(4) After arraignment, the attorneys will prepare a report immediately after the arraignment and scan it to the public defender office. The report will attach all papers received from the court and from law enforcement. That will allow the office to follow up with the defendant.

²⁶⁷ All of the information about Erie County's CAFA program was provided via an email interview with James Auricchio, CAFA Coordinator, Bar Association of Erie County Assigned Counsel (Nov. 22, 2016).

(5) Attorneys will cover only after business hours arraignments. Attorneys will not cover arraignments during business hours unless they occur during the court's regularly scheduled calendar when an attorney already is present.

(6) Attorneys will receive weekly stipends when they are on call, as well as mileage per arraignment and an hourly rate per arraignment (\$75/hour).²⁶⁸

10. Greene County. (1) The Public Defender Office administers the RFP. Three attorneys will participate in the program, with one on-call attorney and one back-up attorney at all times. Each attorney will have a cell phone at which she will be notified of arraignments.

(2) Five courts will participate in the program.

(3) Judges will notify the primary on-call attorney of arraignments, then the back-up attorney, if needed.

(4) The on-call attorney will receive more compensation than the back-up attorney, and weekends and holidays have different compensation rates.²⁶⁹

²⁶⁸All of the information about Genesee County's CAFA program was provided via an email interview with Jerry Ader, Public Defender, Genesee County (Oct. 2, 2017).

²⁶⁹All of the information about Greene County's CAFA program was provided via a telephone interview by Priyanka Verma with Angelo F. Scaturro, Public Defender, Greene County (Oct. 16, 2017).

11. Herkimer County. This committee has contacted Herkimer County for information on its CAFA program and looks forward to receiving its response. Upon information and belief, while the grant was awarded, the County chose to reject the grant.

12. Madison County. (1) The Public Defender Officer administers the RFP. Seven attorneys cover arraignments 24/7. One attorney covers off-hours arraignments per week.

(2) Dispatch notifies attorneys of after-business-hours arraignments by calling the attorney's telephone number. Courts notify attorneys of business-hours arraignments by calling the public defender office.

(3) Attorneys receive \$150 per week that they are on-call, as well as \$150 per arraignment after business hours.²⁷⁰

13. Monroe County. (1) The Public Defender Office always covered arraignments in the county and city court. The CAFA program began under the first RFP, allowing the office to cover

²⁷⁰All of the information about Madison County's CAFA program was provided via a telephone and email interview by Nishat Tabassum with Paul Hadley, Public Defender, Madison County (Oct. 20, 2017).

arraignments in the justice courts, as well, then the program was expanded in 2015 when additional funding became available.

(2) At first, attorneys covered only daytime arraignments (8 a.m. to 8 p.m.) with some weekend coverage (8 a.m. to 8 p.m.). Attorneys in the Town Court Division of the office rotated coverage Monday through Friday with two attorneys on call at two special cell phone numbers each day. Non-Town Court attorneys covered weekend arraignments. Justice Courts contacted attorneys at those numbers to notify them of arraignments. Courts also combined arraignment dockets with regular court schedules and disposition dockets to dispose of arraignments at other scheduled court appearances.

At first, no additional attorneys were hired; instead, the attorneys on staff participated in the program. In 2015, the program expanded to 24/7 coverage. Additional funding allowed the hiring of additional staff. One attorney per night from the Criminal Division is on call for overnight arraignments Monday through Thursday from 8 p.m. to 8 a.m. One attorney from Friday 8 p.m. through Monday 8 a.m. is on call for weekend arraignments.

Fifty-three attorneys are in the Criminal Division and participate in the program (including the Town Court Division). Attorneys in the appeals and family court divisions do not participate.

(3) The attorney who answers the call receives background information about the defendant. The attorney then notifies pre-trial services about that information, and pre-trial assesses the defendant over the phone and issues a release assessment.

(4) Payment is included as part of the attorneys' salaries.²⁷¹

14. Montgomery County. This committee has contacted Montgomery County for information on its CAFA program and looks forward to receiving its response.

15. Nassau County. This committee has contacted Nassau County for information on its CAFA program and looks forward to receiving its response.

16. Niagara County. This committee has contacted Niagara County for information on its CAFA program and looks forward to receiving its response.

17. Oneida County. (1) The Public Defender Office administers the RFP. It provides one full-time public defender and one part-time public defender (along with one investigator).

(2) Attorneys appear daily at regularly-scheduled court hours during the mornings and evenings on weekends and on holidays in the city courts of Utica and Rome. Attorneys are on

²⁷¹All of the information about Monroe County's CAFA program was provided via a telephone interview with Timothy P. Donaher, Public Defender, Monroe County (Feb. 1, 2017).

call at other times in those city courts. Attorneys also appear at regularly scheduled court hours to continue vertical representation of the defendants at whose arraignments they appeared.

(3) In 2016, the Fifth Judicial District Administrative Judge ended off-hours arraignments in those city courts; instead, he created regular arraignment hours on weekends and holidays (8:30 a.m. to 10:00 a.m.). He also provided security and court clerks during those hours. Despite this system, specific public defenders remain on-call for emergency arraignments in those courts; however, none have occurred, yet.

(4) In 2017, the Fifth Judicial District Administrative Judge submitted a plan for centralized off-hours arraignments. Off-hours arraignments would occur at the Oneida County Correctional Facility (a courtroom already has been constructed). Arraignments would occur there daily from 6 p.m. to 10 p.m. for any justice courts off-hours. The Administrative Judge will schedule town and village judges. State legislation is being sought to detain pre-arraignment arrestees.

(5) Under the 2017 proposal, two assistant public defenders and one part-time defender (perhaps one more full-time assistant) would appear at on-hours arraignments. Justice courts will provide private areas for attorneys to consult with their defendants.²⁷²

²⁷²All of the information about Oneida County's CAFA program was provided via a telephone and email interview by Michelle Tarangelo with Frank J. Nebush, Jr., Public Defender, Oneida County (Mar. 30, 2017).

18. Onondaga County. (1) The Assigned Counsel Program (“ACP”) provides attorneys to cover arraignments. Fifty-seven attorneys participate in the program.

(2) Only half of the justice courts received arraignment coverage during regular court sessions. One qualified felony ACP and one qualified misdemeanor ACP appear at each session. A 15th court receives coverage, but it only is covered by one ACP.

(3) As a result of the *Hurrell-Harring* settlement, the other 13 justice courts receive one ACP at each regular court session to cover arraignments. To cover off-hours arraignments in all 28 justice courts, the County was divided into seven geographic regions with a list of on-call attorneys available in each of those regions. Two attorneys are on call at all times, and each attorney has a designated “on-call telephone”. On-call attorneys receive \$25 per day and \$150 per arraignment at which they appear. Judges call the attorneys on the designated telephones to notify them of the arraignments.²⁷³

²⁷³All of the information on Onondaga County’s CAFA program comes from: Implementing the Counsel at Arraignment Obligations in the *Hurrell-Harring v. The State of New York* Settlement 2016 Update, <https://www.ils.ny.gov/files/Hurrell-Harring/Quality%20Improvement/Hurrell-Harring%20Updated%20Quality%20Improvement%20Plan%20111016.pdf> (accessed Mar. 3, 2017); Interview, *supra* at n 212.

19. Ontario County. (1) The Public Defender Office implements the RFP. It includes 1 public defender and 12 staff attorneys. Attorneys cover arraignments at regular “DA sessions” in justice courts.

(2) Attorneys cover off-hours arraignments in three on-call rotations:

(A) 8:30 a.m. - 5:00 p.m.

(B) 5:00 p.m. - 10:00 p.m.

(C) 8:30 a.m. - 10:00 p.m. on weekends and holidays

(3) There are no attorneys available for arraignments that occur after 10 p.m. Defendants arrested after 10 p.m. are detained and arraigned with counsel in the morning in either Canandaigua or Geneva City Court.

(4) As a result of the *Hurrell-Harring* settlement, the Public Defender Office anticipated hiring two additional staff attorneys to cover arraignments at non-DA court sessions. The Public Defender Office would create a list of private attorneys to be available for on-call arraignments on evenings, weekends, and holidays.

(5) There is no salary increase for the staff attorneys covering on-call or off-hours arraignments. Private attorneys participating in the program would receive \$75 per arraignment plus an additional \$150 per day; \$300 per weekend; or \$300 per holiday, whichever applies.

(6) For defendants arraigned after 10 p.m., the Public Defender Office reviewed the jail list each morning to identify defendants who were arraigned without counsel, then, it scheduled an immediate arraignment.²⁷⁴

20. Oswego County. This committee has contacted Oswego County for information on its CAFA program and looks forward to receiving its response.

21. Putnam County. This committee has contacted Putnam County for information on its CAFA program and looks forward to receiving its response.

22. Rensselaer County. (1) The Public Defender administers the RFP.

(2) The Conflict Defender has a part-time attorney who organizes the on-call schedule, handles reporting requirements, and covers arraignments from 9 a.m. to 5 p.m. if other staff attorneys are unavailable.

(3) The RFP covers six major courts for arraignments (county court, city courts, and three justice courts: Brunswick, North Greenbush, and East Greenbush). That covers 85-90% of the county-wide arraignments.

²⁷⁴*Id.*

(4) There are 24/7 arraignments.

(5) The attorney is on-call for one week at a time in both offices. The court or police agency call a Google Voice account phone number, which transfers to the on-call attorney's personal cell phone to notify the attorney of an arraignment. Each attorney participating in the program has her number entered into the voice account. There is one voice account for the Conflict Defender and one for the Public Defender, and the organization on call for the week verifies that the account is set to dial the correct attorney for the week.

(6) County and city courts handle arraignments only during business hours Monday through Friday, and city-court has holding cells to incarcerate inmates overnight to be arraigned the next morning.²⁷⁵

23. Rockland County. (1) The Public Defender Office administers the RFP. It employs 19 attorneys; however with the RFP, it was able to hire 2 part-time attorneys and one part-time secretary. The two part-time attorneys cover after business hours and weekend arraignments for one week at a time.

²⁷⁵All of the information about Rensselaer County's CAFA program was provided via a telephone and email interview by Robert Jereski with Sandra McCarthy, Conflict Defender, Rensselaer County (Mar. 27, 2017).

(2) Courts contact the attorneys on a special cell phone (flip phone) to notify them of after business hours arraignments. Office attorneys cover several arraignments at the end of regularly scheduled court calendars, as well.

(3) If courts call attorneys or the office during non-calendar business hours to notify of arraignments, though, no one appears to represent the defendants, and arraignments proceed without counsel; the office investigator will interview those defendants the next morning, and a bail application will be argued, as needed.

(4) Attorneys covering court-calendar arraignments or full-time attorneys covering after business hours arraignments (as needed) do not receive additional compensation. The RFP funds were used to hire the part-time attorneys and secretary.²⁷⁶

24. Saratoga County. (1) The Public Defender Office administers the RFP. Five attorneys would cover arraignments 24/7. They would receive telephones upon which the arraigning judge would notify them of arraignments.

(2) Arraignments would occur at either of two locations: a northern court and a southern court.

²⁷⁶All of the information about Rockland County's CAFA program was provided via a telephone interview with James D. Licata, Public Defender, Rockland County (Apr. 11, 2017).

(3) Primary attorneys on call Monday through Thursday would receive \$150 for being available, whether they are able to appear at the arraignments. The back-up attorney would receive \$150 for appearing at arraignments at which the primary attorney would be unable to appear. The attorney on call Friday through Sunday would receive \$750 for being available, whether or not she is able to appear at the arraignments.²⁷⁷

25. Schenectady County. (1) The Public Defender Office administers the RFP. Schenectady is awaiting receipt of ILS CAFA 2 funding before creating or implementing its program.²⁷⁸

26. Schuyler County. (1) The Public Defender Office implements the RFP. Two full-time public defenders cover all off-hours arraignments during business hours. One part-time public defender covers arraignments during 5:00 p.m. - 11:30 p.m. The three attorneys also cover arraignments at all regular court DA-sessions.

²⁷⁷All of the information about Saratoga County's CAFA program was provided via a telephone interview by Priyanka Verma with Oscar Schreiber, Public Defender, Saratoga County (Oct. 13, 2017).

²⁷⁸All of the information about Schenectady County's CAFA program was provided via a telephone interview by Priyanka Verma with Stephen M. Signore, Public Defender, Schenectady County (Oct. 13, 2017).

(2) Judges notify the attorneys of arraignments by calling an on-call telephone number.

(3) Although the attorneys are unavailable for overnight arraignments, judges notify them of those arraignments. Attorneys track the number of arraignments that way, as well as arrange for immediate morning arraignments for defendants arraigned without counsel the night before.

(4) As a result of the *Hurrell-Harring* settlement, an on-call attorney covers weekend and holiday arraignments from 9 a.m. to 9 p.m. The attorney is paid \$200 per day. Judges notify the attorney of arraignments by calling a special on-call telephone. Defendants arraigned after 9 p.m. without counsel are arraigned immediately the next morning with counsel.

(5) Also under the settlement, the Public Defender could hire an additional full-time and part-time attorney to cover off-hours, non-DA session arraignments, unless arresting officers increase the issuance of appearance tickets returnable on DA-session dates.²⁷⁹

27. St. Lawrence County. (1) The County administers the RFP. The County orders the courts to assign attorneys at arraignment. If the CAFA attorney cannot remain on the case, though, the Public Defender Office will continue representing the defendant.

²⁷⁹All of the information on Schuyler County's CAFA program comes from *Implementing Obligations*, *supra* at n 271; *Interview*, *supra* at n 219.

(2) The Assigned Counsel Program, Public Defender and Conflict Defender give a list to courts of attorneys available for arraignments at which times of day, along with their personal contact telephone numbers. Judges call the attorneys to notify them of arraignments.

(3) Attorneys are paid \$75 per hour per arraignment.²⁸⁰

28. Suffolk County. (1) The Legal Aid Society (“LAS”) and Assigned Counsel Program (“ACP”) implement the RFP. District Court covers five western towns in Suffolk County. Two parts cover arraignments: D-11 covers those who are detained and arraigned the next day (operates seven days per week), and SAP covers defendants who are issued an appearance ticket and scheduled for arraignment on a specific day (operates five days per week). LAS covers D-11 arraignments.

(2) West End Village Court arraignments are covered by LAS. LAS covers all scheduled court sessions.

(3) East End arraignments encompass four town courts. LAS covers court session and off-hours arraignments in those courts. No one covers weekend arraignments in those courts, though.

²⁸⁰All of the information about St. Lawrence County’s CAFA program was provided via a telephone and email interview by Michelle Tarangelo with Scott B. Goldie, Assigned Counsel Administrator, St. Lawrence County (Mar. 28, 2017).

(4) As a result of the *Hurrell-Harring* settlement, ACP covers D-11 conflicts, as well as SAP. Also, LAS could hire two additional attorneys to cover weekday coverage for the rest of the East End courts (five more courts). Finally, the County would contract with private attorneys to be on-call for weekend and holiday arraignments, and ACP would handle the administration of the on-call program.²⁸¹

29. Tompkins County. (1) The Assigned Counsel Program implements counsel at first appearance. Assigned Counsel has 30 attorneys in its CAFA program. Only one attorney is on call from 12:00 p.m. to 12:00 p.m. each day. Each justice court judge has a list of which attorney is on call for which day, as well as each attorney's contact information (home and cell phone—there is no dedicated CAFA telephone number). Judges call the attorneys to notify them of arraignments.

(2) When there simultaneous arraignments in different courts, the attorney on call may ask the judge to wait. If the judge cannot wait, then the judge may call the supervising Assigned Counsel Coordinator to represent the defendant at arraignment.

(3) The Assigned Counsel Coordinator schedules attorneys one to two months ahead of time according to the attorneys' availabilities. The coordinator gives those finalized schedules to the judges.

²⁸¹Implementing Obligations, *supra* at n 273; Interview, *supra* at 219.

(4) Attorneys are paid hourly at assigned counsel rates. Attorneys covering holidays (10 holidays per year) are paid an additional \$250 stipend per holiday.²⁸²

30. Ulster County. (1) Ulster County applied for the grant in 2014, and it was approved; however no plan has been implemented, yet, because the county has received only ILS formulated money, so far.

(2) The original plan called for 4 arraignment courts (county in quadrants): 2 attorneys assigned to each quadrant (keeping the geographical residence of attorneys in mind - a 15 to 20 minute ride to each court). There would be overnight arraignment coverage. Daytime arraignments would be without counsel (usually, one of the adjacent courts were operating, and an attorney would be present to cover it).

(3) Each attorney would be issued a tablet that would have a notification, and they would respond. Courts would notify attorneys of arraignments.

(4) Centralized arraignments will allow a reduction from four to two attorneys.

(5) Attorneys would be paid extra with grant money with a stipend.²⁸³

²⁸²All of the information about Tompkins County's CAFA program was provided via a telephone and email interview by Michelle Tarangelo with Julia P. Hughes, Assigned Counsel Coordinator, Tompkins County (Mar. 17 and 20, 2017).

31. Warren County. (1) The Public Defender Office administers the RFP. Eight attorneys participate in CAFA. The attorneys cover arraignments throughout the day, after business hours (only until 10 p.m.), on weekends, and on holidays.

(2) The attorneys that cover after-business hours arraignments rotate a telephone among each other to be notified of arraignments. The District Attorney's office, police, or judges notify them of those arraignments via a telephone call or text message.

(3) Payment for arraignment coverage is incorporated into the attorneys' salaries and vacation time.²⁸⁴

32. Wayne County. (1) The Public Defender Office administers the RFP. Originally, it used formulated money for a part-time position to cover all 24/7 arraignments countywide, but it soon realized that CAFA was too overwhelming for just one part-time position. Then, it began a pilot

²⁸³All of the information about Ulster County's CAFA program was provided via an email interview with Andrew Kossover, Public Defender, Ulster County (Feb. 22, 2017).

²⁸⁴All of the information about Warren County's CAFA program was provided via a telephone and email interview by Priyanka Verma with Marcy I. Flores, Public Defender, Warren County (Oct. 2, 2017).

project to provide attorneys at arraignments 24/7 in four of its justice courts. The courts include Arcadia Town Court, Newark Village Court, Palmyra Town Court, and Palmyra Village Court.

(2) Seven attorneys are available for Palmyra arraignments, and five attorneys are available for Arcadia and Newark arraignments. The office provides judges with a list of three attorneys to call and telephone numbers by which to call them. The first attorney is the primary attorney on-call, and the next two are back-ups.

(3) Monday through Friday during business hours, the three full-time public defenders appear for on-call arraignments in those courts. Almost all daytime arraignments are covered. Evenings, weekends, and holidays are covered by lists of public defenders and available 18B attorneys. Arraignment coverage lasts 7am-9am and 5pm-10pm Monday through Thursday, as well as 5pm Friday - 9am Monday.

(4) Weekday after business hours arraignments pay \$150 per arraignment. Weekend and holiday arraignments pay \$200 per arraignment. Funds are paid from the formulated money set aside for the part-time position. The rates used to be \$50 lower in each category; however they were raised to retain interest and participants in the program.²⁸⁵

²⁸⁵All of the information about Wayne County's CAFA program was provided via an email interview with Andrew D. Correia, First Assistant Public Defender, Wayne County (Sept. 18, 2017).

33. Westchester County. (1) The Legal Aid Society of Westchester County (“LAS”) administers the RFP. During business hours, it assigns two attorneys to appear at any court for arraignments. Attorneys also appear during regularly scheduled justice court sessions and cover arraignments, as necessary (not considered a CAFA appearance). After business hours, two staff attorneys per region are on-call from 5 p.m. to 8 a.m. (except just one attorney on Friday) and on weekends.

(2) The county is divided into three regions: North, Central, and South. A telephone number is designated for each area. LAS gives the courts the telephone number to call for their specific area to notify of an arraignment. During business hours, the assigned CAFA attorneys contact their jurisdictions’ police before 8 a.m. and around noon to leave the business-hours contact telephone number of the day. Generally only court clerks call to notify attorneys of arraignments, though, and police do not call.

(3) Monday through Thursday, 5 p.m. to 9 p.m., one telephone number is contacted to notify of arraignments. The secretary answering the call collects all relevant information, then relays that information to the on-call attorney. After 9 p.m., as well as on weekends, the calls are forwarded to the CAFA coordinator (an attorney from LAS or the Executive Director) who contacts the appropriate on-call attorney.

(4) Attorneys covering business-hours arraignments are not paid extra as the responsibility to represent defendants at arraignments is listed as part of their job responsibilities; however, they may seek reimbursement for mileage. CAFA attorneys are paid for being on call; however, they do not receive extra compensation for going out. Overnight CAFA attorneys are paid if they go out to an arraignment, though.

(5) Yonkers and Mount Vernon City Courts regularly schedule weekend arraignment hours.

(6) Legal Aid represents defendants charged with felonies. Defendants charged with misdemeanors or who conflict out on felonies are represented by 18B attorneys. As a result, LAS has not been available (as a rule) for misdemeanor arraignments. Nevertheless, because no defendant should be arraigned without counsel, LAS will appear for misdemeanor arraignments; however, it encourages judges and police to contact available 18B attorneys, first. LAS will ask to be relieved from further assignment after appearing at arraignment, though, because LAS's contract does not allow them to represent defendants on misdemeanors.²⁸⁶

34. Wyoming County. (1) The Public Defender Office implements the RFP. Three assistant public defenders are on call during business hours for arraignments in any court. If the attorneys are unavailable, then they may select from a list of designated 18B panel members.

(2) Two of the attorneys are on call after business hours and on weekends for arraignments in the justice courts. Either judges, sheriff deputies, or sheriff's dispatch contact the defenders at a designated cell phone number to notify them of the time and place of the arraignment. If the attorneys are unavailable, then they may select from a list of designated 18B panel members.

²⁸⁶All of the information about Westchester County's CAFA program was provided via an email interview with Clare J. Degnan, Executive Director, Legal Aid Society of Westchester County (Mar. 30, 2017).

(3) The three attorney's business-hours arraignments are part of their job duties, and they do not receive additional compensation for those arraignments. The two attorneys who handle after-business-hours and weekend arraignments are paid a yearly stipend for their services. 18B panel members are paid hourly at \$75 per hour per arraignment (from bed to bed).

(4) Since one attorney sought alternative employment, the program changed. Now, three full-time attorneys and one part-time attorney are on call during business hours. Of those attorneys, two full-time attorneys and the part-time attorney are on call after business hours, each dedicated to a week at a time. An investigator licensed as an attorney is on call for a couple of designated courts after business hours and only during certain days of the week.²⁸⁷

35. Yates County. (1) The Public Defender Office administers the RFP. Three part-time attorneys work for the office, and they are on-call for one week each, 24/7, for off-hours arraignments. The attorney who handles court during the day is on call for that day.

(2) The office schedules on-call availability three months ahead of time. It gives the schedules to all courts. The courts call the on-call attorney at their phone number listed (office or personal cell) to notify of an arraignment. If the attorney cannot be reached, then the court calls the Public Defender

²⁸⁷All of the information about Wyoming County's CAFA program and its justice courts was provided via an in-person interview with Norman P. Effman, Public Defender, Wyoming County (Oct. 5, 2016 and January 10, 2018).

(3) The office used ILS grant money to hire its third part-time attorney. Otherwise, none of the attorneys receive extra compensation for being on-call; rather, they may seek reimbursement for mileage.²⁸⁸

G. Effects of CAFA

The following includes data and experiences provided by the first RFP recipients:

1. Arraignment coverage. Despite “small, insufficient, or telephone” coverage after business hours and during weekends, attorneys appear at close to 90% of arraignments.²⁸⁹ Co-defendants are arraigned by the same attorney; however, offices try to provide multiple attorneys upon notice of such arraignments.²⁹⁰ Arraignment coverage is verified by the lack of faxes from courts, as well as a review of jail lists.²⁹¹ Missed arraignments are handled immediately the next morning.²⁹² Too many defendants continue to be arrested for minor matters (failure to pay fines

²⁸⁸All of the information about Yates County’s CAFA program and its justice courts was provided via a telephone interview with Edward J. Brockman, Public Defender, Yates County (Apr. 5, 2017).

²⁸⁹Interviews, *supra* at nn 263; 265; 271.

²⁹⁰Interview, *supra* at n 276.

²⁹¹*Id.*

²⁹²*Id.*; Implementing Obligations, *supra* at n 273.

and surcharges) and held overnight or over the weekend.²⁹³ Calls for attorneys at arraignments have increased in some counties, and attorneys work non-stop to cover arraignments.²⁹⁴

2. Increased Release Rates. Police officers have increased the issuance of appearance tickets (especially if they know that the judge will ROR); as a result, on-call attorneys receive fewer calls for arraignments.²⁹⁵ Judges have dismissed accusatory instruments due to facial insufficiency, as well as increased RORs and release under supervision based upon a defendant's name, lack of record, and low charge.²⁹⁶ Even where bail still is set, more defendants are able to afford it, now, due to a 20-40% increase in lower bail amounts.²⁹⁷ As much as 33-69% of defendants are ROR'd or can post bail on misdemeanor and felony arraignments.²⁹⁸ Increased

²⁹³Interview, *supra* at n 272.

²⁹⁴Interview, *supra* at n 259.

²⁹⁵Interviews, *supra* at nn 264; 282; 288.

²⁹⁶Interviews, *supra* at nn 262; 264; 285; 288.

²⁹⁷Interview, *supra* at n 263.

²⁹⁸Interviews, *supra* at nn 265; 267; 285; 286; 287.

release rates save the county \$500,000 to \$1,000,000 annually in incarceration costs, including a reduction of the release under supervision coordinator's position.²⁹⁹

3. District Attorneys. DAs do not appear for misdemeanors or appearance tickets (unless they coincidentally are present during a regularly scheduled court calendar or weekend arraignment session in city court); however, they may appear for significant cases or violent felonies.³⁰⁰ They readily are available by telephone for bail recommendations, though.³⁰¹ Arresting officers also relay the DAs' recommendations to the court; however, sometimes officers will "relay a recommendation" even where none has been made.³⁰² Some judges will remand a defendant without bail absent the DA's recommendation; therefore, the DA's presence is invaluable to a defendant's possibility of release.³⁰³

²⁹⁹Interviews, *supra* at nn 286; 287.

³⁰⁰Interviews, *supra* at nn 259; 265; 270; 271.

³⁰¹Interview, *supra* at n 272.

³⁰²Interviews, *supra* at nn 265; 276; 287.

³⁰³Interview, *supra* at n 259.

4. Judge reservations. Many judges like the presence of attorneys.³⁰⁴ Some judges are concerned about the disruption of judges' and attorneys' work schedules (for daytime off-hours arraignments) and disruption of sleep (for overnight off-hours arraignments), though.³⁰⁵ Sometimes judges call attorneys who are not on call and if those attorneys are unavailable, then the arraignment will occur without counsel.³⁰⁶ Some judges will call the same few 18B attorneys rather than rely on the entire panel. 18B attorneys often claim that some judges call their "favorites" rather than following a rotating roster of attorneys. Despite some resistance during the program's inception, most (if not all) judges participate, now, depending on the county.³⁰⁷ Other judges (even lawyer-judges) "habitually forget" to call attorneys or refuse to participate in the program altogether.³⁰⁸ Some judges appear and arraign defendants in jail without the attorneys' knowledge; attorneys have been locked out of court rooms and ignored by some judges as they waive at the window seeking entrance; some judges refuse to wait 30-40 minutes for attorneys to arrive; attorneys are prevented from interviewing defendants privately; and

³⁰⁴Interviews, *supra* at nn 259; 282.

³⁰⁵Implementing Obligations, *supra* at n 273.

³⁰⁶Interviews, *supra* at nn 280; 282.

³⁰⁷Interview, *supra* at n 259.

³⁰⁸Interviews, *supra* at nn 264; 265; 276; 288; *see* Interview, *supra* at 262.

defendants' arraignments were delayed several hours to prevent midnight arraignments.³⁰⁹ Some judges also complain about having to provide copies of accusatory instruments and associated paperwork to attorneys and about allowing attorneys time to discuss the matter with the defendants.³¹⁰

In some jurisdictions, attorneys arrive at court before judges.³¹¹ Once in court, neither the courts nor law enforcement honor attorneys' requests to consult their clients in private.³¹² If one judge arraigns for another jurisdiction, the arraigning judge often will set higher bail.³¹³

5. Attorney-Client Confidentiality. Neither the size nor structure of courtrooms has changed, and although many arresting officers allow attorneys to speak with their clients briefly before arraignment, not all officers or courtrooms foster attorney-client confidentiality. For example, the New York State Police stand "within arm's reach" or at least within earshot while attorney interview clients, and requests to change that practice have been responded to by sending

³⁰⁹Interviews, *supra* at nn 262; 286.

³¹⁰*Id.*

³¹¹Interview, *supra* at n 272.

³¹²Interview, *supra* at n 264.

³¹³Interview, *supra* at n 271.

sergeants with arresting officers to enforce state policy.³¹⁴ State Police also have responded by taking defendants to courts outside of the four designated arraignment courts for arraignment, resulting in arraignments without counsel.³¹⁵

6. Distance, Cost, and Delays. In some jurisdictions, attorneys arrive at arraignment within 20 minutes of notification (even before the judges) because they are located within reasonable driving distance.³¹⁶ In other jurisdictions, some judges become frustrated by having to wait 30-45 or more minutes for attorneys because they do not live in outlying areas.³¹⁷ Mileage reimbursement requests have increased.³¹⁸ Where fewer attorneys cover a significant number of arraignments, travel significant distances, and work throughout the night (without sufficient back up), they complain about physical exhaustion, “push back,” “burn out” and seek other

³¹⁴Interview, *supra* at n 285.

³¹⁵*Id.*

³¹⁶*Id.*

³¹⁷Implementing Obligations, *supra* at n 273; Interviews, *supra* at nn 262; 280.

³¹⁸Interview, *supra* at n 271.

employment.³¹⁹ Centralized arraignment parts have reduced this frustration.³²⁰ Increased compensation or sliding fee scales may also be an incentive to continue employment.³²¹

H. Centralized/ Off-Hours Arraignments

Recognizing the need for counsel at arraignment, the Advisory Committee on Criminal Law and Procedure proposed centralized arraignment parts (“CAP”) on a rotating basis for off-hours arraignments.³²² “Off-hours” means anytime a court is not sitting in session. Such centralization would provide for the swift arraignment of defendants and to ensure counsel at arraignment. Under a centralized arraignment plan, a police officer:

- * may bring the accusatory instrument to an off-hours court when no other court is open;
- * may bring the accusatory instrument either to an off-hours court or to an open justice court if defense counsel is present at the justice court; or
- * must bring the accusatory instrument to the off-hours court when defense counsel is not present at the open justice court.

³¹⁹Implementing Obligations, *supra* at n 273; Interview, *supra* at n 259.

³²⁰Implementing Obligations, *supra* at n 273.

³²¹Interview, *supra* at n 280.

³²²2016 NY Senate-Assembly Bill S7209-A, A10360.

In CAPs, jurisdictional impediments are lifted on arraignments of accusatory instruments on misdemeanors or violations; therefore, those parts with a centralized arraignment plan may have jurisdiction over any arraignment on a misdemeanor or violation in the county, whether or not the crime happened in a geographically contiguous jurisdiction. After arraignment, the part retains jurisdiction over all matters incidental thereto (handle returns on warrants, conduct bail review, hold felony hearings, etc.). After arraignment and any matters incidental thereto, then the centralized part will transfer the case back to the court that has trial jurisdiction.³²³

Several general suggestions have been made, including the following:

- * rotating judges through a central location; and
- * holding defendants overnight and arraigning them in the morning.

Local administrative judges are meeting with each county's stakeholders (public defender, district attorney, 18B provider, and justice court judges) on a county-by-county basis beginning in January 2017 to develop a county-by-county centralized arraignment plan.³²⁴ The

³²³All of the information regarding "off-hours" and centralized arraignment plans comes from the Town & Village Justice Courts Committee Meeting (Jan. 24, 2017).

³²⁴Centralized Arraignment Parts for Off-Hours Arraignments Stakeholders' Meeting, (Dec. 19, 2016, Albany, NY).

Chief Administrative Judge must approve each plan before it becomes effective, but no plan will be approved before February 26, 2017.³²⁵ There is no deadline by which plans must be submitted.³²⁶

Some of the CAFA program administrators recognize that CAPs would alleviate many frustrations in providing attorneys at arraignments.³²⁷ Nevertheless, many counties will not adopt a CAP. There is an overwhelming perception that some judges vehemently oppose CAPs.³²⁸ Interviewees relate conversations in which magistrates have expressed their concerns such as: fear loss of sleep if traveling outside of their jurisdiction for multiple arraignments in one day/night before returning to their full-time jobs; having to learn a new computer system; multiple courts' computer and filing systems; and unfamiliarity with foreign courts' layouts. Some judges rely on their clerks for forms and cannot operate without their clerks' assistance, requiring clerks to appear at off-hours arraignments, as well. Because most clerks work part time, they may not be scheduled or even available the next day to scan, email, or mail paperwork to the appropriate jurisdiction. Bail receipt deposit books would not be balanced in a timely manner.

³²⁵*Id.*

³²⁶*Id.*

³²⁷Interviews, *supra* at nn 259; 283; 285; 287.

³²⁸The New York State Magistrates Association does not oppose CAPs.

Sheriffs voiced concerns over transporting defendants from one side of the county to another, only to have that defendant be released, and then what? How long would that sheriff be required to wait for that defendant to get a ride? What if he has no ride? Would the Sheriff be required to transport him home? Local village police objected to such situations, concerned that it would remove them from protecting their jurisdictions, violate their union contracts, make their municipality liable for some other municipality's defendants, etc.

Counties are not required to have a plan; however, four counties have initiated the following:

1. Broome County. (1) Off-hours arraignments will occur in a designated room at the county jail.

Up to 10 members of the public may access the room at a time.

(2) Several private attorney-client conference rooms exist.

(3) The CAP operates Monday through Friday from 7:00 p.m. to 7:00 a.m., as well as throughout the weekend.

(4) On-call judges are required to remain within a reasonable distance from the jail during their shifts. There will be a back-up on-call judge for emergencies or conflicts.

(5) The county is also seeking a centralized booking process to facilitate law enforcement.³²⁹

2. Oneida County. (1) A courtroom will be built at the Oneida County Sheriff's Office. A town or village Judge will be assigned to that court from 6:00 p.m. to 10:00 p.m. daily. It will be open to the public. Only defendants charged with detainable offenses (i.e. domestic violence, orders of protection, warrants) will be brought for arraignment; anyone expected to be released will be given appearance tickets. Any defendant detained after the arraignment part is closed will be arraigned the following morning in either Rome or Utica City Court. The Fifth District Administrative Judge will assign judges in conjunction with the local County Magistrates Association. Each judge will receive \$250 per evening.

(2) The Oneida County Sheriff's Office will provide security.

(3) OCA will provide computer and office equipment. Arraignment paperwork immediately will be faxed and mailed to the court of trial jurisdiction by using a file cabinet of pre-addressed envelopes.

³²⁹Arrested after-hours in Broome County? A judge will meet you at the jail, <http://www.pressconnects.com/story/news/public-safety/2017/10/06/arrested-after-hours-broome-county-judge-meet-you-jail/736213001/> (accessed Oct. 23, 2017).

(4) The anticipated cost (salaries for judges, security, attorneys, and costs of equipment and supplies) totals \$365,000. \$197,000 is strictly a county cost; however, the remainder is either a USC cost or ILS reimbursable.³³⁰

3. Onondaga County. (1) A courtroom will be provided at the Syracuse Public Safety Building, next to the county jail. Off-hours arraignments will occur from 6:00 p.m. to 10:00 p.m. each night.

(2) It is estimated to save about \$1 million annually (a combination of state and local tax money). Savings come from the efficiencies of having to staff only one courtroom per night.

(3) Regular security would staff the courtroom so that police officers could return to patrolling immediately.

(4) Judges would be paid for off-hours arraignments, whereas they do not receive extra compensation for off-hours arraignments that do not occur in a CAP. One judge would rotate per night.

(5) There would be a staffed prosecutor and two defense attorneys. Defense attorneys would meet with their clients in private rooms.

³³⁰All of Oneida County's centralized arraignment plan information comes from Centralized Arraignment Part Oneida County, Fifth Judicial District.

(6) Arraignments are open to the public.

(7) This system will work because the county has enough after-business-hours arraignments to justify a scheduled court.³³¹

4. Washington County. (1) A courtroom will be provided at the visitor's area of the Washington County Law Enforcement Center (located within the Washington County Jail). A town or village judge will be assigned by the Washington County Magistrates' Association to that courtroom for all after hours, weekend, evening, and holiday arrests; however, arraignments will be held at 9:00 a.m., 7:00 p.m., and other times, as "emergency" arraignments. It will be open to the public.

(2) The centralized part will have a separate conference room for the on-call attorney to meet with the defendant.

(3) Security includes magnetometers, one security officer, and locked filing cabinets.

(4) The CAFA judge will give the on-call attorney copies of the accusatory instruments, supporting depositions, and RAP sheets.

(5) If a defendant is released after arraignment, he will be allowed to call for transportation to his residence, as well as to wait in the facility staffed by the Sheriff while

³³¹Syracuse courts push radical shakeup in way suspects are arraigned off hours, http://www.syracuse.com/crime/index.ssf/2017/02/syracuse_courts_push_radical_shakeup_in_way_suspects_are_arraigned_after_hours.html (accessed Oct. 23, 2017).

awaiting his transportation. The arraignment part conveniently is located across from a gas station/convenient store/restaurant facility.

(6) The Sheriff's Department will collect posted bail and transfer it to the court of original jurisdiction. The centralized part should not collect bail from defendants.

(7) All arraignment paperwork immediately will be scanned, emailed, and mailed to the court of trial jurisdiction. The arraignment judge will keep an arraignment log to track his arraignments.

(8) If a defendant pleads guilty at arraignment, then the arraignment judge's original jurisdiction will assume jurisdiction of the fine and surcharge owed. The defendant will be given a reasonable period within which to make payment.

(9) Arraignment judges will be paid according to UJCA § 106 (2) at a rate of compensation to be approved by OCA, along with mileage reimbursement, after completion and approval of their payment vouchers.

I. Professional Associations' Opinions

Several associations have commented about CAFA both before its inception and throughout its implementation. Those associations' members have voiced their concerns about arraignment issues, as well as CAFA, and the associations have advocated and spoken on their behalf. This committee has contacted the District Attorneys' Association of New York, New

York State Defenders Association, New York State Sheriffs' Association, and New York State Magistrates Association to gather the collective opinions of district attorneys, defense attorneys, sheriffs, and judges statewide. They have shared the following:

1. District Attorneys' Association of the State of New York ("DAASNY"). This committee has contacted DAASNY for its position on CAFA and looks forward to receiving its response.

2. New York State Defenders Association ("NYSDA"). NYSDA supports counsel at arraignment. It supported only ILS administering the program, though, rather than creating a separate OCA panel to administer it. NYSDA also opposed the use of video-technology for arraignments based on several reasons. It opposed that ILS funds be used to cover any other costs associated with arraignment other than representation of the defendant (other costs such as funding the courts, police agencies, or district attorneys). NYSDA supports that the State fund counties "the full amount necessary to provide public defense legal services, and the full amount necessary to ensure the delivery of quality legal services for clients, including any increased costs incurred by public defense programs in complying with any standards promulgated by the Office of Indigent Legal Services; and the first important step is passage of the Public Defense Mandate Relief Act (A.6202C and S.6341A)."

Regarding centralized arraignments, NYSDA supported the signing and enforcement of off-hours/centralized-arraignment parts. NYSDA voiced its concern that the goals of centralized arraignments were, first, to ensure that defendants are represented by counsel at arraignment and, second, to make the arraignment process more predictable, timely, and cost-efficient for all

parties involved. Centralized arraignment plans should be reviewed and amended as needed. At centralized arraignments, counsel should be provided the defendant's "rap sheet," as well as be provided adequate privacy or consultation room to consult with the defendant. Any pre-arraignment detention should prevent law enforcement from accessing defendants.³³²

3. New York State Sheriffs' Association ("NYSSA"). NYSSA supports centralized arraignments. "Sheriffs have been generally receptive to the idea of a centralized, off-hours arraignment court." NYSSA lists frustrations with finding judges, removing road patrols from diverting crime, and preventing responses to emergency calls. Under CAFA without centralized arraignments, it takes too long for counsel to arrive. "A centralized arraignment court would save the Sheriff's Office time and manpower by requiring a single transport to a single court." Nevertheless, centralized courts would still waste time and manpower in larger counties where driving long distances to one court would take just as long if not longer than finding a judge, causing defendants to be detained longer. Also, holding cells may become dumping grounds for off-hours courts not in constant operation. Finally, staffing of off-hours courts would be

³³²NYSDA's position was gathered from the following: Letter from Jonathan Gradess, Executive Director, New York State Defenders Association (Mar. 13, 2013); New York State Defenders Association Resolution (May 2, 2016); Letter from Jonathan Gradess, Executive Director, New York State Defenders Association (Nov. 22, 2016).; Letter from Susan Bryant, Special Counsel, New York State Defenders Association (Jan. 17, 2017).

burdensome to the Sheriff's Office if members of their office must provide security. "Indeed, the potential cost of this initiative is what gives Sheriffs the most concern."

Regarding CAFA, it appears that most counties have their central dispatch notify counsel and judges about arraignments; however, it is unclear whether dispatch notifies the district attorneys, as well. Even this process is not quick or efficient, and it takes a long time for the parties to conduct an arraignment. NYSSA endorses the use of videoconferencing to conduct arraignments: the arresting officer would transport a defendant to the closest Sheriff's station, contact the lawyers and judges via videoconference, and arraign the defendant from the station. Statutory and political hurdles (especially from defense organizations) prevent current use of such technology statewide.³³³

4. New York State Magistrates Association ("NYSMA"). NYSMA encourages its justice court judges to provide defendants their Constitutional Rights at arraignment. In many towns and villages, CAFA cannot exist without centralized arraignments, though: in a significant number of counties, counsel is not available after business hours. Even in some counties that receive the ILS RFP, counsel is available only in city courts which operate only during business hours.

³³³NYSSA's position was gathered from the following: Letter from Christopher Farber, President, New York State Sheriffs' Association (Jan. 17, 2017); Telephone interview with Alex Wilson, President, New York State Sheriffs' Association, (Feb. 9, 2017).

District Attorneys also should be present at arraignments. NYSMA will meet every few months to discuss issues before taking a formal position or issuing a formal statement on this matter.³³⁴

J. Approved & Proposed Legislation

Several pieces of legislation and other recommendations have been proposed that affect arraignments in justice courts. A summary of frequent, important, and most current legislation is provided below:

Mandatory Counsel at First Appearance Plans. County Law § 722-e. Any such additional expenses incurred for the provision of counsel and services as a result of a plan established under Executive Law § 832 (4) shall be reimbursed by the state to the county or city providing such services. Under Executive Law § 832 (4), ILS shall develop and implement a written plan to ensure that each criminal defendant who is eligible for publicly funded legal representation is represented by counsel in person at her arraignment, and arraignment shall not be delayed pending eligibility determinations. Plans must be developed by December 1, 2017, and they shall be fully implemented by April 1, 2023.

This law passed as Section 11 of Governor Cuomo's 2017 New York State Budget.

³³⁴All of the information regarding NYSMA was acquired via a telephone interview with Sherry Davenport, President, New York State Magistrates Association (Mar. 23, 2017).

Centralized Off-Hours Arraignments. A.10360/S.7209-A. In line with those recommendations, these bills have proposed off-hours arraignment parts outside of NYC. After consultation with ILS and local magistrates' associations, institutional providers, and other local government officials, off-hours arraignment parts would be established in select local criminal courts of a county to be held in such courts on a rotating basis for the conduct of arraignments and incidental preliminary proceedings. The bill promotes centralized arraignments on a rotating basis for off-hours arraignments. It facilitates the availability of institutional providers, judges, and law enforcement to be present in a timely fashion and definite location for those arraignments.

This bill was signed by the governor on November 28, 2016.

Additional Hurrell-Harring recommendations. In addition to providing CAFA, *Hurrell-Harring* also proposed:

- a. approving and using holding cells for next-day arraignments;
- b. encouraging the issuance of more appearance tickets;
- c. rotating arraignment courts; and
- d. holding morning arraignments or special arraignment hours in county court with the county court judge sitting as an acting justice court judge.

Public Defense Mandate Relief Act, A.6202-C/S.6341-A. This bill explains that New York State is constitutionally required to provide public defense services and to undertake initiatives to (1) improve the quality of indigent defense; (2) ensure representation at arraignment; (3) implement caseload standards for providers of indigent legal services; and (4) implement statewide standards for determining eligibility for mandated representation. To ensure that it meets those standards, “the state shall pay counties the full amount necessary to ensure the delivery of quality legal services for indigent criminal defendants in a consistent manner throughout the state.”

Bail Reform:

Danger to community. A.1161 (2017-2018); A.69 (2015-2016); A.3798 (2015-2016); A.10546 (2015-2016); A.1809 (2013-2014); A.2411 (2013-2014). This bill amends CPL § 510.30 to add a factor when considering bail: a court may consider a defendant’s violent criminal history to ensure public safety. The court may consider detaining a defendant with the existence of clear and convincing evidence of danger to any person, or the community, as a requisite.

Victim’s right in pretrial proceedings. A.1163 (2017-2018); A.74 (2015-2016); A.2413 (2013-2014). This bill amends CPL §§ 210.10 and 530.10 to allow victims to be present at a defendant’s arraignment and bail proceeding. It does not grant them any rights other than to be present physically, such as to support or to oppose bail or orders of protection.

Lenient bail. A.1485 (2017-2018); A.1754 (2015-2016); A.9176 (2013-2014). This bill amends CPL § 530.30 to allow prosecutors to seek bail review of justice-court-fixed ROR or low bail in superior court. They initiate the process by filing a Notice of Intention to Apply to a superior court judge, with copies to the defendant, which stays the justice court's order for 72 hours. Such motion must allege new facts that were not alleged in any previous applications. It will be granted only if the justice court's decision constitutes an abuse of discretion.

Isol Cotto Act. A.1660 (2017-2018); A.1755/S.3183 (2015-2016); A.1439/S.2024 (2013-2014). This bill creates CPL § 510.25 which requires defendants charged with certain delineated domestic violence-related offenses to appear before a judge within 12 hours of being arrested. The court will set bail after reviewing the circumstances surrounding the arrest, any prior violent offenses, and the risk that the accused poses to the victim, if released.

Domestic violence bail factors. A.2411 (2017-2018); A.6775 (2015-2016). This bill amends CPL § 510.30 by adding that when a defendant is charged with a crime against members of the same family or household, a court may consider (1) any history of prior acts of violence or threats of violence against a witness in the pending criminal action; (2) any order of protection issued against the defendant for the protection of a member of the same family or household, whether or not that order currently is in effect; and (3) any prior arrest or conviction for a crime or violation against a member of the same family or household .

Exonerate bail for grand jury delay. A.4658 (2017-2018); A.4209 (2015-2016); A.3349 (2013-2014). This bill would allow bail to be exonerated and a defendant to be released on recognizance where a justice court has fixed bail on a felony complaint, a defendant has posted bail and remained at liberty pending the matter, but the grand jury has not taken any action on the matter within 45 days of the defendant's arraignment in justice court. The people may show good cause why bail should not be exonerated.

Pretrial bail recommendation. A.5033/S.3579 (2017-2018); A.8551/S.6061 (2015-2016) S.294; A.7178/S.4091 (2013-2014). This bill amends the criminal procedure law to require counties and cities to appoint (according to the chief administrative judge's process and qualifications) and to compensate pretrial services agents to interview and evaluate defendants before arraignment. Those agents shall interview and evaluate a defendant before arraignment. They shall identify the (1) criminal charges presented; (2) defendant's ties to the community; (3) defendant's place and length of residence; (4) defendant's commitments and contacts with family or friends; (5) defendant's employment history and sources of income; (6) defendant's ability to verify information; (7) defendant's history of appearing or failing to appear in court; (8) defendant's character, reputation, habits, and mental condition; (9) any pending criminal charges against the defendant; and (10) any other information that the agent deems necessary. After interviewing the defendant, the agent shall verify the information and evaluate the defendant for release on recognizance. Then, the agent shall recommend to the court that the defendant (1) be released on recognizance; (2) be released subject to non-monetary conditions; or (3) be

committed to the custody of the sheriff. Securing orders are amended to require a defendant to be subject to probation-like terms and conditions while released subject to those conditions. *Every court in the issuance of a securing order shall grant a preference to release on his or her own recognizance when the most severe charge against the defendant is a violation or misdemeanor. The attendance of a defendant shall not be secured by means of bail . . . shall utilize the least restrictive means necessary to secure the defendant's attendance at future proceedings, including the least restrictive conditions when release subject to conditions is permitted.*

Domestic violence arrest bail forfeiture. S.311 (2017-2018); A.9989/S.7360 (2015-2016). This bill allows for posted bail to be forfeited upon the defendant's arrest for a delineated domestic violence-related offense and who violated an order of protection while doing so.

Protection of Victims of Domestic Violence Act. A.2027/S.3473 (2017-2018); A.2995/S.1413 (2015-2016); A.3499/S.2914 (2013-2014). This bill adds Executive Law Article 22-A which allows a judge who releases a defendant, subject to protective conditions, to impose the condition that he wear a GPS device.

Public safety bail factor. A.7028/S.5167 (2015-2016); A.6799/S.4483 (2013-2014); A.2142 (2013-2014). This bill allows a court to issue a securing order after considering the safety of any other person or the community. *The court must order release on recognizance (unless the*

defendant is charged with a violent felony offense, class A felony, or manslaughter 2nd) *unless the court determines that a securing order will not reasonable secure the defendant's court attendance when required or will endanger the safety of any other person in the community, in which event the court must order bail.*

Family offense appearance ticket. A.2616 (2013-2014). This bill amends the CPL to allow that a person arrested for certain delineated family-offense related conduct be issued an appearance ticket rather than be arraigned in a local criminal court. "Family offense appearance ticket" means an appearance ticket issued to a person alleging his or her commission of a family offense, as described in CPL § 530.11 (1), which contains a direction to such person not to have contact with the complaining witness prior to his or her appearance in court.

DWI no bail. A.4018 (2013-2014). This bill amends the CPL to deny bail to a defendant charged with a DWI-related offense that also involved serious physical injury or death to another person under Penal Law § 125.12

Bail bond study required. A.7057/S.506 (2013-2014). This bill requires that the commissioner of financial services conduct a study about the bail bond business to identify improvements and clarifications in the bail bond system. The department will prepare a report with its suggestions for changes, and it will hold a public hearing on that report.

Broadening bail jurisdiction. A.9281 (2013-2014). This bill amends CPL § 530.20 (2) to allow justice courts to set bail on defendants charged with felonies unless a defendant is charged with a crime calling for a sentence of life imprisonment (Class A or persistent felony offender).

Bail form modification. A.9283-A (2013-2014). This bill amends CPL § 520.10 to state that courts may set bail without designating how it may be posted. If no forms are designated, then it may be posted in forms (g) or (h). Bail may be posted in two or more forms; instead of one of the designated forms.

K. Summary

There are 1,209-1,247 town and village justice courts located throughout 62 counties in the State of New York. The amount of courts varies because not all agencies report the same number of courts or corresponding court information. Although the website managed by the Office of Court Administration lists much information, it lacks a substantial number of courts and their corresponding information. Its information may conflict with that listed on county websites or other websites that organize court information. A defendant, plaintiff, or other resident is left researching multiple websites for correct answers on what should be simple, available information.

Most CAFA programs operate by the courts contacting the attorney-on-call. Theoretically, CAFA runs most smoothly where a large number of attorneys are available for on-

call rotation, and the judges (or other notifying agency) have a reliable, updated list of whom to contact on what days. CAFA has been successful in reducing amounts of bail set at arraignment, in facilitating defendants in being able to afford bail, and in reducing the number of incarcerated persons by increasing the number of appearance tickets issued by arresting officers.

CAFA is not flawless, though. First, some Courts do not cooperate where it takes too long for attorneys to arrive. Second, the program loses its appeal where attorneys experience burn-out. Third, although DAs play an important role, they remain noticeably absent from arraignments, and their absence affects bail arguments. Centralized arraignment parts may alleviate burdens imposed on all parties involved in the program.

Although many of the CAFA and centralized programs currently available provide for attorneys immediately or as soon as possible, not all of them provide 24/7 coverage. CAFA plans fall short of the constitutional right of providing attorneys at arraignment *at the first stage of criminal proceedings* by embracing overnight detention followed by morning arraignments. That promotes detention, however slight, along with disruption to the defendant's work, family, medical, or other areas of life.

Despite having one year's worth of time to develop a CAP, only 6% of counties have done so. The existing plans address sheriffs' concerns by cooperating with county law enforcement and CAP security. The plans also address judge's concerns by designating arraignment hours.

II. TRAINING & EDUCATION

A. What Happens During Town and Village Justice Courts' criminal calendar

The experiences of the parties appearing before judges can be as varied as the number of courts; however, there are some common experiences shared by many defendants across the length of our state. The following descriptions of what one could encounter in a justice court is a meshing of the experiences of the parties from all over the state and is an amalgam of some, but by no means all, justice courts.

There are approximately 2,000 locally elected town and village judges. Of that amount, 60% are non-lawyers.³³⁵ Although there are minimal education requirements for judges, they are not required to hold law degrees or to be admitted as attorneys. Many work day jobs as farmers, laborers, postmen, nurses, construction workers, etc., or are retired. They hold court regularly either during the day or in the evening: traffic court and prosecutor night may occur weekly or monthly; however, criminal court (district attorney and public defender night) may be calendared as infrequently as twice or thrice per year (especially in rural jurisdictions). When occurring that infrequently, counsel may schedule off-calendar appearances with the district attorneys and judges. Court proceedings take place either in town halls, local barns, community centers, or small courtrooms. Judges may sit at simple card tables, desks, or benches. Some have court clerks to assist them with paperwork and other administrative duties; however, others handle all

³³⁵ Email from Kenneth S. Carlson, Assistant Deputy Counsel, Office of Justice Court Support (Oct. 18, 2017).

tasks by themselves. Small, digital recorders are available (rather than stenographers) to record the court's proceedings.

Attorneys conference with clients either in a conference room (if available), outside of the building, in the courtroom's kitchen, or in a broom closet—as far out of earshot from others to ensure client confidentiality. Furniture must be rearranged hurriedly and haphazardly for jury trials in courtrooms without jury boxes. Magnetometers are a relief for buildings without court officers; in some other courts, a judge's concealed pistol may be the only form of security available.

Judges administer justice according to their training. While many judges recall their training and enforce the Criminal Procedure Law, some judges find defendants guilty of violations of probation without holding hearings or make them plead guilty without notice to their attorney. Other abuses have been known to happen, such as some judges sentencing defendants to a year in jail without a pre-sentence report and incarcerating defendants on failure to pay fines without holding willful violation hearings. Occasionally some judges' biases are on display in court when they voice racial and sexual bigotry toward defendants that appear before them. Sometimes, judges just make mistakes. Court clerks assist judges when possible. Despite good intentions, though, some judges and clerks have mishandled court funds and have failed to

file paperwork timely. Some have exhibited inappropriate conduct toward others in public. A few also have used their position to influence political or legal matters on behalf of others.³³⁶

B. Statutory and regulatory background

The justice court assistance program (“JCAP”) provides funds to assist the operation of town and village justice courts.³³⁷ “Funds available pursuant to this article may be used for any purpose having at its end enhancement of the justice courts’ ability to provide suitable and sufficient services to their respective communities.”³³⁸ Those funds may be used for a number of things, including the provision of law books, treatises, and appropriate training for justices and non-judicial court staff; however, they *shall not be used to reduce funding provided to the courts by towns and villages.*³³⁹ *Expenses incurred in fulfilling the training requirements shall be a charge against the municipality.*³⁴⁰ When JCAP funds are applied for, the chief administrator

³³⁶New York State Commission on Judicial Conduct Annual Report 2017, <http://www.scjc.state.ny.us/Publications/AnnualReports/nyscjc.2017annualreport.pdf> (accessed Jan. 24, 2018).

³³⁷Judiciary Law § 849-h (1).

³³⁸Judiciary Law § 849-h (2).

³³⁹*Id.*

³⁴⁰UJCA 105 (b).

shall consider the availability of other sources of funding to pay for some or all of the costs for which the application seeks funding under the program, as well as other factors.³⁴¹ No application in excess of \$30,000 shall be approved unless it is a joint application.³⁴²

The Uniform Justice Court Act (“UJCA”) and 22 NYCRR § 17.2 regulate the education and training of justice court judges. Training shall be conducted at least three times per year according to the following:

(a) Non-lawyer judges. All newly elected/ appointed non-lawyer judges shall attend the first available basic course after their election. Certification upon successful completion is valid until the next available advanced course;

(b) Incumbent judges. Every incumbent judge must complete successfully an advanced course once per year to maintain certification;

(c) Successful completion. “Successful completion” means attendance at no less than 80% of the sessions with a passing grade on a written exam as established by the Chief Administrator;

(d) The Chief Administrator may issue temporary certificates to non-lawyer judges which shall be valid until the time of the next available course; and

³⁴¹Judiciary Law § 849-i (3) (c).

³⁴²Judiciary Law § 849-i (4).

(e) Lawyer judges. Each newly elected/ appointed judge who is a member of the Bar of this State shall attend the first available advanced course of training after he is elected/ appointed. Each such judge shall attend an advanced course of training each calendar year thereafter while holding office. “Attendance” means attendance at no less than 80% of the sessions. The Chief Administrator shall issue appropriate certificates of attendance.³⁴³

C. Previous reports’ findings

In the review process for this section, nine reports (exhumed from the archives of the New York State Bar Association) were examined for content and summarized. Each is referenced at the end of the summarized content.

Justice court judges are required to attend 12 hours of training each year, and non-attorney judges must attend a 6-day basic certification class before sitting as a local judge. After those training requirements, though, justice court judges operate their courts without any meaningful standards or oversight, their actions and decisions were not recorded, and nearly 70% of the judges were non-attorney judges. Those without any legal experience face innumerable issues of statutory interpretation, case law, and legal concepts (such as *stare decisis*) which were, at first blush, foreign to them. It is impossible to learn all of the law in a six-day training course. Some judges do not remain on the bench long enough to gain sufficient experience and

³⁴³22 NYCRR § 17.2; Report and Recommendations of the New York State Bar Association Committee on the New York State Constitution, The Judiciary Article of the New York State Constitution - Opportunities to Restructure and Modernize the New York Courts (Dec. 12, 2016).

confidence. A Resource Center was staffed, at the time, with three attorneys and is available to judges and to court clerks through a toll-free number to answer questions; one attorney is available four evenings each week through an answering machine paging system. Despite the Center, though, if judges have questions about the law, they sometimes rely on district attorneys for help: in two upstate counties, the district attorneys admitted to *ex parte* communications with some judges where defense counsel should have been present. One district attorney believed that those communications occurred because some judges were uncertain of themselves and wanted to make sure that what they were doing was right. Another district attorney noted that one judge did not know the difference between “overruled” and “sustained.” Some judges had an aversion to litigation and discouraged defendants from arguing motions and from going to trial. Those problems became more serious in the absence of meaningful oversight, standards, and goals. There was no mechanism by which justice court statistics (such as the timing of case dispositions) were regularly reported or reviewed. Without oversight and records, justice courts ran their courtrooms according to their own rules; how cases were handled depended on the personalities of the courts; some resulted in excessive sentences and bail whereas other did not.³⁴⁴

A second report recommended that the OCA would create a Justice Court institute. The Institute would serve as an upstate satellite facility for the White Plains-based Judicial Institute, which the Legislature established to serve as a year-round education and training center for the

³⁴⁴Local judge’s training was reported by The Spangenberg Group, *Status of Indigent Defense in New York: A study for Chief Judge Kaye’s Commission on the Future of Indigent Defense Services* (June 2006).

State-paid courts and their judges and personnel. The Institute would, for the first time, allow OCA to bring together newly-elected judges (for the basic program), as well as incumbent judges (for advanced and re-certification programs) in modern facilities.

Regarding Justice Courts, it included:

- * supplying justice courts with digital recorders to make them “courts of record” and to facilitate appeals;
- * providing laptops and other much-needed technical support that would make the courts more efficient while allowing OCA to exercise oversight of the courts more easily;
- * doubling the current required training period to two weeks and adding at-home supplementary training sessions;
- * expanding administrative resources dedicated to advising and educating justice court personnel;
- * expanding the Resource Center to provide additional attorney assistance for justice courts;
- * creating an online library for justice court training; and
- * establishing Justice Court Advisory and Support Teams (“J-CASTs”) to visit newly elected judges before they take office or during their initial months of their first term.

The plan also restructured the justice court education program. The new program would include four parts:

1. Pre-basic, self-study program;
2. First week of basic classroom training;
3. Second period of self-study; and
4. Second week of basic training that emphasizes skill development.

The newly elected judges would be required to attend the one-week program in person. The advanced program would be diversified, though, allowing for dual-tracking, quarterly live and remote (rather than annual) appearances, and online discussion groups.

OCA will create a Permanent Committee on Justice Court Education and Training, including members from the Magistrates Association, New York State Association of Towns, New York State Conference of Mayors, OCA, the State Comptroller's Office, and experts in adult education and psychometrics. The OCA will work with the organized bar to help prepare and implement the new curriculum. Finally, the representatives of the New York State Advisory Committee on Judicial Ethics will provide training seminars dedicated to justice courts on ethical issues likely to arise in their courts.³⁴⁵

³⁴⁵Local judge's training was reported by the Office of Court Administration Task Force, *Action Plan for the Justice Courts* (November 2006).

A third report found that OCA began to fulfill prior recommendations. New recommendations included that proceedings in every case be recorded by court reporters using current technology or by digital recording in lieu of a court reporter. Records provide a basis for appellate review, as well as maintain transparency and oversight. Because there was no requirement that all proceedings be recorded, some courts recorded proceedings and some did not—no uniform practice existed; no record existed for proceedings that did not involve testimony and sometimes judges or court clerks kept notes. As a result, the following year, OCA bought and distributed modern recording devices to justice courts (beginning with those that had the largest caseloads). It was recommended that those courts without any recording receive the digital recorders, first. It also was recommended that every judge and court clerk have access to a computer with uniform software for case management, fiscal record keeping, and financial reporting. Training in the use of the software should be mandatory with monitoring and assistance available. Newly appointed supervising judges should be responsible for the oversight of training and record keeping. Judges should have computer access for training, research, conferencing with other judges, and writing opinions and orders. Training should include Westlaw or Lexis, other research tools, and general search techniques. Computers should include software for form letters and orders. It also recommended consideration of videoconferencing for designated court proceedings to avoid delays when lawyers cannot appear personally or when a defendant cannot be transported to court from a detention facility. It supported the expanded use of email to simplify communications between justice courts and everyone else. Although desktop computers are provided, laptops also should be provided if the courtroom and judge’s chambers

are not in the same place or when the court clerk and judge are doing different tasks at the same time.³⁴⁶

A fourth report recommended that the OCA provide to judges an adequate number of lawyers to help judges with research and analysis to resolve the substantive, procedural, and judicial conduct issues that arise in justice courts. Judges also should be assisted by experts in court and fiscal management. The Resource Center is already in place; however, it is not funded sufficiently to provide assistance comparable to that available to state courts. It also recommended that the Resource Center be staffed sufficiently to provide requested assistance and to enhance the confidence of the judges in the Center's work while making clear to the judges that they are the responsible decision makers. It was recommended that the Resource Center be available to provide assistance throughout the day, as well as during evening sessions, night-time arraignments, and bail decisions. The Center also regularly should prepare and distribute updates to relevant laws, regulations, and case law. It also recommended that the OCA undertake a project of statewide publicity about the Center. It also recommended the establishment of regional offices, especially in towns consisting of non-lawyer judges, on-site assistance when dealing with difficult cases or issues, small group training sessions, and other face-to-face contacts between Center staff and justice court judges and court clerks. The Center

³⁴⁶Local judges' training was reported by the New York City Bar Association Task Force on Town and Village Justice Courts, *Memorandum on Justice Court Technology* (March 2007).

should continue to exist even if all justice courts are run by lawyer judges because all judges need assistance.³⁴⁷

A fifth report, recommended that the City Bar work with other bar associations and appropriate entities to establish a committee to identify volunteer lawyers to work with the New York State Judicial Institute to prepare and present courses of study for basic and advanced programs for local judges. The Judicial Institute should collaborate with the OCA, Office of the State Comptroller, DCJS, and other agencies to form those courses. Those courses should cover training on court administration, as well as fiscal responsibility and accountability. Members of any advisory committee established to plan and monitor the training programs should be neutral in their positions with respect to the issues that come before the justice courts (membership should not reflect only governmental or prosecutorial interests). Judges should be trained intensively on procedural and substantive law regarding summary proceeding eviction cases. It also recommended the establishment of regional offices, especially in areas of non-lawyer judges, and on-site assistance when dealing with difficult cases or issues, small-group training sessions, and other face to face contacts between Center staff and justice court judges and court clerks. Judges and court clerks should be given access to computers with uniform software for case management, fiscal record keeping, and financial reporting; furthermore, training in that software should be mandatory with monitoring and assistance available. Every justice court should have a court clerk trained to prepare financial records; the clerks should be full time and

³⁴⁷Local judges' training was reported by the New York City Bar Association Task Force on Town and Village Justice Courts, *Recommendations Relating to Assisting Town and Village Justices* (June 2007).

fairly compensated; courts may share clerks where necessary; and clerks should be supervised by a state employee who is available to provide assistance.³⁴⁸

A sixth report found that local judges are not required to undergo the same intensity of training offered to state-funded judges through the State Judicial Institute. The report urges NYSBA to explore ways in which the Association could support continuing training and education. It recommended that NYSBA support the OCA's request for increased funding to support the development and implementation of enhanced training and education programs for town and village judges. It also recommended mentoring/training programs for judges that could use the *pro bono* talents of retired judges and attorneys. It also recommended that one consider how retired attorneys could be used to complement the efforts of the Resource Center.³⁴⁹

³⁴⁸Local judges' training was reported by the New York City Bar Association Task Force on Town and Village Justice Courts, *Recommendations Relating to Structure and Organization* (October 2007).

³⁴⁹Local judges' training was reported by NYSBA, *Report of the New York State Bar Association Task Force on Town and Village Justice Courts* (August 2007).

A seventh report found that many of the local judges are non-lawyers and have little or no legal training other than a week-long course that is administered at the beginning of their term, followed by an annual two-day mandatory training session.³⁵⁰

An eighth report found that expanding and improving education and training programs for the local judges was a key aspect of the Action Plan. Newly elected non-lawyer judges traditionally were required to complete only a one-week “basic” training course before taking the bench, and incumbent non-lawyer judges only needed to attend 12 hours of training per year. Additional steps were required to reform justice courts because for judges with no prior experience with the judicial system, two weeks of basic training, even if followed by in-home training, is an insufficient primer for serving as a modern judge. The commission learned that judges complained that there was too much classroom training and not enough hands-on learning, such as observing or presiding over mock arraignments, trials, or other proceedings. The Action Plan recommended:

- * increasing “basic” training from one week to two weeks of in-class training, followed by five weeks of in-home training;
- * restructuring the “advanced” training that incumbent judges receive (geared to the experience level of each judge);
- * establishing a joint training and certification program for court clerks;

³⁵⁰Local judges’ training was reported by the Special Commission on the Future of New York State Courts, *A Court System for the Future: The Promise of Court Restructuring in New York State* (February 2007).

- * establishing a year-round, centrally located Justice Court Institute to serve as a training center for judges and court clerks; and
- * creating Justice Court Advisory and Support Teams (“J-CASTs”) comprised of attorneys, court administrators, and financial experts, to visit the courts of newly elected justices at or before the beginning of their terms to provide onsite, hands-on training tailored to each justice court.

The Commission recommended that the basic training program be increased, and that towns and villages actively support judges and court clerks to remain trained properly. Incoming judges should be required to observe proceedings over a period of weeks, either via formal training sessions or by auditing supreme and county courts. Advanced training for incumbent judges should also be improved; for example, more elective courses should be offered throughout the year so that judges may select courses that are most appropriate and beneficial to their unique experiences. Courses should also be made available in different formats, such as online or on DVDs.³⁵¹

A ninth report found that interpretation of foreign languages remains an issue. When the financial responsibility for the operation of the trial courts was transferred, in 1976, from local

³⁵¹Local judges’ training was reported by the Special Commission on the Future of New York State Courts, *Justice Most Local: The Future of Town and Village Courts in New York State* (September 2008).

governments to the state, the Justice Courts were expressly exempted.³⁵² “As a result, each of the more than 1,200 Justice Courts in New York is operated, financed, and administered by its sponsoring town or village, with very limited financial and technical assistance from the state. None of the Justice Courts has a staff court interpreter, and many lack the funds to hire a per diem interpreter. The difficulty of ensuring language access in the Justice Courts is further compounded by the nature of Justice Court operations. These courts are located in more than 1,200 different locations across the state, in every county outside of New York City. Many of these courts are located in communities where a significant portion of the local population needs language assistance, often in less common languages. In addition, many appearances before the Justice Courts are relatively short, often with little, if any, advance notice of the need for interpreting services. Of particular concern are criminal arraignments conducted late at night or on weekends. Given the due process and access to justice implications, anecdotal reports that relatives or arresting officers serve as interpreters for arraigned defendants are especially troubling.”³⁵³

“The Bar takes the position that all judges should be lawyers, concluding that “[i]t is unfair for litigants in civil or criminal cases to have matters determined by a person who may be

³⁵²L.1976, ch. 966 (Unified Court Budget Act).

³⁵³Ensuring Language Access: A Strategic Plan for the New York State Courts at 29-31, Advisory Committee on Language Access, Office of Court Administration (Mar. 2017).

unfamiliar with the law.”³⁵⁴ Despite that position or the opinions listed, above, the 2008 Dunne Commission Report on Town and Village Justice Courts did not find a compelling basis to eliminate those courts altogether or to require that their judges be admitted attorneys.³⁵⁵ The Report recommended that 1) minimum standards be developed for those courts and 2) panels be developed to discuss court consolidation.³⁵⁶ Three months later, the State Bar agreed that 1) requiring judges in town and village justice courts to be lawyers was not possible; 2) developing standards for those courts was important; and 3) consolidating those courts should be discussed.³⁵⁷ The proposals that the State Bar did not agree with included: 1) judges be a

³⁵⁴New York State Bar Association Committee on the New York State Constitution, *The Judiciary Article of the New York State Constitution - Opportunities to Restructure and Modernize the New York Courts* (Dec. 12, 2016); William Glaberson, *How a Reviled Court System Has Outlasted Many Critics*, N.Y. Times, at B8-B9 (Sept. 27, 2006).

³⁵⁵New York State Bar Association Committee on the New York State Constitution, *The Judiciary Article of the New York State Constitution - Opportunities to Restructure and Modernize the New York Courts* (Dec. 12, 2016).

³⁵⁶*Id.*; Special Commission on the Future of New York State Courts, *Justice Most Local: The Future of Town and Village Courts in New York State* at 83-104 (September 2008).

³⁵⁷See January 30, 2009 New York State Bar Association House of Delegates Minutes (adopting Report of the Committee on Court Structure and Judicial Selection re: *Justice Most Local: The Future of Town and Village Courts in New York State* but rejecting one recommendation in the Committee report in favor of the original recommendation set forth in the Dunne Commission Report); Committee on Court Structure and Judicial Selection re: Justice Most Local: The Future of Town and Village Courts in New York State (Dec. 16, 2008). See also Special Commission

minimum age of 25 (the State Bar recommended 30) and 2) judges have a two-year college degree (the State Bar recommended a four-year degree).³⁵⁸

D. Training for Judges

In compliance with the current training requirements, the OCA requires magistrates to complete training annually. The courses are offered online or at physical locations, and they are provided in live and video format. Justices receive CLE-type packets of information, consisting of Power Point slides, black letter law, case law, statutes, and regulations. The materials also include commentary, memoranda, and ethics opinions. The material also reviews the history of the issues, including previous legislation and references to the Criminal Procedure Law. Training reviews FAQs and written examples/scenarios of how to apply the law to different situations. To assist judges in their duties, materials include samples of accusatory instruments, forms, decision templates, and charts/quick reference guides. The training qualifies as CLE credits for attorney

on the Future of New York State Courts, *Justice Most Local: The Future of Town and Village Courts in New York State* at 83-104 (September 2008).

³⁵⁸ Compare January 30, 2009 New York State Bar Association House of Delegates Minutes (adopting Report of the Committee on Court Structure and Judicial Selection re: Justice Most Local: The Future of Town and Village Courts in New York State except rejecting one recommendation for the original recommendation found in the Dunne Commission Report) with Report of the Committee on Court Structure and Judicial Selection re: Justice Most Local: The Future of Town and Village Court in New York State (Dec. 16, 2008); Justice Most Local: The Future of Town and Village Courts in New York State, A Report by the Special Commission on the Future of the New York State Courts (Sept. 2008).

judges. Finally, judges also receive information on legal research sites, as well as contact information to ask further questions.

Training over the past several years has covered the following topics:

2011 (Basic Course)

Accepting Pleas

ACD and Sentencing

Appeals: Civil & Criminal

Arrest and Assignment of Counsel

Bail: Setting and ROR

Civil Actions

Controlling the Courtroom

Life Cycle of a Criminal Case

Domestic Violence

DWI

Ethics

Evidence

Motion Practice

Non-Jury Trial and Accepting Trial Waiver

Omnibus Motions

Pleas, Sentencing, and ACD

Pringle Hearings

Record Keeping & Reporting

Securing Defendant's Attendance

Determining Legal Sufficiency

Small Claims Forms

Statute of Limitations

Speeding and AUO

Summary Proceeding

Youthful Offender, Juvenile Offender, and Juvenile Delinquent

2012

DMV Updates

Domestic Violence

Judicial Ethics

Life Cycle of a Small Claim

2013

DMV Updates

Judicial Ethics

Leandra's Law and IID

Parker Warnings

Pringle Hearings

Search Warrants

Sovereign Citizen

Tech Center

2014

Conditional Discharge and Violations of Probation

Discovery in a Criminal Case

Ethics

Distracted Driving

Domestic Violence

E-justice

Extradition Warrants

Mental Health Issues in the Courtroom

Revocable Sentences

Summary Proceeding

2015

ADR Best Practices

DWI

Judicial Ethics

Legal Updates

Settlements, Stays, and Unrepresented Litigants

Summary Contempt

Surcharges

2016

Chemical Breath Test and Pringle

Dangerous Dogs

Dismissal in the Interests of Justice

Ethics

Judicial Independence

Judicial Decision Writing

Leandra's Law and IID

Recordkeeping

Sovereign Citizens

Warrant of Habitability

2017

Chemical Breath Test and Preliminary Pringle Determinations

Dismissal in the Interests of Justice

DMV Update

DWI and Refusals

Ethics

Fines Under CPL Article 420

Life Cycle of a Criminal Appeal

New Assigned Counsel Eligibility Guidelines

In addition to their training, justices receive a quarterly magazine published by the New York State Magistrates Association titled, “The Magistrate,” which provides articles about different legal topics, as well as recent case law. Local Magistrates Associations also hold meetings to discuss trainings and other topics. Depending on the location, meetings can be sporadic, attendance is not mandatory, and attendance records may not be maintained.³⁵⁹

Justices have now been advised that it is unethical to arraign a defendant without counsel and to do so will subject them to scrutiny of the Commission on Judicial Conduct. Therefore, they now have no choice but to leave the defendant in the custody of the arresting officer until counsel appears.

Justices may access training materials online or through other links that try to organize and to facilitate their work, such as <http://nyjusticecourts.law.columbia.edu/>.

E. Training for Court Clerks

The Court Clerks Association has existed since 1979 and has about 1115 members (court clerks). There are 1700 court clerks statewide, so 66% of them belong to the association. The clerks deal daily with public funds and people’s freedom. If a clerk mistakes reporting a criminal case, it will impact that defendant’s life. Mistakes can mean the difference between an existing

³⁵⁹ All of the above-referenced information was obtained via an in-person interview with a local village court judge (November 2016-November 2017).

commissary account (deferred or non-deferred restitution); release dates (concurrent versus consecutive sentencing), and potential immediate charges (complete stay away versus refrain from orders of protection). If a clerk mistakes reporting justice courts funds, it will impact the municipality as a whole. Several jurisdictions' clerks have been prosecuted for misreporting funds, resulting in extensive costs for audits, prosecution, theft, etc.

In response to a survey issued several years ago by a joint committee of the State Magistrates (NYSMA) and Court Clerks Association, 1330 court clerks responded. Eighty-five percent agreed that mandatory training for court clerks was necessary (before proposed legislation in December 2016, there were no training requirements for court clerks). Although training is offered, many clerks do not attend it because it is not mandatory, and municipalities will not reimburse or assist with non-mandatory training costs. Furthermore, not every jurisdiction budgets for education of court clerks, and clerks' schedules do not allow time for training. A well-trained court clerk is an asset not only to the judge, but also to the community. Too many clerks have accepted their positions only to become disheartened, overwhelmed, and overworked by having to organize the mismanaged files left behind by an untrained clerk that had worked there for several years. By mandating training, clerks are taking steps to ensure that they will have the appropriate tools and knowledge.

NYSAMCC promotes or co-sponsors statewide events for court clerks; however, it does not retain materials used in trainings nor take attendance at trainings. There are three annual conferences: Association of Towns, Potsdam, and Annual Court Clerk's Association. The Association of Towns offers annual trainings in New York City on President's Day weekend,

and 117 clerks attended this past year. A program is offered annually in Potsdam, New York during the third week in July (all Tuesday and Wednesday), and 70 clerks attended it this past year. OCA organizes the training, and NYSCCA provides instructors. The Annual Court Clerk's Conference takes place at a rotating location during the last week of September (Monday through Wednesday), and 250 clerks attended this past year. The Court Clerk's Association does not retain copies of the training materials provided at the trainings. OCA does not record attendance at any of the trainings unless judges attend. Local training material and attendance information are not shared with or tracked by OCA because clerks do not receive credit for attending training; therefore, OCA does not find it necessary to track that information.³⁶⁰

In Fall 2017, the Court Clerks Association held its training in Ellicottville, New York. Instructors included individuals from NYSAMCC, NYSMA, OCA, various judicial districts (court analyst, management analyst, PC analyst), and DMV. They instructed on the following:

Supporting the Bench

Introduction to Court Clerk Position

Fiscal Responsibilities

CDR - Basic

Introduction to Civil Actions: Small Claims, Civil Claims, and Summary Proceedings

TSLED

³⁶⁰ All of the above-referenced information was obtained via email and in-person interviews with Gillian Koerner, President of Court Clerks Association (Feb. 23 and 24, Mar. 24, 2017), as well as NYSAMCC's comments on proposed regulation 22 NYCRR § 17.2 (f), Nov. 3, 2016.

Web-DVS

Digital Recorder/Outlook

Introduction to Criminal Procedure Law

Advanced Classes

Advanced DWI

Violations of Probation

Civil and Criminal Appeals

Advanced Web-DVS

Advanced CDR

DWI Drugs - Part I

Drugged Drivers - Part II

Advanced TSLED

Advanced Web DVS

Bail Me Out

Elective Classes

All in the Details

Environmental Conservation

NYS Courts Access to Justice Program

Forms Class

Records Management

E-Justice Portal and TAC Responsibilities

CJIS - Audits

Advanced Fiscal³⁶¹

Other than those statewide, annual trainings, towns and villages offer a range of trainings. For example, the Seventh Judicial District offered training on April 7, 2016 to court clerks in Geneva, New York.³⁶² Some counties combine court clerk and judge associations, and when they are combined, there are better records of court clerk training.³⁶³ Each county and/or each district would have to be contacted to determine that information, a task beyond this committee's abilities; however, no trainings were provided for the past two years in Cattaraugus or Chemung Counties.³⁶⁴ Training was provided in Rockland County at the Rockland County Courthouse on October 25, 2016; but the participants were not given an agenda or syllabus.³⁶⁵

³⁶¹All of the information about the 2017 court clerks training was provided from the 2017 New York State Association of Magistrates Court Clerks, Inc. Annual Conference Agenda.

³⁶²Interview with Amy Monachino, Town & Village Court Liaison, 7th Judicial District, Mar. 21, 2017.

³⁶³*Id.*

³⁶⁴Email to Robert Jereski from Kenneth S. Carlson, Assistant Deputy Counsel, Office of Justice Court Support (Mar. 29, 2017).

³⁶⁵Email to Robert Jereski from Kenneth S. Carlson, Assistant Deputy Counsel, Office of Justice Court Support (Apr. 18, 2017).

The court clerks association did not have much organization at all until recently. It now has an interactive, informational website (<https://nysamcc.com>) including training schedules, educational resources, and contact information.³⁶⁶ When court clerks have questions about training or other matters not answered on the website, then they may contact the Office of Justice Court Support (“OJCS”).³⁶⁷

In December 2016, Governor Cuomo signed into law 22 NYCRR § 17.2 to mandate that each court clerk in a town or village justice court complete annually a training or continuing education program approved by the Chief Administrator of the Courts. The regulation applies to all justice court clerks, regardless of how many hours they work. Effective 2019, each veteran court clerk must receive at least 6 hours of approved annual training, and at least 1 course per year must address financial/fiscal matters.³⁶⁸ Clerks newly hired in 2019 and thereafter will be required to take an introductory, 12-hour “Supporting the Bench” training, as well as an additional 6 hours of annual approved training.³⁶⁹ Nassau County justice court clerks must

³⁶⁶New York State Association of Magistrates Court Clerks, Inc., <https://nysamcc.com/#home-1-section> (accessed Oct. 18, 2017).

³⁶⁷Interview, *supra* at n 357.

³⁶⁸22 NYCRR § 17.2 (f).

³⁶⁹22 NYCRR § 17.2 (f) proposal; Email from Nancy Sunukjian, Director of OJCS, Special Counsel to the DCAJ (Aug, 2, 2017).

complete only six hours of “Supporting the Bench” training with an additional four hours of annual approved training.³⁷⁰ To alleviate the costs associated with mandatory training, training will be offered online.³⁷¹ Credits earned in 2018 may be applied to 2019 requirements.³⁷²

OJCS is creating a database to track the training of every justice court clerk statewide—“a task that never before has been undertaken.”³⁷³ It will create appropriate curriculum and appoint appropriate instructors.³⁷⁴ Ken Carlson (Assistant Deputy Counsel), Alex Glick-Kutscha (Associate Counsel), Kate Breen (Senior Court Analyst), and Kathy Roberts (Assistant Court Analyst) will assist in that project.

F. Office of Justice Court Support and the Town and Village Resource Center

The Office of Justice Court Support and Town and Village Resource Center (“the Center”) is part of the Office of Court Administration (“OCA”) and is located in Albany, New York. It has existed for more than 30 years. Its director currently also serves as special counsel to

³⁷⁰22 NYCRR § 17.2 (f) proposal.

³⁷¹Email, *supra* at n 366.

³⁷²22 NYCRR § 17.2 (f) proposal.

³⁷³Email, *supra* at n 366.

³⁷⁴*Id.*

the Deputy Chief Administrative Judge for Courts Outside of New York City. The Center supports justice courts by giving legal and other assistance to those courts, as well as by providing training and education to judges and to court clerks.

The Center is staffed by 17-18 individuals. Currently, eight of those individuals are attorneys. Approximately three of those attorneys also serve as local judges, and at least one is a former local judge. They have a variety of backgrounds, including one with 17 years as an assistant district attorney, another with several years as an assistant public defender, and another with 10 years of criminal defense work in private practice, as well as several years as an assistant district attorney. Other attorneys have their experience working with a bar association, general practice firm, administrative law, human resources, and court administration. Two of the attorneys have worked with the Center for more than 20 years, and one attorney has worked there for more than 10 years.

The attorneys serve as confidential law clerks to over 1,830 justice court judges. They respond to telephone and e-mail inquiries from judges and clerks, perform legal research, and draft memoranda or other written materials to assist the courts. They often consult each other, as well, before answering difficult questions. They receive approximately 75-80 calls per day (more than 20,000 phone calls per year). Five to six individuals work per shift, and at least one staff attorney remains on-call during evening and weekend hours to assist courts after business hours. The attorneys must comply with their CLE requirements, and they keep abreast of new case law by developing annual trainings. Administrative staff also receives training, although it is not legal in nature; rather, it reviews software and database programs.

Administratively, the Center also liaises with OCA's Division of Technology to assist justice courts with other technological issues. Furthermore, the Center secures credit card machines, ensures that justice courts meet their audit obligations, and oversees the JCAP grant program (providing approximately \$3 million to justice courts statewide in 2017). The Center also develops and implements other administrative initiatives, such as increasing language access and improving data entry.

The Center assists with the training and education of judges and clerks, as well. It develops the annual "Core" programs that are offered at the Association of Towns conference in New York City each February. It presents at the late March conference in Albany, July program in Potsdam, and State Magistrates Association in October (held at a different location each year, although it does not develop the October training). All recorded programs are available to local judges through an online learning portal. The Center also sends email blasts to judges to inform them about new legislation that passes post-training sessions. It also develops the "Taking the Bench" training for newly elected non-lawyer judges (an intensive, six-day training offered each December and April with a follow-up session after several months). All lawyer and non-lawyer judges must take 12 advanced training credits annually. The Center also will develop the newly-required court clerk trainings. The Center works with a curriculum consultant to develop new training and includes both lectures and hands-on exercises in its programs.

The Center is aware of the issues involved in communicating with non-English speaking persons, and it has trained the judges on "the importance of ensuring access to justice for individuals with limited English proficiency." A Task Force is reviewing similar practices

around the state and will issue a report in Spring 2018. In the meantime, “there is a State contract with Language Line, a private provider of telephonic interpreting services,” and many courts use it.³⁷⁵ Indeed, court rules provide that the clerk of a court or other designated administrative officer *shall* schedule an interpreter at no expense from an OCA-maintained approved list, and that interpreter may interpret by telephone or other audiovisual means.³⁷⁶

G. Approved and Proposed Legislation

Training and Education of Justices and Non-Judicial Personnel. A.7375/S.4222 (2007)

Requires non-judicial staff to complete courses in docket management, financial control, and court operations. After passing the assembly, this bill died in the senate, was returned to the assembly, and was referred to the finance committee.

Justice Court Efficiency and Modernization Act. A.10945 (2009); A.5647 (2011); A.5338

(2013). Advancing recommendations of Chief Judge Kaye’s 2008 Special Commission on the Future of New York State Courts, this imposes age and educational requirements for justice court judges. Judges must be at least 25 years old and have graduated from high school or earned

³⁷⁵ All of the above-referenced information was obtained via email and in-person interviews with Kenneth S. Carlson, Assistant Deputy Counsel, Office of Justice Court Support (Oct. 18 and Nov. 29, 2017).

³⁷⁶ 22 NYCRR Part 217.

a GED, as well as an Associate's or Bachelor of Arts degree. A person may sit as a judge in any justice court of his county of residence or an adjoining county.

A defendant charged with a misdemeanor or felony may choose to appear only before a judge admitted to practice law. Such motion must be made after arraignment.

Judges must complete training before assuming the functions of a judge, unless that judge is a licensed attorney. This bill was referred to the judiciary, and no votes were taken.

Minimum Educational Requirements for Town and Village Justices. A.8336-A (2013); A.2867 (2015). Allows each municipality to determine whether their town and village court justices must be licensed attorneys. In both 2013 and 2015, this bill was referred to the judiciary, and no votes were taken on it.

Educational Programs for Judicial Personnel on the Law of Searches, Arrests, and Seizures.

A.4012/S.4354 (2016). Reinforces provisions of the Criminal Procedure Law relating to hours of the day that a "no-knock" warrant may be applied for and executed, as well as requiring specific, factual application requirements. The bill also requires that the application court place its finding on the record. It mandates regular training of judicial personnel on the substantive law of search and seizure. This bill has been proposed before.

Allows the Town Supervisor to Examine Justice Court Docket Quarterly Regarding

Payment of Fines and Fees. A.2237 (2016). Allows the town supervisor to review the courts' dockets to ensure that monies collected are not being embezzled by court personnel. This bill has been referred to local governments, and no vote has been taken. This bill has been proposed before.

22 NYCRR §17.2 (f). (2016) Mandatory training for court clerks. The additional section to the existing court rule proposes:

(a)) Newly admitted clerks. Newly admitted clerks would complete successfully a “supporting the bench” course within 90 days of their appointment. A certificate of completion will be issued and valid throughout the calendar year.

(b) Advanced training. Court clerks shall be required to complete 6 hours of training each year, 1 hour of which will include fiscal training. The training could occur in one day: online, at conferences, or at local and district trainings. The addition of the fiscal requirement would minimize the amount of fiscal mistakes, highlighted by the Office of the State Comptrollers in many of their Justice Court audits.

(c)) Successful completion. “Successful completion” means completion of training which must include 1 credit hour of fiscal education annually and attendance verification and/or certification on attendance as established by the Chief Administrator.

On December 14, 2016 the section was approved to read, “Each court clerk in a town or village court shall annually complete a training or continuing education program approved by the Chief Administrator of the Courts.”³⁷⁷

H. Summary

Both judges and clerks have a plethora of quality, CLE-type, training materials available to them, both in print, online, lecture, and role-play formats. Those materials give a thorough overview of both civil and criminal topics that frequently appear in justice courts. Judges may attend any of several available sessions and may access materials at any time if they do not print and save them for their convenience. Additionally, the Center is available throughout the day, evening, and weekends to answer any legal questions or procedures that may arise.

Despite all the training and resource materials available, some justice courts fall short of providing constitutionally mandated due process or timely administrative services. For whatever reasons, some Judges do not follow basic due process requirements, for example, more rural jurisdictions have delayed due process to foreign-speaking defendants by neglecting to provide interpreters or utilize Language Line. Sometimes, judges may be unaware of what certain terms mean or how to impose certain types of relief and other instances they do not have all of the forms available to order certain types of relief (such as less common forms of bail).

³⁷⁷Interview, *supra* at 357.

Training for judges is shorter than previously recommended. A 6-day training course followed by 12 hours of advanced training still is no comparison to the three years of legal education followed by even several more years of practical experience to become a well-rounded attorney (even in a specialized field). Training also does not account for the growing ethnic and cultural diversity/sensitivity of today's defendants. Justice courts also have access to resources to assist them in administering justice; however, JCAP grants do not apply toward funding the costs associated with training. Municipalities must cover that cost; therefore, it becomes yet another unfunded mandate.

Not all court clerks are employed full time, as previously recommended. Where court clerks are available, they do not work enough hours to be able to process the court's paperwork timely, sufficiently, or without mistake.

III. CENTRALIZATION

A. Previous Recommendations

Town and Village Justice Courts are established as part of New York's "Unified Court System" under New York State's Constitution Article VI.³⁷⁸ In 1976, in response to increasing

³⁷⁸N.Y. Const. Art. VI, § 1

caseloads and expense, the Unified Court Budget Act provided for State funding of that Unified Court System - excluding funding of the Town and Village Justice Courts.³⁷⁹

In 1997, Chief Judge Judith S. Kaye and then-Chief Administrative Judge Jonathan Lippman proposed to consolidate New York's Court System into just two levels: Supreme Court (with jurisdiction over most criminal, civil, family, and probate matters) and District Courts (with jurisdiction over housing, as well as minor criminal and civil matters).³⁸⁰ State Bar policy endorses this two-tier system.³⁸¹

In 2006, Chief Judge Kaye appointed the Special Commission on the Future of New York State Courts, headed by Carey Dunne ("Dunne Commission"). In 2007, that commission issued a report: "A Court System for the Future: The Promise of Court Restructuring in New

³⁷⁹Judiciary Law § 39 (1976); L. 1976, ch. 966. This legislation resulted from a 1974 report by the Governor-Elect's Task Force on Judicial Selection and Court Reform, which was headed by Cyrus R. Vance.

³⁸⁰Jan Hoffman, *Chief Judge Offers a Plan to Consolidate the Court System*, N.Y. Times (Mar. 20, 1997), available at <http://www.nytimes.com/1997/03/20/nyregion/chief-judge-offers-a-plan-to-consolidate-the-court-system.html>.

³⁸¹April 1998 New York State Bar Association House of Delegates Minutes; May 31, 2007 New York State Bar Association Executive Committee Minutes; November 4, 2011 New York State Bar Association Executive Committee Minutes. *See also* Letter from President M. Alcott of the New York State Bar Association to C. Dunne of Davis Polk & Wardwell (dated Feb. 1, 2007).

York State;”³⁸² and, town and village justice courts are excluded from the commission’s proposed new court structure diagram. The Commission issued a separate report on town and village justice courts in 2008 titled “*Justice Most Local: The Future of Town and Village Courts in New York State*, A Report by the Special Commission on the Future of the New York State Courts”.

Currently, voters elect town and village court judges.³⁸³ State Bar policy advocates for “merit selection” of New York’s judiciary.³⁸⁴

Under the current system, only town and village court judges do not have a mandatory retirement age.³⁸⁵ They are, however, elected for terms of four years.³⁸⁶ “There is no requirement that judges be members of the Bar, although they must receive some judicial training after

³⁸²A Court System for the Future: The Promise of Court Restructuring in New York State - A Report by the Special Commission on the Future of the New York State Courts, (dated Feb. 2007), at 51-53, *available at* http://nycourts.gov/reports/courtsys-4future_2007.pdf.

³⁸³N.Y. Const. art. VI § 17 (d) (2015).

³⁸⁴*See, e.g.*, April 3, 1993 New York State Bar Association House of Delegates Resolution (“RESOLVED, that this House of Delegates hereby endorses and reaffirms the position adopted by the New York State Bar Association in 1979 in support of the concept of merit selection[.]”)

³⁸⁵N.Y. Const. art VI, § 25 (b) (2015).

³⁸⁶Village Law § 3-302 (3) (2016).

election, the extent of which depends on whether they are members of the Bar.”³⁸⁷ Many have suggested that New should require that these judges be attorneys who are admitted to practice in New York.”³⁸⁸ The Bar has taken the position that all judges should be lawyers, concluding that “[i]t is unfair for litigants in civil or criminal cases to have matters determined by a person who may be unfamiliar with the law.”³⁸⁹

Despite that position or the opinions listed, above, the 2008 Dunne Commission Report on Town and Village Justice Courts did not find a compelling basis to eliminate those courts altogether or to require that their judges be admitted attorneys.³⁹⁰ The Report recommended that 1) minimum standards be developed for those courts and 2) panels be developed to discuss court

³⁸⁷Report and Recommendations of the New York State Bar Association Committee on the New York State Constitution, The Judiciary Article of the New York State Constitution - Opportunities to Restructure and Modernize the New York Courts Dec. 12, 2016.

³⁸⁸*Id.*

³⁸⁹*Id.*; William Glaberson, *How a Reviled Court System Has Outlasted Many Critics*, N.Y. Times, at B8-B9 (Sept. 27, 2006).

³⁹⁰Report and Recommendations of the New York State Bar Association Committee on the New York State Constitution, The Judiciary Article of the New York State Constitution - Opportunities to Restructure and Modernize the New York Courts Dec. 12, 2016.

consolidation.³⁹¹ Three months later, the State Bar agreed that 1) requiring judges in town and village justice courts to be lawyers was not possible; 2) developing standards for those courts was important; and 3) consolidating those courts should be discussed.³⁹² The proposals that the State Bar did not agree with included: 1) judges be a minimum age of 25 (the State Bar recommended 30); 2) judges have a two-year college degree (the State Bar recommended a four-year degree).³⁹³

³⁹¹*Id.*; Justice Most Local: The Future of Town and Village Courts in New York State, A Report by the Special Commission on the Future of the New York State Courts (Sept. 2008), at 83-104.

³⁹²*See* January 30, 2009 New York State Bar Association House of Delegates Minutes (adopting Report of the Committee on Court Structure and Judicial Selection re: Justice Most Local: The Future of Town and Village Court in New York State but rejecting one recommendation in the Committee report in favor of the original recommendation set forth in the Dunne Commission Report); Report of the Committee on Court Structure and Judicial Selection re: Justice Most Local: The Future of Town and Village Courts in New York State (Dec. 16, 2008). *See also* Justice Most Local: The Future of Town and Village Courts in New York State, A Report by the Special Commission on the Future of the New York State Courts (Sept. 2008).

³⁹³*Compare* January 30, 2009 New York State Bar Association House of Delegates Minutes (adopting Report of the Committee on Court Structure and Judicial Selection re: Justice Most Local: The Future of Town and Village Courts in New York State except rejecting one recommendation for the original recommendation found in the Dunne Commission Report) *with* Report of the Committee on Court Structure and Judicial Selection re: Justice Most Local: The Future of Town and Village Court in New York State (Dec. 16, 2008); Justice Most Local: The Future of Town and Village Courts in New York State, A Report by the Special Commission on the Future of the New York State Courts (Sept. 2008).

In 2017, it has been proposed that the issues affecting Town and Village Justice Courts would be appropriately discussed in a Constitutional Convention.³⁹⁴ NYSBA’s Committee on the New York State Constitution believes “that the restructuring and reorganization of the State’s court system — for nearly five decades an abiding concern of the State Bar — has little practical chance of being achieved without a Constitutional Convention.”³⁹⁵ “Of concern is the Constitution’s Judiciary Article (Article VI), which promises a unified court system and then proceeds to establish the most byzantine and complex system in the nation.”³⁹⁶ Clearly, with the voters’ rejection in the November 2017 election, it will be another 20 years before the next time a vote to hold a Constitutional Convention will be on the ballot.

B. Court consolidation

1. Uniform Justice Court Act

³⁹⁴Report and Recommendations of the New York State Bar Association Committee on the New York State Constitution, The Judiciary Article of the New York State Constitution - Opportunities to Restructure and Modernize the New York Courts Dec. 12, 2016.

³⁹⁵Report and Recommendations concerning Whether New Yorkers Should Approve the 2017 Ballot Question Calling For a Constitutional Convention at 2, adopted by the Committee on the New York State Constitution, Apr. 20, 2017.

³⁹⁶Report and Recommendations concerning Whether New Yorkers Should Approve the 2017 Ballot Question Calling For a Constitutional Convention at 9, adopted by the Committee on the New York State Constitution, Apr. 20, 2017.

The law currently provides a procedure by which a more unified—or at least consolidated—court system can exist at the justice court level. Justice Courts are governed by the Uniform Justice Court Act (“UJCA”) and 22 NYCRR Part 214. Under the act, court location and judge assignment is flexible when necessary.³⁹⁷ Certain towns can use other jurisdictions’ spaces and judges for jury trials and for court proceedings, as well.³⁹⁸ Two or more neighboring towns within the same county may form a single town court, that court would be staffed by town justices from each of those “member towns”, and they would be elected in the same manner and

³⁹⁷ UCJA 106 (1-2): A town judge may hold court in a variety of places (anywhere in the town’s municipality, in a village wholly or partly contained within that town whether or not that village maintains a village court and regardless of whether more than one village occupies that space for its offices, in an adjacent town, or in a court in any one of the contiguous municipalities upon agreement with those municipalities). A judge from one court may be assigned temporarily to another court, and even after the assignment ends, that temporary judge may retain jurisdiction over the matters before which he presided (under such circumstances, the temporary judge’s expenses shall be paid out of the state judiciary funds).

³⁹⁸ UCJA 106 (4, 5, and 10): The Town of Watson, Village of Saddle Rock, and Village of Port Dickinson to use other jurisdictions’ spaces for jury trials, on an as-needed basis. The towns of Elba, Oakfield, and Batavia in Genesee County may hold their town court proceedings in any of those towns’ courts or in the city of Batavia; UCJA 106 (b); 106 (b)-7.

for the same terms as if they sat in their towns.³⁹⁹ Such joinder of courts may be initiated either by the town board or by petition.⁴⁰⁰

Even under consolidation, records of the court remain the property of the village or town of the justice.⁴⁰¹ When that justice's term expires, he shall file his records in the clerk's office of his town or village.⁴⁰² There are no stenographers, for whenever a contested criminal proceeding

³⁹⁹UJCA 106-a (1).

⁴⁰⁰UCJA 106-a (1, 7, 8, 10, 11, 13); UCJA-b (2, 3, 6, 7). If initiated by petition, then the petition must contain the verbiage and form requirements of UJCA § 106-a (2) and be signed by at least 20% of the registered voters in each town before being submitted to each town board. After a hearing on the board resolution or petition, the town boards of each municipality involved shall vote as to whether a joinder of courts will occur. If the petition is not approved, then the matter terminates. If the petition is approved, then the town boards shall resolve that the office of one justice in each town shall be abolished, and the remaining justice shall have jurisdiction in both towns as if he had been elected in both. The boards shall study the effects of the proposed resolution (hearing testimony and receiving evidence and information), and then, they will present the results of the study at a hearing. Voters will vote on that resolution at the next general election that occurs more than 60 days after the resolution is finalized. A majority of the qualified voters of each town is required for the resolution to pass. If the resolution passes, then the presiding judge shall keep a separate records, dockets, and bank accounts for each town in which he exercises jurisdiction. The resolution becomes a municipal home rule. It does not take effect until state legislation enacting it shall have become a law.

⁴⁰¹UJCA 2019-a.

⁴⁰²*Id.*

occurs, a justice *may* employ a stenographer.⁴⁰³ The municipal board shall fix the rate of compensation for such stenographer.⁴⁰⁴ The stenographer’s compensation shall be a municipal charge.⁴⁰⁵ The affidavit of errors method, although archaic, is still the method of appeal for justice court matters.⁴⁰⁶

Two or more towns or villages may make a joint application for JCAP funds.⁴⁰⁷

The UCJA governs town and village courts; however, it does not govern civil or criminal matters in city courts.⁴⁰⁸

2. Uniform District Court Act

District Courts are another form of justice court consolidation with the added achieved State Bar goal of having a lawyer judge. They are governed by the Uniform District Court Act (“UDCA”) and 22 NYCRR Part 212. Like justice courts, any town that decided to join its district

⁴⁰³UJCA 2021.

⁴⁰⁴*Id.*

⁴⁰⁵*Id.*

⁴⁰⁶ UCJA 1704 (a).

⁴⁰⁷Judiciary Law § 849-i (1).

⁴⁰⁸UJCA 2300.

court system did so irrevocably.⁴⁰⁹ Currently, Suffolk County has at least six districts in addition to the county district, and Nassau County has at least four districts in addition to the County District.⁴¹⁰

Unlike justice courts, though, a district court judge must be admitted to practice law for at least five years as of the date that she commences offices, among other requirements.⁴¹¹ The

⁴⁰⁹UDCA 2402 and 2403: At least three contiguous towns must cast a majority vote in each town to join. Any town contiguous to those towns thereafter may elect by majority vote to join once the court is established. The county shall be divided as follows: the county serves as one district, and 1 judge is elected for that. Each town joining the district serves as a judicial district, except if two or more contiguous town have a population of less than 60,000 (according to the last census), then they serve as one judicial district. If any of those towns has a population of greater than 30,000, though, then it shall serve as a separate judicial district. One judge shall be elected from each district.

⁴¹⁰ 22 NYCRR 212.2 (a) (1-2). Suffolk County's First District includes the Towns of Babylon, Huntington, Smith Town, Islip, and Brookhaven. Suffolk County's Second District includes the Town of Babylon. Suffolk County's Third District includes the Town of Huntington. Suffolk County's Fourth District includes the Town of Smithtown. Suffolk County's Fifth District includes the Town of Islip. Suffolk County's Sixth District includes the Town of Brookhaven. Nassau County's First District includes the Towns of Hempstead, North Hempstead, and Oyster Bay, as well as Cities of Long Beach and Glen Cove. Nassau County's Second District includes the Town of Hempstead and City of Long Beach. Nassau County's Third District includes the Town of North Hempstead. Nassau County's Fourth District includes the Town of Oyster Bay and City of Glen Cove.

⁴¹¹UDCA 103 (c).

judge may not engage in any other profession which interferes with the performance of her judicial duties.⁴¹²

The handling of criminal matters is flexible.⁴¹³ Once created, although all justice court criminal dockets, powers, duties, and jurisdiction are transferred to the district courts (abolishing justice courts and justices of the peace), towns and villages retain jurisdiction of violations of ordinances, regulations, and vehicle and traffic law offenses (except for operating a motor vehicle in an intoxicated condition.⁴¹⁴ They also retain fine monies collected by district courts for convictions of town and villages ordinances taken in district courts encompassed among other matters.⁴¹⁵

⁴¹²UDCA 103 (d) (4).

⁴¹³ UDCA 2002, 2009: If the criminal matter it is not a felony, then the defendant may appear by mail instead of appearing in person or by counsel. Charges of a misdemeanor may be tried in any place within the territorial jurisdiction of the court; on the other hand, all other charges shall be tried in the judicial district of the court in which the offense is alleged to have been committed. A defendant need not be tried before the judge issuing the summons; instead, he may be tried before any judge of the court.

⁴¹⁴UDCA 2021, 2402, and 2603.

⁴¹⁵ UDCA 2408-a (1, 2, and 4): Fines and penalties collected in cases arising out of the violation of the violation of ordinances or regulations of any town, city, or village shall be paid at least monthly into the treasury of such town, city, or village. Fines and penalties that are payable to New York State or any department, commission, or agency thereof shall be paid as in such general state law at least monthly. Fines and penalties, which by general state laws, but for this section, would be required to be paid to a town or any officer of a town, shall be paid instead to

District courts are not state courts, though. The *county* shall provide the place for holding court, as well as supply and pay for necessary business expenses (proper accommodations, books, stationary, furniture, *salaries*, compensations, expenses, and disbursements).⁴¹⁶ The board of judges shall appoint their court clerks, deputy court clerks, marshals, deputy marshals, stenographers, and other assistants and employees.⁴¹⁷ The appellate division and the supreme court shall approve those appointments.⁴¹⁸ Court clerks, marshals, deputy court clerks, and deputy marshals shall be residents of the county in which they work, and removal from the county shall vacate their position.⁴¹⁹ Salaries for district court judges are defined by statute, and judges in Nassau and Suffolk County District Courts earn \$122,700 annually.⁴²⁰ They also may be reimbursed up to \$75-150 per day (depending on county population) for actual and necessary

the county treasurer and credited to the general fund for the use of such county.

⁴¹⁶UDCA 2409; 2412; 2408*2.

⁴¹⁷UDCA 2415.

⁴¹⁸*Id.*

⁴¹⁹*Id.*

⁴²⁰Judiciary Law § 221-h.

transportation and travel expenses related to judicial duties performed outside of the county of his residence.⁴²¹

District courts also *are not courts of record*.⁴²²

The board of judges shall provide suitable places for holding court.⁴²³ During July and August, at least one part of the court shall be in session at least three days each week to hear civil and criminal cases.⁴²⁴ Except for illness, each judge shall be available for service as assigned throughout 11 months of the year.⁴²⁵

C. Specialty Courts

Specialty courts also are known as boutique courts or problem-solving courts. They regionalize criminal matters resulting from specific types of addiction, providing a term of interim probation, upon successful completion of which, pending charges will be reduced or dismissed (a “carrot at the end of a stick” or “pot of gold at the end of the rainbow” approach to treating addiction recovery). Throughout the term of interim probation, defendants may be

⁴²¹Judiciary Law § 222 (d).

⁴²²*see* UDCA 2401.

⁴²³UDCA 2410.

⁴²⁴*Id.*

⁴²⁵*Id.*

required to participate in counseling, job training, job placement, volunteering, inpatient rehabilitation, random drug testing, group therapy, mentorship, curfews, etc. Violations may result in small sanctions or restarting the term of interim probation rather than in immediate incarceration. Specialty courts realize that incarceration, alone, does not resolve the problems underlying addiction.

A variety of specialty courts exists. They include drug, integrated domestic violence (“IDV”), mental health, sex offense, veterans, human trafficking court, opioid, and youth part courts.⁴²⁶ Since their inception,⁴²⁷ they have become renown and successful.

Often, the only way of entering a specialty court is through indictment or by pleading guilty to a superior court information. When a defendant pleads guilty, he enters into a contract which outlines his sentence if he is successful (reduction or dismissal of charges) or unsuccessful (imposition of the felony followed by a lengthier term of probation or state incarceration). Specialty courts will prohibit defendants charged only with misdemeanors from entering the programs because there is not enough leverage over their heads to make them want to succeed (the maximum term of incarceration on a misdemeanor is one year in a county jail, and specialty

⁴²⁶22 NYCRR Parts 41, 43, 46, 47, and 49.

⁴²⁷ Drug court was created in 1995 in Rochester. IDV court was created in 1996 in Brooklyn. Mental health court was created in 2002 in Kings County. Sex offense court was created in 2005. Veterans court was created in 2008 in Buffalo. Human trafficking court was created in 2012 in New York City. Opioid court was created in 2017 in Buffalo. Youth part will be created in 2018-2019.

courts do not feel that one year of incarceration is hammer enough over one's head). Because of that, misdemeanor cases are pled out in justice courts. Justice court judges do not have the power to refer cases themselves or to encourage referral to the attorneys handling the matter.

Starting in October 2018, justice courts no longer will have jurisdiction over criminal matters involving 16-year olds, and in October 2019, over criminal matters involving 17 year olds. All of those matters (arraignments, matters incidental thereto, dispositions, sentencing) must be transferred to the youth part of the county court or be referred to family court.

D. Centralized/ Off-Hours Arraignments

As mentioned, above, centralized arraignments have attempted to achieve the goal of *Hurrell-Harring* by consolidating justice courts for the purposes of arraignments, albeit "off-hours" arraignments. The legislation organizes arraignments so that arresting officers, police, defense counsel, and prosecutors (where available) know exactly where to go to argue about bail upon a defendant's arrest. It is efficient for all parties involved and promotes constitutional due process.

Despite the convenience and efficiency of the program, only 4 out of 62 counties have created a CAP (*see* Counsel at First Appearance, Paragraph H). The long-held idea of constitutional "home-rule" is too ingrained in many jurisdictions to overcome.

E. Approved and Proposed Legislation

Temporary Assignment of Judges and Justices to Town and Village Courts. A.7374/S.4257

(2007). To implement the goals of the 2006 Action Plan for the Justice Courts, this bill allows the Chief Administrator of the Courts to temporarily assign a justice of a town, village, or city court to another town, village, or city court of that justice's residence or adjoining county. This will increase the resources available to justice courts on an as needed basis. The bill was signed by the governor on July 18, 2007.

Justices Could Preside Over Arraignments Anywhere in the County. S.3615-A (2007/2008);

S.4336 (2013); S.4337 (2015). A judge of a local criminal court may appear in any court or other facility in his county to preside over arraignments and bench warrants only if no judge of the "return" jurisdiction is available, no neighboring jurisdictions' judges are available, and the judge assigned is assigned via an established, emergency plan.

In 2007, 2013, and 2015, this bill passed the senate, was delivered to the assembly, then was referred to the judiciary.

Justice Court Efficiency and Modernization Act. A.10945 (2009); A.5647 (2011); A.5338

(2013). Advancing recommendations of Chief Judge Kaye's 2008 Special Commission on the Future of New York State Courts, this imposes age and educational requirements for justice court judges. Judges must be at least 25 years old and have graduated from high school or earned

a GED, as well as an Associate's or Bachelor of Arts degree. A person may sit as a judge in any justice court of his county of residence or an adjoining county.

A defendant charged with a misdemeanor or felony may choose to appear only before a judge admitted to practice law. Such motion must be made after arraignment.

Judges must complete training before assuming the functions of a judge, unless that judge is a licensed attorney. This bill was referred to the judiciary, and no votes were taken.

Election to Proceed Before a Lawyer Justice. A.5899 (2009); A.5221 (2011); A.3149 (2013).

Following on recommendations of the 2008 Special Commission on the Future of the New York State Courts, this allows defendants in justice courts charged with a misdemeanor or felony to choose to appear before a judge who is admitted as a lawyer without having to show good cause for removal. The "opt-out" right would be available after arraignment and before motions are filed. This bill was referred to Judiciary and Codes, and no vote was taken on it.

Allows the Town Supervisor to Examine Justice Court Docket Quarterly Regarding

Payment of Fines and Fees. A.2237 (2016). Allows the town supervisor to review the courts' dockets to ensure that monies collected are not being embezzled by court personnel. This bill has been referred to local governments, and no vote has been taken. This bill has been proposed before.

Centralized Off-Hours Arraignments. A.10360/S.7209-A. In line with those recommendations, these bills have proposed off-hours arraignment parts outside of NYC. After consultation with ILS and local magistrates associations, institutional providers, and other local government officials, off-hours arraignment parts would be established in select local criminal courts of a county to be held in such courts on a rotating basis for the conduct of arraignments and incidental preliminary proceedings. The bill promotes centralized arraignments on a rotating basis for off-hours arraignments. It facilitates the availability of institutional providers, judges, and law enforcement to be present in a timely fashion and definite location for those arraignments.

This bill was signed by the governor on November 28, 2016.

F. Summary

Consolidation of courts or of the issues that they deal with is the wave of the future. It has existed at least for more than half a century through the district court model (by reducing the number of courts and judges), and it has been revived shortly before the turn of the century (through specialty courts). In theory, specialty courts and centralization provide public convenience, due process, and economic benefits for the criminal justice system that the current local home rule system does not. Justice courts are unable to provide the services available through those specialty courts, and many defendants may be prohibited unfortunately from receiving court-ordered help simply because they were fortunate enough to be charged with a lesser crime.

Many attorneys have advocated replacing justice courts with district courts.

Unfortunately, the only things that district courts do is replace a non-lawyer judge with a lawyer judge and raise the small claims threshold by \$10,000. District courts are not courts of record and do not provide the same conveniences that supreme and county courts provide; therefore, they may not be a viable alternative. They are still a municipal charge. Also, it takes too long to establish them. Finally, 18 counties have populations of 60,000 or less; therefore, their individual municipalities would not be represented adequately under the current district court structure (33 counties have populations of 100,000 or less, and they would face the same disadvantage).

IV. CONCLUSION

Town and Village Justice Courts play an important role in administering justice. When well-trained judges and clerks serve the public enthusiastically, neutrally, and professionally, justice runs smoothly. There are many such judges and clerks, and we appreciate their service. We encourage them to continue to serve the public and to uphold New York State's laws.

Nevertheless, the few that do not play by the rules ruin the system. Counsel at first appearance has shed light on a number of inadequacies both in training, education, and application, as well as the difficulties associated with juggling over 1,200 justice courts. The constant changes of laws and procedures in the criminal justice system have made the system too complex for the simple tasks and issues that justice courts were meant to handle. The time has come to reform justice courts so that they are as modern as the laws that they are meant to adjudicate.

V. RECOMMENDATIONS

Recommendation 1:

All counties should adopt at counsel at first appearance plan that fulfills the vision and goals of *Hurrell-Harring*.

Although current plans provide attorneys during certain hours of the day, not all plans provide for attorneys at arraignment 24/7. That leaves defendants unrepresented which fails to provide them the constitutional due process accorded under the New York State Constitution and Constitution of the United States of America. Furthermore, absent a well-trained judge, police force, and knowledgeable defense attorney, arraignment without an attorney allows defendants to incriminate themselves at arraignment. Realizing that not every county may have the staff available to provide 24/7 arraignments, it is recommended that their plans should include continuing the arraignment of a defendant with an attorney within 24 hours after his arrest where he was originally arraigned without an attorney. It is not recommended that a “one-size-fits-all” plan be adopted or imposed statewide regarding counsel at first appearance.

Recommendation 2:

All arraignments should include defense counsel and District Attorneys.

As experience has shown, arraiving judges may refuse to set bail without the district attorney’s bail argument. Arresting officers may state the district attorney’s “bail recommendation” based on practice or policy; however, even that recommendation may change on a case by case basis and the arresting officer may not be aware of the change. Arraignments will be more well-rounded and accurate by the presence of attorneys. As a result, it is

recommended that district attorneys appear at arraignments, as well. A specific method of appearance is not recommended.

Recommendation 3:

All arraigning judges shall use the Language Line for foreign-speaking defendants.

“The purpose of a local criminal court accusatory instrument is to ‘supply defendant with notice of the charged crime to satisfy the demands of due process and double jeopardy.’”⁴²⁸ The court is obligated to provide an interpreter in all civil and criminal cases where a party is unable to understand and to communicate in English.⁴²⁹ It reasonably follows that for a defendant to be on notice of the crime charged, then he must understand the charges against him; therefore, he has a due process right to be arraigned in his primary language and through use of an interpreter, if necessary.⁴³⁰ The United States is a melting pot and continues to grow in cultural diversity. It encompasses a variety of broken-English and foreign speakers. The only way that they can

⁴²⁸ *People v Padilla*, 42 Misc3d 1221(A), *8 (Rockland County Ct 2014).

⁴²⁹ 22 NYCRR § 217.1 (a).

⁴³⁰ *People v Duenas*, 120 AD2d 97, 979 (4th Dept 1986); see *Matter of Rivera v Smith*, 100 AD2d 1043 (4th Dept 1985); *Padilla* at *10-11; *People v Ramos*, 40 NY2d 610, 620 n* (1976); see *People v Resto*, 147 AD3d 1331, 1331-32 (4th Dept 2017); see *People v Wong*, 256 AD2d 724, 725 (3d Dept 1998).

understand the charges against them is if their charges are read to them in *their* primary language. Because the state contracts with an organization that provides interpretation services, it is recommended every justice court must use that interpretation service when arraigning foreign-speaking defendants rather than rely on other forms of interpretation. It is recommended that every justice court be provided with the telephone number for Language Line (or similar service as contracted with the state), that every justice court contact the Center to access Language Line, when necessary, and that the telephone number for Language Line be provided to institutional providers with CAFA plans so that they have it available when justice courts do not.

Recommendation 4:

All justice courts shall have access to the proper paperwork relating to all forms of bail and be better trained in all forms of bail.

Counsel at first appearance has shown that less common forms of bail are unused or underutilized either because arraigning courts do not have the proper paperwork or do not know what different forms of bail mean. It is recommended that the Office of Court Administration provide these forms and appropriate training on them to judges and to clerks.

Recommendation 5:

All counties shall adopt a centralized arraignment plan.

The centralized arraignment plans make the vision of achieving the constitutional due process mandates of *Hurrell-Harring* more realistic. They save time: the plans consolidate arraignments in one location so that the parties involved need not scramble to find judges or courthouses available for arraignments. They conserve manpower: arresting officers may use their discretion to issue more appearance tickets for less serious offenses which allows them to be “on the streets” and available to arrest defendants who commit more serious offenses. They are economically feasible: they use space already available, schedule shifts ahead of time so that not every judge is on call every night, and result in less crowded jails. It is recommended that every county adopt a centralized arraignment plan to assist implementing the mandates of *Hurrell-Harring*. It is recommended that the Office of Court administration impose a centralized arraignment plan upon counties that fail to adopt a plan within a reasonable amount of time. It is recommended that the Centralized Off-Hours Arraignments Bill (A.10360/S.7209-A) be amended to require centralized arraignment parts and that a deadline be established by which those plans must be created.

Recommendation 6:

All justice court judges and clerks should be trained in diversity and inclusion.

Given the State Bar’s adoption of diversity and inclusion to continuing legal education requirements, and cognizant of the problems associated with language access and cultural

diversity in the justice courts, it is recommended that annual training include courses on diversity and inclusion both for judges and for court clerks. It also is recommended that failure to participate in those courses result in professional discipline, including but not limited to removal from office.

Recommendation 7:

Each judge's written and/or recorded work should be audited randomly for compliance with training.

A non-lawyer judge's performance is reviewed on appeal or by the committee on judicial conduct. Judicial errors may prevent a party from seeking further legal relief or may result in unprofessional, unethical, or illegal decision making. It is recommended that the Office of Court Administration randomly review justice court digital recordings and/or written decisions of non-attorney judges to evaluate their performance and to recommend any additional training that may be required.

Recommendation 8:

Records should be kept of justice court judges' and court clerks' attendance at trainings, as well as training materials (agendas, written materials, recorded materials, etc.).

The New York State CLE Department keeps precise records of attorneys' attendance at programs, issues certificates, and mandates that attorneys certify whether they have complied with CLE reporting requirements as a condition to maintain their license to practice law. The

public has a right to know whether their elected officials—individuals who interpret and enforce public laws—are in compliance with the training required to understand and to interpret the substance and procedure of those laws. It is recommended that the attendance of judges and clerks be kept at every training program that they attend and that certificates of their attendance be issued to them. It also is recommended that they certify on a regular basis that they have complied with their training requirements to continue practicing in their positions. It is not recommended how often that they certify. It is recommended that their failure to comply with training requirements results in disciplinary action against them, including but not limited to removal from office. It also is recommended that a public access database be created listing which judges and clerks are in compliance with registration and training requirements (similar to the OCA website for attorneys).

Recommendation 9:

A public access database should be created to track judges' disciplinary records.

Licensed attorneys' conduct and discipline is monitored by the Office of Court Administration and Grievance Committee. In fact, regular decisions are issued from the grievance committee about what attorneys are disciplined for what type of conduct regarding their practice of law. Similarly, it is recommended that decisions regarding non-lawyer judges be made available and easily searchable. The public has a right to know the conduct of its elected officials, as certainly, such conduct may determine the results not only of their current performance in office, but the outcome of the next election. It is recommended that this

information already maintained by the Commission on Judicial Conduct be distributed to the public each time a judge runs for election.

Recommendation 10:

“Misdemeanor Courts” should be established as a specialty court for jurisdiction over criminal matters where the highest crime charged is a misdemeanor.

Establishment of a specialty court dedicated to adjudicating misdemeanors and felony complaints resolves many of the issues outlined, above.

First, it is recommended that one of these specialty courts be established in each county. This court would be staffed appropriately. This court would take over jurisdiction of all criminal matters in which misdemeanors are the highest crimes charged, as well as felony complaints and matters incidental thereto. Town and Village Justice Courts would lose their jurisdiction to hear criminal matters; however, they would retain jurisdiction over civil matters, as well as vehicle and traffic and all other violations, and they retain the ability to contact the Center for legal assistance related to those matters. This relieves non-lawyer judges of the burden of having defendants sentenced by non-lawyer judges, as well as by having non-lawyer judges make probable cause determinations at felony hearings. Furthermore, it promotes State Bar policy of having all local courts staffed by lawyer-judges. As a result, it is recommended that the Criminal Procedure Law § 10.10 (3) be amended to include “(h) misdemeanor court.” It is recommended that Criminal Procedure Law § 10.30 (1) be amended to state “all local criminal courts except for town and village courts have trial jurisdiction over all offenses other than felonies.” It is

recommended that Criminal Procedure Law § 20.50 be amended to exclude jurisdictional requirements for town and villages as they relate to criminal matters. It is recommended that Criminal Procedure Law §§ 100.05; 100.10 (1); 100.10 (3); 100.10 (4); 100.10 (5); 100.55 (1); 100.55 (2); 100.55 (3); 100.55 (7); 100.55 (8); 110.10 (1); 110.10 (2); 110.20; 120.20 (1); 120.30 (1); 120.30 (2); 120.70 (1); 120.70 (2); 120.90 (1); 120.90 (3); 120.90 (4); 120.90 (5); 120.90 (6); 130.10 (1); 130.20; 130.30; 130.50; 140.20 (1); 140.20 (1) (a); 140.20 (1) (d); 140.20 (1) (e); 140.27 (2); 140.40 (1); 140.40 (3); 140.40 (6) (b); 140.55 (3); 150.40 (1); 150.50 (1); 150.60; 170.10 (1); 170.15 (1); 170.15 (2); 170.15 (4); 170.20 (2); 170.20 (2) (b); 170.25 (1); 170.25 (2); 170.25 (3); 170.25 (3) (c); 170.25 (3) (d); 170.30 (1); 170.30 (4); 170.50 (1); 170.55 (4); 170.70; 180.10 (1); 180.20 (1); 180.20 (1-a); 180.20 (2); 180.20 (2) (a); 180.20 (3); 180.30 (1); 180.40; 180.50 (1); 180.70 (1); 180.75 (1); 180.75 (2); 180.75 (3) (a); 180.75 (4); 180.75 (5); 180.80; 180.85 (1); 180.85 (9); 340.20 (1); 340.30; 340.00 (1); 340.00 (2); 350.10 (1); 350.20 (1); 360.05; 360.20; 360.25 (2); 360.35 (2); 360.55; 690.35 (2) (a); 690.35 (2) (b); 730.40 (1); 730.40 (2); 730.40 (3); and 730.40 (4) be amended to exclude town and village courts from local criminal courts. It is recommended that Criminal Procedure Law §§ 100.55 (4), (5), and (6) be amended to exclude town court and village court. It is recommended that Criminal Procedure Law § 100.55 (9) be eliminated. It is recommended that Criminal Procedure Law § 120.40 be amended to eliminate all references to “town court” or “village court”. It is recommended that Criminal Procedure Law § 180 be amended to give jurisdiction of felony complaints to “misdemeanor courts”. It is recommended that Criminal Procedure Law § 360.10 (2) be amended to eliminate references to the Uniform Justice Court Act. It is recommended that

Criminal Procedure Law § 690.35 be amended to eliminate town or village courts from executing search warrants.

Second, it is recommended that this court be staffed by lawyer judges, a requirement similar to district courts. By requiring such staffing, the judges' training, training attendance, and judicial professionalism would be tracked and monitored easily by the Office of Court Administration, as such training and compliance already is tracked by the nature of their profession. No additional partial training established by the Center is needed. Discipline for failure to comply with training can be handled swiftly and professionally and with public knowledge.

Third, it is recommended that these courts be courts of record. A stenographer or more professional digital recorder (such as that made available by the Office of Court Administration for Family Courts) would be made available to record all proceedings. Recording would be preserved under OCA policy, and they would be easily accessible for parties for further legal needs.

Fourth, these courts serve as the centralized arraignment parts for each county. The courts may operate on a 24/7 schedule (or as otherwise decided) for the purpose of conducting arraignments, as well as their other jurisdictional criminal matters. Arresting officers, defense attorneys, judges, and any other party involved would know exactly where to go at what time (if arraignment schedules are established) to effect an arraignment. It is recommended that the Centralized Off-Hours Arraignments Bill (A.10360/S.7209-A) be amended to require that

arresting officers bring defendants to misdemeanor courts for arraignment during any hour. It is recommended that Criminal Procedure Law § 100.55 (11) be eliminated.

Finally, such centralization minimizes the overwhelming number of local criminal courts hearing criminal matters by approximately 80%. There would be approximately 62 misdemeanor courts rather than 1,235 to 1,247 that currently exist. It would relieve the financial burden of an unfunded mandate to towns and villages regarding the training and education of their judges and staff. It is recommended that these courts be established in existing county court buildings or by an appropriately-sized addition thereto. Cost savings to the state occur by using as much space, security, staff, technology, etc., as already is available. It is recommended that the State of New York fully fund what is currently an unfunded mandate.

Crimes are prosecuted on behalf of the *People of the State of New York*—not on behalf of the town or village of a particular county. Civil matters involve individuals, though, matters which are more sensitive, personal, and meaningful to local, home rule. For all the reasons, above, it is recommended that at least one misdemeanor court be established in each county, with jurisdiction over all misdemeanors in that county (removing jurisdiction of criminal matters from justice courts), allowing justice courts to retain jurisdiction over civil matters—over justice *most local*.



Staff Memorandum

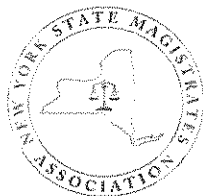
**HOUSE OF DELEGATES
Agenda Item #5**

Attached is a letter from the New York State Magistrates Association with respect to the report and recommendations of the Criminal Justice Section.

NEW YORK STATE MAGISTRATES ASSOCIATION

163 DELAWARE AVENUE * SUITE 108 * DELMAR, NY 12054 * TELEPHONE (518) 439-1087 * TOLL FREE 1(800) 669-6247 * FAX (518) 439-1204
E-MAIL: NYSMA1@GMAIL.COM

President
HON. DAVID S. GIDEON
Town Justice, DeWitt



President Elect
HON. MICHAEL A. PETUCCI
Town Justice, Herkimer

Vice Presidents

HON. JONAH TRIEBWASSER
Town & Village Justice, Red Hook

HON. KARL E. MANNE
Town Justice, Herkimer

HON. DENNIS W. YOUNG
Town Justice, East Otto

Treasurer
HON. THOMAS J. SHEERAN
Town Justice, Lewiston

Executive Director
HON. TANJA SIRAGO
Town Justice, Cairo

Directors

HON. DAVID M. BROCKWAY
Village Justice, Horseheads

HON. VERA L. HUSTEAD
Town Justice, Ripley

HON. DAWN M. KEPPLER
Town Justice, Shelby

HON. BARBARA SEELBACH
Town Justice, Clinton

HON. DONALD BUTTENSCHON
Town Justice, Marcy

HON. JAMES S. EVANS
Town Justice, Northumberland

HON. ROGER FORANDO
Town & Village Justice, Granville

HON. DAVID W. KOZYRA
Town Justice, Marcy

HON. PAUL W. PETER
Town Justice, Schodack

HON. MICHAEL STERIO
Town Justice, Oswego

HON. SUSAN SULLIVAN-BISCIGLIA
Village Justice, Wappingers Falls

HON. DONNA YERDON
Town Justice, Middlefield

Immediate Past President

HON. SHERRY R. DAVENPORT
Town Justice, Summerhill

April 14, 2018

Dear Members of the House of Delegates:

The New York State Magistrates Association, the organization representing our State's Town and Village Justices, respectfully submits to you, for your consideration, our position on the report and recommendations of the NYSBA Criminal Justice Section regarding counsel at first appearance, training, education and centralization.

We support recommendations 1, 2, 3, 4, 5, 6 and 8. We note, parenthetically, that in recommendation 6, diversity training for judges and clerks, such training is now part of the annual required education for our Town and Village Justices. Additionally, as to recommendation 8, records of attendance at training are already currently maintained by the Office of Court Administration for all of the judges.

We oppose recommendation 7 (audit of written and recorded work - p. 183) as having a chilling effect on judicial independence. We are already subject to such scrutiny by the Administrative Judges and the Commission on Judicial Conduct, where necessary. Why are the Town and Village Justices being singled out? Will the work of the courts of record also be subject to such scrutiny? Is it the position of the New York State Bar that judges in the courts of records never make mistakes?

We oppose recommendation number 9 (p. 184) where the Section recommends a "mark of Cain" placed on the forehead of any judge who has ever received even a warning letter from the Commission on Judicial Conduct. The recommendation requires the Commission to distribute that disciplinary record each and every time the judge runs for re-election. First of all, the Commission already maintains a searchable database of past disciplinary records at:

<http://www.scjc.state.ny.us/Determinations/judgeNameSearch.html>

Secondly, it should be up to the opponent of a judge in an election to decide whether to bring this to the attention of the public, not a state department. Finally, a judge may have committed a minor infraction in

the past and have corrected his or her actions so as to avoid that mistake in the future. Is it the position of the Criminal Justice Section that such a minor mistake is never to be forgiven? Does the Section also suggest that we treat defendants convicted of minor violations in the same way?

We oppose recommendation number 10 (p. 185), the establishment of misdemeanor courts with attorney judges only. Neither the constitution nor any law that we are aware of differentiates between lawyer and non-lawyer judges at the justice court level. The establishment of these *de facto* district courts would be very expensive for the taxpayers, with the construction and furnishing of new courtrooms and offices, not to mention the estimated \$1,000,000.00 per bench, per year, it would cost to staff each of these courts. New York State is losing more residents each year than move here¹, and no doubt high taxes are a big part of this. We cannot afford a new expensive bureaucracy when we have a justice court system that has successfully handled these cases for centuries, at minimal cost.

We also take this opportunity to point out some of the glaring factual errors and unsupported allegations in the report, that quite frankly, in my opinion, demonstrates an unsubstantiated bias:

p. 6 - the unsupported allegations that some judges think some defendants are faking not knowing English, and that some judges never schedule preliminary hearings in felonies;

p. 8 - the unsupported allegations that some judges are unaware of the right to counsel, or refuse to appoint counsel based on an eleven (11) year old report;

p. 108 - the unsupported allegation that there is an overwhelming perception that some judges oppose centralize arraignments. To the contrary, in at least one of the existing Centralized Arraignment Parts currently operating, I have personal knowledge that it is the state-paid judges who have voiced objection, not the Town and Village Justices;

p. 127 - the unsupported allegations and, quite frankly, the wholesale defamation against the entire municipal judiciary, with no factual basis quoted or footnoted, that judges make decisions based upon racism, sexism, or otherwise sentenced defendants illegally;

¹

<https://www.democratandchronicle.com/story/news/politics/albany/2017/12/21/leave-ny-another-190-000-le-ft-other-states/974130001/>

House of Delegates
April 14, 2018
Page -3-

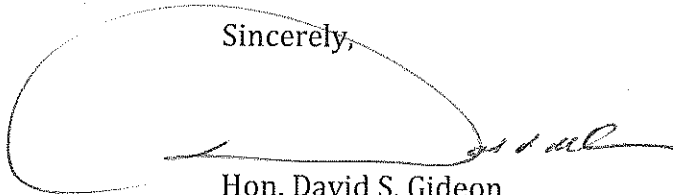
p. 168 *et seq.* - the establishment and maintaining of district courts statewide will be a tremendous expense that New York can ill afford, and will bring the loss of expertise of local conditions, and the loss of 24/7/365 availability for arraignments.

This list is merely illustrative and is by no means comprehensive.

I would respectfully request that the House postpone consideration of this report, and that our two organizations pool their resources to have a joint committee to consider these issues with an eye toward adopting a report that is consistent with the actual existing practices occurring in our justice courts.

Your consideration of our position is deeply appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "D. S. Gideon", is written over a large, hand-drawn oval scribble.

Hon. David S. Gideon
President
New York State Magistrates Association



Staff Memorandum

HOUSE OF DELEGATES Agenda Item #8

REQUESTED ACTION: Approval of the report and recommendations of the Committee on Diversity and Inclusion.

As part of its mission, the Committee on Diversity and Inclusion is charged with conducting biennial surveys to evaluate the level of diversity in Section leadership, membership and activities. Surveys have been conducted since 2005; this year, the committee conducted its seventh survey. The attached report reviews the results of the 2017 survey and compares those results to the previous surveys.

Also included in the report is a review of diversity efforts by eight Association sections selected by the committee, to be used by sections to create and achieve goals.

The committee is making the following recommendations:

- The Association should retool its request for member profiles with respect to diversity and highlight the importance of data.
- Sections that do not currently provide a leadership opportunity for young lawyers should create such an opportunity, such as a seat on the section's Executive Committee. In addition, the Young Lawyers Section should continue to recruit diverse attorneys to serve as liaisons to sections.
- Diversity plan guidelines should be developed to assist in standardizing data collection and reporting of section diversity initiatives.
- Prior recommendations that have not been implemented should be considered for action.
- A team should be designated to collect and analyze data and research the history of prior recommendations.
- Unavailable report cards should be republished and made available on the Committee on Diversity and Inclusion's website.

- Members should receive regular communications about the importance of reviewing the diversity report card and participating in the member profile.

The report will be presented at the April 14 meeting by committee past chair Lillian M. Moy.



NEW YORK STATE BAR ASSOCIATION

DIVERSITY REPORT CARD

SEVENTH EDITION, 2017

APRIL 2018
COMMITTEE ON DIVERSITY AND
INCLUSION

THIS EDITION OF THE DIVERSITY REPORT CARD IS DEDICATED TO THE MEMORY OF JOHN ERIC HIGGINS, ESQ., A MEMBER OF THE NEW YORK STATE BAR ASSOCIATION FOR OVER 25 YEARS AND AN ACTIVE PARTICIPANT IN MANY AREAS OF THE ORGANIZATION, INCLUDING HIS LEADERSHIP AND SERVICE ON THE HOUSE OF DELEGATES AND THE COMMITTEE ON DIVERSITY AND INCLUSION AS CHAIR OF THE DIVERSITY REPORT CARD SUBCOMMITTEE. JOHN WAS ALSO PAST CHAIR OF THE COMMITTEE ON MINORITIES IN THE PROFESSION, FOUNDER OF THE CONSTANCE BAKER MOTLEY SYMPOSIUM AND THE MOVING FORCE BEHIND THE MILES TO GO REPORT. JOHN RECEIVED THE 2018 DIVERSITY TRAILBLAZER AWARD POSTHUMOUSLY.

BECAUSE OF JOHN'S WORK, WE CONTINUE OUR VISION TO RAISE AWARENESS OF THE NEED FOR A DIVERSE AND VIBRANT LEGAL PROFESSION.

COMMITTEE ON DIVERSITY AND INCLUSION

2017-2018

SANDRA IRBY BUCHANAN, CHAIR

SAMUEL F. ABERNETHY

NATHANIEL OWEN ASHER

JEFFREY BERNSTEIN

MICHAEL I. BERNSTEIN

CRAIG S. BROWN*

HON. CHERYL E. CHAMBERS

WILFRED URIAH CODRINGTON III

ERICA SABRINA EDWARDS-O'NEAL

GLINNESA D. GAILLARD

ELENA MOLLY GOLDBERG VELAZQUEZ

EVAN M. GOLDBERG

HON. LIZBETH GONZALEZ

RICHARD M. GUTIERREZ

HON. HELENA HEATH

ELISE B. JAFFE

KI-CHAN JEON*

HON. MARGARITA LOPEZ TORRES

BETTY LUGO

KEITH MCCAFFERTY

JESSICA CHRISTINE MOLLER

JAMES EDWARD MOON

ROSEVELIE MARQUES MORALES

LILLIAN M. MOY*

MARTHE JANE BWALYA NGWASHI

KENDRICK P. PATTERSON

KIMBERLY WOLFE PRICE

DOMINIQUE SAINT-FORT*

MIRNA M. SANTIAGO

HON. GEORGE J. SILVER

EVETTE ANTOINETTE STAIR

KENNETH STANDARD

RUTH L. TISDALE

CLAUDIA O. TORREY*

BENU WELLS

* MEMBERS, DIVERSITY REPORT CARD SUBCOMMITTEE

LILLIAN M. MOY, SUBCOMMITTEE CO-CHAIR

DOMINIQUE SAINT-FORT, SUBCOMMITTEE CO-CHAIR

JOHN HIGGINS, HONORARY CHAIR (IN MEM.)

TAA GRAYS, EXECUTIVE COMMITTEE LIAISON

MINIKA N. UDOKO, NYSBA STAFF LIAISON

**NEW YORK STATE BAR ASSOCIATION, THE COMMITTEE ON DIVERSITY AND INCLUSION
DIVERSITY REPORT CARD
SEVENTH EDITION, 2017**

I. INTRODUCTION

The New York State Bar Association is deeply committed to enhancing diversity at every level of participation within the association and the profession.¹ Similarly, the mission of the Committee on Diversity and Inclusion is to promote and advance the full and equal participation of attorneys of color, women and other diverse attorneys in the Association, and in all sectors and at every level of the legal profession through research, education, fostering involvement and leadership development in the Association and other professional activities, and to promote knowledge of and respect for the profession in communities that historically have been excluded from the practice of law. Therefore, with the support of the Association, the Committee continues to make regular requests that all NYSBA members complete their diversity profile as part of their member census as a means to evaluate the level of diversity in Section leadership, membership and activities and report those results. The initial survey was conducted in 2005 by the Committee on Diversity and Leadership Development.

The subsequent Committee on Minorities in the Profession (now known as The Committee on Diversity and Inclusion) transposed the results of that survey into a Diversity Report Card, which the Executive Committee considered as an informational item at its June 23rd and 24th meeting of 2005. The results of that survey were published as the first report, now called the Diversity Report Card. The chart below provides a brief history of the Diversity Report Card's development.

A. DIVERSITY REPORT CARD TIMELINE

- 2005 (First Edition) Diversity data reported included gender, ethnicity/race and disability status. Nearly half of all Sections appointed a diversity chair and/or formed a diversity committee and developed a diversity plan.
- 2007 (Second Edition) Report was circulated at the Section Leaders Conference to foster increased diversity awareness. Report was also posted on the

¹ On November 8, 2003, the Association's House of Delegates adopted a diversity policy, which reads:

The New York State Bar Association is committed to diversity in its membership, officers, staff, House of Delegates, Executive Committee, Sections and Committees and their respective leaders. Diversity is an inclusive concept, encompassing gender, race, color, ethnic origin, national origin, religion, sexual orientation, age and disability.

We are a richer and more effective Association because of diversity, as it increases our Association's strengths, capabilities and adaptability. Through increased diversity, our organization can more effectively address societal and member needs with the varied perspectives experiences, knowledge, information and understanding inherent in a diverse relationship.

Association's Web site and report narrative was published in the State Bar News.

- 2009 (Third Edition) Sexual orientation was added as a category to diversity data reporting.
- 2011 (Fourth Edition) The report included diversity data on House of Delegates and NYSBA Executive Committee membership. Diversity Section Challenge – year 1.
- 2013 (Fifth Edition) The report includes member diversity data in NYSBA governance, broken down by Judicial District.
- 2015 (Sixth Edition) Age data of overall Association membership added.
- 2017 (Seventh Edition) The report spotlights eight Sections of the Association in order to highlight improvements and provide specific recommendations.

This report continues to highlight the need for raising the level of diversity awareness within the profession and increase opportunities for diverse attorneys to serve in Association leadership positions.

The Committee has worked with NYSBA staff to create surveys that collect data on specific demographics that capture and assess the current data and trends within the membership and leadership of the Association.

In order to encourage member participation, member comments are read and changes are made to the survey instruments based on this feedback. In particular, the method of data collection changed from paper surveys to an online format in 2009, to make it easier for members to participate. Categories of interest have been added and definitions changed. Currently the member profile lists sexual orientation options as either "Heterosexual" or as "Lesbian/Gay/Bisexual." Data collection will be improved in the diversity profile when the transgender category is moved and placed as a separate option for "GENDER." Plans have been made to have this accomplished by the next Diversity Report Card in 2019.

The 2017 report card's format also has been revised so that readers can more easily see trends within their Section. This new format is intended to allow the report card to be used as a tool to help all Sections reach their diversity goals. The color-coded breakdown reveals where each Section's demographics are in comparison to the general NYSBA membership and Section leadership. The format also highlights areas where each Section has made strides concerning diversity issues, and areas where improvements can be made. These observations are based on the Section's diversity data.

The latest new feature for 2017 includes recommendations for a small group of Sections, which are recognized for their diversity achievements. The Diversity Report Card Subcommittee also gathered other diversity-related data and information from each section leadership to illustrate

the findings of the Report Card. Lastly, the Committee made specific recommendations for achieving additional diversity goals, which are published in the Report. The Subcommittee recommends spotlighting each Section in the next edition of the Diversity Report Card, slated for 2019.

B. MEMBER CENSUS PARTICIPATION

One recurring challenge for the report card has been the data collection in terms of full participation by all NYSBA members. The rates of participation are low, as evidenced by the percentage of members who have not provided gender, race/ethnicity, sexual orientation or physical disability data. Non-participation rate includes both members who have “declined to answer” each and every question and non-responsive members from the table below.

OVERALL DATA COLLECTION

	Decline to Answer		No Data Provided	
	2015	2017	2015	2017
Gender	0%	0%	6.16%	17.84%
Race / Ethnicity	1.67%	2.06%	54.23%	54.75%
Sexual Orientation	3.25%	3.67%	68.31%	66.33%
Physical Disability	7.09%	5.76%	55.45%	56.24%

Although the percentage of individuals who provide gender data is high, the non-participation (no data provided) has increased by 11.68% since 2015 to 17.84%. The non-participation rate for race/ethnicity remained steady from 2015 to 2017. The non-participation rate for sexual orientation decreased slightly, but two-thirds of NYSBA membership still does not share data in this category, with more than half of its membership not providing data regarding disability status.

The message that the Committee continues to express is that without accurate statistics on NYSBA membership and attorneys in New York State, programs and services may not accurately reflect the needs of the members. Also, data are needed to inform staff where additional outreach and training may be needed. The non-responsive data, in the Committee’s view, inform us that we have failed to reach a significant of members in connecting the importance of this information to the Association’s work and the profession.² The Association

² This is not just a challenge within the Association. The New York State Office of Court Administration (OCA) has been collecting demographic data for nearly 10 years, as was recommended in a 2007 report, *Miles To Go In New York: Measuring Racial and Ethnic Diversity Among New York Lawyers*.²

must continue to discuss “Race/Ethnicity,” “Sexual Orientation,” and “Physical Disability” for all members of the Association. Also, in order to get more accurate statistics and increase the Committee will consider additional changes to collecting and reporting data, including creating more categories to provide information on one’s background and orientation.

II. METHODOLOGY

While the scope of the 2017 Diversity Report Card is focused on Section data and trends since 2015, it also was important to review the range of recommendations throughout the history of the report card to see what areas of interest changed or remained. The Committee was primarily interested in assessing any positive impacts on Sections’ diversity outcomes since the 2015 Diversity Report Card.

The Association and its sections have implemented prior recommendations such as the Office of Bar Services maintaining a list of affinity bar associations and their leadership. Also, many sections, have developed diversity committees, selected diversity chairs and participated in our Committee meetings, sharing their diversity challenges and progress.

There are, however, recommendations that have not yet been implemented. The Committee encourages analysis of prior Diversity Report Cards and discussions by sections and their leadership to create future diversity goals and plans. The Diversity Report Card Subcommittee will work during the non-reporting year to foster such efforts with individual sections to encourage planning of and action on such goals.

The Committee continues to recommend adequate staffing in the Association to meet the needs of collecting, analyzing and reporting on membership data (Miles to Go In New York: Measuring Racial and Ethnic Diversity Among New York Lawyers” 2007, p.25 [“systemic reporting requires systemic staffing; a full-time, specialized position in the NYSBA administration”]).

A new NYSBA staff position was created in 2016 to coordinate issues concerning diversity and inclusion, including working on the report card and a full-time staff was hired. According to the May 2017 edition of the Section Leaders Conference handbook:

The Membership Diversity and Inclusion Coordinator is responsible for overseeing and facilitating the Associations efforts to increase diversity and inclusion within the Associations leadership and in the legal profession on New York State, through outreach and coordination efforts with the Associations Sections and Committees.

This position also “[s]erves as a resource to NYSBA Section leadership, their diversity committees and Section staff liaisons regarding educational programming focused on elimination of bias and promoting diversity and inclusion, participates in membership development, engagement and retention strategies and performs outreach to diverse communities of relevance to the

professional legal community including not-for profits, affinity bar associations and law schools.

In Summer 2017, staff began working on the Diversity Report Card. In assessing the 2015 Diversity Report Card, the Membership D&I Coordinator discovered that only two of five recommendations had been acted upon. Namely, the Committee invited liaisons from Sections to its meetings, and the Association published the Report Card online, with its results shared in the *State Bar News*. However, the prior recommendation, published in each report since 2007, to create public service announcements (PSAs) explaining the need for participation in the diversity profile has not been adopted. Additionally, no action has yet been taken to (1) hire a law student or intern to help with the report card or (2) to have a calendar of diversity events created (NYSBA Diversity Report Card, Fall 2015 p.30-32).

In the fall of 2017, the new Diversity & Inclusion Coordinator addressed the repeated recommendation concerning the creation of informational PSAs highlighting the importance of participating in the diversity profile. In conjunction with the Association's new Marketing Director and Digital Media Specialist, work started on the development of a series of PSAs, with an anticipated debut of the first PSA to be at Annual meeting 2018. Additionally, a Community page was created for Section Diversity Chairs, as an online forum for Sections to share best practices concerning diversity and inclusion efforts, to facilitate discussions about the Diversity Report Card and other diversity issues, and to provide relevant resources to the Section Diversity Chairs. One of the resources is to provide each Section's demographic data in easy-to-read graphics with corresponding summary recommendations. During the drafting of this Diversity Report Card, the D&I Coordinator resigned and recommended that outside consultants experienced in the field of Diversity and Inclusion be hired to encourage and implement structural change for the organization. This particular issue should be carefully analyzed, as no diversity initiative can survive or thrive without a proper foundation or infrastructure that supports its values and goals. Further, it is possible that the Association needs data-collecting professionals to address the reporting needs of the Association.

Nonetheless, the Committee would like this report card to be used as a tool by the Section Chairs, with the Diversity Chairs and staff liaisons, to enhance their Sections' diversity efforts. Thus, even though the Committee is compelled to recommend consultants to advise on the organizational readiness to support a sustaining diversity initiative, we also challenge the Association to continue to analyze the data and implement constructive change.

The next section analyzes the demographic data. The eight Sections with specific recommendations this year can use the Committee on Diversity and Inclusion as a resource until the organization responds to the call for D&I consultants. Additionally, other Sections can similarly analyze their respective data and call upon the Committee's help to create a plan, document their goals and implement them.

III. STRIDES AND RECOMMENDATIONS

A. THE SECTIONS:³

ANTI-TRUST

Summary: The Anti-Trust Section is commended for having a high percentage of women as Leaders and Executive Committee Members as compared to NYSBA as a whole, 45% and 43% respectively. Although approximately half of section members and more than a third of section leaders did not report ethnicity, among the members who did report, it appears that racial diversity in its general membership and leadership should be a specific goal for this section: In addition encouraging members to complete their profiles would greatly help the section and the Association with efforts to target diverse anti-trust attorneys.

Specific recommendations: The Committee encourages the Section Chair and the Diversity Chair to be more proactive and make greater effort to recruit diverse lawyers as Members, Leaders and Executive Committee Members. Leadership can do this by promoting current members of color to leadership positions, utilizing NYSBA's Office of Bar Services to create an outreach strategy to affinity bars and coordinating with NYSBA's Membership Diversity and Inclusion Coordinator to create diversity initiatives that will attract more diverse members. Additionally, each section could join in pipeline efforts to increase diversity by showcases this practice area to college and law students.

The Anti-trust Section responded to this Committee's survey on diversity by stating its commitment to diversity as follows:

A Broad and Inclusive Definition of Diversity in the NYSBA Antitrust Section

In our experience, antitrust as a nationwide practice is not a particularly diverse area of the law. Indeed, in recent Section efforts to recruit diverse new lawyers, we sought feedback and have learned that antitrust is often viewed by law students and newer lawyers as more complex and inaccessible than other disciplines. Our perception is that a lack of diversity is an issue that is not specific to New York, and that our Section is likely more diverse than the overall antitrust bar due to its longstanding efforts on this topic. We have also contacted the ABA Antitrust Section to see if there is current data on the diversity of the nationwide practice area. Should we receive any information that is useful to our continuing efforts, we will share it with your Committee.

The Antitrust Section reflects a diversity of membership that extends beyond the categories described in the 2017 Report Card (e.g., age, disability, sexual orientation,

³ As an example of how the report card can be used as a tool to improve diversity outcomes, the Committee chose eight Sections, to highlight areas of achievement and areas where improvement is still needed based on the Section's demographic data and on their diversity plan, if they have one and initiatives.

race/ethnicity, gender). Our Section membership and inclusion efforts reflect a broad definition of “diversity” in our members, which we have found has helped to foster a constant and vigorous dialogue regarding antitrust law and policy, enforcement and cases:

- Gender
- LGBT / Sexual Orientation
- Race /Ethnicity
- Plaintiff, defense, in-house, government / public service attorneys, academia
- Upstate / northern New York practitioners
- International (vs. US-only practitioners)
- Law students and newer attorneys (e.g., attorneys in their first 5-10 years of practice)
- Attorneys who practice in related subject matter areas (e.g., litigation and white collar)

As the 2017 Diversity Report Card recognizes, the Antitrust Section has a higher percentage of women as Leaders and Executive Committee Members as compared to the NYSBA as a whole. More generally, antitrust is a practice area that reflects increasing gender diversity, but still requires more efforts to attract attorneys of color and from other diverse backgrounds.

Leadership of the Executive Committee and Section Committees Reflect Diversity

We understand that due to limitations of the NYSBA’s data, including that members may not report their own ethnicity or other information, the data for the Antitrust Section is not complete. For example, the Report incorrectly states that the Antitrust Section leadership does not have Asian members, even though there are multiple Executive Committee members who are Asian, including the Section’s Diversity Chair. The Section’s Leadership and Executive Committee and substantive Committees include diverse members. For example:

- Section leadership (officer-level) includes LGBT and women attorneys.
- More than 40% of the Executive Committee’s members are women, and the Committee includes LGBT members, African American and Asian attorneys, lawyers who are within their first ten years of experience, and attorneys who practice in Northern/upstate New York and outside of New York State. The Executive Committee shows the diverse thought leadership of the Section: EC members come from private practice, both the defense and plaintiff’s bars, federal

and state government antitrust agencies, academia, and in-house in multi-national corporations. Finally, the membership is growing in diversity due to members who are either internationally-qualified and/or frequently practice in cross-border areas of antitrust. The Section sponsored its first panel focused on merger enforcement in China this year, featuring expert panelists from Jun He, a top firm in Beijing.

- The Antitrust Section also has multiple substantive Committees, which provide significant opportunities for newer attorneys who are in their first 10 years of practice to gain leadership experience in the Section. These Committees develop written content (e.g., newsletters) and antitrust-related panels and other programs that showcase the talent in the Section. Each of these Committees also reflects the diversity of the Section and includes members who are diverse from a race / ethnicity and gender perspective, as well as members who are government enforcers. The following substantive Committees have diverse members: Mergers Committee, Cartel & Criminal Practice Committee, Unilateral Conduct Committee, Coordinated Conduct Committee, Class Action Committee.

Online rosters for these committees are available at:

http://www.nysba.org/Sections/Antitrust_Law/Committees/Antitrust_Section_Committees.html

Diversity and Membership Committee Initiatives to Increase Diversity

The Antitrust Section has undertaken important initiatives specifically aimed at increasing race / ethnicity and other diversity in its membership:

- *Antitrust Diversity Fellowship with the New York Bar Foundation:* Since 2013, the Antitrust Section has co-sponsored a summer diversity fellowship for first and second-year law students to work at federal and state antitrust enforcement agencies in New York. The selection criteria and interviews focus on diversity as one of the key factors for Fellows. Fellows benefit from a \$6,000 stipend for their summer work and exposure to cutting-edge enforcement at government agencies, which is a resume-building experience and unparalleled networking opportunity. The last class of Fellows included students who were diverse from a race / ethnicity perspective, as well as educational and other background. The Fellowship alumni include African American, Asian / Indian, and other diverse attorneys.

Fellows are invited to the Section's events and Section members have made efforts to keep in touch with past Fellows to provide mentoring and other helpful connections, including resume advice and potential opportunities.

- *2017 Diversity Fellow Alumni Lunch:* In 2017, the Section sponsored the first Diversity Fellow alumni lunch, which was attended by twelve former Fellows. The lunch was attended by Section leadership, and there was a lively discussion focused on how the Section can improve the Fellowship program and increase the number of opportunities for diverse students. From this lunch, the Diversity Committee took suggestions for the upcoming program and selection process, which has begun for 2018.
- *Mentoring Program:* This year, the Section kicked off a mentoring pilot program during which attorneys with up to five years of experience could request a Section mentor. From January to June 2017, mentors provided guidance, direction and advice to their mentees, including insight on how to get more involved with the Antitrust Section. The program hosted a social and networking event at the close of the program for the mentees and mentors to get to know each other better.
- *Contact with New York Affinity Bars:* The Section also makes efforts to keep in touch with affinity bars in the hope of attracting new members and coordinating on programs. In the past, the challenge has been that affinity bars have their own busy calendars of events for their own members, which has impeded the planning of joint events. In addition, antitrust is a very specific focus (vs. general litigation or corporate) and some of the affinity bar associations have given feedback that more work needs to be done to determine which of their committees would be interested in the topic (e.g., litigation, corporate, IP, all of which could be connections). However, our Section continues to explore opportunities with these important diverse bar associations.

Diversity Reflected in Antitrust Programming and Participation Throughout the Year

In addition to showing diversity through its membership and targeted initiatives, the Antitrust Section seeks to raise the profile of diverse members and other attorneys, including newer attorneys in the practice area. Antitrust is a complex disputes practice that involves high stakes cases and economic evidence, and therefore can be a difficult area for newer lawyers to thrive and advance without mentoring and support. The Section also focuses on these newer attorneys in its programming and events during the year. This focus on fostering a diversity of viewpoints is reflected in our programs:

- During its Annual Antitrust Law Section Meeting, the Section makes efforts to identify and feature panelists from diverse viewpoints. For example, all six substantive panels at the 2017 Antitrust Law Section Meeting featured one or more women panelists and/or a panelist who was racially diverse, as well as speakers from the private vs. public sector (DOJ, FTC, and NY Attorney General

speakers) and with international experience (two European-qualified women panelists).

The Diversity Committee also made efforts to reach out to affinity bars to offer free invitations to the Symposium and Annual Section Dinner, including the Metropolitan Black Bar Association (MBBA), LeGaL, Asian American Bar Association of New York (AABANY), Hispanic Bar Association (HBA/HNBA), and others.

- “*Why Antitrust?*” Panel and Networking Event – In June 2017, as in years prior, the Antitrust Section sponsored a panel and networking event aimed at educating newer lawyers and law students about the area of antitrust law. This panel focuses on the opportunities in the area of antitrust, and aims to make the subject matter interesting and less intimidating. Invites were circulated to New York affinity bar associations to increase attendance by diverse attorneys. Follow-up is conducted by the Membership Committee to try to recruit new Section members.
- *Cartel & Criminal Practice Committee Enforcement Panel*: In October 2017, the Cartel & Criminal Practice Committee held a substantive panel regarding trends in federal criminal enforcement. Cartel practice has historically been an area in which there were few women and diverse attorneys. This panel featured all women (and one of the three is a diverse woman attorney), from the DOJ, in-house, and private sector. Each panelist has been practicing for less than 20 years, so this panel also reflected an effort to feature younger lawyers as leads in the field.
- The Antitrust Section participates in NYSBA Committee on Diversity and Inclusion meetings to understand better what other sections are doing to increase their diverse membership.
- The Antitrust Section participates in the Diversity Reception at the NYSBA Annual Meeting and has a table to provide information to potential new members. Ongoing and Future Efforts to Increase African American and Other Diverse Membership.

We appreciate the feedback and ideas about increasing diversity from a race / ethnicity perspective in our Section, in particular African American members. In the coming year, we plan to continue our work with targeted initiatives including:

- Outreach to the Metropolitan Black Bar Association (MBBA), in addition to other affinity bar groups.
- Seeking further diverse members via the Diversity Fellowship Program and ongoing membership recruitment efforts, and continuing to ask for feedback from Fellow alumni about how to recruit more diverse members.
- Sponsor at least one New York area law school event in 2018, aimed at connecting with diverse law students. The Diversity Committee has solicited ideas from student contacts at several schools, and one of the proposals under consideration is a resume / interview preparation opportunity aimed at introducing students to the Section.
- Reach out to diversity contacts at the ABA Antitrust Section to share ideas from their recruitment efforts

CRIMINAL JUSTICE

Summary: The Criminal Justice Section is commended for having a large percentage of Black/African Americans in leadership positions, approximately 14% and 12% of section leaders and section executive committee members who responded to the profile requests identify as Black/African American; however, it appears only Black/African American and White/Caucasian members are leaders, and less than a quarter of the leaders who responded to the survey are female. The section also appears to have a lower ratio of female members than is the case among NYSBA membership in general. The Criminal Justice Section has recently established a diversity committee that is focused on recruiting and retaining women and people of color.

Specific recommendations: We recommend that the section's diversity committee partner with this Committee, the Committee on Women in the Law, the Committee on LGBT and the Committee on Civil Rights and sponsor certain activities related to criminal justice for one or more minority law school associations. The senior members should actively take interest in and mentor law students and new members to the section, where possible.

To the extent possible, the Criminal Justice Section should foster relationships with the District Attorneys' offices across New York State, indigent legal services providers and public defenders' offices to recruiting more qualified women and people of color to join NYSBA and specifically the Section. Additionally, the Committee should encourage more women and people of color already in the Section to take on leadership roles. Finally, the Section can utilize the newly established diversity committee to assist in advancing the above recommendations and work with law school courses and clinics relevant to the work of the Section to bring in new and diverse members.

CORPORATE COUNSEL

Summary: The Corporate Counsel Section is commended for having a diversity committee and high levels of women leaders, who make up more than half of section leaders, and 63% of the section's executive committee. Additionally, the section has excellent rates of participation in the diversity profile. While Black/African American members enjoy a high rate in leadership in comparison with NYSBA members at approximately 16%, Asian members also have a high percentage of members at 9%, but are not reflected in leadership at all.

Specific recommendations: The section should actively recruit a diverse panel of leaders among its ranks. Because the section is in a leadership position among other sections, it should work with this Committee to develop a best practices guide to help other Sections and the Association as a whole to improve their diversity levels rates.

FOOD, DRUG & COSMETIC LAW

Summary: The Food, Drug and Cosmetic Law Section is NYSBA's smallest section. The Section has reached gender parity with its Members, Leaders and Executive Committee members being 50 to 55% female in each category. Section leadership has done an excellent job of sharing participation opportunities with its members. However, the Section leadership is not as racially diverse as NYSBA membership, with those in leadership positions being exclusively White/Caucasian.

Specific recommendations: The section should also work with law school associations to introduce the work of the section to bring in new and diverse members. The section should also work with the new Membership Diversity and Inclusion Coordinator and the Office of Bar Services to develop a diversity plan, including outreach to attract more diverse members. Additionally, the Section can take advantage of programming and sponsorship opportunities with other Sections and Committees, for outreach purposes.

The Food, Drug and Cosmetic Law Section responded to this Committee's inquiry with the following statement:

The Food, Drug and Cosmetic Law Section make every effort to engage all members who want to be involved in senior section leadership which includes committee chairs. The Section is open to ideas that have been successful in other sections for active engagement by their diversity members and has established a Diversity Committee. Those interested in serving can contact Brian Malkin.

HEALTH LAW

Summary: The Health Law section is commended for its large number of Hispanic leaders and female membership – almost half of section members of women and almost 10% of leadership self-identified as Hispanic. The section also enjoys good representation of persons in all age categories. The section has a diversity committee that offers Summer Diversity Fellowships each

year. In 2016, the Committee held a luncheon to bring together current and former fellowship recipients. The section is also connected with the law school community through its diversity committee and hosted a recent panel at Brooklyn Law School.

Specific recommendations: Connect with general counsel offices of companies to recruit more members with a focus on recruiting people of color. Additionally, the diversity committee may want to host a panel at a local law school and invite attorneys from the aforementioned organizations to serve as panelists, thereby attracting them to join the section. The Committee should also work on encouraging the female section members to take on leadership roles.

The section notes that since 2011, the Health Care Section Diversity Committee has worked to expand the diversity of its membership, particularly by offering opportunities to law students interested in health law thereby developing a pipeline to membership. For example, the Committee has sponsored a Fellowship Program where it places diverse law students in paid summer positions at major medical centers. Such placements have included Montefiore Medical Center, Mt. Sinai and NYU Medical Center. The Committee sponsors panel discussions on health law careers. The first panel discussion in 2013 was sponsored by Proskauer, the second in 2015 was held at Brooklyn Law School and reflected a diverse panel from the insurance and hospital industries. In 2016, the Section co-sponsored a discussion on “What Now? The Role of Diverse Managers During the Trump Presidency” with Brooklyn Law School. From its inception, the Diversity Committee has worked with local law schools to identify and mentor diverse students interested in healthcare law.

Action Plan

Project	Goals and Objectives	Tasks
Diversity Summer Fellowship in Health Law Dionne Shuler, Chair Lisa D. Hayes Beverly Jones Edwina Martin	Sponsor and place a Health Law Fellow in an in-house law office of a major medical center by March 1, 2018	1. Contact schools with law health programs. 2. Send out notices 3. Conduct selection process 4. Identify institutions to place a Fellow
Health Law Careers Program Lisa D. Hayes Karen Porter	Sponsor the Third Health Law Careers Program in the Spring of 2018.	1. Identify a partner – possibly a law school. 2. Develop budget and solicit sponsors. 3. Develop a topic. 4. Identify panelists.

INTELLECTUAL PROPERTY

Summary: The Intellectual Property Law Section should be commended for its efforts in reaching gender equity in its Membership and Leadership. The Section also has matched or exceeded racial diversity in section membership and leadership compared to NYSBA

membership. Anomaly, however, the section's higher percentage of Asian members is not reflected in the leadership of section.

Specific recommendations: The section should recruit more members of color, specifically encourage Asian/Pacific Islander members, to be leaders or aspire to sit on the Executive Committee. The Section can further improve diversity through enhanced recruitment plans, including working with law school associations to introduce the work of the section to bring in new and diverse members.

The Section reviewed the recommendations on increasing Asian membership and leadership. The Section believes that the way to accomplish this is by ensuring that program panels are more diversified. It can only attract people when they see people who look like them on panels and in leadership positions. The Chair, Erica Klein, is committed to this and recently reminded program chairs and those heading up panels that they have to do better. Erica mentioned that the Diversity Committee can help recommend diverse speakers. The Section is looking forward to putting this to work for the annual meeting in January and beyond.

SENIOR LAWYERS

Summary: The Section is commended for the high rate of its leadership participating in the diversity profiles. However, the Members and Leaders are disproportionately male. Members, Leaders and Executive Committee Members have virtually no racial diversity. And while the Section is limited to attorneys aged 55 and older, the Leaders and Executive Committee Members are disproportionately represented in the 66+ category.

Specific recommendations: The Section may wish to research and recruit members of color and women into the section by creating an outreach plan utilizing the new Office of Bar Services and Membership Diversity and Inclusion Coordinator. The section can also work with the Committee on Women to proactively take measures to recruit women, and promote diverse and younger attorneys within its age group to be leaders and executive committee members.

The Section provided the possible action plan:

The section is considering offering, as a special diversity effort, another one-year free section membership to all women members of NYSBA who are 55 or older and not a member of our Section.

TAX

Summary: The section is commended for having a diversity chair. However, the Tax Section's ratio of female Members, Leaders and Executive Committee members falls 11 to 14% short in comparison with NYSBA members. The section has also achieved improvement in reporting in the sexual orientation category. However, there is also very little age and racial diversity among the leadership. We also note that the Section supports this Committee's Diversity Reception.

Specific recommendations: The Section's Diversity Chair can work with its staff liaison and the Membership Diversity and Inclusion Coordinator to create a diversity plan. That plan should focus on recruiting female and diverse section members and promoting more women to leadership positions. Additionally, the Section can work with the Young Lawyers Section to help create a recruitment plan to attract younger attorneys. Additionally, the section can take advantage of programming and sponsorship opportunities with other sections and committees, such as the International Section or the Civil Rights Committee, for outreach purposes. The Committee could also work with law school courses and clinics relevant to the work of the Section to bring in new and diverse members.

B. ACCESSING DIVERSITY RESOURCES

These section snapshots are meant as feedback and a tool for each section to create goals and achieve them. The Association recognizes the need for resources to be available to assist the Sections reach their diversity goals.

The Committee on Diversity and Inclusion's prior recommendations on establishing Diversity chairs, diversity sub-committees and diversity plans have been widely accepted. Currently,

22 out of 25 (88%) of the Sections have a Diversity Committee

21 out of 25 (84%) of the Sections have a diversity Chair or co-Chairs

23 out of 25 (92%) have a diversity plan or at least one diversity initiative

As all sections are different, so are their diversity plans and initiatives. There are no basic requirements for a diversity plan. The Committee recommends that guidelines or a template be developed outlining minimum requirements. This will allow data to be standardized, improve data collection and reporting. For example, one section may wish to encourage diverse speakers to participate in panels and conferences. In such instance, the section should set a goal as to how many diverse speakers it will seek to contact and include in these programs. These aspirational goals can be included in future diversity report cards, which will assist the Committee and the Association in keeping track of progress and working initiatives.

In conjunction with the section liaisons, the Association has other resources to help improve diversity outcomes. The Office of Bar Services provides contact information for Affinity bars, and a new Membership Diversity and Inclusion Coordinator will be available to coordinate diversity efforts throughout the Association. We also recommend that a Section Diversity Chairs have a community and share best practices among the Sections.

It is the Committee's hope that these resources, in conjunction with the recommendations to follow, will enable each section to assess its own success and utilize the resources available to it to set and attain higher diversity goals.

C. GENERAL RECOMMENDATIONS FOR THE DIVERSITY REPORT CARD

1. New Recommendations:

- a. The percentage of members that report their disability status and sexual orientation is extremely low. Further, approximately, 54% of NYSBA members, 39% of Section members, 31% of Section leaders do not report their race. The Committee recommends the Association retool the diversity profile requests and work with the relevant Committees to demystifying the import of the data for the Report Card. The Committee also recommends that the Section Chairs and Diversity Chairs work with their Diversity Committees to improve the data collection.
- b. The Committee recommends that each section that does not currently provide a leadership opportunity for a young lawyer create a new leadership opportunity; for example, a seat on their executive committee for a young lawyer to create mentorship opportunities as well as a pathway to leadership positions in the section. The Committee recommends that the Young Lawyers Section continue to recruit attorneys with disabilities, LGBTQ attorneys, attorneys of color and female attorneys and encourage diverse attorneys to serve as liaisons to sections.
- c. The Committee recommends that diversity plan guidelines be developed, to assist in standardized data collection and reporting of section diversity initiatives.
- d. Based on the 2017 Section demographic data, the Committee recommends that each prior recommendation that has not been acted upon thus far should be considered for action to be taken by the Association.

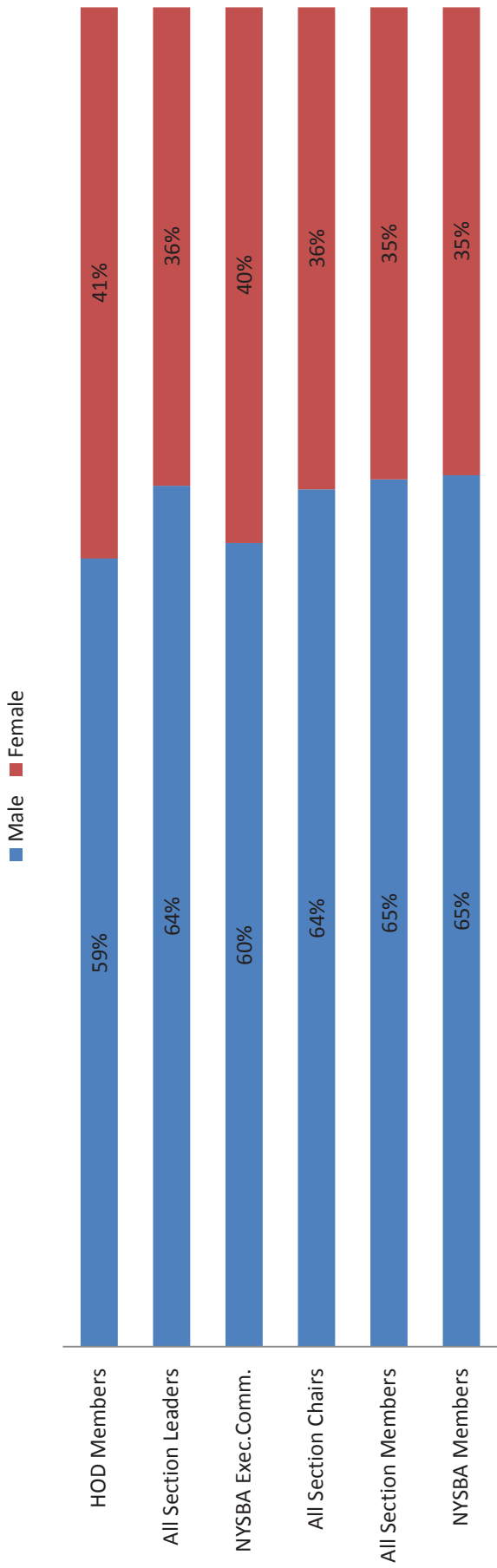
2. Repeat Recommendations:

- a. The Diversity Report Card requires many staff hours. As the report card remains a priority for the Association, the Committee recommends that a team be designated to collect and analyze data, and to research the history of each of the prior recommendations so a status update can be included in the 2019-2020 edition of the report card.
- b. Any out of print prior Diversity Report Card should be republished and have a permanent home on the NYSBA's or Committee on Diversity and Inclusion's Web page, making it readily accessible to all NYSBA members.
- c. Additionally, regular communication should be given to members about the importance of reviewing the diversity report card and participating in the diversity profile. Updated PSAs should be created on a biennial basis to address the current participation issues within NYSBA's membership and Section leadership.

Diversity Report Card

2016-2017

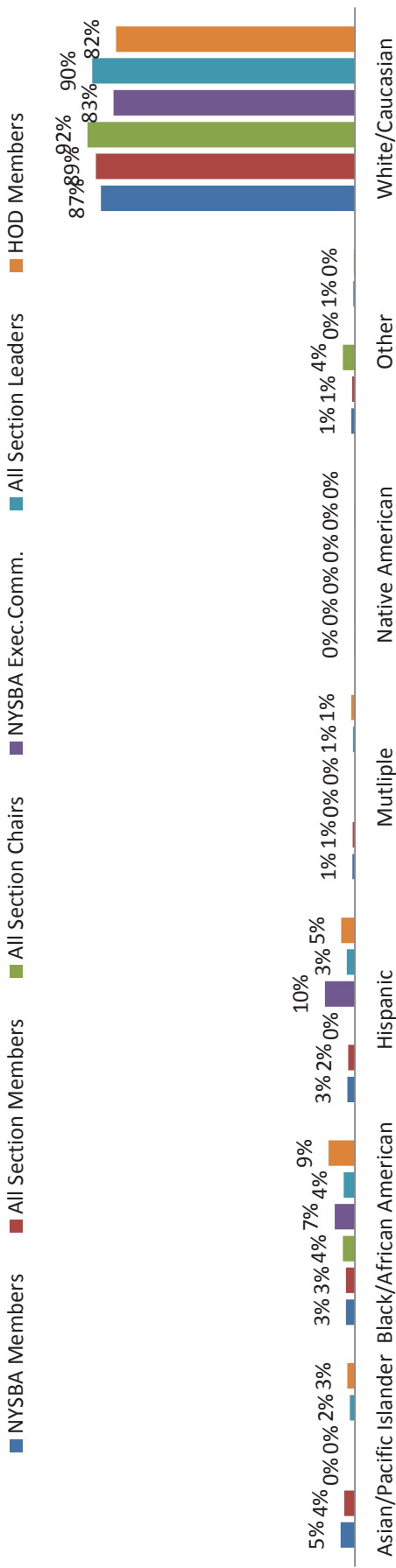
Leadership and Membership



NYSBA Members and Section members have a male/female ratio of 65%/35%. Our leadership groups have improved upon that ratio.

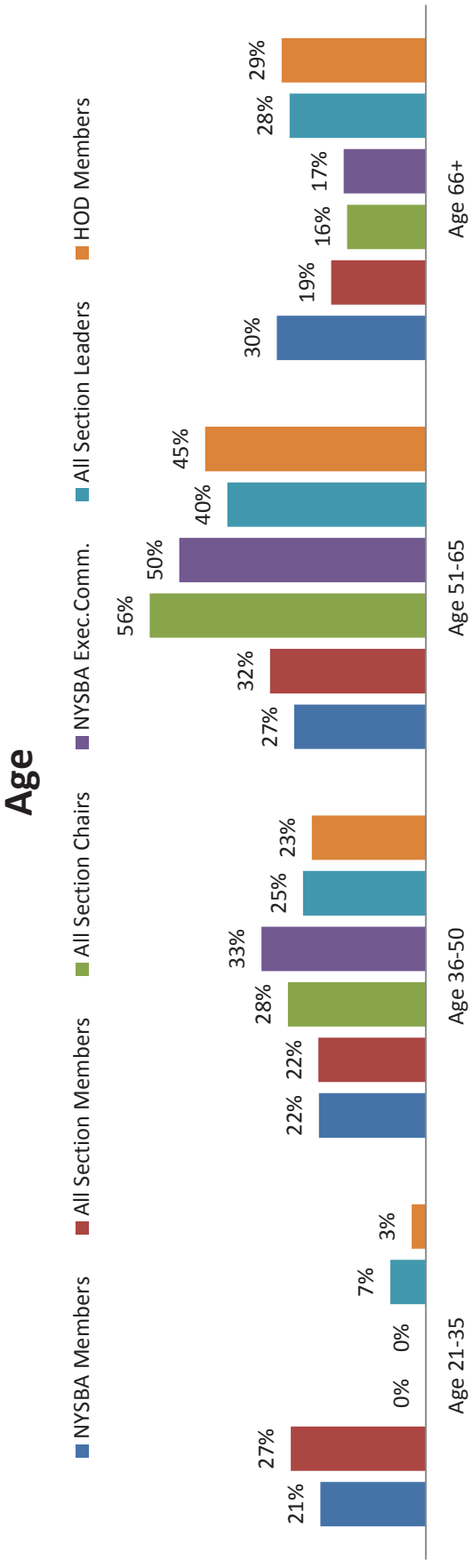
Leadership and Membership

Race/Ethnicity



Ethnic Diversity Comments (Taunya?)

Leadership and Membership

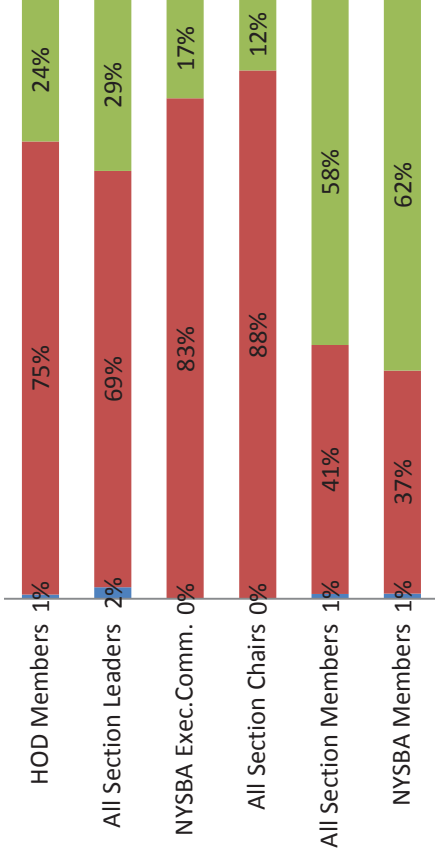


Less than one-third of NYSBA members & section members are in age range 51-65, however, 56% of our section chairs and 50% of our NYSBA Executive Committee are in that age range.

Leadership and Membership

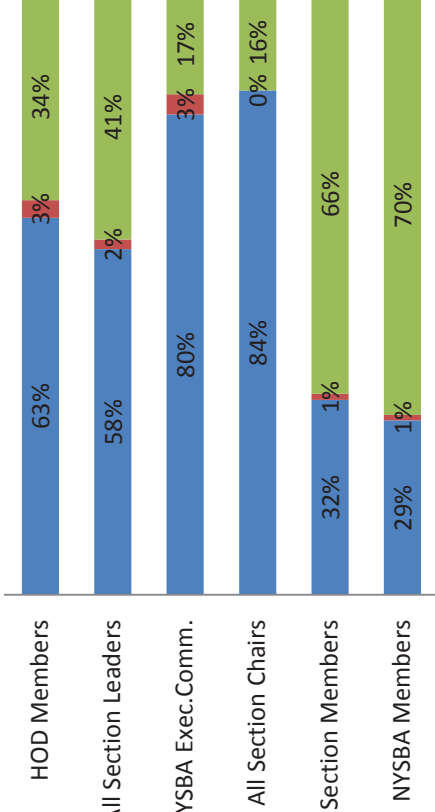
Disability

■ Yes ■ No ■ Unknown



Sexual Orientation

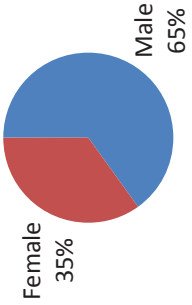
■ Heterosexual ■ LGBT ■ Unknown



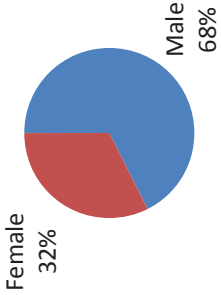
Information on disability and sexual orientation for membership is lacking however, NYSBA leaders have recognized the importance of providing this data and appear to be reflective of the membership.

Antitrust Section

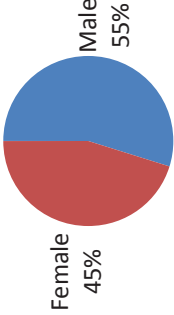
NYSBA Members



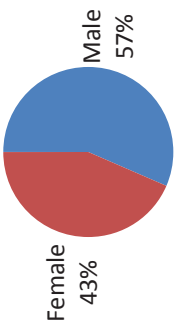
Section Members



Section Leaders



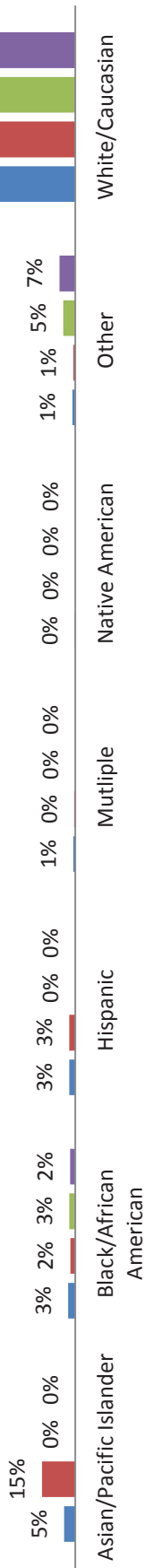
Section Exec. Comm.



Antitrust Section excels at having a higher than average percent of female attorneys in leadership positions

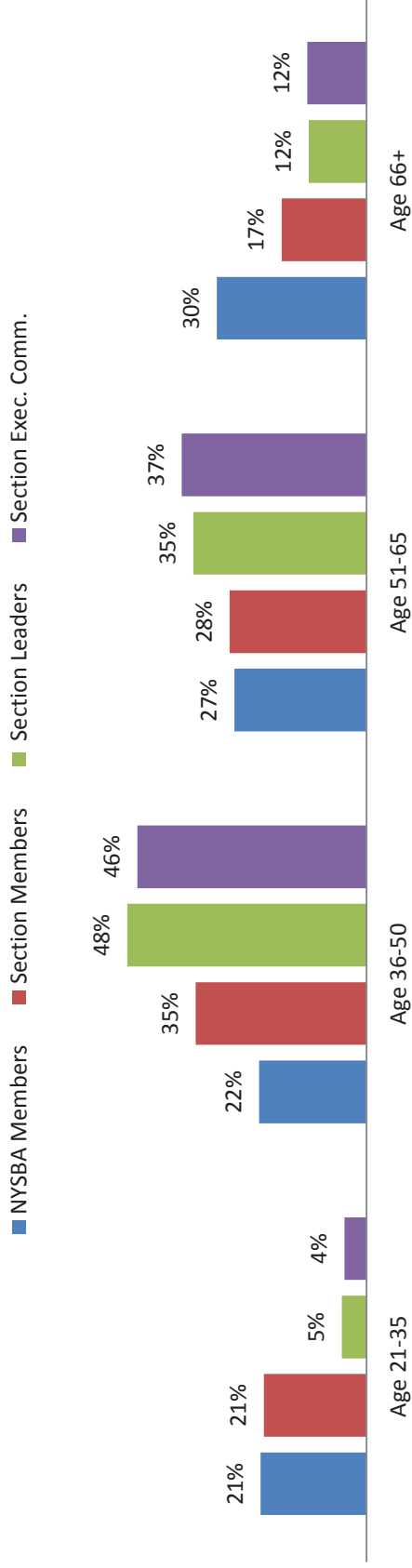
Race/Ethnicity

■ NYSBA Members ■ Section Members ■ Section Leaders ■ Section Exec. Comm.



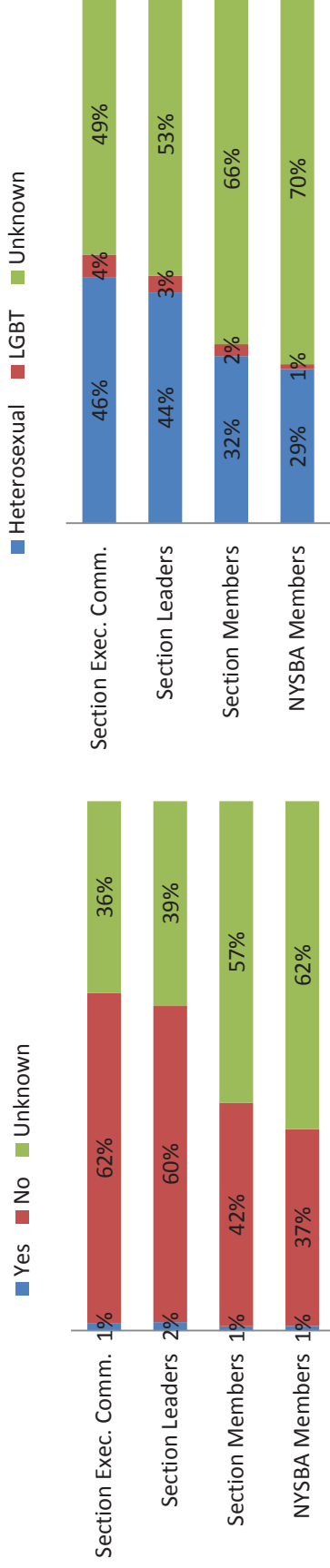
15% of Antitrust Section Members are Asian/Pacific Islander (which is higher than usual), however, no Asian/Pacific Islanders are part of the section leadership. However, please note that 50% of section members and 37% of antitrust section leaders did not report an ethnicity, which could significantly change the statistics since the Antitrust section has approximately 488 members.

Antitrust Section

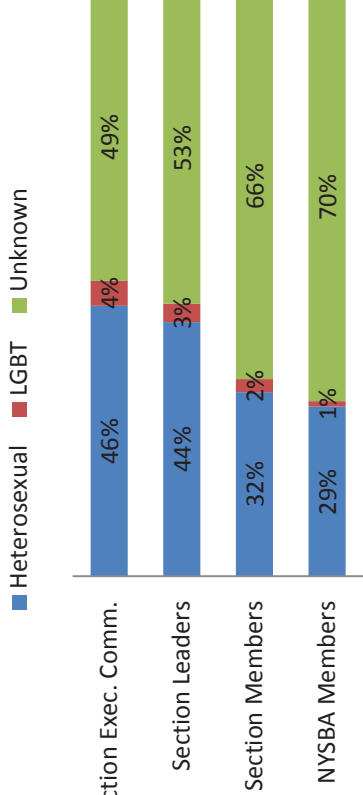


AGE: 21% of both all members and section members are ages 21-35, however, the percentage of corresponding leaders is 4 to 5% and is not reflective of this age group. 46-48% of the section leaders are Ages 36-50 which is disproportional to the people they represent.

Disability

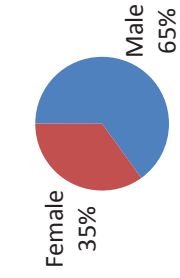


Sexual Orientation

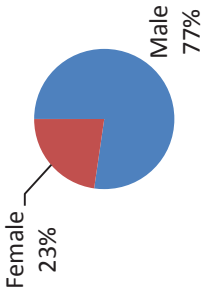


Business Law Section

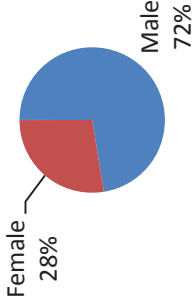
NYSBA Members



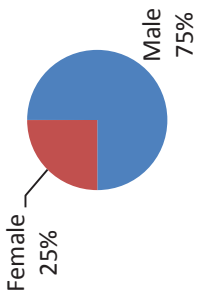
Section Members



Section Leaders



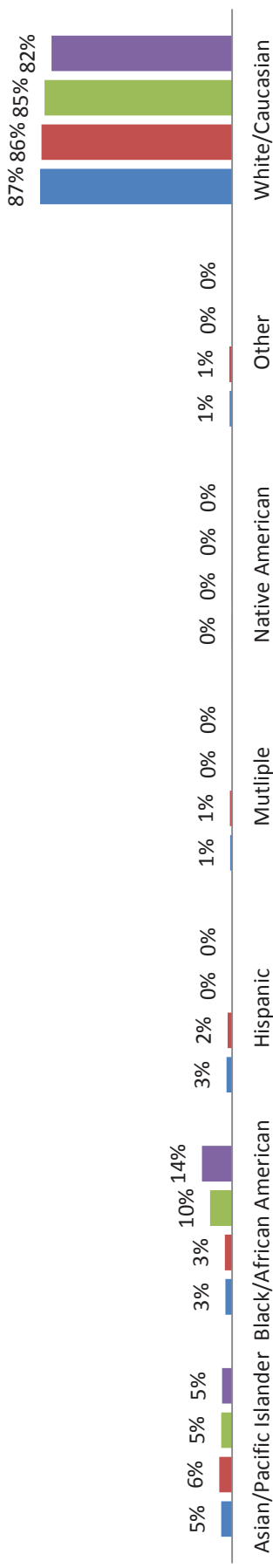
Section Exec. Comm.



The section has done a great job of making sure the leadership gender is reflective of its section members. However, section members are not as gender diverse as NYSBA members, perhaps more recruitment efforts?

Race/Ethnicity

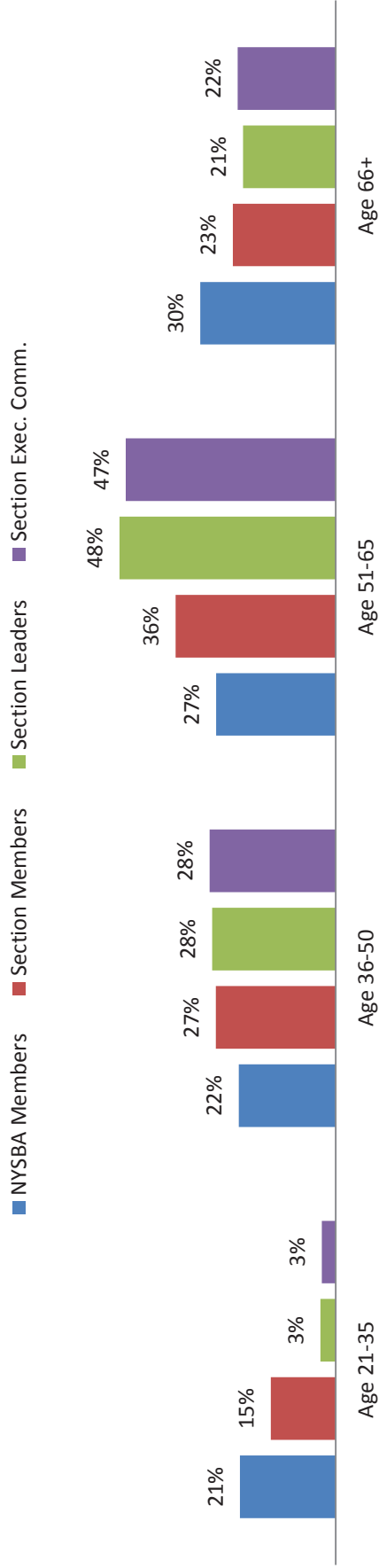
■ NYSBA Members ■ Section Members ■ Section Leaders ■ Section Exec. Comm.



The 14% of Black/African Americans in the E.C. = 3 people.

About 54% of NYSBA members, 39% of section members, 31% of section leaders do not report their race.

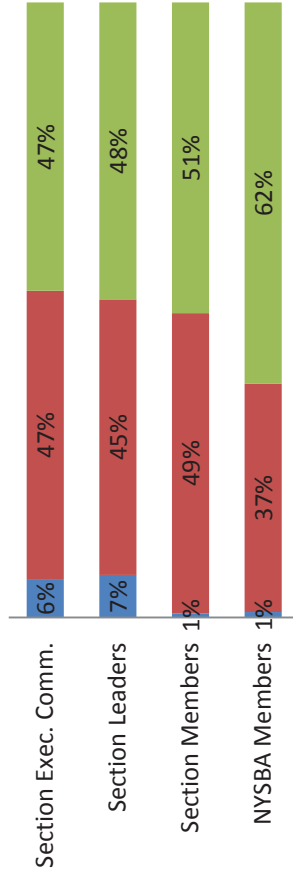
Business Law Section



Business Law Section has less young members percentagewise than NYSBA members. The section's younger members are under-represented when compared to it's leadership. The leadership is over-represented in age range of 51-65.

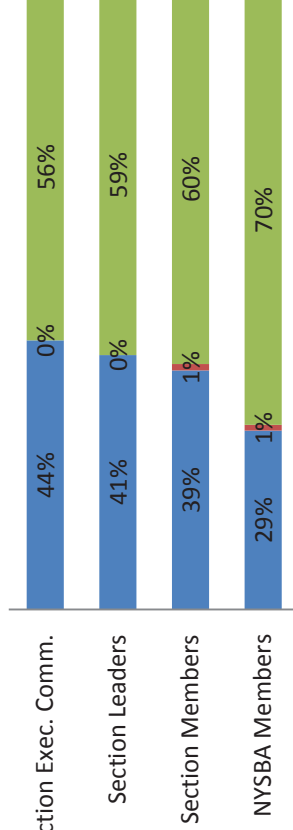
Disability

■ Yes ■ No ■ Unknown



Sexual Orientation

■ Heterosexual ■ LGBT ■ Unknown



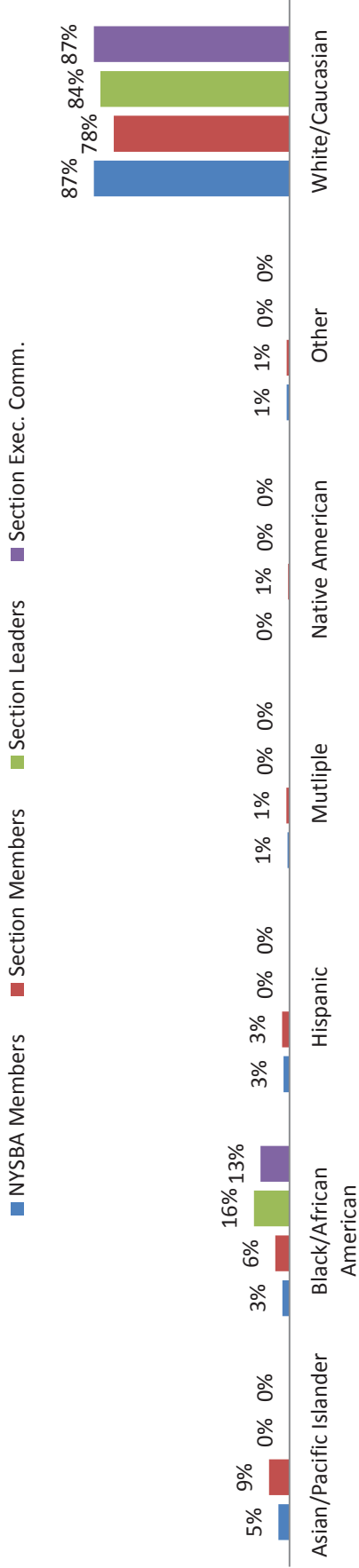
Corporate Counsel Section

NYSBA Members Section Members Section Leaders Section Exec. Comm.



This section has done an excellent job of having a great number of female leaders, however, this division is greater than what we see in the section and NYSBA membership.

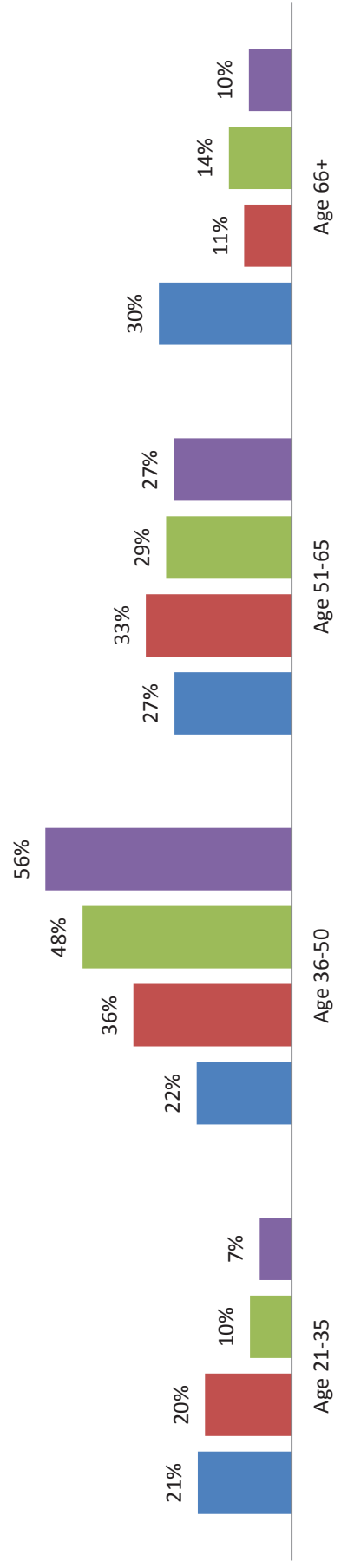
Race/Ethnicity



While the section members show a higher percentage of Asian members, this is not reflected in the leadership. Also, the 16% of Section leaders who are Black/African American amount to three individuals.

Corporate Counsel Section

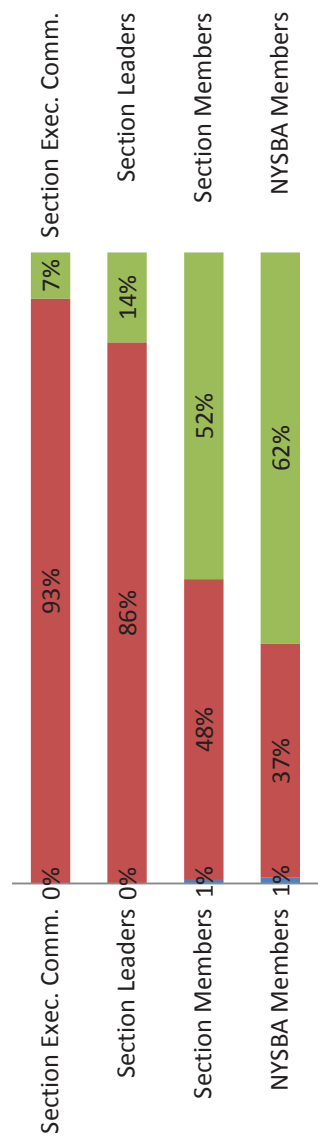
■ NYSBA Members ■ Section Members ■ Section Leaders ■ Section Exec. Comm.



The section's leadership (including EC) does not reflect the age range of its members. Also, while 30% of NYSBA members are age 66 and over, only a small percentage of section members and leaders are in that age range. (do they leave the section once they retire but still maintain NYSBA membership w/o CC members? Or is there something else that is happening?)

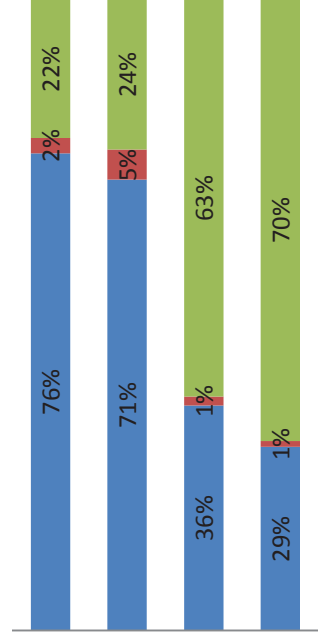
Disability

■ Yes ■ No ■ Unknown



Sexual Orientation

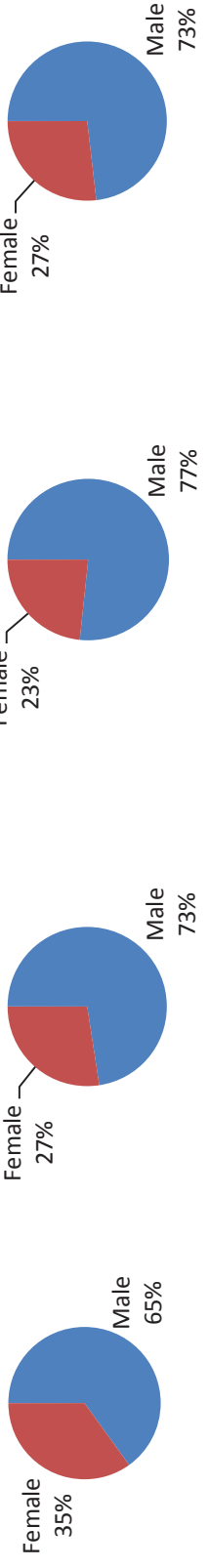
■ Heterosexual ■ LGBT ■ Unknown



The section's leadership & EC has done an excellent job of providing diversity information (second best).

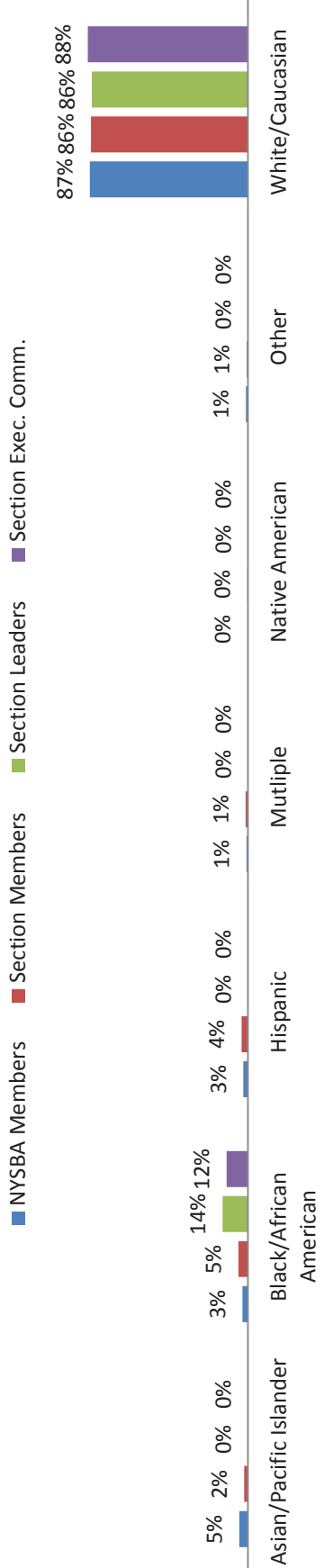
Criminal Justice Section

NYSBA Members Section Members Section Leaders Section Exec. Comm.

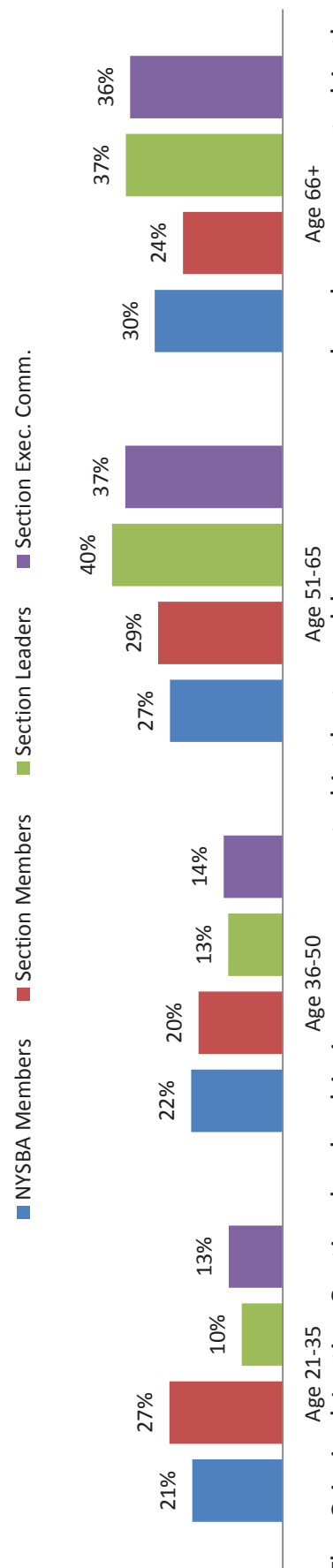


The section has fewer females than the NYSBA population. If there were two more of the existing 64 section leaders were women, that would bring the percent up to 27%, which would be reflective of the section membership.

Race/Ethnicity

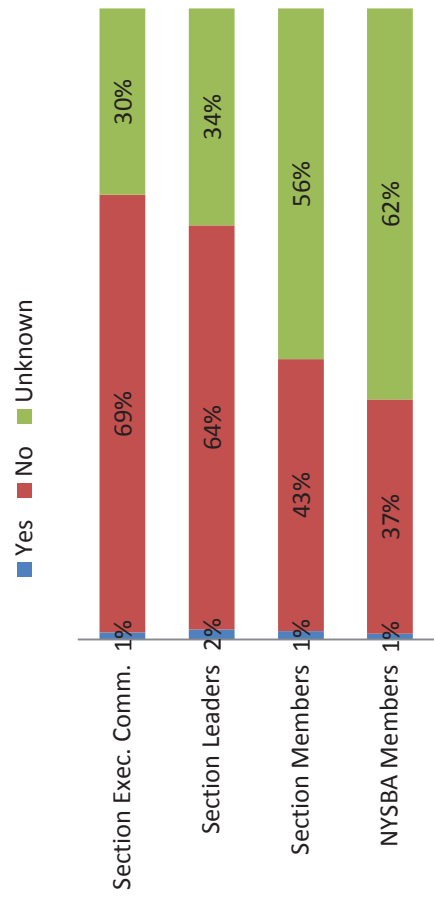


Criminal Justice Section

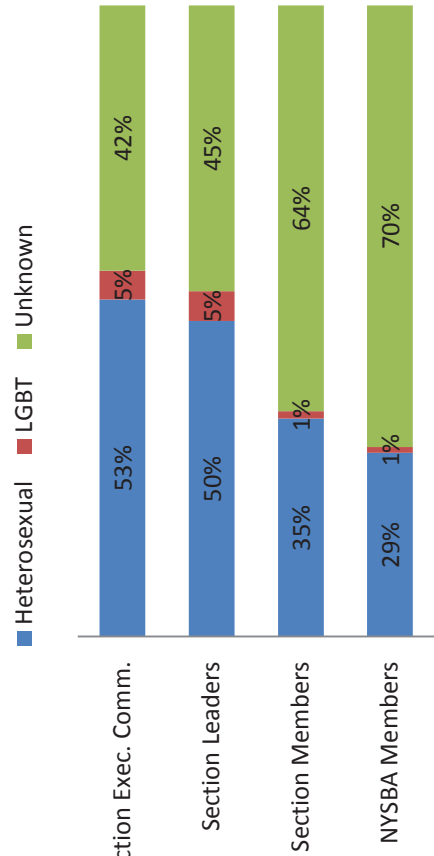


The Criminal Justice Section leadership is over-represented in the two older age groups, and under-represented in the younger age groups in comparison to its' section membership.

Disability

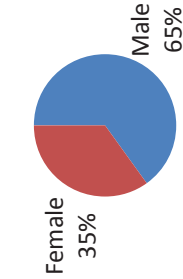


Sexual Orientation

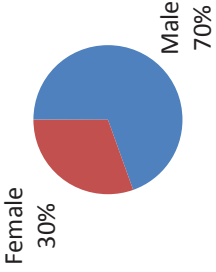


Dispute Resolution Section

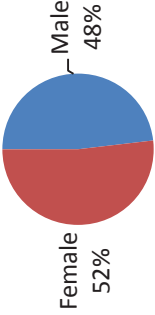
NYSBA Members



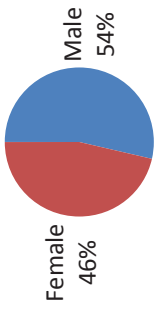
Section Members



Section Leaders



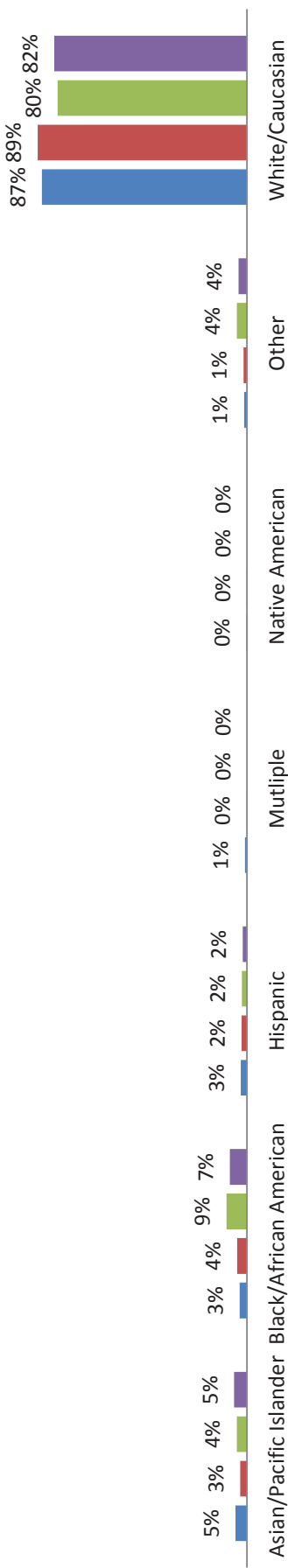
Section Exec. Comm.



The section membership is mostly male (70%), while leadership is closer to being equal. The leadership has 46-52% women.

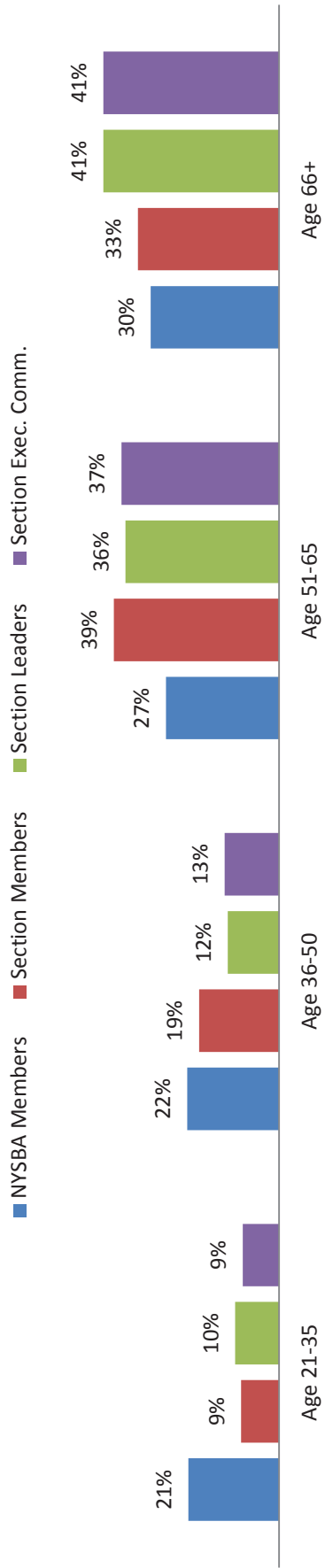
Race/Ethnicity

■ NYSBA Members ■ Section Members ■ Section Leaders ■ Section Exec. Comm.



Section leadership seems more diverse than the section and NYSBA membership.

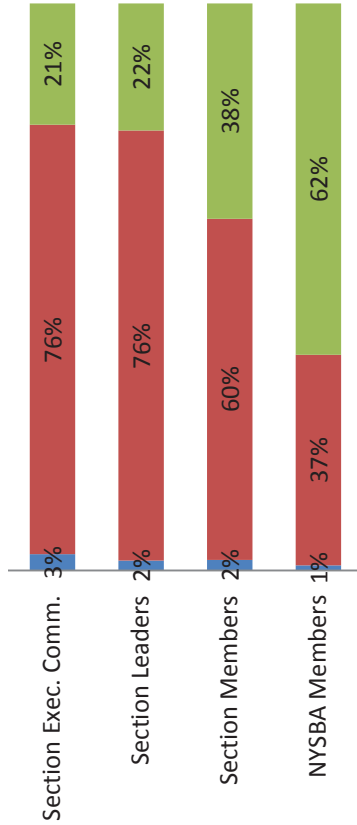
Dispute Resolution Section



The section leadership is somewhat reflective of section membership, however a few less leaders in the age range of 66+ and a few more in the age range of 36-50 would balance the section.

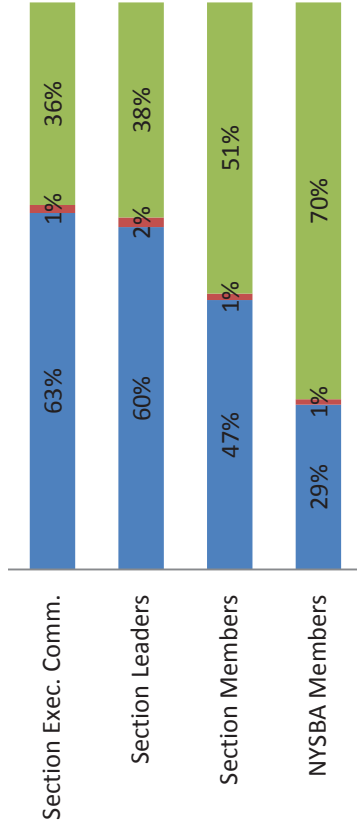
Disability

■ Yes ■ No ■ Unknown



Sexual Orientation

■ Heterosexual ■ LGBT ■ Unknown



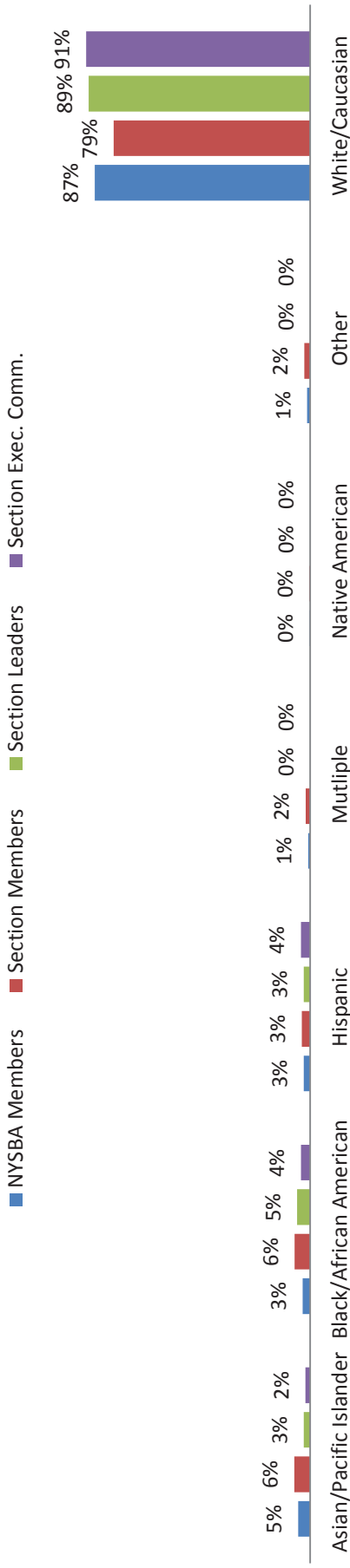
Entertainment, Arts and Sports Law Section

NYSBA Members Section Members Section Leaders Section Exec. Comm.



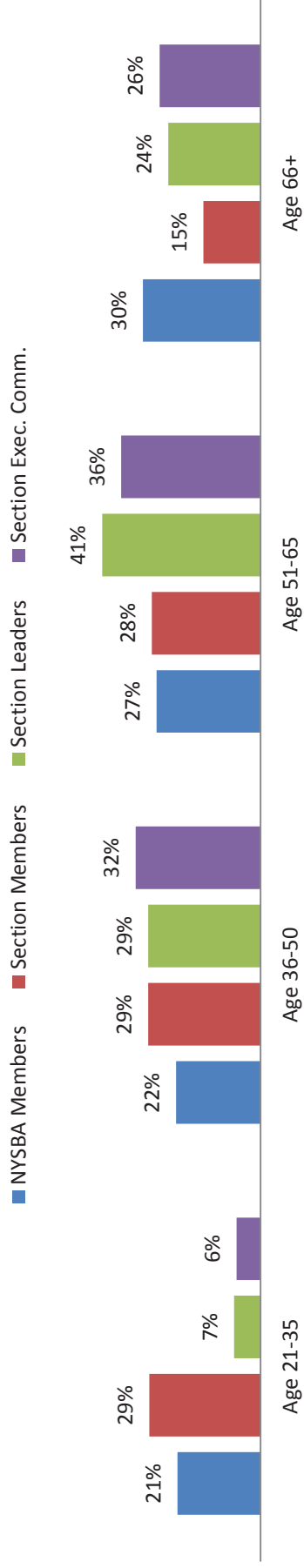
The section and its leaders have more gender diversity than NYSBA membership.

Race/Ethnicity



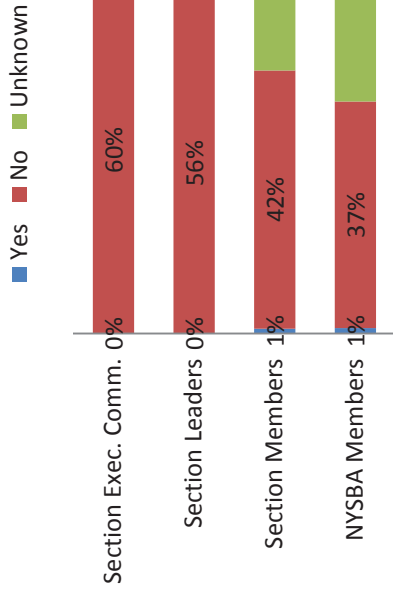
The section members appear more diverse than NYSBA membership, however the section leadership is less ethnically diverse.

Entertainment, Arts and Sports Law Section



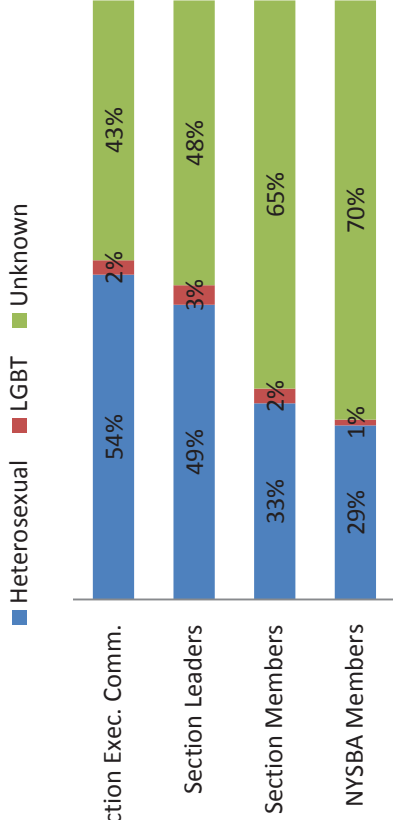
The youngest age group is under-represented by its leadership. Further investigation is recommended since EASL is of high interest to students and young attorneys but may not be reflective of actually practicing in that area of this law.

Disability



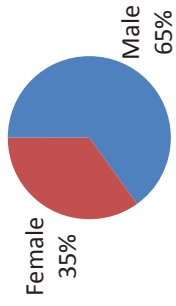
0% disability among section leaders

Sexual Orientation

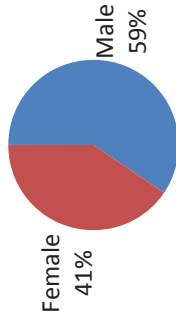


Elder Law and Special Needs Section

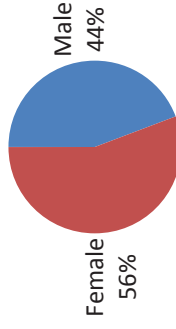
NYSBA Members



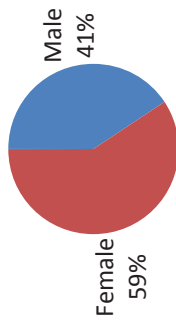
Section Members



Section Leaders



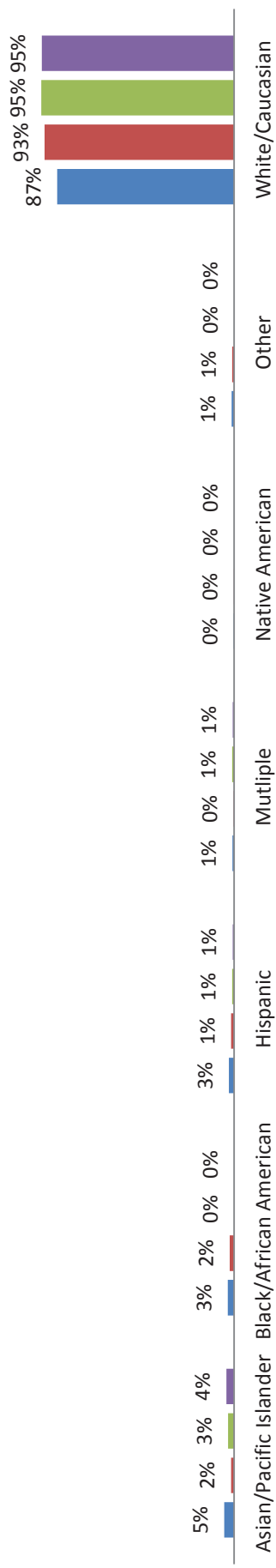
Section Exec. Comm.



Section membership and leadership has a higher ratio of females/males.

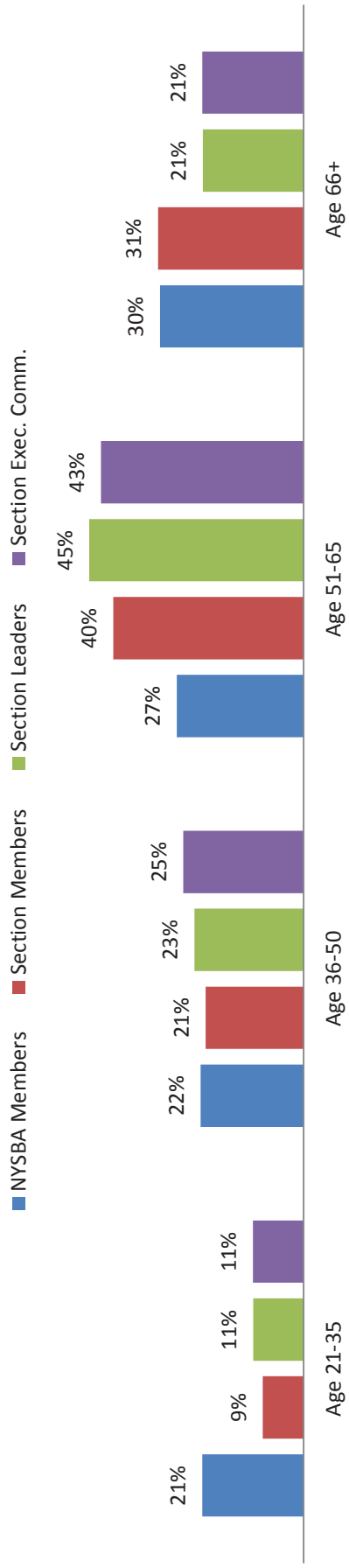
Race/Ethnicity

■ NYSBA Members ■ Section Members ■ Section Leaders ■ Section Exec. Comm.



The section and its' leaders are less diverse than NYSBA membership.

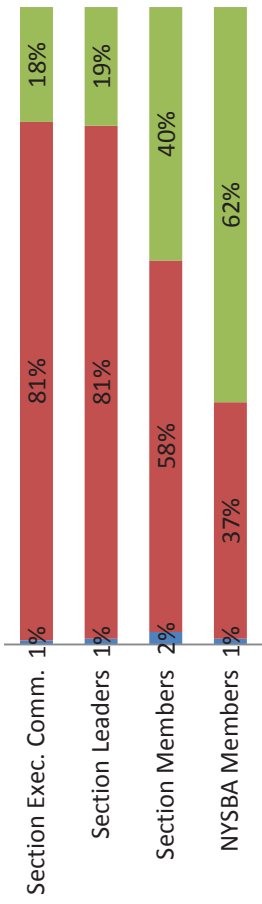
Elder Law and Special Needs Section



There are 12% less young attorneys in this section. Older attorneys (ages 66+) are not as well represented by the section leadership, a 10% difference from section membership.

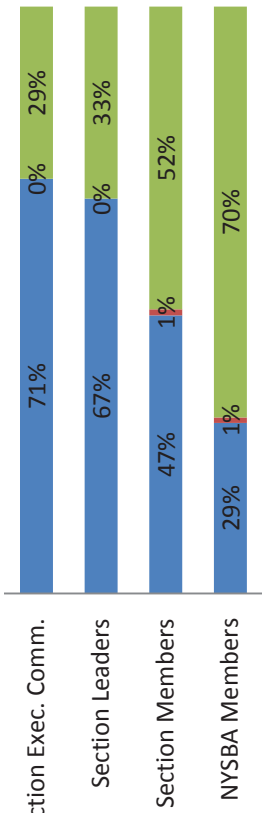
Disability

■ Yes ■ No ■ Unknown



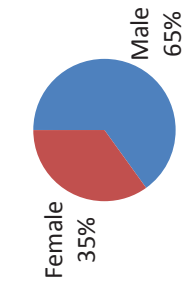
Sexual Orientation

■ Heterosexual ■ LGBT ■ Unknown

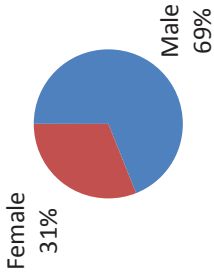


Environmental & Energy Law Section

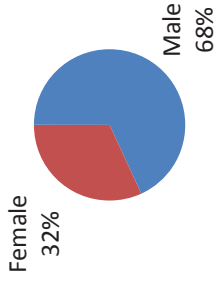
NYSBA Members



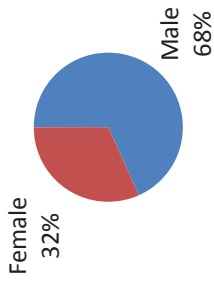
Section Members



Section Leaders

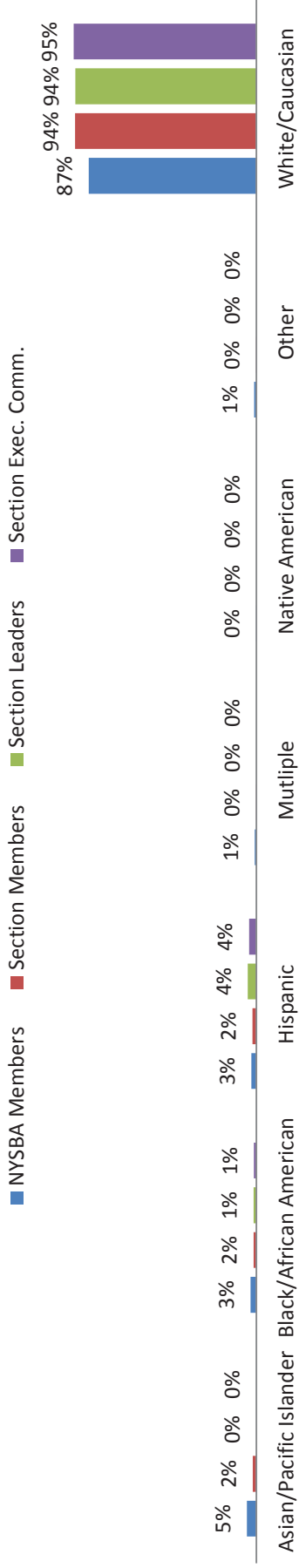


Section Exec. Comm.



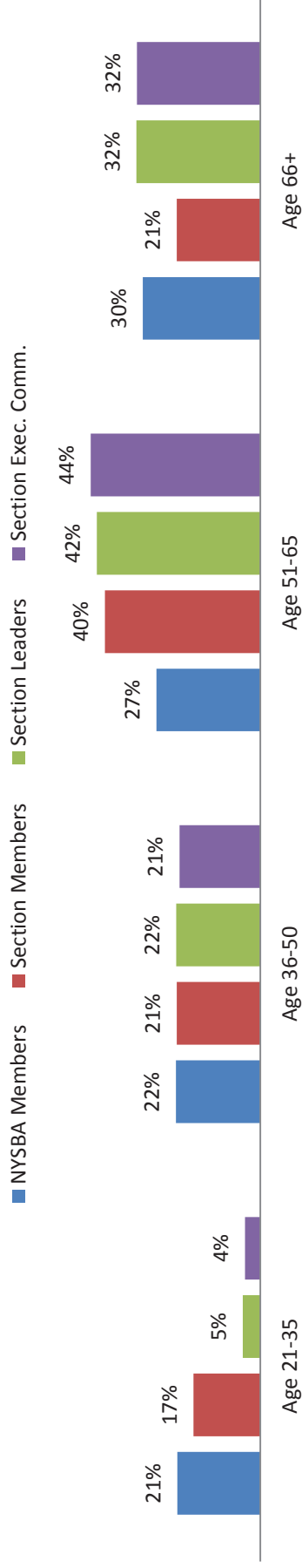
Compared to NYSBA membership, gender diversity is slightly less among section members and leaders.

Race/Ethnicity



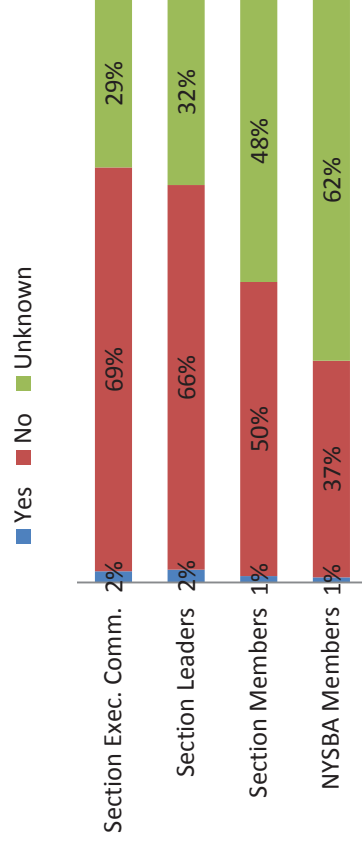
Ethnic diversity is lower than NYSBA membership, among section members and leadership.

Environmental & Energy Law Section

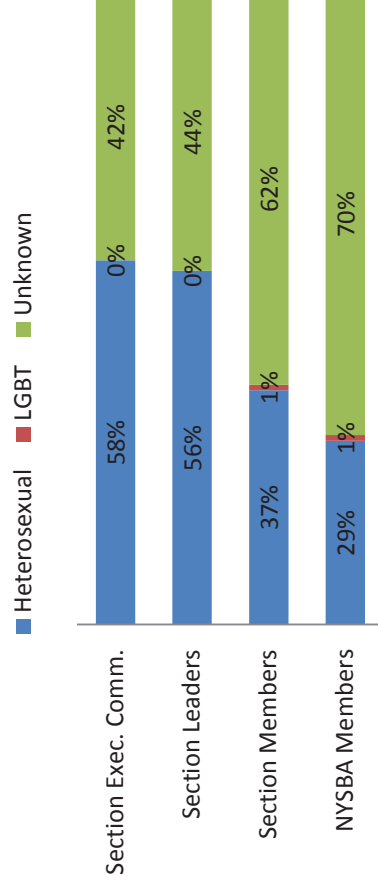


The middle two age ranges represent the section membership well. However, the youngest and oldest age ranges do not reflect the section membership.

Disability

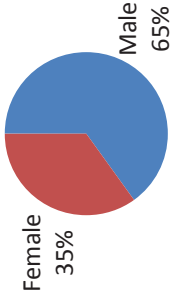


Sexual Orientation

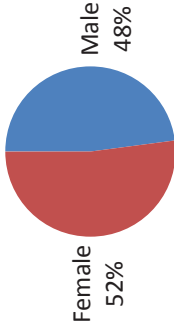


Family Law Section

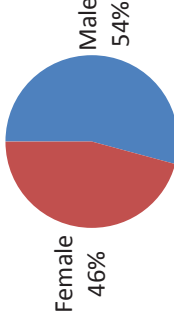
NYSBA Members



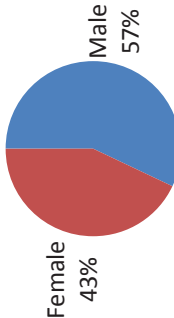
Section Members



Section Leaders



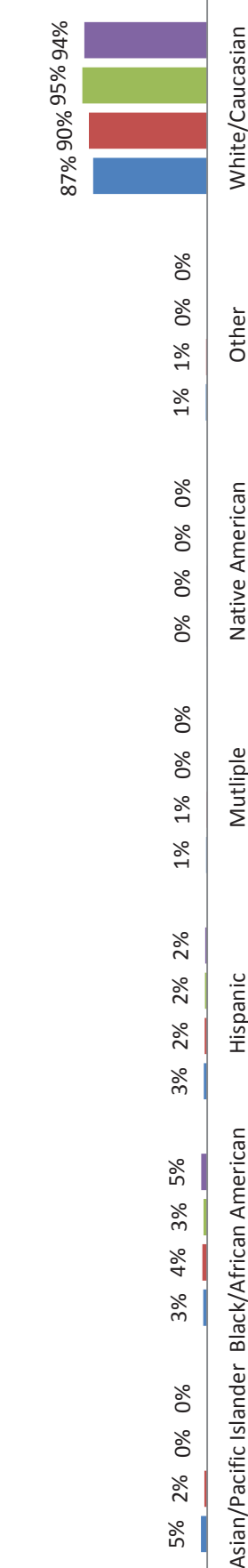
Section Exec. Comm.



While section members have great female/male diversity, the section leadership has a lower rate of diversity by 6% or more.

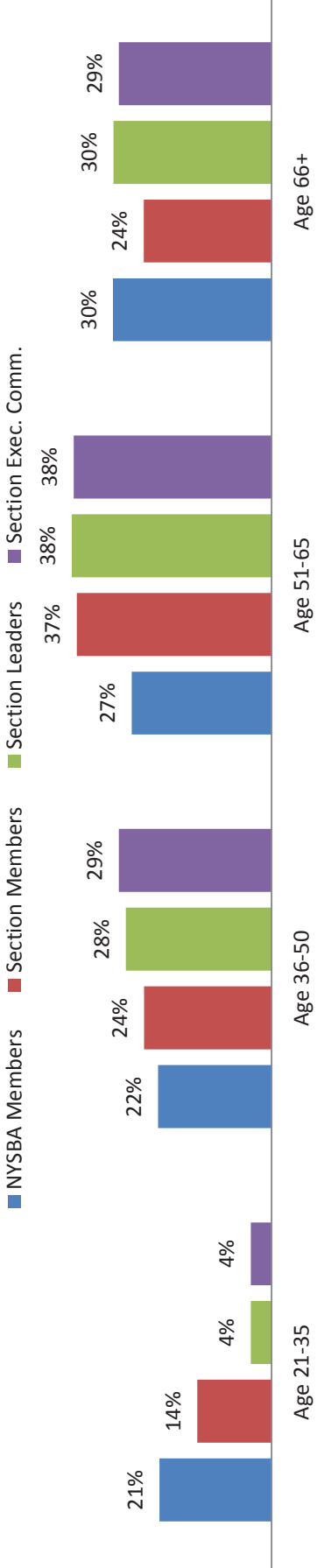
Race/Ethnicity

■ NYSBA Members ■ Section Members ■ Section Leaders ■ Section Exec. Comm.



13% of NYSBA members, 10% of section members and 5-6% of section leaders have an ethnicity other than White/Caucasian.

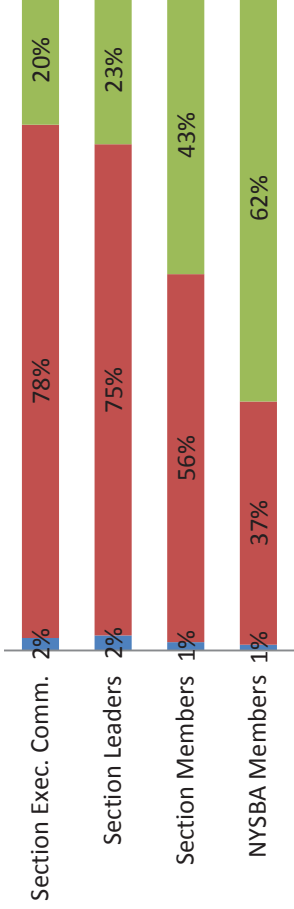
Family Law Section



Section members ages 21-35 are not well represented by section leadership (difference of 10%).

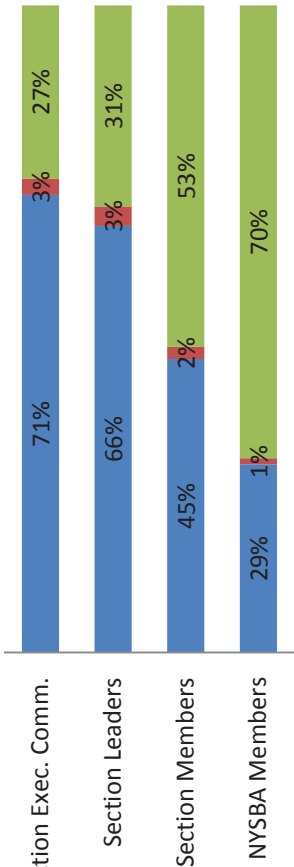
Disability

■ Yes ■ No ■ Unknown



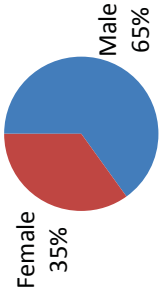
Sexual Orientation

■ Heterosexual ■ LGBT ■ Unknown

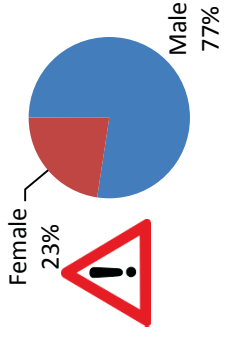


Commercial and Federal Litigation Section

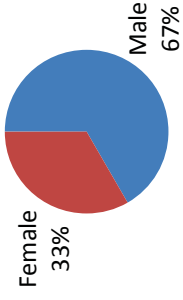
NYSBA Members



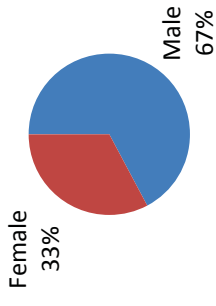
Section Members



Section Leaders

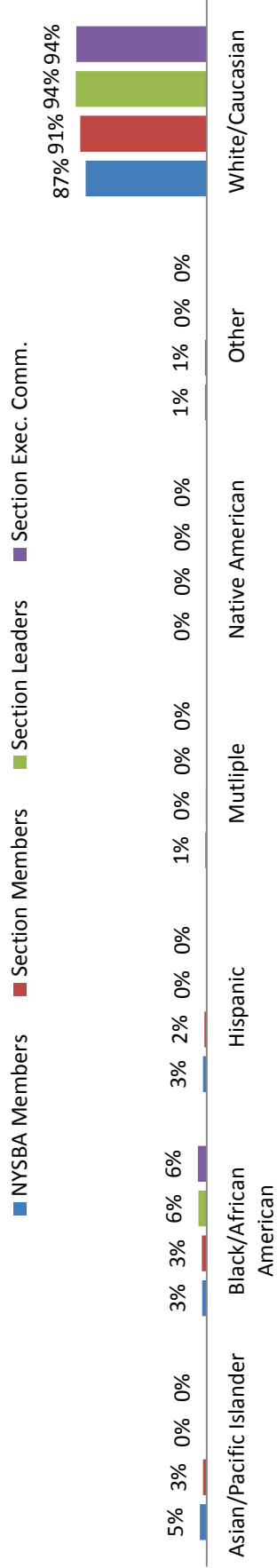


Section Exec. Comm.



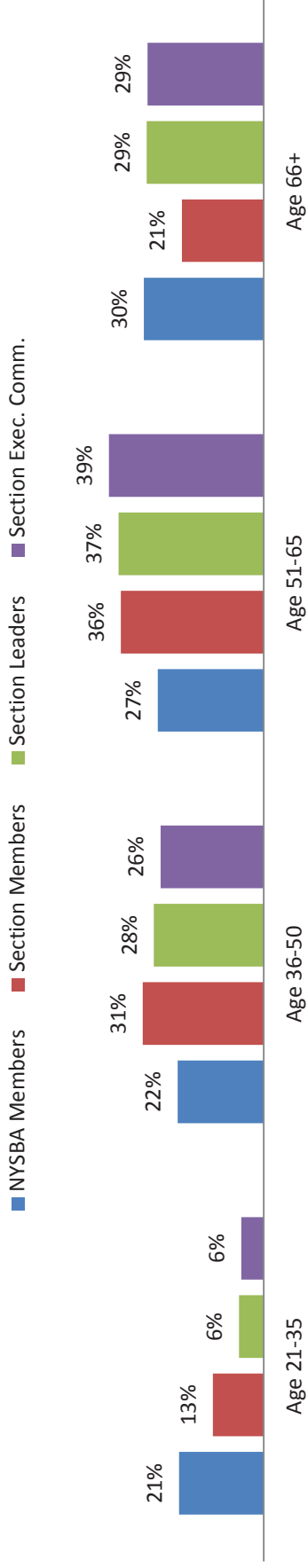
Section membership has 12% fewer females than NYSBA, but section leadership has a fair spread of female to male.

Race/Ethnicity



Ethnic diversity among section members and leadership is lower than NYSBA's average.

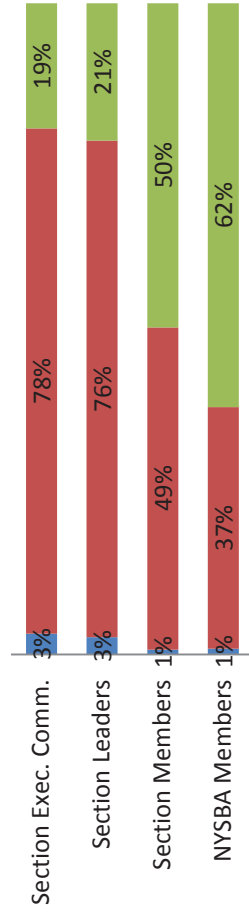
Commercial and Federal Litigation Section



A few more leaders in the younger two age ranges would make section leadership more reflective of its members.

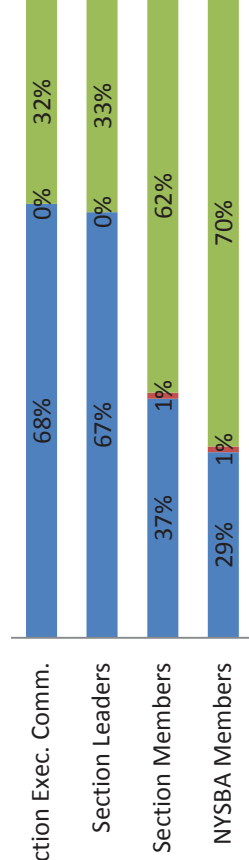
Disability

■ Yes ■ No ■ Unknown



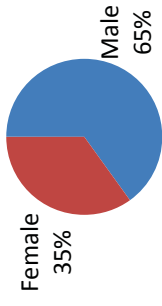
Sexual Orientation

■ Heterosexual ■ LGBT ■ Unknown

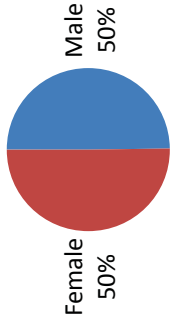


Food, Drug & Cosmetic Law Section

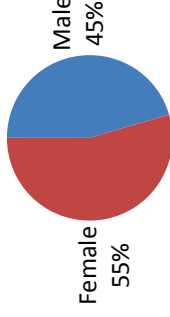
NYSBA Members



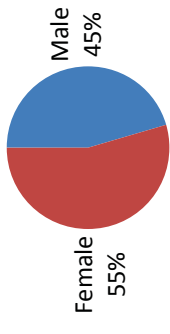
Section Members



Section Leaders



Section Exec. Comm.



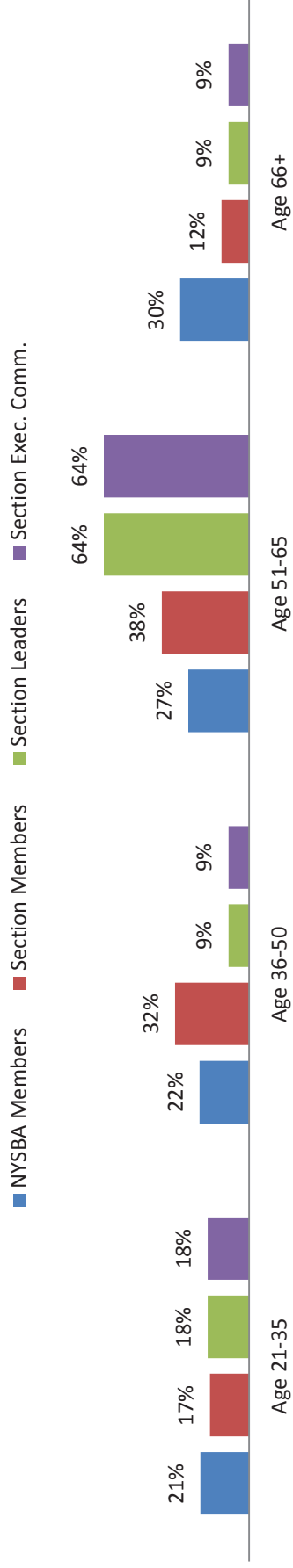
Section members are 50% female / 50% male.

Race/Ethnicity



The ethnic diversity of the section members is better than NYSBA's average however, 100% of section leaders are White/Caucasian.

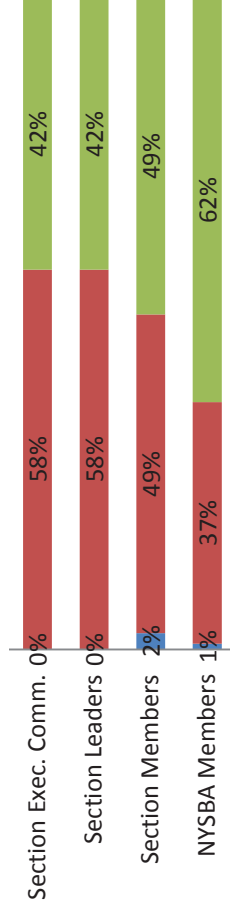
Food, Drug & Cosmetic Law Section



32% of section members are ages 36-50, but leadership is only 9%. Also, 38% of section membership are ages 51-65 and leadership is 64%.

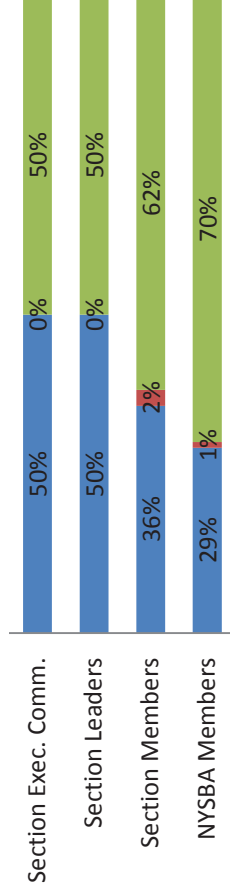
Disability

■ Yes ■ No ■ Unknown

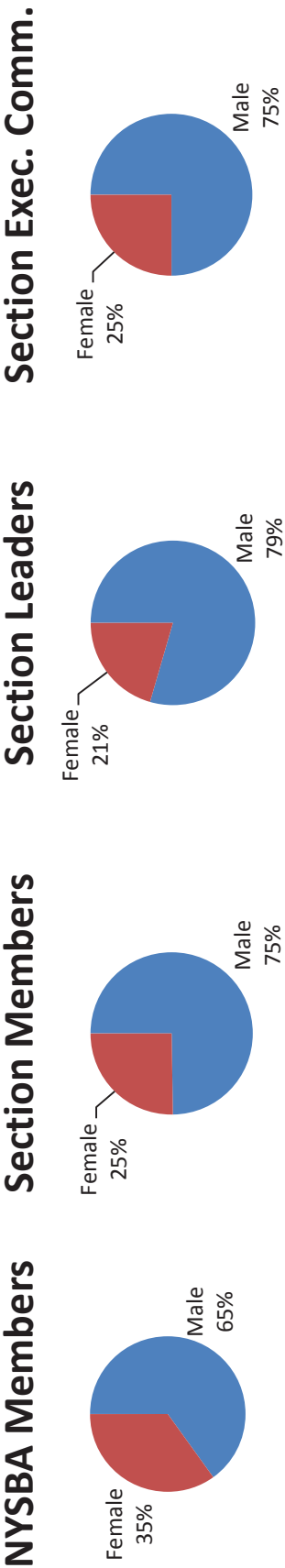


Sexual Orientation

■ Heterosexual ■ LGBT ■ Unknown

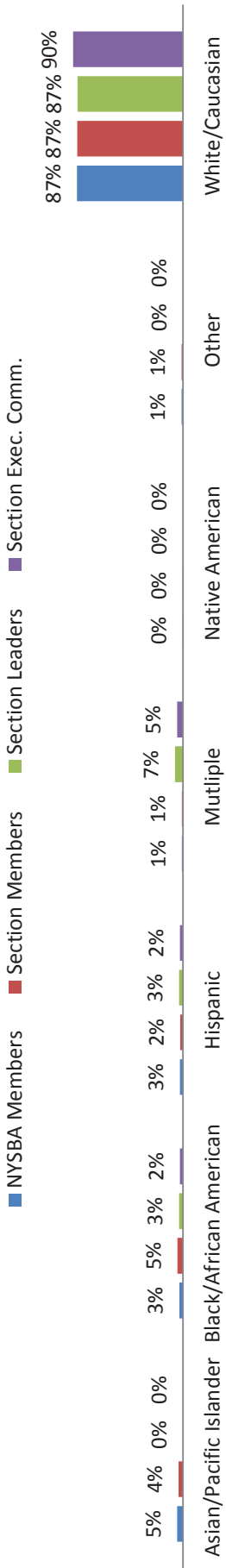


General Practice Section

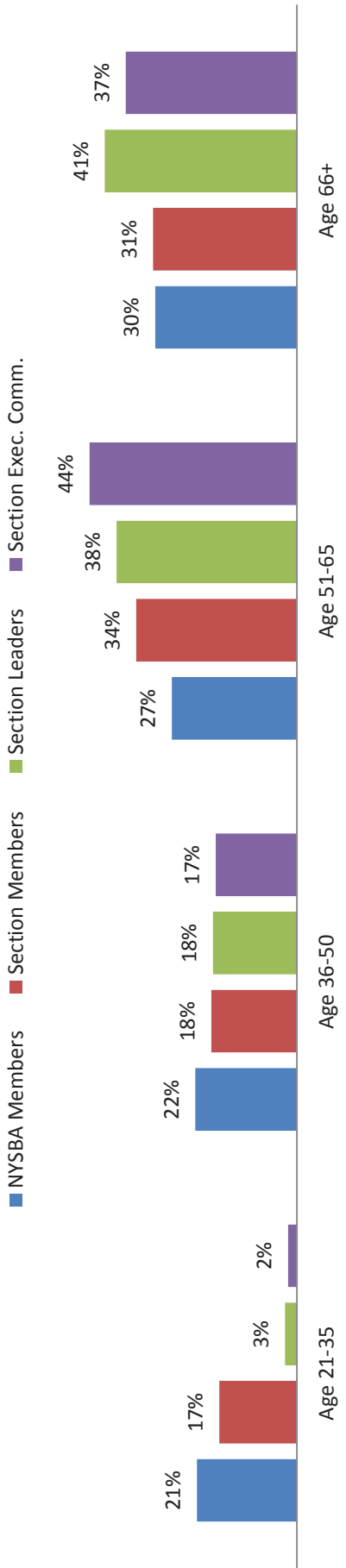


The female/male ratio of section members and leaders is lower than NYSBA's.

Race/Ethnicity

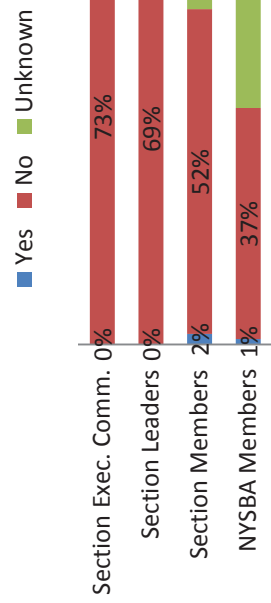


General Practice Section

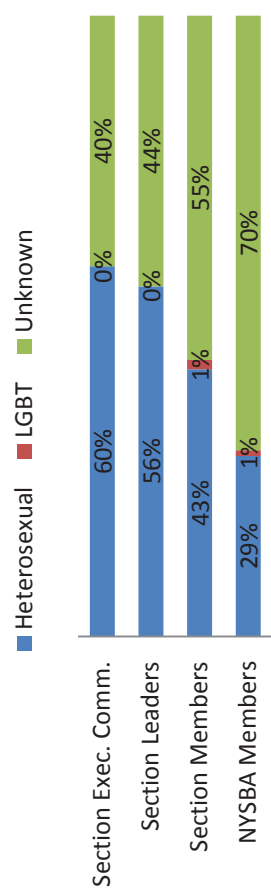


There are fewer leaders in the age range of 21-35 and a surplus of leaders in the age ranges of 51 and above.

Disability

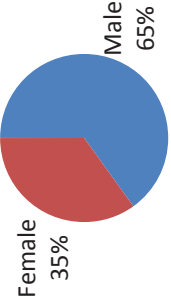


Sexual Orientation

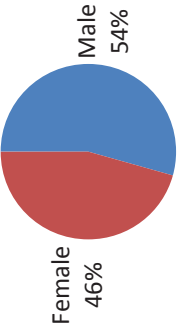


Health Law Section

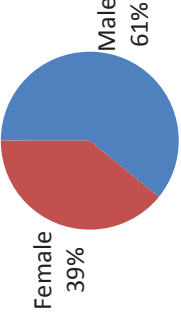
NYSBA Members



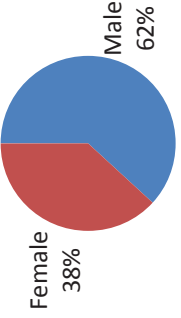
Section Members



Section Leaders

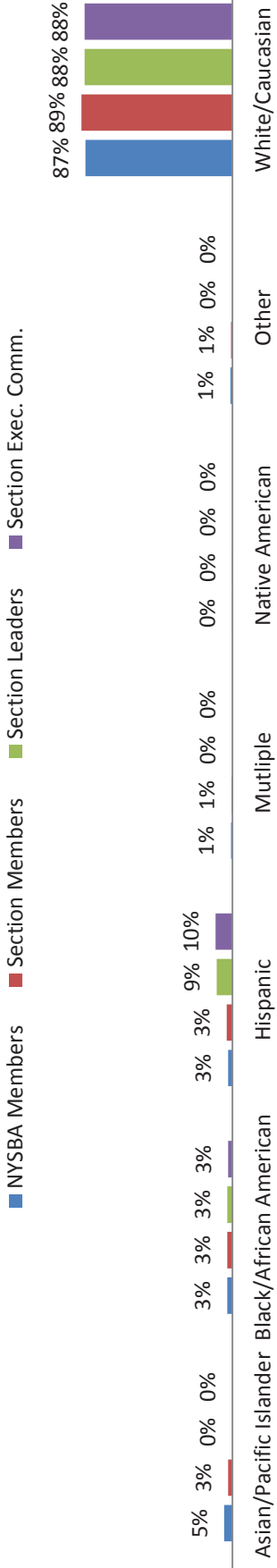


Section Exec. Comm.



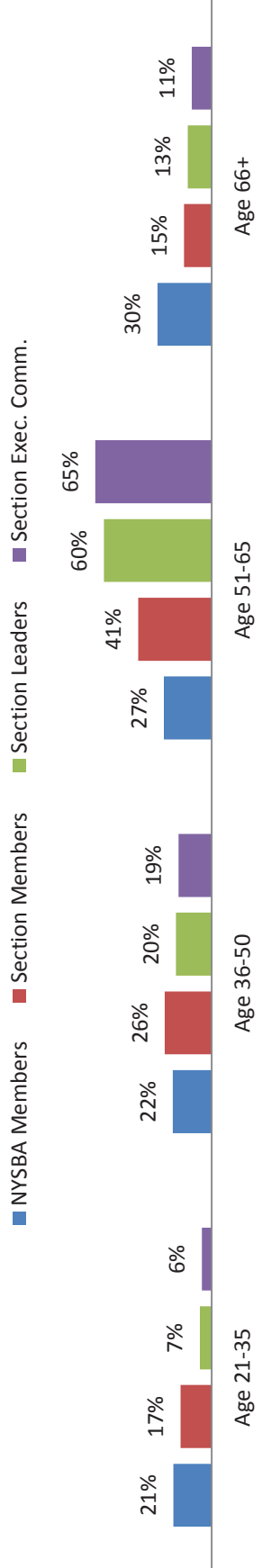
There is a higher percentage of females in this section compared to NYSBA membership, however, the section leaders percentage of females is 7-8% below section members.

Race/Ethnicity



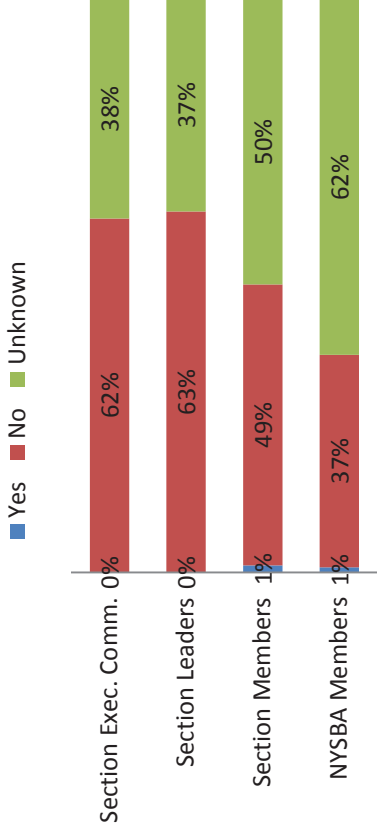
The ethnic diversity of the section groups is close to that of NYSBA membership.

Health Law Section

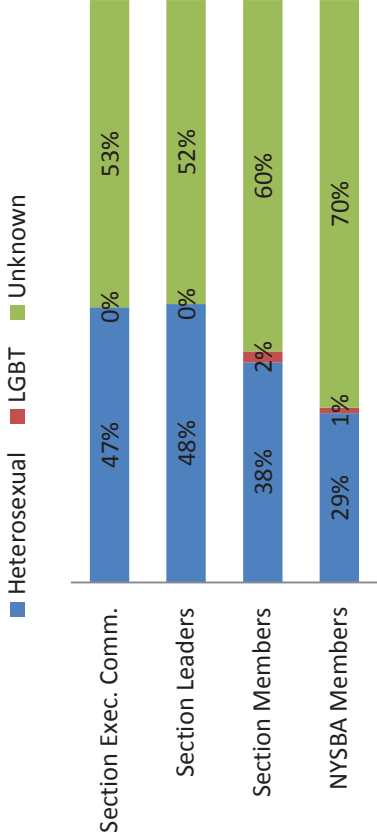


A large majority of the section leaders are in the age range of 51-65.

Disability

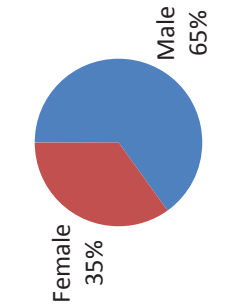


Sexual Orientation

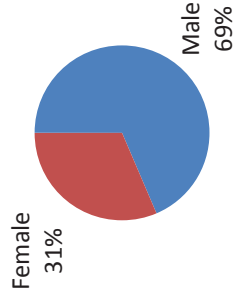


International Section

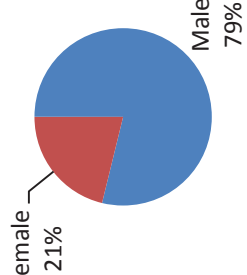
NYSBA Members



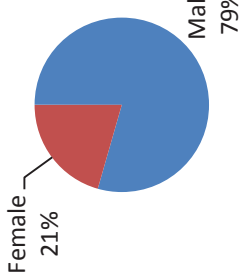
Section Members



Section Leaders



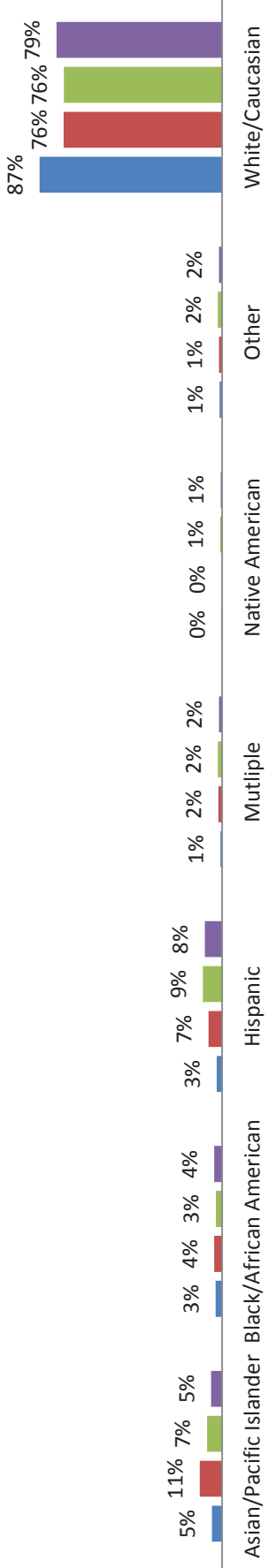
Section Exec. Comm.



The gender diversity of section leadership is 14% below NYSBA membership and 10% below section membership.

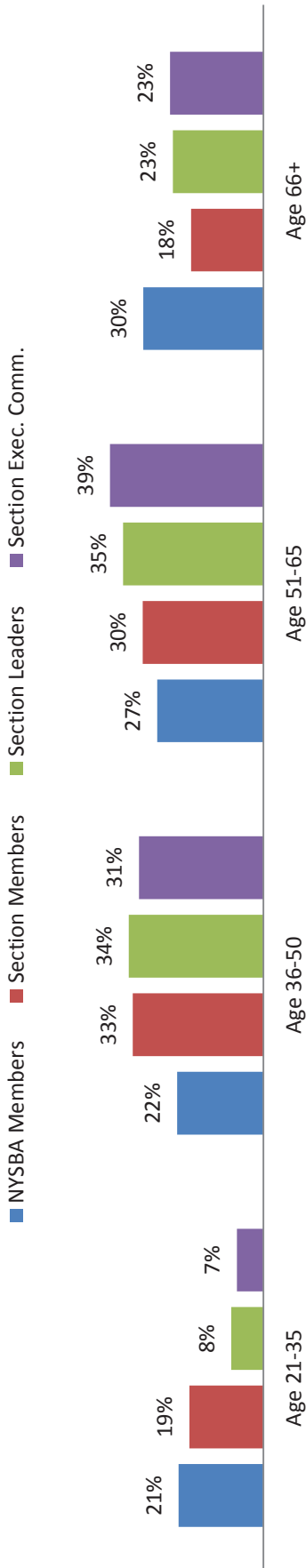
Race/Ethnicity

■ NYSBA Members ■ Section Members ■ Section Leaders ■ Section Exec. Comm.



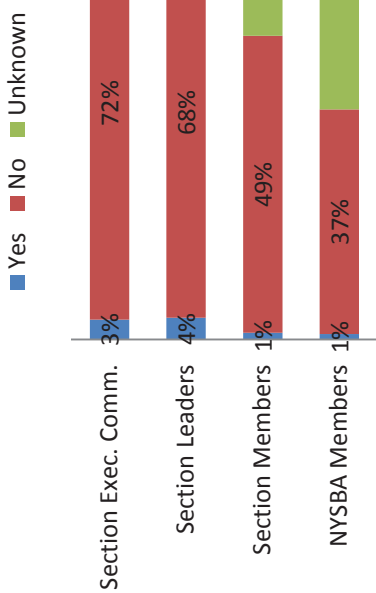
The section and its leadership have more ethnic diversity and NYSBA members.

International Section

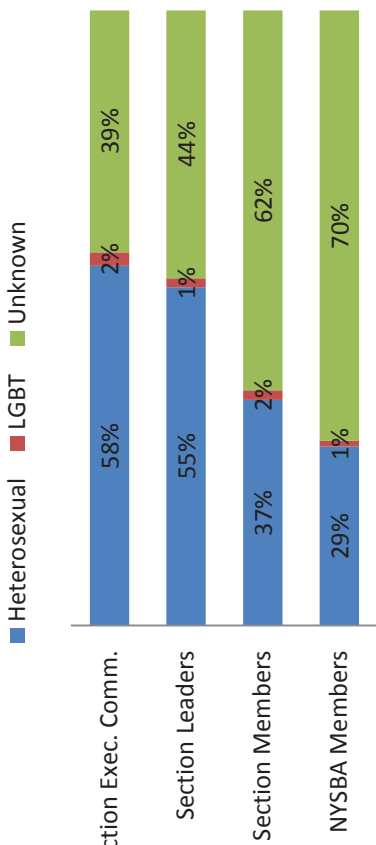


There are very few leaders ages 35 and below, but a modest surplus of leaders 51 and above.

Disability

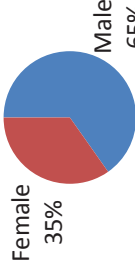
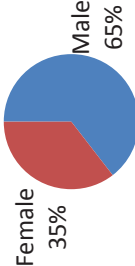
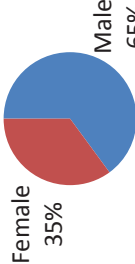
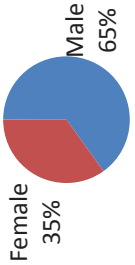


Sexual Orientation



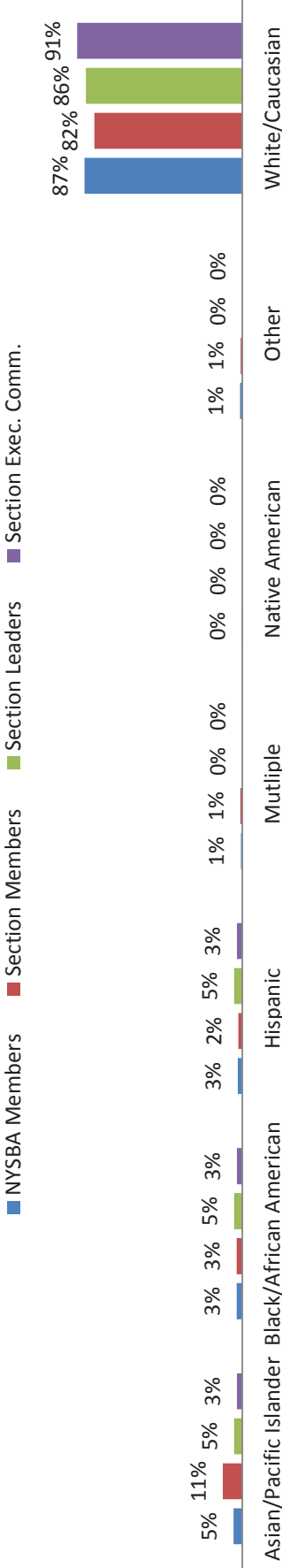
Intellectual Property Law Section

NYSBA Members Section Members Section Leaders Section Exec. Comm.

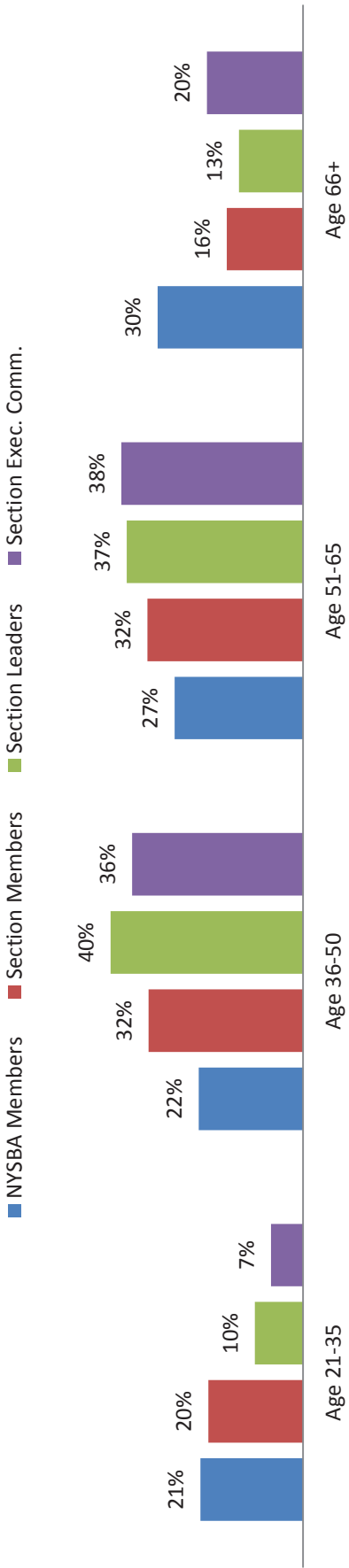


All groups are 35% female / 65% male.

Race/Ethnicity



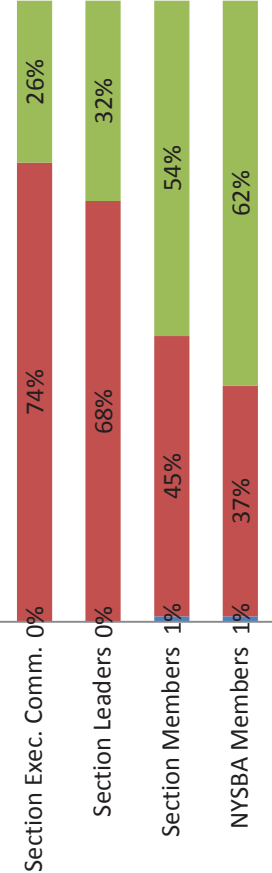
Intellectual Property Law Section



Section leadership for age range 36-50 and 51-65 is slightly higher than the section membership. Section members ages 21-35 are under-represented by their leadership.

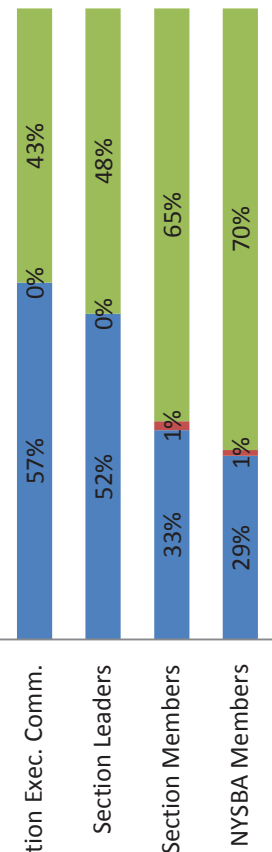
Disability

■ Yes ■ No ■ Unknown



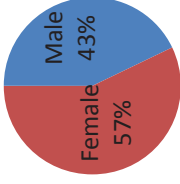
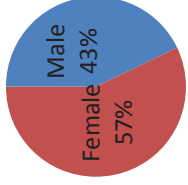
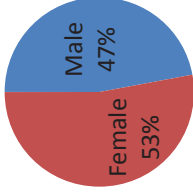
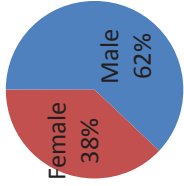
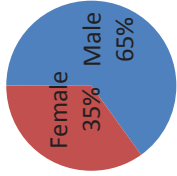
Sexual Orientation

■ Heterosexual ■ LGBT ■ Unknown



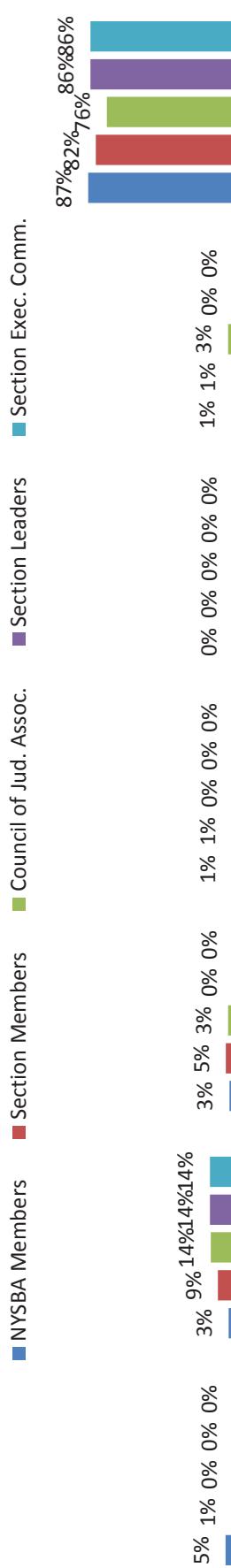
Judicial Section

NYSBA Members **Section Members** **Council of Jud. Assoc.** **Section Leaders** **Section Exec. Comm.**



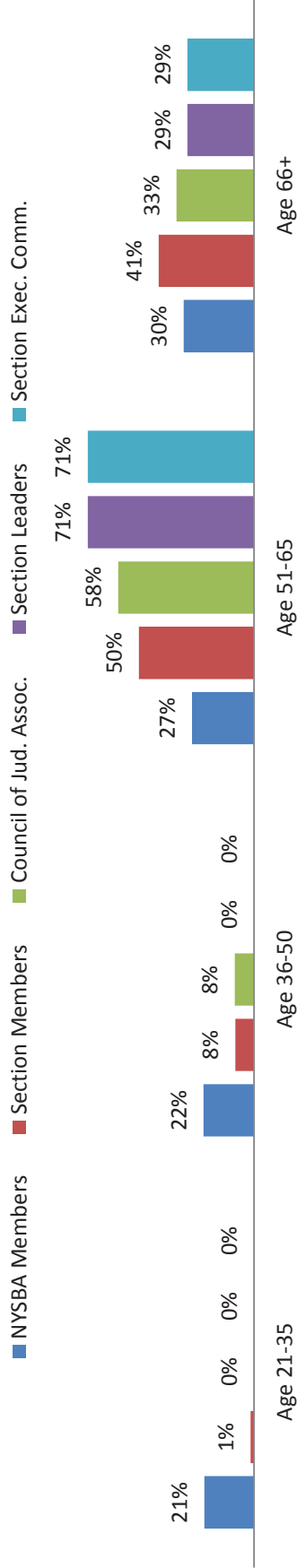
Section Members = 420, Council = 36, Section Leaders & EC = 7
 Female section membership is slightly higher than the NYSBA average. More than half of the judicial section leaders are women.

Race/Ethnicity



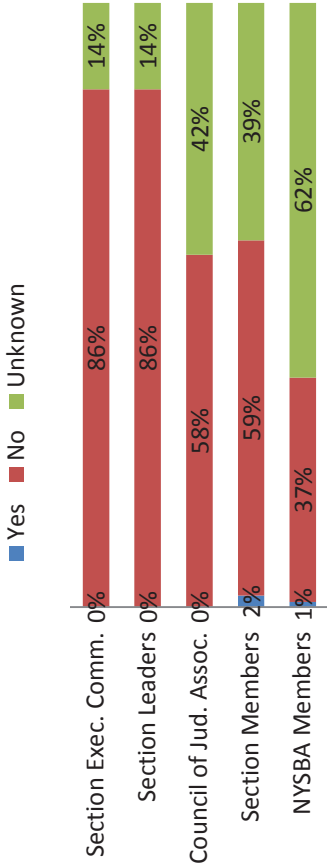
	Asian/Pacific Islander	Black/African American	Hispanic	Multiple	Native American	Other	White/Caucasian	Decline to Answer X (no data)	TOTAL
NYSBA Members	1341	844	714	237	65	336	23837	1304	34695
Section Members	3	28	14	3	1	3	244	15	109
Council of Jud. Assoc.	0	4	1	0	0	1	22	1	7
Section Leaders	0	1	0	0	0	0	6	0	7
Section Exec. Comm.	0	1	0	0	0	0	6	0	7

Judicial Section

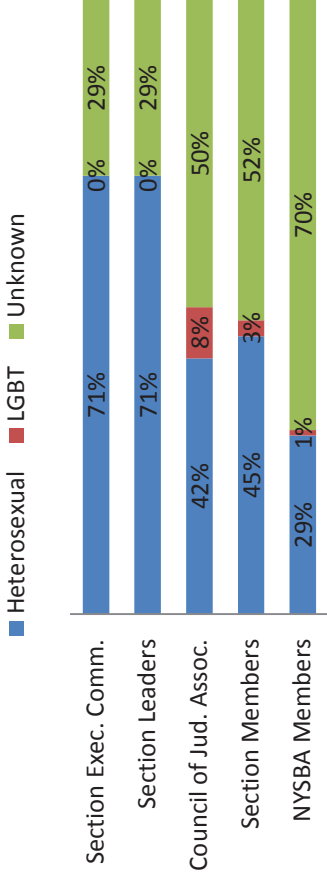


50% of section membership is in the age range of 51-65, however, section leadership for the same age range is 71%. The age range of 66+ is under-represented.

Disability

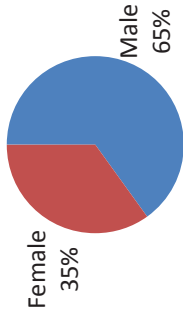


Sexual Orientation

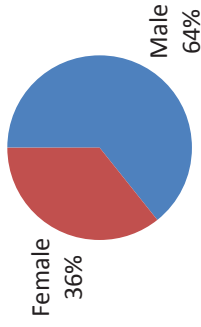


Labor and Employment Law Section

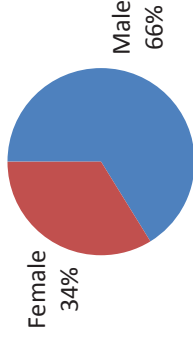
NYSBA Members



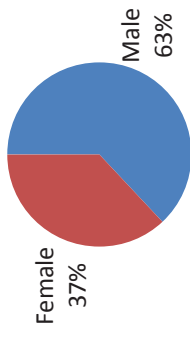
Section Members



Section Leaders



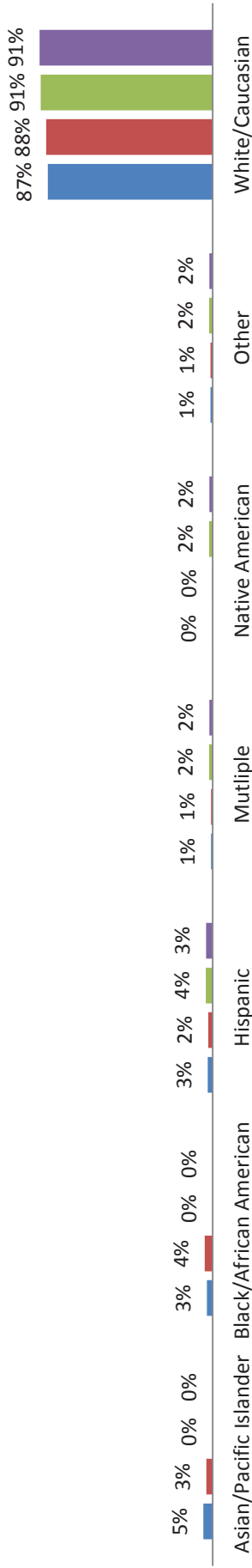
Section Exec. Comm.



Section membership and leadership closely reflect that of NYSBA membership.

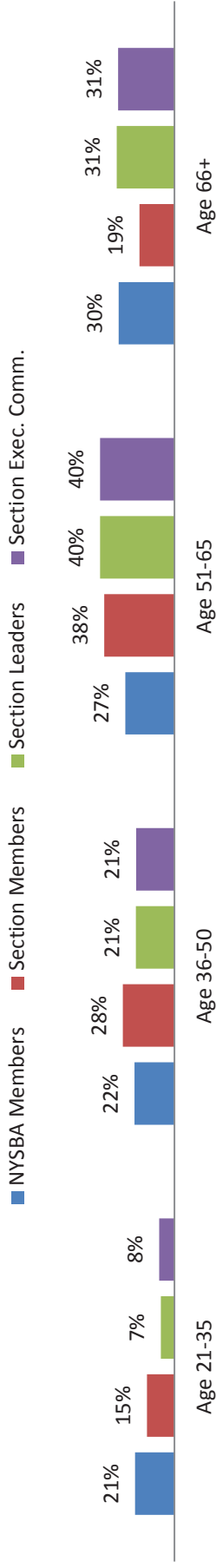
Race/Ethnicity

■ NYSBA Members ■ Section Members ■ Section Leaders ■ Section Exec. Comm.



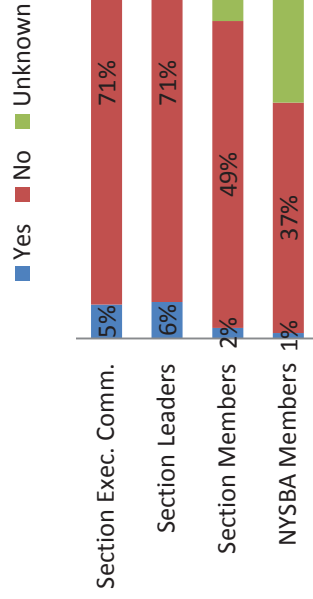
Section membership and leadership has slightly less ethnic diversity than NYSBA membership.

Labor and Employment Law Section

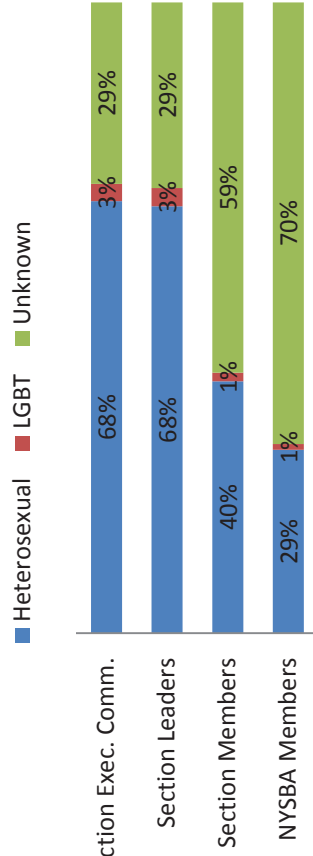


The section membership has a higher concentration of members in the middle two age ranges (36-50 and 51-65) than NYSBA membership. Section leadership is higher for ages 66+ and lower for ages 21-35 than its' section membership.

Disability



Sexual Orientation



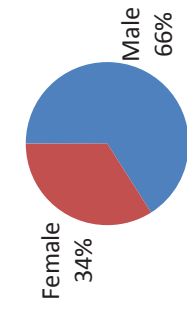
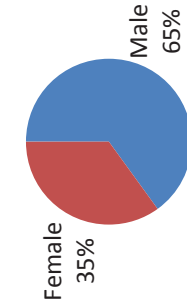
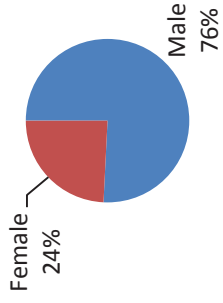
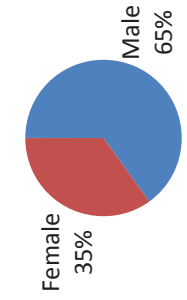
Local and State Government Law Section

NYSBA Members

Section Members

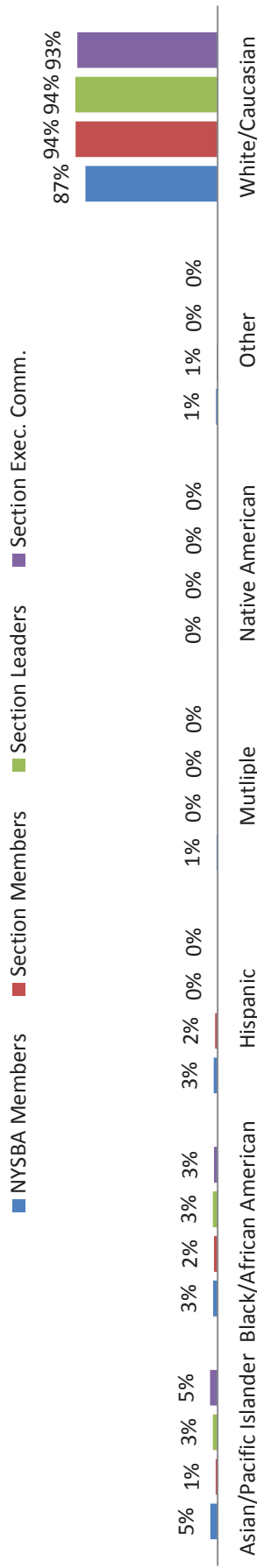
Section Leaders

Section Exec. Comm.



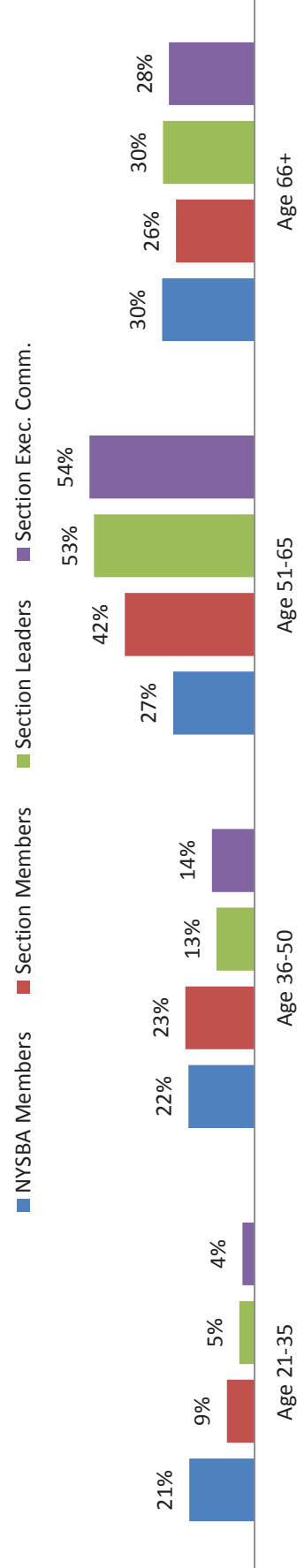
While section membership is 11% lower in females from NYSBA membership. The percentage of females within section leaders closely reflects that of NYSBA membership (35%) rather than the section membership.

Race/Ethnicity



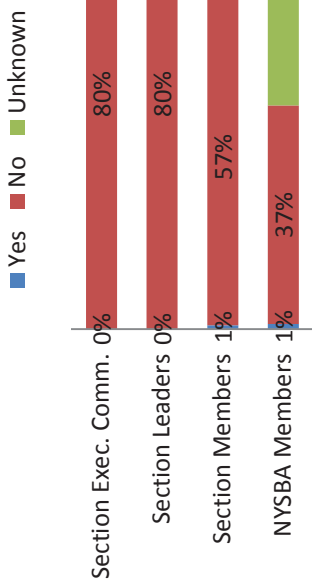
Section members and leaders have less diversity than NYSBA members.

Local and State Government Law Section

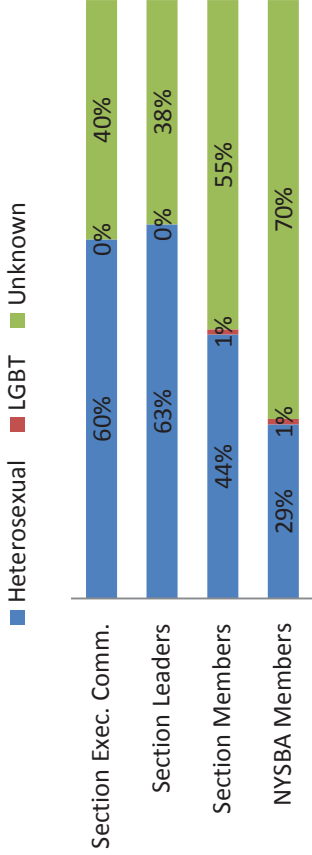


The majority of section leaders are in age range 51-65. Leadership in those 50 or younger is under-representative of section members by 9-10%.

Disability



Sexual Orientation



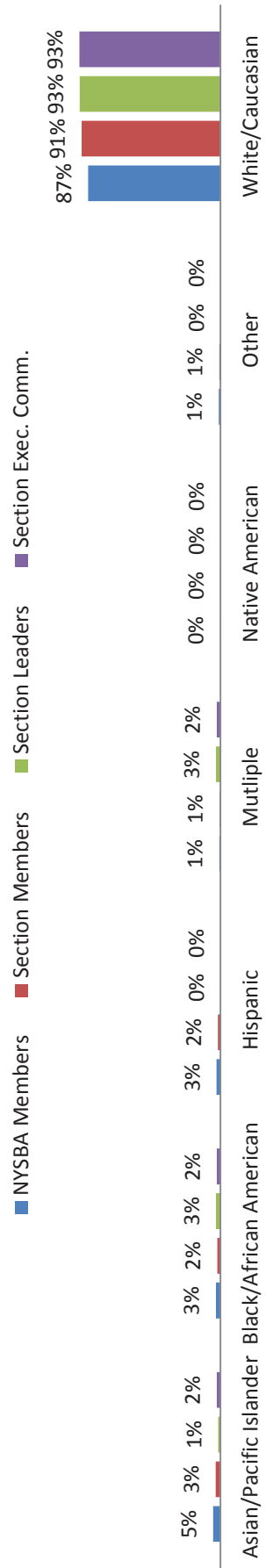
Real Property Law Section

NYSBA Members Section Members Section Leaders Section Exec. Comm.



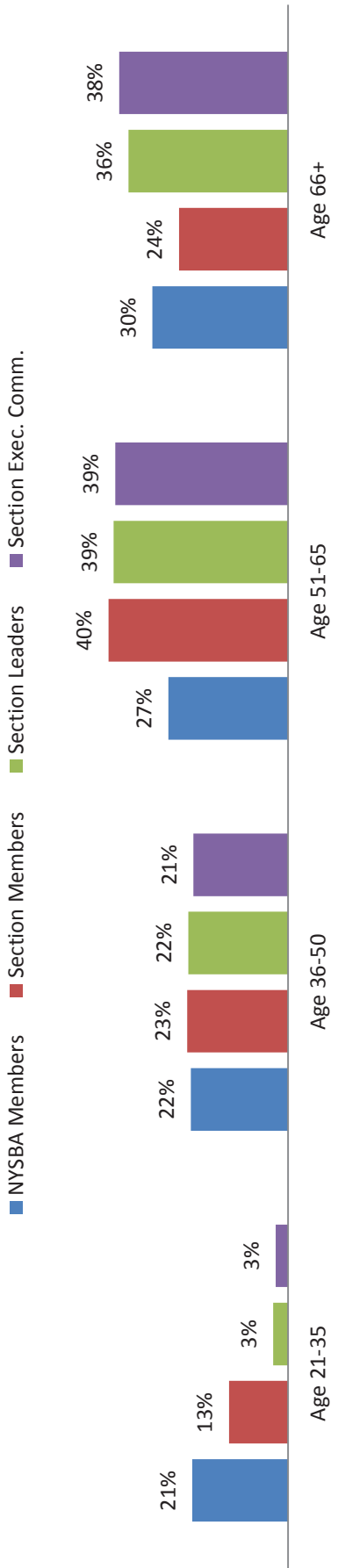
While section leadership reflects section membership, both are approximately 10% below NYSBA's average.

Race/Ethnicity



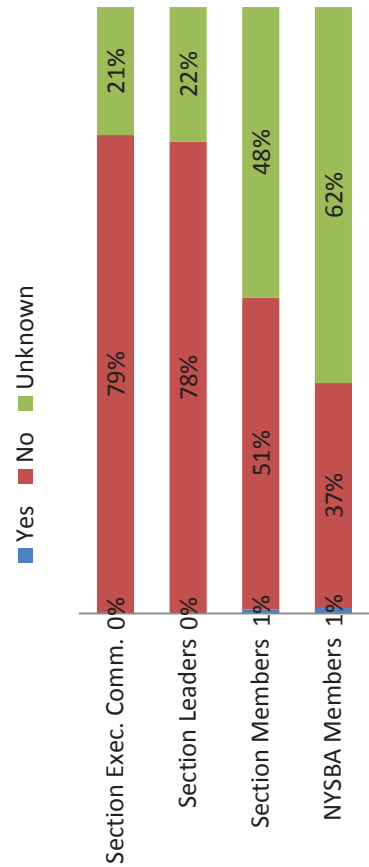
Both the section and its' leadership are less ethnically diverse than NYSBA membership.

Real Property Law Section

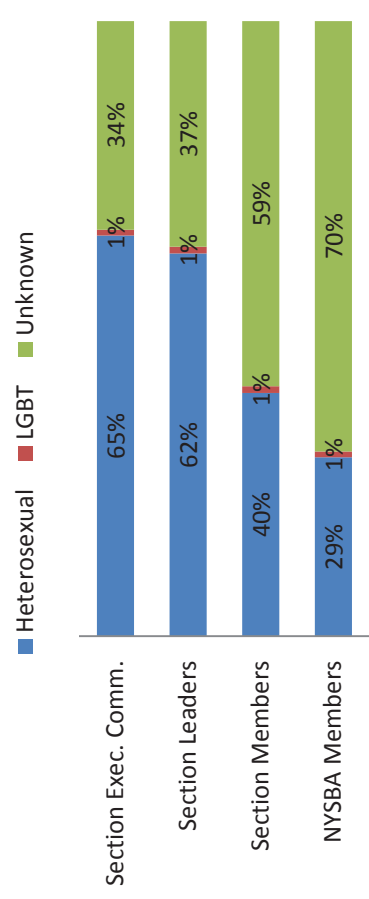


Section members age ranges 36-50 and 51-65 are well represented by section leadership. Section members age 66+ are 24% of the section, but 36-38% of leadership is in this age range, while age range 21-35 is under-represented by 10% less than section members.

Disability

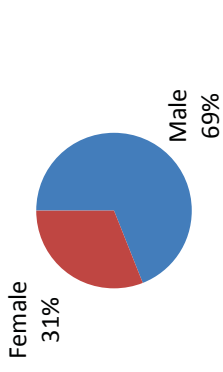
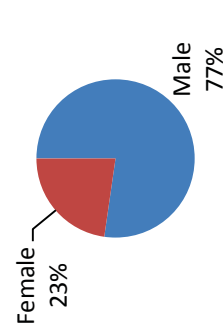
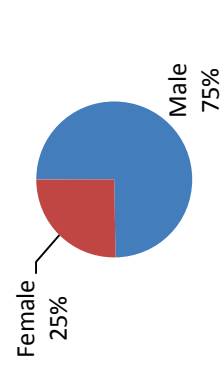
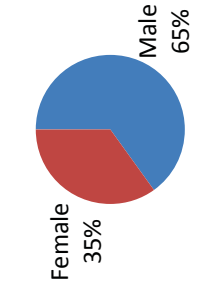


Sexual Orientation



Senior Lawyers Section

NYSBA Members **Section Members** **Section Leaders** **Section Exec. Comm.**



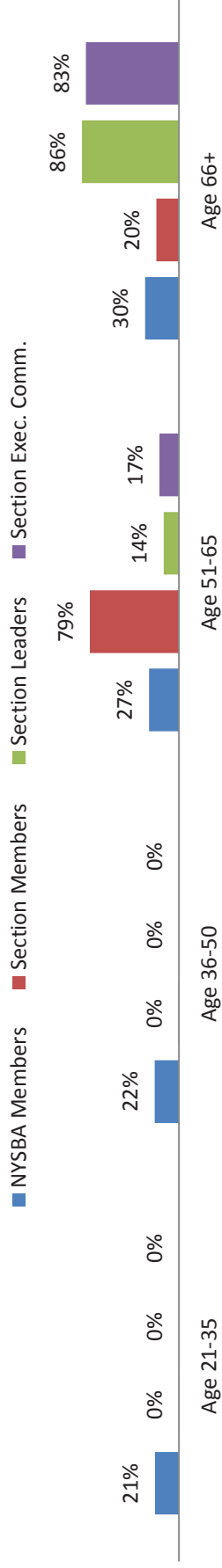
Section membership and leadership has a lower percentage of females than NYSBA. Recommendation: review the retirement rates of female vs. male attorneys. Evidence may suggest that women leave the practice of law before men.

Race/Ethnicity



100% of section leaders are White/Caucasian.

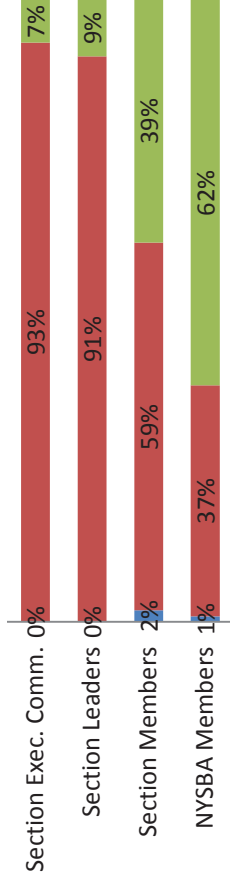
Senior Lawyers Section



79% of the section members are ages 51-65, however, 83-86% of section leaders are in the age range of 66+.

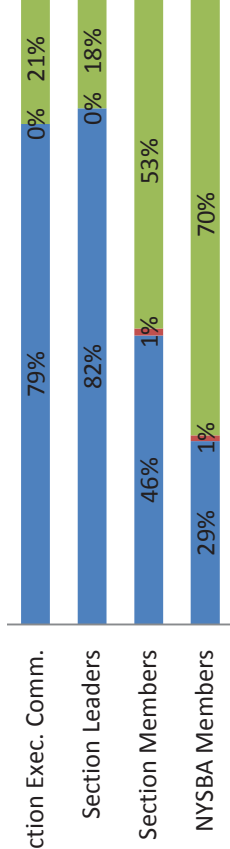
Disability

■ Yes ■ No ■ Unknown



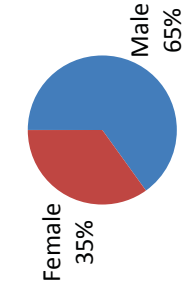
Sexual Orientation

■ Heterosexual ■ LGBT ■ Unknown

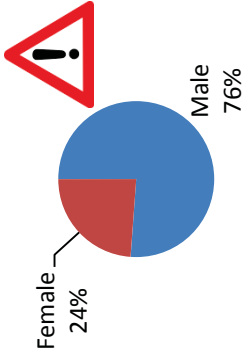


Tax Section

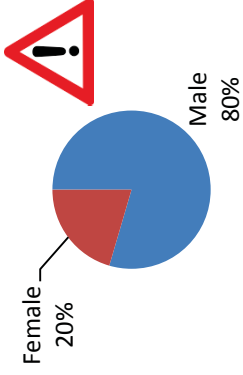
NYSBA Members



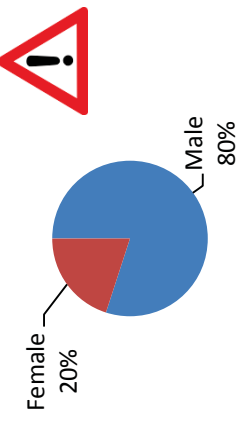
Section Members



Section Leaders

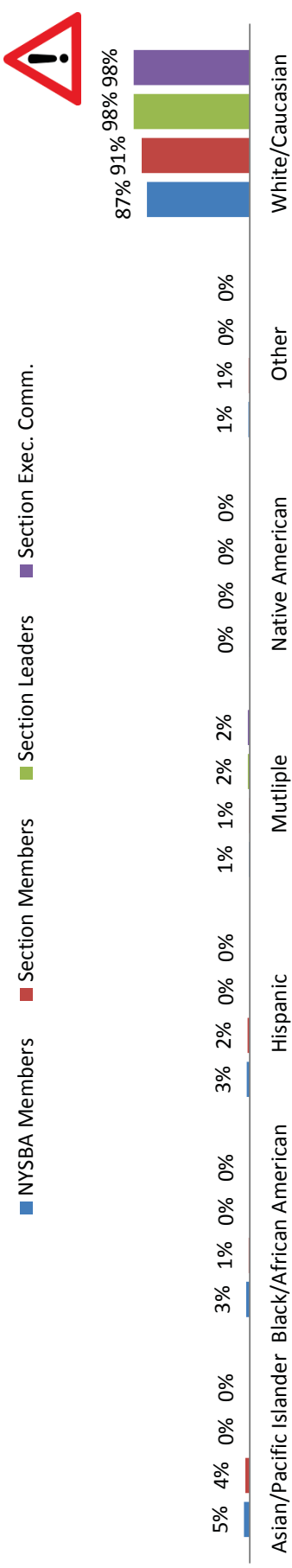


Section Exec. Comm.



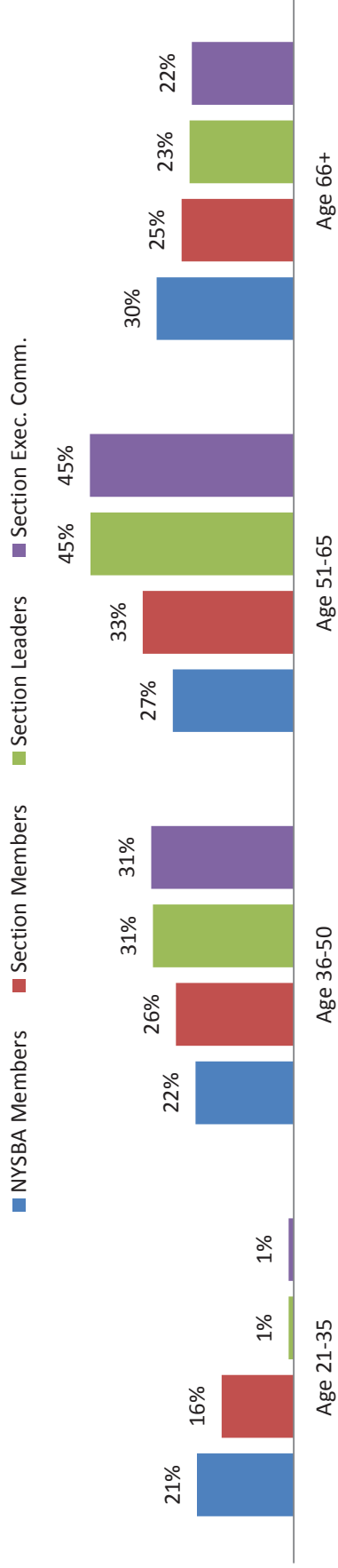
Section members have 11% fewer females than NYSBA's average. Section leaders have 15% fewer females than NYSBA.

Race/Ethnicity



98% of the section's leaders are White/Caucasian.

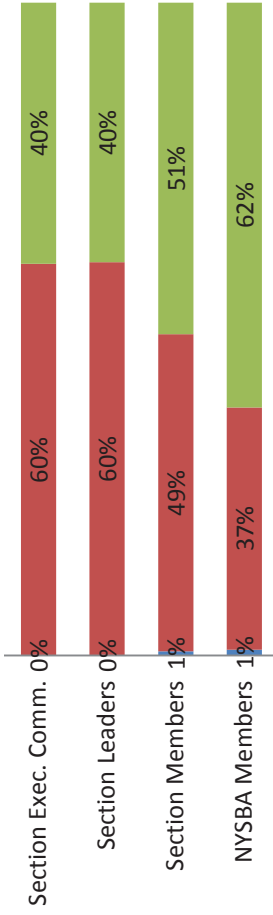
Tax Section



Section leaders in age range 51-65 are 12% above the section members' average. Section members in age range 36-50 and under are under-represented compared to leadership by 15%.

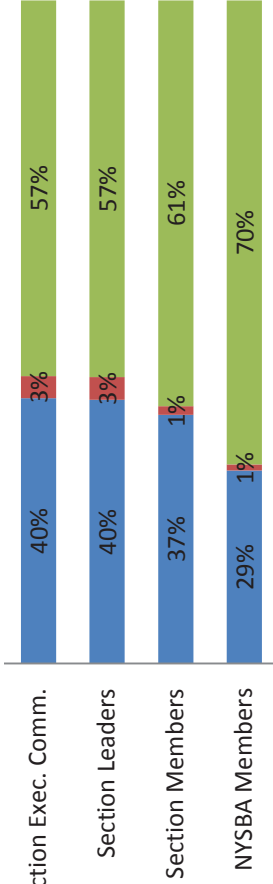
Disability

■ Yes ■ No ■ Unknown



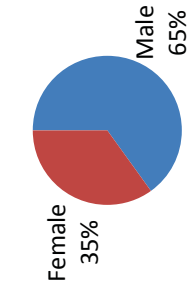
Sexual Orientation

■ Heterosexual ■ LGBT ■ Unknown

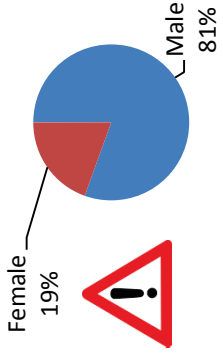


Torts, Insurance and Compensation Law Section

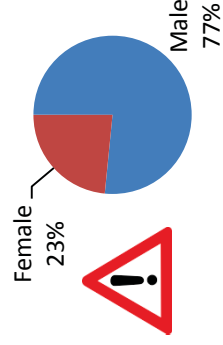
NYSBA Members



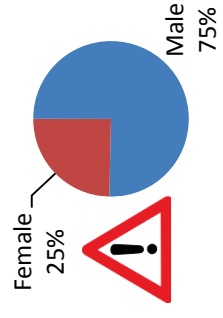
Section Members



Section Leaders

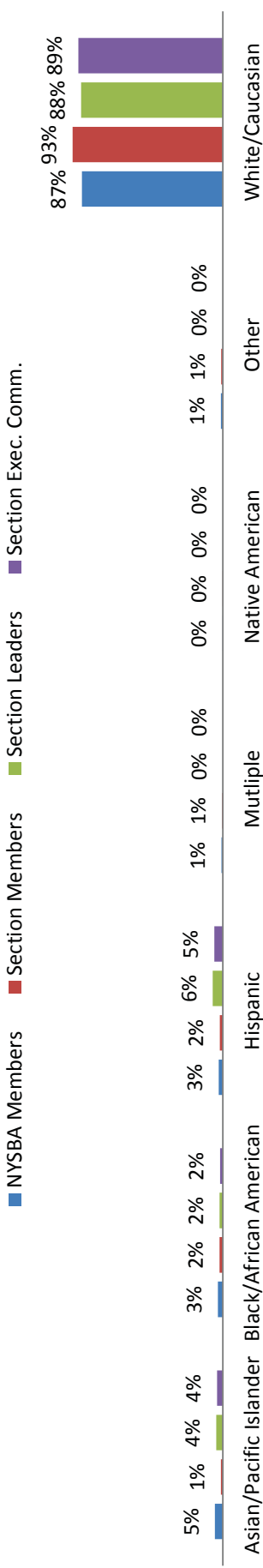


Section Exec. Comm.

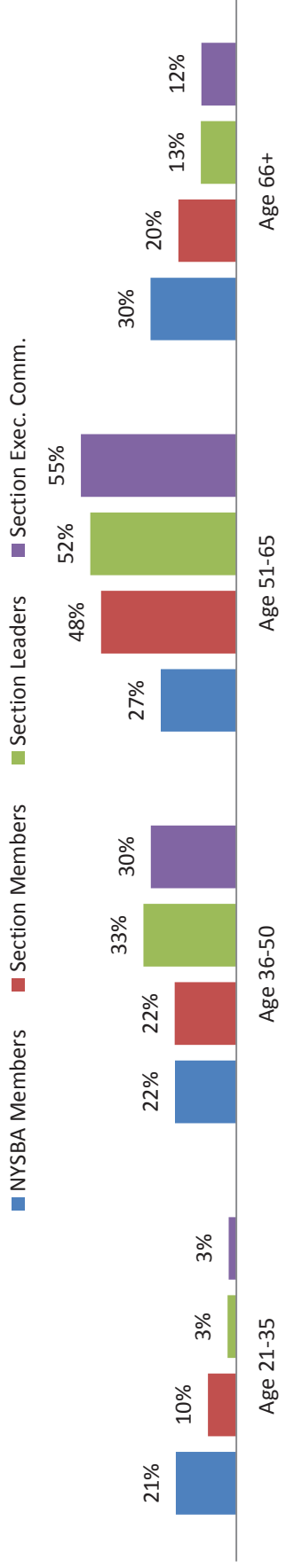


Section members have 16% fewer females than NYSBA members. Section leadership is 12-14% less than NYSBA's average but greater than its section members.

Race/Ethnicity



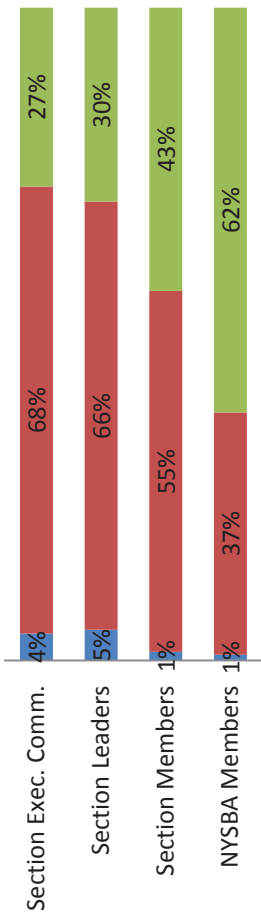
Torts, Insurance and Compensation Law Section



While 27% of NYSBA members are age 51-65; 48% of section members and 52-55% of section leaders are in that age range. The oldest and youngest age ranges of section members are slightly under-represented by its' leadership.

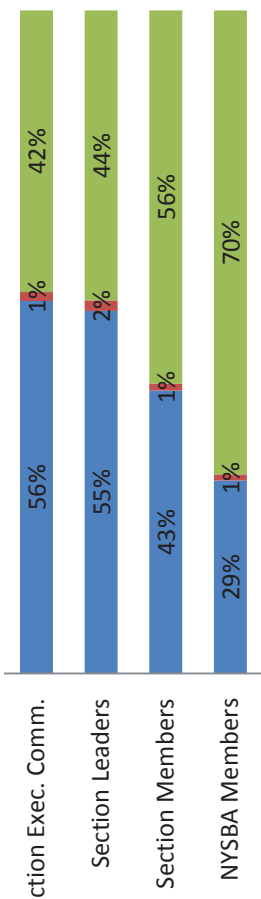
Disability

■ Yes ■ No ■ Unknown

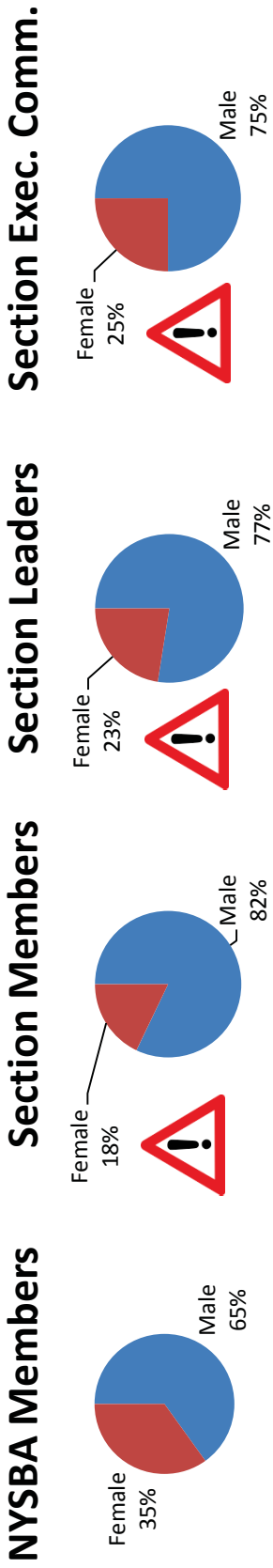


Sexual Orientation

■ Heterosexual ■ LGBT ■ Unknown

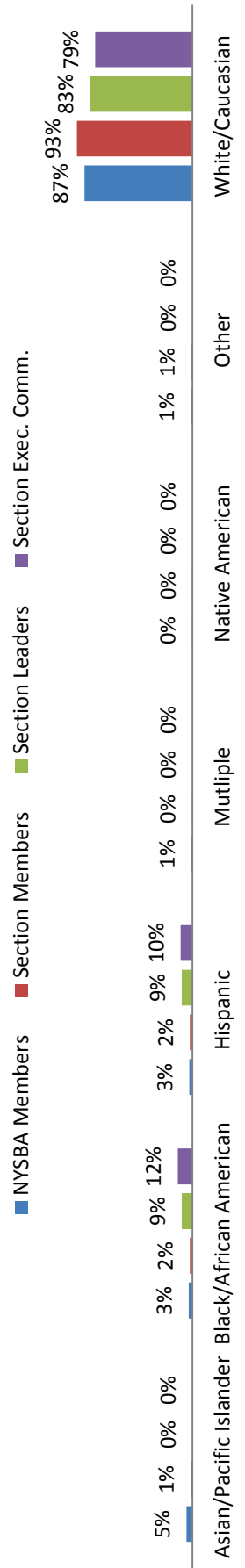


Trial Lawyers Section



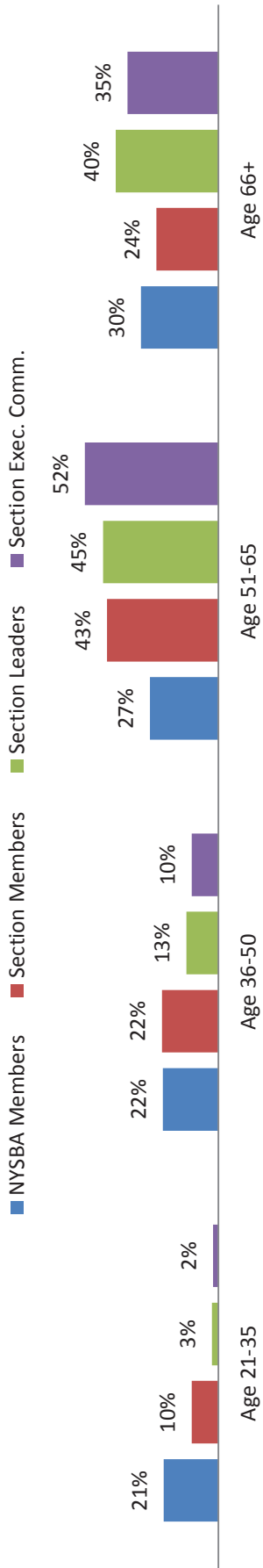
While 35% of NYSBA members are female, 18% of the section members are females, a 17% drop. Section leadership is higher than the section average but lower than NYSBA's average.

Race/Ethnicity



The ethnic diversity of the section membership is less than NYSBA membership and section leadership.

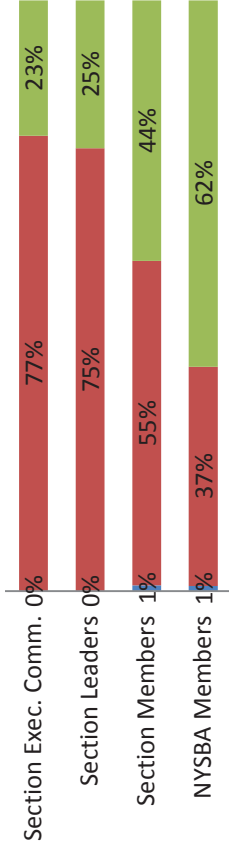
Trial Lawyers Section



The age diversity of the section leadership does not reflect the section membership.

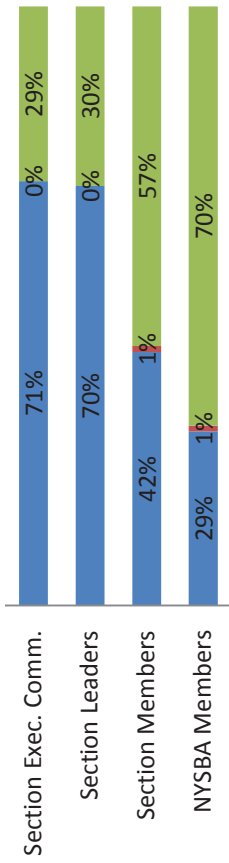
Disability

■ Yes ■ No ■ Unknown



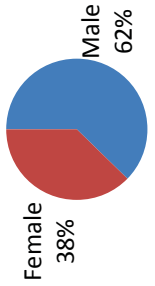
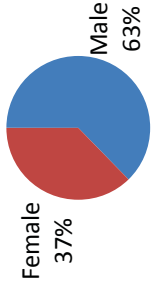
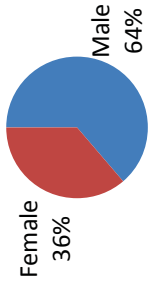
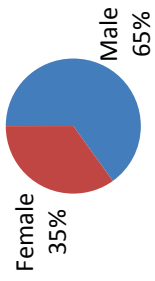
Sexual Orientation

■ Heterosexual ■ LGBT ■ Unknown



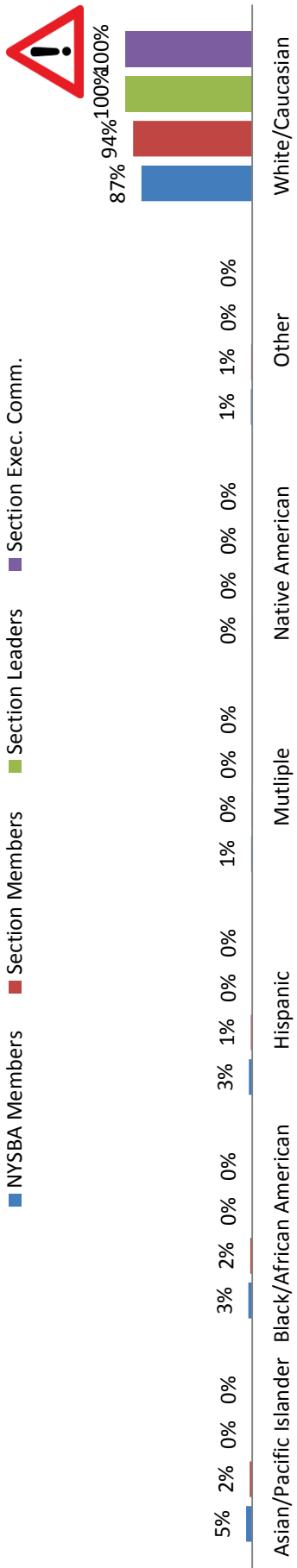
Trusts and Estates Law Section

NYSBA Members Section Members Section Leaders Section Exec. Comm.



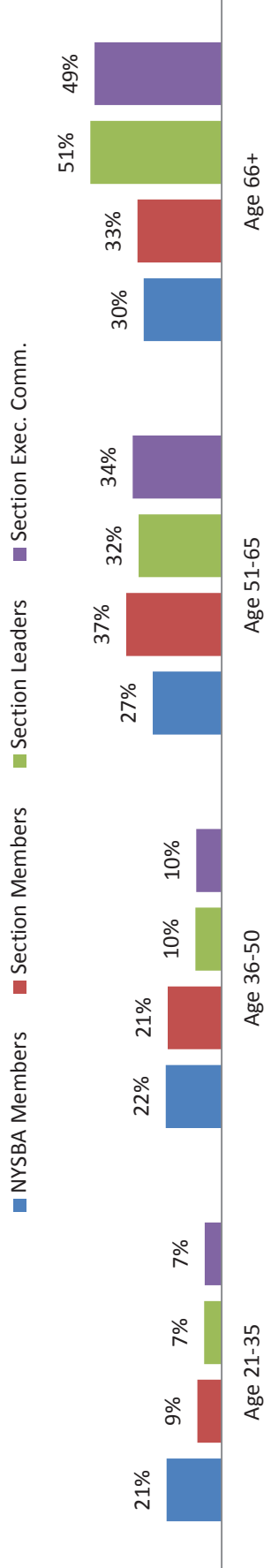
The gender diversity of the section members and leaders is close to that of NYSBA membership.

Race/Ethnicity



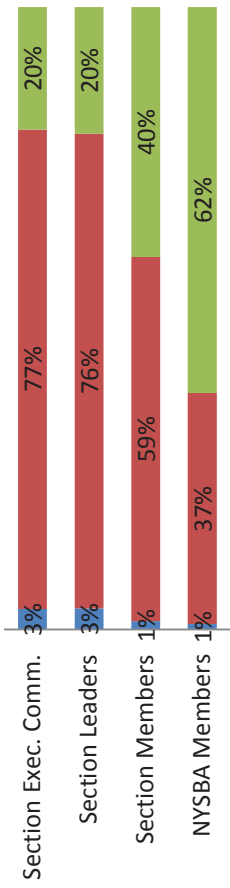
There appears to be no ethnic diversity in the section leadership.

Trusts and Estates Law Section

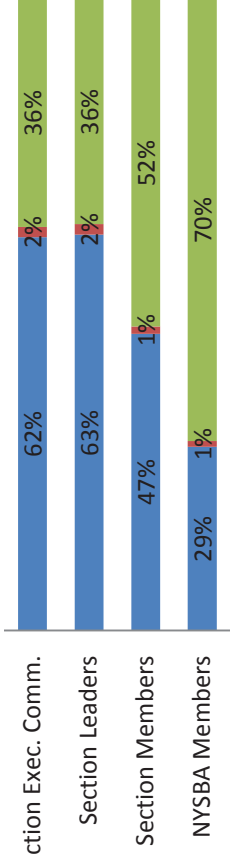


Section leadership is over-represented in the oldest age range and under-represented in the younger two age ranges.

Disability

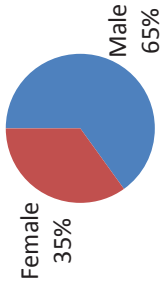


Sexual Orientation

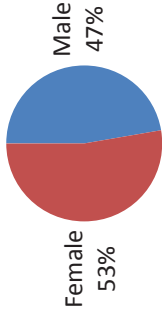


Young Lawyers Section

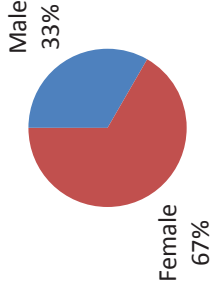
NYSBA Members



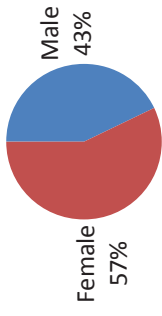
Section Members



Section Leaders

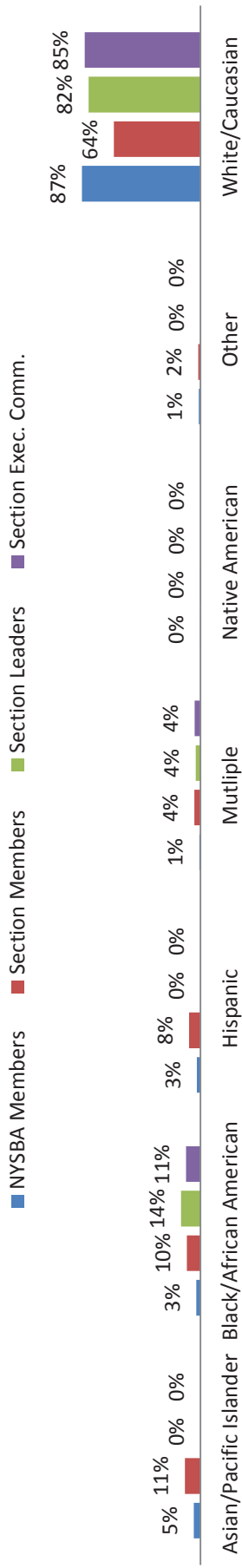


Section Exec. Comm.



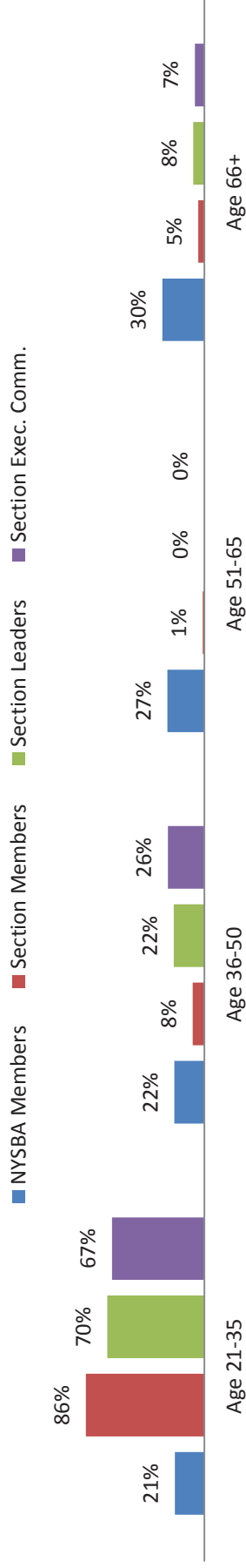
The section membership and leadership has a high female/male ratio. While NYSBA membership has 35% female/65% male, section leaders are 67% female/33% male. This reinforces that there are more female students and young attorneys early in the profession, while senior lawyer statistics reflect that female attorneys leave the profession earlier than men.

Race/Ethnicity



The ethnic diversity of section members is 23% more diverse than NYSBA members. Section leadership ethnic diversity is more equivalent to NYSBA than it is to section membership.

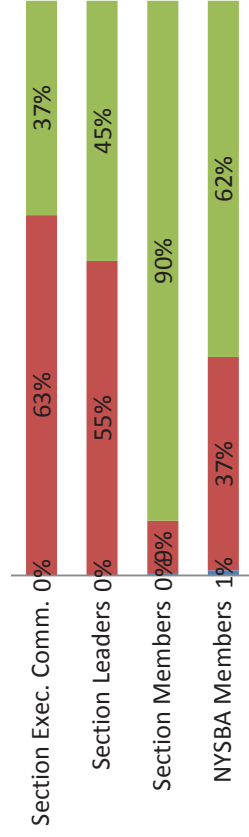
Young Lawyers Section



86% of section members are under age 35. Section leadership in that age range is 16-19% below that.

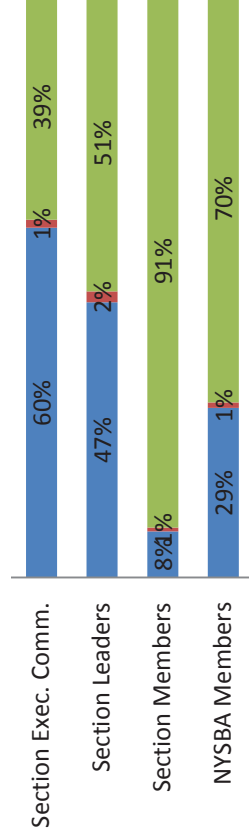
Disability

■ Yes ■ No ■ Unknown



Sexual Orientation

■ Heterosexual ■ LGBT ■ Unknown





Staff Memorandum

HOUSE OF DELEGATES Agenda Item #9

REQUESTED ACTION: Approval of the report and recommendations of the Committee on Families and the Law.

Attached is a report from the Committee on Families and the Law recommending that the Association support State funding and oversight of mandated representation provided to indigent parents pursuant to the Family Court Act and the Surrogate's Court Procedure Act. The report notes that last year, the state budget included provisions to improve the quality of criminal defense statewide; in the committee's view, mandated parental representation is as important as indigent criminal defense. The report notes flaws in the existing system of mandated parental representation, including a lack of standards of performance, caseload, and financial eligibility; insufficient resources for non-lawyer professional services; failure to provide access to counsel in a timely manner; inadequate client contact; and lack of state oversight and funding. Further, existing laws and policy recognize that high-quality representation is essential to protect fundamental familial rights and interests. Accordingly, the report recommends that the State should pay the entire cost of mandated parental representation, or at least the cost of elevating the quality of representation being provided, and should provide a mechanism for statewide oversight of such representation.

The report was submitted in January 2018 and posted in the Reports Community. The Erie County Bar Association and the NYSBA Committee on Women in the Law have indicated their support for the report.

The report will be presented at the January 26 meeting by committee co-chair Susan B. Lindenauer and member Angela O. Burton.

**NEW YORK STATE BAR ASSOCIATION
COMMITTEE ON FAMILIES AND THE LAW**

**MEMORANDUM IN SUPPORT OF
STATE FUNDING FOR MANDATED PARENTAL
REPRESENTATION**

January 2018

Opinions expressed in this Memorandum are those of the NYSBA Committee on Families and the Law and do not represent those of the New York State Bar Association unless and until they have been adopted by the NYSBA's Executive Committee or House of Delegates.

**NEW YORK STATE BAR ASSOCIATION
COMMITTEE ON FAMILIES AND THE LAW**

**MEMORANDUM IN SUPPORT OF
STATE FUNDING FOR MANDATED PARENTAL REPRESENTATION**

January 2018

The Committee on Families and the Law urges the New York State Bar Association (“NYSBA”) to adopt a Resolution calling for the State to fund and oversee all constitutionally and statutorily required representation provided—pursuant to §§ 262 and 1120 of the Family Court Act, and § 407 of the Surrogate’s Court Procedures Act — to litigants who are financially unable to obtain counsel (“mandated parental representation” or “parental representation”).

Introduction

In April 2017, Governor Andrew Cuomo fulfilled a promise to reimburse 100% of the costs to the counties and New York City for certain statewide improvements in criminal defense provided to persons who are financially unable to obtain counsel (“indigent criminal defense” or “criminal defense”). The final FY 2018 State budget included two groundbreaking statutory amendments. Executive Law § 832 (4) now gives the New York State Office of Indigent Legal Services (“ILS”) the authority and duty to develop plans to: (a) ensure that each criminal defendant eligible for mandated representation is represented by counsel at arraignment; (b) establish numerical caseload/workload standards for each provider of indigent criminal defense representation; and (c) improve the quality of representation in indigent criminal defense statewide. ILS submitted those plans on December 1, 2017. Further, County Law § 722-e was amended to specify that the State will cover the costs to implement the reform plans produced by ILS, thereby relieving the counties of the burden to alone pay for indigent criminal defense.

This progress was achieved partly thanks to NYSBA’s staunch support of State funding and oversight of indigent criminal defense. Such leadership was consistent with the important role played by the State Bar for decades, including advocating for an increase in assigned counsel rates and creating the Special Committee to Ensure the Quality of Mandated Representation (now the Committee on Mandated Representation).

The next frontier is mandated parental representation. This realm is as important as indigent criminal defense, and NYSBA should advocate for similar State leadership and commitment to reform in this area. Just as in criminal defense, constitutionally protected rights are at stake. Whereas the U.S. Constitution guarantees the right to assigned counsel in criminal cases where physical liberty is implicated, the New York State Constitution guarantees the right to counsel to indigent parents in matters involving fundamental liberty interests in the parent-child relationship. First recognized by the New York State Court of Appeals in 1972, the parental right to assigned counsel has been codified in State statute since 1975.

The impact of the quality of representation is as profound for parents experiencing a family crisis as for persons accused of committing a crime. Certain Family Court proceedings involve allegations that can result in the temporary separation of a child from his or her family, with the potential for permanent destruction of the parent-child relationship, and, in some instances, for criminal charges against the parent. More generally, Family Court cases determine life-altering matters affecting the safety of children and parents and the integrity and autonomy of families. Recognizing that the “objective of any [mandated] representation plan should be to ensure high quality legal services for every individual represented under the plan,” the NYSBA *Standards for Providing Mandated Representation*, issued by the Committee to Ensure the Quality of Mandated Representation, cover parental representation, as well as criminal defense.¹

With groundbreaking reform well underway in criminal defense, similarly intense attention needs to be focused on improving parental representation. Both areas of practice suffer myriad problems under the framework established by County Law Article 18-B, which requires each county and the City of New York to maintain a plan for the provision of assigned counsel.² These problems include, among others, lack of clear, uniform, and enforceable standards of performance, attorney workload/caseload, and litigant financial eligibility; inadequate training and supervision of attorneys; lack of sufficient resources for non-attorney professional services; failure to provide access to assigned counsel in a timely manner; inadequate client contact; and lack of State oversight and funding.³ Indeed, more than a decade ago, while noting that its “mandate was limited to indigent criminal defense,” Chief Judge Judith Kaye’s Commission on the Future of Indigent Defense in New York (the “Kaye Commission”), in its 2005 Interim Report, emphasized that “identical problems affect representation of adults in family court. This representation, carried out by the same 18-B providers, with the same staff, under the same statutory scheme . . . needs to be addressed.”⁴

Since its establishment in 2010, ILS has made modest inroads toward improving mandated parental representation, but much more must be done. Parental representation in some counties has benefitted from sorely needed, yet woefully inadequate State funds distributed by ILS for attorneys and non-attorney professional services, such as experts, investigators, and social work staff. In 2015, ILS initiated *Families Matter: Parental Defense in New York*, a now biannual statewide training conference co-sponsored by ILS, the Office of Court Administration’s (“OCA”) Child Welfare Court Improvement Project, and the New York State Defenders Association. Also in 2015, the ILS Board adopted *Standards for Parental Representation in State*

¹NYSBA, *2015 Revised Standards for Providing Mandated Representation*, pp. 4-5 (“The standards are also intended to apply to Family Court cases in which counsel is assigned to represent an adult or to represent a child.”), <http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=44644>.

²County Law § 722.

³The Spangenberg Group, *Status of Indigent Defense in New York: A Study for Chief Judge Kaye’s Commission on the Future of Indigent Defense Services: Final Report*, pp. ii -iv, 15-19 (June 16, 2006), <https://www.nycourts.gov/ip/indigentdefense-commission/SpangenbergGroupReport.pdf>.

⁴Commission on the Future of Indigent Defense Services, *Interim Report to the Chief Judge of the State of New York*, p. 16, fn. 27, <http://www.nycourts.gov/reports/futureofindigentdefense.pdf>.

Intervention Matters, developed by ILS in collaboration with lawyers and social work professionals across the State, to guide attorneys in providing high-quality representation in child protective and termination of parental rights (“state intervention”) cases.⁵ While significant, these initiatives only scratch the surface of the reforms needed to ensure effective mandated parental representation.

In contrast to the flawed county-based system, there is precedent for a different approach to parental representation. Decades ago, a pioneering statewide system, fully funded and administered by the State, was established for representation of children—the Attorneys for the Child (“AFC”) (formerly Law Guardian) Program. The AFC Program has demonstrated the wisdom and value of a State-based, rather than county-based, approach to mandated representation in Family Court matters. Ultimately, the new vision for parental representation in Family Court and related proceedings should embrace a statewide system that is fully financed and administered by the State. Such an approach would better ensure that the rights of parents *and* children are protected.

High-Quality Parental Representation Protects Constitutionally Recognized Liberty Interests of Parents and Children

Our Family Courts address the safety of children and other family members, as well as the integrity, autonomy, and financial stability of families. In child welfare proceedings, Family Courts determine whether children are at risk of harm and, if so, how they should be protected, whether by providing services to the family or removing the child and placing him or her in foster care. When orders of protection are needed in cases of domestic violence, when parents have custody disputes, or when child support orders are violated, Family Courts provide needed relief.

The U.S. Supreme Court has long emphasized that the Constitution recognizes and protects parents’ interests in the parent-child relationship and the integrity of the family unit.⁶ The Court has specifically recognized parents’ fundamental liberty interest in the care and custody of their children.⁷ Indeed, depriving a parent of the right to raise his or her own child is viewed by many as “more grievous” than a prison sentence,⁸ and the determination of parental rights is often referred to as the “civil death penalty.”⁹ Even in

⁵*Standards for Parental Representation in State Intervention Matters*, ILS (2015),

<https://www.ils.ny.gov/files/Parental%20Representation%20Standards%20Final%20110615.pdf>.

⁶*E.g. Troxel v. Granville*, 530 U.S. 57, 65 (2000) (“The liberty interest at issue in this case – the interest of parents in the care, custody, and control of their children – is perhaps the oldest of the fundamental liberty interests recognized by this Court.”); *Parham v. J. R.*, 442 U.S. 584, 602 (1979) (“Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course.”).

⁷*Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

⁸*Lassiter v. Department of Social Services*, 452 U.S. 18, 59 (1981) (Stevens, J., dissenting).

⁹*E.g. Stephanie N. Gwillim, The Death Penalty of Civil Cases: The Need for Individualized Assessment and Judicial Education When Termination Parental Rights of Mentally Ill Individuals*, 29 St Louis U Pub L Rev 341 (2009) (citing *In re K.A. W.*, 133 S.W.3d 1, 12 (Sup. Ct., Mo. 2004); see also *In re Smith*, 77 Ohio App.3d 1, 16 (1991) (“A termination of parental rights is the family law equivalent of the death penalty in a

cases of alleged maltreatment, parents' fundamental liberty interest in raising their children does "not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State...parents retain a vital interest in preventing the irretrievable destruction of their family life."¹⁰ Likewise, the New York Court of Appeals has emphasized that "governmental interference with the liberty of a parent to supervise and rear a child" is prohibited, "except upon a showing of overriding necessity."¹¹

Children also have liberty interests in the parent-child relationship.¹² Our Court of Appeals has recognized the fundamental principle that "[a] parent has a 'right' to rear [his or her] child, and the child has a 'right' to be reared by [his or her] parent."¹³ Similarly, the U.S. Supreme Court has observed that, in termination of parental rights proceedings, until the State proves parental unfitness, "the child and his parents share a vital interest in preventing erroneous termination of their natural relationship."¹⁴

These fundamental principles are embedded in our statutes. As noted by the Court of Appeals, "[l]ooking to the child's rights as well as the parents' rights to bring up their own children, the Legislature has found and declared that a child's need to grow up with a 'normal family life in a permanent home' is ordinarily best met in the child's 'natural home.'"¹⁵ In 1990, the Legislature adopted "Family policy guidelines, set out in Executive Law §§ 990-992, to "ensure that all state and local planning and provision of services are effectuated in a manner that maximizes support and strengthening of the family structure." These standards are "directed toward stemming the human and financial costs of the unnecessary placement of children outside their homes, while ensuring the safety and well-being of children" by providing them and their families with necessary services, or, when appropriate, providing for permanency for children through other means.¹⁶

criminal case. The parties to such an action must be afforded every procedural and substantive protection the law allows.").

¹⁰*Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

¹¹*Matter of Marie B.*, 62 N.Y.2d 352, 358 (1984)

¹²See e.g. *Troxel v. Granville*, 530 U.S. 57, 88 (2000) (Stevens, J., dissenting) ("[I]t seems to me extremely likely that, to the extent parents and families have fundamental liberty interests in preserving such intimate relationships, so, too, do children have these interests, and so, too, must their interests be balanced in the equation."); *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977) ("[T]he reciprocal rights of both parent and children [include the interest] of the children in not being dislocated from the 'emotional attachments that derive from the intimacy of daily association' with the parent.").

¹³*Matter of Bennett v. Jeffreys*, 40 N.Y.2d 543, 546 (1976); see also *Rankel v. County of Westchester*, 135 A.D.3d 731, 733 ("parents have a liberty interest in the care and custody of their children, and children have a parallel liberty interest in not being dislocated from their family.")

¹⁴*Santosky v. Kramer*, 455 U.S. 745, 760 (1982).

¹⁵*Matter of Michael B.*, 80 N.Y.2d 299, 309 (1992) (citing Social Services Law § 384-b[1][a][i], [ii])

¹⁶Executive Law § 991 ("The legislature finds that the children of this state are at the same time both our most important resource and our most vulnerable citizens. Children best develop their unique potential in a caring and healthy family environment either with their birth parents or other relatives or in an adoptive family, with support from other nurturing environments, especially the schools and the community. As such, children need a special state policy to ensure the strength and viability of their families.")

To protect these vital interests, New York has long recognized a broad parental right to counsel in matters affecting the family. In 1972, in *Matter of Ella B.*, the Court of Appeals held that constitutional principles of fundamental fairness, due process, and equal protection require appointment of governmentally-funded lawyers for indigent parents in child protective proceedings.¹⁷ “A parent’s concern for the liberty of the child, as well as for his care and control,” the Court said, “involves too fundamental an interest and right to be relinquished to the State without the opportunity for a hearing, with assigned counsel if the parent lacks the means to retain a lawyer.”¹⁸ One year later, citing *Ella B.*, the Second Department held that indigent parents in proceedings under Family Court Act Article 4, regarding the violation of support orders, have the right to assigned counsel, in light of their possible incarceration if found to have willfully violated such an order.¹⁹

In the wake of these decisions, in 1975, the Legislature enacted legislation—drafted and introduced by OCA—which codifies a broad parental right to counsel. See Family Court Act §§ 261, 262, and 1120.²⁰ Emphasizing potential infringements of parents’ “fundamental interests and rights, including the loss of a child’s society and the possibility of criminal charges,” the Legislature recognized counsel’s “indispensable” role in the “practical realization of due process of law” and in assisting the court “in making reasoned determinations of fact and proper orders of disposition.” See Family Court Act § 261. Our courts have repeatedly emphasized that the parental right to assigned counsel means *effective assistance of counsel* under the State Constitution.²¹

Since its enactment, New York’s parental right to counsel statute has been expanded on numerous occasions. It currently extends to specified litigants in proceedings involving child custody and visitation, abuse/neglect, foster care placement and review, termination of parental rights, destitute children, adoption, paternity, and family offenses. Additionally, assigned counsel is available to a person charged with contempt of court for violation of a prior Family Court order (including willful violation of a child support order), and persons in any other proceeding in which the judge concludes that the U.S. or New York State Constitution requires the assignment of counsel. See Family

¹⁷ *Matter of Ella B.*, 30 N.Y.2d 352 (1972).

¹⁸ *Id.* at 356.

¹⁹ *Jennings v. Jennings*, 42 A.D.2d 568 (2nd Dep’t 1973).

²⁰ See Letter from Richard A. Bartlett, State Administrative Judge to Hon. Judah Gribbetz, Counsel to the Governor, (July 22, 1975), <http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=75119>.

²¹ *E.g. Matter of Nassau County Dept. of Social Services v. King*, 149 A.D.3d 942, 944 (2nd Dep’t 2017) (“Accordingly, in support proceedings such as this one in which a party faces the potential of imprisonment and has a statutory right to counsel, we hold that the appropriate standard to apply in evaluating a claim of ineffective assistance is the meaningful representation standard.”); *Matter of Brown v. Gandy*, 125 A.D.3d 1389, 1390 (4th Dep’t 2015) (“[B]ecause the potential consequences are so drastic, the Family Court Act affords protections equivalent to the constitutional standard of effective assistance of counsel afforded defendants in criminal proceedings.”); *Matter of Eileen R. (Carmine S.)*, 79 A.D.3d 1482 (3rd Dep’t 2010) (“Indigent parents facing termination of parental rights are entitled to the assignment of counsel, and such counsel must provide effective assistance comparable to that afforded to criminal defendants.”).

Court Act § 262. Most of this representation occurs in Family Court proceedings, but certain types of cases may also be heard in Surrogate's or Supreme Court.²²

As shown above, New York's laws and policies recognize that high-quality representation is essential when fundamental familial rights and interests are at stake. However, as the Kaye Commission found, the current system does not satisfy the State's obligations to protect those rights and interests. What is required is a structure, funded and administered by the State, that creates, monitors and enforces standards of mandated parental representation.

State System of Representation for Children: Attorneys for the Child

The establishment of the AFC Program, administered by OCA and fully funded by the State, stands in stark contrast to the parental representation system. New York's recognition of a child's right to counsel in Family Court matters pre-dated by five years the U.S. Supreme Court's 1967 recognition of a child's right to counsel in juvenile delinquency matters.²³ In 1962, New York became the first state to create a broad statutory right to counsel for children in juvenile delinquency and family-related matters.²⁴ The Legislature declared in Family Court Act § 241 that "minors who are the subject of family court proceedings or appeals . . . should be represented by counsel of their own choosing or by assigned counsel," and established an assigned counsel program to "help protect [children's] interests and to help them express their wishes to the court." From the outset, the State assumed both administrative and fiscal responsibility for the AFC Program. All operating costs are payable by the State, pursuant to Family Court Act § 248. For FY 2018-2019, the Judiciary budget request estimates the statewide cost of the program to be \$127,957,373.²⁵

Full State funding and administrative oversight of the AFC program supports a framework for representation of children. Administrative responsibility for the program is

²²Surrogate's Court Procedure Act § 407 mandates County Law Art. 18-B representation for: respondents in proceedings involving termination of parental rights under Social Services Law §384-b or approval of a surrender of a child under Social Services Law §384; the parent of a child in any adoption proceeding who opposes the adoption of such child; the parent of any child seeking custody or contesting the substantial infringement of his or her right to custody of such child; any of the aforementioned persons upon an appeal in any of those proceedings; and any adult in a proceeding under the Surrogate's Court Procedure Act if the judge determines that such assignment of counsel is mandated by the constitution of this state or of the United States. Judiciary Law § 35 (8) provides that, "[w]henver supreme court shall exercise jurisdiction over a matter which the family court might have exercised jurisdiction had such action or proceeding been commenced in family court or referred thereto pursuant to law, and under circumstances whereby, if such proceedings were pending in family court, such court would be required by section two hundred sixty-two of the family court act to appoint counsel, supreme court shall also appoint counsel."

²³*In re Gault*, 387 U.S. 1 (1967).

²⁴Fam. Ct. Act Article 2, Part 4 – *Attorneys for Children*; see also Merrill Sobie, *The Meaningful Representation of Children: An Analysis of the State Bar Association Law Guardian Legislative Proposal*, 64 NY St BJ 52 (May/June 1992).

²⁵Unified Court System Budget, Fiscal Year 2018-2019, "Attorney for the Child Program," p. 107, <http://www.nycourts.gov/admin/financialops/BGT18-19/2018-19-UCS-Budget.PDF>.

divided between OCA and the Appellate Divisions (see Family Court Act §§ 241-243). Family Court Act § 246 empowers the Administrative Board of OCA to “prescribe standards for the exercise of the powers granted to the appellate divisions under this part and may require such reports as it deems desirable.” The program is supervised by the Appellate Division presiding justices. Each Department’s AFC Director conducts initial and ongoing training programs and certifies and re-certifies panel attorneys. Over the years, NYSBA has advocated for improvements in the AFC system. In part due to reports published by NYSBA in 1984 and 1990,²⁶ significant improvements have been made, including oversight by the Directors to determine attorney compliance with standards of practice adopted by NYSBA at the behest of the Committee on Children and the Law.²⁷

Other State Systems of Representation: Capital Defender Office, Mental Hygiene Legal Services, and Parental Representation in Supreme Court

In addition to the AFC program, other statutory schemes have provided for State funding and oversight of programs for representation of indigent New Yorkers.

Now defunct, a notable State system of indigent legal representation was the State Capital Defender Office (“CDO”). Established in 1995 by Judiciary Law §35-b, the CDO was created to ensure adequate representation for indigent persons accused of crimes punishable by death²⁸ and was funded by an appropriation from the State Operations budget.²⁹ The CDO closed in the wake of a 2004 New York Court of Appeals decision which effectively declared the State’s death penalty law unconstitutional.³⁰

Mental Hygiene Legal Service (“MHLS”) is a State agency responsible for representing, advocating, and litigating on behalf of individuals receiving services for a mental disability. The agency provides a broad range of legal services and assistance to mentally disabled persons in State facilities. MHLS, which is funded by the State through the Judiciary budget, will have an estimated cost of \$32,853,966 in FY 2018-2019.³¹

As noted above, in certain situations, parents are entitled under the Judiciary Law to State-funded assigned counsel in Supreme Court cases.³² Assignment of counsel in

²⁶ Jane Knitzer and Merrill Sobie, *Law Guardians in New York State: A Study of the Legal Representation of Children*, NYSBA (1984); *Report and Recommendations of the Task Force on the Law Guardian System*, NYSBA (1990). See also Merrill Sobie, *The Representation of Children: A Summary and Analysis of the Bar Association Law Guardian Study*, NY St BJ (Feb. 1985), at 41, <http://digitalcommons.pace.edu/lawfaculty/616/>.

²⁷ NYSBA, *Standards for Attorneys Representing Children in New York*, <http://www.nysba.org/StandardsforAttorneysRepresentingChildren>.

²⁸ Judiciary Law § 35-b (3).

²⁹ Judiciary Law § 35-b (9).

³⁰ *People v. LaValle*, 3 N.Y.3d 88 (2004)

³¹ Unified Court System, *Budget Request FY 2018-2019*, p. 112, accessible at <https://www.nycourts.gov/admin/financialops/BGT18-19/2018-19-UCS-Budget.PDF>.

³² Judiciary Law §35 (8).

Supreme Court generally involves issues of custody, visitation, or contempt or willful violation of orders of protection or child support. In addition, Judiciary Law § 35 provides for assigned counsel in other matters, including habeas corpus proceedings involving prisoners in State institutions; commitment proceedings involving persons who are mentally ill, mentally incompetent or those with narcotic addictions; commitment of a child to an authorized agency by reason of the mental illness or retardation of his or her parent; and adoption or custody proceedings where counsel is constitutionally mandated. Pursuant to Judiciary Law § 35 (5) the costs of these services are a State charge through the Judiciary Budget. For FY 2018-2019, the costs are estimated to be \$1,985,000.³³

County-Based Mandated Parental Representation

In contrast to representation of children via the State AFC Program, parental representation is relegated to the county-based system that has proven so inadequate for indigent criminal defense. In 1975, when enacting the parental right to counsel in the Family Court Act, the Legislature added the cost and administration of indigent parental representation to County Law Article 18-B, thus forcing the counties alone to shoulder this responsibility.³⁴

Unsurprisingly, as the Kaye Commission noted in 2005, “identical problems affect representation of adults in family court” as have been identified in indigent criminal defense representation.³⁵ In 2006, the “most comprehensive study of indigent defense representation ever undertaken in New York State”³⁶ confirmed the existence of numerous, overlapping deficiencies in the county-based indigent criminal defense and mandated parental representation systems. The Spangenberg Group (“TSG”), which conducted the study on behalf of the Kaye Commission, observed that:

“Although not part of the Commission’s charge, we found that family court matters are an integral and inextricable part of New York’s indigent defense system. . . Like the provision of indigent defense representation in criminal cases, the provision of representation in family court is a severely fractured and under-funded system, and one that is quite disparate from the [Attorneys for Children] Program that provides for the representation of children in family court.”³⁷

³³Unified Court System, *Budget Request FY 2018-2019*, p. 104, accessible at <https://www.nycourts.gov/admin/financialops/BGT18-19/2018-19-UCS-Budget.PDF>.

³⁴County Law Article § 722; see also Joel Stashenko, “Counsel Costs for Indigent Family Court Litigants Often Overlooked,” NYLJ, Jan. 5, 2017.

³⁵Kaye Commission Interim Report, *supra*, n. 4.

³⁶Commission on the Future of Indigent Defense in New York, *Final Report to the Chief Judge of the State of New York*, p. 2, (June 18, 2006) (“Kaye Final Report”), accessible at http://nycourts.gov/ip/indigentdefense-commission/IndigentDefenseCommission_report06.pdf.

³⁷The Spangenberg Group, *Status of Indigent Defense in New York: A Study for Chief Judge Kaye’s Commission on the Future of Indigent Defense Services, Final Report*, pp. iii-iv, (June 16, 2006) (“TSG Report”), <https://www.nycourts.gov/ip/indigentdefense-commission/SpangenbergGroupReport.pdf>.

Reiterating TSG’s findings, the Kaye Commission remarked that “the criminal defense programs studied by TSG were, in many instances, inseparable from the programs providing Family Court representation” and suggested that “[t]he Indigent Defense Commission that we propose also oversee services providing for Family Court representation.”³⁸

Providing high-quality parental representation is a difficult and challenging endeavor, requiring great skill and dedication. Many assigned attorneys throughout the State work zealously on behalf of their clients. However, far too many attorneys have little or no training or experience in family law, and minimal, if any, supervision and oversight. Many lack access to administrative staff and non-attorney professional services, such as investigators, social workers, interpreters, and experts.³⁹ These deficiencies not only undermine the goal of meaningful representation and effective assistance of counsel; they also threaten the safety and stability of children and families.

Effective representation for parents supports the safety, stability, and well-being of children and families. The federal Administration for Children and Families (“ACF”) recently issued a Technical Guidance encouraging “all child welfare agencies, courts, administrative offices of the courts, and Court Improvement Programs to work together to ensure parents, children and youth, and child welfare agencies, receive high-quality representation at all stages of child welfare proceedings.”⁴⁰ ACF pointed to research linking representation for all parties in child welfare proceedings to increased party engagement, improved case planning, expedited permanency, and cost savings to State government.⁴¹

New York City’s approach to parental representation illustrates the benefits of high-quality parental representation. Since 2007, the New York City Mayor’s Office of Criminal Justice has operated a multidisciplinary, institutional model of parental defense that requires the use of social workers, paralegals, investigators, experts, and parent advocates as part of the legal team. The Center for Family Representation (“CFR”) – cited in the ACF’s Technical Guidance as an “exemplary” model of parental representation - is one of several institutional providers with whom New York City contracts to provide parental representation in State intervention cases.⁴² In 2014 the average length of stay for a child in foster care in New York was 29 months; for CFR clients’ children, the average length of stay was less than five months. As a result of CFR attorneys’ early entry into the case, they are able to work closely with the family and the social services agency to identify and access appropriate services. In about half of its cases, CFR succeeded in keeping children out of foster care entirely, while

³⁸Kaye Final Report, *supra* n. 36, p. 20, fn. 33.

³⁹See e.g. *New York County Lawyers’ Ass’n v. State of N.Y.*, 196 Misc.2d 761, 771 (2003).

⁴⁰U.S. Health and Human Services, *High Quality Legal Representation in Child Welfare Proceedings*, ACYF-CB-IM-17-02, (Administration for Children and Families, January 17, 2017), <https://www.acf.hhs.gov/cb/resource/im1702>.

⁴¹*Id.*, pp. 6-7.

⁴²Currently, CFR, Brooklyn Defender Services, the Bronx Defenders, and the Neighborhood Defender Service of Harlem are the primary providers for state intervention cases in New York City.

maintaining them safely within their families of origin. As of 2017, CFR estimated that its services reduced the cost of foster care by \$37 million.⁴³

Indeed, research has demonstrated a direct connection between high-quality parental representation and improved outcomes and timeliness to permanency for children involved in child welfare proceedings. A study of the Washington State Office of Parental Representation program (“OPR”) found that enhanced parental representation “speeds reunification with parents, and for those children who do not reunify, it speeds achieving permanency through adoption and guardianship.”⁴⁴ The program is also credited with contributing to fewer continuances, improved case participation by parents, and better access to services, among other benefits. Key elements of the OPR include caseload limits and professional attorney standards; access to expert services and independent social workers; supervisory oversight; and ongoing training and support. What started in 2000 in two counties has gradually expanded, and as of Fall 2017, the program operates in 34 of Washington’s 39 counties. The Washington State Legislature has provided funding to extend it to all of the remaining counties beginning in July 2018.⁴⁵

Building on experiences such as those in New York City and Washington State, in August 2017, ILS announced a three-year grant for an Upstate Model Parental Representation Office in the amount of \$2,610,417 (\$870,139 per year for each of three years).⁴⁶ The grant will support a demonstration project which will provide high-quality, comprehensive, and multidisciplinary representation to parents in State intervention cases. ILS has included in its FY 2018-2019 budget a request for funding to enable up to four additional counties outside New York City to establish such a program.⁴⁷

Timely access to counsel for indigent parents is critical. However, such parents often appear without representation at hearings where judges make critical decisions, including whether to separate a child from his or her family or to continue such separation following an *ex parte* or non-judicial removal by a local child protective services (“CPS”) agency.⁴⁸

⁴³CFR, *2014 Report to the Community*, <https://www.cfmv.org/wp-content/uploads/2012/12/Annual-Report-2014-FINAL.pdf>; CFR, *Our Results*, <http://www.cfrny.org/about-us/our-results/>.

⁴⁴Courtney, M. E., & Hook, J. L., *Evaluation of the impact of enhanced parental legal representation on the timing of permanency outcomes for children in foster care*, Children and Youth Services Review,

⁴⁵See Washington State Office of Public Defense, *Parental Representation Program*, <https://www.opd.wa.gov/program/parents-representation>.

⁴⁶ILS, *Request for Proposals: Model Upstate Parental Representation Office*, <https://www.ils.ny.gov/files/Parent%20Representation/RFP-Upstate%20Model%20Parental%20Representation%20Office%20Grant%20032017.pdf>.

⁴⁷ILS Budget Request, October 18, 2017, <https://www.ils.ny.gov/files/Budget%20Request%20FY%202018-19.pdf>.

⁴⁸See e.g. *In re Hannah YY*, 50 A.D.3d 1201 (3rd Dept. 2008); see also Judge Leonard Edwards (Superior Ct., California, ret.), *Representation of Parents and Children in Abuse and Neglect Cases: The Importance of Early Appointment*, Juv & Fam Ct J 63, no. 2 (Spring 2012), http://www.maineourtimprovement.org/fileLibrary/file_52.pdf; Mark Hardin & Susan Koenig, *Early Appointment of Counsel for Parents*, in *Court Performance Measures in Child Abuse and Neglect Cases:*

Some indigent parents in State intervention cases do not meet their assigned counsel until weeks, and sometimes months, after their child has been taken into custody by CPS. A 1989 report by the New York State Senate Standing Committee on Child Care found that “even though 67 percent of respondents have counsel within one month of petition filing . . . a number of significant events can and frequently do occur during that first month (during which time a third of respondents have no appointed counsel).”⁴⁹ The report noted that preliminary hearings affecting the child’s placement occurred, and preliminary removal orders or temporary orders of protection were often issued, “in the absence of representation for the respondent, which may be prejudicial to the respondent’s interests.”⁵⁰ The authors emphasized that “a number of highly significant events occur prior to the initial appearance and prior to the initial appointment of representation for the respondent. *All of these events occur on an ex parte basis and many of the events are of a magnitude to shake the family structure of the respondent.*”⁵¹

Numerous standards urge access to counsel for parents at the earliest possible stage of a child protective case.⁵² As pointed out by the U.S. Department of Justice, “[i]f the parents’ attorneys are not involved prior to the emergency removal hearing, the court is more likely to place children away from the parents,” potentially traumatizing the child and “ultimately mak[ing] it more difficult for the parent to correct the problems that led to State intervention.”⁵³ Standards issued by ILS, as well as the American Bar Association, emphasize timely access to counsel.⁵⁴ NYSBA’s *Revised Standards for Providing Mandated Representation* require that “[c]ounsel shall be available when a person reasonably believes that a process will commence that could result in a proceeding where representation is mandated,” (Standard B-3); Standard B-4 urges the establishment of systematic procedures “to ensure that prompt mandated representation is available to all eligible persons, particularly . . . where a child has been removed by a governmental agency from the person’s home.” Indeed, pointing to NYSBA’s standards, one judge observed that they “demonstrate, objectively, that

Technical Guide, U.S. Department of Justice, Office of Justice Programs (2nd Printing, 2009), pp. 101-109.

⁴⁹Jules Kerness and Constance R. Warden, *Child Protection and the Family Court: A Study of the Processes, Procedures, and Outcomes Under Article Ten of the New York Family Court Act*, p. 130, New York State Senate Standing Committee on Child Care, (Sen. Mary Goodhue, Chair) (National Center on Child Abuse and Neglect, December 1989), <https://www.ncirs.gov/pdffiles1/Digitization/126665NCJRS.pdf> .

⁵⁰*Id.*

⁵¹*Id.* at pp. 131-132 (emphasis added).

⁵²Court Performance Measures, pp. 101-107.

⁵³*Id.*, p. 101.

⁵⁴ILS, *Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest*, Standard 5 (2012) (requiring counties to ensure that mandated legal services providers “[p]rovide representation for every eligible person at the earliest possible time and begin advocating for every client without delay, including while client eligibility is being determined or verified.”); ILS, *Standards for Parental Representation in State Intervention Cases*, Standard I – Representation Prior to Court Intervention; American Bar Association, *Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases*, Standard 4 (2006) (the parent’s attorney shall “[a]ctively represent a parent in the prepetition phase of a case, if permitted within the jurisdiction.”)

effective representation for indigent individuals entails representation without delay pending the judge's eligibility determination . . . there is no scenario under which indigent individuals would not be afforded an impaired quality of representation where the Public Defender's function as counsel is effectively disabled pending receipt of a judge's order of appointment."⁵⁵

In general, early access to counsel supports the goals of Family Court Act § 261 by giving litigants the opportunity to receive advice and counsel before initiating or responding to litigation; protecting due process rights of parents and families; and providing judges with comprehensive information upon which to make critical decisions. Thus, it is crucial that the timing of access to counsel be included in reform of the parental representation system.

Hurrell-Harring and Criminal Defense Reform

In 1963, the U.S. Supreme Court held in *Gideon v. Wainwright*, 372 U.S. 335, that each state is obligated to provide representation for persons facing possible incarceration who are unable to hire a lawyer. In 1965, New York State decided to impose upon the counties the fiscal and administrative responsibility for providing such representation. Without State funding, standards or oversight, the quality of representation a client receives is largely dependent on the wealth of the counties. County Law § 722, which requires localities to choose from several methods for providing assigned counsel, contains no standards regarding the quality of representation. It establishes no oversight mechanism to ensure meaningful representation and prevent disparities based on geography. For decades, the law has placed a serious financial burden on counties and led to serious shortcomings in indigent criminal defense.

In 2007, a lawsuit initiated in Albany County on behalf of a certified plaintiff class of indigent criminal defendants charged that the State was violating their constitutional rights by failing to provide effective assistance of counsel. Ultimately, the State agreed to assume responsibility for improving representation in the five defendant counties.⁵⁶ In 2014 the State entered into a Settlement Agreement, agreeing to address four major areas: lack of counsel at arraignment; excessive caseloads; lack of quality control and inadequate support services; and the absence of a uniform standard of eligibility for the assignment of counsel.

For the first time, the State acknowledged its responsibility to comply with the promise of *Gideon*. Further, the State vested in ILS the responsibility for implementing these reforms. However, the Settlement had significant limitations, including that its first three remedial provisions—counsel at first appearance, caseload standards, and quality

⁵⁵ *People v. Rankin*, 46 Misc. 3d 801 (County Ct, Monroe County, 2014).

⁵⁶ *Hurrell-Harring vs. State of N.Y.*, Supreme Court, Albany County, Index No. 8866/2007. The stipulation in that matter can be accessed at: <https://www.ils.ny.gov/files/Hurrell-Harring%20Final%20Settlement%20102114.pdf>.

improvement—apply only to the five named counties. Moreover, the Settlement is applicable only to indigent criminal defense.

In 2016, State Senators Patricia Fahy and John DeFrancisco introduced legislation (the “Fahy-DeFrancisco” bill) that would have expanded the reforms of *Hurrell-Harring* statewide and would have encompassed not only indigent criminal defense, but also mandated parental representation. The bill passed unanimously in both chambers of the Legislature, but, on December 31, 2016, Governor Andrew Cuomo vetoed the bill. In his veto memorandum, the Governor promised to introduce a plan to extend the *Hurrell-Harring* criminal defense reforms to the rest of the State. In doing so, however, he characterized the inclusion of parental representation in the bill as an attempt to “transfer to the taxpayers of this State an entirely new obligation to pay for any and all existing expenses related to general defense legal work, far beyond representation of indigent criminal defendants.”⁵⁷ He further stated that the Fahy-DeFrancisco bill would require the State “to ultimately expend more than \$800 million dollars every year—of which nearly \$650 million a year” would go to “expenses associated with non-criminal legal defense work, including legal services in family court and surrogate [sic] court.”⁵⁸ No explanation was provided as to the basis for the \$650 million figure, which far exceeds the amount spent in 2015 on **all** types of indigent legal services statewide, which at the time was reported to be between \$400 and \$500 million.⁵⁹ Moreover, as of January 2016, of the estimated \$550 million being spent annually by the 57 counties, New York City, and the State for indigent representation, only about one-quarter was attributable to mandated parental representation.⁶⁰

In January 2017, Governor Cuomo fulfilled his promise to begin improving the quality of indigent criminal defense by proposing, at State expense, the extension of the *Hurrell-Harring* reforms throughout the State. Three months later, the final FY 2018 State budget included the aforementioned statutory amendments requiring the State to pay for the reform of criminal defense and empowering ILS to develop and implement statewide plans for counsel at arraignment, caseload relief, and quality improvement. By ensuring counsel at arraignment, increasing staffing, improving training and supervision, expanding non-attorney professional services, and improving client-communications, the reforms hold the promise of significantly elevating the quality of mandated representation in criminal defense.

The State can, and should, similarly transform the caliber of representation in Family Court and improve the fate of families throughout New York by providing for State

⁵⁷ *Id.*

⁵⁸ Veto #306, State of New York, Executive Chamber (December 31, 2016).

⁵⁹ New York State Association of Counties, *Indigent Legal Defense Services: Balanced Justice and Mandate Relief*, p. 3 (June 2016), [http://www.nysac.org/files/NYSAC%20Indigent%20Legal%20Defense%20Services%20White%20Paper\(1\).pdf](http://www.nysac.org/files/NYSAC%20Indigent%20Legal%20Defense%20Services%20White%20Paper(1).pdf); see also Matthew Hamilton, “Supporters urge Cuomo to sign indigent legal services bill,” Capitol Confidential, Dec. 6, 2016, <http://blog.timesunion.com/capitol/archives/269921/supporters-urge-cuomo-to-sign-indigent-legal-services-bill/>.

⁶⁰ Stashenko, *supra*, n. 35.

funding and oversight of mandated parental representation. As discussed above, the experience in New York City and elsewhere has shown that a reformed system of mandated parental representation can also save money by, among other things, helping to more promptly resolve family disputes, to preserve family units, to reduce foster care and subsidized adoptions, and to improve the quality of decision-making by the courts.

There is no doubt that the State's delegation to the counties of its responsibility for parental representation has been "a recipe for inconsistency, inequity, and failure."⁶¹ A 2001 report issued by the Appellate Division First Department Committee on Representation of the Poor concluded that "[t]he outmoded, underfunded, overburdened, and organizationally chaotic system in operation today dishonors New York's long-standing commitment to an individual's right to meaningful and effective representation, often with devastating effects on the thousands of children and indigent adults who pass through that system each year."⁶² The Committee recommended, among other things, that the State "reconsider the entire legislative structure relating to [mandated representation] in order to assist counties and New York City in overcoming the current crisis in legal representation of the poor." In particular, the First Department Committee urged the elimination of the "bifurcation" of State fiscal and administrative responsibility for the AFC program on the one hand, and county responsibility for parental representation in Family Court proceedings on the other.⁶³

The time is now for immediate action to address egregious deficiencies in parental representation. ILS Director William J. Leahy highlighted the urgency of the need for reform in his January 31, 2017 testimony before the Joint Legislative Hearing on the 2017-2018 Public Protection Budget testimony:

The representation of parents in Family Court, and, to a much lesser extent, Surrogate's Court, is a vital component of legally mandated representation under County Law article 18-B. This representation is every bit as mandated by law as is criminal defense; yet, because it was not included in the *Hurrell-Harring* lawsuit, it was not included in the Settlement Agreement whose provisions the Executive budget proposal would extend throughout the State. This category of cases and clients, with family integrity and children's well-being at stake in every case, must not continue to be neglected. We call upon the Governor and the

⁶¹William J. Leahy, *The Right to Counsel in the State of New York: How Reform was Achieved After Decades of Failure*, ___ Indiana L Rev ___ (2017) (forthcoming 2018).

⁶²Appellate Division First Department Committee on Representation of the Poor, *Crisis in the Legal Representation of the Poor: Recommendations for A Revised Plan to Implement Mandated Governmentally Funded Legal Representation of Persons Who Cannot Afford Counsel*, p. 2 (March 23, 2001), http://www.courts.state.ny.us/press/old_keep/1ad-rep-poor.shtml.

⁶³Id.

Legislature to include parental representation as an integral part of the planned statewide reforms.⁶⁴

The State and NYSBA leadership that helped bring us to the brink of criminal defense reform must now be directed to parental representation. There is no justifiable basis for distinguishing between these two categories of mandated representation. The fact that the right to counsel in criminal defense is grounded in the U.S. Constitution, whereas the broad right to counsel for parents is found in the State Constitution, does not provide a sound rationale for repairing the broken system for one set of litigants, but not the other. Both species of mandated representation have a profound impact on the fundamental rights of New Yorkers. Both realms require sweeping improvements and State funding and oversight to ensure quality representation.

For all these reasons, the Committee on Families and the Law makes the following Recommendation.

Recommendation

- The NYSBA Executive Committee or House of Delegates should proclaim that the State should pay the entire cost of mandated parental representation, or at least for the cost to elevate the quality of representation being provided, and should provide a mechanism for statewide oversight of such representation.

⁶⁴William J. Leahy, *Testimony of ILS, Joint Legislative Hearing on the 2017-2018 Public Protection Budget* (January 31, 2017), <https://www.ils.ny.gov/files/FY%202017-18%20Legislative%20Budget%20Testimony%20013117.pdf>.

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF EXECUTIVE COMMITTEE
CONFERENCE CALL MEETING
MARCH 5, 2018**

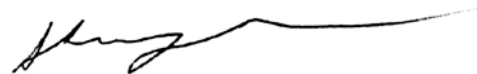
Members Participating: Karina E. Alomar, Alyssa M. Barreiro, Jonathan B. Behrins, Matthew R. Coseo, Norman P. Effman, Margaret J. Finerty, Prof. Michael L. Fox, Michael W. Galligan, Sharon Stern Gerstman, Sarah E. Gold, Taa R. Grays, Henry M. Greenberg, Richard M. Gutierrez, Bryan D. Hetherington, Drew Jaglom, Scott M. Karson, Elena DeFio Kean, Peter H. Levy, Michael Miller, Domenick Napoletano, William T. Russell, Jr., Carol A. Sigmond, David H. Tennant.

Guests: Chaim Steinberger, Eric A. Tepper, Harriet R. Weinberger.

Ms. Gerstman presided as President of the Association.

1. Reports and recommendations re proposed court rules amendment to require judges to order parents to attend parent education and awareness programs. Ms. Gerstman outlined a request for comments published by the Office of Court Administration which would require divorcing parents to attend parent education programs. Proposed comments were submitted by the Committee on Families and the Law and the Family Law Section (opposing the proposal) and the Committee on Children and the Law (supporting the proposal). Ms. Gerstman prepared an additional memo incorporating the comments of all three groups with the goal of submitting it as the position of the Association, if the Executive Committee agreed. After discussion, a motion was adopted to submit the comments prepared by Ms. Gerstman opposing the proposal as the comments of the Association.
2. Reports and recommendations re Child Victims Act. Ms. Gerstman outlined a request from Senate Majority Leader John Flanagan to comment on the Child Victims Act, part of the Governor's 2018-19 budget proposal. The legislation was sent to the Committee on Civil Practice Law and Rules; the Torts, Insurance and Compensation Law Section; the Trial Lawyers Section; and the Criminal Justice Section. The Committee on CPLR prepared a memorandum analyzing the proposed extension of the statute of limitations. The Torts, Insurance and Compensation Law Section agreed with the committee, while the Trial Lawyers Section indicated its support for the proposal. After discussion, it was the consensus of the Executive Committee that the positions of the three groups should be transmitted to the Legislative leaders and the Governor with an indication that the comments do not represent the position of the Association.
3. Adjournment. There being no further business to come before the Executive Committee, the meeting was adjourned.

Respectfully submitted,



Sherry Levin Wallach
Secretary