



June 4, 2019

To: Members of the House of Delegates

Re: June 15, 2019 meeting

Enclosed are the agenda and related background materials for the upcoming meeting of the House of Delegates scheduled to begin at **9:00 a.m.** on Saturday, June 15, 2019 at The Otesaga in Cooperstown, New York. The enclosed background materials cover agenda items 2, 3, 8 and 12. Also enclosed for your use is a roster of the members of the House of Delegates.

We look forward to seeing you in Cooperstown.

Henry M. Greenberg
President

Scott M. Karson
President-Elect



**NEW YORK STATE BAR ASSOCIATION
HOUSE OF DELEGATES
SATURDAY, JUNE 15, 2019 – 9:00 A.M.
THE OTESAGA, COOPERSTOWN, NEW YORK**

AGENDA

1. Call to order, Pledge of Allegiance and introduction of new members – Mr. Scott M. Karson 9:00 a.m.
2. Approval of minutes of April 13, 2019 meeting 9:10 a.m.
3. Report of Treasurer – Mr. Domenick Napoletano 9:20 a.m.
4. Presentation of Root/Stimson Award – Mr. Henry M. Greenberg 9:40 a.m.
5. Installation and inauguration of Henry M. Greenberg as President – Hon. Howard A. Levine 9:55 a.m.
6. Report of President – Mr. Henry M. Greenberg 10:10 a.m.
7. Address by Ms. Judy Perry Martinez – President-Elect, American Bar Association 10:45 a.m.
8. Report and recommendations of Committee on Immigration Representation – Ms. Camille Mackler and Prof. Sarah Rogerson 11:00 a.m.
9. Report of Special Committee on Association Structure and Operations – Mr. Glenn Lau-Kee 11:20 a.m.
10. Report of Women in Law Section – Ms. Susan L. Harper 11:30 a.m.
11. Report of The New York Bar Foundation – Ms. Lesley Rosenthal 11:40 am.
12. Report and recommendations of Task Force on the Role of the Paralegal – Mr. Vincent Ted Chang and Prof. Margaret Phillips 11:50 a.m.
13. Administrative items – Mr. Scott M. Karson 12:10 p.m.
14. New business 12:20 p.m.
15. Date and place of next meeting
Saturday, November 2, 2019
Bar Center, Albany, New York

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
BAR CENTER, ALBANY
APRIL 13, 2019**

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PRESENT: Alomar; Baum; Bauman; Behrins; Berman; Bonina; Braunstein; Brown Spitzmueller; Brown, T.; Burke; Buzard; Castellano; Chambers; Christian; Coffey; Cohen, D.; Cohen, O.; Connery; DeFelice; Disare; Doxey; Eberle; Effman; Eng; Engel; Entin Maroney; Fay; Fernandez; Finerty; Flood; Fox; Franklin; Gayle; Genoa; Gerstman; Gold; Goldberg; Grady; Grays; Greenberg; Grimmick; Gutekunst; Gutierrez; Hack; Haig; Heath; Hersh; Hines; Hurteau; Jackson; Jaglom; James; Kamins; Karson; Katz; Kehoe; Kelly; Kenney; Kirby; Kobak; Krajewski; LaBarbera; Lamberti; Lau-Kee; Lawrence; Leo; Lessard; Levin Wallach; Levin; Levy; Lewis; Lindenauer; Lugo; MacLean; Maldonado; Mancuso; Mandell; Marinaccio; Maroney; Martin Owens; Martin; Matos; McGann; McNamara, M.; McNamara, T.; Meyer; Miller, M.; Miller, R.; Minkoff; Miranda; Mohan; Moskowitz; Murphy; Napoletano; Nowotarski; O'Donnell; Onderdonk; Ostertag; Owens; Perlman; Pitegoff; Pleat; Poster-Zimmerman; Quist; Ravin; Richman; Richter; Rosner; Saleh; Schofield; Schriever; Scott; Sen; Shamoon; Shampnoi; Shisov; Sigmond; Silkenat; Skidelsky; Standard; Stieglitz; Strenger; Tarver; Tennant; van der Meulen; Vigdor; Weathers; Westlake; Whiting; Wimpfheimer; Young.

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

1. The meeting was called to order and members of the House recited the Pledge of Allegiance.
2. Approval of minutes of January 18, 2019 meeting. The minutes were accepted as submitted.
3. Report of Treasurer. Scott M. Karson, Treasurer, reviewed the draft audited statements for the year ending December 31, 2018. Operating revenue for the year was \$22.4 million and expenses were \$21.3 million, with an operating surplus of \$1.1 million. He reported that through February 28, 2019, the Association's total revenue was \$13.1 million, an increase of approximately \$132,000 over the previous year, and total expenses were \$4.8 million, an increase of approximately \$116,000 over 2018. The Chair received the report with thanks.
4. Election of the Nominating Committee and NYSBA Delegates to the ABA House of Delegates. David P. Miranda, chair of the Nominating Committee, presented the report of the Nominating Committee.
 - a. Election of members of the Nominating Committee. The following were nominated for service on the 2019-2020 Nominating Committee:

District members and alternates of the Nominating Committee: First – Vincent Ted Chang, Taa R. Grays, Adrienne Beth Koch, Stephen C. Lessard, Susan B. Lindenauer, Michael J. McNamara, John Owens Jr., Seth Rosner and Stephen P. Younger, with Kaylin L. Whittingham, First Alternate, Asha Susan Smith, Second

Alternate, and Jay G. Safer, Third Alternate; Second – Andrea E. Bonina and Hon. Cheryl E. Chambers, with Barton L. Slavin as Alternate; Third – David W. Myers and Elena DeFio Kean, with Sandra Rivera as Alternate; Fourth – Michelle H. Wildgrube and Tara Ann Pleat, with Jeremiah Wood as Alternate; Fifth – Timothy J. Fennell and Michael E. Getnick, with Stuart J. LaRose as Alternate; Sixth – Bruce J. McKeegan and Alyssa M. Barreiro, with Christopher Denton as Alternate; Seventh – LaMarr Jackson and June M. Castellano, with Amy L. Christenson as Alternate; Eighth – Vincent E. Doyle III and Kathleen Marie Sweet, with Oliver C. Young as Alternate; Ninth – Kelly M. Welch, Joseph J. Ranni and Jessica D. Parker, with James L. Hyer as Alternate; Tenth – Ilene S. Cooper, A. Thomas Levin, Dorian Ronald Glover and Justin M. Block, with Marian C. Rice, First Alternate, and Rosemarie Tully, Second Alternate; Eleventh – Violet E. Samuels and Chanwoo Lee, with Steven Wimpfheimer as Alternate; Twelfth – Carlos M. Calderón and Samuel M. Braverman, with Steven E. Millon as Alternate; Thirteenth – Michael J. Gaffney and Robert A. Mulhall, with Orin J. Cohen as Alternate.

A motion to elect the foregoing was adopted.

- b. Election of Delegates to ABA House: A motion was adopted to elect the following for a two-year term commencing in August 2019: Claire P. Gutekunst, Seymour W. James, Jr., Scott M. Karson, Bernice K. Leber and Michael Miller.
5. Report and recommendations of Committee on Standards of Attorney Conduct. Joseph E. Neuhaus, past chair of the committee, reviewed the committee’s proposed amendments to Rules 1.10, 1.16(c)(5), 3.4(a) and 3.6(c) of the Rules of Professional Conduct. A motion was adopted to table the amendment to Rule 1.10; motions were adopted to approve the amendments to Rules 1.16(c)(5), 3.4(a) and 3.6(c).
6. Report and recommendations of Task Force on School to Prison Pipeline. John H. Gross, co-chair of the Task Force, reviewed the committee’s report on school disciplinary practices, restorative justice, and best practices for school districts. After discussion, a motion was adopted to amend the report to include the following: “Where school districts elect not to implement restorative justice techniques, those school districts must exercise good faith when using established procedures without impunity.” A motion was then adopted to approve the report and recommendations as amended.
7. Report and recommendations of Committee on Attorney Professionalism. Andrew L. Oringer, chair of the committee, presented the committee’s revised Standards for Civility which, if approved, would be submitted to the Chief Judge for consideration. After discussion, a motion was adopted to approve the report and recommendations.
8. Report and recommendations of Task Force on Wrongful Convictions. Hon. Barry Kamins and Hon. Robert S. Smith, co-chairs of the Task Force, outlined the Task Force’s report containing recommendations relating to conviction integrity units, forensic issues, actual innocence, statewide legislation, and the use of jailhouse informants. After discussion, a motion was adopted to approve the report and recommendations.

9. Report of the President. Mr. Miller highlighted the items contained in his written report, a copy of which is appended to these minutes and reflected on his term as President and thanked the House members for the opportunity to serve. He also thanked the officers and the staff for their assistance during his term. He thanked the members of the House for their service.
10. Report and recommendations of Task Force on Evaluation of Candidates for Election to Judicial Office. Hon. Susan Phillips Read and Robert L. Haig, co-chairs of the Task Force, presented the Task Force's report proposing best practices, guidelines and minimum standards for bar associations, good government groups and other in developing nonpartisan screening and evaluation processes for judicial candidates. A motion to amend the report and recommendations with respect to guidance from published bar association rules governing judicial evaluation systems was defeated. A motion to amend the report and recommendations to state that, as a best practice, a judiciary committee should consider using either a two-tiered or three-tiered system and recommended ratings for each was adopted on a standing vote of 51-48. As amended, a motion was adopted to approve the report and recommendations.
11. Report of The New York Bar Foundation. Lesley Rosenthal, President of The New York Bar Foundation, updated the House as to the work of The Foundation. The Chair received the report with his thanks.
12. Report and recommendations of New York City Bar Association. Steven Fink, chair of the NYC Bar Association's Professional Responsibility Committee, presented proposed amendments to Part 522 of the Rules of the Court of Appeals governing registration of in-house counsel who are working in New York and licensed to practice in another jurisdiction. After discussion, a motion was adopted to approve the report and recommendations.
13. Report and recommendations of Task Force on Incarceration Release Planning and Programs. Scott M. Karson and Sherry Levin Wallach, co-chairs of the Task Force, reviewed the Task Force's report and recommendations with respect to policy changes and best practices for incarceration release programs. They accepted a proposed amendment to the report to require the Department of Correctional and Community Services to assist inmates prior to release in applying for certain public benefits. After discussion, a motion was adopted to approve the report and recommendations.
14. Administrative items. Mr. Greenberg reported on the following:
 - a. Motions to approve the designation of delegates filed by the county and local bar associations for the 2019-2020 Association year and to approve the filed roster of the members of the House for the 2019-2020 year were requested and approved.
 - b. He noted that this meeting represents his last as Chair of the House and thanked the House for the opportunity to serve. He thanked the departing members of the Executive Committee and the House for their service and thanked the staff for their

support. He introduced Mr. Karson as the next Chair of the House and presented him with the House's gavel.

15. Date and place of next meeting. Mr. Karson announced that the next meeting of the House of Delegates would take place on Saturday, June 15, 2019 at The Otesaga in Cooperstown.
16. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,



Sherry Levin Wallach
Secretary

Michael Miller
President
Law Office of Michael Miller
666 Fifth Avenue, Suite 1717
New York, New York 10103
mmiller@nysba.org
212.545.7000

**President's Report
to the House of Delegates
April 13, 2019**

As I approach the last few weeks of my term as New York State Bar Association president, I am especially reflective. We have had an ambitious agenda and have achieved a great deal this year. We are sound financially and have made significant contributions to our profession and our community. I again want to applaud the tremendous work being done by lawyers across New York, across the United States and around the world to protect and advance the rule of law.

NYSBA Sections, Committees, Task Forces, and Working Groups

We have a number of task forces and other groups that have developed reports that will be presented to you at this and future meetings. I would like to highlight the work of these groups.

The **Committee on Standards of Attorney Conduct** is our premier committee that reviews the rules that govern our profession. The committee has undertaken a comprehensive review of the New York Rules of Professional Conduct. At the January meeting, the Committee presented and the House approved amendments to a number of rules; at this meeting, the Committee will continue its presentation with a number of additional rules. Of course, none of these proposals will become effective unless and until approved by the Appellate Division. We will work closely with the courts to secure approval of these rules.

At this meeting, the **Committee on Attorney Professionalism** will present proposed amendments to the Standards of Civility that the court system has adopted as aspirational standards. Our Association played a critical role in the original development of these standards almost a quarter-century ago, and it is fitting that we should continue in the updating of these rules to account for changes in our profession.

The **Task Force on the Evaluation of Candidates for Election to Judicial Office**, co-chaired by Hon. Susan P. Read and Robert L. Haig, has developed a comprehensive report that it will present to you at this meeting and for debate and vote. It recommends the continuation of existing effective screening mechanisms. For those counties not currently served by existing screening entities, the Task Force recommends the establishment of regional or district screening committees, with funding from the Office of Court Administration. The Task Force also has recommended a set of best practices to be used by screening committees. The report is being presented to you for vote at this meeting.

The Task Force on Incarceration Release Planning and Programs, co-chaired by NYSBA secretary Sherry Levin Wallach and president-elect designee Scott M. Karson, has prepared a comprehensive report with recommendations to address a range of barriers to re-entry including availability of housing, education and vocational training; restoration of rights; inconsistency in rules; limited availability of substance abuse and mental health treatment programs; and housing options and limited availability of housing. The report also addresses the impact on our communities and on formerly incarcerated people that results from inadequate release planning. The report is being presented to you for a vote at this meeting.

The Task Force on Wrongful Convictions, co-chaired by Hon. Barry Kamins and Hon. Robert S. Smith, has submitted a report with recommendations relating to the establishment of conviction integrity units; legislation to permit a newly discovered evidence claim after conviction; improvement of the quality of forensic science introduced into evidence; improvement of implementation of laws relating to eyewitness identification and recording of interrogations; and jailhouse informants. The report is being presented to you for a vote at this meeting.

The Task Force on School to Prison Pipeline, co-chaired by Sheila A. Gaddis and John H. Gross, and established last year by past president Sharon Stern Gerstman, has issued a report to the House with substantive recommendations to address school discipline issues, outline restorative justice alternatives, and develop best practices. It is presenting its report for a vote at this meeting.

The Task Force on the Role of Paralegals, co-chaired by Vincent Ted Chang, past President Maryann Saccomando Freedman and Margaret L. Phillips, has issued a report updating paralegal guidelines adopted by the House of Delegates in 1997 and making recommendations for best practices for the use of paralegals. The task force also has recommended a category of NYSBA membership for paralegals. The report will be presented for vote at the June 2019 House meeting.

The Task Force on Mass Shootings and Assault Weapons, co-chaired by Margaret J. Finerty and past President David M. Schraver, is considering the connection between mental health and mass shootings, the relationship between domestic violence and mass shootings, and whether assault weapons belong in civilian hands, issues which are constantly in the news. It has met a number of times, one of which included an extraordinary presentation by NYPD senior weapons experts.

The Task Force on the New York Bar Exam, co-chaired by Eileen D. Millett and Hon. Alan D. Scheinkman, which was established last month, has scheduled its first meeting next week. It will be embarking upon an ambitious agenda investigate and report on the experience and impact of New York's adoption in May 2015 of the Uniform Bar Examination (UBE). The task force will consider matters including the impact that the UBE has had upon applicants, upon the qualifications and relevant knowledge of newly admitted New York attorneys, upon potential employers, and upon diversity in the profession. Based on its investigation, the task force will make recommendations as to the future content and form of the New York Bar examination.

The Working Group on Puerto Rico, co-chaired by Richard M. Gutierrez, Drew Jaglom, Hilary F. Jochmans and Maria Matos, continues to identify steps that can be taken to assist the

people of Puerto Rico in their continued recovery efforts and efforts to secure an exemption from the Jones Act for Puerto Rico.

Advocacy

NYSBA's voice has been strong and vibrant and our advocacy efforts have achieved concrete results to improve the administration of justice, enhance access to justice and serve our members' interests.

In February, Chief Judge Janet DiFiore presented the annual State of the Judiciary speech at the Bronx County Courthouse. In her speech, the Chief Judge singled out NYSBA for its support of court modernization. Our Association long has supported the consolidation of New York's byzantine structure consisting of 11 levels of courts into a modern, streamlined system that will benefit users of our courts – both lawyers and litigants alike. We believe that there is now an opportunity to pursue this long-time goal through legislation calling for amendment of our state's constitution.

You may recall that we established a **Working Group on Civil Rights Law §50-a** co-chaired by Catherine A. Christian and Norman P. Effman to examine whether the statute should be repealed or amended. In February, the Executive Committee approved the recommendation of the Working Group calling for a substantial amendment of the statute.

As you know, Judiciary Law §470 requires generally that in order to appear as an attorney of record in New York courts, an attorney must have a physical office in New York. For many years, critics have argued that this requirement is seriously outdated. Our **Working Group on Judiciary Law §470**, chaired by Past President David M. Schraver, presented its report in January calling for the repeal of the statute. With House approval of the report, we are advocating for this repeal with the Legislature.

We have participated in a number of lobbying activities. In February, NYSBA leaders, held a lobby day here in Albany to advocate our state legislative priorities. A week later, we traveled to Washington D.C. to advocate for our federal legislative priorities. Earlier this week, we participated in ABA Day in Washington.

There is no doubt that the **2019-2020 New York State Budget** takes great strides toward making the State of New York freer and fairer, and NYSBA played a meaningful role in many of its most important provisions. We have lobbied hard for criminal discovery reform, and we are delighted by its inclusion in the budget. Make no mistake - this is a monumental shift toward fairness in our criminal justice system. The new rules will require automatic discovery, meaning that a motion will not be required to obtain discovery; that discovery will be conducted early in the case. NYSBA's work on this issue began in 2012, when then-President Seymour James established the Task Force on Criminal Discovery.

NYSBA policy on criminal justice has also embraced bail and pretrial detention reforms. The reforms included in the adopted state budget eliminate cash bail for misdemeanors and non-violent felonies and require police officers to issue desk appearance tickets to most people charged with misdemeanors and Class E felonies. This will ensure that the overwhelming number of people charged with a crime will no longer languish in jail prior to adjudication because of an inability to post bail.

I am very pleased to report that thanks in large part to the advocacy efforts of NYSBA members and leadership, along with bar associations and attorneys around the state, **the 2019-2020 New York State budget will not include a \$50 increase in the biennial attorney registration fee** which had been proposed by the Governor.

NYSBA's Tax Section reviewed N.Y. Tax Law § 171-v in 2018. It provides that people who owe \$10,000 or more in state taxes may have their driver's license suspended as an incentive for payment, even if those debtors have no reasonable chance of paying their tax arrears without compromising their ability to cover basic living expenses. The Tax Section concluded that section 171-v is in conflict with longstanding debtor protection laws. Based on the section's affirmative legislative proposal, the 2019-2020 state budget included an amendment to the tax law that would exempt any taxpayer receiving public assistance or Supplemental Security Income and would allow exemption where the taxpayer can demonstrate that such payment would cause undue financial hardship.

ABA Activity

Together with House member Ronald Minkoff and President-Elect Hank Greenberg, I have been meeting with various ABA committees and entities concerning adoption of best practices for online legal document providers, following up on the report and recommendations of the New York County Lawyers Association adopted by our House in 2017. It is our goal to bring these Best Practice Guidelines for online legal document providers to the ABA House in August 2019, which will afford consumers protections and reliability.

At the January NYSBA House meeting, Past President Mark H. Alcott offered a resolution condemning the impact of the partial government shutdown, then taking place, on the federal court system. We brought a similar resolution to the ABA House at its February 2019 meeting. Although the shutdown had ended by the time of the meeting, we thought it was important to adopt a resolution condemning any shutdown as impairing the legal system and undermining the Rule of Law. The resolution was unanimously adopted.

Membership & Communications

I have often said that “all roads lead to membership.” In partnership with staff, association leaders have worked hard to enhance the membership experience through programs and media coverage emphasizing NYSBA’s relevance in today’s world.

In an effort to achieve positive results in our 2019 renewal campaign, Director of Attorney Retention and Engagement Victoria Shaw began the season with a methodical and strategic approach for engagement. Starting the first week in September, which is one month earlier than in previous years, we sent an invoice eblast. We redesigned the invoice eblast for 2019 with a straightforward subject line, cleaner design and clear calls to action. We maintained this eblast schedule sending monthly invoice eblasts the first Thursday of each month starting in September and ending in February. We sent a final invoice eblast to anyone who did not renew by March 28, letting them know they would be dropped on April 1. As of this writing, our retention rate has exceeded the 2018 rate.

NYSBA’s flagship publications, the NYSBA Journal and the State Bar News, have both changed significantly over the past year. The Journal, which comes out nine times each year, has a new mix of content with more feature articles on issues of interest to attorneys, in addition to the law

practice management pieces and other columns that have been mainstays of the publication. Each Journal issue also includes three “State Bar News” pages of NYSBA-specific content.

The State Bar News has been entirely redesigned to be more colorful and reader-friendly and is now issued three times each year. Content from the State Bar News and the Journal is now also disseminated through our NYSBA Weekly Wednesday e-mail blast – a new publication that was introduced last year – and posted on the NYSBA blog on our website.

The NYSBA Weekly gives us the opportunity to get timely news and other articles of interest to our members more quickly. For the first time ever at a NYSBA Annual Meeting, the communications team was able this past January to cover some events and publish articles about them in the same week.

Over the past year, we have seen significant continued growth across our social media platforms. Twitter remains our most viable social medium with 13,600+ followers. Successful posts include tasteful Legal Humor posts and breaking news on the legal profession, as well as law practice management tips.

Our Facebook presence has seen its biggest growth in five years with a 23 percent increase in growth to more than 6,900 likes. This is due to carefully curated posts that highlight the best of our profession, better use of Facebook events, and strategic advertising campaigns on NYSBA Podcasts and Free Legal Answers. This past November, NYSBA earned its biggest numbers on Love Your Lawyer Day. NYSBA’s post reached 288,330 people including 341 reactions, 117 comments and 1,700 shares.

Our Instagram grew 47.8 percent to 1,705 followers, and we are currently the second-most followed bar Instagram in the bar world. This is currently our most successful platform for member engagement and reaching younger members. It gives us a lot of opportunities to be creative and tell our stories to law students and newly-admitted attorneys.

NYSBA also has seen a 15 percent growth in our LinkedIn followers, to 8,100+. We get more clicks than likes and it remains an effective marketing tool for events and news.

All of these media work differently, but together they help us form a unified and cohesive digital communications strategy. We have the analytics on our side to help us continually refine our strategies and deliver the content our members want and need to succeed.

The NYSBA website remains our primary communications hub with our members. Our total growth from June 1 is 15 percent and our individual visitors are up 20 percent. Our most visited pages include our Ethics Opinions, CLE homepage, Downloadable Forms and Fastcase. We also have added weekly blog content highlighting our Journal and State Bar News articles. In addition, our new NYSBA Podcasts series launched last June 1 and is available for streaming on the website, Apple Podcasts, Google Play and Spotify.

This fall, NYSBA will unveil a new website through our new web vendor, Clique Studios. NYSBA kicked off the project on March 26, 2019. New features will include more personalized content, improved delivery of section publications and searchable directories.

With support from our International Section, we continue outreach to the global marketplace. Our international membership has grown considerably over the past decade and we believe we have enormous opportunity for expansion with a thoughtful and strategic plan. We have learned that the NYSBA brand is remarkably strong in the international sector – lawyers in other countries view NYSBA as the premier United States bar association.

In our continuing effort to provide a more meaningful membership experience for NYSBA's non-resident members, NYSBA hosted receptions for non-resident members in [Chicago](#) and [Washington, D.C.](#)

Budget, Finance and Technology

In the written Treasurer's Report that you have received, you will find the results of the 2018 NYSBA audit. Our financial position remains strong, and we ended 2018 with a significant budget surplus.

We continue to focus on increasing non-dues revenue and developing new types of non-dues revenue. In 2018, we worked with MCI, our sales consultants, and focused on growing our non-dues revenue streams. We added 10 revenue streams in 2018 growing our portfolio of opportunities to 15 revenue streams including everything from event sponsorships, digital sponsored content on our NYSBA blog and direct email blast and mail opportunities for our member benefit partners. We increased our revenue for sponsorships, print and digital media sales by 50 percent in 2018 ending the year with \$313,400 in total net non-dues revenue through MCI's sponsorships, print and digital media sales.

We finalized an agreement with Kaplan Test Prep which will provide NYSBA student members with a significant discount and a royalty payment to NYSBA. We are finalizing member benefit agreements with JDL, which provides vulnerability assessments and penetration testing on firms' external-internal network and systems, and with Cybersecurity Risk Solutions, which provides cybersecurity and data breach protection solutions to commercial enterprise and small-to-midsize businesses.

We are now in the process of replacing our outdated, cumbersome IT database system with a modern association management system. At present we are in the discovery phase of this project with Jessica Patterson of our staff being tapped as project manager. In addition, by the end of 2019 we will have a new website, designed to make the member experience significantly more user-friendly.

Chaired by Mark A. Berman, the Committee on Technology and the Legal Profession has approached law students in a way like never before. Through the Committee, NYSBA is teaching a full multi-credit course at CUNY School of Law. Each week, different members of NYSBA teach students in areas such as artificial intelligence, blockchain, cryptocurrency, biometrics, cybersecurity, ediscovery, algorithms, and social media ethics. Other members of the law school community are also welcome to attend. In the fall, the Committee will be similarly teaching a two-credit course at Syracuse Law School. The Committee also has taught at Hofstra Law School and plans are in the works for Buffalo Law School. In this way, NYSBA shows relevance to the next generation of lawyers and helps drive students to the Association.

Continuing Legal Education

NYSBA continues to provide high quality continuing legal education programs for attorneys. In 2018, the CLE Department, in conjunction with sections and committees, presented a total of 178 program topics in 293 locations statewide. With CLE and Sections combined, including the 38 programs at Annual Meeting, over 250 programs were presented in 329 locations. All programs carrying CLE credit were added to master listing and calendar of events on the CLE website in 2018. Free programs, in addition to Section Destination Meetings were added to the Spring and Fall calendars and the CLE homepage to increase awareness of events.

Over 4,000 programs, including individual course segments, are available online on demand. In 2018, online, on demand program archive gross revenue surpassed one million dollars for the first time. Combined gross revenue sales of DVDs and CDs totaled \$330,000.

NYSBA sponsored 30 free diversity, inclusion and elimination of bias CLE programs in 2018 for members. The Association will continue to offer free diversity programs to members in 2019 to enable attorneys to meet the new requirement.

Core curriculums by area of practice and section have been added to the NYSBA CLE website. Landing pages were created to highlight specific programs of interest to design and lay a foundation for core competencies. In 2019, the goal is to work closely with each section to be sure past program archives are posted and available online by practice area and that they are tagged to section pages.

In 2018, the CLE Department launched an all access pass enabling members to access all online CLE programs for a year for a set flat fee. A special introductory rate for solo and small firm practitioners was offered for \$595 in November 2018. 45 attorneys purchased the all access pass generating \$26,975 in revenue. The regular member rate is \$795. Non-members are charged \$1,995. In 2019, efforts will be made to offer firm or group discounts for larger organizations or firms to meet their CLE needs.

The bundling discount will be discontinued in 2019. The offer was based on total credits purchased rather than total courses or products and was automated at checkout. Marketing efforts will focus on the launch of the new all access pass rather than the bundling discount.

NYSBA is transitioning the existing CLE portal for online program viewing to a new learning management system called CE21, and testing and integration are largely complete. In addition to hosting all of our online videos, MCLE certificating for other states including New Jersey, Pennsylvania, California and Connecticut and the uniform certificate will be processed through the new platform for a set annual fee.

In 2019, we are using Convene, a new facility in New York City as a venue for CLE programs. The Association contracted in December 2018 with Convene, which offers high tech meeting space including built in A/V and outlets for all laptops and all-day beverage and snack service, all for a flat fee. CLE programs in New York City are scheduled on Mondays and Fridays at Convene located at 810 Seventh Ave between 52nd and 53rd Streets. Programs are currently scheduled from January through June, and programs are in the process of being scheduled for September through December 2019.

The New York State Bar Association will host its first ever Tech Summit September 19-20, 2019 in NYC. This special program will offer a unique experience for attorneys to learn more about technology and legal practice. The day and a half program will be held at the Crowne Plaza Times Square and will offer special keynotes and three tracks for learning more about technology and practical applications and software.

Representing NYSBA

Among the events I attended since our January meeting were:

- The ABA Mid-Year Meeting and House of Delegates in Las Vegas January 25 - January 2;
- The Albany County Bar Association's annual Court of Appeals Dinner on February 13;
- The State of the Judiciary address at the Bronx County Courthouse on February 26;
- Meet the Presiding Justices event at Appellate Division, 2nd Dept., on March 4;
- The Westchester County Bar Association's Annual Dinner on March 7;
- The Dutchess County Bar Association Membership Luncheon on March 14;
- The inaugural Women in Law Section Trailblazer Series, honoring Attorney General Letitia James, on March 15;
- The New York Intellectual Property Law Association Federal Judiciary Dinner on March 22; and
- NYS Judicial Institute on Professionalism in the Law Spring Convocation on April 1.

In Closing

This is my last meeting of the House as President of the Association. It has been a greatest privilege and honor of my professional life to serve in this role during the past year. I am deeply grateful to have had a front-row seat to witness the many, many great and inspiring things being done by our members and by lawyers throughout the country and the world.

I want to thank the officers of the Association for their strong support and friendship throughout the year. Many thanks to the members of the Executive Committee for their dedicated work. A special thank you to Pam McDevitt, our extraordinarily dedicated Executive Director, and to the members or our staff for everything they do to further the good work of the Association.

I especially want to thank again our next president, Hank Greenberg, for his steadfast support, solid counsel and abiding friendship. I know that Hank will be a superb leader of our great Association and look forward to supporting him during his term.

And finally, thank you to you, the members of our House, for your support and commitment to improving the administration of justice and to the highest standards of professionalism, civility and collegiality. You set the standards by which all others in our profession are measured.

The next meeting of the House of Delegates will occur on Saturday, June 15, 2019 at The Otesaga in Cooperstown. I look forward to seeing you there.

Respectfully submitted,

A handwritten signature in black ink that reads "Michael Miller". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.



Staff Memorandum

**HOUSE OF DELEGATES
Agenda Item # 3**

Attached for your reference are the Association's financial statements through April 30, 2098.

**NEW YORK STATE BAR ASSOCIATION
2019 OPERATING BUDGET
FOUR MONTHS OF CALENDAR YEAR 2019**

REVENUE

	2019 BUDGET	ADJUST- MENTS	2019 BUDGET AS ADJUSTED	UNAUDITED RECEIVED 4/30/2019	% RECEIVED 4/30/2019	2018 BUDGET	UNAUDITED RECEIVED 4/30/2018	% RECEIVED 4/30/2018
MEMBERSHIP DUES	10,050,000		10,050,000	9,372,080	93.25%	10,050,000	9,607,576	95.60%
SECTIONS:								
Dues	1,302,000		1,302,000	1,247,092	95.78%	1,341,574	1,252,506	93.36%
Programs	3,160,640		3,160,640	1,245,113	39.39%	2,894,561	1,507,133	52.07%
INVESTMENT INCOME	478,000		478,000	67,276	14.07%	477,000	50,046	10.49%
ADVERTISING	219,000		219,000	66,496	30.36%	296,000	59,137	19.98%
CONTINUING LEGAL EDUCATION	3,130,000		3,130,000	1,315,875	42.04%	3,635,000	1,519,798	41.81%
USI AFFINITY PAYMENT	2,196,800		2,196,800	748,731	34.08%	2,262,000	732,256	32.37%
ANNUAL MEETING	850,000		850,000	942,198	110.85%	930,000	842,403	90.58%
HOUSE OF DELEGATES & COMMITTEES	78,250		78,250	42,133	53.84%	211,500	36,286	17.16%
PUBLICATIONS, ROYALTIES AND OTHER	268,200		268,200	94,162	35.11%	296,500	60,542	20.42%
REFERENCE MATERIALS	1,274,000		1,274,000	341,906	26.84%	1,310,000	342,298	26.13%
TOTAL REVENUE	23,006,890	0	23,006,890	15,483,062	67.30%	23,704,135	16,009,981	67.54%

EXPENSE

	2019 BUDGET	ADJUST- MENTS	2019 BUDGET AS ADJUSTED	UNAUDITED EXPENDED 4/30/2019	% EXPENDED 4/30/2019	2018 BUDGET	UNAUDITED EXPENDED 4/30/2018	% EXPENDED 4/30/2018
SALARIES & FRINGE	9,382,242		9,382,242	2,835,870	30.23%	10,105,550	3,036,288	30.05%
BAR CENTER:								
Rent	284,000		284,000	82,137	28.92%	287,000	82,137	28.62%
Building Services	230,750		230,750	87,558	37.94%	238,250	55,684	23.37%
Insurance	162,000		162,000	49,667	30.66%	142,000	58,449	41.16%
Taxes	2,750		2,750	1,112	40.44%	5,250	-2,833	-53.96%
Plant and Equipment	862,000		862,000	273,534	31.73%	904,600	271,781	30.04%
Administration	539,100		539,100	119,581	22.18%	607,600	184,307	30.33%
SECTIONS	4,466,940		4,466,940	1,771,116	39.65%	4,198,850	1,793,901	42.72%
PUBLICATIONS:								
Reference Materials	306,752		306,752	71,587	23.34%	389,050	55,322	14.22%
Journal	360,200		360,200	150,051	41.66%	378,200	144,142	38.11%
Law Digest	172,300		172,300	69,315	40.23%	187,800	60,438	32.18%
State Bar News	135,300		135,300	51,304	37.92%	242,300	71,063	29.33%
MEETINGS:								
Annual Meeting	338,500		338,500	388,275	114.70%	345,800	268,550	77.66%
House of Delegates, Officers and Executive Committee	519,300		519,300	203,756	39.24%	526,950	170,688	32.39%
COMMITTEES:								
Continuing Legal Education	1,659,000		1,659,000	613,683	36.99%	1,711,950	681,402	39.80%
LPM / Electronic Communication Committee	55,950		55,950	25,571	45.70%	72,800	34,188	46.96%
Marketing / Membership	924,350		924,350	308,675	33.39%	798,100	241,333	30.24%
Media Services	30,450		30,450	6,113	20.08%	98,900	18,783	18.99%
All Other Committees and Departments	2,574,705		2,574,705	874,368	33.96%	2,556,410	720,427	28.18%
TOTAL EXPENSE	23,006,589	0	23,006,589	7,983,273	34.70%	23,797,360	7,946,050	33.39%
BUDGETED SURPLUS	301	0	301	7,499,789		(93,225)	8,063,931	

NEW YORK STATE BAR ASSOCIATION
STATEMENTS OF FINANCIAL POSITION
AS OF APRIL 30, 2019

<u>ASSETS</u>	<u>UNAUDITED</u> <u>4/30/2019</u>	<u>UNAUDITED</u> <u>4/30/2018</u>	<u>UNAUDITED</u> <u>12/31/2018</u>
<u>Current Assets:</u>			
General Cash and Cash Equivalents	13,656,141	12,810,703	15,567,756
Accounts Receivable	229,305	113,232	230,010
Prepaid expenses	1,097,966	775,574	1,627,608
Royalties and Admin. Fees receivable	671,808	160,771	644,691
Total Current Assets	15,655,220	13,860,280	18,070,065
<u>Board Designated Accounts:</u>			
<u>Cromwell Fund:</u>			
Cash and Investments at Market Value	2,487,351	2,330,264	2,191,231
Accrued interest receivable	0	0	0
	<u>2,487,351</u>	<u>2,330,264</u>	<u>2,191,231</u>
<u>Replacement Reserve Account:</u>			
Equipment replacement reserve	1,117,447	1,117,112	1,117,337
Repairs replacement reserve	794,280	794,042	794,202
Furniture replacement reserve	219,926	219,860	219,904
	<u>2,131,653</u>	<u>2,131,014</u>	<u>2,131,443</u>
<u>Long-Term Reserve Account:</u>			
Cash and Investments at Market Value	24,642,564	22,829,667	21,745,927
Accrued interest receivable	0	0	147,237
	<u>24,642,564</u>	<u>22,829,667</u>	<u>21,893,164</u>
<u>Sections Accounts:</u>			
Section Accounts Cash equivalents and Investments at market value	3,753,905	3,599,281	3,699,977
Cash	721,089	965,738	-3,453
	<u>4,474,994</u>	<u>4,565,019</u>	<u>3,696,524</u>
<u>Fixed Assets:</u>			
Furniture and fixtures	1,431,781	1,415,856	1,431,781
Leasehold Improvements	1,368,781	1,368,781	1,368,781
Equipment	7,630,531	8,306,954	7,554,673
Telephone	107,636	107,636	107,636
	<u>10,538,729</u>	<u>11,199,227</u>	<u>10,462,871</u>
Less accumulated depreciation	9,224,640	8,945,286	9,118,640
Net fixed assets	1,314,089	2,253,941	1,344,231
Total Assets	50,705,871	47,970,185	49,326,658
<u>LIABILITIES AND FUND BALANCES</u>			
<u>Current liabilities:</u>			
Accounts Payable & other accrued expenses	885,581	735,891	1,016,651
Deferred dues	0	94	8,382,450
Deferred income special	615,384	846,153	692,307
Deferred grant revenue	22,364	34,010	27,406
Other deferred revenue	248,498	62,074	1,228,772
Unearned Income - CLE	25,074	21,388	57,487
Payable To The New York Bar Foundation	2,512	3,339	28,915
Total current liabilities & Deferred Revenue	1,799,413	1,702,949	11,433,988
<u>Long Term Liabilities:</u>			
Accrued Pension Costs	0	0	0
Accrued Other Postretirement Benefit Costs	7,228,910	7,651,026	7,128,910
Accrued Supplemental Plan Costs and Defined Contribution Plan Costs	120,000	120,000	296,197
Total Liabilities & Deferred Revenue	9,148,323	9,473,975	18,859,095
<u>Board designated for:</u>			
Cromwell Account	2,487,351	2,330,264	2,191,231
Replacement Reserve Account	2,131,653	2,131,014	2,131,443
Long-Term Reserve Account	17,293,654	15,058,641	14,320,820
Section Accounts	4,474,994	4,565,019	3,696,524
Invested in Fixed Assets (Less capital lease)	1,314,089	2,253,941	1,344,231
Undesignated	13,855,807	12,157,331	6,783,314
Total Net Assets	41,557,548	38,496,210	30,467,563
Total Liabilities and Net Assets	50,705,871	47,970,185	49,326,658

New York State Bar Association
Statement of Activities
For the Four Months Ending April 30, 2019

	<u>April 2019</u>	<u>April 2018</u>	<u>December 2018</u>
REVENUES AND OTHER SUPPORT			
Membership dues	9,372,080	9,607,576	9,902,972
Section revenues			
Dues	1,247,092	1,252,506	1,292,120
Programs	1,245,113	1,507,133	2,529,827
Continuing legal education program	1,357,391	1,519,798	3,240,221
Administrative fee and royalty revenue	835,126	783,545	2,483,276
Annual meeting	942,198	842,403	838,408
Investment income	168,808	135,238	1,580,794
Reference Books, Formbooks and Disk Products	341,906	342,298	1,076,377
Other revenue	138,607	149,040	518,422
	<hr/>	<hr/>	<hr/>
Total revenue and other support	15,648,321	16,139,537	23,462,417
PROGRAM EXPENSES			
Continuing legal education program	870,010	951,091	2,307,567
Graphics	519,824	638,427	1,749,965
Government relations program	165,376	162,156	483,561
Law, youth and citizenship program	23,563	24,546	76,021
Lawyer assistance program	38,309	32,218	108,395
Lawyer referral and information services	39,047	42,809	122,216
Law practice management services	37,968	19,106	88,689
Media / public relations services	111,843	123,257	350,259
Marketing and Membership services	596,476	522,836	1,485,399
Pro bono program	49,790	80,492	208,883
Local bar program	32,937	35,416	103,730
House of delegates	178,688	153,142	431,481
Executive committee	25,068	17,547	57,322
Other committees	209,042	228,791	634,270
Sections	1,771,116	1,798,074	3,853,509
Section newsletters	25,613	57,389	160,727
Reference Books, Formbooks and Disk Products	256,858	237,022	794,391
Publications	270,669	275,643	648,945
Annual meeting expenses	388,275	268,550	274,263
	<hr/>	<hr/>	<hr/>
Total program expenses	5,610,472	5,668,512	13,939,593
MANAGEMENT AND GENERAL EXPENSES			
Salaries and fringe benefits	1,127,568	1,164,881	3,907,677
Pension plans and other employee benefit plan costs	221,743	217,207	(131,456)
Rent and equipment costs	396,986	309,716	1,118,192
Consultant and other fees	363,444	300,315	903,249
Depreciation and amortization	225,200	225,200	1,294,000
Other expenses	37,860	60,220	176,382
	<hr/>	<hr/>	<hr/>
Total management and general expenses	2,372,801	2,277,539	7,268,044
CHANGES IN NET ASSETS BEFORE INVESTMENT TRANSACTIONS AND OTHER ITEMS			
	7,665,048	8,193,486	2,254,780
Realized and unrealized gain (loss) on investments	3,424,935	(517,833)	(2,603,313)
CHANGES IN NET ASSETS			
	11,089,983	7,675,653	(348,533)
Net assets, beginning of year	<hr/>	<hr/>	<hr/>
	30,467,564	30,816,097	30,816,097
Net assets, end of year	<hr/>	<hr/>	<hr/>
	41,557,547	38,491,750	30,467,564



Staff Memorandum

HOUSE OF DELEGATES Agenda Item #8

REQUESTED ACTION: Approval of a resolution offered by the Committee on Immigration Representation urging the State Legislature to enact a right to counsel in immigration proceedings.

In 2012, the Committee on Immigration Representation issued a report, approved by the House in June 2012, proposing minimum standards for the provision of legal representation in immigration proceedings and recommending programs to improve immigration justice. Since the issuance of that report, the committee has worked to increase access to quality legal representation. Presently, with federal immigration policy promoting more widespread enforcement and restricted access to legal benefits, the committee has revisited access to counsel for immigrants.

The attached report provides an assessment of access to counsel in New York immigration proceedings, noting challenges posed by political and geographic variations, including geographic distances, language barriers, political fears, budgeting, and long wait lists. The report notes that having counsel significantly improves an applicant's prospects for success in proceedings, and urges legislation to provide a right to counsel.

The committee notes that New York City created a right to counsel in housing court for indigent and low-income residents, and suggests that the circumstances that led to the creation of a right to counsel in those matters are similar to immigration proceedings. The committee notes that since a right to counsel in housing court was developed in 2017, there has been a 24% decrease in evictions.

This report was posted for comment in April 2019. Attached is a memorandum from the Committee on Mandated Representation indicating its support for the report. Also attached is a memorandum from the Committee on Legal Aid supporting the report, but indicating that it should recommend that any funds allocated by the Legislature should be subject to the issuance of a Request for Proposals and competitive bidding process.

The report will be presented at the June 15 meeting by committee co-chairs Camille Mackler and Prof. Sarah F. Rogerson.

New York State Bar Association
Committee on Immigration Representation
Proposed Resolution

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, a national study of immigration court data published by the American Immigration Council shows the great disparities in outcomes between cases that have legal representation and those that don't, including a 78% success rate for never-detained represented immigrants compared to 15% for their never-detained non-represented counterparts; and

WHEREAS, a similar study done through the evaluation of the first years of the New York Immigrant Family Unity Project (NYIFUP), the pioneering public defender system that provides universal representation to detained immigrants appearing before the Varick Street immigration court in New York City, shows that detained immigrants have a 48% chance of success with a NYIFUP attorney, compared to 4% before NYIFUP was created; and

WHEREAS, the American Bar Association has called for both a federally funded system of appointed counsel for indigent respondents in removal proceedings as well as for states and localities to provide such counsel until the federal government does so; and

WHEREAS, recent policies and immigration enforcement trends have greatly increased removal risks to immigrant New Yorkers and our immigration courts backlogs have reached historical highs; and

WHEREAS, NYSBA believes that true access to justice includes ensuring due process is served and principles of fundamental of fairness are observed in any judicial setting;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association hereby urges the New York State Governor and the New York State Legislature to enact a right to counsel in immigration proceedings as a statutory requirement under New York State law.

The Need for Access to Counsel in Immigration Proceedings in New York

Prepared by the New York State Bar Association's
Special Committee on Immigration Representation¹

EXECUTIVE SUMMARY

In 2012 the New York State Bar Association's Special Committee on Immigration Representation issued a report detailing its findings regarding access to counsel for immigrants in New York. The report detailed the monumental task the new Committee faced as they sought to increase rates of representation for some of New York's most vulnerable communities. In 2019, as immigration policies have continued to focus on enforcement-heavy mechanisms and as worrying limitations on due process have emerged, the Committee has chosen to re-visits the report and its initial assessments to ensure its work is responsive to today's needs.

Based on an initial review of publicly available data as well as field research conducted by some Committee members it has become apparent that, despite the progress made by the Committee, new policies have continued to impede immigrants' access to counsel and, by extension, to justice. In addition, New York State's diverse geography, its uneven distribution of service providers, and concentrated funding streams pose significant challenges for immigration attorneys throughout the state, as well as the communities that seek to access their services.

Notwithstanding these obstacles, recent studies have highlighted the impact of access to counsel, particularly in immigration court proceedings. In fact, a national study showed that having a lawyer dramatically increases not just an individual's chance of success in immigration applications, but also the likelihood of them appearing in immigration court or applying for some kind of protection from deportation. A New York-specific study of the impact of representation in detained court also showed significantly improved chances of applying for relief, winning protections from deportation, and earlier releases from custody. Taken together, these findings show that one way in which New York can meaningfully support its immigrant communities is by creating a statutory right to counsel in immigration proceedings.

The Right to Counsel is not a new concept in New York. In fact, last year New York City became the first jurisdiction to pass a right to counsel in housing court. Preliminary results show that the impact has been overwhelmingly positive. At the

¹ This report was prepared by the following members of the Special Committee: Camille Mackler (co-chair), Sarah Rogerson (co-chair), Stephen Yale-Loehr, Hasan Shafiqullah, Jojo Annobil, Karen Murtagh, and staff liaison Thomas Richards. Special thanks to Elyssa Klein for her contributions.

same time, the idea of providing universal representation to immigrants has also become a growing concept among advocates and attorneys. In order to put its own work in context, the Committee offers in this report a framework by which universal access to representation can be broadly construed, with recommendations on how a publicly funded right to counsel would be incorporated.

INTRODUCTION

In May of 2011 the New York State Bar Association formed a special committee to prepare a “report and recommendations to improve the quality and availability of legal representation and to ensure that immigrants, especially those of low income, have access to competent immigration assistance throughout New York State.”² The Special Committee’s report, released in 2012, relied heavily on a then-recent study by the Katzmann Study Group on Immigration Representation, which “found that having legal representation is one of the two most important variables in obtaining a successful outcome in an immigration proceeding.”³ Unfortunately, the Special Committee’s report further concluded that there lacked sufficient specialized, knowledgeable attorneys throughout New York State to address immigration legal needs in the state.⁴ This finding mirrored the Katzmann Study Group’s conclusion that there is a crisis of representation, both in quality and quantity, for New York’s immigrant communities.⁵

In the intervening years, the Special Committee has worked to increase access to quality immigration legal education and *pro bono* legal engagement on behalf of indigent and low-income immigrant New Yorkers.⁶ This task, which the Special Committee initially described as “Sisyphean,”⁷ has only become harder as fluctuating federal immigration policy has trended towards more widespread enforcement while simultaneously restricting access to legal benefits.⁸ In 2019, as the Special Committee examines its work and impact amid a White House administration that has made immigration enforcement a centerpiece of its policy platforms, we believe the time is right to revisit the state of access to counsel for New York’s immigrants and the impact it has on our profession.

² N.Y. State Bar Ass’n, Report of the Special Committee on Immigration Representation 3 (2012), <http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=26696>.

³ *Id.* at 2 (citing The New York Immigration Representation Study, *Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings New York Immigrant Representation Study Report: Part 1*, 33 Cardozo L. Rev. 357, 363 (2011)).

⁴ *Id.*

⁵ *See id.* at 2; The New York Immigration Representation Study, *supra* note 3, at 358.

⁶ *See* N.Y. State Bar Ass’n, *supra* note 2, at 46-49.

⁷ *Id.* at 49.

⁸ Muzzaffar Christi et al., *Even as Congress Remains on Sidelines, the Trump Administration Slows Legal Immigration*, Migration Pol’y Inst. (Mar. 22, 2018), <https://www.migrationpolicy.org/article/even-congress-remains-sidelines-trump-administration-slows-legal-immigration>.

ASSESSMENT OF CURRENT ACCESS TO COUNSEL

Immigrant New Yorkers remain extremely vulnerable to increasingly anti-immigrant policies coming out of Washington, even as enforcement increases to unprecedented levels. In the seven years since the Special Committee first released its assessment of its Sisyphean task of increasing rates of representation in immigration proceedings, the backlog in New York's immigration courts has more than doubled, from just over 47,000 in 2012 to over 110,000 in the first quarter of 2019.⁹ At the same time, Immigration and Customs Enforcement arrests and deportations in New York have far surpassed the national averages, with a 35% jump in arrests from 2017 to 2018, compared to 11% nationally, and a 29% increase in deportations, more than double the 13% national increase.¹⁰ Many of these arrests have come while New Yorkers sought access to justice in other areas. The Immigrant Defense Project (IDP) reports that ICE conducted at least 178 arrests in New York's courthouses in 2018, compared to 159 in 2017 and 11 in 2016.¹¹

New York's political and geographic variations create significant challenges in providing immigrants access to justice and access to counsel, and low-cost legal services are particularly difficult to expand. New York is home to more than 4 million immigrants,¹² of which nearly an estimated 1 million lack lawful status¹³ and are vulnerable to immigration enforcement. While little empirical data exists to give an objective assessment of the immigration legal services field in New York, a 2018 report by the New York Immigration Coalition (NYIC) and the Immigrant Advocates Response Collaborative (I-ARC) found that geographic distances, political fears, financial considerations, long wait lists, and language barriers were the top reasons why immigrants could not access legal representation in New York State.¹⁴ In the same report, non-profit organizations reported that lack of flexible funding, lack of funding for supervisory positions, lack of physical space, and constant changes in immigration law and policy requiring rapid response efforts constituted major

⁹ *Immigration Court Backlog Tool*, TRAC Immigr., https://trac.syr.edu/phptools/immigration/court_backlog/ (follow "New York" hyperlink under "State") (last updated Feb. 2019).

¹⁰ Beth Fertig, *ICE Arrests and Deportations on the Rise in New York*, Gothamist (Dec. 14, 2018), http://gothamist.com/2018/12/14/ice_deportations_surge_new_york.php.

¹¹ Immigration Defense Project, *The Courthouse Trap: How ICE Operations Impacted New York's Courts in 2018*, at 6, <https://www.immigrantdefenseproject.org/wp-content/uploads/TheCourthouseTrap.pdf>

¹² *Immigrants and the Economy in New York*, New Am. Econ., <https://www.newamericaneconomy.org/locations/new-york/> (last visited Mar. 23, 2019).

¹³ *Profile of Unauthorized Population: New York*, Migration Pol'y Inst., <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/NY> (last visited Mar. 23, 2019).

¹⁴ N.Y. Immigration Coalition & Immigration Advocates Response Collaborative, *No Safe Harbor: Challenges in Obtaining Immigration Legal Services in New York State 6* (2018 Update), www.nyic.org/nosafeharbor.

obstacles to expanding access to legal help for indigent and low-income immigrant New Yorkers.¹⁵

Lack of supervisory positions is a particular problem, as it hinders organizations' and firms' abilities to hire more junior attorneys, to take on more complex legal cases, and also prevents the expansion of pro bono engagement because there are insufficient numbers of experienced supervising or mentoring attorneys.¹⁶ In 2018, 75% of non-profits reported requiring their supervisors to carry full or nearly full caseloads on top of their supervisory responsibilities.¹⁷ Only 58% of non-profits handled appeals of immigration court cases.¹⁸

New York's rural areas suffer particularly from lack of access to competent immigration representation. In 2018, Committee Co-Chair Camille Mackler toured New York's various regions to determine what challenges they face in accessing immigration representation.

Long Island

The main challenges specific to Long Island are (1) difficulties in traveling to meetings with legal service providers, (2) difficulties in finding linguistically competent staff willing to work on Long Island, (3) lack of funding for certain desperately needed services, and (4) lack of meaningful collaborations between the private and non-profit bars.

Travel: Services on Long Island are unevenly distributed and more prevalent closer to New York City, leaving areas such as Eastern Suffolk County with very few immigration legal providers. While community members use the Long Island Rail Road to travel to court dates and immigration appointments in New York City, in the absence of driver's licenses for undocumented immigrants in New York they must rely on buses, taxis, and unlicensed car services dubbed "rideros" to access legal appointments and other critical services. This can be costly, leading to a reluctance in seeking out help, and has also created an opportunity for unscrupulous individuals who take advantage by charging higher rates than are warranted. Immigration attorneys have organized screening and other legal events in the more under-resourced areas, but the distances present problems for follow-up after initial intakes.

Linguistically Competent Staff: Like other parts of the state, immigration providers on Long Island have noted the need for case workers, social workers, and mental health providers to support legal services. This is particularly crucial as there have historically been system-wide discrimination issue on Long Island that have prevented communities of color from enrolling in school or accessing necessary

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 9, 41.

¹⁷ *Id.* at 44.

¹⁸ *Id.* at 6.

social and law enforcement services. A secondary challenge is recruiting linguistically competent staff, both for legal and non-legal positions, who are willing to live and work on Long Island. Many of the local law and social service students do not speak Spanish, which represents the biggest language need, and attracting candidates from outside Long Island is difficult. Several Long Island groups noted that their funding is tied to yearly renewals, such as funds provided by New York State, and that this also hampers their recruitment because candidates are unwilling to settle on Long Island with no guarantee of a long-term position.

Lack of Funding for Needed Services: Much of the funding for providers on Long Island is siloed to address specific needs, such as unaccompanied children, which prevents providers from helping individuals with other cases. Notably, lack of funding for both citizenship and family-based green card petitions that may flow from a community member naturalizing were both raised as specific gaps in provision for the region. Many providers with less-restrictive funding focus on deportation defense and other urgent-type cases, leaving those who could legalize their status and avoid the risk of enforcement without access to resources through which to do so. Those providers who offer those services typically charge fees. In addition, clients, whether receiving free or low-cost services, still struggle to pay onerous immigration filing fees.

Lack of Meaningful Collaboration with Private Immigration Bar: With the exception of a handful of private attorneys who work closely with local non-profits, there is no meaningful collaboration between the non-profit and private immigration bars on Long Island. This is due in part to a lack of resources. Many private non-immigration attorneys express interest in doing pro bono immigration work, but non-profits lack the capacity to mentor them.

New York City

While relatively well resourced compared to the rest of the State, New York City poses its own unique sets of challenges. The main challenges specific to New York City are (1) uneven distribution of legal services, (2) restrictive funding contracts, and (3) geographic limits.

Uneven Distribution of Legal Services: The vast majority of legal service providers are concentrated in Manhattan, with some in Brooklyn and Queens and very few in the Bronx and Staten Island. As a result, many immigrants must travel long distances to secure legal services, which often requires a day off from work, to meet with a lawyer. Many funding sources have also historically favored larger providers, who tend to be located in Manhattan, at the expense of small, community-focused providers in the other-boroughs.

Restrictive Funding Contracts: The main sources of funding for New York City-based immigration providers are funds provided by New York City itself. While these investments represent some of the largest municipal investments in immigration legal services nationwide, the contract requirements either silo the type of cases

that can qualify for funds or limit the number of cases that can be opened each year. The silo-ing of funding effectively forces lawyers to choose which cases to take on based on funding streams rather than the merits of a particular case. The limits on how many times a case can be re-enrolled into a grant program from year to year limits the number of cases organizations will take on because of the risk that the longer a case takes, the less they will get paid.

Geographic Limits: Because most organizations rely primarily on city funding, they are also limited to representing individuals who live or work within the five boroughs of New York City and cannot help grow the field of immigration law by exporting the resources and knowledge developed within the City.

Capital Region

The main challenges specific to the Capital Region are (1) difficulties in traveling to legal service providers and lack of providers for the region overall, especially for regions north of Albany, (2) lack of access to interpreters, (3) the Immigration Court's location in Buffalo, NY and detained court in Batavia, NY, and (4) the increase in detention at the Albany County jail.

Travel and Geographic Disparity: Relatively few legal service providers serve the Capital Region. It can be difficult to access services for immigrants, most of whom cannot obtain a driver's license. The lack of public transit infrastructure outside the city of Albany itself means that many must risk driving without a license, further increasing their risk of arrest by local law enforcement departments that cooperate with ICE. Moreover, while the lack of legal services organizations providing immigration legal services necessarily means that community members will need to travel to wherever they can obtain services, it also makes growing the field more difficult as local law schools often cannot find local placements for graduates interested in taking on the work.

Lack of Access to Interpreters: The Capital Region is extremely diverse, with immigrant communities from South and Central America, Asia, Africa, and Eastern Europe. As a result, it is near-impossible for providers to competently represent individuals without access to robust interpretation services. However, existing services are often high-priced and geared towards medical or other professions that cannot adapt easily to the immigration legal field, while student-led interpretation services can only help a few cases at a time, subject to student availability.

The Immigration Courts' Geographic Inaccessibility: Cases in the Capital Region depend on the immigration offices in Buffalo, NY. While USCIS and ICE have sub-offices in Albany, the non-detained immigration court is in Buffalo, NY and the detained court in Batavia, NY. This means that community members in deportation proceedings must not only drive approximately 4 hours to Buffalo for all appearances, they must also find a lawyer willing to do so. Individuals arrested locally may be held for a few days in the Albany County Jail but are typically transferred to Batavia, far from their families and legal counsel.

Increase in Detention at the Albany County Jail: Over the last year, the need for detained representation at the Albany County Jail increased exponentially. Amid the border crisis over the summer of 2018, ICE transferred large numbers of recently-arrived asylum seekers to the Albany County Jail to make more bed space at the U.S.-Mexico border. Because of the procedural posture of their cases, which effectively treated these individuals as if they were still at the Southern Border seeking admission to the U.S., none of the nearly 400 individuals transferred between July and December, 2018 qualified for funded services in the region. As a result, local non-profits launched an unprecedented legal rapid response effort that was staffed by volunteers from all over New York State and beyond. This effort, the Detention Outreach Project (“DOP”), assisted all needing counsel at the Albany County Jail in preparing for their Credible Fear Interviews (“CFIs”) as well as connecting them to other help. Attorneys leading the DOP were able to address medical needs, reunite separated family members, and, once an individual had passed their CFI, ensure they were connected to state-funded lawyers to represent them in immigration court. Once they passed their CFIs, detained migrants at the Albany County Jail were taken on for representation by the state-funded New York Immigrant Family Unity Project (NYIFUP), which provides free lawyers to detained immigrants who cannot otherwise afford an attorney. The impact of this crisis has radically changed how immigration legal services are viewed in the Capital Region and will likely continue to alter its landscape; all while encountering and exposing new challenges, into 2019.

Western & Central New York

The main challenges specific to Western and Central New York are (1) a significant lack of immigration lawyers, (2) the isolation of community members, (3) a general fear of consulting immigration attorneys, and (4) the burden on community-based organizations.

Significant Lack of Attorneys: There are only 12 legal services organizations serving Western and Central New York, which span about 200 miles (from Buffalo to Utica) by 100 miles (from the Canadian border to Pennsylvania). Most of these organizations have only one or two attorneys working on immigration issues on staff, and many rely on refugee resettlement funding to support their overall work, even as that funding has undergone significant cuts because of the federal reduction in refugee admission numbers in recent years. As a result, non-profit attorneys are frequently at capacity and are forced to turn away clients or place them on months-long waiting lists. In 2017, New York State government created the Liberty Defense Project (LDP) and gave out \$10 million in grants for immigration legal services throughout New York. Before the LDP was created, there were no attorneys handling deportation cases in Central New York, and that attorney’s docket has rapidly filled up. To make matters worse, an Equal Justice Works AmeriCorps Legal Fellowship program created to enhance legal representation in underserved areas was not renewed after its first year, meaning that approximately 100 immigrants became at risk of losing their attorney mid-way through their cases. Private

immigration attorneys in this region are equally scarce, and in both the non-profit and private sector many attorneys do not speak Spanish. Community members and advocates alike describe hours of calling from organization to organization trying to place a single case, or getting screened at community clinics but being unable to obtain legal help for follow-up.

Isolation of Community Members: Many immigrants in Western and Central New York are geographically isolated, as they often live and work on remote farmland and cannot easily take a day off to drive, without a driver's license, into an urban area to meet with a lawyer. Non-profit attorneys and community advocates often have to drive hours to meet with a single client, or to bring a client to a law office or government appointment. In many of these areas, cell service and other technology are non-existent, making it hard to communicate with those in need of legal help.

Fear of Consulting an Attorney: The scarcity of immigration lawyers has also led to unscrupulous individuals taking advantage of immigrant communities' vulnerabilities to enforcement and anti-immigrant policies. This, in turn, leads to a general distrust of lawyers on the part of community members. It is a prevailing belief among community members that lawyers, while necessary to winning legal status in the United States, will likely charge money for no work in return. In some instances, individuals had been charged tens of thousands of dollars, working through debilitating illnesses to be able to afford legal representation, with no good results. Isolation and a lack of connection to appropriate resources means that community members frequently do not report these providers to law enforcement, allowing them to continue preying on others with impunity.

Burden on Community-Based Organizations: In the absence of sufficient legal services, community-based organizations (CBOs) have stepped up to act as a conduit between community members and lawyers. Staffs of CBOs often have enough training and experience to recognize facts that may have immigration consequences, and spend enormous time transporting community members, helping them gather documents, and calling around to organizations hoping to persuade them to take on a specific case. Most CBOs, however, are not funded to do this work and take it on in addition to their regular obligations. Those who do receive funding receive it mainly from government grants but often have difficulties in responding to the weighty reporting and administrative requirements.

North Country

Though there is a significant immigrant population working in agriculture, construction, hospitality, and other labor-intensive industries throughout the North Country, there are no legal service providers in the region and community members are often isolated and have difficulty protecting their legal rights. When community members need an immigration lawyer, they must travel to Albany or Syracuse and face the same challenges in those regions as those enumerated above.

Future Assessments

To increase our awareness and understanding of immigration legal needs of immigrants living in rural New York, the Special Committee co-chairs, along with colleagues in the pro bono and other committees, hope to embark on a week-long trip visiting agricultural and dairy farms along the New York-Canadian border. The visits will include story collection, know your rights presentations, and one-on-one legal screenings that will hopefully lead to a more precise assessment of the legal needs of some of our state's most vulnerable communities.

NEED TO ACCESS LEGAL REPRESENTATION IN IMMIGRATION PROCEEDINGS

Despite the proven impact of legal representation on case outcomes and the quasi-criminal nature of immigration proceedings, courts have overwhelmingly found that federal law does not provide a guaranteed right to counsel in immigration proceedings.¹⁹ This is all the more dramatic because, as one judge put it, immigration court proceedings are akin to “death penalty cases heard in traffic court settings.”²⁰ In this context, where the government is always represented by a trained attorney but the immigrant is far less likely to have legal counsel, increasing access to representation is imperative to ensure due process and access to justice.

Nationally, a study by the American Immigration Council, which studied data on case outcomes obtained from the Executive Office for Immigration Review, showed that having an attorney made it more likely for someone to:

- Be released from custody: 44% of represented immigrants were given a custody hearing, compared to 18% of unrepresented immigrants, and 44% of represented immigrants were actually released from custody, compared to 11% of unrepresented immigrants.²¹
- Appear in immigration court: “Ninety percent of unrepresented immigrants with removal²² orders were removed in absentia versus only 29 percent of

¹⁹ Mills et al., *supra* note 27, at 366-67.

²⁰ Dana Leigh Marks, *Immigration Judge: Death Penalty Cases in a Traffic Court Setting*, CNN (June 26, 2014), <http://www.cnn.com/2014/06/26/opinion/immigration-judge-broken-system/index.html>.

²¹ Ingrid Eagly & Steven Shafer, Am. Immigration Council, *Access to Counsel in Immigration Court* 17 (2016), https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf.

²² In 1996 the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) merged the concepts of exclusion, whereby an individual is not permitted to lawfully enter the United States, and deportation, where an individual is physically removed from the United States after having been previously admitted. The terms were merged into the concept of “removal”, which is the legally accurate word for both exclusion and deportation. For sake of accuracy, this report will use the word “removal” to discuss issues typically addressed as “deportation” in layman’s terms.

their represented counterparts with removal orders.”²³

- Defend themselves against removal charges: 21% of represented detained immigrants fought off removal either by filing successful applications for relief or successfully challenging the proceedings in the first instance, compared to 2% of unrepresented detained immigrants, and 60% of never-detained represented immigrants did the same versus 17% of never-detained unrepresented immigrants.²⁴
- Win their cases: Of those that filed applications for relief from removal, 32% of detained immigrants won their case, compared to 3% of unrepresented detained immigrants, and 78% of never-detained represented immigrants won their case versus 15% of never-detained represented immigrants.²⁵

In New York, the first round of assessment of the New York Immigrant Family Unity Project (NYIFUP), the pioneering public defender model for detained immigrants begun in New York City in 2013, shows that access to lawyers has resulted in a 48% success rate for detained New Yorkers, compared to 4% pre-NYIFUP.²⁶ This represents a 1,100% increase in a detained individual’s chances of winning their cases before an immigration judge.²⁷

Access to counsel is inexorably linked to access to justice in the immigration context because of the high stakes involved. A bad decision in immigration court can lead to a death sentence in the home country²⁸ or permanent exile from family and community in the United States.²⁹ Nonetheless, immigration judges are under mounting pressures that compromise their independence, including performance reviews directly tied to case-completion quotas and re-interpretations of immigration law by the Department of Justice that remove the little discretion they once enjoyed, which has led to an exodus from their ranks.³⁰ At the same time, immigrants facing deportation can be indefinitely detained in prison-type settings under civil, administrative authority only, with no constitutional protections

²³ Eagly & Shafer, *supra* note 20, at 18.

²⁴ *Id.* at 19.

²⁵ *Id.* at 20.

²⁶ Jennifer Stave et al., Vera Inst. of Justice, Evaluation of the New York Immigrant Family Unity Project: Assessing the Impact of Legal Representation on Family and Community Unity 5-6 (2017), <https://www.vera.org/publications/new-york-immigrant-family-unity-project-evaluation>.

²⁷ *Id.* at 6.

²⁸ John R. Mills, Kristen M. Echemendia & Stephen Yale-Loehr, “*Death is Different*” and a Refugee’s Right to Counsel, 42 Cornell Int’l L.J. 361, 362 (2009).

²⁹ Marks, *supra* note 19.

³⁰ See Hamed Aleaziz, *Being An Immigration Judge Was Their Dream. Under Trump, It Became Untenable*, BuzzFeed News (Feb. 13, 2019), <https://www.buzzfeednews.com/article/hamedaleaziz/immigration-policy-judge-resign-trump>.

available in the criminal context.³¹ In New York, this often means being detained in county jails in New Jersey or in a federally-run facility outside of Buffalo.³² However, increasingly, ICE has begun opening detention centers in remote locations across the country.³³ Since ICE has full authority to transfer any detainees outside New York, the stakes are correspondingly higher to ensure that New Yorkers do not end up in ICE detention in the first place. This makes access to counsel that much more of an imperative.

As policies have evolved and immigration reform remains elusive, the need has only continued to grow since the Special Committee first issued its report and recommendations in 2012. As New York State continues to respond to Washington's recent immigration policies by countering with pro-immigrant solutions,³⁴ a state-wide statutory right to immigration counsel is the necessary next step.

CIVIL RIGHT TO COUNSEL IN NEW YORK

Though there is no nationally recognized right to counsel in civil cases, many states and jurisdictions have carved out instances in which the interests at stake necessitate a right to counsel for principles of fundamental fairness to be met. For example, New York courts have found that in both family court and appeals of family court decisions there is a right to counsel for minors, for respondents in child protection cases, for legal custodians in child custody and guardianship cases, for certain petitioners seeking visitation with children, in domestic violence cases generally, and for individuals accused of being in contempt of family court.³⁵ Additionally, courts may assign counsel in proceedings to commit mentally ill individuals, drug addicts, children to state agencies where the parents are not competent, in habeas cases, and in civil actions generally.³⁶

³¹ See Immigrant Advocates Response Collective, *Behind Bars in the Empire State: An Assessment of the Immigration Detention of New Yorkers 6-7* (2019), <https://d1jikt90t87hr.cloudfront.net/323/wp-content/uploads/sites/2/2019/03/State-of-Immigration-Detention-of-NYers-v5.pdf>.

³² *Id.* at 8.

³³ See Noah Lanard, *ICE Is Sending Hundreds of Asylum-Seekers to a Private Prison in Mississippi*, Mother Jones (Feb. 15, 2019), <https://www.motherjones.com/politics/2019/02/ice-is-sending-hundreds-of-asylum-seekers-to-a-private-prison-in-mississippi/>.

³⁴ Press Release, Governor Andrew M. Cuomo, *Governor Cuomo Announces New Measures to Assist Immigrants and Protect Them from ICE* (Mar. 14, 2019), <https://www.governor.ny.gov/news/governor-cuomo-announces-new-measures-assist-immigrants-and-protect-them-ice>.

³⁵ Donald Kerwin, Migration Pol'y Inst., *Revisiting the Need for Appointed Counsel 11-12* (Apr. 2005), <https://www.migrationpolicy.org/research/revisiting-need-appointed-counsel>.

³⁶ *Id.* at 12.

In 2017, New York City became the first jurisdiction to create a right to counsel in housing court for indigent and low-income New Yorkers.³⁷ The law requires New York City to provide an attorney to all city residents who make less than 200% of the federal poverty guidelines.³⁸

The circumstances that led to the creation of the right to counsel in housing court are strikingly similar to proceedings in immigration courts:

- Like in immigration court, there is an imbalance between the party that holds power, in housing the landlord and in immigration the Government, versus the respondent, in housing the tenant and in immigration the immigrant themselves.³⁹ Before the right to counsel legislation, 90% of landlords in New York City's housing courts were represented, compared to most tenants who did not have access to attorneys.⁴⁰
- Like in immigration court, the stakes for Respondents in housing court are extraordinarily high. Most tenants facing eviction are low-income and losing their home leads directly to homelessness for themselves and their families.⁴¹
- Providing attorneys in housing court has restored fairness to court proceedings by providing a check on landlords' abilities to profit from the imbalance of power and ensuring due process and equal protections of the law apply to all in the court system.⁴²
- Providing a right to counsel actually saves money, by protecting individuals from homelessness and the associated costs for social services the city must shoulder once someone loses their home and enters the homeless system.⁴³ Similarly in immigration court, if a household loses a primary breadwinner or primary caregiver to prolonged detention and/or deportation, the city or State will incur higher costs in providing social assistance to the family members left behind, at the same time as they lose the revenue of a taxpayer and possibly business and/or home owner.

³⁷ Kriston Capps, *New York City Guarantees a Lawyer to Every Resident Facing Eviction*, CityLab (Aug. 14, 2017), <https://www.citylab.com/equity/2017/08/nyc-ensures-eviction-lawyer-for-every-tenant/536508/>.

³⁸ *Id.*

³⁹ See Right to Counsel NYC Coalition, *Housing Justice: New Yorkers Should Have a Right to Counsel in Eviction Proceedings 1* (2016), <https://www.righttocounselnyc.org/resources> (follow hyperlink "FACT SHEET: See the facts about why we need Right to Counsel").

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See *id.* at 1-2.

⁴³ *Id.* at 2.

Though still early in the five-year implementation process, the impact of providing a right to counsel is already obvious. In 2018, 33,000 households received legal assistance through city-funded services.⁴⁴ This led to a 24% decrease in evictions since 2014, an increase in representation rates from 10% pre-right to counsel to 27% in the first year, an increase from 200 to 500 non-profit lawyers working with low-income tenants, and a 10% decrease in housing court proceedings overall.⁴⁵ Advocate are already working on expanding the right to counsel to individuals making less than 400% of the federal poverty line, to appellate and additional kinds of housing-related proceedings, and to fund community based groups for outreach and know your rights presentation.⁴⁶

UNIVERSAL REPRESENTATION IN IMMIGRATION PROCEEDINGS

As policies have evolved and immigration reform remains elusive, immigrant's needs for legal representation has only continued to grow since the Special Committee first issued its report and recommendations in 2012. At the same time, the idea of universal representation of immigrants has begun to take hold in New York State, which leads the country in funding for immigration legal services and piloted the first immigrant public defender model for detained immigrants through the NYIFUP program.

While there is no widely accepted agreement on the definition of universal representation for immigrants, this report has focused by and large on the need to provide representation to individuals in immigration court proceedings and facing possible removal from the United States. For this section, the Special Committee examines what a broader framework of universal representation could look like for anyone interacting with our immigration system and offers the following guidance for consideration in any discussion on this topic:

A Universal Representation System Should Account for Ability to Pay

When discussing an aspirational system, a universal representation framework should examine the entirety of the immigration system, not just immigration court proceedings. In other words, this framework applies not just to those needing representation to defend themselves from deportation charges, but also examines the need for access to legal assistance when affirmatively applying for immigration benefits. These services are equivalent to early intervention services, allowing individuals to access immigration benefits they may legally be entitled to and that

⁴⁴ Office of Civil Justice, N.Y.C. Human Res. Admin., *Universal Access to Legal Services: A Report on Year One of Implementation in New York City 1* (2018), <https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-UA-2018-Report.pdf>.

⁴⁵ Right to Counsel NYC Coalition, *RTC 2.0: Achieving the Full Vision of Right to Counsel for Tenants*, https://d3n8a8pro7vhmx.cloudfront.net/righttocounselnyc/pages/23/attachments/original/1536702507/RTC_2.0_One_Pager-2.pdf?1536702507 (last visited Mar. 26, 2019).

⁴⁶ *Id.*

would protect them from being placed into deportation proceedings in the first place.

Under such a framework, it is important to note that not all individuals in the above categories will require free or low cost legal services. Rather, to maximize the legal services field it would be best to develop a sliding scale structure that ensures that those unable to pay receive free services, those with limited means have access to low-bono services, and individuals with sufficient income to afford an attorney be directed to private bar.

A Universal Representation System is Distinct from Appointed Counsel

Realistically assessing available resources, or potential resources, the concept of universal representation can be further refined by distinguishing itself from a system of appointed counsel. The latter may be appropriate for certain categories of cases but not all. Rather, in certain instances there is a compelling need to ensure an individual access to a lawyer no matter the circumstances of their case, whereas in others a more flexible approach giving legal service providers some latitude in which cases they take on is appropriate.

Akin to the position taken by the National Immigration Law Center (NILC), the Vera Institute of Justice, and the Center for Popular Democracy (CPD) in their recently-released “Advancing Universal Representation Toolkit,” and given the high liberty and human rights interests at stake, individuals facing deportation should have access to a lawyer if they cannot afford one and have no private counsel, irrespective of the actual merits of their case.⁴⁷ In areas where resources are limited, priority should be given to detained immigrants.⁴⁸ This position has been adopted by the American Bar Association (ABA), which passed a resolution in 2017 calling for federally-funded appointed counsel for all indigent respondents in removal proceedings and further calling on states and localities to provide such counsel until the Federal Government does so.⁴⁹ The Ninth Circuit has also recognized that individuals who lack mental competency must be provided with counsel in removal proceedings.⁵⁰ Finally, there is a growing acknowledgment that

⁴⁷ Karen Berberich et al., Ctr. for Popular Democracy, Nat’l Immigration Law Ctr., Vera Inst. of Justice, *Advancing Universal Representation: A Toolkit Module 1: The Case for Universal Representation 3* (2018), <https://www.vera.org/advancing-universal-representation-toolkit/the-case-for-universal-representation-1>.

⁴⁸ *Id.*

⁴⁹ ABA Resolution 115 (2017), <https://www.americanbar.org/content/dam/aba/images/abanews/2017%20Annual%20Resolutions/115.pdf>

⁵⁰ *Franco v. Holder*, Am. Civil Liberties Union S. Cal., <https://www.aclusocal.org/en/cases/franco-v-holder>.

asylum seekers⁵¹ and children should have appointed counsel in immigration court proceedings.⁵²

For individuals where the rights and liberties at stake are not as high, a system geared towards universal representation should take steps towards sustainably growing the immigration legal bar, community access to legal help, and community empowerment to protect their legal rights.

A Universal Representation System Requires Sustainable Growth of the Immigration Legal Services Field

Some considerations when promoting a system that achieves universal representation could include:

- Public procurement processes that allow a maximum number of non-profits to apply for government funding to run immigration legal services programs. Current requirements are often too onerous for small and mid-size organizations to qualify.
- Focus on legal education with mechanisms to encourage recent graduates to enter the immigration legal field, including low-bono incubator models, apprenticeship models, loan repayment assistance, and incentives to provide legal assistance in underrepresented areas.
- A voucher system, similar to one employed in several Canadian provinces, whereby non-profit organizations provide a voucher to pay for services provided by a previously vetted private bar attorney. This system is similar to the current 18b panels in family and criminal courts around the state.
- Further incentives to provide pro-bono services to immigrants beyond the 50-hours requirement for New York law students and recently admitted attorneys.
- Better mechanisms to connect attorneys across the state to foster co-counsel relationships and promote information and resource sharing.

CONCLUSION AND RECOMMENDATIONS

In 2019, with immigration courts facing a doubled case load even as arrests and deportations increase, the Special Committee believes the time has come for a renewed, in-depth assessment of the immigration legal services field, to culminate in an updated report to the House of Delegates examining current challenge and making specific recommendations to defining and achieving universal

⁵¹ Mills et al., *supra* note 27, at 376-78.

⁵² Matthew S. Mulqueen, *Access to Counsel in Immigration Proceedings*, Am. B. Ass'n: GPSolo eReport (Feb. 21, 2019), https://www.americanbar.org/groups/gpsolo/publications/gpsolo_ereport/2019/february-2019/access-counsel-immigration-proceedings/.

representation, as well as a call on New York State to create the first statutory right to counsel in immigration proceedings.



COMMITTEE ON MANDATED REPRESENTATION

ROBERT S. DEAN, CHAIR
Center for Appellate Litigation
120 Wall Street – 28th Floor
New York, New York 10005
212.577.2523, ext. 502
rdean@cfal.org

TO: NYSBA Executive Committee

FROM: Robert S. Dean, Chair, Committee on Mandated Representation

DATE: May 22, 2019

RE: Letter in Support of the Committee on Immigration Representation’s Proposed Resolution to Urge the State Governor and Legislature to Enact a Right to Counsel in Immigration Proceedings as a Statutory Requirement Under State Law

The Committee on Mandated Representation supports the Committee on Immigration Representation’s proposed resolution that the New York State Bar Association (NYSBA) urge the Governor and State Legislature to enact legislation that would provide a right to counsel in immigration proceedings.

The Committee on Immigration Representation, in support of the resolution, issued a report that assessed the current state of access to counsel for immigrant New Yorkers in removal (deportation) proceedings in the context of increasingly anti-immigrant policies at the federal level and stepped up immigration enforcement arrests and deportations in New York that “have surpassed the national averages.” The report described the specific main challenges to competent immigration representation currently facing each of the geographic regions of Long Island, New York City, the Capital Region, Western and Central New York, and the North Country. Noting that courts have “overwhelmingly found that federal law does not provide a guaranteed right to counsel in immigration proceedings,” the report detailed the proven significant impact of legal representation on deportation case outcomes, and argued that a State-wide statutory right to immigration counsel would be a “necessary next step” for New York State to take in its ongoing immigrant-protective responses to federal anti-immigrant policies in recent years.

The Committee on Mandated Representation has for years studied issues, and made recommendations to the Executive Committee, relevant to methods of providing mandated representation, and proposed, commented on, or supported legislation that would further the goal of ensuring quality mandated representation to indigent New Yorkers. We therefore support the resolution that NYSBA urge the enactment of a State right to counsel in deportation proceedings, as we are of the view that such a law is necessary – absent a federally recognized right to counsel – to address what has been described as a “crisis in representation” for immigrant New Yorkers, and to ensure access to justice, due process, and fundamental fairness in any proceeding that threatens immigrant New Yorkers with permanent exile from their community and families here in the United States.



COMMITTEE ON LEGAL AID

May 30, 2019

TO: Committee on Immigration Representation

Dear Friends,

The New York State Bar Association's Committee on Legal Aid (COLA) supports the adoption by the New York State House of Delegates of the proposed resolution of the Committee on Immigration Representation urging the New York State Governor and the New York State Legislature to enact the right to counsel in immigration proceedings as a statutory requirement under New York State law, with the following comment/addition.

The COLA believes that, if the proposed resolution is adopted, it should include a recommendation that any funds allocated by the Legislature to implement the right to counsel in immigration proceedings as a matter of New York State law must be allocated only following the issuance of a Request for Proposals by the state agency administering the program, with all qualified applicants being accorded a fair opportunity to be awarded funding to provide these services, with allocation decisions made after a competitive bidding process, and with grantees selected based upon the objective application of selection criteria for receipt of funding.

Sincerely yours,

Hon. Sergio Jimenez
Chair, Committee on Legal Aid



Staff Memorandum

HOUSE OF DELEGATES Agenda Item #12

REQUESTED ACTION: Approval of the report and recommendations of the Task Force on the Role of Paralegals.

In 1976 and 1997, the House of Delegates approved “Guidelines for the Utilization by Lawyers of the Service of Paralegals.” Last year, then-President Michael Miller appointed the Task Force on the Role of Paralegals to update the 1997 report, explore relevant issues and make recommendations for best practices for the use of paralegals in the context of the modern 21st century law office.

The Task Force’s proposed amendments to the guidelines are attached. The Task Force notes that it recommends adherence to the 1995 guidelines, supplemented by additional commentary. The guidelines cover the following topics: lawyers’ professional responsibility; unauthorized practice of law; authorized practice; confidentiality and conflicts of interest; professional independence of lawyers; disclosure of non-lawyer status; professional development; and fees charged for paralegal services.

Appendix 1 contains the Task Force’s recommendations, which may be summarized as follows:

- The Task Force supports continued study of the regulation of non-lawyers and recommends against new regulations at this time. Regulation should focus on voluntary programs rather than mandatory regulation.
- NYSBA’s commitment to active enforcement of unauthorized practice statutes should be reaffirmed.
- Alternate systems of delivery of legal services should be considered and implemented.
- NYSBA should create a Paralegal Division by which paralegals can become non-voting members and participate in activities.

This report was posted for comment in March 2019. Attached is a memorandum from the Committee on Legal Aid supporting the report, but noting that the Association should oppose pending legislation that would allow for the employment of non-lawyer housing court and consumer court advocates.

The report will be presented at the June 15 meeting by committee co-chairs Vincent Ted Chang and Prof. Margaret Phillips.

**NEW YORK STATE BAR ASSOCIATION
TASK FORCE ON THE ROLE OF PARALEGALS**

**REPORT AND RECOMMENDATION
MARCH 2019**

TO: Michael Miller, President
New York State Bar Association

FROM: Task Force on the Role of Paralegals

DATE: March 1, 2019

RE: Report and Recommendation on Updating the
New York State Guidelines

We attach the proposed revised New York Guidelines for the Effective Utilization by Lawyers of Paralegals, which includes the updated guidelines (amending the 1997 version) as well as the Task Force report, Appendix 1, with its Recommendations and Conclusions. The report has been approved by the Task Force.

NYSBA

New York State Bar Association Task Force on Paralegals

GUIDELINES FOR THE UTILIZATION BY LAWYERS OF THE SERVICE OF PARALEGALS

Amending Guidelines Approved by House of Delegates June, 1995 and June 19, 1976

The Committee is solely responsible for the contents of this report and the recommendations contained herein. Unless and until adopted in whole or in part by the Executive Committee or the House of Delegates of the New York State Bar Association, no part of the report should be attributed to the Association.

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ABBREVIATIONS

NYSBA	New York State Bar Association
Rule	New York Rules of Professional Conduct_ <u>(2017)</u>
NYSBA # (19xx)	New York State Bar Association Ethics Opinion # issued in 19xx.
N.Y.C. (19xx)	The Association of the Bar of the City of New York Ethics Opinion # issued in 19xx.
N.Y. County (19xx)	New York County Lawyers' Association Ethics Opinion # issued in 19xx.
Nassau County (19xx)	Bar Association of Nassau County Committee on Professional Ethics Opinion # issued 19xx.

PRELIMINARY STATEMENT

In 1995, the New York State Bar Association (“NYSBA”) issued its last iteration of its Guidelines for the Utilization by Lawyers of the Service of Legal Assistants (the “1995 NYSBA Guidelines”).¹ The 1995 NYSBA Guidelines in turn augmented NYSBA’s prior Guidelines from May 1976. More than 20 years after the NYSBA’s 1995 Guidelines were issued, NYSBA President Michael Miller convened a task force (the “Task Force”)² to supplement and reconsider issues relating to best practices and legal ethics arising from the utilization of legal assistants. The Task Force’s intent in updating the 1995 NYSBA Guidelines is to report on developments in the market for, and practices in the use of, paralegals. In addition, a core section of this Report updates the authorities supporting the 1995 NSYBA Guidelines. The Task Force recommends adherence to each of the 1995 NYSBA Guidelines, subject to the additional commentary contained in this Report.

The 1995 Guidelines, as amended by this Report, establish standards for the proper function of paralegals, subject to constraints such as the prohibition against the unauthorized practice of law. The 1995 Guidelines, and these guidelines, also establish standards for attorney oversight of paralegals. It is the hope of the Task Force that this Report and the accompanying Guidelines will facilitate and enhance the use of paralegals in an ethical fashion with the goal of cost-efficiently serving the public.³

The Revised Guidelines reflect changes resulting from the replacement of the New York

¹ The 1995 NYSBA Report and Guidelines were adopted by the NYSBA House of Delegates on June 28, 1997. The 1995 Report and Guidelines appear at Appendix 9, *infra*. This Report will refer to them as the “1995 Guidelines” or the “1995 NYSBA Guidelines.”

² The members of the Task Force are: [Jessica – please add]

³ As was the case in the 1995 Report, this report will generally use the term “paralegal” rather than “legal assistant.” However, as the 1995 Report stated, “lawyers should be aware that the terms legal assistant and paralegal are often used interchangeably.”

Lawyer's Code of Professional Responsibility and the adoption of the New York Rules of Professional Conduct by the New York State Courts Administrative Board in 2009. Until that time, New York State was the only state in the United States to still follow the outdated ABA Model Code of Professional Conduct (the Code). In order to clarify and simplify the laws governing attorney conduct, the Administrative Board of the Appellate Divisions approved the New York Rules of Professional Conduct (the Rules). Thus, with this change, New York joined the rest of the **country** and based its disciplinary laws on the American Bar Association's Model Rules of Professional Conduct. New York's rules are not a copy of the ABA Model Rules, and retain some individual rules from the Code, but the organization, and much of the content and comments are similar to those in the Model **Rules**.

In Appendix I, the Task Force sets out several general recommendations.

First, the Task Force urges further study of potential regulations with respect to the ethical standards and qualifications of paralegals but does not recommend the adoption of such standards at this time.

Second, the Task Force adheres to the recommendations of the 1995 report and urges that NYSBA continue its vigorous efforts to counter the unauthorized practice of law and to promote the use of paralegals where such use would be ethically and economically feasible and beneficial.

Finally, the Task Force recommends that NYSBA create a Paralegal Division through which paralegals can become non-voting members of NYSBA and participate in NYSBA's activities, but particularly in programs aimed at the enhancement of the paralegal profession. It is our hope that the proposed Paralegal Division could continue the work of this Task Force in considering and implementing proposals for the betterment of the paralegal profession.

DEFINITION

The 1995 NYSBA Report defined legal-assistant/paralegal as:

“a person qualified through education, training or work experience who is employed or retained by a lawyer, law office, governmental agency, or other entity in a capacity or function which involves the performance, under the ultimate direction and supervision of, and/or accountability to, an attorney, of substantive legal work, which requires a sufficient knowledge of legal concepts that, absent such legal assistant/paralegal, the attorney would perform the task.”

The Task Force recommends the adoption of the ABA guideline, which reads as follows: “A legal assistant or paralegal is a person qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity who performs specifically delegated substantive legal work for which a lawyer is responsible.”⁴

The Task Force believes that ABA definition is broader than the 1995 NYSBA definition and better reflects the tasks that paralegals often perform. The Task Force believes that there is some value to aligning the New York definition with the definition used elsewhere. In addition, the Task Force believes that the broader phrase “substantive legal work for which a lawyer is responsible” more accurately captures the broad range of tasks that paralegals perform.⁵

OVERVIEW OF THE PARALEGAL MARKET

Several years ago, the Associated Press suggested that technology would make paralegals obsolete.⁶ In fact, the market for paralegal services remains robust. The Bureau of Labor Statistics reports that there are 290,000 paralegals in the US, 26,000 of whom are in New York

⁴ ABA Definition of Legal Assistant/Paralegal (<https://www.americanbar.org/groups/paralegals.html>)

⁵ It is also notable that both NALA and NFPA adopted the ABA definition of "paralegal" See NALA definition (<https://www.nala.org/about-paralegals>); NPPA Definition (<https://www.paralegals.org/i4a/pages/index.cfm?pageid=3315>)

⁶ M. Davis, Technology Has Not Replaced the Need for Paralegals, ABA Journal (Feb. 2018) (http://www.abajournal.com/magazine/article/technology_has_not_replaced_need_for_paralegals)

State. The BLS also reports that the median salary of paralegals exceeds \$50,000 a year and that job growth from 2016-2026 is projected at 15 percent, which is “much faster than average.”⁷ BLS reported that, “[t]he growing demand of paralegal professionals at a very rapid rate has resulted in schools and colleges catering to such education popping up everywhere. It has been found through a survey that currently 50,000 students are enrolled in paralegal education courses.” These trends are likely to continue.

Far from rendering paralegals obsolete, the advent of new technology has increased the need for paralegals to manage and use technology.⁸ And the pressure to lower legal costs has likely adversely affected the market for attorneys, causing law firms and other employers of paralegals to entrust more tasks to paralegals including, as the BLS stated, “maintaining and organizing files, conducting legal research, and drafting documents.”

ACCESS TO JUSTICE

The Task Force stresses the importance of paralegals as a force for closing the justice gap. The 1995 Report correctly observed, quoting the report of the Marrero Commission⁹, that “[t]he expanded use of traditional legal assistants also presents an opportunity to service poor and lower

⁷U.S. Department of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook, Occupational Employment and Wages, Paralegals and Legal Assistants (updated through February 15, 2019) <https://www.bls.gov/oes/current/oes232011.htm>

⁸ Cheryl Clark, Trends in the Paralegal Profession, J. Kan. B. Ass'n, May 2016, at 7 (topics related to technology. In many law offices, attorneys rely on paralegals to select, manage and operate law-related software. They assist in e-discovery, understand and manage databases, facilitate case management software, create searchable electronic documents, and orchestrate the technology aspects of trial presentations. As a result, paralegal programs are expanding their technology offerings and are training students on a diverse array of word processing, spreadsheet, timekeeping, trial presentation, legal research and case management software. It is impossible for paralegal programs to teach every form of legal software available, but it is necessary for paralegal programs to introduce their students to new concepts and provide education in these areas. The more paralegals know about technology and legal software programs, the more job security they will have when they enter the workforce.)

⁹ 1995 NYSBA Report at 41 & n.3 (citing Report of the Chief Judge’s committee on Improving the Availability of Legal Services) (April 1990)).

middle income persons.” The introduction to the 1995 Report quoted from the then operative New York State Code of Professional Responsibility stating that:

The New York State Bar Association Code of Professional Responsibility (hereinafter "Code of Professional Responsibility") commits members of the bar to the provision of legal services to the public at a reasonable fee. This goal is embodied in Canon 2: "A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available," and also in Canon 8: "A lawyer should assist in improving the legal system." The employment of educated and trained legal assistants presents an opportunity to expand the public's accessibility to legal services at a reduced cost while preserving attorneys' time for attention to legal services which require the independent exercise of an attorney's judgment. This should enhance the quality of legal services and, at the same time, reduce the total cost of those services.

We reaffirm this statement in the 1995 Report, recognizing the importance of access to justice for all.

Since 1995, the so-called “justice gap” has become even more acute and thus the need for the use of **paralegals** to bridge that gap has become more acute as well. As reported in research compiled by the New York County Lawyers Association in a report later approved by the NYSBA House of Delegates¹⁰, the overwhelming majority of low-income individuals and families, and roughly half of those of moderate income, face their legal problems without a lawyer.¹¹ This “justice gap” is huge and is not closing.¹² Paralegals can help provide affordable legal services for underserved populations of low and middle income consumers who cannot

¹⁰REPORT OF NYCLA TASK FORCE ON ON-LINE LEGAL PROVIDERS REGARDING ON-LINE DOCUMENTS (Approved New York State Bar Association House of Delegates) <http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=77879>

¹¹ Raymond H. Brescia, What We Know and Need to Know about Disruptive Innovation, 67 S.C. L. REV. 203, 206 (2016), http://www.americanbar.org/content/dam/aba/images/office_president/brescia_whitepaper.pdf; See also Deborah L. Rhode, Access to Justice: An Agenda for Legal Education and Research, 62 J. LEGAL EDUC. 531, 531 (2013).

¹² Discussion of the “justice gap” is not new. See, e.g., Houseman, Alan, The Justice Gap: Civil Legal Assistance Today and Tomorrow, CENTER FOR AMERICAN PROGRESS (June 2011), <https://www.americanprogress.org/wpcontent/uploads/issues/2011/06/pdf/justice.pdf> ; see also Documenting the Justice Gap In America The Current Unmet Civil Legal Needs of Low-Income American, LEGAL SERVICES CORPORATION (Sept. 2009), (<https://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/JusticeGaInAmerica2009.authcheckdam.pdf>)

afford lawyers. In New York State alone, “[s]ome 1.8 million litigants in civil matters do not have representation when addressing the “core essentials of life –housing, family matters, access to health care and education and subsistence income.”¹³ In New York, over 90% of people involved in housing, family, and consumer problems have no legal representation.¹⁴ According to some estimates, “about four-fifths of the civil legal needs of the poor and two to three-fifths of the needs of middle income individuals remain unmet.”¹⁵

NYSBA has recognized the role that paralegals can play in providing access to justice. In 2015, NYSBA’s House of Delegates approved a task force report which endorsed a pilot program to use Housing Court Advocates to assist tenants in Housing Court to defend against nonpayment eviction proceedings, pursue remedies for violation of the Housing Code, and obtain repairs in holdover proceedings. The program also involved the use of Consumer Court Advocates to assist debtors in the New York City Civil Courts. NYSBA cautioned that its support for such programs was contingent upon the development of appropriate administrative, supervision, rules and training programs to protect the interests of clients.

Paralegals have played a significant role in closing the justice gap in states such as Washington, New York, Utah, and Oregon.¹⁶ These programs build on an earlier generation of

¹³ TASK FORCE TO EXPAND ACCESS TO JUSTICE TO CIVIL LEGAL SERVICES IN NEW YORK REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 2, 3 (Nov. 2014) (<http://nycourts.gov/accesstojusticecommission/PDF/CLS%20TaskForce%20Report%202014.pdf>); *See also* Alan Houseman, The Justice Gap: Legal Assistance Today and Tomorrow, CTR. FOR AM. PROGRESS, 3 (Jun. 22, 2011), <https://www.americanprogress.org/issues/courts/reports/2011/06/22/9824/the-justice-gap/>.

¹⁴ *See* Tom Gordon, Comments on Issues Paper on the Future of Legal Services, AMERICANBAR.ORG, 1 (Dec. 10, 2014), https://www.americanbar.org/content/dam/aba/images/office_president/responsive_law.pdf. “In New York, 2.3 million pro se litigants try to find their way through the civil justice system each year.” Wallace B. Jefferson, Chief Justice of the Supreme Court of Texas, Liberty and Justice for Some: How the Legal System Falls Short in Protecting Basic Rights, 19th Annual Justice William J. Brennan Lecture on State Courts and Social Justice, Address at N.Y.U. School of Law, 1960 (Dec. 2013), <http://www.nyulawreview.org/sites/default/files/pdf/NYULawReview-88-6-Jefferson.pdf>.

¹⁵ NYCLA Report, *supra* at n.12 (citing Deborah Rhode, Access to Justice, 3 (2004)).

¹⁶ [R. Sandefur and T. Clarke, “Roles Beyond Lawyers: Evaluation of the New York City Court Navigators Program and its Three Pilot Projects,” \(American Bar Foundation \(Dec. 2016\)\)](#)

programs such as the Onondaga County housing court program discussed in the 1995 Report.

While the details of these programs vary from state to state, these programs all use non-lawyers to assist low and/or moderate-income clients in such areas as landlord-tenant, family law, debt collection, and small claims. As a general matter the Task Force approves of these initiatives, which are largely in their nascent stages. Further review of the results of these programs is necessary to fully evaluate the use of, for example, Legal Technicians in Washington State or the Navigator program in New York, but the preliminary results appear encouraging. We note that in 2015, NYSBA's House of Delegates gave its approval to a New York pilot program in which non-lawyers were used to provide assistance to low-income clients in housing court.¹⁷

To date, NYSBA's support of such programs has been confirmed. The American Bar Foundation and the National Center for State Courts conducted perhaps the most comprehensive study of these initiatives to date.¹⁸ Their research shows the potential of programs such as New York's pilot programs which use non-lawyers to improve access to justice for low and moderate-income individuals. The ABA/NCSC study reviewed three programs. First, it analyzed New York's Access to Justice Navigators Pilot Project which is built around trained volunteer

http://www.americanbarfoundation.org/uploads/cms/documents/new_york_city_court_navigators_report_final_with_final_links_december_2016.pdf . See Lori W. Nelson, Limited License Legal Technician: What It Is, What It Isn't, and the Grey Area in Between, 50 Fam. L.Q. 447, 459–60 (2016) (adopted in WA, considered in OR; while Washington LLLTs are limited to working in family law, the Oregon Task Force recommended their LLLTs also be permitted to work on landlord-tenant and small claims cases); *id.* (New York has taken a different approach from Washington's LLLT program with its Court Navigator Program created by New York Court of Appeals Chief Judge Jonathan Lippman.⁶³ Navigators are unlicensed individuals who provide free assistance to pro se litigants involved in landlord-tenant housing cases in Brooklyn and those involved in consumer debt cases from the Bronx and Brooklyn. This assistance ranges from simple guidance about the courthouse to actually filling out forms.) In December 2015, the Utah Supreme Court approved the creation of a Limited Paralegal Practitioner (LPP) who will be allowed to provide certain limited legal services in approved practice areas, such as certain areas of family law, landlord-tenant, and debt collection. See Utah Supreme Court Backs Licensed Paralegal Practitioners, ABA Journal (12/6/15).

¹⁷ Report and Recommendation of the Committee to Study the Court Advocates Proposal (approved NYSBA House of Delegates).

<http://www.nysba.org/workarea/DownloadAsset.aspx?id=55515>

¹⁸Sandefur & Clarke, *supra* at n. 18

(http://www.americanbarfoundation.org/uploads/cms/documents/new_york_city_court_navigators_report_final_with_final_links_december_2016.pdf)

Navigators “for the day.” These Navigators assist unrepresented litigants in understanding and moving through nonpayment or debt collection proceedings.¹⁹ Second, it examined New York’s Housing Court Answers Navigators Pilot Project which involves trained volunteer Navigators “for the day,” operating in the Brooklyn Housing Court. These Navigators provide individualized assistance with tenants’ preparation of a legal document, the “answer” to the landlord’s petition for nonpayment of rent, in which the tenant responds to the petition by asserting defenses. Finally, it reviewed the University Settlement Navigators Pilot Project which employs trained caseworkers who work for a nonprofit organization. These Navigators, operating in the Brooklyn Housing Court, are Navigators “for the duration,” working the case from initial appearance through resolution and beyond.

In its research on New York’s Navigator programs, the American Bar Foundation/NCSC study found positive results:

- The programs were found to be appropriate uses of trained personnel without full formal legal training and to have potential for sustainability. Navigator programs, through their impact on both legal and life outcomes, thus can result in financial savings to society as well as a reduction in the hardships experienced by unrepresented litigants.
- Surveys of litigants revealed that litigants who received the help of any kind of Navigator were 56 percent more likely than unassisted litigants to say they were able to tell their side of the story.
- Litigants assisted by Housing Court Answers Navigators asserted more than twice as many defenses as litigants who received no assistance.
- A review of case files reveals that tenants assisted by a Housing Court Answers Navigator were 87 percent more likely than unassisted tenants to have their defenses recognized and addressed by the court. For instance, judges ordered landlords to make needed repairs about 50 percent more often in Navigator assisted cases.
- In cases assisted by these University Settlement Navigators, zero percent of tenants experienced eviction from their homes by a marshal. By contrast, in recent years, one formal eviction occurs for about every 9 nonpayment cases filed citywide.²⁰

¹⁹ *Id.* at 4

²⁰ *Id.* at 5-6

At a minimum, the Task Force views these programs as worthy of further study and fully supports the use of pilot programs in New York designed to test the viability of such approaches to addressing access to justice issues.

While the Task Force regards access to justice issues as the most significant issue requiring supplementation of the commentary contained in the 1995 NYSBA Report, it remains the case that, as in 1995, the use of paralegals today raises a host of ethical and practical issues that should be addressed by the organized bar. The following Guidelines revise and supplement the Guidelines that the NYSBA issued in 1976 and 1995. As was the case at both those times, these guidelines are intended to assist attorneys in understanding the role of paralegals in the delivery of high quality, cost effective legal services to the public in accordance with the ethics rules and with best practices.

The Task Force reaffirms the pronouncements in the 1995 Guidelines relating to the value of paralegals. Those statements remain as true today as they were in 1995 and we quote them in full:

The legal profession recognizes legal assistants as dedicated professionals with skills and abilities which contribute to the delivery of cost-effective, high quality legal services. The New York State Bar Association *Ad Hoc* Committee on Non Lawyer Practice studied the role of the legal assistant and in its report, approved by the House of Delegates in 1995, made the recommendation to support the expanded use and role of traditional legal assistants. The committee indicated its belief that the expanded use of the traditional legal assistant will benefit both the client and the bar. It recommended that court rules and ethical rules be developed to encourage the expanded use of traditional legal assistants. See Appendix 1 for the full text of the recommendations of the *Ad Hoc* Committee on Non-Lawyer Practice.

NSYBA 2019 GUIDELINES

It is recognized that these Guidelines are not static, but are subject to modification.

Attorneys who desire further advice on questions of utilization may contact the New York State Bar Association.

GUIDELINE I
LAWYERS' PROFESSIONAL RESPONSIBILITY

A LAWYER MAY PERMIT A PARALEGAL TO PERFORM SERVICES IN THE REPRESENTATION OF A CLIENT PROVIDED THE LAWYER:

- (A) RETAINS A DIRECT RELATIONSHIP WITH THE CLIENT;
- (B) SUPERVISES THE PARALEGAL'S PERFORMANCE OF DUTIES; AND
- (C) REMAINS FULLY RESPONSIBLE FOR SUCH REPRESENTATION, INCLUDING ALL ACTIONS TAKEN OR NOT TAKEN BY THE PARALEGAL,

EXCEPT AS OTHERWISE PROVIDED BY STATUTE, COURT RULE OR DECISION, ADMINISTRATIVE RULE OR REGULATION, OR BY THE NEW YORK RULES OF PROFESSIONAL CONDUCT.

COMMENTARY

Rule 5.3 of the Rules of Professional Conduct addresses the lawyer's responsibility for conduct of nonlawyers, stating in pertinent part:

- (a) A law firm shall ensure that the work of nonlawyers who work for the firm is adequately supervised, as appropriate. A lawyer with direct supervisory authority over a nonlawyer shall adequately supervise the work of the nonlawyer, as appropriate. In either case, the degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the person whose work is being supervised, the amount of work involved in a particular matter and the likelihood that ethical problems might arise in the course of working on the matter.

Comment 2 to this rule states that the purpose of requiring supervision of nonlawyers, is to reasonably assure that the conduct of nonlawyers employed by or retained by or associated with the law firm, including nonlawyers outside the firm working on firm matters, is compatible with the professional obligations of the lawyers and firm.

As stated in N.Y. County 641 (1975) (quoting N.Y. County 420 (1953)).

"What an employee, who is not a lawyer, does in the course of his employment by the law office is deemed a professional service by the law firm for which it is charged with full responsibility. Consequently, his work must be done under the supervision and direction of one or more lawyers in the firm, ... "

In order to retain a "direct relationship" with the client, a lawyer need not be in contact with the client with any specified degree of regularity or frequency, The lawyer should, however, at all reasonable times be available for consultation by the client, and whenever in the course of supervising the legal assistant's work it appears that communication with the client is desirable he should act accordingly in the client's interest.

Of course, the obligations imposed upon a lawyer with respect to the services of his legal assistant do not in any way relieve the latter from his personal obligation to obey the law and his employer's instructions.

In order to maintain a direct relationship with the client, a lawyer need not be in contact with the client with any specified degree of regularity or frequency. However, the lawyer should at all reasonable times be available for consultation by the client. *See* N.Y. State 677 (1995) (lawyer may delegate attendance at real estate closing to a legal assistant under attorney supervision.) *See also* Nassau County 90-13 (1990); Nassau County 2002-3 (2002) (a lawyer or law firm may utilize paralegals or other non-lawyer personnel to perform real estate closings under the guidance and supervision of an attorney, even though the attorney is not physically present at the closings, provided the attorney maintains a direct relationship with the client, properly supervises the delegated work, and has complete responsibility for the work product.); N.Y. State 693 (1997) (a lawyer may allow a paralegal to use a signature stamp to execute escrow checks from a client trust account so long as the lawyer supervises the delegated work closely as provided in this Opinion and exercises complete professional responsibility for the acts of the paralegal); and ABA Formal Opinion 477R (2017) (supervisory requirement extends to electronic practices which are comparable to other office procedures.)

Rule 5.3(b) specifies that the lawyer is responsible for a paralegal's conduct that violates the Rule of Professional Conduct in certain circumstances. Specifically:

- (b) A lawyer shall be responsible for conduct of a nonlawyer employed or retained by or associated with the lawyer that would be a violation of these Rules if engaged in by a lawyer, if:
- (1) the lawyer orders or directs the specific conduct or, with knowledge of the specific conduct, ratifies it; or
 - (2) the lawyer is a partner in a law firm or is a lawyer who individually or together with other lawyers possesses comparable managerial responsibility in a law firm in which the nonlawyer is employed or is a lawyer who has supervisory authority over the nonlawyer; and
 - (i) knows of such conduct at a time when it could be prevented or its consequences avoided or mitigated but fails to take reasonable remedial action; or
 - (ii) in the exercise of reasonable management or supervisory authority should have known of the conduct so that reasonable remedial action could have been taken at a time when the consequences of the conduct could have been avoided or mitigated.

A lawyer's failure to adequately supervise a paralegal can lead to disciplinary sanctions on the lawyer. *Matter of Rozenzraft*, 143 A.D.3d 54, 36 N.Y.S. 3d 711 (3^d Dep't 2016) (attorney's wholesale disregard of his duty to supervise his paralegals – including allowing paralegal to conduct residential closings and allowing them to use his signature stamp and sign his name on real estate operating accounts, all without supervision – led to two year suspension); *In Re Gaesser*, 290 A.D.2d 58, 737, N.Y.S.2d 719 (4th Dep't 2001) (suspending attorney for 3 years for failing to supervise a paralegal even after paralegal had admitted to forging checks drawn on attorney trust account). A lawyer's failure in the fundamental duty to supervise paralegals closely can lead to multiple ethical violations. *In re Castelli*, 131 A.D.3d 29, 11 N.Y.S.3d 268 (2^d Dep't 2015) (three-year suspension from practice for attorney for multiple violations, including allowing paralegals to use business cards that didn't specify "paralegal"; allowing paralegal to enter into fee arrangements and retainer agreements with clients; using signature stamp to sign pleadings not checked by the attorney, as well as checks from IOLA account).

A lawyer has the further responsibility to instruct the paralegal regarding ethics. Comment 2

to Rule 5.3 states in pertinent part:

A law firm must ensure that such nonlawyer assistants are given appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose confidential information.

In delegating tasks, the lawyer should provide instruction regarding the ethical constraints under which those in the law office must work. While the non-lawyer may receive some guidance in this regard elsewhere, as for instance through the New York Rules of Professional Conduct and the Model Code of Ethics and Professional Responsibility adopted by the foremost paralegal associations, National Association of Legal Assistants ("NALA") and the National Federation of Paralegal Associations ("NFPA"), the lawyer should not rely on others to perform this important task. N.Y. City 1995-11.

Paralegals, though not members of the bar and not technically bound by the Rules of Professional Conduct, have demonstrated the need for adherence to ethical guidelines through the adoption of the NALA and NFPA Model Code of Ethics and Professional Responsibility, attached as Appendix 6. The study of ethics is also included in all paralegal educational programs that are approved by the ABA.

GUIDELINE II

A LAWYER SHALL NOT ASSIST A PARALEGAL IN THE PERFORMANCE OF AN ACTIVITY THAT CONSTITUTES THE UNAUTHORIZED PRACTICE OF THE LAW.

COMMENTARY

The unauthorized practice of law is prohibited by statute, the Rules of Professional Conduct, and court decisions. Sections 478 and 484 of the Judiciary Law prohibit individuals who are not licensed members of the Bar of the State of New York (with

certain exceptions hereinafter noted) from engaging in the practice of the law. Any person, including a legal paralegal, who violates the statute may be punished for criminal contempt and the conduct may be enjoined. See Judiciary Law, Sections 750(B), 476-a and 476-b. *See Carter v. Flaherty*, 37 Misc. 3d 46, 953 N.Y.S. 2d 814 (2d Dep't 2012) (contract between prisoner and independent paralegal for "paralegal services" which included review of case and opinion on potential success for habeas corpus motion ruled illegal as violative of Judiciary Law Section 478 and therefore unenforceable.); *Sussman v. Grado*, 192 Misc. 2d 628, 746 N.Y.S.2d 548 (Dist. Ct. Nassau Cty 2002) (finding that independent paralegal "crossed the line" and used "independent judgment" in attempt to compose "turnover order" to help client execute judgment, thereby practicing law; contract to do so violated General Business Law § 349 and was therefore void; court reported action to Attorney General).

The issue of whether an attorney may bill the services of an assistant as a "paralegal" when the employee was not a graduate of a legal program and not certified by any particular body, was discussed in NYSBA Bar Op. 1079 (2015). The NYSBA noted that the term "paralegal" only appears in Comment [4] to Rule 1.10 (vicarious disqualification) and is not defined. NYSBA further explained that "use of the term 'paraprofessionals' in Comment [2] to Rule 5.4 indicates that the Rules place greater importance on the role these individuals play than on the name applied to them." The Rules require attorneys to supervise paralegals adequately; the Rules, however, do not contain a prohibition for charging for the time of paralegals. The NYSBA concluded that since New York does not require certification for paralegals, the term "paralegal" does not imply certification. Therefore, it is not improper to describe non-certified individuals as "paralegals" and charge a paralegal rate, provided that the rate is not excessive.

See also NYSBA Op. 695 (1997) (use of "Certified Legal Assistant" is permissible if certifying entity meets certain standards and disclosure is made of certifying entity); *Frances v. Atlantic Infiniti*, 34 Misc. 3d 1221, 950 N.Y.S.2d 608 (App. Term. 2012). (holding that attorneys cannot bill secretarial work at paralegal work).

Rule 5.5 of the N.Y. Rules of Professional Conduct provides that: ". . . A lawyer shall not aid a nonlawyer in the unauthorized practice of law."

There is no all-inclusive definition of the phrase "practice of law in New York." It has

occasionally been referred to as an act requiring the exercise of "independent professional legal judgment." N.Y. State 304 (1973); *Carter v. Flaherty*, 37 Misc 3d 46, 953 N.Y.S.2d 814 (2nd Dept. 2012) (contract between prisoner and independent paralegal for "paralegal services" which included review of case and opinion on potential success for habeas corpus motion ruled illegal as unauthorized practice of law violating Judiciary Law Section 478 and therefore unenforceable); *Matter of Sobolevsky*, 96 A.D.3d 60, 944 N.Y.S.2d 20 (1st Dep't 2012) (holding that attorney should be suspended for 2 years because he had relied on paralegal work without checking it and had therefore aided in the assistance of the unauthorized practice of law; failed to supervise nonlawyer acting at his direction); *Sussman v. Grado*, 192 Misc. 2d 628, 746 N.Y.S.2d 548 (Dist. Ct. Nassau County 2002) (finding that independent paralegal "crossed the line" and used "independent judgment" in attempt to compose turnover order to help client execute judgment, thereby practicing law; contract to do so violated General Business Law § 349 and was therefore void; court reported action to Attorney General).

Comment 2 to Rule 5.5 states, "Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. *See* Rule 5.3. .

A paralegal may not represent a client in court, give legal advice or set legal fees. However, depending on court rule, a paralegal may answer calendar calls provided no oral argument is necessary and the role is confined to purely ministerial activity. N.Y. County 682 (1990); N.Y. County 666 (1985) (lawyer may not assign a legal assistant to perform any services which involve the independent exercise of professional legal judgment.). *See also* N.Y.

City 1995-11 (comprehensive analysis of a lawyer's responsibility toward non-lawyer personnel under his or her supervision.); N.Y. State 44 (1967) (law clerk's role is that of student, and attorney must provide supervision and not permit clerk to be involved in matters involving independent discretion or judgment.)

As defined by the *Ad Hoc* Committee on Non Lawyer Practice, a freelance paralegal "as an independent contractor with supervision by and/or accountability to a lawyer," satisfies existing ethical rules which require the direct supervision of an attorney. *But see Carter v. Flaherty*, 37 Misc 3d 46, 953 N.Y.S.2d 814 (2^d Dep't. 2012) (contract between prisoner and independent paralegal for "paralegal services" which included review of case and opinion on potential success for habeas corpus motion ruled illegal as unauthorized practice of law violating Judiciary Law Section 478 and therefore unenforceable).

GUIDELINE III **AUTHORIZED PRACTICE**

A PARALEGAL MAY PERFORM CERTAIN FUNCTIONS OTHERWISE PROHIBITED WHEN AND ONLY TO THE EXTENT AUTHORIZED BY STATUTE, COURT RULE OR DECISION, OR ADMINISTRATIVE RULE OR REGULATION.

COMMENTARY

A paralegal is not engaged in the unauthorized practice of law when acting in compliance with statutes, court rules or decisions, or administrative rules and regulations which establish authority in specific areas for a lay person to appear on behalf of parties to proceedings before certain administrative agencies.

The Federal Administrative Procedure Act, 5 U.S.C. § 555(b) (2011) authorizes federal administrative agencies to permit representation by non-lawyers. *Sperry v. Florida ex. rel. Florida Bar*, 373 U. S. 379 (1963). *Sperry* held that no state may prohibit, through its UPL

provisions, a non-lawyer from practice before a federal administrative agency if the agency itself and federal statute authorizes such practice. -

Several bar associations have considered what actions may be delegated to a paralegal.

These services typically include, but are not limited to: researching legal matters; developing an action, procedure, technique, service or application; preparing and interpreting legal documents; selecting, compiling and using technical information; assisting the lawyer in court: handling administrative matters with tribunals; handling real estate closings; and analyzing and following procedural problems that involve independent decisions. Nassau County 90-13 (1990) (attorney may assign a legal assistant to attend a closing of title but only if the attorney strictly supervises.); *see also* N.Y. State 667 (1995); N.Y.State 693 (1997); N.Y. City 884 (1974); N.Y. State 44 (1967); and Nassau County 2002-3 (2002). According to NYSBA 693, an attorney may permit a paralegal to use a stamp bearing the attorney’s signature to execute escrow checks. “A lawyer may allow a paralegal to use a signature stamp to execute escrow checks from a client trust account so long as the lawyer supervises the delegated work closely as provided in this Opinion and exercises complete professional responsibility for the acts of the paralegal.”

In the Department of Labor’s Occupational Outlook Handbook (2018) the Bureau of Labor Statistics provides a description of paralegal and legal assistant tasks, stating:

Paralegals and legal assistants perform a variety of tasks to support [lawyers](#), including maintaining and organizing files, conducting legal research, and drafting documents.

Duties

Paralegals and legal assistants typically do the following:

- Investigate and gather the facts of a case
- Conduct research on relevant laws, regulations, and legal articles
- Organize and maintain documents in paper or electronic filing systems
- Gather and arrange evidence and other legal documents for attorney review and case preparation

- Write or summarize reports to help lawyers prepare for trials
- Draft correspondence and legal documents, such as contracts and mortgages
- Get affidavits and other formal statements that may be used as evidence in court
- Help lawyers during trials by handling exhibits, taking notes, or reviewing trial transcripts
- File exhibits, briefs, appeals and other legal documents with the court or opposing counsel
- Call clients, witnesses, lawyers, and outside vendors to schedule interviews, meetings, and depositions

Paralegals and legal assistants help lawyers prepare for hearings, trials, and corporate meetings. Paralegals use technology and computer software for managing and organizing the increasing amount of documents and data collected during a case. Many paralegals use computer software to catalog documents, and to review documents for specific keywords or subjects. Because of these responsibilities, paralegals must be familiar with electronic database management and be current on the latest software used for electronic discovery. Electronic discovery refers to all electronic materials obtained by the parties during the litigation or investigation. These materials may be emails, data, documents, accounting databases, and websites.

GUIDELINE IV **CONFIDENTIALITY & CONFLICT OF INTEREST**

IT IS THE RESPONSIBILITY OF A LAWYER TO TAKE REASONABLE MEASURES TO ENSURE THAT ALL CLIENT CONFIDENCES ARE PRESERVED BY THE PARALEGAL AND TAKE APPROPRIATE MEASURES TO AVOID POTENTIAL CONFLICTS OF INTEREST ARISING FROM EMPLOYMENT OF PARALEGALS.

COMMENTARY

Confidentiality: Rule 1.6(a) provides: “Confidential information” consists of information gained during or relating to the representation of a client, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the client has requested be kept confidential.

“Confidential information” does not ordinarily include (i) a lawyer’s legal knowledge or legal research or (ii) information that is generally known in the local community or in the trade, field or profession to which the information relates.

Rule 1.6(c) provides that “a lawyer shall exercise reasonable care to prevent the lawyer’s employees, associates, and others whose services are utilized by the lawyer from disclosing or

using confidential information of a client, except that a lawyer may reveal the information permitted to be disclosed by paragraph (b) through an employee.

Rule 1.6 expressly mandates an attorney to prevent employees and other service providers from disclosing or using confidential information as defined above. Thus an attorney should make clear to paralegals their obligations under the rules, institute measures to prevent inadvertent disclosure by paralegals, and exercise reasonable supervision of paralegals in this regard. (Rule 5.3 (a) Comment 2); NYSBA Op. 774 (2004). *See also Moray v. USF Industries, Inc.* 156 A.D.3d 781, 67 N.Y.S.3d 256 (2^d Dep't 2017) (disqualifying attorney because his paralegal had represented opposing party in his prior employment, there was a "reasonable probability of disclosure of confidential information obtained during paralegal's prior employment given extent of his involvement in defendants' affairs, law firm of plaintiff's counsel had only two attorneys, and no effort was made to erect adequate screening measures around associate attorney"); *Mulhern v. Calder*, 196 Misc. 2d 818 (Sup. Ct. Alb. Co. 2003) (Supreme Court refused to disqualify a law firm that had hired a secretary who had previously been a secretary/paralegal for opposing counsel and had assisted opposing counsel on the case in question. The court said that a hiring firm "can avoid disqualification by taking steps to ensure that non-lawyer employees with confidential information are kept from divulging or using confidences obtained at the prior firm" and that the law firm's timely construction of a screen around the secretary/paralegal was sufficient to protect the firm from disqualification); NYSBA Op. 774 (2004) (Law firm hiring a non-lawyer who has previously worked for another firm must supervise the non-lawyer, including instructing the non-lawyer not to disclose any confidential information and instructing its own lawyers not to exploit such information; law firm may need to conduct comprehensive conflict check based on non-lawyer's prior work); *see also*, N.Y. City 1995-11 (lawyer responsible for maintaining confidentiality should sensitize non-lawyers to

pitfalls); N.Y. State 503 (1979) (lawyer bound not to reveal confidences and secrets acquired while employed as legal assistant prior to admission to bar).

Conflict of Interest: Rule 5.3(a) provides: A law firm shall ensure that the work of nonlawyers who work for the firm is adequately supervised. Rule 5.3(b) provides that “a lawyer shall be responsible for conduct of a nonlawyer employed or retained by or associated with the lawyer that would be a violation of these Rules if engaged in by a lawyer” and the lawyer orders or directs the conduct, or in the capacity of supervising lawyer, knows or should have known of the conduct and taken measures to avoid or mitigate it.

Rule 1.10 (a), dealing with imputation of conflicts of interest requires that if an attorney in a firm is prohibited from representing a client, all attorneys in the firm are so prohibited. Thus if an attorney hired from another firm possesses confidential information of a client in a matter adverse to a current client of the hiring firm, that attorney’s disqualification under Rule 1.9, is imputed to the entire hiring firm. However, Comment 4 clearly states that the provisions regarding imputation of conflicts do not apply to non-lawyers who should be screened if they possess otherwise disqualifying information.

NYSBA Op 905 (2012), modifying NYSBA Op. 503, comes to a similar conclusion in the case of a new attorney who was a paralegal at another firm before admission and acquired confidential information of a client adverse to a client in the hiring firm, A, during his work as a paralegal at the other firm, B.

“We interpret Rules 1.9 and 1.10 in a more limited manner. While the prospective lawyer was certainly employed by Law Firm B, he was not ‘associated’ with that firm during his tenure as a paralegal. As used in Rules 1.9 and 1.10, the term ‘associated’ denotes a more significant relationship, such as holding a position as partner, associate, or of counsel at the former law firm. While the prospective lawyer may have gained material confidential information pertaining to

Matter X in his work as a paralegal or legal assistant while at Law Firm B, he did not obtain it while ‘associated’ with Firm B as an attorney.”

- “Law Firm A also has an obligation to ‘make reasonable efforts to ensure that all lawyers in the firm conform to the [] Rules.’ Rule 5.1(a). Once the prospective lawyer is admitted to practice and hired by Law Firm A, it too has an independent obligation to ensure that he does not reveal any confidential information learned while employed at Firm B.”
- “It is also advisable for Law Firm A, upon hiring the prospective lawyer, to perform a conflicts check reasonable under the circumstances... If the prospective attorney played more than a ministerial role in the matter at Law Firm B, which appears to be the case in Matter X, screening of the prospective attorney may be required under Rule 5.1(a) to prevent the misuse of confidential information and to implement the ‘reasonable efforts’ that must be undertaken under that provision to ensure that all lawyers conform to the Rules.”

See also In Re Lowell, 14 A.D.3d 41, 784 N.Y.S.2d 69 (1st Dep’t 2004) (disbarring attorney for multiple egregious acts and a pattern of deceit, including allowing paralegal to work on case in which paralegal had conflict and questioning paralegal on other side’s strategy); *Moray v. USF Industries, Inc.* 156 A.D.3d 781, 67 N.Y.S.3d 256 (2^d Dep’t 2017) (disqualifying attorney because his paralegal had represented opposing party in his prior employment, there was a “reasonable probability of disclosure of confidential information obtained during paralegal’s prior employment given extent of his involvement in defendants’ affairs, law firm of plaintiff’s counsel had only two attorneys, and no effort was made to erect adequate screening measures around associate attorney”); *Mulhern v. Calder*, 196 Misc. 2d 818 (Sup. Ct. Alb. Co. 2003) (Supreme Court refused to disqualify a law firm that had hired a secretary who had previously been a secretary/paralegal for opposing counsel and had assisted opposing counsel on the case in question. The court stated that a hiring firm "can avoid disqualification by taking steps to ensure that non-lawyer employees with confidential information are kept from divulging or using confidences obtained at the prior firm." The court also stated that the law firm's timely construction of a screen around the secretary/paralegal was sufficient to protect the firm from

disqualification); *Glover Bottled Gas Corp. v. Circle M. Beverage Barn, Inc.*, 129 A.D. 2d 678, 514 N.Y.S. 2d 440, 441 (2d Dep't 1987) (counsel disqualified from further representation after employing legal assistant from adversary firm.).

The ABA's "Model Guidelines for Utilization of Paralegal Services," (2018) address a lawyer's responsibility as follows:

Model Rule 5.3 requires lawyers with direct supervisory authority over a paralegal and partners/lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the conduct of the paralegals they employ is compatible with their own professional obligations, including the obligation to prevent conflicts of interest. Therefore, paralegals should be instructed to inform the supervising lawyer and the management of the firm of any interest that could result in a conflict of interest or even give the appearance of a conflict. The guideline intentionally speaks to "other employment" rather than only past employment because there are instances where paralegals are employed by more than one law firm at the same time. The guideline's reference to "other interests" is intended to include personal relationships as well as instances where the paralegal may have a financial interest (i.e., as a stockholder, trust beneficiary, or trustee, etc.) that would conflict with the clients in the matter in which the lawyer has been employed.

See Guideline 7, page 14. ABA Guideline 7 also provides that "Lawyers must ensure that paralegals are instructed to disclose an interest that could create an apparent or actual conflict of interest." (page 14).

If a conflict arises, it may be possible to isolate the paralegal. To the extent that such a mechanism is appropriate for a lawyer, it should be appropriate for a paralegal. According to the ABA Guidelines:

Adequate and effective screening of a paralegal may prevent disqualification of the new firm. Model Rule 1.10, comment 4. Adequate and effective screening gives a lawyer and the lawyer's firm the opportunity to build and enforce an "ethical wall" to preclude the paralegal from any involvement in the client matter that is the subject of the conflict and to prevent the paralegal from receiving or disclosing any information concerning the matter. ABA Informal Opinion 1526 (1988). The implication of the ABA's informal opinion is that if the lawyer, and the firm, do not implement a procedure to effectively screen the paralegal from involvement with the litigation, and from communication with attorneys and/or co-employees concerning the litigation, the lawyer and the firm may be disqualified from representing either party in the controversy.

See Guideline 7, page 15.

GUIDELINE V
PROFESSIONAL INDEPENDENCE OF LAWYERS

A LAWYER SHALL NOT FORM A PARTNERSHIP WITH A PARALEGAL IF ANY PART OF THE FIRM'S ACTIVITIES CONSISTS OF THE PRACTICE OF LAW, NOR SHALL A LAWYER SHARE LEGAL FEES WITH A PARALEGAL.

COMMENTARY

Non-lawyer compensation may be tied to the net profits and business performance of a firm: thus, discretionary bonuses may properly be paid to non-lawyer employees without violating the rule against sharing legal fees. N.Y. City 1995-11. *See also*, N.Y. City 884 (1974); N.Y. State 282 (1973); ABA 325 (1970). Rule 5.4 (a) provides in pertinent part that a lawyer may not share fees with a non-lawyer except:

“(3) a lawyer or law firm may compensate a non-lawyer employee or include a non-lawyer employee in a retirement plan based in whole or in part on a profit sharing arrangement.

Rule 5.4 (b) prohibits the forming of a partnership with a non-lawyer if any of the activities consist of the practice of law.

Nassau County Bar Op. 2002-3 (2002) states in part that:

“Compensation to paralegals or other non-lawyer personnel for such closings may be paid on a piece-meal basis, paying a specified amount for each closing performed. The compensation may not be directly related to the fees to be paid to the lawyer or law firm by the client for such closing services.”

See also NYSBA Op. 1079 (2015) (paralegals need not be certified and an uncertified paralegal may be described as a paralegal and the work may be billed at a “paralegal” rate).

GUIDELINE VI
DISCLOSURE OF NON-LAWYER STATUS

LAWYERS SHALL REQUIRE THAT THEIR PARALEGALS WHEN DEALING WITH CLIENTS DISCLOSE AT THE OUTSET THAT THEY ARE NOT

LAWYERS. LAWYERS SHALL ALSO REQUIRE THAT WHEN A PARALEGAL IS DEALING WITH A COURT, AN ADMINISTRATIVE AGENCY, ATTORNEYS, OR THE PUBLIC PARALEGALS SHALL DISCLOSE AT THE OUTSET THAT THEY ARE NOT LAWYERS AND DISCLOSE THE ASSOCIATION WITH THE ATTORNEY.

COMMENTARY

Disclosure of paralegal status when dealing with persons in connection with legal matters is necessary to assure that there will be no misunderstanding as to the responsibilities and role of the paralegal. Disclosure must be made in a way that avoids confusion. Common sense suggests a routine disclosure at the outset of communication. N.Y. City 884 (1974). When a paralegal is designated as **an** individual for contact, disclosure of status should be made at the time of such designation.

Therefore, a lawyer should require that the paralegal, when dealing **with** the client, disclose at the outset that the paralegal is not a lawyer. The lawyer shall also require disclosure at the outset when the **paralegal is dealing with a court, an administrative agency, attorneys or the public** the fact that the paralegal is not an attorney and his or her association *with the attorney*.

Rule 8.4(c) prohibits conduct involving dishonesty, fraud, deceit or misrepresentation. An attorney's supervision of a paralegal must take into consideration that the paralegal's status as a nonlawyer must be known to potential and actual clients, and misleading a client either by the attorney or the paralegal as to the paralegal's status may violate the rule.

NYSBA Opinion 851 indicated that an advertisement for a law firm may feature a photograph that includes nonlegal staff as long as it is not misleading. "One way to ensure that a firm photograph including non-legal staff is not misleading would be to accompany the

photograph with a caption specifying the professional status of each person in the photograph or stating that the photo includes non-legal staff.”

Disclosure of paralegal status must be clear and unambiguous. NYSBA Op. 640 (1992) (titles employed by paralegals may not be false and misleading; attorney is responsible for ensuring that business cards of paralegals meet the correct standard; use of “paralegal” is clear, and title must clearly demonstrate that paralegal is not an attorney; use of “legal associate” “paralegal coordinator” or “legal advocate” “family law advocate” or “housing advocate” is impermissible). Paralegals business cards must specify “paralegal.” *In re Castelli*, 131 A.D.3d 29, 11 N.Y.S.3d 268 (2^d Dep’t 2015) (Three year suspension from practice for attorney for multiple violations, including allowing paralegals to use business cards that didn’t specify “paralegal”; allowing paralegal to enter into fee arrangements and retainer agreements with clients; using signature stamp to sign pleadings not checked by the attorney, as well as checks from IOLA account); *In the Matter of Neal M. Pomper*, 70 A.D. 3d 222, 889 NYS2d 868 (2^d Dep’t 2009) (respondent attorney publicly censured in New York based upon discipline imposed in New Jersey because he “sent his paralegal to a hearing with his client where the paralegal identified herself as an attorney, entered an appearance on the record, allowed herself to be addressed as counselor, and acted as an advocate for the client.”) Both the NFPA and NALA Model Codes of Ethics require that a paralegal’s title is fully and accurately disclosed at the beginning of all professional relationships. NFPA Rule 1.7; NALA Canon 5. NFPA specifically mentions the necessity for a paralegal title on business cards.

GUIDELINE VII

PROFESSIONAL DEVELOPMENT

A LAWYER SHALL PROMOTE THE PROFESSIONAL DEVELOPMENT OF THE PARALEGAL.

COMMENTARY

Professional development is important to all members of the legal team.

Rule 1.1 mandates that a lawyer provide competent representation to clients. It defines “competent representation as requiring the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. Comment 6 to the rule states:

[8] To maintain the requisite knowledge and skill, a lawyer should (i) keep abreast of changes in substantive and procedural law relevant to the lawyer’s practice, (ii) keep abreast of the benefits and risks associated with technology the lawyer uses to provide services to clients or to store or transmit confidential information, and (iii) engage in continuing study and education and comply with all applicable continuing legal education requirements under 22 N.Y.C.R.R. Part 1500.

In order to assure that paralegals maintain competency, paralegals should be supported in their pursuit of opportunities for continuing legal education, including the ethical duties of lawyers, participation in *pro bono* projects and participation in professional organizations.

Both the NALA and the NFPA Model Codes of Ethics embrace continuing education for paralegals. NFPA Model Disciplinary Rule and Ethical Consideration 1.1 requires paralegals to “achieve and maintain a high level of competence” through 12 hours of continuing legal education (including 1 hour of ethics) every two year. NALA Code of Ethics and Professional Responsibility Canon 6 requires paralegals to maintain a high degree of integrity and competency through education, training, and continuing education. The NFPA Rule 1.4 also specifically requires paralegals to “serve the public interest by contributing to the improvement of the legal system and delivery of quality legal services, including pro bono public services and community service.”

GUIDELINE VIII

A LAWYER MAY INCLUDE A “MARKET RATE” CHARGE FOR THE WORK PERFORMED BY A PARALEGAL IN SETTING A CHARGE AND/OR BILLING FOR

LEGAL SERVICES.

COMMENTARY

Although the 1995 Guidelines did not address this issue, the Task Force follows the lead of the ABA Model Guidelines in confirming that lawyers may charge “market rates” for paralegal services, rather than actual costs. ABA Model Guidelines. As the ABA Model Guidelines have written:

In *Missouri v. Jenkins*, 491 U.S. 274 (1989), the United States Supreme Court held that in setting a reasonable attorney’s fee under 42 U.S.C. § 1988, a legal fee may include a charge for paralegal services at “market rates” rather than “actual cost” to the attorneys. In its opinion, the Court stated that, in setting recoverable attorney fees, it starts from “the self-evident proposition that the ‘reasonable attorney’s fee’ provided for by statute should compensate the work of paralegals, as well as that of attorneys.” *Id.* at 286. This statement should resolve any question concerning the propriety of setting a charge for legal services based on work performed by a paralegal. *See also*, Alaska Rules of Civil Procedure Rule 79 Florida Statutes Title VI, Civil Practice & Procedure, 57.104; North Carolina Guideline 7; Comment to NALA Guideline 5; Michigan Guideline 6. The *Jenkins* decision has been followed by several cases upholding paralegal fees at market rates. *See Richlin Sec. Serv.Co. v. Chertoff*, 553 U.S. 571 (2008); *United States v. Claro*, 579 F.3d 452 (5th Cir. 2009) and *Nadarajah v. Holder*, 569 F.3d 906 (9th Cir. 2009). In addition to approving paralegal time as a compensable fee element, the Supreme Court effectively encouraged the use of paralegals for the cost-effective delivery of services.

The legal conclusions in the ABA Guidelines have not been altered by case law in the intervening years and the Committee believes that is reasonable to adopt the ABA provision permitting lawyers to charge market rates for their paralegals. *See also* NYSBA Op. 1079 (2015) (paralegals need not be certified and an uncertified paralegal may be described as a paralegal and the work may be billed at a “paralegal” rate).

Appendix 1

RECOMMENDATIONS AND CONCLUSIONS

The Task Force supports the expanded use and role of the traditional paralegal. In 1995, the Committee wrote that it, “believes that only an attorney should be responsible for analyzing legal problems and giving legal advice. A matter may come into an office sounding in "tort" but may require an attorney's knowledge of bankruptcy, labor law or some other area with which a legal technician may not be familiar. The attorney, through his or her training and education, and under the Code of Professional Responsibility which states that the lawyer shall not take on a matter which the lawyer is not competent to handle, is better able to "see the whole picture" that may develop in the course of representation.”

This Task Force continues to believe that the finding of the 1995 committee remains sound and indeed forms the foundation of our doctrines prohibiting the unauthorized practice of law. At the same time, however, the Committee stresses that the admonition against unauthorized practice should be read in connection with the points below and above which call for some flexibility in expanding the role of paralegals to encompass broader tasks than they have historically performed. The Task Force recommends that Court rules and ethical rules be developed to encourage the expanded use of paralegals particularly in connection with efforts to serve low and moderate income clients (as discussed above).

In 1995, the Committee called for the Uniform Court Rules to be expanded, “to permit the use of paralegals for calendar calls, motions, adjournments and submissions of consent orders for disclosure.” More than 20 years later, little headway has been made on this front. While paralegals sometimes attend calendar calls and other ministerial court functions,²¹

²¹ L. Emmanuel, Guide to Dos and Don't's for Paralegals, NY State Legal Ethics Reporter (R. Minkoff Editor) (reprinting Sept. 1998 article) (<http://www.newyorklegaethics.com/guide-to-dos-donts-for-paralegals/>). Law firms with over 3000

there is no uniform rule permitting such a practice and indeed in our experience attorneys often handle ministerial appearances themselves. This Task Force reiterates the 1995 recommendation calling for paralegals to be able to handle ministerial court activities. *See* Guideline 2, *supra* (discussing the ethical use of paralegals in ministerial court activities). In 1995, The Committee also noted that, “In some communities, legal assistants perform most, if not all, of the legal work at real estate closings, without the physical presence of an attorney.” This Task Force notes that even more so than in 1995, the practice of using legal assistants for real estate closings has become an accepted part of the legal practice landscape²² and this Task Force accepts this practice, provided of course that the legal assistants working on real estate closings are appropriately supervised by licensed attorneys. *See* p. ___ Guidelines I and II, *supra* (discussing ethical issues relating to use of paralegals in real estate closings).

In short, the Task Force adheres to the view of the 1995 committee that:

[t]he expanded use of the professional traditional paralegal will benefit both client and bar. The traditional paralegal, through training, education and/or experience, has the capacity to make a greater contribution to the public. It goes without saying that some legal assistants know more about some technical aspects of practice areas than do some lawyers. While the lawyer must continue to maintain an involved relationship with clients, the paralegal can serve as a liaison and provide individual contact with the client. The client has a contact when the attorney is in court or otherwise unavailable and a relationship of trust may be developed, benefiting both public and Bar.²³

As was the case in 1995, this Task Force recommends the increased use of bar publications and CLE programs to promote the use of paralegals, such as a series of articles informing the bar about the qualifications, ability and professionalism of legal assistants. We note the concern of the 1997 committee that “Despite the considerable evidence built over many years supporting the premise that legal assistants are valuable members of the legal "team", the legal profession still fails to fully avail

attorneys collectively were contacted for the survey described in this article.

²² *Id.* <http://www.newyorklegaethics.com/guide-to-dos-donts-for-paralegals/>

²³ *See* report of the Chief Judge's Committee to Improve the Availability of Legal Services, April, 1990.

itself of the talent such individuals offer. Attorneys are still not aware of the capabilities of legal assistants. The bar must be educated that the traditional legal assistant is a true professional.” However, we believe that this concern has been ameliorated in the years since 1995, in part because of bar association programs such as those recommended in 1995. As a result, as set out above, the use of paralegals continues to increase at a rapid pace, outstripping job growth in most other sectors of the economy. *See* p. __, *supra*. Thus, while we continue to see a need for articles and programs regarding the use of paralegals and best practices in that regard, we note that considerable progress has been made in increasing the use of paralegals as a way to, among other things, address client concerns regarding the cost of legal services.

A. The Task Force Supports Continued Study of Regulation of Non-Lawyers and Recommends Against Imposition of New Regulations at this Time .

In 1995, the Committee recommended further study of regulatory alternatives, noting that the topic, “is sure to engender discussion and controversy” particularly with respect to “who would administer the regulatory scheme,” whether the scheme should be, “as comprehensive as lawyer regulation” and “whether a private entity such as the bar association, NALA or NFPA” should be involved in the regulatory scheme. ²⁴

The ABA has urged that state courts and bar associations devise “new or improved frameworks” for “licensing or otherwise authorizing providers of legal and related services,” including paralegals.²⁵ Legislation calling for mandatory regulation has been introduced in the

²⁴ 1995 Report at 44.

²⁵ The American Bar Association, in its January 2014 Report and Recommendations of the Task Force on the Future of Legal Education, specifically stated that “state supreme courts, state bar associations, admitting authorities, and other regulators should devise ... new or improved frameworks for licensing or otherwise authorizing providers of legal and related services.”⁴⁴ This should include licensing persons other than those holding law degrees to deliver limited legal services and “authorizing bar admission for people whose preparation may be other than the traditional four-years of college plus three-years of classroom-based law school education.” TASK FORCE ON THE FUTURE OF LEGAL EDUC., AM. BAR ASS’N, REPORT AND RECOMMENDATIONS 3 (2014), available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_ab

New York assembly, although it does not appear that such legislation has gained much traction.²⁶

National paralegal organizations have also advocated the promulgation of educational and other licensing regulations.²⁷ However, NALA, with a membership composed of more than 18,000 paralegals, through individual membership and its 90 state and local affiliated associations, opposes any mandatory regulation.²⁸ The Empire State Association of Paralegals has endorsed greater regulations.²⁹

For the reasons set out below, the Task Force at this time recommends further study of mandatory regulation as well as study of voluntary regulation by bar associations and state courts.

Numerous proposals have been offered to require, for example, licensure of paralegals, minimum education standards for paralegals, continuing legal education for paralegals, and/or ethical rules to govern paralegal conduct.³⁰ The Task Force supports the principles underlying

a_task_force.authcheckdam.pdf.) (cited in R. Zorra and Udell, March 2016).
New Roles For Non-Lawyers To Increase Access To Justice, 41 Fordham Urban L.J.. No. 4 1259 (2014)

²⁶ Bill No. 808532 (N.Y. State Assembly July 13, 2011)
http://www.assembly.state.ny.us/leg/?default_fld=&bn=A08532&term=2011&Text=Y). This legislation provides for a program to, among other things, “provide mandatory minimum standards and procedures for initial qualifications; and provide requirements for continuing education, certification, and professional conduct. It also calls for the establishment of “license application fees and license renewal fees” and the creation of an independent board to oversee paralegal regulations.

²⁷Empire State Alliance of Paralegal Associations, POSITION STATEMENT ON PARALEGAL EDUCATION STANDARDS IN NEW YORK STATE (Jan. 2006)
([https://www.paralegals.org/files/Position%20Statement%20on%20Regulation%20\(approved%2016-01\).pdf](https://www.paralegals.org/files/Position%20Statement%20on%20Regulation%20(approved%2016-01).pdf)) CITE TO NATIONAL PARALEGAL ORGANIZATIONS THAT HAVE ADVOCATED FOR REGULATIONS . . .

²⁸C. Durgin, Getting Legal with Paralegals: A Look at State Regulations, 16 Business Law Today No. 3 (American Bar Association Business Law Section Jan./Feb. 2007 <https://apps.americanbar.org/buslaw/blt/2007-01-02/durgin.shtml>

²⁹Empire State Alliance of Paralegal Associations, POSITION STATEMENT ON PARALEGAL EDUCATION STANDARDS IN NEW YORK STATE (Jan. 2006)
(http://empirestateparalegals.org/yahoo_site_admin/assets/docs/ESAPA_Paralegal_Education_Position_Paper1.114183058.pdf)

³⁰ ESAPA and its member Associations take the following position on education qualifications for entry into the paralegal profession in New York State on or after the date of adoption of this Position Statement:

- A. An individual entering the paralegal profession must possess:
 1. a post bachelor’s degree paralegal certificate*; or
 2. bachelor’s degree (major, minor or concentration) in paralegal studies; or
 3. associates degree in paralegal studies.

the proposed regulations, but does not believe coercive regulations are necessary at this time. Rather, the Task Force calls for study of such regulations and an increased emphasis on voluntary certification standards.

1. Mandatory versus Voluntary Regulation

In 1995, the Committee predicted that mandatory regulation of paralegals would encounter widespread opposition. The Committee wrote as follows:

...it can be easily concluded that mandatory across-the-board regulation will be opposed by both lawyers and legal assistants. Legitimate concerns about the time and cost of training, refresher courses, examination fees and annual registration fees will be raised. Moreover, across-the-board mandatory regulation is likely to increase the cost of legal services to some extent and possibly decrease the "supply" of non-lawyer practitioners. Many attorneys and legal assistants, for their own individual reasons, may prefer the *status quo ante*.

This prediction largely proved true. Only California has adopted regulations governing paralegals. Paralegals are regulated by statute under CA Business & Professions Code 6450 et. seq. requiring mandatory compliance with educational standards, and continuing education. In at least Florida, New Hampshire, Wisconsin³¹, New Jersey, Washington Indiana³², South Carolina,³³ and South Dakota³⁴, proposals to implement some form of mandatory regulation of paralegals failed.³⁵ In many other states, such proposals never received any serious debate and

³¹In the Matter of Licensure and Regulation Paralegals, No. 04-03 (Sup. Ct. Wis. Apr. 27, 2008) https://www.paralegals.org/files/SC_WI_Decision_4_7_08.pdf

³² In September 2008, the Indiana Supreme Court rejected Proposed Rule 2.2, which proposed the creation of the Indiana Registered Paralegal program. *See* NFPA Regulatory Review Committee, National Federation of Paralegal Associations, Paralegal Regulation by State (updated 8/17) (https://www.paralegals.org/files/REGULATION_CHART_10-14final.pdf).

³³ In 2003 the South Carolina Alliance of Legal Assistant Associations submitted a proposal for regulation of paralegals to the South Carolina Bar Association's Board of Governors which included a definition, educational standards, code of ethics and guidelines for paralegal utilization. The Bar Association's House of Delegates tabled the proposal.

³⁴ In December 2006, the State Bar submitted proposed changes to SDCL 16-18-34 to the Supreme Court to revise the definition of paralegal and set minimum qualifications for paralegals. The Supreme Court held hearings in 2007 on the proposal, however, the proposal was rejected. NFPA Regulatory Review Committee, National Federation of Paralegal Associations, Paralegal Regulation by State (updated 8/17) (https://www.paralegals.org/files/REGULATION_CHART_10-14final.pdf)

³⁵ *Id.* (https://www.paralegals.org/files/REGULATION_CHART_10-14final.pdf). In April 2006 the Florida bar defeated a bill that would have placed paralegals under the regulatory oversight of the state Department of business and Professional Regulation. *Id.* st 9. Legislation in Hawaii in 2017 was introduced to determine the feasibility of licensure or certification for paralegals. These proposals did not receive a hearing in the legislative committee to which the proposal was referred. *Id.* at 10. The Indiana Supreme Court in 2008 rejected the creation of an Indiana Registered Paralegal Program. The New

did not generate any meaningful votes. Montana,³⁶ Hawaii, Oregon,³⁷ were examples of this.

Some of the competing considerations were discussed in the New Jersey Supreme Court's opinion on paralegal regulation, rendered after a series of hearings involving many paralegal and attorney groups.

The Committee recommended that the Court establish a licensing system for all paralegals. Recognizing that paralegals have come to their positions through various educational and experiential routes, the Committee recommended that a multi-tiered licensing system be created. Plenary licensure would be available to those who completed an American Bar Association-approved paralegal program and restricted licensure would be available for paralegals trained in law firms. A "grandfather" clause was also included in the recommendation.

Some paralegals and paralegal associations endorsed the Committee's recommendations as enhancing the professionalism of the profession and the degree of respect accorded to paralegals. Other paralegal organizations, the American Bar Association, and the New Jersey State Bar Association viewed the regulatory proposal as unnecessary. The ABA noted that its review of paralegal educational programs was not intended to serve as a formal accreditation service. The NJSBA urged the Court to forego establishing a regulatory system within the Judiciary. In lieu thereof, the Association urged that the Court focus on the responsibility of lawyers to oversee the work of paralegals. In reviewing the Committee's discussion of this recommendation and the concerns it generated, the Court accepted the underlying premise; that is, that its regulation of paralegals should be conducted in a form that best serves the needs of the public, the bar, and the Judiciary. Pending future evaluations of the profession, the Court has concluded that direct oversight of paralegals is best accomplished through attorney supervision rather than through a Court-directed licensing system. As noted below, the Court agrees that the obligations attorneys have as paralegal supervisors need to be set forth in greater detail.

[Committee] Recommendation 3: Persons who seek to be practicing paralegals in New Jersey should be required to demonstrate compliance with minimum hour and course content requirements of paralegal programs offered by American Bar Association-approved paralegal educational programs.

Although the Court would encourage those who seek to become paralegals to engage in a broad-based educational program such as that recommended by the American Bar

Hampshire House in 2003 killed legislation which would have defined paralegals and legal assistants. In 1999, the NJ Supreme Court denied a proposal calling for the mandatory licensure of paralegals. *Id.* at 20. In 2007 the SD Supreme Court rejected a proposal to set minimum qualifications for paralegals. *Id.* at 28. In several states proposals died at either the state bar or legislative levels. Vermont, Utah. *Id.* at 31.

³⁶ In September of 1994, the Montana State Bar Board of Trustees voted to petition Montana Supreme Court to adopt rules regulating paralegals which included education and testing requirements. Supreme Court No. 94-577 was denied. https://www.paralegals.org/files/REGULATION_CHART_10-14final.pdf.

³⁷ 1997: HB 3082 was introduced addressing the licensure of paralegals. It was found that the bill was not complete with regard to educational requirements. The bill was amended and resubmitted where it died in committee

Association, it recognizes that there are many paths available to develop the skills necessary to perform with competence as a paralegal. The paralegal community and organized bar should work together to identify and promote educational programs that will enhance the performance of current and future paralegals.³⁸

At this time, the Task Force does not believe that efforts at mandatory regulation would be more politically palatable in New York than they have been in the numerous other states that have defeated efforts at such reforms. Thus, the Task Force believes that the appropriate course at this time is to redouble the Bar Association's efforts to study the issue, preferably under the auspices of a new NYSBA Paralegal Division (see Part __, *infra*).

While further study might generate evidence that paralegals are not being adequately supervised and/or that they are often not qualified for the roles they fill, the Task Force is unaware of such research at this point. In the absence of such evidence, we are reluctant to recommend stringent regulations that would limit the career options of those who seek to become paralegals. We recognize that at some point, NYSBA might generate sufficient research and analysis to make a case for regulation sufficiently compelling to overcome political resistance and to warrant the intrusion upon the career paths of potential paralegals. The Task Force does not believe that such a case has yet been made and thus would defer efforts at mandatory regulation in favor of support for voluntary regulatory programs such as those described below.

2. Focus on Voluntary Regulation.

The Task Force encourages further study of and further joint efforts between and among NYSBA, the New York State courts and voluntary paralegal certification programs, including those maintained by the NFPA and NALA. Subject to further study, it appears to the Task Force that these rigorous programs potentially provide a cost-effective existing framework for improving paralegal training and certification without the need for further regulation.

³⁸ New Jersey Rejects Legal Assistant Licensing Recommendations, *Utah B.J.*, DECEMBER 1999, at 22, 23

At the same time that mandatory regulatory proposals were undergoing defeat, many governments or state courts adopted voluntary paralegal certification programs, including such states as Florida³⁹, Texas, Kentucky,⁴⁰ South Carolina, North Carolina and Utah.⁴¹ A number of state bar associations have also adopted voluntary certification programs. In these instances, both the court and bar association programs generally permit paralegals to call themselves “certified_[MP1]” if they meet requirements such as a written examination or certain educational requirements according to voluntary organizations such as NALA and NFPA. _[MP2] states include Florida, North Carolina, Ohio, and Indiana.⁴² Wisconsin’s bar association has also approved the concept of such a program. Notably, some states have expressly incorporated the rules of private certification organizations. *See* Oklahoma (adopting certification examinations administered by the National Association of Legal Assistants or the National Federation of Paralegal Associations).⁴³

A number of private organizations maintain robust voluntary licensing programs. About a thousand paralegal educational programs are operating, nearly 300 of which are approved by the ABA, and about 300 of which are members of the American Association for Paralegal Education. For example, NALA maintains CLA/CP examination is a two-day comprehensive exam with more than 1,000 questions based on federal law and procedure. More than 13,000

³⁹ https://www.paralegals.org/files/FLorida_Paralegal_Regulation_Supreme_Court_Order_06_1622.pdf

⁴⁰ In 2010, Kentucky adopted the Certified Kentucky Paralegal Program –launched in Fall 2010 with “the purpose of . . . implement[ing] Kentucky Supreme Court Rule 3.700.

⁴¹ Lynn Crossett, Regulation of the Paralegal Profession and Programs for Limited Practice by Non-Lawyers, Prof. Law., 2017, at 95, 98–112. https://www.paralegals.org/files/REGULATION_CHART_10-14final.pdf

⁴² <https://www.floridabar.org/about/frp/>
<https://www.nccertifiedparalegal.gov/> (North Carolina);
<https://www.ohiobar.org/cle-certification/certification/paralegal-certification/> (Ohio);
<https://www.inbar.org/page/RegisteredParalegal> (Indiana);

⁴³ NEPA’s model regulations appear at https://www.paralegals.org/files/Model_Plan_for_Regulation.pdf
arkansa

paralegals have obtained the CLA/CP credential. Continuing education is required to maintain the credential. NFPA's Paralegal Advanced Competency Exam (PACE), established in 1994, provides a competency evaluation of paralegals. PACE is a four-hour computer-generated exam. An applicant successfully passing the exam is entitled to the "Registered Paralegal" credential but must obtain continuing education to maintain it. The NFPA is an umbrella organization of state and local paralegal associations with more than 50 affiliated local associations, representing about 11,000 paralegals. At least 600 paralegals have earned the Registered Paralegal designation that is granted to those who pass the PACE.

Surveys show that well over half of paralegals hold a baccalaureate degree and even more have some formal paralegal education.

The Task Force recommends that NYSBA and its proposed Paralegal Division promote the voluntary programs run by organizations such as NALA and NFPA, educating attorneys and potential clients as to the value of the certifications and other services provided by these organizations. Given the BLS projections for increased use of paralegals in the future, it appears likely that voluntary efforts to promote training and certification of paralegals should gain traction, particularly if such efforts obtain NYSBA's imprimatur.

B. The Task Force Reaffirms NYSBA's Commitment to Active Enforcement of the U.P.L

As the Committee wrote in 1995:

Statutes preventing the practice of law by those unqualified to provide legal services not only safeguards against harm to the public, but enhances the image of attorneys who are licensed to practice. Those who provide legal services under the guise of non-lawyers, such as disbarred lawyers, document preparers or unregulated legal technicians, are wholly unaccountable for their malfeasance.

While the Task Force recommends analysis of efforts to provide paralegals with an increased role, particularly in the service of indigent and moderate means clients, the Task Force adheres to the Committee's recommendations that NYSBA take an active role in remaining vigilant for, and

reporting, instances of unauthorized practice to appropriate authorities, including Grievance Committees, where necessary.

C. The Task Force Recommends Consideration and Implementation of Alternative Delivery Systems for Lawyers' Services.

The 1995 report discussed and recommended consideration and implementation of alternative delivery systems in an effort to increase access to justice for New Yorkers of modest and moderate means. This Task Force endorses the conclusion of the 1995 Report that “Viable alternatives to the traditional delivery system should be considered and implemented to protect New Yorkers from the unfortunate consequences which may arise if legal services are provided without attorney involvement.” However, we do not address this issue comprehensively as it is beyond the scope of this report, which is focused on the use of paralegals. However, we note that most of the concepts discussed in the 1995 report have not been adopted to this day and that these concepts remain potentially sound ideas for delivering legal services to clients of low and moderate means. The 1995 report examined: 1) prepaid legal plans; 2) modest means panels of attorneys who are willing to provide legal services at reduced rates to screened clients who meet income qualifications for such services; 3) pro se Assistance Programs and Clinics in certain jurisdictions to assist unrepresented litigants; and 4) programs to match under-utilized attorneys with clients with unmet legal needs. This list is not intended to be exhaustive and further study will be necessary.

D. The Task Force Recommends Creation of a Paralegal Division

The Task Force recommends that NYSBA create a Paralegal Division through which paralegals can become **non-voting** members of NYSBA and participate in NYSBA’s activities, but particularly in programs aimed at the enhancement of the paralegal profession. The Task Force notes that the American Bar Association has such a division. The state bars of a number

of states have paralegal membership categories and/or sections or divisions. These include, at least, Connecticut, Montana, New Mexico, Nevada, Texas, Florida, Indiana, Michigan, North Carolina, Utah, Vermont, Massachusetts, New Jersey, and Ohio.⁴⁴ Such a division would provide a means for paralegals to learn from and contribute to the organized bar. Moreover, a Paralegal Division could provide guidance for paralegals who are considering law school attendance and the practice of law. In addition, the Paralegal Division could focus on researching some of the open questions presented in this Report regarding the need for further regulation or certification

⁴⁴ New Mexico--

https://www.nmbar.org/nmstatebar/AboutUs/Divisions/Paralegal_Division/Nmstatebar/About_Us/Paralegal_Division/Paralegal_Division.aspx?hkey=7fea2437-2fa2-4acd-bef2-6d8e1d012f43

Nevada --https://www.nvbar.org/wp-content/uploads/NevadaLawyer_Jan2018_

Michigan -- <http://connect.michbar.org/paralegal/home> (Paralegal/Legal Assistant Section of the State Bar of Michigan provides education, information and analysis about issues of concern through meetings, seminars, this site, public service programs, and publication of a newsletter. Membership in the Section is open to qualified legal assistants and to all members of the State Bar of Michigan).

Ohio --The Ohio State Bar Association (OSBA) has established a credentialing program for paralegals. Paralegals interested in earning a certification good for four years must meet educational standards stipulated by the bar association, have sufficient experience and pass an examination. The first exam was offered in March 2007.

Montana -- <https://www.montanabar.org/store/ViewProduct.aspx?id=2102697>

Nevada -- <https://www.nvbar.org/member-services-3895/sections/paralegal-division/>

North Carolina --<https://www.ncbar.org/join-ncba/applications/>

Texas--

<https://www.texasbar.com/Content/NavigationMenu/ForLawyers/MembershipInformation/ParalegalDivision/default.htm>

Indiana -- <https://www.inbar.org/page/paralegals>

Utah--<http://paralegals.utahbar.org/index.php/Bylaws>

Connecticut--<https://members.ctbar.org/page/Paralegals>

Vermont --

[https://www.vtbar.org/UserFiles/files/About%20the%20VBA/JOIN%20THE%20VBA/Vermont%20Bar%20Association%20Dues%20Structure0717\(1\).pdf](https://www.vtbar.org/UserFiles/files/About%20the%20VBA/JOIN%20THE%20VBA/Vermont%20Bar%20Association%20Dues%20Structure0717(1).pdf)

Massachusetts --<https://www.massbar.org/membership/dues-structure-and-rates>

New Jersey --<https://community.njsba.com/paralegalspecialcommittee/home?ssopc=1>

of paralegals.

Appendix 2

NY RULES OF PROFESSIONAL CONDUCT

Appendix 3

**ABA MODEL GUIDELINES FOR THE UTILIZATION OF PARALEGAL
SERVICES (2018)**

https://www.americanbar.org/content/dam/aba/administrative/paralegals/ls_prlgs_modelguidelin

[es.pdf](#)

Appendix 4

NFPA AND NALA MODEL ETHICAL GUIDELINES

NFPA: [https://www.paralegals.org/files/Model Code of Ethics 09 06.pdf](https://www.paralegals.org/files/Model_Code_of_Ethics_09_06.pdf)

NALA: <https://www.nala.org/certification/nala-code-ethics-and-professional-responsibility>

Appendix 5

ABA REPORT ON THE FUTURE OF LEGAL SERVICES (2016)

file:///Users/mphillip/Downloads/2016FLSReport_FNL_WEB.pdf

Appendix 6

ABA RESOLUTION 105 (FEBRUARY 8, 2016)

<https://www.americanbar.org/content/dam/aba/images/abanews/2016mymres/105.pdf>

Appendix 7

**NATIONAL FEDERATION OF PARALEGAL ASSOCIATION (NFPA) REPORT ON
PARALEGAL REGULATION BY STATE (2017)**

<https://www.paralegals.org/files/2017-08-24%20Regulation%20by%20State%20FINAL.pdf>

Appendix 8

**AMERICAN BAR FOUNDATION AND THE NATIONAL CENTER FOR STATE
COURTS – ROLES BEYOND LAWYERS: SUMMARY, RECOMMENDATIONS AND
RESEARCH REPORT OF AN EVALUATION OF THE NEW YORK CITY COURT**

NAVIGATORS PROGRAM AND ITS THREE PILOT PROJECT (DECEMBER 2016)

<https://ncsc.contentdm.oclc.org/digital/collection/accessfair/id/387>

Appendix 9

**NEW YORK STATE BAR ASSOCIATION MEMORANDUM (HOUSE OF
DELEGATES AGENDA ITEM #11)**

<http://www.nysba.org/workarea/DownloadAsset.aspx?id=55515>



COMMITTEE ON LEGAL AID

May 30, 2019

TO: The Task Force on the Role of Paralegals

The New York State Bar Association's Committee on Legal Aid ("COLA") supports the Task Force on the Role of Paralegals Report and Recommendations dated March 2019 with the following comments/additions.

The COLA has grave concerns about legislation drafted this year by the New York State Office of Court Administration (OCA) which seeks to amend the judiciary law to allow for the employment of housing court advocates and consumer court advocates to assist indigent persons in certain court proceedings under attorney supervision.

Most significantly, the COLA believes, if enacted, this proposal will significantly decrease the incentive to hire housing attorneys under the universal access/right to counsel legislation enacted in New York City and gaining momentum in other counties in New York State. The results for tenants in New York City of the universal access legislation is a significant decrease in evictions for low income households residing in affordable housing. Additionally, there is no funding attached to the proposed OCA legislation and legal services providers will not have the resources or motivation to hire, train and adequately supervise non-attorneys to avoid malpractice. Importantly, advocates are not attorneys and will not be able to provide the full range of knowledge, skill and experience necessary to ensure optimal results for low income tenants and consumer defendants. Moreover, non-attorneys do not have the same professional ethical obligations as attorneys. For this reason, and because of the significant risk that they would inadvertently waive important defenses or compromise valid claims of low-income litigants we should not permit non-attorneys to draft, sign and file legal papers under their own signatures. On the consumer side, the requirement that a paralegal be employed by a non-profit

organization is not enough to protect defendants from deceptive practices, as unscrupulous operators charging high prices for sham services sometimes disguise themselves as nonprofit organizations in order to evade detection and regulation; the proposed legislation will encourage the proliferation of such scams. Finally, the COLA believes this is a dangerous precedent to set and will result in expansion of non-attorney representation of low-income litigants in additional court matter involving high stakes basic needs cases to the detriment of low-income households.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Sergio Jimenez". The signature is fluid and cursive, with the first name being the most prominent part.

Hon. Sergio Jimenez
Chair, Committee on Legal Aid

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF EXECUTIVE COMMITTEE MEETING
BAR CENTER, ALBANY
APRIL 12, 2019**

Present: Karina E. Alomar, Jonathan B. Behrins, Mark A. Berman, Norman P. Effman, Margaret J. Finerty, Michael L. Fox, Sharon Stern Gerstman, Sarah E. Gold, Evan M. Goldberg, Taa R. Grays, Henry M. Greenberg, Richard M. Gutierrez, Erica M. Hines, Drew Jaglom, Scott M. Karson, Sherry Levin Wallach, Peter H. Levy, Richard C. Lewis, Michael Miller, Aimee L. Richter, Robert T. Schofield, IV, Rona G. Shamoon, Carol A. Sigmond, Jean Marie Westlake,.

Guests: James R. Barnes, John P. Christopher, Steven Fink, Ignatius A. Grande, John H. Gross, Robert L. Haig, Hilary F. Jochmans, Hon. Barry Kamins, Robert I. Kantowitz, Joel L. Kurtzberg, Chris Liberati-Conant, Deepankar Mukerji, Domenick Napoletano, Marne L. Onderdonk, Andrew L. Oringer, Hon. Susan Phillips Read, Sandra Rivera, Hon. Robert S. Smith, Mark Starkman,.
Mr. Miller presided over the meeting as President of the Association.

The members were welcomed and Messrs. Christopher, Napoletano and Starkman, together with Ms. Onderdonk, were introduced as incoming Executive Committee members for the term commencing on June 1, 2019. It was noted that Diana S. Sen will join the Executive Committee as Vice President, First District; Donna England as Vice President, Tenth District; and Michael A. Marinaccio as Vice President, Twelfth District; they were unable to attend the meeting.

1. Approval of minutes of meetings. The minutes of the January 17, 2019 meeting and the February 19, 2019 teleconference meeting were approved as distributed.
2. Consent calendar:
 - a. Approval of bank signatories.

The consent calendar, consisting of the item listed above, was approved by voice vote.
3. Confirmation of presidential appointments to the House of Delegates. Mr. Greenberg reported that candidates were under review and that a list of appointees will be forwarded to the members for confirmation.
4. Report of Treasurer. In his capacity as Treasurer, Mr. Karson reviewed the draft audited statements for the year ending December 31, 2018. Operating revenue for the year was \$22.4 million and expenses were \$21.3 million, with an operating surplus of \$1.1 million. He reported that through February 28, 2019, the Association's total revenue was \$13.1 million, an increase of approximately \$132,000 over the previous year, and total expenses were \$4.8 million, an increase of approximately \$116,000 over 2018. The report was received with thanks.

5. Report of staff leadership. Pamela M. McDevitt, Executive Director, updated the Executive Committee with respect to Membership and CLE initiatives. She also reported on the move to a Salesforce-based association management system and simultaneous website redesign. Jessy Pasche was introduced as the new Director of Marketing. The report was received with thanks.
6. Report of Committee on Communications and Publications. In his capacity as chair of the subcommittee, and together with committee members Sarah E. Gold and Ignatius A. Grande, Prof. Fox provided an update on the redesign of the NYSBA website with the selection of Clique as the designer. The report was received with thanks.
7. Report and recommendations of Task Force on Incarceration Release Planning and Programs. In their capacities as co-chairs of the Task Force, Ms. Levin Wallach and Mr. Karson reviewed the Task Force's report and recommendations with respect to policy changes and best practices for incarceration release programs. After discussion, a motion was adopted to endorse the report for favorable action by the House.
8. Report of Committee on Continuing Legal Education. Committee chair James R. Barnes, together with Senior Director Katherine Suchocki, provided an update on CLE programming and delivery and the status of the all-access pass, which allows a member to get all of their CLE credits for a set price. The report was received with thanks.
9. Report of President. Mr. Miller highlighted the items included in his written report, a copy of which is appended to these minutes.
10. Report of Vice Presidents and Executive Committee liaisons. Ms. Finerty provided an update on the work of the Task Force on Mass Shootings and Assault Weapons. Mr. Levy reported on the Committee on Media Law, the Real Property Law Section, and the Trusts and Estates Law Section. Ms. Gold provided an update on the Young Lawyers Section. Prof. Fox reported on the Intellectual Property Law Section and bar associations in the Ninth Judicial District. The reports were received with thanks.
11. Report re legislative activities. Sandra Rivera, chair of the Committee on State Legislative Policy, and Hilary F. Jochmans, chair of the Committee on Federal Legislative Priorities, updated the Executive Committee as to legislative activities at the state and federal levels, including lobbying visits in Washington, D.C. and Association priorities that were addressed in the state budget process. The reports were received with thanks.
12. Report and recommendations of Committee on Attorney Professionalism. Andrew L. Oringer, chair of the committee, and committee member Robert I Kantowitz presented the committee's revised Standards for Civility which, if approved, would be submitted to the Chief Judge for consideration. After discussion, a motion was adopted to endorse the report and recommendations for favorable action by the House.
13. Report and recommendations of Elder Law and Special Needs Section. Deepankar Mukerji, a member of the section's Legislation Committee, updated the Executive

Committee on the section's work with the Business Law Section to revise the section's draft legislation proposing amendments to the Social Services Law and the Banking Law to protect vulnerable elderly persons from financial exploitation, which had been tabled at the January Executive Committee meeting. After discussion, a motion was adopted to table the proposal for an additional two weeks to permit further consultation between the sections.

14. Report and recommendations of Committee on Mandated Representation. Committee member Chris Liberati-Conant reviewed the committee's report on the use of the insanity defense and mental health issues and the establishment of a committee to address such issues. After discussion, a motion was adopted to accept the report with the thanks of the Executive Committee and to ask sections and committees to identify issues in their respective fields related to mental health. Mr. Goldberg agreed to coordinate this outreach.
15. Report and recommendations of Committee on Media Law. Committee member Joel L. Kurtzberg outlined the committee's affirmative legislative proposal to amend the Criminal Procedure Law to permit a nonparty to appeal the denial of a motion to quash a subpoena. After discussion, a motion to table was adopted to permit the committee to address issues raised in the discussion.
16. Report and recommendations of Task Force on School to Prison Pipeline. John H. Gross, co-chair of the Task Force, reviewed the committee's report on school disciplinary practices, restorative justice, and best practices for school districts. After discussion, a motion was adopted to endorse the report and recommendations for favorable action by the House.
17. Report and recommendations of Task Force on Wrongful Convictions. Hon. Barry Kamins and Hon. Robert S. Smith, co-chairs of the Task Force, outlined the Task Force's report containing recommendations relating to conviction integrity units, forensic issues, actual innocence, statewide legislation, and the use of jailhouse informants. After discussion, a motion was adopted to endorse the report and recommendations for favorable action by the House.
18. Report and recommendations of New York City Bar Association. Steven Fink, chair of the NYC Bar Association's Professional Responsibility Committee, presented proposed amendments to Part 522 of the Rules of the Court of Appeals governing registration of in-house counsel who are working in New York and licensed to practice in another jurisdiction. After discussion, a motion was adopted to endorse the report and recommendations for favorable action by the House.
19. Report and recommendations of Task Fore on Evaluation of Candidates for Election to Judicial Office. Hon. Susan Phillips Read and Robert L. Haig, co-chairs of the Task Force, presented the Task Force's report proposing best practices, guidelines and minimum standards for bar associations, good government groups and other in developing nonpartisan screening and evaluation processes for judicial candidates. An amendment to the report to refer to "participating" counties was accepted by the Task Force. After

discussion, a motion was adopted to endorse the report and recommendations for favorable action by the House. Ms. Grays and Ms. Westlake abstained from participating in the discussion and vote.

20. New Business.

Mr. Miller observed that Matthew R. Coseo, Michael L. Fox, Sharon Stern Gerstman, Sarah E. Gold, Taa R. Grays, Peter H. Levy and Steven E. Millon are rotating off the Executive Committee and that this is their last meeting. He thanked them for their service and their participation. He thanked the officers, members of the Executive Committee, and staff for their assistance during his term as President.

21. Date and place of next meeting.

Thursday and Friday, June 13-14, 2019
The Otesaga, Cooperstown

22. Adjournment. There being no further business, the meeting of the Executive Committee was adjourned.

Respectfully submitted,



Sherry Levin Wallach
Secretary

Members of the House of Delegates

as of Saturday, June 1, 2019

Hon. Stewart D. Aaron Fellow
ELECTED DELEGATE, FIRST JUDICIAL DISTRICT
United States District Court Southern District of New York
500 Pearl Street
Chambers 1970
New York, NY 10007
Phone: (212) 805-0274
Email: stewart.aaron@verizon.net

Holly A. Adams, Esq.
DELEGATE-ONTARIO COUNTY BAR ASSOCIATION
Ontario County Attorney's Office
20 Ontario Street
3rd Floor
Canandaigua, NY 14424
Phone: (585) 396-4411 FAX: (585) 396-4481
Email: holly.adams@co.ontario.ny.us

Mark H. Alcott, Esq. Fellow
FORMER PRESIDENT
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
28th Floor
New York, NY 10019-6064
Phone: (212) 373-3179 FAX: (212) 492-0179
Email: malcott@paulweiss.com

Karina E. Alomar
VICE-PRESIDENT, ELEVENTH JUDICIAL DISTRICT
Alomar & Associates, PC
125-01 Queens Blvd.
Kew Gardens, NY 11415
Phone: (718)298-1491
Email: kalomar@nycourts.gov

Gregory K. Arenson, Esq.
DELEGATE-COMMERCIAL AND FEDERAL LITIGATION SECTION
Kaplan Fox & Kilsheimer LLP
850 Third Avenue
Suite 1400
New York, NY 10022-7237
Phone: (212) 687-1980 FAX: (212) 687-7714
Email: garenson@kaplanfox.com

Josephine M. Bahn, Esq.
ALTERNATE DELEGATE-YOUNG LAWYERS SECTION
2808 Village Lane
Silver Spring, MD 20906
Email: josephine.bahn@gmail.com

Kathleen Anne Barclay, Esq.
DELEGATE-ALBANY COUNTY BAR ASSOCIATION
O'Connor O'Connor Bresee & First PC
20 Corporate Woods Blvd.
Albany, NY 12211
Phone: (518) 465-0400 FAX: (518) 465-0015
Email: barclay@oobf.com

Jeffrey S. Battistoni, Esq.
DELEGATE-DUTCHESS COUNTY BAR ASSOCIATION
Van DeWater & Van DeWater LLP
85 Civic Center Plaza
Suite 101
Poughkeepsie, NY 12601
Phone: (845) 452-5900 FAX: (845) 452-5848
Email: jbattistoni@vandewaterlaw.com

Simeon H. Baum, Esq. Fellow
DELEGATE-DISPUTE RESOLUTION SECTION
Resolve Mediation Services Inc.
1211 Avenue of the Americas
40th Floor
New York, NY 10036
Phone: (212) 355-6527 FAX: (212) 753-0396
Email: simeonhb@disputeresolve.com

Hon. Harold J. Bauman Fellow
DELEGATE-GREENE, SCHOHARIE & SULLIVAN COUNTY BAR ASSOCIATIONS
45 Delaware Ave.
Liberty, NY 12754
Phone: (845) 292-0290 x 21 FAX: (845) 295-9216
Email: harbau@verizon.net

Jonathan B. Behrins, Esq.
VICE PRESIDENT, THIRTEENTH JUDICIAL
DISTRICT
The Behrins Law Firm PLLC
1491 Richmond Road
Staten Island, NY 10304
Phone: (718) 447-5541 FAX: (718) 983-5088
Email: jb@behrinslaw.com

Jonathan Ben-Asher, Esq.
DELEGATE-LABOR AND EMPLOYMENT LAW
SECTION
Ritz Clark & Ben-Asher LLP
One Liberty Plaza
165 Broadway, 23rd Fl
New York, NY 10006
Phone: (212) 321-7075 FAX: (212) 321-7078
Email: jben-asher@rcbalaw.com

Ericka N. Bennett
DELEGATE-BAR ASSOCIATION OF ERIE
COUNTY
Roswell Park Cancer Institute
Elm and Carlton Streets
Buffalo, NY 14263
Phone: 7168458132 FAX: 7168454781
Email: ericka.bennett@yahoo.com

David L. Berkey, Esq.
DELEGATE-REAL PROPERTY LAW SECTION
Gallet Dreyer & Berkey LLP
845 Third Avenue
5th Floor
New York, NY 10022-6601
Phone: (212) 935-3131 FAX: (212) 935-4514
Email: dlb@gdblaw.com

Mark Arthur Berman Fellow
MEMBER-AT-LARGE, EXECUTIVE
COMMITTEE
Ganfer Shore Leeds & Zauderer LLP
360 Lexington Avenue
14th Floor
New York, NY 10017-6502
Phone: (212) 922-9250 x266 FAX: (212) 922-9335
Email: mberman@ganfershore.com

Hon. Lucy Billings
DELEGATE-NEW YORK COUNTY LAWYERS'
ASSOCIATION
New York State Supreme Court
71 Thomas Street
New York, NY 10013
Phone: (646) 386-3856 FAX: (212) 952-6511
Email: lbilling@nycourts.gov

Allan S. Bloom, Esq. Fellow
DELEGATE-LABOR AND EMPLOYMENT LAW
SECTION
Proskauer
Eleven Times Square
New York, NY 10036-8299
Phone: (212) 969-3880
Email: abloom@proskauer.com

Richard J. Bowler, Esq.
DELEGATE-TRUSTS AND ESTATES LAW
SECTION
Law Offices of Richard J. Bowler
Ten Bank Street
Suite 650
White Plains, NY 10606
Phone: (914) 993-0936 FAX: (914) 949-7199
Email: bowler.rich89@gmail.com

John P. Bracken, Esq. Fellow
FORMER PRESIDENT
1120 Crystal Drive
Palm Beach Gardens, FL 33418-4028
Email: jbrackenesq@gmail.com

Lawrence Jay Braunstein, Esq.
DELEGATE-FAMILY LAW SECTION
Braunstein & Zuckerman Esqs.
333 Westchester Avenue
Suite S 302
White Plains, NY 10604
Phone: (914) 997-6220 FAX: (914) 328-0916
Email: ljbraunstein@bzsesqs.com

Samuel M. Braverman, Esq.
ELECTED DELEGATE-TWELFTH JUDICIAL DISTRICT
Fasulo Braverman & Di Maggio, LLP
225 Broadway
Suite 715
New York, NY 10007
Phone: 212-566-6213 FAX: (718) 293-5395
Email: sbraverman@fbdmllaw.com

Alice M. Breeding, Esq.
DELEGATE-REAL PROPERTY LAW SECTION
Law Office of Alice M Breeding, Esq., PLLC
632 Plank Road
Suite 201
Clifton Park , NY 12065-6588
Phone: (518) 212-7520 FAX: (518) 512-0702
Email: alice@breedinglaw.com

Earamichia Brown, Esq.
MEMBER-AT-LARGE, EXECUTIVE COMMITTEE
2448 Rotherham Circle
McKinney, TX 75071
Phone: (917) 837-7673
Email: enbrownesq@gmail.com

Fellow

T. Andrew Brown, Esq.
PRESIDENTIAL APPOINTEE, FOURTH DEPARTMENT
Brown Hutchinson LLP
2 State Street
925 Crossroads Building
Rochester, NY 14614
Phone: (585) 454-5050 FAX: (585) 454-5066
Email: abrown@brownhutchinson.com

Eileen E. Buholtz, Esq.
DELEGATE-TORTS, INSURANCE AND COMPENSATION LAW SECTION
Connors, Corcoran & Buholtz, PLLC
45 Exchange Blvd. Suite 250
Rochester, NY 14614
Phone: (585) 232-5885 FAX: (585) 546-3631
Email: ebuholtz@connorscorcoran.com

Fellow

Jane B. Burke
DELEGATE-HEALTH LAW SECTION
Hodgson Russ LLP
677 Broadway
Suite 301
Albany, NY 12207
Phone: (518) 465-2333 FAX: (877) 432-1625
Email: jbburke@hodgsonruss.com

A. Vincent Buzard, Esq.
FORMER PRESIDENT
16 Mitchell Road
Pittsford, NY 14534
Email: avincentbuzard@gmail.com

Fellow

Carlos M. Calderón, Esq.
ELECTED DELEGATE-TWELFTH JUDICIAL DISTRICT
99 Court Street
White Plains, NY 10601
Phone: (914) 668-8900 ext. 13 FAX: (914) 668-8969
Email: ccalderon@wandcllp.com

Daniel D. Cassidy, Esq.
DELEGATE-BRONX COUNTY BAR ASSOCIATION
Law Office of Daniel D Cassidy, Pllc.
881 Gerard Avenue
Suite 200
Bronx, NY 10452-9434
Phone: (914) 722-2110
Email: dcassidy@danieldcassidy.com

June M. Castellano, Esq.
ELECTED DELEGATE-SEVENTH JUDICIAL DISTRICT
125 Dunbarton Drive
Rochester, NY 14618-4460
Phone: (585) 256-1927 FAX: (585) 242-7873
Email: june@junecastellano.com

Fellow

Soo-young Chang

PRESIDENTIAL APPOINTEE, FOURTH DEPARTMENT
279 Wellingwood Drive
East Amherst, NY 14051
Phone: (716) 249-5147
Email: chang.sooyoung@gmail.com

Vincent Ted Chang, Esq.

DELEGATE-NEW YORK COUNTY LAWYERS' ASSOCIATION
Wollmuth Maher & Deutsch LLP
12th Floor
500 5th Avenue
New York, NY 10110-0002
Phone: (212) 382-3300 FAX: (212) 382-0050
Email: vchang@wmd-law.com

David M. Chidekel, Esq.

DELEGATE-BROOKLYN BAR ASSOCIATION
Law Office of David M. Chidekel, Esq.
575 Madison Avenue
Suite 1006
New York, NY 10022-2511
Phone: (212) 605-0161
Email: dcjoyesq@aol.com

Amy L. Christensen, Esq.

ELECTED DELEGATE-SEVENTH JUDICIAL DISTRICT
Deputy Director
Legal Assistance of Western New York, Inc.
16 W. William St.
PO Box 272
Bath, NY 14810
Phone: (607) 776-4126 FAX: (607) 776-4029
Email: achristensen@lawny.org

Catherine A. Christian

DELEGATE-NEW YORK COUNTY LAWYERS' ASSOCIATION
Special Assistant District Attorney
New York County District Attorney's Office
One Hogan Place
Special Victims Bureau
New York, NY 10013
Phone: (212) 335-4068 FAX: (212) 815-0128
Email: christianc@dany.nyc.gov

Fellow

John P. Christopher, Esq.

MEMBER-AT-LARGE, EXECUTIVE COMMITTEE
Sahn Ward Coschignano, PLLC
333 Earle Ovington Blvd
Suite 601
Uniondale, NY 11553
Phone: (516) 228-1300 FAX: (516) 228-0038
Email: JChristopher@swc-law.com

Lisa M. Cobb, Esq.

DELEGATE-DUTCHESS COUNTY BAR ASSOCIATION
118 North Fostertown Drive
Newburgh, NY 12550
Phone: (845) 473-0900
Email: lcobb@wallacelaw.net

Peter V. Coffey, Esq.

ELECTED DELEGATE-FOURTH JUDICIAL DISTRICT
Sciocchetti & Abbott, PLLC
800 Troy-Schenectady Road
Suite 102
Latham, NY 12110
Phone: (518) 867-3001 FAX: (518) 867-3017
Email: pcoffey@pvslaw.com

Fellow

David Louis Cohen, Esq.

DELEGATE-QUEENS COUNTY BAR ASSOCIATION
Law Office of David L. Cohen, Esq.
125-10 Queens Boulevard
Suite 5
Kew Gardens, NY 11415-1522
Phone: (718) 793-1553 FAX: (718) 261-2129
Email: david@davidlouiscohenlaw.com

Fellow

Mitchell Y. Cohen

DELEGATE-FAMILY LAW SECTION
Johnson & Cohen LLP
701 Westchester Avenue
Suite 208W
White Plains, NY 10604
Phone: (914) 644-7100 FAX: 9149229500
Email: mcohen@johnsoncohenlaw.com

Members of the House of Delegates

as of Saturday, June 1, 2019

Orin J. Cohen, Esq.
ELECTED DELEGATE-THIRTEENTH
JUDICIAL DISTRICT
1162 Victory Blvd.
Staten Island, NY 10301
Phone: (718) 448-2889 FAX: (718) 650-9965
Email: orinjc@aol.com

Fellow

Nancy A. Connery, Esq.
DELEGATE-REAL PROPERTY LAW SECTION
Schoeman, Updike Kaufman & Gerber, LLP
551 Fifth Avenue
New York, NY 10176
Phone: (212) 661-5030 FAX: (212) 687-2123
Email: nconnery@schoeman.com

Matthew R. Coseo, Esq.
ELECTED DELEGATE-FOURTH JUDICIAL
DISTRICT
Saratoga County Surrogate's Court
30 McMaster Street - Bldg. 3
Ballston Spa, NY 12020
Phone: (518) 451-8830
Email: mcoseo@nycourts.gov

Allyn J. Crawford, Esq.
DELEGATE-RICHMOND COUNTY BAR
ASSOCIATION
Crawford Bringslid Vander Neut, LLP
900 South Avenue
Suite 204
Staten Island, NY 10314
Phone: (718) 273-9414
Email: acrawford@cbvlaw.com

Robert S. Dean, Esq.
DELEGATE-NEW YORK COUNTY LAWYERS'
ASSOCIATION
Center for Appellate Litigation
120 Wall St.
28th Floor
New York, NY 10005
Phone: (212) 577-2523 ext 502 FAX: (212)
577-2535
Email: rdean@cfal.org

Fellow

Hon. Paul Michael Deep
DELEGATE-ONEIDA COUNTY BAR
ASSOCIATION
Oneida County Family Court
301 West Dominick Street
Rome, NY 13440
Phone: (315) 266-4508 FAX: (315) 266-4697
Email: pdeep@nycourts.gov

Joseph F. DeFelice, Esq.
DELEGATE-QUEENS COUNTY BAR
ASSOCIATION
Office of Joseph F. DeFelice, Esq.
125-10 Queens Blvd.
Suite 302
Kew Gardens, NY 11415
Phone: (718) 261-3358 FAX: (718) 793-5072
Email: jdefel4@gmail.com

Sylvia E. Di Pietro, Esq.
DELEGATE-TRUSTS AND ESTATES LAW
SECTION
Law Office of Sylvia E. Di Pietro, Esq., LLC
55 West 14th Street
Suite 4H
New York, NY 10011-7400
Phone: (212) 242-8800 FAX: (212) 633-6298
Email: femalelitigator@yahoo.com

Michael D. DiFalco
DELEGATE-YOUNG LAWYERS SECTION
Aiello, DiFalco & Gianakos LLP
600 Old Country Road
Suite 520
Garden City, NY 11530
Phone: (516) 747-1131 FAX: (516) 794-3363
Email: mdd@matlawyers.com

Donald C. Doerr, Esq.
ELECTED DELEGATE-FIFTH JUDICIAL
DISTRICT
Cerio Law Offices
407 South Warren Street
5th Floor
Syracuse, NY 13202
Phone: (315) 422-8769 FAX: (315) 703-4884
Email: don@ceriolawoffices.com

Fellow

Members of the House of Delegates

as of Saturday, June 1, 2019

Deborah Anne Doxey, Esq.
DELEGATE-BUSINESS LAW SECTION
Phillips Lytle LLP
One Canalside
125 Main Street
Buffalo, NY 14203-2887
Phone: (716) 847-5480 FAX: (716) 852-6100
Email: ddoxey@phillipslytle.com

Vincent E. Doyle, III, Esq. Fellow
FORMER PRESIDENT
Connors LLP
1000 Liberty Building
Buffalo, NY 14202
Phone: (716) 852-5533 FAX: (716) 852-5649
Email: ved@connorsllp.com

Aaron Kyle Eberle
DELEGATE-TOMPKINS COUNTY BAR
ASSOCIATION
Eberle Law Office
PO Box 7
Lansing, NY 14882
Phone: (607) 280-8721
Email: aaron@eberlelawoffice.com

Norman P. Effman, Esq. Fellow
VICE-PRESIDENT, EIGHTH JUDICIAL
DISTRICT
Exec Director-Wyoming-Attica
Wyoming County Public Defender
Wyoming Cty Attica Legal Aid Bureau Inc.
18 Linwood Avenue
Warsaw, NY 14569
Phone: (585) 786-8450 FAX: (585) 786-8478
Email: attlegal@yahoo.com

Anthony J. Enea, Esq.
DELEGATE-SENIOR LAWYERS SECTION
Enea, Scanlan & Sirignano LLP
245 Main St, 5th Fl
White Plains, NY 10601
Phone: (914) 948-1500 FAX: (914) 948-9316
Email: a.enea@esslawfirm.com

Gordon Eng, Esq.
PRESIDENTIAL APPOINTEE, FIRST
DEPARTMENT
525 East 80th St.
New York, NY 10075
Phone: (203) 769-8812
Email: gordoneng@att.net

Gordon Eng, Esq.
DELEGATE-NEW YORK COUNTY LAWYERS'
ASSOCIATION
525 East 80th St.
New York, NY 10075
Phone: (203) 769-8812
Email: gordoneng@att.net

Paula Mallory Engel
DELEGATE-ONONDAGA COUNTY BAR
ASSOCIATION
110 Cedar Heights Drive
Jamesville, NY 13078-9425
Phone: (315) 435-2585 FAX: (315) 435-2113
Email: Paula.Engel@dfa.state.ny.us

Donna England, Esq.
VICE-PRESIDENT, TENTH JUDICIAL
DISTRICT
England & England PC
2556 Middle Country Rd
Centereach, NY 11720-3549
Phone: (631) 588-0250 FAX: (631) 588-0329
Email: dengland@englandlaw.legal

Andrew M. Fallek, Esq.
ELECTED DELEGATE-SECOND JUDICIAL
DISTRICT
Joseph Fallek. P.C.
One Battery Park Plaza
32nd Floor
New York, NY 10004
Phone: (212) 797-4700 x12 FAX: (212) 797-1550
Email: afallek@gmail.com

Michael S. Farber, Esq.
DELEGATE-TAX SECTION
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
Phone: (212) 450-4704 FAX: (212) 701-5704
Email: michael.farber@davispolk.com

Jody Fay, Esq.

DELEGATE-WESTCHESTER COUNTY BAR ASSOCIATION
The Kelsey Company
1 Palmer Ave
Scarsdale, NY 10583
Phone: (914) 358-9323 FAX: (914) 358-9324
Email: jody.fay@thekelseycompany.com

Hermes Fernandez, Esq.

ELECTED DELEGATE-THIRD JUDICIAL DISTRICT
Bond, Schoeneck & King, PLLC
22 Corporate Woods
Suite 501
Albany, NY 12211
Phone: (518) 533-3209 FAX: (518) 533-3299
Email: hfernandez@bsk.com

Fellow

Paul A. Ferrara

DELEGATE-THE NEW YORK CITY BAR
Bank of America Private Bank
114 W 47th St
New York, NY 10036
Phone: (212) 852-2817
Email: paul.a.ferrara@bofa.com

Margaret J. Finerty, Esq.

MEMBER-AT-LARGE, EXECUTIVE COMMITTEE
Getnick & Getnick LLP
521 Fifth Avenue
33rd Floor
New York, NY 10175
Phone: (212) 376-5666 FAX: (212) 292-3942
Email: mfinerty@getnicklaw.com

Fellow

Marie-Eleana First, Esq.

DELEGATE-QUEENS COUNTY BAR ASSOCIATION
Marie Eleana First, Attorney At Law
233 Broadway
Suite 2201
New York, NY 10279-0001
Phone: (212) 566-3555 FAX: (212) 349-0338
Email: mfirst622@verizon.net

Gerard Fishberg, Esq.

DELEGATE-LOCAL AND STATE GOVERNMENT LAW SECTION
Cullen & Dykman LLP
100 Quentin Roosevelt Boulevard
Garden City, NY 11530-4850
Phone: (516) 357-3703 FAX: (516) 296-9155
Email: gfishberg@cullenanddykman.com

Fellow

Patrick J. Flanagan, Esq.

ELECTED DELEGATE-SIXTH JUDICIAL DISTRICT
Nelson & Flanagan
42 South Broad Street
Norwich, NY 13815
Phone: (607) 334-9323 FAX: (607) 336-2017
Email: nelsonandflanagan@frontiernet.net

Danielle Mikalajunas Fogel, Esq.

DELEGATE-ONONDAGA COUNTY BAR ASSOCIATION
Fager & Amsler LLP
2 Clinton Square
Syracuse, NY 13202
Phone: (315) 703-7207 FAX: 315-428-0082
Email: dfogel@fakslaw.com

Jenifer J. Foley, Esq.

DELEGATE-THE NEW YORK CITY BAR
Alter, Wolff & Foley, LLP
810 7th Avenue
Suite 3600
New York, NY 10019
Phone: (212) 218-5378 FAX: (212) 218-5399
Email: jfoley@awf.nyc

Alexander D. Forger, Esq.

FORMER PRESIDENT
Milbank Tweed Hadley & McCloy LLP
28 Liberty St
Suite 2801
New York, NY 10005-1413
Phone: (212) 530-5000 FAX: (212) 530-5219
Email: aforger@milbank.com

Fellow

Prof. Michael L. Fox
DELEGATE-ORANGE COUNTY BAR
ASSOCIATION
Assistant Professor and Pre-Law Advisor
Mount Saint Mary College
School of Business
330 Powell Avenue
Newburgh, NY 12550
Phone: (845) 569-3122
Email: michael.fox@msmc.edu

Hon. Helen E. Freedman Fellow
DELEGATE-NEW YORK COUNTY LAWYERS'
ASSOCIATION
150 West 96th Street
Apt. 5E
New York, NY 10025-6443
Phone: (212) 865-6647 FAX: none
Email: helenfreedman@gmail.com

Maryann S. Freedman Fellow
FORMER PRESIDENT
Cohen & Lombardo, P.C.
343 Elmwood Avenue
Buffalo, NY 14222
Phone: (716) 881-3010 x229 FAX: (716) 881-2755
Email: freedman@cn-lo.com

Richard B. Friedman, Esq. Fellow
DELEGATE-NEW YORK COUNTY LAWYERS'
ASSOCIATION
5 Charcoal Hill Common
Westport, CT 06880
Phone: (212) 600-9539
Email: rfriedman@richardfriedmanlaw.com

William D. Frumkin, Esq.
DELEGATE-LABOR AND EMPLOYMENT LAW
SECTION
Frumkin & Hunter LLP
1025 Westchester Avenue
Suite 309
West Harrison, NY 10604
Phone: (914) 468-6096 FAX: (914) 682-9128
Email: WFrumkin@frumkinhunter.com

Jennifer L. Galvan, Esq.
DELEGATE-STEUBEN COUNTY BAR
ASSOCIATION
3 E Pulteney Sq
Bath, NY 14810-1510
Phone: 607-664-2353
Email: jennifer.galvan@co.steuben.ny.us

Armena D. Gayle, Esq.
DELEGATE-BROOKLYN BAR ASSOCIATION
2152 Ralph Avenue
Apt. 122
Brooklyn, NY 11234
Phone: (800) 460-1382 FAX: (718) 208-4151
Email: attorneygayle@gmail.com

Hon. Marilyn Genoa Fellow
DELEGATE-BAR ASSOCIATION OF NASSAU
COUNTY
Genoa & Associates, PC
12 Jaegger Drive
Glen Head, NY 11545-1825
Phone: (516) 759-7940 FAX: (516) 674-9425
Email: mkgenoa@genoaandassociates.com

Sharon Stern Gerstman, Esq. Fellow
FORMER PRESIDENT & DELEGATE TO ABA
HOUSE OF DELEGATES
Magavern Magavern Grimm LLP
1100 Rand Building
14 Lafayette Square
Buffalo, NY 14203-1929
Phone: (716) 856-3500 x227 FAX: (716) 856-3390
Email: sgerstman@magavern.com

Michael E. Getnick, Esq. Fellow
FORMER PRESIDENT
Getnick Livingston Atkinson & Priore, LLP
258 Genesee Street
Utica, NY 13502
Phone: (315) 797-9261 FAX: (315) 732-0755
Email: mgetnick@getnicklivingston.com

Members of the House of Delegates

as of Saturday, June 1, 2019

Jon P. Getz, Esq.

DELEGATE-MONROE COUNTY BAR
ASSOCIATION
Vahey Muldoon Reston Getz LLP
144 Exchange Boulevard
Suite 402
Rochester, NY 14614-2108
Phone: (585) 262-5130 FAX: (585) 262-3474
Email: jonpgetz@aol.com

Karen Gilbreath Sowell, Esq.

DELEGATE-TAX SECTION
Ernst & Young
1101 New York Avenue, Nw
Washington, DC 20005
Phone: (202) 327-8747
Email: Karen.Sowell@ey.com

Margaret E. Gilmartin, Esq.

ELECTED DELEGATE-FOURTH JUDICIAL
DISTRICT
Gilmartin Law Firm
29 Spa Drive
Saratoga Springs, NY 12866
Phone: (518) 888-6750
Email: meg@gilmartinlawfirm.com

Evan M. Goldberg

MEMBER-AT-LARGE, EXECUTIVE
COMMITTEE
129 Lake Shore Road
Greenwood Lake, NY 10925-4001
Phone: (212) 750-1200 FAX: (212) 980-4011
Email: egoldberg@tgllaw.com

Fellow

Colleen M. Grady

DELEGATE-OUT-OF-STATE
Alvarez & Diaz-Silveira LLP
1001 Brickell Bay Dr Ste 2110
Miami, FL 33131-4940
Phone: (305) 740-1960 FAX: 3057401961
Email: cgrady@adslp.com

Barbara Jeane Graves-Poller, Esq.

DELEGATE-THE NEW YORK CITY BAR
NYC Law Department
100 Church Street, 6th Floor
New York, NY 10007
Email: bjg210@nyu.edu

Henry M. Greenberg, Esq.

PRESIDENT & DELEGATE, ABA HOUSE OF
DELEGATES
Counsel
Greenberg Traurig, LLP
54 State Street
Albany, NY 12207
Phone: (518) 689-1492 FAX: (518) 689-1499
Email: greenbergh@gtlaw.com

Matthew J. Griesemer, Esq.

DELEGATE-COLUMBIA COUNTY BAR
ASSOCIATION
Freeman Howard, PC
PO Box 1328
Hudson, NY 12534
Phone: (518) 828-2021 FAX: (518) 828-2420
Email: Griesemer@freemanhoward.com

Mark P. Griffin, Esq.

DELEGATE-THE NEW YORK CITY BAR
202 Coligni Avenue
New Rochelle, NY 10801
Phone: (212) 409-1863 FAX: (212) 409-1705
Email: gryps64@yahoo.com

Judith D. Grimaldi, Esq.

DELEGATE-ELDER LAW AND SPECIAL
NEEDS SECTION
Grimaldi & Yeung, LLP
9201 4th Avenue
6th Floor
Brooklyn, NY 11209-7006
Phone: (718) 238-6960 FAX: (718) 238-3091
Email: Jgrimaldi@gylawny.com

Fellow

Members of the House of Delegates

as of Saturday, June 1, 2019

Noreen Dewire Grimmick, Esq.
DELEGATE-TRIAL LAWYERS SECTION
Partner
Noreen Grimmick Attorney At Law
13 Dawson Lane
Clifton Park, NY 12065
Phone: (518) 248-3873 FAX: (518) 877-5265
Email: ngrimmick@gmail.com

John H. Gross, Esq.
DELEGATE-SUFFOLK COUNTY BAR
ASSOCIATION
Ingerman Smith LLP
150 Motor Parkway
Suite 400
Hauppauge, NY 11788-5108
Phone: (631) 261-8834 x240 FAX: (631) 261-0523
Email: jhgross@ingermansmith.com

Claire P. Gutekunst, Esq.
FORMER PRESIDENT & DELEGATE TO ABA
HOUSE OF DELEGATES
369 Park Hill Avenue
Yonkers, NY 10705
Phone: (917) 734-5458
Email: cgutekunst@gutekunstadr.com

Fellow

Kristin E. Gutenberger Grossman, Esq.
DELEGATE-TOMPKINS COUNTY BAR
ASSOCIATION
Cornell University Real Estate Department
15 Thornwood Drive
Ithaca, NY 14850
Phone: (607) 266-7872 FAX: (607) 266-7876
Email: keg7@cornell.edu

Richard M. Gutierrez, Esq.
MEMBER-AT-LARGE, EXECUTIVE
COMMITTEE
Richard Gutierrez Law
118-35 Queens Blvd.
Suite 1500
Forest Hills, NY 11375-7205
Phone: (718) 520-0663 FAX: (718) 520-8306
Email: richlaw101@aol.com

Fellow

Jay L. Hack, Esq.
DELEGATE-BUSINESS LAW SECTION
Gallet Dreyer & Berkey, LLP
845 Third Avenue
New York, NY 10022
Phone: (212) 935-3131 FAX: (212) 935-4514
Email: jlh@gdbl原因.com

Robert L. Haig, Esq.
DELEGATE-NEW YORK COUNTY LAWYERS'
ASSOCIATION
Kelley Drye & Warren LLP
30th Floor
101 Park Avenue
New York, NY 10178-0001
Phone: (212) 808-7715 FAX: (212) 808-7897
Email: rhaig@kelleydrye.com

Fellow

Jyotin R. Hamid, Esq.
DELEGATE-THE NEW YORK CITY BAR
Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
Phone: (212) 909-1031
Email: jhamid@debevoise.com

Susan L. Harper
DELEGATE-WOMEN IN LAW SECTION
Bates Group LLC
344 River Road
Bogota, NJ 07603
Phone: 917-325-8652
Email: sharperry@aol.com

Peter C. Harvey, Esq.
ELECTED DELEGATE, FIRST JUDICIAL
DISTRICT
Patterson Belknap Webb & Tyler LLP
1133 Avenue Of The Americas
New York, NY 10036-6710
Phone: (212) 336-2810 FAX: (212) 336-2222
Email: pcharvey@pbwt.com

Members of the House of Delegates

as of Saturday, June 1, 2019

Meredith Stacy Heller, Esq.

DELEGATE-THE NEW YORK CITY BAR
Law Office of Meredith S. Heller PLLC
99 Park Avenue
Penthouse Suite
New York, NY 10016
Phone: (646) 661-1808 FAX: (347) 412-0092
Email: msheller@mshellerlaw.com

Erica M. Hines, Esq.

MEMBER-AT-LARGE, EXECUTIVE
COMMITTEE
Heslin Rothenberg Farley & Mesiti PC
5 Columbia Circle
Albany, NY 12203
Phone: (518) 452-5600
Email: Erica.Hines@hrfmlaw.com

Fellow

Robert N. Holtzman, Esq.

DELEGATE-COMMERCIAL AND FEDERAL
LITIGATION SECTION
Kramer Levin Naftalis & Frankel LLP
1177 Avenue Of The Americas
New York, NY 10036-2714
Phone: (212) 715-9513
Email: rholtzman@kramerlevin.com

Michael Timothy Horan

DELEGATE-SCHENECTADY COUNTY BAR
ASSOCIATION
Michael T Horan
670 Franklin St
Schenectady, NY 12305-2113
Phone: (518) 374-0468
Email: mhoran3@nycap.rr.com

Daniel Joseph Hurteau, Esq.

DELEGATE-ALBANY COUNTY BAR
ASSOCIATION
Nixon Peabody LLP
677 Broadway
10th Floor
Albany, NY 12207
Phone: (518) 427-2652 FAX: (518) 427-2666
Email: dhurteau@nixonpeabody.com

LaMarr J. Jackson, Esq.

ELECTED DELEGATE-SEVENTH JUDICIAL
DISTRICT
23 Overland Trail
West Henrietta, NY 14586-9733
Phone: (585) 747-2261
Email: jacksonlaw2440@gmail.com

Drew Jaglom, Esq.

MEMBER-AT-LARGE, EXECUTIVE
COMMITTEE
Tannenbaum Helpert Syracuse & Hirschtritt LLP
900 Third Avenue
12th Floor
New York, NY 10022-4728
Phone: (212) 508-6740 FAX: (646) 390-7042
Email: jaglom@thsh.com

Fellow

Seymour W. James, Jr.

FORMER PRESIDENT & DELEGATE TO ABA
HOUSE OF DELEGATES
Barket Epstein Kearon Aldea & LoTurco
350 Fifth Ave.
Suite 6400
New York, NY 10118
Phone: 212-972-1710 FAX: 516-745-1245
Email: sjames@barketepstein.com

Fellow

Hon. Barry Kamins

DELEGATE-BROOKLYN BAR ASSOCIATION
Aidala, Bertuna & Kamins P.C.
546 5th Avenue
6th Floor
New York, NY 10036
Phone: (212) 750-9700 FAX: (212) 750-8297
Email: judgekamins@aidalalaw.com

Fellow

Hon. Barbara R. Kapnick

DELEGATE-JUDICIAL SECTION
NYS Appellate Division, 1st Dept.
27 Madison Avenue
New York, NY 10010-2201
Phone: (212) 340-0461
Email: bkapnick@nycourts.gov

Scott M. Karson, Esq.

PRESIDENT-ELECT, CHAIR-HOD &
DELEGATE-ABA HOUSE OF DELEGATES
Lamb & Barnosky LLP
534 Broadhollow Road
Suite 210 P.O. Box 9034
Melville, NY 11747-9034
Phone: (631) 694-2300 FAX: (631) 694-2309
Email: smk@lambarnosky.com

Joshua Reuven Katz

DELEGATE-QUEENS COUNTY BAR
ASSOCIATION
Katz Silverman Law Group, LLP
125-10 Queens Blvd
Suite 311
Kew Gardens, NY 11415-1506
Phone: (718) 8858095 FAX: (718)4259958
Email: josh@katzsilvermanlaw.com

Elena DeFio Kean, Esq.

ELECTED DELEGATE-THIRD JUDICIAL
DISTRICT
DeFio Kean
125 Wolf Road
Suite 509
Albany, NY 12205
Phone: (518) 650-7070 FAX: (518) 213-2122
Email: Edk@defiokeanlaw.com

Fellow

Deborah S. Kearns

DELEGATE-TRUSTS AND ESTATES LAW
SECTION
Chief Clerk
15 Tamarack Drive
Delmar, NY 12054-3030
Phone: (518) 285-8586 FAX: (518) 285-8237
Email: dkearns@nycourts.gov

Peter R. Kehoe, Esq.

DELEGATE-RENSSELAER COUNTY BAR
ASSOCIATION
18 Hawthorne Avenue
Troy, NY 12180
Phone: (518) 432-4318 FAX: (518) 434-9093
Email: pkehoe@nysheriffs.org

Kevin Thomas Kelly, Esq.

DELEGATE-CRIMINAL JUSTICE SECTION
835 Taughannock Blvd.
Apt. C
Ithaca, NY 14850
Phone: (607) 368-8257
Email: kevinkellyesq@outlook.com

Matthew J. Kelly, Esq.

DELEGATE-TORTS, INSURANCE AND
COMPENSATION LAW SECTION
Roemer Wallens Gold & Mineaux LLP
13 Columbia Circle
Albany, NY 12203
Phone: (518) 464-1300 x312 FAX: (518) 464-1010
Email: mkelly@rwgmlaw.com

Amy K. Kendall

DELEGATE-ENVIRONMENTAL AND ENERGY
LAW SECTION
Knauf Shaw, LLP
1400 Crossroads Bldg.
2 State Street
Rochester, NY 14614
Phone: (585) 546-8430
Email: akendall@nyenvlaw.com

John J. Kenney

DELEGATE-NEW YORK COUNTY LAWYERS'
ASSOCIATION
Hoguet Newman Regal & Kenney, LLP
60 East 42nd Street
48th Floor
New York, NY 10165
Phone: (212) 689-8808 FAX: (212) 689-5101
Email: jkenney@hnrklaw.com

Leonard Kessler, Esq.

DELEGATE-ORANGE COUNTY BAR
ASSOCIATION
Kessler Law Offices
PO Box 294
163 William Lain Road
Westtown, NY 10998
Phone: (845) 355-2020 FAX: (845) 374-3030
Email: kesslerlaw2020@gmail.com

Peter J. Kiernan, Esq.

DELEGATE-THE NEW YORK CITY BAR
42 Alewife Brook Rd
East Hampton, NY 11937
Email: pkiernan44@gmail.com

Members of the House of Delegates

as of Saturday, June 1, 2019

Dawn Kirby, Esq.

DELEGATE-WESTCHESTER COUNTY BAR ASSOCIATION
DeBello Donnellan Weingarten Wise & Wiederkehr, LLP
One North Lexington Ave
11th Floor
White Plains, NY 10601
Phone: (914) 681-0200 FAX: (914) 684-0288
Email: dkirby@kacllp.com

Adrienne Beth Koch, Esq.

DELEGATE-NEW YORK COUNTY LAWYERS' ASSOCIATION
Katsky Korins LLP
605 Third Avenue
New York, NY 10158-0180
Phone: (212) 716-3225 FAX: (212) 716-3349
Email: akoch@katskykorins.com

Hon. Rachel Kretser

DELEGATE-SENIOR LAWYERS SECTION
6 Greyledge Drive
Albany, NY 12211-2054
Phone: (518) 641-9562
Email: Rkret@albanylaw.edu

Anthony J. Lamberti, Esq.

DELEGATE-BROOKLYN BAR ASSOCIATION
Armstrong & Lamberti, PLLC
900 South Avenue
Suite 401
Staten Island, NY 10314-3429
Phone: (718) 477-7700
Email: ajl@nyelderlaw.net

Dawn Joyce Lanouette, Esq.

DELEGATE-BROOME COUNTY BAR ASSOCIATION
Hinman Howard & Kattell, LLP
700 Security Mutual Building
80 Exchange St.
Binghamton, NY 13902-2723
Phone: (607) 723-5341 FAX: (607) 723-6605
Email: dlanouette@hbk.com

Richard A. Klass, Esq.

DELEGATE-BROOKLYN BAR ASSOCIATION
The Law Offices of Richard A. Klass, Esq.
16 Court Street
28th Floor
Brooklyn, NY 11241
Phone: (718) 643-6063 FAX: (718) 643-9788
Email: richklass@courtstreetlaw.com

Kenneth A. Krajewski, Esq.

DELEGATE-TORTS, INSURANCE AND COMPENSATION LAW SECTION
Brown & Kelly, LLP
800 Main Place Tower
350 Main Street
Buffalo, NY 14202
Phone: (716) 256-1212 FAX: (716) 854-0082
Email: kkrajewski@brownkelly.com

Anne Louise LaBarbera

DELEGATE-YOUNG LAWYERS SECTION
Thomas LaBarbera Counselors At Law
11 Broadway
Suite 615
New York, NY 10004
Phone: (917) 704-9759 FAX: (917) 732-7756
Email: anne@tlcpc.law

Stephen B. Land

DELEGATE-TAX SECTION
Duval & Stachenfeld LLP
555 Madison Avenue
New York, NY 10022
Phone: (212) 692-5991 FAX: (212) 883-8883
Email: sland@dslp.com

Nelida Lara-Garduno, Esq.

DELEGATE-WESTCHESTER COUNTY BAR ASSOCIATION
DeBello Donnellan Weingarten Wise & Wiederkehr LLP
1 North Lexington Avenue, Floor 11
White Plains, NY 10601
Phone: (212) 756-2715
Email: NLG@ddw-law.com

Glenn Lau-Kee Fellow
FORMER PRESIDENT & DELEGATE TO ABA
HOUSE OF DELEGATES
Lau-Kee Law Group, PLLC
354 Broome Street
Suite 1
New York, NY 10013
Phone: (212) 625-0300 X110 FAX: (212) 625-1812
Email: glaukee@laukeelaw.com

C. Bruce Lawrence, Esq. Fellow
DELEGATE-SENIOR LAWYERS SECTION
Boylan Code LLP
145 Culver Road
Suite 100
Rochester, NY 14620
Phone: (585) 232-5300 x256
Email: cblawrence@boylancode.com

Bernice K. Leber, Esq. Fellow
FORMER PRESIDENT
Arent Fox LLP
1301 Avenue of the Americas
42nd Floor
New York, NY 10019-6040
Phone: (212) 484-3930 FAX: (212) 484-3990
Email: bernice.leber@arentfox.com

Hon. John J. Leo
DELEGATE-SUFFOLK COUNTY BAR
ASSOCIATION
Supreme Court of the State of NY Suffolk County
400 Carleton Ave
Central Islip, NY 11722
Phone: (631) 853-4921
Email: jleo@nycourts.gov

Stephen Charles Lessard, Esq.
DELEGATE-NEW YORK COUNTY LAWYERS'
ASSOCIATION
Orrick, Herrington & Sutcliffe LLP
51 West 52nd Street
New York, NY 10019
Phone: (212) 506-5137 FAX: (212) 506-5100
Email: slessard@orrick.com

Steven G. Leventhal, Esq.
DELEGATE-BAR ASSOCIATION OF NASSAU
COUNTY
Leventhal, Cursio, Mullaney & Blinkoff, LLP
15 Remsen Avenue
Roslyn, NY 11576-2102
Phone: (516) 484-5440 x101 FAX: (516) 484-2710
Email: sleventhal@lcmsslaw.com

Sherry Levin Wallach, Esq. Fellow
SECRETARY
Bashian P.C.
235 Main Street
White Plains, NY 10601
Phone: (914) 946-5100 FAX: (914) 946-5111
Email: slwallach@bashian-law.com

A. Thomas Levin, Esq. Fellow
FORMER PRESIDENT
Meyer, Suozzi, English & Klein P.C.
990 Stewart Avenue, Suite 300
P.O. Box 9194
Garden City, NY 11530-9194
Phone: (516) 592-5704 FAX: (516) 741-6706
Email: atlevin@msek.com

Peter H. Levy, Esq.
ELECTED DELEGATE-TENTH JUDICIAL
DISTRICT
366 North Broadway
Suite LW1
Jericho, NY 11753
Phone: (516) 822-5800 FAX: (516) 822-5848
Email: phlatty.1@juno.com

Richard C. Lewis, Esq. Fellow
VICE-PRESIDENT, SIXTH JUDICIAL
DISTRICT
Hinman Howard & Kattell, LLP
80 Exchange Street
PO Box 5250
Binghamton, NY 13901-3400
Phone: (607) 231-6891 FAX: (607) 723-6605
Email: Rlewis@HHK.com

Susan B. Lindenauer, Esq.
DELEGATE-NEW YORK COUNTY LAWYERS'
ASSOCIATION
45 Gramercy Park North
Apt. 8A
New York, NY 10010
Phone: (212) 982-0298 FAX: (212) 477-6728
Email: alindenauer@nyc.rr.com

Fellow

Gregory Scot Lisi, Esq.
DELEGATE-BAR ASSOCIATION OF NASSAU
COUNTY
Forchelli Curto Deegan Schwartz Mineo Cohn &
Terrana LLP
333 Earle Ovington Blvd.
Suite 1010
Uniondale, NY 11553
Phone: (516) 248-1700 FAX: (516) 248-1279
Email: glisi@forchellilaw.com

Betty Lugo, Esq.
DELEGATE-TRIAL LAWYERS SECTION
Pacheco & Lugo, PLLC
340 Atlantic Avenue
Brooklyn, NY 11201-5870
Phone: (718) 855-3000 FAX: (718) 855-6565
Email: blugo@pachecolugo.com

Fellow

Ian William MacLean
DELEGATE-TRUSTS AND ESTATES LAW
SECTION
The MacLean Law Firm, P.C.
60 East 42nd Street
40th Floor
New York, NY 10165
Phone: (212) 682-1555 FAX: (212) 485-9877
Email: ianwmaclean@mlfpc.com

Fellow

Hon. Joan Anne Madden
DELEGATE-NEW YORK COUNTY LAWYERS'
ASSOCIATION
Supreme Court Of The State Of New York
60 Centre Street
New York, NY 10007-1402
Phone: (646) 386-3190 FAX: (646) 386-3576
Email: jmadden@nycourts.gov

Fellow

Kathryn Grant Madigan
FORMER PRESIDENT & DELEGATE TO ABA
HOUSE OF DELEGATES
Levene Gouldin & Thompson, LLP
450 Plaza Drive
Vestal, NY 13850
Phone: (607) 763-9200 FAX: (607) 763-9211
Email: kmadigan@lgtlegal.com

Fellow

Roger Juan Maldonado, Esq.
DELEGATE-THE NEW YORK CITY BAR
Smith, Gambrell & Russell LLP
1301 Avenue of the Americas
21st Floor
New York, NY 10019
Phone: (212) 907-9741
Email: Rmaldonado@sgrlaw.com

Fellow

Andrew Mandell, Esq.
DELEGATE-THE NEW YORK CITY BAR
NYC Human Resources Administration
4 World Trade Center
35th Floor
New York, NY 10007-5211
Phone: (929) 221-6804
Email: mandella@hra.nyc.gov

Linda U. Margolin
DELEGATE-SUFFOLK COUNTY BAR
ASSOCIATION
MargolinBesunder, LLP
1050 Old Nichols Road
Suite 200
Islandia, NY 11749
Phone: (631) 234-8585 FAX: (631) 234-8702
Email: lmargolin@margolinbesunder.com

Fellow

Marianne Mariano, Esq.
DELEGATE-BAR ASSOCIATION OF ERIE
COUNTY
Federal Public Defender's Office, WDNY
300 Pearl St Ste 200
Buffalo, NY 14202-2510
Phone: (716) 551-3341
Email: marianne_mariano@fd.org

Michael A. Marinaccio, Esq.
VICE-PRESIDENT, TWELFTH JUDICIAL
DISTRICT
Law Office of Michael A. Marinaccio
245 Main Street
Suite 420
White Plains, NY 10601-2411
Phone: (914) 761-0707 FAX: (914) 761-0795
Email: michael@mamarinacciolaw.com

Michael A. Markowitz, Esq.
DELEGATE-BAR ASSOCIATION OF NASSAU
COUNTY
Michael A. Markowitz, PC
1553 Broadway
Hewlett, NY 11557-1494
Phone: (516) 295-9061 FAX: (516) 740-2880
Email: attorney@mampc.net

Daniel C. Marotta, Esq.
DELEGATE-RICHMOND COUNTY BAR
ASSOCIATION
Gabor & Marotta
1878 Victory Blvd
Staten Island, NY 10314
Phone: (718) 876-5500
Email: dan@gabormarottalaw.com

Fellow

Deborah Martin Owens
PRESIDENTIAL APPOINTEE, FIRST
DEPARTMENT
New York City Bar Association
42 West 44th Street
New York, NY 10036
Phone: (212) 382-6713
Email: deborahmartinesq@gmail.com

Edwina Frances Martin, Esq.
ELECTED DELEGATE-THIRTEENTH
JUDICIAL DISTRICT
966K Clove Road
Staten Island, NY 10301
Phone: (212) 788-6972
Email: edwinamartin@hotmail.com

Fellow

Maria Matos, Esq.
PRESIDENTIAL APPOINTEE, SECOND
DEPARTMENT
38 Chateau Lane
Hawthorne, NY 10532
Email: mmatoslaw@aol.com

Michael R. May, Esq.
ELECTED DELEGATE-SIXTH JUDICIAL
DISTRICT
Levene Gouldin & Thompson, LLP
121 East Buffalo Street
Ithaca, NY 14850
Phone: (607) 272-3442 FAX: (607) 272-4514
Email: mmay@lgtlegal.com

John T. McCann
DELEGATE-ONONDAGA COUNTY BAR
ASSOCIATION
Hancock Estabrook, LLP
1800 AXA Tower I
100 Madison Street
Syracuse, NY 13202
Phone: (315) 565-4500 FAX: (315) 471-3167
Email: jmccann@hancocklaw.com

Fellow

Michael Philip McDermott, Esq.
DELEGATE-ALBANY COUNTY BAR
ASSOCIATION
O'Connell & Aronowitz PC
54 State Street
9th Floor
Albany, NY 12207
Phone: (518) 462-5601 FAX: (518) 462-2670
Email: mmcdermott@oalaw.com

Mary Elizabeth McGowan, Esq.
DELEGATE-HERKIMER, JEFFERSON, LEWIS
& OSWEGO COUNTY BAR ASSOCIATIONS
Reynolds & McGowan, PLLC
138 West Fourth Street
Oswego, NY 13126-2768
Phone: (315) 343-2451
Email: mary.mcgowan@oswego.edu

Christopher James McNamara, Esq.
DELEGATE-NEW YORK COUNTY LAWYERS'
ASSOCIATION
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
Phone: (212) 728-8546 FAX: (212) 728-9546
Email: cmcnamara@willkie.com

Michael J. McNamara, Esq. Fellow
DELEGATE-NEW YORK COUNTY LAWYERS'
ASSOCIATION
Seward & Kissel LLP
One Battery Park Plaza
New York, NY 10004
Phone: (212) 574-1581 FAX: (212) 480-8421
Email: mcnamara@sewkis.com

Timothy G. McNamara, Esquire
DELEGATE-ROCKLAND COUNTY BAR
ASSOCIATION
Traub Lieberman Straus & Shrewberry LLP
Mid-Westchester Executive Park
7 Skyline Drive
Hawthorne, NY 10532
Phone: (914) 586-7024 FAX: (914) 347-8898
Email: tmcnamara@tlsslaw.com

Harry G. Meyer Fellow
DELEGATE-REAL PROPERTY LAW SECTION
96 Morningside Lane
Williamsville, NY 14221-5033
Email: hgmeyer96@gmail.com

Claire C. Miller, Esq. Fellow
ELECTED DELEGATE-THIRTEENTH
JUDICIAL DISTRICT
One Edgewater Plaza
Suite 701
Staten Island, NY 10305-4900
Phone: (718) 815-2003 x2 FAX: (718) 815-2012
Email: Claire@clairecmiller.com

Henry G. Miller, Esq. Fellow
FORMER PRESIDENT
Clark, Gagliardi & Miller, P.C.
99 Court Street
White Plains, NY 10601
Phone: (914) 946-8900 FAX: (914) 946-8960
Email: hmiller@cgmlaw.com

Michael Miller, Esq.
FORMER PRESIDENT & DELEGATE TO ABA
HOUSE OF DELEGATES
Law Office of Michael Miller
666 Fifth Avenue, Suite 1717
New York, NY 10103-0001
Phone: (212) 545-7000 FAX: (212) 532-8800
Email: mm@michaelmilleresq.com

Rachel Ellen Miller, Esq.
DELEGATE-BROOME COUNTY BAR
ASSOCIATION
Aswad & Ingraham
46 Front Street
Binghamton, NY 13905
Phone: (607) 724-8456
Email: rachel.miller@ailaw.com

Eileen D. Millett Fellow
DELEGATE-OUT-OF-STATE
Phillips Nizer LLP
485 Lexington Avenue
14th Floor
New York, NY 10017
Phone: (212) 841-0529
Email: emillett@phillipsnizer.com

Steven E. Millon, Esq.
ELECTED DELEGATE-TWELFTH JUDICIAL
DISTRICT
675 Third Avenue
Suite 3005
New York, NY 10017
Phone: (212) 779-9100 FAX: (212) 684-4923
Email: smillon@jeffshapiro.com

Ronald C. Minkoff, Esq.
DELEGATE-NEW YORK COUNTY LAWYERS'
ASSOCIATION
Frankfurt Kurnit Klein & Selz PC
488 Madison Avenue
10th Floor
New York, NY 10022
Phone: (212) 980-0120 FAX: (212) 593-9175
Email: rminkoff@fkks.com

Fellow

David P. Miranda, Esq.
FORMER PRESIDENT & DELEGATE TO ABA
HOUSE OF DELEGATES
Heslin Rothenberg Farley & Mesiti, PC
5 Columbia Circle
Albany, NY 12203
Phone: (518) 452-5600 FAX: (518) 452-5579
Email: dpm@hrfmlaw.com

Fellow

Hon. Michael M. Mohun
ELECTED DELEGATE-EIGHTH JUDICIAL
DISTRICT
County/Family/Surrogate Judge
Wyoming County Court Judge
147 N. Main Street
Warsaw, NY 14569
Phone: (585) 228-3196 FAX: (585) 937-8988
Email: mmohun@nycourts.gov

Fellow

James C. Moore, Esq.
FORMER PRESIDENT
19 Oakfield Way
Pittsford, NY 14534
Phone: (585) 231-1124 FAX: (585) 232-2152
Email: jcmoore1939@gmail.com

Fellow

Arthur J. Muller, III, Esq.
DELEGATE-WESTCHESTER COUNTY BAR
ASSOCIATION
Trivella & Forte LLP
1311 Mamaroneck Ave
Suite 170
White Plains, NY 10605
Phone: (914) 949-9075
Email: aj@tfsllp.com

Kevin P. Mulry, Esq.
DELEGATE-BAR ASSOCIATION OF NASSAU
COUNTY
Farrell Fritz
400 RXR Plaza
Uniondale, NY 11556
Phone: (516) 227-0620
Email: kmulry@farrellfritz.com

Hon. James P. Murphy
DELEGATE-JUDICIAL SECTION
3875 Jordan Road
Skaneateles, NY 13152-9317
Phone: (315) 671-1109 FAX: (315) 671-1186
Email: jmurphy@nycourts.gov

Domenick Napoletano, Esq.
TREASURER
351 Court Street
Brooklyn, NY 11231-4384
Phone: (718) 522-1377 FAX: (718) 596-6137
Email: domenick@napoletanolaw.com

Matthew J. Nolfo, Esq.
DELEGATE-ELDER LAW AND SPECIAL
NEEDS SECTION
Matthew J. Nolfo & Associates
275 Madison Avenue
Suite 1714
New York, NY 10016
Phone: (212) 286-9499 FAX: (212) 286-8881
Email: mnolfo@estateandelderlaw.net

Leah R. Nowotarski
DELEGATE-CRIMINAL JUSTICE SECTION
Wyoming County Public Defender
18 Linwood Avenue
Warsaw, NY 14569
Phone: (585) 786-8450 FAX: (585) 786-8478
Email: lnowotarski.attlegal@yahoo.com

Fellow

Carolyn G. Nussbaum, Esq.

DELEGATE-MONROE COUNTY BAR ASSOCIATION
Nixon Peabody LLP
1300 Clinton Square
Rochester, NY 14604
Phone: (585) 263-1000 FAX: (585) 263-1600
Email: cnussbaum@nixonpeabody.com

Fellow

Bridget M. O'Connell

DELEGATE-BAR ASSOCIATION OF ERIE COUNTY
190 Admiral Road
Buffalo, NY 14216
Email: boconnel@nycourts.gov

Thomas M. O'Donnell

DELEGATE-BAR ASSOCIATION OF NIAGARA COUNTY
City of Niagara Falls Law Department
745 Main Street
City Hall
Niagara Falls, NY 14302
Phone: (716) 286-4409 FAX: (716) 286-4424
Email: thomas.odonnell@niagarafallsny.gov

Marne L. Onderdonk, Esq.

VICE-PRESIDENT, FOURTH JUDICIAL DISTRICT
Albany County Courthouse - Chambers of the Hon. Margaret Walsh
16 Eagle Street
Room 38
Albany, NY 12207
Phone: (518) 285-6139
Email: monderdo@nycourts.gov

Robert L. Ostertag, Esq.

FORMER PRESIDENT
Ostertag O'Leary Barrett & Faulkner
301 Manchester Road
Suite 201
Poughkeepsie, NY 12603
Phone: (845) 486-4300 FAX: (845) 486-4080
Email: b.ostertag55@gmail.com

Fellow

Anthony Robert Palermo, Esq.

FORMER PRESIDENT
Woods Oviatt Gilman LLP
700 Crossroads Building
2 State Street
Rochester, NY 14614
Phone: (585) 987-2882 FAX: (585) 987-2982
Email: apalermo@woodsoviatt.com

Fellow

Christopher Palermo, Esq.

DELEGATE-FOOD, DRUG AND COSMETIC LAW SECTION
Harris Beach PLLC
445 Hamilton Avenue
Suite 1206
White Plains, NY 10601
Phone: (914) 298-3032
Email: cpalermo@harrisbeach.com

Fellow

John A. Pappalardo, Esq.

DELEGATE-WESTCHESTER COUNTY BAR ASSOCIATION
Farber Pappalardo & Carbonari
200 East Post Rd.
White Plains, NY 10601
Phone: (914) 761-9400 FAX: 914-761-0747
Email: johnp@pappalardoesq.com

David B. Perlman

DELEGATE-CORPORATE COUNSEL SECTION
15 Country Club Lane
Scarborough, NY 10510
Email: davidbperlman@earthlink.net

Hon. Elizabeth D. Pessala

DELEGATE-BAR ASSOCIATION OF NASSAU COUNTY
Village of Westbury
235 Lincoln Place
Westbury, NY 11590
Phone: (516) 334-1700 ext 116
Email: edpessala@gmail.com

Scott M. Peterson, Esq.
DELEGATE-SARATOGA COUNTY BAR
ASSOCIATION
Dorazio Peterson LLP
125 High Rock Avenue
Saratoga Springs, NY 12866
Phone: (518) 308-8339 FAX: (518) 633-5106
Email: smp@doraziopeterson.com

Maxwell S. Pfeifer, Esq.
FORMER PRESIDENT
2727 Palisade Avenue
Suite 8 F
Bronx, NY 10463
Phone: (718) 884-6675 FAX: (718) 324-0333
Email: mspfeifer@aol.com

Fellow

Thomas M. Pitegoff
DELEGATE-BUSINESS LAW SECTION
LeClairRyan
885 Third Avenue
16th Floor
New York, NY 10022
Phone: (212) 634-5032 FAX: (212) 634-5004
Email: tom.pitegoff@leclairryan.com

Tara Anne Pleat, Esq.
DELEGATE-ELDER LAW AND SPECIAL
NEEDS SECTION
Wilcenski & Pleat PLLC
5 Emma Lane
Clifton Park, NY 12065
Phone: (518) 881-1621 FAX: (518) 881-1622
Email: TPleat@WPLawNY.com

Fellow

Lynn D. Poster-Zimmerman, Esq.
DELEGATE-SUFFOLK COUNTY BAR
ASSOCIATION
Lynn Poster-Zimmerman Esq.
775 Park Avenue
Suite 335
Huntington, NY 11743-7563
Phone: (631) 673-6905 FAX: (631) 673-6905
Email: lynnpzim@aol.com

Hon. Linda Poust Lopez
DELEGATE-THE NEW YORK CITY BAR
Bronx Criminal Court
265 E. 161st Street
Bronx, NY 10451
Phone: (718) 618-3796
Email: lplopez@nycourts.gov

Joshua M. Pruzansky, Esq.
FORMER PRESIDENT
160 West 86th St
Apt.6 B
New York, NY 10024-4071
Phone: (631) 374-1393 FAX: (631) 751-3163
Email: jmp@pruzlaw.com

Fellow

Craig Arthur Purcell, Esq.
ELECTED DELEGATE-TENTH JUDICIAL
DISTRICT
Glynn Mercep and Purcell LLP
PO Box 712
Stony Brook, NY 11790-0712
Phone: (631) 751-5757
Email: acpurcell@glymerlaw.com

Rory J. Radding, Esq.
DELEGATE-INTELLECTUAL PROPERTY LAW
SECTION
Locke Lord LLP
3 World Financial Center
Ste 2001
New York, NY 10281-2101
Phone: (212) 912-2858
Email: rory.radding@lockelord.com

Courtney S. Radick, Esq.
ELECTED DELEGATE-FIFTH JUDICIAL
DISTRICT
Amdursky, Pelky, Fennell and Wallen, PC
26 East Oneida Street
Oswego, NY 13126
Phone: (315) 343-6363 FAX: (315) 343-0134
Email: cradick@apfwlaw.com

Richard L. Ravin, Esq.
DELEGATE-INTELLECTUAL PROPERTY LAW
SECTION
Hartman & Winnicki, PC
74 Passaic Street
Ridgewood, NJ 07450-4310
Phone: (201) 967-8040 FAX: (201) 967-0590
Email: rick@ravin.com

Thomas O. Rice, Esq. Fellow
FORMER PRESIDENT
Albanese & Albanese LLP
1050 Franklin Avenue
Garden City, NY 11530
Phone: (516) 248-7000 x203 FAX: (516) 747-7777
Email: trice@albaneselegal.com

M. Catherine Richardson, Esq. Fellow
FORMER PRESIDENT
233 Delhi Street
Syracuse, NY 13203-2621
Phone: (315) 218-8230 FAX: (315) 218-8100
Email: crichardson@bsk.com

Aimee L. Richter, Esq. Fellow
VICE-PRESIDENT, SECOND JUDICIAL
DISTRICT
Lee Anav Chung White Kim Ruger & Richter LLP
99 Madison Ave
8th Floor
New York, NY 10016
Phone: (212) 271-0664 FAX: (212) 271-0665
Email: aimeerichter@lacwkr.com

Jorge Luis Rivera Agosto, Esq.
DELEGATE-THE NEW YORK CITY BAR
43-10 53rd Street
Apt. 1A
Woodside, NY 11377
Phone: (718) 454-8888 FAX: (718) 575-1100
Email: riveraagosto.law@gmail.com

Sandra Rivera
ELECTED DELEGATE-THIRD JUDICIAL
DISTRICT
Rivera Law, PLLC
140 State Street
3rd Floor
Albany, NY 12207
Phone: (518) 533-2884
Email: srivera@rivera.legal

Hon. Derrick J. Robinson
DELEGATE-SUFFOLK COUNTY BAR
ASSOCIATION
Suffolk County District Court
400 Carleton Ave.
Central Islip, NY 11722
Phone: (631) 853-7601 FAX: (931) 853-5403
Email: Drobinso@nycourts.gov

Elisa Strassler Rosenthal, Esq.
DELEGATE-GENERAL PRACTICE SECTION
Of Counsel
Franchina Law Group LLC
1050 Franklin Avenue, Suite 302
Garden City, NY 11530
Phone: (516) 743-9988
Email: erosenthal@elderlawflg.com

Seth Rosner, Esq. Fellow
DELEGATE-THE NEW YORK CITY BAR
Seth Rosner Law Office
17 Collins Terrace
Saratoga Springs, NY 12866-1028
Phone: (518) 587-4802 FAX: (518) 587-4802
Email: sethrosner@nycap.rr.com

William T. Russell, Jr., Esq. Fellow
MEMBER-AT-LARGE, EXECUTIVE
COMMITTEE
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017-3954
Phone: (212) 455-3979 FAX: (212) 455-2502
Email: wrussell@stblaw.com

David J. Saleh, Esq.

DELEGATE-ALLEGANY, CATTARAUGUS,
GENESEE, ORLEANS & WYOMING
Inlighten, Inc.
9645 Wehrle Drive
Clarence, NY 14031
Phone: (716) 759-7750 FAX: (716) 759-7751
Email: dsaleh@inlighten.net

Mirna M. Santiago, Esq.

PRESIDENTIAL APPOINTEE, SECOND
DEPARTMENT
Acacia Network
300 East 175th Street
Bronx, NY 10457
Phone: (347) 649-3249 FAX: (347) 649-3301
Email: MirSantiago@AcaciaNetwork.org

Paul D. Sarkozi, Esq.

DELEGATE-COMMERCIAL AND FEDERAL
LITIGATION SECTION
Tannenbaum Helpern Syracuse & Hirschtritt LLP
900 Third Avenue
New York, NY 10022
Phone: (212) 508-7524 FAX: (212) 937-5207
Email: sarkozi@thsh.com

Hon. Alan D. Scheinkman

DELEGATE-NEW YORK COUNTY LAWYERS'
ASSOCIATION
10 Puritan Road
Rye, NY 10580
Phone: (718) 722-6400
Email: ascheink@nycourts.gov

Fellow

Robert T. Schofield, IV, Esq.

VICE-PRESIDENT, THIRD JUDICIAL
DISTRICT
Whiteman Osterman & Hanna LLP
One Commerce Plaza
19th Floor
Albany, NY 12260
Phone: (518) 487-7616 FAX: (518) 487-7777
Email: rschofield@woh.com

Fellow

William H. Schrag, Esq.

DELEGATE-INTERNATIONAL SECTION
Thompson Hine LLP
335 Madison Ave.
New York, NY 10017
Phone: (212) 908-3961 FAX: (212) 344-6101
Email: william.schrag@thompsonhine.com

David M. Schraver, Esq.

FORMER PRESIDENT
Nixon Peabody LLP
1300 Clinton Square
Rochester, NY 14604
Phone: (585) 263-1341
Email: dschraver@nixonpeabody.com

Fellow

Andrew P. Schriever, Esq.

ELECTED DELEGATE-NINTH JUDICIAL
DISTRICT
Cuddy & Feder LLP
445 Hamilton Avenue
14th Floor
White Plains, NY 10601
Phone: (914) 761-1300
Email: aschriever@cuddyfeder.com

Benjamin E. Schub

DELEGATE-FAMILY LAW SECTION
Bodnar & Milone LLP
140 Grand Street
Suite 401
White Plains, NY 10601
Phone: (914) 518-3934 FAX: (914) 949-4939
Email: bschub@bodnarmilone.com

Eric C. Schwenker, Esq.

DELEGATE-WARREN COUNTY BAR
ASSOCIATION
7 Ashley Place
Queensbury, NY 12804-2502
Phone: (518) 792-1174
Email: eschwenker@mfcflp.com

Kathleen A. Scott, Esq.
DELEGATE-BUSINESS LAW SECTION
160 West End Avenue
Apt. 10K
New York, NY 10023
Phone: (212) 318-3084 FAX: (212) 318-3400
Email: Kathleen.scott@nortonrosefulbright.com

Diana S Sen, Esq.
VICE-PRESIDENT, FIRST JUDICIAL DISTRICT
22 Bloomingdale Ave.
Cranford, NJ 07016
Phone: (646) 320-8240
Email: dsen29@gmail.com

Diana S Sen, Esq.
PRESIDENTIAL APPOINTEE, SECOND
DEPARTMENT
22 Bloomingdale Ave.
Cranford, NJ 07016
Phone: (646) 320-8240
Email: dsen29@gmail.com

Fellow

Robert M. Shafer
ELECTED DELEGATE-SIXTH JUDICIAL
DISTRICT
Scolaro Fetter Grizanti & McGough PC
PO Box 430
397 Route 281
Tully, NY 13159-0430
Phone: (315) 729-8133 FAX: (315) 671-1217
Email: mshafer@scolaro.com

Rona G. Shamoon, Esq.
MEMBER-AT-LARGE, EXECUTIVE
COMMITTEE
RonaShamoonADR
48 Edgewood Road
Scarsdale, NY 10583-6421
Phone: (914) 723-2416 FAX: (914) 723-7544
Email: rona.shamoon@ronashamoonadr.com

Fellow

Elizabeth Jean Champnoi, Esq.
DELEGATE-CORPORATE COUNSEL
SECTION
Champnoi Dispute Resolution & Management
Services, Inc.
76 Hancock Place
Thornwood, NY 10594
Phone: (914) 522-0174
Email: elizabeth@champnoiadr.com

Fellow

Lauren E. Sharkey
DELEGATE-YOUNG LAWYERS SECTION
Cioffi Slezak Wildgrube PC
1473 Erie Boulevard
1st Floor
Schenectady, NY 12305
Phone: (518) 377-6700 FAX: (518) 377-6110
Email: LSharkey@cswlawfirm.com

Fellow

Lauren E. Sharkey
DELEGATE-SCHENECTADY COUNTY BAR
ASSOCIATION
Cioffi Slezak Wildgrube PC
1473 Erie Boulevard
1st Floor
Schenectady, NY 12305
Phone: (518) 377-6700 FAX: (518) 377-6110
Email: LSharkey@cswlawfirm.com

Fellow

Adam J. Sheldon, Esq.
DELEGATE-BRONX COUNTY BAR
ASSOCIATION
305 E. 24th St Apt 9X
New York, NY 10010
Email: sheldonlawny@gmail.com

Natasha Shishov
YOUNG LAWYER DELEGATE ABA HOUSE OF
DELEGATES
New York State Supreme Court
Appellate Division, First Department
41 Madison Avenue
New York, NY 10010
Phone: 2123400507
Email: nshishov@nycourts.gov

Paul T. Shoemaker, Esq.
DELEGATE-GENERAL PRACTICE SECTION
Greenfield Stein & Senior LLP
600 Third Avenue
11th Floor
New York, NY 10016
Phone: (212) 818-9600 FAX: (212) 818-1264
Email: pshoemaker@gss-law.com

Fellow

Carol Ann Sigmond, Esq.
VICE-PRESIDENT, FIRST JUDICIAL DISTRICT
Cohen, Seglias, Pallas, Greenhall & Furman, P.C.
55 Broadway
Suite 901
New York, NY 10006
Phone: (212) 871-7046 FAX: (212) 981-2928
Email: csigmond@cohenseglias.com

Fellow

James R. Silkenat
ABA FORMER PRESIDENT
James R. Silkenat
260 W. 52nd Street
7A
New York, NY 10019
Phone: (212) 245-5815
Email: jrsilkenat@gmail.com

Lorraine R. Silverman, Esq.
DELEGATE-ALBANY COUNTY BAR
ASSOCIATION
Copps DiPaola Silverman PLLC
126 State Street
6th Floor
Albany, NY 12207
Phone: (518) 436-4170
Email: lsilverman@thecdslawfirm.com

David C. Singer, Esq.
DELEGATE-DISPUTE RESOLUTION
SECTION
Singer ADR
165 West End Avenue
Suite 10E
New York, NY 10023
Phone: (646) 220-1749
Email: dsinger@singeradr.com

Fellow

Barry Skidelsky, Esq.
DELEGATE-ENTERTAINMENT, ARTS AND
SPORTS LAW SECTION
185 East 85th Street
Apt. 23 D
New York, NY 10028
Phone: (212) 832-4800
Email: bskidelsky@mindspring.com

Ira S. Slavitt, Esq.
DELEGATE-BAR ASSOCIATION OF NASSAU
COUNTY
Levine & Slavitt
60 East 42nd Street
Suite 2101
New York, NY 10165-6233
Phone: (212) 687-2777 FAX: (212) 983-4637
Email: islavitt@newyorkinjuries.com

Fellow

Asha Saran Smith, Esq.
PRESIDENTIAL APPOINTEE, FIRST
DEPARTMENT
337 West 14th Street
Apt. 21
New York, NY 10014
Email: asha.smith@gmail.com

Asha Saran Smith, Esq.
DELEGATE-NEW YORK COUNTY LAWYERS'
ASSOCIATION
337 West 14th Street
Apt. 21
New York, NY 10014
Email: asha.smith@gmail.com

Hon. Michael R. Sonberg
DELEGATE-THE NEW YORK CITY BAR
380 W. 12 Street, #3F
New York, NY 10014-7213
Email: mrsonberg@post.harvard.edu

Graeme Spicer

ELECTED DELEGATE-FIFTH JUDICIAL DISTRICT
Graeme Spicer, Esq.; Of Counsel to Levine & Blit, PLLC
499 South Warren Street, Suite 220
Syracuse, NY 13202
Phone: (315) 460-6472
Email: gspicer@levineblit.com

Alexander Leon Stabinski, Esq.

DELEGATE-CLINT., ESSEX, FRANK., FULTON, HAMIL., MONTG., ST. LAWR., WASHINGTON
Maynard, O'Connor, Smith & Catalinotto LLP
6 Tower Place
Albany, NY 12203
Phone: (518) 465-3553 FAX: (518) 465-5845
Email: stabinski@maynardoconnorlaw.com

Tucker C. Stanclift, Esq.

MEMBER-AT-LARGE, EXECUTIVE COMMITTEE
Stanclift Law PLLC
704 Upper Glen St
PO Box 4595
Queensbury, NY 12804
Phone: (518) 745-4346 FAX: (518) 745-4344
Email: tcs@stancliftlaw.com

Fellow

Kenneth G. Standard, Esq.

FORMER PRESIDENT & DELEGATE TO ABA HOUSE OF DELEGATES
136 Bayberry Close
Chappaqua, NY 10514-3725
Phone: (212) 351-4670 FAX: (212) 661-0989
Email: kstandard@ebglaw.com

Fellow

Mark Starkman

VICE-PRESIDENT, NINTH JUDICIAL DISTRICT
14 Rudy Road
New Windsor, NY 12553
UNITED STATES
Phone: (914) 262-0024
Email: marktstarkman@gmail.com

Kathleen Marie Sweet, Esq.

ELECTED DELEGATE-EIGHTH JUDICIAL DISTRICT
Gibson McAskill & Crosby LLP
69 Delaware Avenue
Buffalo, NY 14202
Phone: (716) 856-4200 FAX: (716) 856-4013
Email: ksweet@gmclaw.com

Fellow

Derek Tarson, Esq.

DELEGATE-ROCKLAND COUNTY BAR ASSOCIATION
Legal Aid Society of Rockland County
2 Congers Road
New City, NY 10956
Phone: (845) 634-3627
Email: dtarson@legallaidrockland.org

Elena Jaffe Tastensen, Esq.

DELEGATE-SARATOGA COUNTY BAR ASSOCIATION
Law Office of Elena Jaffe Tastensen, PLLC
376 Broadway
Suite 16
Saratoga Springs, NY 12866
Phone: (518) 587-4419 FAX: (518) 587-1262
Email: ejt@ejtlaw.com

Zenith T. Taylor, Esq.

DELEGATE-QUEENS COUNTY BAR ASSOCIATION
Law Offices of Zenith T. Taylor
118-35 Queens Boulevard
Suite 1240
Forest Hills, NY 11375
Phone: (718) 268-1300 FAX: (347) 474-6774
Email: zenith@zenithtaylor.net

Justin S. Teff, Esq.

DELEGATE-ULSTER COUNTY BAR ASSOCIATION
Kirk & Teff, LLP
10 Westbrook Lane
Kingston, NY 12401
Phone: (845) 338-4477 FAX: (845) 338-2892
Email: JustinTeff@kirkandteff.com

David H. Tennant, Esq.
VICE-PRESIDENT, SEVENTH JUDICIAL
DISTRICT
Law Office of David Tennant PLLC
3349 Monroe Avenue
Suite 345
Rochester, NY 14618
Phone: (585) 708-9338
Email: David.tennant@appellatezealot.com

Lewis F. Tesser, Esq. Fellow
DELEGATE-NEW YORK COUNTY LAWYERS'
ASSOCIATION
Tesser, Ryan & Rochman, LLP
509 Madison Avenue
New York, NY 10022
Phone: (212) 754-9000 FAX: (212) 754-5906
Email: ltesser@tesserryan.com

Nancy M. Thevenin, Esq.
DELEGATE-INTERNATIONAL SECTION
87-37 164th Street
Apt. 2
Jamaica, NY 11432
Phone: (212) 703-5047 FAX: (917) 475-9468
Email: nancy.thevenin@theveninarbitration.com

Fellow

Virginia K. Trunkes
DELEGATE-THE NEW YORK CITY BAR
Delbello Donnellan Weingarten Wise & Wiederkehr,
LLP
One North Lexington Avenue
11th Floor
White Plains, NY 10601
Phone: (914) 607-3219
Email: gtrunkes@yahoo.com

Robin A. van der Meulen, Esq.
DELEGATE-ANTITRUST LAW SECTION
Labaton Sucharow LLP
140 Broadway
34th Floor
New York, NY 10005
Phone: (212) 907-0754 FAX: (212) 883-7004
Email: rvandermeulen@labaton.com

Justin L. Vigdor Fellow
FORMER PRESIDENT
Bond, Schoeneck & King PLLC
350 Linden Oaks
3rd Floor
Rochester, NY 14625-2825
Phone: (585) 362-4786 FAX: (585) 362-4763
Email: jvigdor@bsk.com

Stuart Andre Warner, Esq.
DELEGATE-THE NEW YORK CITY BAR
New York Life Insurance Company
51 Madison Ave
New York, NY 10010-1603
Phone: (212) 576-8652
Email: andrewarner@gmail.com

Mira B. Weiss, Esq.
DELEGATE-THE NEW YORK CITY BAR
200 East 71st
Apt. 19 A
New York, NY 10021
Phone: (646) 395-3851 FAX: (877) 616-9303
Email: mweiss@weisslawgroup.com

Kelly M. Welch, Esq.
DELEGATE-WESTCHESTER COUNTY BAR
ASSOCIATION
Bertine, Hufnagel, Headley, Zeltner, Drummond &
Dohn LLP
700 White Plains Road
Scarsdale, NY 10583-5013
Phone: (914) 472-7700 FAX: (914) 472-1946
Email: kwelch@bertinelaw.com

Jean Marie Westlake, Esq. Fellow
VICE-PRESIDENT, FIFTH JUDICIAL DISTRICT
DeFrancisco & Falgiatano, LLP
6739 Myers Rd.
East Syracuse, NY 13057
Phone: (315) 479-9000 FAX: (315) 479-9000
Email: jeanmarie@defranciscocolaw.com

Hon. Michelle Weston

ELECTED DELEGATE-SECOND JUDICIAL DISTRICT
Associate Justice Of The Appellate Term
320 Jay Street
Brooklyn, NY 11201-3712
Phone: (347) 296-1848 FAX: (347) 296-1351
Email: mweston@nycourts.gov

Judith Whiting

DELEGATE-THE NEW YORK CITY BAR
Community Service Society of New York
633 3rd Ave
Floor 10
New York, NY 10017
Phone: (212) 614-5323 FAX: (212) 260-6218
Email: jwhiting@cssny.org

Steven Wimpfheimer, Esq.

ELECTED DELEGATE-ELEVENTH JUDICIAL DISTRICT
16625 Powells Cove Blvd
Apt. 16F
Whitestone, NY 11357-1522
Phone: (347) 732-9524 FAX: (347) 732-9529
Email: wimpf1@gmail.com

Fellow

G. Robert Witmer, Jr., Esq.

FORMER PRESIDENT
892 Lake Road
Webster, NY 14580
Email: GRWitmer@nixonpeabody.com

Fellow

Brandon Lee Wolff, Esq.

DELEGATE-YOUNG LAWYERS SECTION
LeClairRyan, PLLC
885 Third Avenue
16th Floor
New York, NY 10022
Phone: (212) 634-5035 FAX: (212) 634-5038
Email: brandon.wolff@leclairryan.com

John J. Yanas, Esq.

FORMER PRESIDENT
10 Hamlet Court
Apt 102
Slingerlands, NY 12159
Phone: (518) 462-5300 FAX: (518) 436-0210
Email: firm@degraff-foy.com

Fellow

Pauline Yeung-Ha, Esq.

ELECTED DELEGATE-SECOND JUDICIAL DISTRICT
Grimaldi & Yeung LLP
9201 Fourth Avenue
6th Floor
Brooklyn, NY 11209
Phone: (718) 238-6960 FAX: (718) 238-3091
Email: pyeung@gylawny.com

Oliver C. Young, Esq.

ELECTED DELEGATE-EIGHTH JUDICIAL DISTRICT
122 Forestview Drive
Buffalo, NY 14221-1470
Email: ocyoung99@gmail.com

Fellow

Stephen P. Younger, Esq.

FORMER PRESIDENT & STATE DELEGATE FROM NY TO THE ABA
Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036
Phone: (212) 336-2685 FAX: (212) 336-2222
Email: spyounger@pbwt.com

Fellow

Kathleen Mulligan Baxter, Esq.

MAILING PURPOSES ONLY
New York State Bar Association
One Elk St.
Albany, NY 12207
Phone: (518) 487-5690 FAX: (518) 487-5694
Email: kbaxter@nysba.org

Pamela McDevitt, Esq.

MAILING PURPOSES ONLY
New York State Bar Association
One Elk St.
Albany, NY 12207-1002
Phone: (518) 487-5555
Email: pmcdevitt@nysba.org