



Staff Memorandum

HOUSE OF DELEGATES Agenda Item #9

Attached are comments submitted with respect to the report and recommendations of the Committee on Continuing Legal Education from the following sections, committees, and bar associations represented in the House:

Albany County Bar Association
Committee on Attorney Professionalism
Bronx County Bar Association
Chemung County Bar Association
Committee on Civil Rights
Committee on Diversity and Inclusion
Committee on LGBT People and the Law
Nassau County Bar Association
New York County Lawyers' Association
Suffolk County Bar Association
Westchester County Bar Association
Sections Caucus (plus individual comments submitted by Judicial Section, Torts, Insurance and Compensation Law Section, Labor and Employment Law Section, Antitrust Section, Commercial and Federal Litigation Section, Local and State Government Law Section, Health Law Section, and Dispute Resolution Section)

ALBANY COUNTY BAR ASSOCIATION

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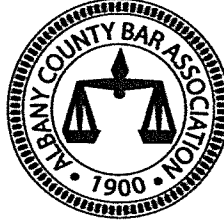
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January 4, 2017

Ellen G. Makofsky
Chair of the Committee on Continuing Legal Education
NYSBA
One Elk Street
Albany, NY 12207

Re: Report and Recommendations of the Committee on Continuing Legal Education supporting diversity and inclusion requirement in New York's mandatory CLE regulations.

Dear Ms. Makofsky:

Upon careful review and consideration of the above referenced Report and Recommendations, the Albany County Bar Association ("ACBA") would like to extend its support for the NYSBA CLE Committee's proposal that one (1) or two (2) credit hours of Diversity and Inclusion be required for the biennial reporting period. Since the proposal will serve to promote diversity and eliminate bias in the legal profession while leaving the total number of CLE credits required the same, the ACBA wholeheartedly supports the initiative. The initiative is clearly in line with the ACBA's goal to promote and enhance the legal community both inside and outside of the courtroom.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel W. Coffey".

Daniel W. Coffey
ACBA President



COMMITTEE ON ATTORNEY PROFESSIONALISM

LILLIAN M. MOY

Chair

Legal Aid Society of Northeastern NY, Inc.

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Albany, NY 12206

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January 3, 2017

Claire Gutekunst, President
New York State Bar Association
One Elk Street
Albany, NY 12206

Dear Claire:

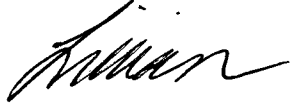
Please accept these comments from the Committee on Attorney Professionalism in strong support of the Report and Recommendations of the Committee on Continuing Legal Education supporting a Diversity and Inclusion requirement in New York's Mandatory Continuing Legal Education Regulations. We agree with the Committee's proposal that either one or two credit hours of D&I CLE be required for each biennial reporting period. We agree that the Diversity and Inclusion CLE be a stand-alone ("floating") CLE requirement, but not add to the 32 credit hours required for new attorneys or the 24 hours required for more experienced attorneys. The D&I CLE credit could count towards any other required credit hours including Ethics, Skills or Areas of Professional Practice/Law Practice Management.

We believe that the D&I CLE credit is needed to enhance our professionalism. We believe that attorney professionalism is most clearly manifested in dedication to service to our diverse clients, and in our commitment to promoting respect of the legal system in pursuit of justice and the public good, characterized by ethical conduct, competence, good judgment, integrity and civility. The D&I CLE credit will enhance every aspect of our professionalism. By increasing the cultural competence of New York's attorneys, we will enhance our ability to behave with courtesy and respect to diverse clients, witnesses and adverse parties. Our cultural competence will also enhance our ability to exercise good judgment in providing client services as well as enhance our competency in seeking the best possible results for our clients.

This Committee stands ready to assist in developing a substantive and practical Diversity and Inclusion CLE, with the special eye towards enhancing our professionalism. We note that CLE requirements can sometimes be difficult to meet for small firms or solo practitioners – we would like to be of service.

If we can provide you with any additional information, please contact me at lmoy@lasny.org or 518-689-6304.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Lillian M. Moy". The signature is fluid and cursive, with a prominent initial "L" and "M".

Lillian M. Moy, Chair
Committee on Attorney Professionalism

From: Godotman@aol.com [<mailto:Godotman@aol.com>]

Sent: Friday, January 13, 2017 4:30 PM

To: Wilson, Mark

Cc: Godotman@aol.com

Subject: Subcommittee of Local & Speciality Bar Leaders : Request for Public Comment on

Good Afternoon Mr. Wilson,

While the Bronx County Bar Association supports offering CLE courses focused on Diversity, Inclusion and Elimination of Bias, our Bar Association opposes the proposed NYSBA resolution that would recommend to the NY CLE Board that it adopt a rule making such attendance mandatory.

Sincerely,

Corey Sokoler
President
Bronx County Bar Association

Position Statement of the Chemung County Bar Association

on

Proposed Mandatory Diversity and Inclusion and Elimination of Bias CLE Requirement for New York State Attorneys

As Delegate for a portion of upstate New York, I submit the following comments on the *Proposed Mandatory Diversity and Inclusion and Elimination of Bias CLE Requirement for New York State Attorneys*

The NYSBA Committee on Continuing Legal Education has written a fascinating and detailed report on the social phenomenon commonly known as diversity and inclusion.

It appears that the NYSBA is proposing that a Mandatory Diversity and Inclusion and Elimination of Bias course be taken biennially by each and every lawyer in the State of New York as a condition of their license to practice law. The Committee's proposal, although well intentioned, is misguided.

An Unnecessary Distortion of the Concept of Legal Education

Firstly, the behavioral changes which the Committee seeks, regardless of their merits, are not within the purview of the normal and logical meaning of the phrase "Continuing Legal Education". Indeed, the proposal stretches the definition of "Legal" to include any subject matter which is designed to alter the social behavior of the members of the legal profession.

Secondly, using the CLE program in this way is inherently ineffectual and inappropriate. It has the odor of political indoctrination. I know of no competent attorney who willingly submits to indoctrination of any kind. To propose such a method of social change to independently minded legal professionals is a fool's errand. Such 'education' will be seen and regarded for what it really is: mandatory cultural engineering. Nothing could be more antithetical to an independent and reflective legal mind.

The Wrong Method Directed at the Wrong People

As a mandatory CLE course, this proposal wrongly presumes that each of us is racist, sexist, ageist, classist, insensitive, and prejudiced against anyone who looks, acts, believes, or speaks differently from us. Such a presumption is not only disrespectful and offensive (with its air of an adult who 'knows better what is good for the child'), it also perpetuates the very ignorance, bias, and stigmatization that the 'education' would seek to overcome. The presumption of bias is itself an invidious bias. This proposal tends to increase the divide among people, not narrow it.

The proposal also fails to acknowledge that bias may arise from many causes. Racism, sexism, ageism, etc., are simply names for different species of prejudice. Adding 'ism' to a word only hinders our understanding of the real origins for humans problems: fear, sloth, jealousy, pride, selfishness, revenge, arrogance, anger, greed, and grief. The 'isms' which this proposal intends to address ultimately arise out of these ephemeral emotions. To suppose that a cultural engineering course is going to arrest those inherent human characteristics is naïve. Only a non-legalistic, shared core morality can ameliorate such innate traits. Such a morality cannot be, nor would we want it to be, legislated.

The Elevation of Good Intentions into a New Orthodoxy

We all need to find a way to overcome inherent primitive instincts, but the 'how', the 'when' and 'by what method' to achieve this, ought not to be forced upon each of us as a condition of practicing law. This proposal can be called the 'camel's nose under the tent' or 'mission creep', but either way, these cultural mandates are akin to a religion and are advanced as gospel. Disagree with any part of the gospel or the methods of their adherents and the wrath of the Protectors of the Faith rains down in instant public condemnation, as we have seen practiced so many times by both sides in the most recent Presidential campaign.

If we are not prudent in our processes for advancing "Diversity and Inclusion", we can easily cause them to become an abusive method for gaining social, political and/or financial advantage. By twisting the powerful human emotions of sympathy and compassion into a morbid sense of collective guilt (a concept deservedly discredited), mandatory diversity training risks becoming a form of cultural bullying. Such bullying is anathema to what diversity and inclusion seek.

The proposal has forgotten that the ends, no matter how good or righteous, do not justify the means. Process and procedures matter. They are the foundation of our legal protections. It is often said that the Bill of Rights is a guaranteed criminal procedure law, made unbreakable in the face of the whims of executives, legislatures, or the courts.

The Conversion of Differences into Privileges

This proposal implicitly ranks differences legally and socially. It balkanizes differences among people into legally 'protected classes', thereby converting these differences into privileges. This conversion of differences to privilege tends to create, in other non-protected classes (who have an identifiable difference), an incentive to lobby for the 'protected class' designation for themselves in order to obtain the benefits afforded a 'protected class'. (Such as the right to sue, the right to recover attorney's fees, and the right to use statistical variabilities to create a presumption that the class member should recover money in the lawsuit). Indeed, the number of protected classes seems to expand with every new presidential election. Is this 'balkanization' the route which we want to travel? Better that we treat all men and women with respect and without prejudice than to prioritize our respect to only those who have been anointed with the status of a 'protected class'.

Importance of Self-Discipline and Personal Persistence

This proposal advances the easy and seductive temptation to submit to the attitude that every ill of a member of a protected class is or was caused by some other class either now or in the past. That barriers exist outside of ourselves is not in doubt. However, the traits of personal discipline and persistence have shown to be all powerful. Witness the success of African American, Asian American, and Hispanic men and women in American history despite institutional barriers 100 times worse than those of today. Relying on a mandatory course in diversity and inclusion masks the personal recognition of our own daily failures and offers each of us an excuse for not facing the hard work of making ourselves better.

We need to take care, in our zeal for diversity and inclusion, to not forget to sharpen and skillfully employ our individual traits of self-discipline, persistence, competence, and dignity in the face of adversity. Leading by example is the strongest form of pedagogy.

Unity

In discussions of diversity and inclusion, one seldom ever hears the word 'unity'. This is because the social policy of diversity and inclusion, as currently conceived, presumes that there can never be a dominant central core culture around which all citizens can unite. Identity politics has now shown itself not to be a panacea, but rather a great divider.

It fails to recognize that the inequities which existed in the past millennia were never substantially addressed by humans until this country came into being. It fails to acknowledge the uniqueness of what has been accomplished in this country. We cannot let diversity become a form of culling, i.e. separating one class or group from the others in order to gain social, political and/or financial advantage, thereby creating a culture of double standards (formerly called hypocrisy) instead of equal opportunity. Double standards are the very definition of inequality; such duplicity can only tear this great country apart.

Perhaps we all should begin to think about an alternative to an orthodoxy which denies that there can be a unifying culture. It is axiomatic that to have unity everyone must surrender something that they otherwise hold dear.

A start would be to surrender one's sense of injury and to embrace the notion that the word 'injury' is simply an emotional characterization of an unwanted change. In other words, each of us, by giving up one's emotional sense of injury, creates an environment where each of us can better adjust to the changes we are experiencing.

Secondly, we ought to consider adopting those parts of other people's ideas, principles and concepts which may be useful and valuable to each of us, without having to accept them *in toto*. By removing our ideological blinders we may better adjust to the constant changes in our world. Pragmatism and eclecticism are not flaws, but rather are thoughtful manifestations of Darwin's conclusion that the species which survive are those which are most responsive to change.

Diversity without adaption leads to balkanization and disunity. Rather than balkanize our culture and exaggerate our differences further, we ought instead to remove our ideological blinders. We need to call upon ourselves to accept each other in dignity and honest competition, in understanding and forgiveness, accepting the frail humanity in us all.

For all these reasons, I oppose the proposal, and I will therefore vote against it.

Christopher Denton, Esq.
Delegate

January 3, 2017



NEW YORK STATE BAR ASSOCIATION

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COMMITTEE ON CIVIL RIGHTS

JEREMY A. BENJAMIN

Chair

New York State Bar Association
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January 13, 2017

VIA EMAIL & U.S. MAIL

House of Delegates
New York State Bar Association
One Elk Street
Albany, NY 12207

Re: Proposed Diversity and Inclusion and Elimination of Bias CLE Requirement for New York State Attorneys

The New York State Bar Association (the “Association”)'s Committee on Civil Rights (the “Committee”) enthusiastically supports the Committee on Continuing Legal Education’s report to the House of Delegates recommending that the Association formally support the addition of a Diversity and Inclusion and Elimination of Bias requirement to the New York State MCLE requirements.

As you know, diversity, inclusion, and implicit bias in the legal profession have been a focus of the Committee in recent years, evidenced by our programming at last year’s annual meeting of the Association, as well the Association’s upcoming annual meeting later this month. In just a few weeks, the Committee, along with the Committee on Diversity and Inclusion, will be presenting a program for Association members on countering the effects of implicit bias in the legal profession in order to advance diversity and inclusion. However, discussion of these important issues should not be limited to just those attorneys who have a preexisting interest in the initiative.

Implicit bias impacts all of our practices and our clients. It affects lawyer training, hiring, compensation, promotion, and retention.¹ It has been observed in the courts and in our criminal justice system, where race and ethnicity, for example, can significantly impact outcomes.² New York has often been at the forefront of advances in civil rights, diversity, and the legal profession. Take, for example,

¹ See, e.g., Joan C. Williams and Veta Richardson, *New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women*, 62 HASTINGS L.J. 597 (2011).

² See, e.g., Vera Institute of Justice, *End of An Era? The Impact of Drug Law Reform in New York City* (Jan. 2015), available at <http://archive.vera.org/sites/default/files/resources/downloads/drug-law-reform-new-york-city-summary-01.pdf>; Amer. Bar Ass’n, *Justice by Gender: The Lack of Appropriate Prevention, Diversion, and Treatment Alternative for Girls in the Justice System* (2001), available at http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_juvjus_justicebygenderweb.authcheckdam.pdf; Michael Winerip, Michael Schwartz and Robert Gebeloff, *For Blacks Facing Parole in New York State, Signs of a Broken System*, N.Y. TIMES, Dec. 4, 2016, at A1, available at <https://www.nytimes.com/2016/12/04/nyregion/new-york-prisons-inmates-parole-race.html>; Michael Schwartz, Micheal Winerip and Robert Gebeloff, *The Scourge of Racial Bias in New York State Prisons*, N.Y. TIMES, Dec. 3, 2016, at A1, available at https://www.nytimes.com/2016/12/03/nyregion/new-york-state-prisons-inmates-racial-bias.html?_r=0.

the State Legislature's 2009 elimination of mandatory minimum sentences under the Rockefeller Drug Laws, which disproportionately affected minorities, and restoration of judges' authority to divert drug offenders into treatment programs, rather than jail. Or last year's legislation increasing the state's minimum wage and providing paid family leave benefits.³

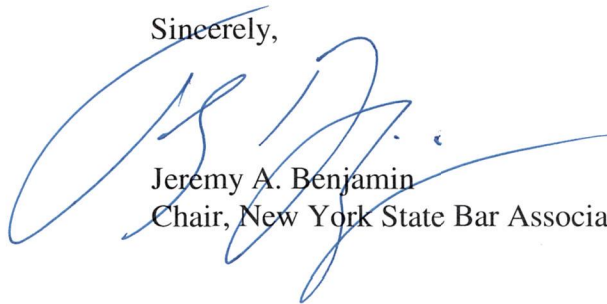
Our state and the country as a whole are becoming increasingly diverse, and the legal profession and practice of law must continue to grow with them. New York has one of the largest minority populations in the country,⁴ eclipsed only by California and Texas. Notably, California has already established a diversity and inclusion CLE requirement for its attorneys. New York should follow suit. Although increasing numbers of women and minorities are attending and graduating from law school, that increased diversity still does not fully carry over into "big law" recruiting or the partnership ranks.⁵ Addressing the issues of diversity, inclusion, and bias statewide through mandatory CLE for all attorneys will help our profession match and understand the populations we have a duty to serve.

The Association's commitment to fostering and celebrating diversity in the legal profession is well-established. Reaffirming that commitment this month by supporting the addition of a mandatory diversity and inclusion CLE component for all attorneys is especially well-timed considering that at this month's annual meeting, the Association will be celebrating diversity in the bar and honoring Judge Denny Chin as a diversity trailblazer.

As outlined more fully in the Committee on Continuing Legal Education's report to the House of Delegates, which has our enthusiastic and full support, a diversity and inclusion CLE component has widespread backing from several other bar associations in the state, and would bolster a diverse legal profession that is able to better support the clients we serve.

Thank you for your consideration of this important and timely initiative.

Sincerely,



Jeremy A. Benjamin
Chair, New York State Bar Association Committee on Civil Rights

³ See Ch. 54, Laws of 2016.

⁴ See, e.g., U.S. Census Bureau, 2010 Census Brief, Overview of Race and Hispanic Origin: 2010 (Mar. 2011), available at <https://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>.

⁵ See, e.g., Aviva Cuyler, *Diversity in the Practice of Law: How Far Have we Come?*, 29 ABA Journal 5 (Sept./Oct. 2012), available at http://www.americanbar.org/publications/gp_solo/2012/september_october/diversity_practice_law_how_far_have_we_come.html; Liane Jackson, *Minority Women are Disappearing from BigLaw and Here's Why*, ABA JOURNAL (Mar. 1, 2016), available at http://www.abajournal.com/mobile/mag_article/minority_women_are_disappearing_from_biglaw_and_heres_why.



COMMITTEE ON DIVERSITY
AND INCLUSION

SANDRA BUCHANAN

Chair
Special Council for Ethics
The Office of Court
Administration
25 Beaver Street
New York, NY 10004

January 13, 2017

Ellen G. Makofsky, Esq.
Chair of the Committee on Continuing Legal Education
New York State Bar Association
One Elk Street
Albany, NY 12207

Re: Report and Recommendations of the Committee on Continuing Legal Education supporting diversity and inclusion requirement in New York's mandatory CLE regulations

Dear Ms. Makofsky,

After carefully reviewing and considering the Report and Recommendations of the Committee on Continuing Legal Education, the Committee on Diversity and Inclusion (the "Committee on D&I") unequivocally supports your Committee's (the "Committee on CLE") proposal that one or two Diversity and Inclusion credit hours ("D&I CLE") be required for biennial reporting by licensed New York State legal practitioners. We also support the recommendation that D&I CLE credit be a stand-alone or floating CLE requirement within the 32 credit hours required for new attorneys or the 24 credit hours required for experienced attorneys. Moreover, we concur in urging members of the House of Delegates to vote in support of this recommendation to the New York State CLE Board.

As your report has articulated, mandatory CLE was implemented to strengthen lawyer competence and public trust in the profession. The ethics CLE requirement – as stand-alone, floating credits – demonstrates our profession's commitment to protecting the public from not only unscrupulous practices, but also educating attorneys on ethical practices that are not particularly intuitive and are often fact-specific and nuanced. Requiring D&I Credit should be viewed through the same lenses. D&I Credit will help educate lawyers to better serve their clients. It will also show our commitment to eradicating discrimination and implicit bias in the practice of law.

The Committee on D&I commends the thoroughness of Committee on CLE's report and concludes that it is in line with our Committee's mission: promoting diversity and inclusion in all aspects of the profession. Therefore, we support your report and recommendations without reservation.

Respectfully submitted,

Sandra Buchanan

New York State Bar Association, Diversity and Inclusion Committee, Chair

New York State Bar Association

One Elk Street, Albany, New York 12207 • 518/463-3200 • <http://www.nysba.org>



COMMITTEE ON LGBT PEOPLE AND THE LAW

ERIC WRUBEL

Chair
Warsaw Burnstein, LLP
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To: NYSBA Executive Committee
From: Eric Wrubel, Chair of the NYSBA Committee on LGBT People and the Law
Date: 1/11/2017
Re: MCLE Diversity Requirement Proposal

The New York State Bar Association's Committee on LGBT People and the Law supports the Committee on Continuing Legal Education's proposed resolution to require New York lawyers to complete a diversity and inclusion component as a part of continuing legal education credit.

Over the past two months, members of the Committee on LGBT People and the Law have contacted academics, community support organizations, attorneys, and the state and federal courts within New York in an attempt to ascertain the scope of discrimination New York attorneys and litigants face as a result of being a member of the LGBTQ community. While our efforts have not yielded reported instances of discrimination against LGBT community members within the New York court system, we believe that requiring a diversity and inclusion component to mandatory continuing legal education is integral to promoting continued understanding and acceptance of the diversity within our state.

Even though the LGBT community has made gains in recent years, widespread discrimination and violence against the LGBT community persist. It is our sincere hope that the New York State Bar Association, the Committee on Continuing Legal Education, and the Committee on LGBT People and the Law will continue to lead the march towards equality by requiring that all New York attorneys receive continuing training in diversity and inclusion.

Memo prepared by: Avish Dhaniram, Nicholas Reeder and Robert J Kauffman

NASSAU COUNTY BAR ASSOCIATION



**NASSAU ACADEMY OF LAW COMMENT/RECOMMENDATION ON THE
REPORT AND RECOMMENDATIONS OF THE NYSBA COMMITTEE ON
CONTINUING LEGAL EDUCATION, AS ADOPTED BY THE NASSAU
COUNTY BAR ASSOCIATION BOARD OF DIRECTORS AT ITS JANUARY
10, 2017 MEETING**



Mili Makhijani, Dean
Nassau Academy of Law

Nassau County Bar Association
15th & West Streets
Mineola, NY 11501

**Nassau Academy of Law Comment/Recommendation on the Report and Recommendations
of the Committee on Continuing Legal Education**

The American Bar Association (“ABA”) proposed a Diversity and Inclusion and Elimination of Bias Continuing Legal Education (“CLE”) Requirement for New York State attorneys. The New York State Bar Association (“NYSBA”) Committee on CLE issued a report proposing to recommend the amendment to the New York State CLE Board.

The NYSBA proposes a broad definition and encourages CLE providers to create a wide range of programs for all practice areas that incorporate diversity and inclusion and the elimination of bias in dealing with other attorneys, clients, the judiciary, court personnel, and others in the legal system. The proposal is to amend the “Definitions” section of the CLE Board Rules and Regulations to include the following definition for Diversity and Inclusion:

Diversity and Inclusion must address diversity and inclusion in the legal profession and the practice of law of all persons regardless of race, ethnicity, national origin, gender, sexual orientation, gender identity, religion, age or disability and may include, among other things, how issues of diversity and inclusion may arise within the scope of the Rules of Professional Conduct, application within the procedural and substantive aspects of law practice, and law practice management, including elimination of bias. The diversity and inclusion requirement may be fulfilled through courses addressing diversity and inclusion within the existing categories of credit listed in Section 1500.2.

The NYSBA CLE Committee proposes that one (1) or two (2) credit hour(s) of D&I CLE be required for an attorney’s biennial reporting period. The recommendation is for the diversity and inclusion credit(s) to be “stand-alone”, but not add to the current credit requirements for new or experienced attorneys. The D&I CLE credit(s) could also count toward any of the currently required credit hours, including Ethics, Skills or Areas of Professional Practice/Law Management.

The one (1) or two (2) credit(s) could be satisfied by attending a program under a broad range of categories, including, but not limited to, the following:

- (i) how lawyers perceive and interact with each other as employers, colleagues and partners;

- (ii) how lawyers perceive and interact with those they come in contact with during the course of practicing law, such as court personnel, witnesses, jurors, judges and opposing counsel;
- (iii) ways in which lawyers can better understand and represent their clients who face barriers, biases and discrimination;
- (iv) non-discrimination, non-harassment and competent representation as part of a lawyer's ethical obligations;
- (v) discrimination and bias in the broader legal and societal context and the role of lawyers in addressing them; and
- (vi) the law and legal issues as they relate to diverse groups and protected classes.

NYSBA's diversity initiative was tabled at its November 2016 meeting for a vote and such vote is scheduled to occur at the next NYSBA meeting of the house of delegates on January 27, 2017. The instant comments on behalf of the Nassau County Bar Association ("NCBA") and the Nassau Academy of Law ("NAL"), the teaching arm of the NCBA, are submitted in full support of the proposed amendment based on the reasons set forth herein. However, the NCBA and NAL recommend launching this initiative by requiring a "minimum of one (1) credit hour" in the area of diversity and inclusion and elimination of bias.

The New York City Bar Association spearheaded the diversity initiative due to the attrition rate of minority attorneys in NYC law firms and lack of diversity in our profession. We agree with our sister bar associations that support this proposal based on principles of equality, access to justice and the rule of law. Indeed, the Constitution and Declaration of Independence promote such principles upon which our society is grounded. We add that the amendment further promotes civility in the practice of law. Diversity and inclusion and the elimination of bias are goals the legal profession should strive to take steps to achieve, spread and encourage others to adopt. Every little bit helps. As a teaching organization, we should take every opportunity to foster and promote these goals rather than remaining neutral, or worse, opposing such efforts.

One of our sister organizations supports the underlying principles of diversity and inclusion, but opposes the mandatory CLE requirement based on an article issued by the Harvard Business Review entitled "Why Diversity Programs Fail". The article is based on an analysis isolating the effects of diversity programs in 829 midsize and large U.S. Firms over a five (5) year period.

Specifically, the article reflects that one of the reasons many firms see adverse effects is that “three-quarters use negative messages in their [diversity] training.

However, the article also discusses other types of diversity programs that *are effective* in achieving more diversity (i.e. mentoring programs, cross-training). As an educational body, one of our incentives would be to raise awareness among attorneys regarding the programs that prove to be effective and those that do not – based on studies exactly like the one conducted by Harvard Business Review.

While our association currently offers several programs that fall under the umbrella of “diversity and inclusion and elimination of bias”, more can be done from a marketing and training perspective to specifically address the concerns raised by the ABA, NYSBA and several of our sister bar associations. Requiring one (1) credit of diversity and inclusion and elimination of bias CLE out of the thirty-two (32) (currently required for new attorneys), and twenty-four (24) (currently required for more experienced attorneys), is a minimal obligation which does not hinder an attorney’s ability to attend programs addressing other societal and professional issues. The amendment is but a small step towards achieving the goals of a society where all men and women are treated equal. While some may consider this a utopian ideal, it is one that should be encouraged by members of the legal profession.

MM



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Carol A. Sigmond

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Michael J.
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Stephen Lessard

Secretary
Megan Davis

Treasurer
Vincent T. Chang

Immediate
Past President
Lew Tesser

January 13, 2017

TO: New York State Bar Association

FROM: New York County Lawyers Association

RE: Proposed CLE Requirement for Diversity, Inclusion and Elimination of Bias

The New York County Lawyers Association (“NYCLA”) has been asked to provide comments regarding the recent proposals by both the CLE Committee of the New York State Bar Association (“NYSBA”) and the New York State Unified Court System (“UCS”) to impose a requirement that attorneys admitted to the New York State Bar take at least one credit hour of CLE addressing the subject of diversity, inclusion and elimination of bias (“D&I CLE”) during each biennial reporting cycle. (Respectively, the “NYSBA Proposal” and the “UCS Proposal”.) The following comments are based on a report of the NYCLA Committee on Professionalism and Professional Discipline that was approved by the NYCLA Board of Directors on January 9, 2017.

NYCLA has a long history of promoting diversity and inclusion in the legal profession; it was the first major bar association in the country to admit members without regard to race, ethnicity, religion or gender. The NYCLA Board of Directors considers both the NYSBA Proposal and UCS Proposal to be excellent but recommends that the UCS Proposal be adopted with the provision that it include the definition of “diversity and inclusion” contained in the NYSBA Proposal.

The concept of D&I CLE is consistent with one of NYCLA’s important missions: to foster professionalism among members of the New York Bar. Put another way, we seek to foster a sense among lawyers that we are a single, unified profession, mindful of our important role in society as well as our need to service our specific clients. In its landmark 1986 report, “. . . *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism*,” the ABA Commission on Professionalism [at 10] adopted the definition of “profession” espoused by Dean Roscoe Pound:

The term refers to a group . . . *pursuing a learned art as a common calling in the spirit of public service* – no less a public service because it may incidentally be a means of livelihood. *Pursuit of the learned art in the spirit of public service is the primary purpose.* (Emphasis added.)

For us, the idea that we, as lawyers, are engaged in a “common calling” means that *all* members of the profession must have an equal opportunity to succeed, and to do so in whatever milieu they choose to practice: in private law firms, government agencies or public defender offices; in large law firms or small; and as litigators, transactional lawyers, trust &

estates attorney or any other field.

Recent reports, as well as our own anecdotal experience, tell us that the goal of equal opportunity and treatment within our profession remains elusive. A group of affinity bar associations, in a letter to Hon. Janet Defiore dated July 21, 2016, described this as a “pervasive, but often unspoken problem within our profession.” Statistics back this up. Professor Deborah Rhode reports that “women constitute more than a third of the profession, but only about one-fifth of all law firm partners, general counsels of Fortune 500 companies and law school deans,” and that “blacks, Latinos, Asian Americans and Native Americans, while making up a fifth of law school graduates, make up fewer than 7% of law firm partners and 9% of general counsels of large corporations.” Rhode, Deborah L., *Law is the Least Diverse Profession in the Nation. And Lawyers Aren't Doing Enough to Change That*,” Washington Post, May 27, 2015. The New York City Bar Association’s Diversity Benchmarking Report for 2014 showed that law firms continue to experience higher rates of attrition among women and minority attorneys: 23.6% of minority attorneys and 21.3% of women of all levels of seniority left a sample of large firms in 2014, compared to 14.7% of white men. See J. Kiernan Letter to Hon. Betty Weinberg Ellerin dated August 25, 2016 at 3. Numerous studies back up these figures, not just with women and minority lawyers, but also with respect to the LGBT community. *Id.* at 2 n.2 (citing articles and studies).

But even if one is not content to rely on the numbers, the day-to-day experiences of those who practice in this City tell us that women, minority, disabled and LGBT lawyers are falling behind. White, straight males predominate among law firm partners and on the executive committees that manage their firms, no matter what the firms’ size. Women lawyers are often asked to get coffee, to manage firm parties and get-togethers, to take notes at meetings and court conferences. Women and minority lawyers rarely argue in court, especially in our Commercial Divisions. All these categories of lawyers are often passed over for promotions and for the best assignments. They often struggle to find adequate mentors, as well as adequate maternity and paternity leave policies, adequate child care opportunities and adequate accommodations for the disabled.

The list goes on. While D&I CLE is no panacea, and may strike some as a nod to “political correctness,” NYCLA believes it can serve only to help the legal profession fulfill its mission, both symbolically and on a day-to-day basis, of making available “justice for all.” It can sensitize the profession to the pervasiveness of this problem, and to the many ways – large and small – that lawyers contribute to it. It can foster a recognition of the importance of an inclusive profession to the administration of justice. It can help continue the effort to eliminate implicit bias and discrimination, both in interactions among lawyers and in communications between lawyers and clients. And it can help make the profession more vital by calling on, and allowing the full development of, the talents of all lawyers, no matter their gender, ethnic background, disability status or sexual orientation.

In considering the NYSBA and UCS Proposals on D&I CLE, we note that there are subtle but important differences. The NYSBA Proposal broadly defines “diversity and

inclusion” to include “all persons regardless of race, ethnicity, national origin, gender, sexual orientation, gender identity, religion, age or disability,” while the UCS Proposal has yet to adopt a definition. Under the NYSBA Proposal, either one or two hours for each reporting period will be required, while only one hour is required under the UCS Proposal. Under the NYSBA Proposal, the one or two hours for D&I CLE may be deducted from the mandatory four hour ethics and professionalism component, while the UCS Proposal would not allow such a deduction.

Because NYCLA believes that it is important to continue to require New York attorneys to have four full hours of ethics and professionalism credits in each reporting period, while also making D&I CLE mandatory, we recommend adoption of the UCS Proposal, on the assumption that the UCS Proposal define “diversity and inclusion” as broadly as the NYSBA Proposal does. We also feel that one hour of D&I CLE in each reporting period should be adequate to accomplish the goals of D&I CLE, and will feel less onerous, and thus more welcomed, by the Bar as a whole.

We therefore support adoption of the UCS Proposal to impose a requirement for D&I CLE with amendment to include the definition of “diversity and inclusion” contained in the NYSBA proposal.

THE SUFFOLK COUNTY BAR ASSOCIATION



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President

John R. Calcagni

December 13, 2016

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Patricia M. Meisenheimer

Ellen G. Makofsky, Secretary
New York State Bar Association
One Elk Street
Albany, New York 12207

First Vice President

Justin M. Block

Second Vice President

Lynn Poster-Zimmerman

Re: Report of NYSBA Committee on Continuing Legal Education
Regarding Proposed Rule Change Providing for Mandatory
Attendance at CLE courses on Diversity, Inclusion and
Elimination of Bias

Treasurer

Hon. Derrick J. Robinson

Secretary

Daniel J. Tambasco

Dear Ms. Makofsky:

Executive Director

Sarah Jane LaCova

I write in reference to the above-captioned Report of the NYSBA Committee on Continuing Legal Education ("Report") proposing to recommend to the NYS CLE Board an amendment to CLE Rules that would require NYS attorneys to attend one or two credit hours of CLE focused on issues related to diversity, inclusion and elimination of bias ("D&I Training") during each biennial reporting period.

Directors

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During the October and November meetings at which our Bar Association's Board of Directors discussed the Report, the Board made clear that our Association joins with the ABA, NYSBA, the City Bar and the Affiliate Bars named in the Report in opposing all forms of bias and prejudice. Our Board also agrees with its brother and sister bar associations that providing educational opportunities to attorneys on how to recognize and address bias is an effective means of addressing D&I issues. However, it was the unanimous opinion of our Board that making attendance at D&I Training *mandatory* is not an effective solution to these societal issues. Therefore, it opposes the proposed change being recommended by the NYSBA.

Past President Directors

Dennis R. Chase

William T. Ferris III

Donna England

Counsel

John H. Gross

A recent cover article in the July/August 2016 issue of the *Harvard Business Review* entitled "Why Diversity Programs Fail" fully supports our Board's position. See it at <http://hbr.org/2016/07/why-diversity-programs-fail>.

In the article, Harvard Sociology Professor Frank Dobbin and University of Tel Aviv Associate Sociology Professor Alexandra Kalev explain why compulsory diversity training may do more harm than good. The article summarizes the results of a series of studies they conducted on almost 830 companies over a five-year period using data compiled over three decades.

Their studies showed that companies that imposed *mandatory* diversity training on their managers actually experienced *declines* in the numbers of African American women and Asian American men and women promoted to the ranks of management and *no* improvement among white women and other minorities. According to Professors Dobbin and Kalev:

“In analyzing three decades’ worth of data from more than 800 U.S. firms and interviewing hundreds of line managers and executives at length, we’ve seen that companies get better results when they ease up on the control tactics. It’s more effective to engage managers in solving the problem, increase their on-the-job contact with female and minority workers, and promote social accountability-the desire to look fair minded.”

Professors Dobbin and Kalev also point to other social science studies indicating that top-down, control type efforts to reduce prejudice can actually lead to increases in hostility and bias. According to Prof. Dobbin, “Social Scientists have long known that if you try to control people’s thoughts and behavior, they rebel. That’s what we find – programs designed to reeducate managers or stop them from discriminating directly tend to backfire.”

Our Board agrees with Professors Dobbin and Kalev that making D&I Training mandatory is likely to be counterproductive to achieving the intended result. It also agrees that *engagement* rather than *coercion* is a more successful road to inclusiveness and diversity. To put it another way, having people “buy into” a mind-set of inclusiveness, rather than having it thrust upon them, is more effective if one is seeking behavioral change.

It is understandable that our brother and sister bar associations believe that requiring attorneys to attend such programs will help to increase their awareness of the benefits of inclusiveness and diversity as well as to reduce bias within the legal profession. After all, the private sector has been mandating that their employees attend D&I Training programs for decades.

Ellen G. Makofsky, Secretary\\December 13, 2016

As Professors Dobbin and Kalev have concluded, however, due to the very mandatory nature of such training, it has been not only largely ineffective in achieving its intended goal but has often resulted in actual declines in inclusiveness and diversity within the almost 830 companies the Professors studied. Our Bar Association does not want to see a well-intended but largely failed policy implemented through the adoption of the proposed rule change.

Thank you for considering our Association's input on this very important issue.

Very truly yours,


JOHN R. CALCAGNI
PRESIDENT

cc: Peter Levy, Esq., NYSBA VP, 10th Judicial District
SCBA Board of Directors



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LUIS RIVERA
EXECUTIVE DIRECTOR

January 13, 2017

New York State Bar Association
Attn: Kathleen Mulligan-Baxter
1 Elk Street
Albany, NY 12207

Sent Via E-Mail & Regular Mail

Re: Request for Public Comment on Proposed New York Continuing Legal Education Requirement for Diversity, Inclusion and the Elimination of Bias

Dear Ms. Mulligan/Baxter:

This letter is being submitted by the Westchester County Bar Association ("WCBA") in response to the Request for Public Comment on Proposed New York Continuing Legal Education Requirement for Diversity, Inclusion and the Elimination of Bias to provide comments from our association. The WCBA remains steadfast in our support of diversity, inclusion and the elimination of bias throughout the legal profession and greater society. However, the WCBA will only offer our support for the requested change to the current New York State Continuing Legal Education ("CLE") requirement if a modification to this proposal is made.

Currently, the requested change will impose a one-credit CLE requirement for experienced attorneys (admitted to the New York State Bar for more than two years) addressing the subject of diversity, inclusion and the elimination of bias. This credit would be included within, and would not add to, the current requirement of 24 credit hours of CLE required of each attorney in each biennial reporting cycle. The requested change would then require that a diversity component be incorporated into a CLE offered within one of the currently existing CLE subject areas, being (1) Ethics and Professionalism, (2) Skills, (3) Law Practice Management and (4) Areas of Professional Practice. Accordingly, a CLE offered within "Law Practice Management" for at least one credit may also serve as a "Diversity" credit if it incorporates an issue pertaining to diversity, inclusion and the elimination of bias.

The WCBA notes the importance of the current CLE structure offering New York State attorneys the much needed continuing education in the areas of Skills, Law Practice Management and Areas of Professional Practice, and asks that any Diversity CLE requirement ONLY be required if such a credit may be completed in place of one (1) required Ethics and Professionalism credit. By making this one modification to the proposed change, the goals sought by the proposal will be achieved, while the vital skills and education offered by the other current CLE subject areas will not be diminished.

Thank you for your review of the comments of the WCBA.

Luis A. Rivera, Esq.
Executive Director- WCBA



COMMENTS
OF THE
NEW YORK STATE BAR ASSOCIATION'S
SECTIONS CAUCUS

ON

THE REPORT OF THE NYSBA COMMITTEE ON
CONTINUING LEGAL EDUCATION RE:
PROPOSED DIVERSITY AND INCLUSION AND
ELIMINATION OF BIAS CLE REQUIREMENT
FOR NEW YORK STATE ATTORNEYS

JANUARY 5, 2017

The New York State Bar Association Committee on Continuing Legal Education has issued a report recommending a continuing legal education requirement for New York State attorneys covering diversity and inclusion and elimination of bias. The Sections Caucus and all the Sections that have commented on the report support the goal of encouraging and promoting diversity and inclusion and eliminating bias in the legal profession and in our society, a core value of the Association. The Caucus and seven of the eight Sections that have commented on the report support a mandatory CLE requirement to implement this goal. The Local and State Government Law Section opposes the mandatory requirement, while agreeing that CLE providers should be encouraged to create a wide range of programs that incorporate diversity and inclusion.

The Proposal

The NYSBA CLE Committee proposes that a one- or two-hour CLE credit covering diversity and inclusion be a stand-alone requirement for each attorney biennial reporting period. It would not add to the 32 hours required for newly admitted attorneys or to the 24 hours required for more experienced attorneys. The CLE Committee suggests the following definition:

Diversity and Inclusion must address diversity and inclusion in the legal profession and the practice of law of all persons regardless of race, ethnicity, national origin, gender, sexual orientation, gender identity, religion, age or disability and may include, among other things, how issues of diversity and inclusion may arise within the scope of the Rules of Professional Conduct, application within the procedural and substantive aspects of law practice, and law practice management, including the elimination of bias.

Thus, the diversity and inclusion CLE requirement could count toward any of the required credit hours in ethics, skills, areas of professional practice, or law office management.

The NYSBA CLE Committee report describes six categories of programs already offered by accredited providers that would appear to satisfy the proposed diversity and inclusion

requirement and includes a list of sample diversity and inclusion programs from New York and around the country in its Appendix B.

Other Bar Associations

In February 2016, the House of Delegates of the American Bar Association unanimously adopted Resolution 107 encouraging all state bar associations and other licensing and regulatory authorities to include programs regarding diversity and inclusion and the elimination of bias as a separate requirement of mandatory continuing legal education. In July 2016, the New York City Bar Association, together with 12 other New York-based diversity bar associations, urged the New York State Continuing Legal Education Board to modify the existing New York mandatory CLE requirements to include a separate diversity and inclusion requirement, as California and Minnesota had already done.

Individual Sections' Views

The Judicial Section thinks that the proposal is “a great idea.” *See* Exhibit 1. The Torts, Insurance and Compensation Law Section (TICL) “embrace[s] this initiative.” *See* Exhibit 2. The Labor and Employment Law Section “applaud[s] the focus on diversity,” although one member was against “legislating social issues” and some members balked at the mandatory nature of the requirement. *See* Exhibit 3. The Antitrust Law Section “support[s]” the addition of a diversity and inclusion CLE requirement. *See* Exhibit 4. The Commercial and Federal Litigation Section (ComFed) “recommends” the adoption of the NYSBA CLE Committee’s report, although it requests a decision whether the requirement should be one or two hours. *See* Exhibit 5. The Health Section “approve[s]” the proposal. *See* Exhibit 7. The Dispute Resolution Section “wholeheartedly support[s]” the proposal but recommends that acceptable course descriptions be

broadened to include lawyers' perceptions of, and interactions with, arbitrators, mediators, and legal support staff. *See* Exhibit 8.

Comments by the Labor and Employment Law, the Antitrust, TICL, and the Health Sections indicate that each could readily present programs satisfying the proposed diversity and inclusion requirement. *See* Exhibits 2-4, 7. ComFed notes that fulfilling the requirement "should not be onerous." *See* Exhibit 5. Nonetheless, both the Labor and Employment Law Section and ComFed would like clear guidelines covering both the substance to be presented and course descriptions for programs qualifying for the diversity-and-inclusion requirement. *See* Exhibits 3 and 5. The Antitrust Section recommends that the Association CLE Department take a broad and flexible approach to the requirement to include programs that relate directly to an attorney's day-to-day practice. *See* Exhibit 4.

The Local and State Government Law Section supports the efforts of the Association to promote awareness of diversity and inclusion and the elimination of bias and agrees that CLE providers should be encouraged to create a wide range of programs incorporating diversity and inclusion and the elimination of bias. *See* Exhibit 6. However, this Section opposes a separate mandatory diversity-and-inclusion CLE requirement. *Id.* It draws a distinction between ethical rules that are embodied in the Code of Professional Responsibility and the aspirational nature of diversity and inclusion in the legal profession, finding that the former is an appropriate topic for mandatory continuing legal education, while the latter is not. *Id.* The Local and State Government Law Section also suggests that adopting a mandatory diversity-and-inclusion CLE requirement could, and, if adopted, perhaps should, lead to mandated CLE training on equally important causes such as access to justice, child or elder abuse, or substance abuse, as other state CLE boards have done. *Id.*

The Sections Caucus's Position

The legal profession should promote diversity and inclusion and the elimination of bias. While having come far in the last half century, American society and the legal profession still have a great distance to travel in this area. It is in the profession's interest that practitioners learn to recognize often unspoken and unrealized discrimination, as well as more overt bias, and develop techniques to combat both. This is more than an aspirational goal. It is a moral imperative that must be learned, lived, and reinforced. Accordingly, it is appropriate to mandate that all experienced practitioners or recently admitted attorneys be required to receive one or two hours of diversity-and-inclusion education (the number of hours of the credit to be determined by the New York State Continuing Legal Education Board) every two years as part of the required 24 or 32 hours of CLE that each group must, respectively, satisfy. The Sections Caucus endorses and urges the House of Delegates to adopt the report of the NYSBA CLE Committee on a proposed CLE requirement for New York State attorneys regarding diversity and inclusion and elimination of bias.

EXHIBIT 1

Judicial Section

I am writing on behalf of the Judicial Section to say that we think that the mandatory bias/diversity credits are a great idea and we are in favor of the resolution.

Judge Marsha Steinhardt
November 22, 2016

EXHIBIT 2

Torts, Insurance and Compensation Law

To: Sections Caucus CLE Committee
From: Jean Gerbini (Delegate) on behalf of the Torts, Insurance and Compensation Law Section
Date: December 1, 2016
Re: CLE Diversity and Inclusion Proposal

The Torts, Insurance and Compensation Law (“TICL”) Section strongly supports the Report of the NYSBA Committee on Continuing Legal Education, presented to the House of Delegates on November 5, 2016. The Report recommends adoption of a mandatory diversity and inclusion and elimination of bias (“D&I”) CLE requirement for all New York State attorneys.

On October 20, the Chair of the TICL Section, Kenneth Krajewski, urged the Section to embrace the initiative. His comments, in pertinent part:

As you will read, the CLE Committee will recommend to the House of Delegates that “one (1) or two (2) credit hours of diversity and inclusion CLE be required for the biennial reporting period.” The Committee will recommend that “the diversity and inclusion CLE be a stand-alone (“floating”) CLE requirement, but not add to the thirty-two (32) credit hours required for new attorneys or the twenty-four (24) hours required for more experienced attorneys.”

Here’s what the CLE Committee envisions:

Based on a survey of existing offerings by accredited providers, it appears that courses that would satisfy a D&I CLE requirement fall into one or more of the following categories: (I) how lawyers perceive and interact with each other as employers, colleagues and partners; (II) how lawyers perceive and interact with those they come in contact with during the course of practicing law, such as court personnel, witnesses, jurors, judges and opposing counsel; (III) ways in which lawyers can better understand and represent their clients who face barriers, biases and discrimination; (IV) non-discrimination, non-harassment and competent representation as part of a lawyer’s ethical obligations; (V) discrimination and bias in the broader legal and societal context and the role of lawyers in addressing them; and (VI) the law and legal issues as they relate to diverse groups and protected classes.

TICL should embrace this initiative.

...

I think there are many topics that could easily fit into many TICL CLEs. For instance,

- *Elimination of Bias in Jury Selection: Wheeler/Batson/Lenix in the Courtroom*
- *Bias: The Enemy of Persuasion*

- *Ten Common Mistakes in Mediation and How to Avoid Them*
- *How to Recognize Cross Cultural Issues in Litigation, Negotiation and Mediation*
- *Clients from Other Cultures: Traps & Tips*

Many of these could easily fit into almost any TICL CLE program.

Perhaps TICL could even do a joint program with the Labor & Employment Section in which is part “Respect in the Workplace—The Legal Landscape of Harassment, Bias & Discrimination in the Workplace,” and we could add a couple of topics such as “Am I Covered? What Happens When An Employee Brings a Discrimination Claim?”

....

I am proud of the efforts the TICL Executive Committee has made relative to diversity and inclusion. But, as Mirna called to my attention at the EC in New Orleans, we can't ever let our efforts fall behind. My recommendation is that even if the House of Delegates doesn't adopt this – TICL should with respect to its upcoming programs.

The TICL leadership has urged its Section Delegates to vote in support of the measure. Compliance should be easy, based on our experience as a Section. Under the slogan, “Strength by Association,” the TICL Section has hosted a number of CLE programs that featured or included diversity, inclusion and elimination of bias topics over a number of years. We would be happy to share our experience with other Sections. As noted by our Section Chair:

In November of 2014, TICL held an Open Executive Committee Meeting at the Sheraton LaGuardia East Hotel. The program included Strength by Association and Mentoring and the Power of Diversity. ...

Our Fall Deposition CLE in 2014 contained a “Dos and don'ts of deposing the non-English speaking witness” topic item.

In August 2012, TICL had its Summer Meeting in Montreal, Quebec. This meeting was co-sponsored by the Association of Black Women Attorneys, the Latino Lawyers Association of Queens County, the Minority Bar Association of Western New York and the Nigerian Lawyers Association. Our second topic of the program was Mentoring for Diversity Charrette: A collaborative workshop involving small group discussion and role-playing.

At the TICL/Trial Lawyers Joint Meeting at the Annual Meeting in 2012, we another Strength by Association Program. This was Recruitment and Retention of the Diverse Associate and Partner.

At the TICL Summer Meeting in Bar Harbor, Maine in 2011, we had a program another Strength by Association Program. This was The Benefits of Bar Association Professional Memberships, Diversity and Mentoring.

In November 2011, TICL held another Open Executive Committee at the Sheraton Brooklyn New York Hotel. At this meeting, TICL had another Strength by Association Program. This one was titled Mentoring and Power of Diversity.

TICL has a history of fostering diversity and inclusion. TICL programs have contained topics on diversity and inclusion for at least the past 5 years. TICL meeting programs that include topics on diversity and inclusion are well-received and well-attended. Our experience has been positive. TICL CLEs have contained diversity and inclusion topics. I am proud of the efforts TICL has made to be diverse and to include and foster mentoring of diverse members of the bar. And I'm proud of the efforts TICL has made to assist lawyers in their representation and contact with diverse clients and parties.

As current Chair, I feel that while we've done much – we can and should do more. Hence, as Chair, I support the CLE Diversity Report and the goals it seeks achieve.

Respectfully submitted,

Jean Gerbini



NYSBA

TICL Open Executive Committee Meeting

Ethics CLE Program and Reception

November 6, 2014

Sheraton LaGuardia East Hotel
135-20 39th Avenue
Flushing, New York 11354

2.0 CLE Ethics Credits



STRENGTH BY ASSOCIATION

MENTORING AND THE POWER OF DIVERSITY

Join us on November 6th and meet the members of the TICL Section's Executive Committee. Then join our distinguished panel for an interactive discussion of a series of real-life ethical problems that arise in the practice of law. One focus will be the process of mentoring (or being mentored by) an attorney whose background may be very different from one's own. Finish the evening with a networking reception to celebrate diversity in the Bar and the Judiciary.

Program Schedule

- 3:00 pm – 4:00 pm** TICL Open Executive Committee Meeting
- 4:00 pm – 6:00 pm** Interactive Mentoring Panel Discussion
- 6:00 pm – 8:00 pm** Reception to Celebrate Diversity

The panel discussion will qualify for 2.0 hours of MCLE Ethics and Professionalism Credits suitable for all attorneys including newly admitted attorneys. It is offered for \$20.00 for TICL section members; \$50.00 for non-members. NYSBA members enroll in TICL now (\$40). Your section membership continues through 2015. Not a NYSBA member? **Click here** for a special NYSBA membership offer through 2015 for non-NYSBA members.

Planning Committee:

Sean Downes, Esq.
Maiaklovsky Preval, Esq.
Mirna Santiago, Esq.
Michael C. Tromello, Esq.

Moderator:

Mirna Santiago, Esq.



Sheraton LaGuardia East Hotel

PLANNING COMMITTEE



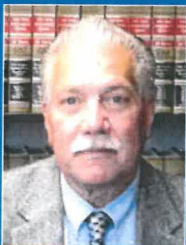
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Michael C. Tromello, Esq.

PANEL



Hon. Jenny Rivera
Court of Appeals



Lawton W. Squires, Esq.
Herzfeld & Rubin



Joseph M. Hanna, Esq.
Goldberg Segalla



Claire F. Rush
Rush & Sabatino, PLLC

SECTION CHAIR



Robert H. Coughlin, Jr., Esq.
Hink Smith Law LLC

Torts, Insurance and Compensation Law Section

STRENGTH BY ASSOCIATION MENTORING AND THE POWER OF DIVERSITY

November 6, 2014 | Sheraton LaGuardia East Hotel, Flushing, NY

Name _____

Firm/Address _____

City/State/Zip _____

E-mail Address _____

Phone (_____) _____ Fax (_____) _____

Program Schedule

3:00 – 4:00 pm TICL Open Executive Committee meeting

_____ I will attend _____ I am unable to attend

4:00 – 6:00 pm Strength by Association – Interactive Mentoring Workshop with a Focus on Legal Ethics

\$20 TICL Member Registration Fee Qualifies for CLE credit _____ I will attend _____ I am unable to attend

\$50 Non-Member Registration Fee Qualifies for CLE credit _____ I will attend _____ I am unable to attend

6:00 – 8:00 pm Networking Reception to Celebrate Diversity in the Bar and Judiciary

_____ I will attend _____ I am unable to attend

NYSBA members **enroll in TICL now** (\$40). Your section membership continues through 2015. Not a NYSBA member? **Click here** for a special NYSBA membership offer through 2015 for non-NYSBA members.

Payment Information

Check or money order enclosed.

(Make checks payable to **New York State Bar Association**)

Charge \$ _____ **to**

American Express Discover MasterCard Visa

Card number

Expiration date

Authorized Signature

Fax or mail this form to:

State Bar Service Center
NYS Bar Association
One Elk Street
Albany, NY 12207

Phone 800.582.2482

Secure Fax 518.463.5993

Questions?

Contact Tina Rothaupt
trothaupt@nysba.org or Pat
Johnson (518) 487-5688,
pjohnson@nysba.org

IMPORTANT INFORMATION: The New York State Bar Association's Meetings Department has been certified by the NYS Continuing Legal Education Board as an accredited provider of continuing legal education in the State of New York. Under New York's MCLE rule, this program has been approved for up to a total of 2.0 credit hours in Ethics and Professionalism. This is a program suitable for transitional and non-transitional credit for newly admitted attorneys.

Accommodations for Persons with Disabilities: NYSBA welcomes participation by individuals with disabilities. NYSBA is committed to complying with all applicable laws that prohibit discrimination against individuals on the basis of disability in the full and equal enjoyment of its goods, services, programs, activities, facilities, privileges, advantages, or accommodations. To request auxiliary aids or services or if you have any questions regarding accessibility, please contact Patricia Johnson at 518.487.5688 or pjohnson@nysba.org

Discounts and Scholarships: New York State Bar Association members and non-members may receive financial aid to attend this program. Under this policy, any member of our Association or non-member who has a genuine basis for his/her hardship, if approved, can receive a discount or scholarship, depending on the circumstances. To apply for a discount or scholarship, please send your request in writing to: Pat Johnson, New York State Bar Association, One Elk Street, Albany, New York 12207.

**Torts, Insurance and Compensation Law Section and
Trial Lawyers Section Annual Meeting**

<p>Wednesday, January 25, 2012 Torts, Insurance and Compensation Law Section and Trial Lawyers Section Annual Dinner Cipriani Wall Street 55 Wall Street New York City Reception - 6:00 p.m. Dinner - 7:00 p.m.</p>	<p>Thursday, January 26, 2012 Torts, Insurance and Compensation Law Section and Trial Lawyers Section Annual Meeting Petit Trianon, 3rd Floor Hilton New York 1335 Avenue of the Americas, New York City Morning Program - 8:30 a.m. Afternoon Program - 1:30 p.m.</p>
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Torts, Insurance and Compensation Law Section and Trial Lawyers Section Joint Annual Dinner
Cipriani Wall Street, 55 Wall Street, New York City
Buses will depart from the 54th Street side of the Hilton New York at 5:30 p.m.

Dinner Speaker: HONORABLE A. GAIL PRUDENTI, Chief Administrative Judge, of all NYS Courts

IMPORTANT INFORMATION

Under New York's MCLE rule, this program has been approved for credit hours in Professional Practice. This program is NOT a transitional program and will not qualify for credit for newly admitted attorneys.

Discounts and Scholarships: New York State Bar Association members and non-members may apply for a discount or scholarship to attend this program, based on financial hardship. *This discount applies to the educational portion of the program only.* Under that policy, any member of our Association or non-member who has a genuine basis of his/her hardship, if approved, can receive a discount or scholarship, depending on the circumstances. To apply for a discount or scholarship, please send your request in writing to Lori Nicoll at Inicoll@nysba or New York State Bar Association, One Elk Street, Albany, New York 12207. *Written requests must be submitted by Thursday, January 19th.*

TORTS, INSURANCE AND COMPENSATION LAW SECTION

SECTION CHAIR

THOMAS J. MARONEY, ESQ.
Maroney O'Connor LLP
New York City

PROGRAM Co-CHAIRS

RICHARD W. KOKEL, ESQ.
New York City

MIRNA M. SANTIAGO, ESQ.
White Fleischner & Fino
White Plains

TRIAL LAWYERS SECTION

SECTION CHAIR

WILLIAM J. KENIRY ESQ.
Tabner Ryan & Keniry LLP
Albany

**PROGRAM CHAIR
, ESQ.**

- 8:30 a.m.** Business Meeting and Election of Officers and District Representatives of the Torts, Insurance and Compensation Law Section and Business Meeting and Election of Officers and District Representatives of the Trial Lawyers Section
- 8:45 - 10:00 a.m.** **STRENGTH BY ASSOCIATION: RECRUITMENT AND RETENTION OF THE DIVERSE ASSOCIATE AND PARTNER**
- Moderators:** **KENNETH A. KRAJEWSKI, ESQ.**
Brown & Kelly, LLP
Buffalo
- MIRNA M. SANTIAGO, ESQ.**
White Fleischner & Fino
White Plains
- Panelists:** **MILES R. AFSHARNIK, ESQ.**
Senior Vice President
Claim & Legal Resource Director
Professional Risk Group
Wells Fargo Insurance Services USA, Inc.
New York City
- MERCEDES COLWIN, ESQ.**
Managing Partner New York Offices
Gordon & Rees LLP
New York City
- PAUL F. JONES, ESQ.**
Partner, Phillips Lytle LLP
Buffalo
- RICHARD T. LAU, ESQ.**
Managing Partner, Richard Lau Associates
Jericho
- MATTHEW J. KELLY, ESQ.**
Roemer Wallens Gold & Mineaux LLP
Albany
- 10:00 - 10:15 a.m.** **Refreshment Break**
- 10:15 a.m. - 12:05 p.m.**



12:05 - 1:30 p.m. Lunch (on your own)

AFTERNOON SESSION

1:30 - 3:10 p.m.

Panel Chair: , ESQ.

Panelists: ESQ.

 , ESQ. , ESQ.

 , ESQ.

3:10 - 3:25 p.m. Refreshment Break

3:25 - 4:40 p.m.

Panel Chair: ESQ.

Panelists: J ESQ.

 , ESQ. , ESQ.

 , ESQ.



Accommodations for Persons with Disabilities: NYSBA welcomes participation by individuals with disabilities. NYSBA is committed to complying with all applicable laws that prohibit discrimination against individuals on the basis of disability in the full and equal enjoyment of its goods, services, programs, activities, facilities, privileges, advantages, or accommodations. To request auxiliary aids or services or if you have any questions regarding accessibility, please contact Lori Nicoll at 518-487-5563.



For overnight room accommodations, please call the Hilton New York at 1-800-445-8667 and identify yourself as a member of the New York State Bar Association. Room rates are \$259.00 for single/double occupancy. You also can reserve your overnight room on the web at www.nysba.org/11accomm. **Reservations must be made by December 31, 2011.**



For questions about this specific program, please contact Lori Nicoll at 518-487-5563. **For registration questions only, please call 518-487-5621. Fax registration form to 866-680-0946.**

**Torts, Insurance and Compensation
Law Section
and Trial Lawyers Section**

**Wednesday, January 25, 2012
Cipriani Wall Street
55 Wall Street, NYC
Reception - 6:00 p.m.
Dinner - 7:00 p.m.**

**Thursday, January 26, 2012
Petit Trianon, 3rd Floor
Hilton New York
1335 Avenue of the Americas, New York City
Morning Program - 8:30 a.m.
Afternoon Program - 1:30 p.m.**



Section Chair

Thomas J. Maroney, Esq.
Maroney O'Connor LLP
New York City

Program Co-Chairs

Brendan F. Baynes, Esq.
The Baynes Law Firm PLLC
Ravena

Sean Downes, Esq.
Law Offices of Sean Downes
New York City

James P. O'Connor Esq.
Maroney O'Connor LLP
New York City

NYSBA

Torts, Insurance and Compensation Law Section

Summer Meeting

The Harborside Hotel & Marina
Bar Harbor, Maine
August 14 -17, 2011

This program provides up to **7 MCLE credit** hours consisting of 5 credits in Professional Practice, 1 credit in Law Practice Management and 1 credit in Ethics. Only the Ethics portion of this program is transitional and therefore suitable for newly admitted attorneys.



SCHEDULE OF EVENTS

Sunday, August 14

2:00 - 6:00 p.m.

Registration

3:00 - 5:00 p.m.

Executive Committee Meeting

5:30 - 6:30 p.m.

Opening Night Cocktail Reception

Come meet and mingle with attorneys from the Maine Bar Association.

Sponsored by PrintingHousePress, Full Service Appellate Printers

(Hors d'oeuvres will be served)

Dinner is on your own this evening

8:30 - 10:30 p.m.

Hospitality Suite and Ice Cream Social for Children & Adults

Monday, August 15

7:00 a.m.

Registration

7:30 - 8:15 am

Executive Committee Breakfast Meeting

8:30 a.m. - 12:30 p.m.

General Session

Welcoming Remarks

THOMAS J. MARONEY, ESQ.

Section Chair

Maroney O'Connor LLP

New York City

Introductory Remarks

BRENDAN F. BAYNES, ESQ.

Program Co-Chair

The Baynes Law Firm PLLC

Ravena

NYSBA Welcome

VINCENT E. DOYLE III, ESQ.

NYSBA President

Connors & Vilaro, LLP

Buffalo

8:45 - 9:35 a.m.

Strength By Association: The Benefits of Bar Association and Professional Memberships, Diversity and Mentoring

Panel Chair:

THOMAS J. MARONEY, ESQ.

Section Chair

Maroney O'Connor LLP

New York City

Panelists:

VINCENT E. DOYLE III, ESQ.

NYSBA President

Connors & Vilaro, LLP

Buffalo

STEPHEN P. YOUNGER, ESQ.

Immediate Past President, NYSBA

Patterson Belknap Webb & Tyler LLP

New York City

SCHEDULE OF EVENTS

Monday, August 15 continued

R. MATTHEW CAIRNS, ESQ.

DRI President
Gallagher, Callahan & Gartrell, PC
Concord, New Hampshire

EDWARD GERSOWITZ, ESQ.

New York State Trials Lawyers Association
Gersowitz Libo & Korek, PC
New York City

9:35 - 9:45 a.m.

Refreshment Break

*Sponsored by Steve Goldman, Esq.,
Funder to the Trial Bar & Law Cash (212-370-1359)*

9:45 - 10:35 a.m.

Legislative Update & Recent Significant Case Update

Panel Chair:

ELIZABETH A. FITZPATRICK, ESQ.

Lewis Johs Avallone Aviles, LLP
Melville

Panelists:

JULIAN D. EHRlich, ESQ.

Aon Risk Services, Inc.
Aon Construction Services Group
Jericho

SHARON STERN GERSTMAN, ESQ.

Magavern Magavern Grimm LLP
Buffalo

RICHARD W. KOKEL, ESQ.

AAA No-Fault Arbitrator
Law Offices of Richard W. Kokel
New York City

10:35 - 11:25 a.m.

Ethical Considerations in Automobile Liability Cases

Panel Chair:

RODERICK J. COYNE, ESQ.

McMahon, Martine & Gallagher, LLP
Brooklyn

Panelists:

HON. GEORGE J. SILVER

New York State Supreme Court
Justice, New York County
New York City

Plaintiff's Perspective:

CODY K. McCONE, ESQ.

O'Dwyer & Bernstein
New York City

Defendant's Perspective:

TIMOTHY D. GALLAGHER, ESQ.

McMahon, Martine & Gallagher, LLP
Brooklyn

ANTHONY D. MARTINE, ESQ.

McMahon, Martine & Gallagher, LLP
Brooklyn

SCHEDULE OF EVENTS

Monday, August 15 *continued*

11:25 - 11:35 a.m. **Refreshment Break**
Sponsored by Medical Management Group of New York

11:35 a.m. - 12:25 p.m. **Emerging Trends & Technologies in Automobile Litigation - Part 2**

Panel Chair: **JAMES P. O'CONNOR, ESQ.**
Maroney O'Connor LLP
New York City

Panelists: **CHRIS BROGAN**
AssureNet

TIM BROGAN
AssureNet

SEAN M. CONNORS, ESQ.
Global Biomechanical Solutions, Inc.
New York City

ROBERT S. FIJAN, Ph.D.
Biomechanical Engineering
and ScienceExpert
West Chester, PA

JOHN MONTALBANO
Global Biomechanical Solutions, Inc.
New York City

1:30 p.m. **Transportation departs for our adventure at Acadia National Park.**
This will be a family fun excursion. More details to come.

6:00 - 7:30 p.m. **Cocktail Reception**
Sponsored by Jay Dietz Associates, Court Reporting Services
(Hors d'oeuvres will be served)

Dinner is on your own this evening

9:30 p.m. - Midnight **Hospitality Suite**
Time to socialize and relax with your colleagues.

SCHEDULE OF EVENTS

Tuesday, August 16

7:00 a.m.

Registration

7:30 - 8:15 a.m.

Executive Committee Breakfast Meeting

8:30 - 11:30 a.m.

General Session

8:30 - 9:40 a.m.

Handling a Catastrophic Injury Case

Panelists:

Judicial/Mediator Perspective:

HON. ALLEN Z. HURKIN-TORRES

Former New York State Supreme
Court Justice, Kings County
JAMS Mediator
New York City

Plaintiff's Perspective:

JEFFREY A. BLOCK, ESQ.

Block O'Toole & Murphy, LLP
New York City

Defendent's Perspective:

JOHN J. MCDONOUGH III, ESQ.

Cozen O'Connor
New York City

9:40 - 9:50 a.m.

Refreshment Break

Sponsored by Ringler Associates, Structured Settlements

9:50 - 10:40 a.m.

Bench and Bar Best Practices and the Claims Professional

Panel Chair:

MIRNA MARTINEZ SANTIAGO, ESQ.

White Fleischner & Fino
White Plains

Panelists:

DEBORAH BOUCHER

Nationwide Mutual Insurance Co.
Woodbury

JOHN FIXTER

Travelers Insurance Co.

Judicial/Mediator Perspective:

HON. ALLEN Z. HURKIN-TORRES

Former New York State Supreme
Court Justice, Kings County
JAMS Mediator
New York City

HON. GEORGE J. SILVER

New York State Supreme Court
Justice, New York County
New York City

Plaintiff's Perspective:

LAURIE A. GIORDANO, ESQ.

Leclair Korona Giordano Cole LLP
Rochester

Defendent's Perspective

DENNIS J. BRADY, ESQ.

Mackay Wrynn & Brady LLP
Douglaston

SCHEDULE OF EVENTS

Tuesday, August 16 *continued*

10:40 - 11:30 a.m.

No Fault Serious Injury Threshold Update

Panel Chair:

HON. DOUGLAS J. HAYDEN

Wright Risk Management
Uniondale

Panelists:

Plaintiff's Perspective:

PROF. MICHAEL J. HUTTER, JR.

Albany Law School
Albany

Defendant's Perspective:

H. NEAL CONOLLY, ESQ.

Wright Risk Management
Uniondale

Arbitrator's Perspective

WALTER P. HIGGINS, ESQ.

AAA No-Fault Arbitrator
Walter P. Higgins, P.C.
Garden City

1:00 p.m.

Kebo Valley Golf Club - Sponsored by Terrier Claims Services

Fee is \$104.00 per player (includes play and golf cart and boxed lunch). Kebo Valley Golf Club was founded in 1888. It is the 8th oldest golf club in the United States. Nestled between Cadillac and Dorr Mountain, Kebo includes 18 spectacular holes, each one very different from the rest. Since much of Kebo Valley Golf Course shares its borders with Acadia National Park, you may encounter many forms of wildlife, such as Whitetail Deer and Red Fox, during your round. American Bald Eagles are also frequently seen soaring above the links. Advanced sign up is required.

2:00 p.m.

Tennis Tournament - based upon interest and availability of tennis courts a round robin tournament will be held. Advanced sign up is required to determine interest in this event.

Sponsored by Terrier Claims Services

6:00 - 8:30 p.m.

Closing Cocktail Reception and Dinner

Sponsored by Matson Driscoll & Damico LLP, Certified Public Accountants, Forensic Accountants

9:00 p.m. - Midnight

Hospitality Suite

Time to socialize and relax with your colleagues.

Wednesday, August 17

Departure



IMPORTANT INFORMATION

Under New York's MCLE rule, this program has been approved for a total of **7 MCLE credit hours** consisting of 5 credits in Professional Practice, 1 credit in Law Practice Management, and 1 credit in Ethics. Only the Ethics portion of this program is transitional and therefore suitable for newly admitted attorneys.

Discounts and Scholarships: New York State Bar Association members and non-members may apply for a discount or scholarship to attend this program, based on financial hardship. This discount applies to the educational portion of the program only. Under that policy, any member of our Association or non-member who has a genuine basis of his/her hardship, if approved, can receive a discount or scholarship, depending on the circumstances. To apply for a discount or scholarship, please send your request in writing to Lori Nicoll at: New York State Bar Association, One Elk Street, Albany, New York 12207 or e-mail lnicoll@nysba.org.

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BAR HARBOR AND THE HOTEL

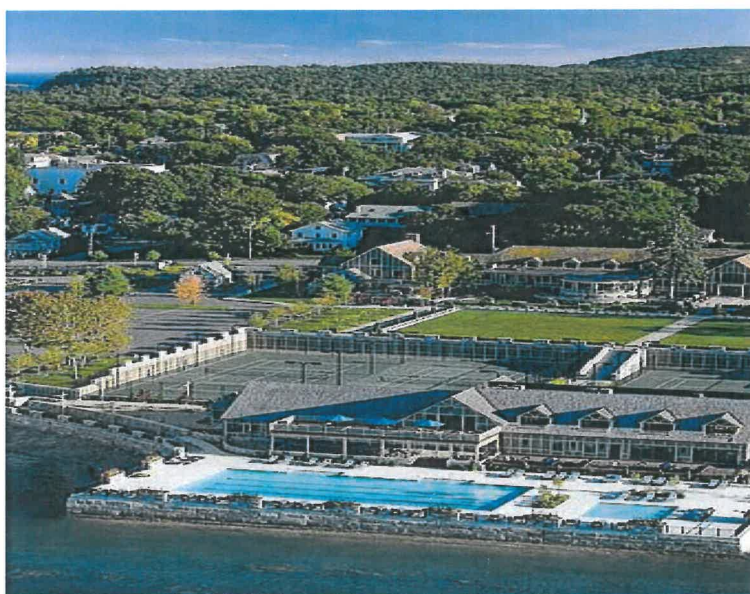
The Harborside Hotel, Spa & Marina is the premier resort facility in Bar Harbor, Maine. Nestled in downtown Bar Harbor, and just moments away from Acadia National Park. The Harborside offers breathtaking views of Frenchman's Bay and the ocean beyond.

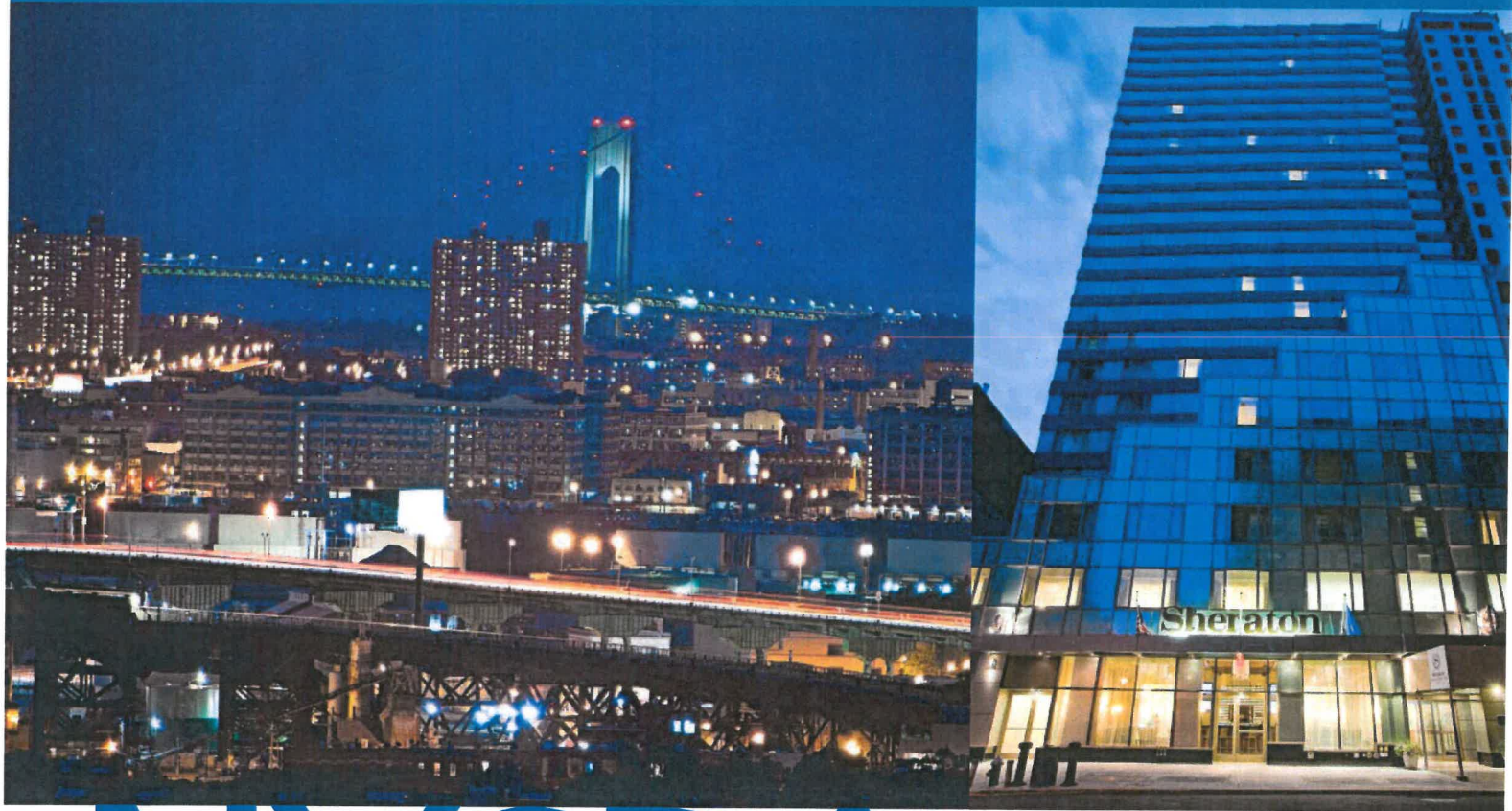
The Harborside Hotel, Spa & Marina boasts a fantastic variety of leisure activities. There is the grandeur of the beautifully restored Bar Harbor Club, the awe-inspiring sights on a whale watching tour, and explorations through Acadia National Park, where you can hike granite peaks, bike historic carriage roads, or relax and enjoy the scenery. The hotel's full-service marina welcomes boaters and yachtsmen on their travels to Bar Harbor.

The Bar Harbor Club has been restored to its original grand state and features clay tennis courts, ocean-side food and beverage in the Pool House, and spectacular grounds in one of Maine's most scenic ocean-front locations. Experience a world of self-indulgence at our spa, engage in a friendly game of tennis or cool off in the ocean-front pool.

Acadia National Park contains over 120 miles of the most varied and beautiful hiking trails in the eastern United States. In addition, the Park maintains approximately 55 miles of gravel carriage roads for walking as well as bicycling, horseback or horse carriage riding, and cross-country skiing. While the trails in Acadia are extremely scenic, they are relatively short. The average one-way length is about one mile.

When it comes to the arts and performing arts, Bar Harbor offers something for all tastes. Since its early days when two Hudson River Valley artists, Thomas Cole and Frederic Church, set out one summer in the early 1800s in search of a scenic fishing village called Eden on the coast of Maine, Bar Harbor has been world-renown as an artist community. And so began America's love affair with one of the most beautiful places in the world—Bar Harbor, Maine. The town has several art galleries, art shows and two celebrated music festivals offering everything from string orchestras, through chamber music, to jazz. Bars and clubs host a range of bands and solo artists that complete the musical mix. Movies have never seemed more enjoyable than when seen in our Art Deco theater.





NYSBA

TICL Open Executive Committee meeting

**Strength by Association –
Mentoring and the Power
of Diversity**

November 17, 2011

Sheraton Brooklyn New York Hotel

1.5 CLE Ethics and Professionalism Credits



STRENGTH BY ASSOCIATION MENTORING AND THE POWER OF DIVERSITY

Join us for a free networking TICL event: Open Executive Committee Meeting, CLE, and reception immediately following to shine a light on minority members of the judiciary including JUDGES Hon. LUCINDO SUAREZ (Supreme Court, Bronx County), Hon. GEORGE SILVER (Supreme Court, New York County), Hon. LAURA DOUGLAS (Supreme Court, Bronx County) and Hon. GLORIA DABIRI (Supreme Court, Kings County)

3:00 – 4:45 pm TICL Open Executive Committee meeting

5:00 – 6:30 pm "Strength by Association – Mentoring and the Power of Diversity"

6:30 – 8:30 pm Reception



1.5 CLE Ethics and Professionalism Credits

5:00 – 6:30 pm

Join our distinguished panel to review best practices for firms, law students and schools, public sector and corporate law departments regarding diversity and mentoring professional values including professional development, improving the profession, and the promotion of fairness, justice and morality. Local Judges will emphasize how diversity and mentoring promotes professional values.

Moderator:

Mirna M. Santiago, Esq., White Fleischner & Fino, LLP

Floor Moderators:

Joanna Young, Carroll, McNulty & Kull LLC

Carlos Calderón, Weisman & Calderon LLP

PANEL

Judges **Hon. Lucindo Suarez** (Supreme Court, Bronx County), **Hon. George Silver** (Supreme Court, New York County), **Laura Douglas** (Supreme Court, Bronx County), **Gloria Dabiri** (Supreme Court, Kings County)



PLANNING COMMITTEE



Mirna M. Santiago
White Fleischner
& Fino



Joanna L. Young
Carroll McNultyKull



James P. Delaney
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Roderick J. Coyne
McMahon, Martine
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Herzfeld & Rubin



Thomas J. Maroney
Maroney O'Connor



Jean F. Gerbini
Whiteman Osterman



Carlos M. Calderon
Weisman & Calderon

Torts, Insurance and Compensation Law Section

STRENGTH BY ASSOCIATION: MENTORING AND THE POWER OF DIVERSITY

November 17, 2011

Sheraton Brooklyn New York Hotel
228 Duffield Street, Brooklyn, New York 11201

3:00 – 4:45 pm TICL Open Executive Committee meeting

_____ yes I will be able to attend

5:00 – 6:30 pm “Strength by Association – Mentoring and the Power of Diversity” 1.5 CLE and Panel Discussion

_____ yes I will be able to attend

6:30-8:30 pm The 2011 TICL Open Networking Reception

_____ yes I will be able to attend

Register by fax or email Pat Johnson pjohnson@nysba.org; 518.487.5758
Register early, space is limited.

Name _____

Firm/Address _____

City/State/Zip _____

E-mail Address _____

Phone (_____) _____ Fax (_____) _____

IMPORTANT INFORMATION

The New York State Bar Association’s Meetings Department has been certified by the NYS Continuing Legal Education Board as an accredited provider of continuing legal education in the State of New York. Under New York’s MCLE rule, this program has been approved for a total of 1.5 credit hours in Ethics and Professionalism. This is a program suitable for transitional and non-transitional credit for newly-admitted and other attorneys.

Accommodations for Persons with Disabilities: NYSBA welcomes participation by individuals with disabilities. NYSBA is committed to complying with all applicable laws that prohibit discrimination against individuals on the basis of disability in the full and equal enjoyment of its goods, services, programs, activities, facilities, privileges, advantages, or accommodations. To request auxiliary aids or services or if you have any questions regarding accessibility, please contact Patricia Johnson at 518.487.5688 or pjohnson@nysba.org

Watch for the Strength by Association series to continue at the NYSBA Annual Meeting on January 26, 2012 when TICL presents:

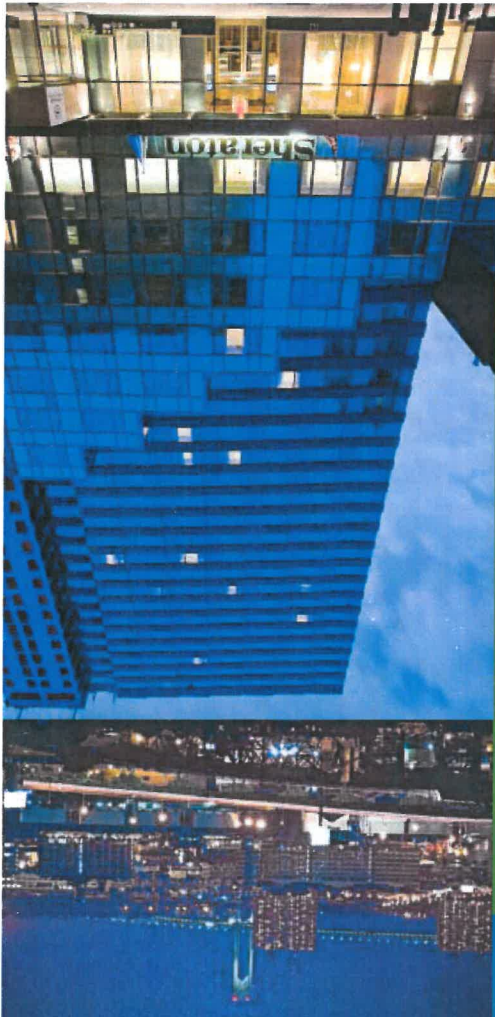
**“Strength by Association—Recruitment and Retention
of the Diverse Associate and Partner”**



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TORTS, INSURANCE AND COMPENSATION LAW SECTION
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1.5 CLE Ethics and Professionalism Credits

Sheraton Brooklyn New York Hotel

November 17, 2011

Strength by Association –
 Mentoring and the Power
 of Diversity

TICL Open Executive Committee meeting

NEW YORK STATE BAR ASSOCIATION



Section Chair

Jean F. Gerbini Esq.

Whiteman Osterman & Hanna LLP
Albany

Program Co-Chairs

Elizabeth A. Fitzpatrick, Esq.

Lewis Johs Avallone Aviles, LLP
Melville

Kenneth A. Krajewski, Esq.

Brown & Kelly, LLP
Buffalo

George Skandalis, Esq.

Pinsky & Skandalis
Syracuse

NYSBA

Torts, Insurance and Compensation Law Section

Co-Sponsoring Organizations

Association of Black Women Attorneys
Latino Lawyers Association of Queens County
Minority Bar Association of Western New York
Nigerian Lawyers Association

Summer Meeting

Intercontinental Montreal
Montréal, Québec, Canada
August 16 -19, 2012

This program provides up to **8.0 MCLE credit** hours consisting of 6.5 credits in Professional Practice and 1.5 credit in Ethics.



SCHEDULE OF EVENTS

Thursday, August 16

- 2:00 p.m. - 6:00 p.m. **Registration - Foyer Vieux-Montreal**
- 3:30 p.m. - 5:30 p.m. **Executive Committee Meeting - Vieux-Montreal**
- 5:30 p.m. - 6:30 p.m. **Opening Night Cocktail Reception - Les Voutes**
Sponsored by Terrier Claims Services
(Hors d'oeuvres will be served)
Dinner is on your own this evening
- Optional Tour:** ***Ghost Walk in Old Montreal*** - (a "ghostly" way to explore the old city)
For those who are interested and dare to explore the ghostly city of Old Montreal go to www.fantommontreal.com/en/legendes.htm and register.
- 8:30 p.m. - 10:30 p.m. **Ice Cream Social for Children & Adults - Hospitality Suite**

Friday, August 17

- 7:00 a.m. **Registration - Foyer Saint-Jacques**
- 7:30 a.m. - 8:15 a.m. **Executive Committee Breakfast Meeting - Vieux-Port**
- 8:15 a.m. - 12:05 p.m. **General Session - Saint-Jacques**
- 8:15 a.m. **Welcome and Introductory Remarks**
JEAN F. GERBINI, ESQ. **SEYMOUR W. JAMES, JR., ESQ.**
Section Chair President
Whiteman Osterman & Hanna LLP New York State Bar Association
Albany The Legal Aid Society
New York City
- 8:30 a.m. - 9:45 a.m. **The World's A Stage: Managing Social Media Risk**
(1.5 professional practice)
- Speakers:** **JAMES ADLER** **ELIZABETH A. FITZPATRICK, ESQ.**
Chief Privacy Officer Lewis Johs Avallone Aviles, LLP
Intelius, Seattle Melville
- 9:45 a.m. - 10:00 a.m. **Refreshment Break**
Sponsored by National Arbitration and Mediation (NAM)

SCHEDULE OF EVENTS

Friday, August 17 *continued*

10:00 a.m. - 11:15 a.m. **Mentoring for Diversity Charrette: A collaborative workshop involving small group discussion and role-playing** (1.5 Ethics)

Mentoring for diversity will be put into practice by having the participants be “mentored” by the designated speakers/judges. We will discuss ethics in the legal practice, in mediation and in the judicial setting through role playing.

Moderator: **MIRNA SANTIAGO, ESQ.**
White Fleischner & Fino, LLP
White Plains

Speakers: **HON. GEORGE J. SILVER**
New York State Supreme Court
Justice, New York County
New York City

HON. LUCINDO SUAREZ
New York State Supreme Court
Justice, Bronx County
Bronx

YOMI AJAIYEGBA, ESQ.
Association of Black Women Attorneys
and Nigerian Lawyers Association

JOSEPH HANNA, ESQ.
Minority Bar Association
of Western New York

ALEXANDER ROSADO, ESQ.
Latino Lawyers Association
of Queens County

11:15 a.m. - 12:05 p.m. **When the Car Crosses the Border: Guest Statutes and Cross-Border Disputes**(1 professional practice)

Moderator: **KENNETH A. KRAJEWSKI, ESQ.**
Brown & Kelly, LLP
Buffalo

Speakers: **GENEVIÈVE COTNAM, ESQ.**
Stein Monast L.L.P. Attorneys
Québec, Canada

STEVEN P. CURVIN, ESQ.
Burgio, Kita & Curvin
Buffalo

SHARON STERN GERSTMAN, ESQ.
Magavern Magavern Grimm LLP
Buffalo

SCHEDULE OF EVENTS

Friday, August 17 *continued*

1:00 p.m.

Walking Excursion Through Old Montreal

Take in the cobblestoned streets and historic buildings of Old Montreal, a city with roots in the 1600s. Visit the Basilica of Notre-Dame, the public square of Place Jacques-Cartier (with performing and visual artists and craftspeople), and the Pointe-a-Calliere Museum of Archaeology (which contains a real archaeological conservation site). Tour is without charge; museum entrance fee is between \$12-\$16 CN, depending on size of group, age and student status (paid at entrance).

Sign up on Meeting Registration Form.

Ride on the Rapids - Complete the tour with an exciting ride (for extra charge) on the St. Lawrence rapids in a "saute-moutons" speedboat. ***Sign up on Meeting Registration Form.***

6:30 - 7:30 p.m.

Cocktail Reception - Les Voutes

Sponsored by Legal Med

(Hors d'oeuvres will be served)

Dinner is on your own this evening

8:30 p.m.

Hospitality - Hospitality Suite

Saturday, August 18

7:00 a.m.

Registration - Foyer Saint-Jacques

7:30 a.m. - 8:15 a.m.

Executive Committee Breakfast Meeting - Vieux-Montreal

8:15 a.m. - 12:05 p.m.

General Session - Saint-Jacques

8:15 a.m.

Opening Remarks

GEORGE SKANDALIS, ESQ.

Pinsky & Skandalis

Syracuse

8:20 a.m. - 9:10 a.m.

Update on the No-Fault Serious Injury Threshold (1 professional practice)

Speaker:

LAURIE A. GIORDANO, ESQ.

Leclair Korona Giordano Cole LLP

Rochester

SCHEDULE OF EVENTS

Saturday, August 18 *continued*

9:10 a.m. - 9:40 a.m. **Top 10 Insurance Hits: An Update on Insurance Law**
(1/2 professional practice)

Speaker: **DANIEL KOHANE, ESQ.**
Hurwitz & Fine, P.C.
Buffalo

9:50 a.m. - 10:15 a.m. **Workers' Compensation: Due Process on the Edge**
(1/2 professional practice)

Speaker: **JOHN SNYDER, ESQ.**
Gitto & Niefer LLP
New Hartford, NY

10:15 a.m. - 10:45 a.m. **Structured Settlements: The End of a 40-Year Experiment?**
(1/2 professional practice)

Speaker: **DENNIS R. McCOY, ESQ.**
Hiscock & Barclay LLP
Buffalo

10:45 a.m. - 10:55 a.m. **Refreshment Break**
Sponsored by Franklin Court Press, Inc.

10:55 a.m. - 11:20 a.m. **Are New York Courts Ready for E-Filings?** (1/2 professional practice)

Speakers: **HON. GEORGE SILVER**
New York State Supreme Court
Justice, New York County
New York City

RICHARD W. DAWSON, ESQ.
Conway, Farrell, Curtin & Kelly, P.C.
New York City

CHARLES SIEGEL, ESQ.
Law Offices of Charles J. Siegel
New York City

11:20 a.m. - 12:10 p.m. **Social Media and Claims Investigation-Dinosaur to Avatar**
(1 professional practice)

Speaker: **DANIEL W. GERBER, ESQ.**
Goldberg Segalla LLP
Buffalo

DENIS GIGUÉRE, B ADM., FPA
Expert en sinistres
Chartis Insurance
Analyste, Responsabilité Civile
Service des Sinistres/Claims Management
Québec, Canada

SCHEDULE OF EVENTS

Saturday, August 18 *continued*

- 1:00 p.m. **Guided City Bus Tour** - Experience the climates, plants and animals of North America up close at the Biodôme in Montréal's Olympic Park. Pick up local flavors at the Jean-Talon Farmers' Market—the largest in North America. Take in a panoramic view from atop Mount Royal, for which the city was named. The tour is arranged to appeal to all ages. **Cost of tour is \$20 per person. Sign up on Meeting Registration Form.**
- 6:30 p.m. - 7:30 p.m. **Cocktail Reception - Foyer Sarah Bernhardt**
Sponsored by Jay Dietz & Associates, Ltd.
- 7:30 p.m. **Farewell Dinner - Sarah Bernhardt**
- 8:30 p.m. **Hospitality - Hospitality Suite**
Presentation by the Children
Team Awards

Sunday, August 19

Departure

IMPORTANT INFORMATION

Under New York's MCLE rule, this program has been approved for a total of **8.0 MCLE credit hours** consisting of 6.5 credits in Professional Practice and 1.5 credit in Ethics.

Discounts and Scholarships: New York State Bar Association members and non-members may apply for a discount or scholarship to attend this program, based on financial hardship. This discount applies to the educational portion of the program only. Under that policy, any member of our Association or non-member who has a genuine basis of his/her hardship, if approved, can receive a discount or scholarship, depending on the circumstances. To apply for a discount or scholarship, please send your request in writing to Lori Nicoll at: New York State Bar Association, One Elk Street, Albany, New York 12207 or e-mail lnicoll@nysba.org.

Accommodations for Persons with Disabilities: NYSBA welcomes participation by individuals with disabilities. NYSBA is committed to complying with all applicable laws that prohibit discrimination against individuals on the basis of disability in the full and equal enjoyment of its goods, services, programs, activities, facilities, privileges, advantages, or accommodations. To request auxiliary aids or services or if you have any questions regarding accessibility, please contact Lori Nicoll at 518-487-5563.

Note: For information on required travel documentation to/from Canada, please visit the Department of State website at: http://travel.state.gov/travel/cis_pa_tw/cis/cis_1082.html#entry_requirements

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EXHIBIT 3

Labor and Employment Law Section

I chair the Labor and Employment Law Section of the New York State Bar. We have been asked to provide any comments we have on the report of the NYSBA CLE Committee. I am familiar with the report, as I sit on the NYSBA CLE Committee, in addition to my duties as Chair of the Labor and Employment Law Section.

We circulated the report to our Executive Committee, asking for comments.

While one member was against “legislating social issues” and some balk at the mandatory nature of the requirement, by far and away, the response applauded the focus on diversity. We do feel that it would be helpful to understand what programs would qualify for diversity CLE credit.

The Labor and Employment Law section has made diversity a priority for some time. We have an important diversity fellows program, which selects several fellows, permits them the opportunity to attend our conferences and this year, we also asked them to attend Executive Committee meetings, as non-voting members. Their input has been invaluable and the experience helps them to learn leadership skills. The program started as a one-year program, but we have expanded it to a two year program.

We have also focused several of our plenary sessions and workshops on diversity related issues. Among these was a plenary last January on implicit bias in the workplace. If diversity is significant enough to require CLE credit, it should be significant enough for us to learn about its impact in our own workplaces, our firms and companies.

While historically, CLE has primarily been conducted within the Section, we will need to find new ways to reach out to other Sections in order to educate them about the employment related aspects of diversity. Many of the California programs are similar to programs we have already presented, such as bias in the legal profession, accommodating disabilities in the legal profession, transgender rights, and challenges faced by minorities and women in the legal profession. We may wish to think about ways to make such programs available to all sections, such as at the Annual Meeting or through webinars providing the CLE credit, but which also provide a more in depth opportunity to share best practices.

Please let us know how our input can help in formulating the parameters of the requirement and delivering meaningful programs.

Thank you for the opportunity for input.

Sharon Stiller
December 5, 2016

EXHIBIT 4

Antitrust Section

The Antitrust Section supports measures to expand sensitivity and awareness of diversity and inclusion issues, and we support the recommended addition of a diversity and inclusion CLE requirement (particularly since the proposal would not add to the total number of required CLE credit hours, but would fit within it). We also would recommend that the NYSBA's CLE department, in accrediting programs for Diversity and Inclusion credit, take a broad and flexible approach under the provision so as to permit programs that relate directly to attorneys' day-to-day practices. For example, in the antitrust context, such topics might be implicit bias in agency regulatory decision-making or in the exercise of prosecutorial charging or sentence-recommendation discretion.

Thank you for providing the opportunity to comment.

Jay L. Himes
December 8, 2016

EXHIBIT 5



REPORT
OF THE
COMMERCIAL AND FEDERAL LITIGATION SECTION
OF THE
NEW YORK STATE BAR ASSOCIATION

concerning

The Report of the NYSBA Committee on Continuing Legal Education

Proposed Diversity and Inclusion and Elimination of
Bias CLE Requirement for New York State Attorneys

DECEMBER 6, 2016

**Opinions expressed herein are those of the
Commercial and Federal Litigation Section.
They do not represent those of the New York State Bar Association
unless and until the report has been adopted by the
Association's House of Delegates or Executive Committee.**

Report of the Section as recommended by the Diversity Committee Working Group*

I. Introduction and Summary of the Proposal

At the November 5, 2016 NYSBA House of Delegates meeting, the Committee on Continuing Legal Education (“CLE Committee”) proposed that the Bar adopt a mandatory diversity and inclusion and elimination of bias (“D&I”) CLE requirement for all attorneys admitted in New York. The CLE Committee’s proposal is not without precedent, and is modeled on the unanimously approved resolution supported by the American Bar Association’s House of Delegates at its mid-year meeting in February 2016. Similarly, California and Minnesota both have adopted mandatory D&I CLE requirements.

The genesis of this proposal in New York – as well as in other jurisdictions – is the fact that issues surrounding race, ethnicity, religion, national origin, gender, sexual orientation, disability discrimination, etc., remain critically important in our society. Similarly, lack of access to legal representation by traditionally disadvantaged groups and the continuing underrepresentation of women and minorities within the highest ranks of the profession continue to present challenges for the legal community as a whole.

As set forth in the attached detailed Report of the NYSBA CLE Committee (“Report”), one of the key drivers of the recommendation is NYSBA’s core belief that increasing diversity and inclusion – as well as the elimination of bias – within the profession is essential for legal practitioners to be able to respond effectively to our society’s rapidly changing demographics. The proposal is also aimed at increasing lawyers’ core competencies by educating them to not

* The Diversity Committee Working Group was comprised of the current Diversity Committee Co-Chairs, The Honorable Sylvia Hinds-Radix and Carla M. Miller, Esq., as well as former Committee Chair, The Honorable Barry Cozier and former Section Chair and House of Delegates Alternate Representative Tracee Davis, Esq.

only better serve an increasingly more diverse client base, but also to continue to work on the forefront of the social justice issues for which the profession traditionally has fought for over half a century. (See Report, at 3, describing the four basic values of professional responsibility; including, *inter alia*, “striving to promote justice, fairness and morality”).

Accordingly, the CLE Committee’s specific recommendation is that all accredited CLE providers within the state “be encouraged to create a wide range of programs for all practice areas that incorporate diversity and inclusion, which would include the elimination of bias – whether dealing with other attorneys, clients, courts or anyone else in the legal system.” Moreover, the CLE Committee proposes that “one (1) or two (2) credit hours of D&I CLE be required for the biennial reporting period.” Importantly, the new credit hour requirement would be a standalone or “floating” requirement, **but not add to** the current requirements of thirty-two (32) credit hours for new attorneys, or twenty-four (24) hours for experienced attorneys.

II. Recommendation to Adopt CLE Committee’s D&I Requirement

The Commercial and Federal Litigation Section recommends the adoption of the CLE Committee’s Report. NYSBA’s adoption of the new CLE requirements would be entirely consistent with the Bar’s longstanding positions on D&I generally, and would align New York with the ABA on the issue, along with the other states that already have adopted such CLE requirements. The Section also emphasizes that support of the CLE Committee’s recommendation would further augment the Section’s stated commitment to increasing diversity within the profession, and the field of litigation in particular, that it started over a decade ago with its annual Smooth Moves CLE program and awards presentation, and the Commercial Division 1L Minority Fellowship.

Other than the fact that it would now become part of each attorney's mandatory CLE requirement, we further note that fulfilling the requirement should not be onerous, since there are currently numerous CLE programs on D&I topics offered by several of the New York-based bar associations, including NYSBA itself, the Bar of the City of New York, and the New York County Bar Association, as well as private CLE providers. (For example, one notable, upcoming CLE course offering by the City Bar that likely would satisfy the proposed D&I requirement, and also enhance competency within the profession is entitled *Assisting Victims of Hate Crimes and Bias and Representing Peaceful Protesters*). In addition, one significant advantage of the proposal is that, while it imposes a mandatory D&I requirement, it does not increase the current biennial hourly CLE requirements and could easily be melded into existing requirements much like the mandatory ethics CLE credits. Accordingly, the actual requirement is nominal, as it presumably would entail completion of only a single CLE course over the biennial period.

We recognize that the proposal is not without some measure of controversy concerning how and in what manner diversity and inclusion would be defined. To address this potential issue, the Section would like to see the CLE Committee provide further clarification in two areas. Specifically, the proposal could be clearer regarding the language within a CLE course description that a provider would need to use in order to determine whether the credit has been satisfied – *i.e.*, currently, there exists a clear understanding of what it means to satisfy the Ethics credit requirement, but unless providers are given clear guidelines of what to include in a course description – as well as substance, of course – to make clear that the D&I requirement is met, then some confusion could ensue. Further, the Section also recommends that the CLE Committee clearly decide the precise requirement, instead of the current statement of “one (1) or two (2) credit hours.”

EXHIBIT 6



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2015-2017 Executive Committee

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To: Greg Arenson, Rona Shamoon, NYSBA Section Caucus
From: Michael Kenneally, NYSBA Local and State Government Law Section
Date: December 13, 2016
Re: Mandatory CLE for Diversity and Inclusion

The Executive Committee of the Local and State Government Law section (LSGL) has reviewed the attached report on the Proposed Diversity and Inclusion and Elimination of Bias CLE Requirements for New York State Attorneys. After discussing this report, the LSGL Executive Committee opposes mandatory CLE requirements for diversity and inclusion CLE, but supports the effort of the New York State Bar Association to promote awareness among its members of this very important issue.

The report thoroughly identifies the issues that the legal profession faces when addressing this sensitive and important topic. It recommends that "CLE providers should be encouraged to create a wide range of programs for all practice areas that incorporate diversity and inclusion, which would include the elimination of bias – whether dealing with other attorneys, clients, courts, or anyone else in the legal system." Our section agrees with this recommendation – that CLE providers should be encouraged to meet this goal in their programming for all of the reasons stated in the report.

Nevertheless, the report ultimately recommends that the NYSBA CLE Committee propose one or two credit hours of diversity and inclusion continuing legal education be required as part of the biennial reporting required of attorneys in New York State. After careful consideration, it is the mandatory implementation of this goal that our section opposes.

The proposal for mandatory diversity and inclusion credits treats these credits similarly to those for attorney ethics. The aspirational nature of diversity and inclusion in the legal profession, however, distinguishes them from ethical rules that are embodied in the Code of Professional Responsibility codified in the New York Code, Rules and Regulations. To the extent that existing law and the Code of Professional Responsibility address diversity and inclusion by prohibiting forms of discrimination and harassment, and setting forth ethical rules, the current CLE structure allows attorneys to remain educated and up-to-date on existing legal and professional requirements. Education on the elements of diversity and inclusion that are not prohibited by law or ethics rules, while undoubtedly a noble goal, do not align with the purpose and intent of mandatory continued legal education.

The proposal also begs the question: what other types of training and programming are appropriate for "mandatory" biannual re-registration CLE mandates? Various state CLE boards throughout the country have mandated CLE training on access to justice, child/elder abuse, and substance abuse as part of their curriculum. These examples are not intended to undermine the importance of diversity and related issues; rather, they are intended to show that there are many other equally important causes about which attorneys and others should also receive regular, ongoing training.

Upon admission to the Bar, all attorneys take an oath to uphold the law. Our section members, many of whom are elected and appointed officials, take additional oaths to uphold the law. As a section, we have sought, and will continue, to encourage and promote diversity and inclusion CLE credits with respect to our future programs as the report suggests. Nevertheless, we do not believe that this issue warrants a mandatory training and reporting requirement in addition to the legal protections and laws already in place.

The Local and State Government Law section is ready and willing to assist the New York State Bar Association to raise awareness of diversity and inclusion, and promote the elimination of bias, among our members. We do not agree that such training should be mandated on all attorneys in New York State.

The position stated above was adopted by vote of the Executive Committee of LSGL Section taken on December 5, 2016, with one member opposed (Mr. Davies) and one abstaining (Mr. Fisher).

EXHIBIT 7

Health Section

The Health Section voted to approve the diversity proposal at our EC meeting on December 13, 2016. Comments included the fact that attorneys involved in health care representation are faced with the potential that inherent bias will directly and adversely impact the delivery of care (or lack thereof). In addition, our Section has included diversity CLE in prior conferences. Attached is a diversity CLE which qualified for ethics credits which I had given in the Fall of 2013 as the Affordable Care Act was first being implemented. This was enlightening for me in terms of the history I encountered on our professional responsibilities in this area.

Raul A. Tabora, Jr.
December 17, 2016

**AFFORDABLE CARE ACT & READINESS
FOR 2014 AND BEYOND**

**NYSBA Health Section Fall Conference
October 25, 2013**

**Diversity in Health Care & Legal Representation
Raul A. Tabora, Jr.**

I. Introduction.

The diversity committee of the Health Section within the NYSBA has been developing and implementing a “diversity action plan” over the past two years. One goal of the plan involves education and awareness of the importance of diversity across the spectrum of health care representation. Today’s presentation will focus on this goal.

It is said that health care knows no racial boundaries and is not limited by any factor other than the goal of healing. As lawyers representing or advocating for the interests of the many stakeholders in this segment of our society, it is critical to assure that bias of any nature is minimized and eliminated from such representation. This presentation will address the basic rules of professional practice concerning bias, our ethical aspirations and the benefits to society as a whole gained through inclusiveness. Perhaps no other area of health care represents the core values of diversity more than Federally Qualifying Health Centers (FQHCs). These providers are unique in the health care delivery system not only because of the focus on underserved populations but also because of the thought that by having a diverse Board and governance better

outcomes will follow to assure that the needs and voices of the communities are heard and addressed.

Listening to the leaders of Whitney M. Young Jr., Health Services dramatically enhances our awareness in health representation relating to the concept of diversity as part of the ethical obligations of health care attorneys. It also coincides with the goals of the Affordable Care Act to expand coverage and health care access to those who have been traditionally underserved.

As the health care system expands to afford primary care and chronic care management to populations above traditional Medicaid eligibles but below the 400% poverty line, many of the FQHC models of outreach and training will be required for ACA's "Qualified Health Plans" (QHP).

II. Overview of FQHC Under Federal Law.

The FQHC delivery model is a unique creature of Federal law. It is designed to assure that community needs are met by providing for a cost based reimbursement system, availability of Federal grants and a governance structure which is designed to involve, engage and empower those served by the FQHC. Both Medicare and Medicaid assure payment based on meeting reasonable costs. In many cases, the requirements relating to governance makes this structure unappealing for sponsoring organizations that would be providing equity and capital to start up such FQHCs. As a result, Federal policy has allowed for "look-alike" FQHCs which may obtain a waiver of the governance rules.

Under Federal law, (§330 of the Public Health Service Act), the following governance requirements (among others) apply in order for a FQHC to obtain funding: First, the applicant must demonstrate that "...the center has established a governing body which:

1. **is composed of individuals, a majority of whom are being served by the center** and who, as a group, represent the individuals being served by the center;
2. meets at least once a month, selects the services to be provided by the center, schedules the hours during which services will be provided, approves the center's annual budget, approves the selection of a director for the center, and, except in the case of a public center (as defined in the second sentence of this paragraph), establishes general policy for the center; ***

Secondly, if a truly representative Board cannot be implemented, the FQHC may apply as a "Look-Alike Program". Federal policy guidelines (PIN 2003-21) state as follows with regard to obtaining a waiver of the above standards:

- Organizations Serving Special Populations: Organizations that are requesting designation to serve a special population authorized under section 330 of the PHS Act (i.e., migratory and seasonal agricultural workers, homeless populations, and residents of public housing) are now eligible to apply for FQHC Look-Alike designation. **Upon showing good cause, the following types of organizations are eligible to request a waiver of the 51 percent consumer/patient majority and monthly meeting governance requirements in accordance with section 330(k)(3)(H)(iii) of the PHS Act: (1) any organization serving** a sparsely populated rural area (section 330(p) of the PHS Act); and (2) organizations that receive FQHC Look-Alike designation to serve section 330(g), Migratory and Seasonal Agricultural Workers, section 330(h), **Homeless Populations, or section 330(i), Residents of Public Housing, only but do not serve the general community (section 330(e))**. Refer to Section II.2.B., Program Requirements for Special Populations, for additional information regarding organizations that serve special populations authorized under section 330 of the PHS Act.

These organizations have been on the forefront in providing care to the underserved and minority populations over the past few decades. The ACA

integrates such organizations within the new design as “essential community providers”. Under ACA regulations 45 CFR PART 156, (criteria for Qualified Health Plans or QHPs), FQHCs would be deemed to be “essential community Providers:

§ 156.235 Essential community providers.

(a) *General requirement.* (1) A QHP issuer must have a sufficient number and geographic distribution of essential community providers, where available, to ensure reasonable and timely access to a broad range of such providers for low-income, medically underserved individuals in the QHP's service area, in accordance with the Exchange's network adequacy standards.

(2) A QHP issuer that provides a majority of covered professional services through physicians employed by the issuer or through a single contracted medical group may instead comply with the alternate standard described in paragraph (b) of this section. ***

(b) *Alternate standard.* A QHP issuer described in paragraph (a)(2) of this section must have a sufficient number and geographic distribution of employed providers and hospital facilities, or providers of its contracted medical group and hospital facilities to ensure reasonable and timely access for low-income, medically underserved individuals in the QHP's service area, in accordance with the Exchange's network adequacy standards.

(c) *Definition.* **Essential community providers are providers that serve predominantly low-income, medically underserved individuals,**

(e) *Payment of federally-qualified health centers.* If an item or service covered by a QHP is provided by a federally-qualified health center (as defined in section 1905(l)(2)(B) of the Act) to an enrollee of a QHP, **the QHP issuer must pay the federally-qualified health center for the item or service an amount that is not less than the amount of payment that would have been paid to the center under section 1902(bb) of the Act for such item or service.** Nothing in this paragraph (e) would preclude a QHP issuer and federally-qualified health center from mutually agreeing upon payment rates other than those that would have been paid to the center under section 1902(bb) of the Act, as long as such mutually agreed upon rates are at least equal to the generally applicable payment rates of the issuer indicated in paragraph (d) of this section.

Given this integration, it will be expected that FQHCs will expand their levels of service for those populations who are above the Medicaid eligibility level and targeted by the ACA as uninsured or under-insured.

As the speakers will present, the needs of those served by FQHCs require an understanding of cultural background and historical impediments to care which have not been present with regard to those traditionally covered by employer-based plans.

In addition to the awareness raised by FQHCs goals and operations, there are many issues impacting diversity in the delivery of health care, such as enrollment under the Exchange and criteria impacting notice and explanation of options to diverse populations. There are mandates in terms of interpretation of materials and outreach.

This presentation is not the forum for a full analysis of health care disparities. It is designed to simply provide education and awareness of the issue and how it impacts our ethical obligations and aspirations as attorneys.

For example, another issue is the impact of hidden discriminatory criteria created by the disparity of health care access as in the area of liver transplants. The selection criteria for liver organ recipients often may include the ability to pay for the recovery costs – which can be over \$30,000 per month in after care for quite some time. For example, one leading transplant center has set forth as a 12th selection criteria:

“12. Financial considerations: Transplantation is an expensive treatment option due to the medications and intense monitoring of the recipient’s organ function. **Candidates with an inability to fund transplant care due to lack of adequate insurance coverage may not be eligible for transplant.** The transplant financial coordinator will work with transplant candidates to provide information regarding potential sources of financial support.

Proposed policies surrounding organ procurement under the Federal Health Resources and Services Administration (HRSA) have added the following guideline which has yet to be adopted:

5.4.A Nondiscrimination in Organ Allocation (6.2.1)

A candidate's citizenship or residency status in the United States must not be considered when allocating deceased donor organs to candidates for transplantation. Allocation of deceased donor organs must not be influenced positively or negatively by political influence, national origin, race, sex, religion, or financial status.

[http://optn.transplant.hrsa.gov/ContentDocuments/OPTN Policies PC 08-2013.pdf#nameddest=Policy09](http://optn.transplant.hrsa.gov/ContentDocuments/OPTN_Policies_PC_08-2013.pdf#nameddest=Policy09)

These issues have been reported in the news media as having the effect of excluding many uninsured or underinsured individuals who fall mainly in disadvantaged and minority groups within our diverse population.

Awareness of the potential for bias is critical in the health field and is just as essential for those representing stakeholders in this field. In an interview on this subject published by Brown University, physician and professor Augustus White III, author of *"Seeing Patients: Unconscious Bias in Health Care"*, noted:

"If you stop any doctor on the street and say, 'Doctor, are you aware of all the racism and all of the disparities in health care?' He or she will say, 'I don't know what you are talking about. I take good care of all my patients,'" White told the audience in the Salomon Center. "The data will suggest that there is some subconscious disparity being practiced."

White, ... identified 13 groups of patients that experience health care discrimination and disparities, including not only racial and religious minorities and immigrants but also women, the obese, the elderly, the disabled, and the imprisoned.

In his suggestions for how doctors can reduce their subconscious contribution to health disparities, White focused on that theme of self-awareness. "For caregivers, first of all believe that biases exist," he said. "It is easy to blow it off and say that it's not really a problem. And believe that they can be corrected."

He offered the website of Harvard psychology colleague Mahzarin Banaji as a tool for personally exploring subconscious bias: implicit.harvard.edu.

(See interview at <http://news.brown.edu/features/2011/03/disparities>.)

Applying the same logic to health care legal representation, the advent of ACA implementation is the perfect point to address hidden bias and aspire to the ethics of an inclusive system of access to high quality health care.

III Professional Rules of Responsibility.

The trail head in assessing ethical obligations for lawyers is found within the Rules of Professional Conduct as adopted by the Appellate Divisions of the Supreme Court, effective April 1, 2009. As we know, these rules supersede the former part 1200 (Disciplinary Rules of the Code of Professional Responsibility). Since receiving a pamphlet of such rules distributed by NYSBA as many of us have upon graduation from law school, the very first text to be read is actually a “Preamble, Scope and Comments”. While these additional materials are not enacted as regulation for lawyers, they provide a good guidepost in understanding one’s overall approach for each specific rule of conduct is applied in day-to-day life. (See 22 NYCRR Part 1200 Rules of Professional Conduct; § 1200.0 Rules of Professional Conduct).

The topic of “diversity” is not mentioned anywhere within the Preamble, Comments or the Rules themselves. Instead, this concept has grown in usage across many professions and society in general as a way of pre-empting bias, discrimination and the ill-effects of naturally occurring segregation across many classifications such as race, religion, gender, sexual preference, age, color, disability, nationality and more.

As such, the concept of “diversity” in legal ethics actually is designed to not only educate attorneys on the benefits of diversity but to prevent the oftentimes hidden biases which adversely impact non-diverse groups. From the legal perspective, such impact goes beyond the traditional employment realm but also impacts the decisions made in advocating a particular point, revising contract terms in health transactions, developing laws and regulations affecting the population and communicating with clients to ensure that all aspects of a particular legal issue are properly addressed.

Of particular note with regard to these inspirational goals of “diversity” as an ethical standard is the following from the Preamble to the Rules:

PREAMBLE: A LAWYER’S RESPONSIBILITIES

[1] A lawyer, as a member of the legal profession, is a representative of clients and an officer of the legal system with special responsibility for the quality of justice. As a representative of clients, a lawyer assumes many roles, including advisor, advocate, negotiator, and evaluator. As an officer of the legal system, each lawyer has a duty to uphold the legal process; to demonstrate respect for the legal system; to seek improvement of the law; and to promote access to the legal system and the administration of justice. **In addition, a lawyer should further the public’s understanding of and confidence in the rule of law and the justice system because, in a constitutional democracy, legal institutions depend on popular participation and support to maintain their authority.**

[8] The Rules provide a framework for the ethical practice of law. **Compliance** with the Rules, as with all law in an open society, **depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion** and finally, when necessary, upon enforcement through disciplinary proceedings. **The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules.**

It is in this last comment that “diversity” finds its place within the ethical trail of the practice of law. Although many groups have argued for a business case in furthering diversity, it may be that the real case for diversity lies in legal ethics.¹

The black letter Rules of Professional Conduct prohibit clear violations on the part of attorneys as “misconduct”, as follows:

RULE 8.4. *Misconduct*

A lawyer or law firm shall not:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; ***

(g) **unlawfully discriminate in the practice of law**, including in hiring, promoting or otherwise determining conditions of employment on the basis of age, race, creed, color, national origin, sex, disability, marital status or sexual orientation. Where there is a tribunal with jurisdiction to hear a complaint, if timely brought, other than a Departmental Disciplinary Committee, a complaint based on unlawful discrimination shall be brought before such tribunal in the first instance. A certified copy of a determination by such a tribunal, which has become final and enforceable and as to which the right to judicial or appellate review has been exhausted, finding that the lawyer has engaged in an unlawful discriminatory practice shall constitute prima facie evidence of professional misconduct in a disciplinary proceeding; or

(h) engage in any other conduct that adversely reflects on the

¹ As noted by one organization in this area: “corporate clients apply the “carrot” of continued or increased business and the “stick” of an implied decrease, withdrawal or even loss of business to encourage law firms to become more diverse, or use their economic power to support the economic success and financial independence of diverse lawyers through the growth of minority and women owned law firms. Nevertheless, corporate clients continue to express concern about the lack of diversity among their outside counsel. Similarly, law firm leaders remain disappointed that their diversity efforts have not achieved desired levels of success or translated into noticeable increases in business from corporate clients. And diverse partners are frustrated by the amount of business they receive from corporate clients who express a commitment to diversity. This leads anyone in the legal profession familiar with diversity and inclusion efforts to question whether a business case for diversity truly exists, and, if it does, how it might be improved to the greater satisfaction of all stakeholders.” (Institute for Inclusion in the Legal Profession, “Business Care for Diversity Report - Reality or Wishful Thinking” (c) 2011.) (See also letter of September 14, 2012 of the IILP calling for changes in the Model Code regarding bias and diversity – Attachment “A”.)

lawyer's fitness as a lawyer.

The history of the adoption of these provisions has been described as "long and tortuous" and the result of two separate proposals from State Bar committees:

"The Committee on Minorities in the Profession proposed to prohibit discrimination in hiring, promoting or otherwise determining conditions of employment, on nine bases, including race, color, religion, sex, age and handicap. The Special Committee on Women in the Courts sought a far broader prohibition against discrimination. As a result of a study of discrimination in the courts, the Special Committee on Women in the Courts advocated that the Bar Association provide that a lawyer is prohibited from engaging in any conduct that would discriminate or manifest bias on nine bases, including sex, color, race, religion, disability, age, marital status and sexual preference, in handling a legal matter." The Jones Committee declined to recommend adoption of either an Ethical Consideration or a Disciplinary Rule addressing discrimination because the subject of discrimination was adequately covered by laws, such as the Federal anti-discrimination law and the New York Human Rights Law, and was an inappropriate subject for a code of ethics." "The Long Process of Change: The 1990 Amendments to the New York Code of Professional Responsibility", Fordham Urban Law Journal, Volume 18, Issue 2 1990 Article 5

<http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1343&context=ulj>

As such, from a disciplinary perspective, the concept of "diversity" arises out of the need to prevent "unlawful discrimination" in the practice of law. Notably, this goes beyond employment, hiring and promotion. In one interesting opinion of the Association of the Bar of the City of New York (1995-12), the Committee on Professional and Judicial Ethics opined that lawyers must consider the need for the services of an interpreter and take steps to secure the services of a qualified interpreter to insure competent and zealous representation, to preserve client confidences, and to avoid unlawful discrimination. Notably, the opinion reasoned:

Lawyers are increasingly being called upon to advise and represent persons with whom they cannot communicate directly because the lawyer and the client do not share a common language. Often, the only effective method of communication is through a language (foreign or sign) interpreter.

..... DR 1-102(A)(6) provides that "[a] lawyer shall not . . . [u]nlawfully discriminate in the practice of law, including in hiring, promoting or otherwise determining conditions of employment, on the basis of age, race, creed, color, national origin, sex, disability, or marital status." Even if failure to consider the need for and to secure the services of an interpreter may not constitute unlawful discrimination, **it may show biased or condescending conduct towards the client**, which should be avoided. See EC 1-7. For example, exclusive reliance on family members, friends or even strangers to interpret, or attempts to communicate solely using a rudimentary personal knowledge of a foreign or sign language **may not only be unwise, but may reflect bias or condescension towards the client because such a practice could tend to minimize the importance of what the client has to say to the lawyer and the client's role in decision making, and to treat the client with less care than other clients because of the language barrier between lawyer and client.** ***

CONCLUSION

A lawyer who represents a client with whom direct communications cannot be maintained in a mutually understood language, must evaluate the need for qualified interpreter service and take steps to secure the services of an interpreter, when needed for effective lawyer-client communications, to provide competent and zealous representation, preserve client confidences and avoid unlawful discrimination or prejudice in the practice of law.

http://www2.nycbar.org/Publications/reports/show_html_new.php?rid=168

As such, the value of education and promotion of ethics surrounding "diversity" is primarily one of prevention and instilling a temperament within all attorneys which seeks to guard against the hidden effects of both intentional and benign discriminatory behavior.

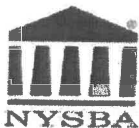
The Health Section's Diversity Challenge seeks to educate attorneys practicing health care law as well as law students and individuals who aspire to become lawyers with regard to the importance of diversity as a goal in all aspects of practice. Diversity

is a good in all professions, however lawyers have special duties and social expectations - It's not enough to know, professionals must be aware of the potential for hidden bias and how it may adversely impact not only our clients but also the status of our legal system and perception of justice.

In the end analysis, diversity in both health care and legal representation spreads both positive ethical practices and good business results. Research has found that groups with diverse backgrounds and a culture of inclusiveness innovate better and enhance an organization's objectives. One recent exposition on this subject surveyed research from McKinsey Reports to the Sloan School at MIT - "It's not just a matter of being fair to have a diverse organization, it's really important in order to get the best business results" *Diversity – It's Not Just About Being Fair*, Beryl Neslon, Googletechtalks March 10, 2013.

Eliminating bias and the onset of potential illegal discrimination are goals which must be seen as reaching the core of a just legal system.

EXHIBIT 8



New York State Bar Association

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December 20, 2016

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Re: Proposed Diversity and Inclusion and Elimination of Bias CLE
Requirement for New York Attorneys

Dear Greg,

I am writing to provide the NYSBA Dispute Resolution Section's comments on the CLE Committee's Report recommending a new CLE requirement covering diversity and inclusion and elimination of bias. We wholeheartedly support the CLE proposal.

Our Section also believes that many attorneys do not appreciate the benefits of choosing minority and female arbitrators and mediators in an increasingly diverse world, but instead often default to the "safe" choice of a white, male neutral with whom they or their colleagues have worked in the past. Accordingly, we recommend that the acceptable course descriptions at Part E. II of the Report be broadened to include lawyers' perceptions of and interactions with arbitrators, mediators, and legal support staff. Part E. II would therefore be amended to read:

"(II) how lawyers perceive and interact with those they come in contact with during the course of practicing law, such as court personnel, legal support staff, witnesses, jurors, judges, arbitrators, mediators, and opposing counsel;"

Thank you for your consideration. Please let me know if you need any additional information.

Very truly yours,

Abigail Pessen, DRS Chair