



**GENERAL ASSEMBLY  
FRIDAY, JANUARY 26, 2018 – 8:45 A.M.  
TRIANON BALLROOM, THIRD FLOOR  
NEW YORK HILTON MIDTOWN**

**AGENDA**

**THE NEW YORK BAR FOUNDATION ANNUAL MEETING**

**8:45 a.m.**

(The members of the House of Delegates also serve as members of  
The New York Bar Foundation)

**Mr. John H. Gross  
President, presiding**

1. Approval of the minutes of the January 27, 2017 Annual Meeting
2. Report of the officers – Mr. John H. Gross
3. Ratification and confirmation of the actions of the Board of Directors since the 2016 Annual Meeting – Mr. John H. Gross
4. Report of the Nominating Committee – Mr. David M. Schraever
5. Other matters
6. Adjournment

**ANNUAL MEETING OF THE NEW YORK STATE BAR ASSOCIATION**

**9:00 a.m.**

**Ms. Sharon Stern Gerstman  
President, presiding**

1. Call to order and Pledge of Allegiance
2. Approval of the minutes of the January 27, 2017 Annual Meeting
3. Report of Nominating Committee and election of elected delegates to the House of Delegates – Mr. Glenn Lau-Kee
4. Report of Treasurer – Mr. Scott M. Karson
5. Adjournment

**HOUSE OF DELEGATES MEETING****9:15 a.m.****Mr. Michael Miller  
Chair, presiding**

- i. National Anthem – Mr. Michael F. Donegan 9:15 a.m.
- ii. Invocation – Hon. Milton A. Tingling 9:20 a.m.
1. Approval of minutes of November 4, 2017 meeting 9:23 a.m.
2. Report of Treasurer – Mr. Scott M. Karson 9:25 a.m.
3. Report of Nominating Committee and election of officers and members-at-large of the Executive Committee – Mr. Glenn Lau-Kee 9:28 a.m.
4. Presentation of awards by Committee on Bar Leaders of New York State – Ms. Marne Onderdonk 9:35 a.m.
5. Address by Hon. Janet DiFiore, Chief Judge of the State of New York 9:45 a.m.
6. Presentation of Ruth G. Schapiro Award – Ms. Sharon Stern Gerstman 10:05 a.m.
7. Report and recommendations of Committee on Immigration Representation – Ms. Camille Mackler 10:20 a.m.
8. Report of President – Ms. Sharon Stern Gerstman 10:35 a.m.
9. Report and recommendations of Committee on Diversity and Inclusion – Ms. Sandra H. Buchanan 10:50 a.m.
10. Report of Task Force on School to Prison Pipeline – Ms. Sheila A. Gaddis and Mr. John H. Gross 11:10 a.m.
11. Report of Committee on Membership – Mr. Thomas J. Maroney 11:25 a.m.
12. Report of Executive Subcommittee on Association Publications – Mr. Michael L. Fox 11:35 a.m.
13. Report and recommendations of NYSBA/WBASNY Domestic Violence Initiative – Hon. Judy Harris Kluger and Ms. Amy Schwartz-Wallace 11:50 a.m.
14. Report of Committee on Standards of Attorney Conduct – Prof. Roy D. Simon and Prof. Barbara Gillers 12:10 p.m.
15. Administrative items – Mr. Michael Miller 12:15 p.m.
16. New business 12:25 p.m.
17. Date and place of next meeting:  
Saturday, April 14, 2018  
Bar Center, Albany

**THE NEW YORK BAR FOUNDATION  
Annual Meeting**

**MINUTES  
January 27, 2017  
New York City**

**PRESENT:** Aidala; Alcott; Alsina; Alvarez; Arenson; Baker; Barrett; Bauman; Behe; Berman; Block; Bloom; Bonina; Braverman; Brown, E.; Brown, J.; Brown, T.A.; Bruno; Burns, S.; Buzard; Calcagni; Carola; Cassidy; Castellano; Chambers; Chandrasekhar; Chang; Cheng; Christenson; Christian; Christopher; Cilenti; Clarke; Cohen, C.; Cohen, D.; Cohen, O.; Cooper; Corbin; Dean; DeFelice; Denton; Disare; Edgar; Effman; England; Ferrara; Finerty; First; Fisher; Flanagan; Flynn; Fox, G.; Fox, M.; Franchina; Freedman; Gaal; Gaddis; Gailliard; Gallagher; Galligan; Gayle; Genoa; Gingold; Gische; Glover; Goldberg Velzaquez; Goldenberg; Goldfarb; Goldschmidt; Gonzalez; Grays; Greenberg; Grogan; Grossman; Gutekunst; Haig; Halpern; Heath; Hetherington; Himes; Hines; Hoffman; Hollyer; Hurteau; Hyer; Jackson; James; Jochmans; Karson; Kase; Kelly; Kiernan, P.; Kiesel; King, B.; Kobak; Koch; Krausz; LaRose; Lau-Kee; Lee; Levy; Lewis; Lindenauer; Madden; Madigan; Makofsky; Mancuso; Mandell, Adam; Maroney; Martin; Masucci; McCann; McKeegan; McNamara; Meisenheimer; Meyers; Miller, C.; Miller, G.; Miller, M.; Millon; Miranda; Moore; Moretti; Moses; Moskowitz; Napoletano; Nathanson; O'Donnell, T.; Ogden; Onderdonk; Owens; Prager; Radding; Ranni; reitzfeld; Richman; Richter; Rivera; Rosner; Russell; Samuels; Schofield; Schraver; Schwenker; Sciocchetti; Seddio; Shafer; Shamon; Shautsova; Sheehan; Silkenat; Silverman; Simmons; Singer; Smith; Sonberg; Spierer; Spiro; Spitler; Standard; Starkman; Steinhardt; Strenger; Sullivan; Sunshine; Tennant; Thaler-Parker; Tully; Udell; Ventura; Vigdor; Vitacco; Wallach; Wasmund; Weathers; Welch; Westlake; Weston; Whittingham; Wildgrube; Williams; Witmer; Younger; Zuchlewski.

President John H. Gross called the meeting to order at 9:00 a.m.

**Approval of minutes:** On a motion duly made and carried, the minutes of the Annual Meeting of The New York Bar Foundation on January 29, 2016 were approved.

Report of officers: John H. Gross, President presented the 2016 Annual Reports of The New York Bar Foundation, copies of which were distributed. The Annual Report sets forth in detail the operations and activities of the Foundation during 2016. Mr. Gross highlighted several new initiatives described in the Annual Report including:

1. The Foundation implemented a new fundraising initiative, the firm challenge which raised \$60,000.
2. Two new scholarships were created honoring the late Chief Judge Kaye. Overall The Foundation presented \$90,000 in scholarships and fellowships in partnership with various sections of the state bar.
3. The Foundation presented more than \$7,000 in disaster assistance to Louisiana to assist those in need of legal services.
4. A new fundraising initiative was created with the Young Lawyers Section and Friends of the Foundation giving group. Mr. John Christopher spoke on behalf of the Young Lawyers about the fundraising that was done to assist Veterans in need of legal services.

**Ratification and confirmation of actions of the Board:** A motion was adopted ratifying, confirming and approving the actions of the Board of Directors since the 2016 Annual Meeting.

**Report of the Nominating Committee:** Reporting on behalf of the Nominating Committee, committee member Carla Palumbo placed in nomination the following slate of nominees presented by the Committee for the position of Director for terms commencing June 1, 2017 for term ending May 31, 2020:

- June Castellano, Rochester
- Donald Doerr, Syracuse
- James Kobak, New York
- Ellis Mirsky, Nanuet

A motion was adopted electing said Directors.

Mr. Gross closed his report by reminding attendees that the Foundation is holding an annual meeting week appeal and that The Foundation will become the custodian of a restricted fund in the amount of \$1 million to administer the Catalyst Public Service Fellowship Program.

There being no further business, the meeting was adjourned.



TO: Members of The New York Bar Foundation

FROM: Nominating Committee of The New York Bar Foundation  
David Schraver, Chair  
Edwina Martin  
Martin Minkowitz  
Carla Palumbo  
Michael E. Getnick

DATE: January 26, 2018

RE: Report of the Nominating Committee

The Nominating Committee of The New York Bar Foundation is pleased to submit the following slate of nominations as Directors of The Foundation Board of Directors commencing June 1, 2018.

**For a term ending May 31, 2021**

New directors for a term commencing June 1, 2018 and concluding May 31, 2021

- Gioia Gensini, Syracuse
- Ellen Makofsky, Garden City

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF ANNUAL MEETING  
NEW YORK HILTON MIDTOWN, NEW YORK CITY  
JANUARY 27, 2017**

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**PRESENT:** Aidala; Alcott; Alsina; Alvarez; Arenson; Baker; Barrett; Bauman; Behe; Berman; Block; Bloom; Bonina; Braverman; Brown, E.; Brown, J.; Brown, T.A.; Bruno; Burns, S.; Buzard; Calcagni; Carola; Cassidy; Castellano; Chambers; Chandrasekhar; Chang; Cheng; Christenson; Christian; Christopher; Cilenti; Clarke; Cohen, C.; Cohen, D.; Cohen, O.; Cooper; Corbin; Dean; DeFelice; Denton; Disare; Edgar; Effman; England; Ferrara; Finerty; First; Fisher; Flanagan; Flynn; Fox, G.; Fox, M.; Franchina; Freedman; Gaal; Gaddis; Gailliard; Gallagher; Galligan; Gayle; Genoa; Gingold; Gische; Glover; Goldberg Velzaquez; Goldenberg; Goldfarb; Goldschmidt; Gonzalez; Grays; Greenberg; Grogan; Grossman; Gutekunst; Haig; Halpern; Heath; Hetherington; Himes; Hines; Hoffman; Hollyer; Hurteau; Hyer; Jackson; James; Jochmans; Karson; Kase; Kelly; Kiernan, P.; Kiesel; King, B.; Kobak; Koch; Krausz; LaRose; Lau-Kee; Lee; Levy; Lewis; Lindenauer; Madden; Madigan; Makofsky; Mancuso; Mandell, Adam; Maroney; Martin; Masucci; McCann; McKeegan; McNamara; Meisenheimer; Meyers; Miller, C.; Miller, G.; Miller, M.; Millon; Miranda; Moore; Moretti; Moses; Moskowitz; Napoletano; Nathanson; O'Donnell, T.; Ogden; Onderdonk; Owens; Prager; Radding; Ranni; reitzfeld; Richman; Richter; Rivera; Rosner; Russell; Samuels; Schofield; Schraver; Schwenker; Sciocchetti; Seddio; Shafer; Shamoan; Shautsova; Sheehan; Silkenat; Silverman; Simmons; Singer; Smith; Sonberg; Spirer; Spiro; Spitler; Standard; Starkman; Steinhardt; Strenger; Sullivan; Sunshine; Tennant; Thaler-Parker; Tully; Udell; Ventura; Vigdor; Vitacco; Wallach; Wasmund; Weathers; Welch; Westlake; Weston; Whittingham; Wildgrube; Williams; Witmer; Younger; Zuchlewski.

Ms. Gutekunst presided over the meeting as President of the Association.

1. The meeting was called to order and the Pledge of Allegiance recited, with the presentation of colors by the New York State Courts Ceremonial Unit.
2. Approval of minutes of the January 29, 2016 meeting. The minutes, as previously distributed, were accepted.
3. Report of the Nominating Committee and election of elected delegates to the House of Delegates. David M. Schraver, chair of the Nominating Committee, reported that the Committee had nominated the following individuals for election as elected delegates to the House of Delegates for the 2017-2018 Association year:

First District: James B. Kobak, Jr., Stewart Aaron, and Carrie H. Cohen, all of New York City;

Second District: Andrew M. Fallek, Andrea E. Bonina, and Barton Slavin, all of Brooklyn;

Third District: Glinessa D. Gaillard, Robert T. Schofield IV, and Hermes Fernandez, all of Albany;

Fourth District: Marne L. Onderdonk of Albany, Patricia L.R. Rodriguez of Schenectady, and Peter V. Coffey of Schenectady;

Fifth District: Timothy J. Fennell of Oswego, Gioia A. Gensini of Syracuse, and L. Graeme Spicer of Syracuse;

Sixth District: Patrick J. Flanagan of Norwich, Robert M. Shafer of Tully, and Michael R. May of Ithaca;

Seventh District: LaMarr J. Jackson of Rochester, June M. Castellano of Rochester, and Amy L. Christenson of Bath;

Eighth District: Kathleen Sweet, Jessica M. Lazarin, and Oliver C. Young, all of Buffalo;

Ninth District: Julie Cvek Curley of White Plains, Andrew P. Schriever of White Plains, and Robert B. Marcus of Orangeburg;

Tenth District: William T. Ferris III of Islandia, Rosemarie Tully of Huntington, and Peter J. Mancuso of North Bellmore;

Eleventh District: Frank Bruno, Jr. of Glendale, Chanwoo Lee of Flushing, and Guy R. Vitacco, Jr. of Elmhurst;

Twelfth District: Samuel M. Braverman of the Bronx, Carlos M. Calderón of Scarsdale, and Michael A. Marinaccio of White Plains;

Thirteenth District: Orin J. Cohen, Edwina Frances Martin, and Claire Cody Miller, all of Staten Island.

There being no further nominations, a motion was made and carried for the Secretary to cast a single ballot for the elected delegates to the House of Delegates.

4. Report of Treasurer. Scott M. Karson, Treasurer, reported on the 2016 operating budget, comparing the amounts to those as of December 31, 2015. He reported that through December 31, 2016, the Association's total revenue was \$23 million, a decrease of approximately \$135,000 from the previous year, and total expenses were \$22 million, a decrease of approximately \$233,000 from the previous year. The operating surplus prior to audit was approximately \$98,000. Mr. Karson also reviewed selected revenue and expense items, with a focus on membership dues revenue. The report was received with thanks.
5. Adjournment. There being no further business, the Annual Meeting of the Association was adjourned.

Respectfully Submitted,

A handwritten signature in black ink, reading "Ellen G. Makofsky". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Ellen G. Makofsky  
Secretary



**HOUSE OF DELEGATES  
Agenda Item #3**

**ELECTION OF 2018-2019  
OFFICERS AND MEMBERS-AT-LARGE  
OF THE EXECUTIVE COMMITTEE**

**PRESIDENT-ELECT**

Henry M. Greenberg, Albany

**SECRETARY**

Sherry Levin Wallach, White Plains

**TREASURER**

Scott M. Karson, Melville

**DISTRICT VICE-PRESIDENTS**

**FIRST:**

Taa R. Grays, New York City  
Carol A. Sigmond, New York City

**SEVENTH:**

David H. Tennant, Rochester

**SECOND:**

Aimee L. Richter, Brooklyn

**EIGHTH:**

Norman P. Effman, Warsaw

**THIRD:**

Robert T. Schofield IV, Albany

**NINTH:**

Michael L. Fox, Newburgh

**FOURTH:**

Matthew R. Coseo, Ballston Spa

**TENTH:**

Peter H. Levy, Jericho

**FIFTH:**

Jean Marie Westlake, East Syracuse

**ELEVENTH:**

Karina E. Alomar, Ridgewood

**SIXTH:**

Richard C. Lewis, Binghamton

**TWELFTH:**

Steven E. Millon, New York City

**THIRTEENTH:**

Jonathan B. Behrins, Staten Island

**AT-LARGE MEMBERS OF THE EXECUTIVE COMMITTEE**

Mark A. Berman, New York City  
Evan M. Goldberg, New York City  
Erica M. Hines, Albany  
Tucker C. Stanclift, Queensbury  
Earamichia Brown, New York City (Diversity Seat)  
Rona G. Shamoon, New York City (Section Representative)



# Staff Memorandum

## ANNUAL MEETING Agenda Item #4

Attached for your reference are the unaudited financial statements for the year ending December 31, 2017.

**NEW YORK STATE BAR ASSOCIATION  
2017 OPERATING BUDGET  
TWELVE MONTHS OF CALENDAR YEAR 2017**

**REVENUE**

	2017 BUDGET	ADJUST- MENTS	2017 BUDGET AS ADJUSTED	UNAUDITED RECEIVED 12/31/2017	% RECEIVED 12/31/2017	2016 BUDGET	UNAUDITED RECEIVED 12/31/2016	% RECEIVED 12/31/2016
<b>MEMBERSHIP DUES</b>	10,925,000		10,925,000	10,049,600	91.99%	10,925,000	10,537,010	96.45%
<b>SECTIONS:</b>								
Dues	1,411,600		1,411,600	1,306,781	92.57%	1,416,400	1,360,835	96.08%
Programs	2,763,550		2,763,550	2,464,082	89.16%	2,606,550	2,223,618	85.31%
<b>INVESTMENT INCOME</b>	345,000		345,000	480,953	139.41%	390,000	472,795	121.23%
<b>ADVERTISING</b>	133,000		133,000	87,732	65.96%	125,000	154,429	123.54%
<b>CONTINUING LEGAL EDUCATION</b>	3,900,000		3,900,000	3,149,481	80.76%	4,050,000	3,631,127	89.66%
<b>USI AFFINITY PAYMENT</b>	2,269,000		2,269,000	2,258,769	99.55%	2,025,000	2,269,769	112.09%
<b>ANNUAL MEETING</b>	869,500		869,500	897,247	103.19%	919,500	865,217	94.10%
<b>HOUSE OF DELEGATES &amp; COMMITTEES</b>	108,100		108,100	84,021	77.73%	206,200	217,688	105.57%
<b>PUBLICATIONS, ROYALTIES AND OTHER</b>	274,200		274,200	229,105	83.55%	276,800	266,168	96.16%
<b>REFERENCE MATERIALS</b>	1,350,000		1,350,000	1,204,135	89.20%	1,450,000	1,256,740	86.67%
<b>TOTAL REVENUE</b>	<b>24,348,950</b>	<b>0</b>	<b>24,348,950</b>	<b>22,211,906</b>	<b>91.22%</b>	<b>24,390,450</b>	<b>23,255,396</b>	<b>95.35%</b>

**EXPENSE**

	2017 BUDGET	ADJUST- MENTS	2017 BUDGET AS ADJUSTED	UNAUDITED EXPENDED 12/31/2017	% EXPENDED 12/31/2017	2016 BUDGET	UNAUDITED EXPENDED 12/31/2016	% EXPENDED 12/31/2016
<b>SALARIES &amp; FRINGE</b>	10,409,950		10,409,950	9,875,888	94.87%	10,365,900	9,432,133	90.99%
<b>BAR CENTER:</b>								
Rent	305,000		305,000	283,623	92.99%	288,000	285,078	98.99%
Building Services	283,250		283,250	205,081	72.40%	285,000	227,382	79.78%
Insurance	142,000		142,000	169,687	119.50%	150,000	141,781	94.52%
Taxes	5,250		5,250	15,044	286.55%	7,750	23,148	298.68%
Plant and Equipment	858,000		858,000	921,892	107.45%	620,000	754,395	121.68%
Administration	543,500		543,500	482,080	88.70%	539,700	523,574	97.01%
<b>SECTIONS</b>	4,171,175		4,171,175	3,624,531	86.89%	3,961,650	3,576,180	90.27%
<b>PUBLICATIONS:</b>								
Reference Materials	430,150		430,150	301,025	69.98%	491,050	377,285	76.83%
Journal	431,200		431,200	410,016	95.09%	489,200	418,138	85.47%
Law Digest	187,800		187,800	160,503	85.46%	221,000	187,721	84.94%
State Bar News	247,300		247,300	217,026	87.76%	254,300	173,259	68.13%
<b>MEETINGS:</b>								
Annual Meeting	348,200		348,200	338,205	97.13%	303,100	321,137	105.95%
House of Delegates, Officers and Executive Committee	520,600		520,600	537,993	103.34%	481,250	500,818	104.07%
<b>COMMITTEES:</b>								
Continuing Legal Education	1,767,875		1,767,875	1,661,465	93.98%	1,944,050	1,647,365	84.74%
LPM / Electronic Communication Committee	86,250		86,250	61,700	71.54%	85,300	87,380	102.44%
Marketing / Membership	971,200		971,200	759,943	78.25%	1,000,650	823,757	82.32%
Media Services	115,300		115,300	33,595	29.14%	267,750	118,578	44.29%
All Other Committees and Departments	2,489,075		2,489,075	2,283,585	91.74%	2,612,220	2,274,772	87.08%
<b>TOTAL EXPENSE</b>	<b>24,313,075</b>	<b>0</b>	<b>24,313,075</b>	<b>22,342,882</b>	<b>91.90%</b>	<b>24,367,870</b>	<b>21,893,881</b>	<b>89.85%</b>
<b>BUDGETED SURPLUS</b>	<b>35,875</b>	<b>0</b>	<b>35,875</b>	<b>(130,976)</b>		<b>22,580</b>	<b>1,361,515</b>	

NEW YORK STATE BAR ASSOCIATION  
STATEMENTS OF FINANCIAL POSITION  
AS OF DECEMBER 31, 2017

<u>ASSETS</u>	<u>UNAUDITED</u> <u>12/31/2017</u>	<u>UNAUDITED</u> <u>12/31/2016</u>	<u>UNAUDITED</u> <u>12/31/2016</u>
<b><u>Current Assets:</u></b>			
General Cash and Cash Equivalents	13,830,803	14,728,435	14,728,435
Accounts Receivable	341,236	157,953	157,953
Accrued interest receivable	0	0	0
Prepaid expenses	1,225,311	1,170,385	1,170,385
Royalties and Admin. Fees receivable	507,000	705,055	705,055
Total Current Assets	15,904,350	16,761,828	16,761,828
<b><u>Board Designated Accounts:</u></b>			
<b><u>Cromwell Fund:</u></b>			
Cash and Investments at Market Value	2,365,477	2,077,752	2,077,752
Accrued interest receivable	0	0	0
	2,365,477	2,077,752	2,077,752
<b><u>Replacement Reserve Account:</u></b>			
Equipment replacement reserve	1,117,002	1,116,667	1,116,667
Repairs replacement reserve	793,964	793,726	793,726
Furniture replacement reserve	219,839	219,773	219,773
	2,130,805	2,130,166	2,130,166
<b><u>Long-Term Reserve Account:</u></b>			
Cash and Investments at Market Value	22,901,794	19,835,080	19,835,080
Accrued interest receivable	116,968	119,404	119,404
	23,018,762	19,954,484	19,954,484
<b><u>Sections Accounts:</u></b>			
Section Accounts Cash equivalents and Investments at market value	3,629,262	3,527,130	3,527,130
Cash	146,332	8,273	8,273
	3,775,594	3,535,403	3,535,403
<b><u>Fixed Assets:</u></b>			
Furniture and fixtures	1,377,127	1,340,918	1,340,918
Leasehold Improvements	1,368,781	1,366,016	1,366,016
Equipment	8,266,037	8,466,905	8,466,905
Telephone	107,636	107,636	107,636
	11,119,581	11,281,475	11,281,475
Less accumulated depreciation	8,870,169	8,548,569	8,548,569
Net fixed assets	2,249,412	2,732,906	2,732,906
Total Assets	49,444,400	47,192,539	47,192,539
<b><u>LIABILITIES AND FUND BALANCES</u></b>			
<b><u>Current liabilities:</u></b>			
Accounts Payable & other accrued expenses	1,016,900	1,117,148	1,117,148
Deferred dues	7,709,242	7,921,620	7,921,620
Deferred income special	923,076	1,153,845	1,153,845
Deferred grant revenue	55,413	34,780	34,780
Other deferred revenue	852,291	797,941	797,941
Unearned Income - CLE	47,819	53,183	53,183
Payable To The New York Bar Foundation	37,382	35,845	35,845
Total current liabilities & Deferred Revenue	10,642,123	11,114,362	11,114,362
<b><u>Long Term Liabilities:</u></b>			
Accrued Pension Costs	0	734,372	734,372
Accrued Other Postretirement Benefit Costs	7,512,723	7,212,723	7,212,723
Accrued Supplemental Plan Costs and Defined Contribution Plan Costs	360,000	381,559	381,559
Total Liabilities & Deferred Revenue	18,514,846	19,443,016	19,443,016
<b><u>Board designated for:</u></b>			
Cromwell Account	2,365,477	2,077,752	2,077,752
Replacement Reserve Account	2,130,805	2,130,166	2,130,166
Long-Term Reserve Account	15,029,071	11,506,426	11,506,426
Section Accounts	3,775,594	3,535,403	3,535,403
Invested in Fixed Assets (Less capital lease)	2,249,412	2,732,906	2,732,906
Undesignated	5,379,195	5,766,870	5,766,870
Total Net Assets	30,929,554	27,749,523	27,749,523
Total Liabilities and Net Assets	49,444,400	47,192,539	47,192,539

**New York State Bar Association**  
**Statement of Activities**  
**For the Twelve Months Ending December 31, 2017**

	<u>December 2017</u>	<u>December 2016</u>	<u>December 2016</u>
<b>REVENUES AND OTHER SUPPORT</b>			
Membership dues	\$10,049,600	\$10,537,010	\$10,537,010
Section revenues			
Dues	1,306,781	1,360,835	1,360,835
Programs	2,464,082	2,223,618	2,223,618
Continuing legal education program	3,149,481	3,631,127	3,631,127
Administrative fee and royalty revenue	2,474,442	2,493,706	2,493,706
Annual meeting	897,247	865,217	865,217
Investment income	1,028,052	856,515	856,515
Reference Books, Formbooks and Disk Products	1,204,135	1,256,740	1,256,740
Other revenue	166,266	425,172	425,172
	<u>22,740,086</u>	<u>23,649,940</u>	<u>23,649,940</u>
<b>PROGRAM EXPENSES</b>			
Continuing legal education program	2,482,617	2,401,679	2,401,679
Graphics	1,866,244	1,856,614	1,856,614
Government relations program	637,370	591,137	591,137
Law, youth and citizenship program	195,371	193,577	193,577
Lawyer assistance program	182,796	191,929	191,929
Lawyer referral and information services	180,350	181,053	181,053
Law practice management services	101,086	194,450	194,450
Media / public relations services	442,365	360,775	360,775
Meetings services	0	253,540	253,540
Marketing and Membership services	1,597,646	1,655,277	1,655,277
Pro bono program	233,167	169,464	169,464
Local bar program	105,656	126,376	126,376
House of delegates	480,346	454,622	454,622
Executive committee	57,647	46,196	46,196
Other committees	587,314	762,377	762,377
Sections	3,624,531	3,576,180	3,576,180
Section newsletters	150,102	144,522	144,522
Reference Books, Formbooks and Disk Products	980,667	1,027,634	1,027,634
Publications	787,545	779,118	779,118
Annual meeting expenses	338,205	321,137	321,137
	<u>15,031,025</u>	<u>15,287,657</u>	<u>15,287,657</u>
<b>MANAGEMENT AND GENERAL EXPENSES</b>			
Salaries and fringe benefits	3,608,501	3,830,892	3,830,892
Pension plans and other employee benefit plan costs	663,897	44,928	44,928
Rent and equipment costs	1,046,817	919,372	919,372
Consultant and other fees	983,801	972,151	972,151
Depreciation and amortization	753,600	601,546	601,546
Other expenses	255,247	237,335	237,335
	<u>7,311,863</u>	<u>6,606,224</u>	<u>6,606,224</u>
<b>CHANGES IN NET ASSETS BEFORE INVESTMENT TRANSACTIONS AND OTHER ITEMS</b>			
	<b>397,198</b>	<b>1,756,059</b>	<b>1,756,059</b>
Realized and unrealized gain (loss) on investments	2,782,836	629,058	629,058
<b>CHANGES IN NET ASSETS</b>			
	<b>3,180,034</b>	<b>2,385,117</b>	<b>2,385,117</b>
Net assets, beginning of year	<u>27,749,523</u>	<u>25,364,406</u>	<u>25,364,406</u>
Net assets, end of year	<u><u>30,929,557</u></u>	<u><u>27,749,523</u></u>	<u><u>27,749,523</u></u>

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
BAR CENTER, ALBANY, NEW YORK  
NOVEMBER 4, 2017**

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

**PRESENT:** Aidala; Alcott; Barclay; Barreiro; Behrins; Bennett; Berman; Billings; Block; Bloom; Bobrow; Bonina; Bowler; Brown Spitzmueller; Brown, T.; Buholtz; Burke, J.; Burns, S.; Buzard; Calderón; Carola; Castellano; Chandrasekhar; Chang, S.; Chang, T.; Christian; Christopher; Clark; Clarke; Clouthier; Coffey; Cohen, D.; Cohen, O.; Davis; Denton; DiFalco; Disare; Doxey; Doyle; Eberle; Effman; Everett; Fallek; Fay; Fennell; Fernandez; Finerty; First; Fishberg; Flanagan; Foley; Fox, G.; Fox, M.; Freedman, H.; Framkin; Gaddis; Gallagher; Galligan; Genoa; Gensini; Gerbini; Gerstman; Getnick; Gingold; Gische; Gold; Goldfaarb; Greenberg; Grimaldi; Gutekunst; Gutenberger Grossman; Gutierrez; Hack; Hacker; Haig; Heath; Hersh; Hetherington; Himes; Hoffman; Jackson; Jaglom; James; Jochmans; Jones; Kamins; Karson; Kase; Kean; Kiernan, J.; Kiesel; Kirby; Kobak; Koch; Krausz; Lanouette; LaRose; Lau-Kee; Lawrence; Leber; Leo; Lessard; Levin Wallach; Levin; Levy; Madden; Madigan; Mancuso; Mandell, Andrew; Mariano; Maroney; Martin Owens; Martin; May; McCann; McGinn; McNamara, C.; McNamara, M.; Meisenheimer; Miller, C.; Miller, M.; Millett; Millon; Minkoff; Minkowitz; Miranda; Mosher; Moskowitz; Murphy; Napoletano; Nowotarski; Ostertag; Owens; Perlman; Pessala; Pitegoff; Poster-Zimmerman; Prager; Richardson; Richman; Richter; Rivera; Rodriguez; Rosiny; Rosner; Samuels; Schofield; Schraver; Schreiber; Shafer; Shamoan; Champnoi; Sharkey; Shautsova; Singer; Spicer; Spitle; Standard; Starkman; Stieglitz; Strenger; Sullivan; Sweet; Temkin; Tennant; Thaler-Parker; Tully; Vigdor; Vitacco; Weathers; Weiss; Whiting; Wildgrube; Williams; Young; Younger.

The members of the House recited the Pledge of Allegiance and Michael F. Donegan, counsel at the New York State Commission of Correction, sang “God Bless America.”

1. Approval of minutes of June 17, 2017 meeting. The minutes were deemed accepted as previously distributed.
2. Report of Treasurer. Scott M. Karson, Treasurer, reported that through September 30, 2017, the Association’s total revenue was \$20.7 million, a decrease of approximately \$964,000 from the previous year, and total expenses were \$17 million, a decrease of approximately \$60,000 over 2016. Mr. Karson also provided a report on the status of the long-term reserve investments. The report was received with thanks.
3. Report and recommendations of Finance Committee re proposed 2016 income and expense budget. T. Andrew Brown, chair of the Finance Committee, reviewed the proposed budget for 2018, which projects income of \$23,704,135, expenses of \$23,797,360, and a projected deficit of \$93,225. After discussion, a motion was adopted to approve the proposed 2018 budget.
4. Report of The New York Bar Foundation. John H. Gross, President of The New York Bar Foundation, announced the unveiling of a portrait of former Chief Judge Judith S. Kaye for display in the Bar Center. He also presented a report on some of The Foundation’s initiatives, including the establishment of a disaster relief fund, a veterans program, and an awards booklet for distribution at the 2018 Annual Meeting. The report was received with thanks.

5. Report of President. Ms. Gerstman highlighted the items contained in her written report, a copy of which is appended to these minutes. In addition, she updated the House with respect to new committees, judicial vacancies, and membership initiatives.
6. Report of Nominating Committee. Glenn Lau-Kee, chair of the Nominating Committee, reported that the Committee had nominated the following individuals for election to the indicated offices for the 2018-2019 Association year: President Elect: Henry M. Greenberg, Albany; Secretary: Sherry Levin Wallach, White Plains; Treasurer: Scott M. Karson, Melville; Vice Presidents: 1st District – Taa R. Grays, New York City and Carol A. Sigmond, New York City; 2nd District – Aimee L. Richter, Brooklyn; 3rd District – Robert T. Schofield, IV, Albany; 4th District – Matthew R. Coseo, Ballston Spa; 5th District – Jean Marie Westlake, East Syracuse; 6th District – Richard C. Lewis, Binghamton; 7th District – David H. Tennant, Rochester; 8th District – Norman P. Effman, Warsaw; 9th District – Michael L. Fox, Newburgh; 10th District – Peter H. Levy, Jericho; 11th District – Karina E. Alomar, Ridgewood; 12th District – Steven E. Millon, New York; 13th District – Jonathan B. Behrins, Staten Island. The following individuals were nominated to serve as Executive Committee Members-at-Large for a 2-year term beginning June 1, 2018: Earamichia Brown (Diversity Seat), New York City; Mark A. Berman, New York City; Evan M. Goldberg, New York City; Erica M. Hines, Albany; and Tucker C. Stanclift, Queensbury Nominated as Section Member-at-Large was Rona G. Shamoan, Scarsdale. The following individuals were nominated as delegates to the American Bar Association House of Delegates for the 2018-2020 term: Sharon Stern Gerstman, Buffalo; Henry M. Greenberg, Albany; Kathryn Grant Madigan, Binghamton; David P. Miranda, Albany; Kenneth G. Standard, New York City; and Alena Shautsova, Brooklyn (Young Lawyer Delegate). The report was received with thanks.
7. Report and recommendations of Trusts and Estates Law Section. Prof. Ira M. Bloom, chair of the section's Uniform Trust Code Committee, together with section chair Sharon L. Wick, outlined a proposal for a New York Trust Code, which would enable the codification of changed practices and case law. After discussion, a motion was adopted to approve the report and recommendations.
8. Memorial for Ms. Jana Springer Behe. Elizabeth Jean Champnoi, chair-elect of the Corporate Counsel Section, presented a memorial in honor of Jana Springer Behe, chair of the Corporate Counsel Section and a member of the House, who passed away on August 20, 2017. A standing ovation was observed in honor of Ms. Behe's memory and her contributions to the Association and the profession.
9. Report and recommendations of New York County Lawyers Association. Sarah Jo Hamilton, director of NYCLA's Ethics Institute, and Ronald C. Minkoff, chair of NYCLA's Committee on Professionalism and Professional Discipline, presented a report that reviews issues related to providers of online legal documents and makes recommendations for regulations/best practices. They noted that NYCLA had accepted amendments to the report to reference a related ABA report. After discussion, a motion was adopted to approve the report and recommendations as amended. Mr. Coffey abstained from participation.
10. Memorial for Mr. John Eric Higgins. Kenneth G. Standard, Past President, presented a memorial in honor of John Eric Higgins, past chair of the Committee on Diversity and Inclusion and a member of the House, who passed away on September 4, 2017. A moment of silence was observed in honor of Mr. Higgins' memory and his contributions to the Association and the profession.

11. Report of Committee on Membership. Thomas J. Maroney, chair of the Membership Committee, together with Associate Executive Director Elizabeth Derrico, reported on recent committee developments, including the work of the committee's subcommittees. He noted that the committee's January 2018 meeting will be an open meeting and he encouraged members to attend. The report was received with thanks.
12. Report and recommendations of Commercial and Federal Litigation Section. Past President Bernice K. Leber, together with immediate past section chair Mark A. Berman, presented the section's report on the number of women lawyers who serve as litigators, arbitrators and mediators, with recommendations as to steps firms, ADR providers, and clients can take to increase the number of women in litigation and ADR settings. After discussion, a motion was adopted to approve the report and recommendations.
13. Administrative items. Mr. Miller reported on the following items:
  - a. He announced that the House of Delegates Dinner will take place on Thursday, January 25, 2018 at the Metropolitan Club, 1 East 60<sup>th</sup> Street, New York City.
  - b. Elizabeth Derrico, Associate Executive Director, is retiring at the end of 2017 and this would be her last House meeting. The members of the House thanked Ms. Derrico for her service to the Association.
14. New Business. Elena DeFio Kean, chair of the Committee on Leadership Development, announced that the committee would host a luncheon immediately following the meeting to discuss leadership opportunities and the nominating process.
15. Date and place of next meeting. Mr. Miller announced that the next meeting of the House of Delegates would take place on Friday, January 26, 2018 at the New York Hilton Midtown, New York City.
16. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully submitted,



Sherry Levin Wallach  
Secretary



**Sharon Stern Gerstman**

President, New York State Bar Association

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**REPORT OF THE PRESIDENT  
TO THE HOUSE OF DELEGATES  
November 4, 2017**

**CONSTITUTIONAL CONVENTION**

After the House voted in June to support the November 7, 2017 referendum on a constitutional convention, we did a formal kickoff of our “Vote Yes” campaign with a September 19 press conference in Albany. Our focus has been on the goals of fixing New York’s court structure; lifting barriers to voter participation; adjusting the balance between state and local government decision-making; ensuring the rights of New Yorkers; and streamlining the Constitution to meet today’s needs. In addition to the press conference, we have authored articles and dedicated the September Bar News and the October issue of the State Bar Journal to support “Vote Yes.” Our website with resources and videos is available at [www.nysba.org/nyconstitution](http://www.nysba.org/nyconstitution). As we approach November 7, please do all you can to convince your friends and family to vote, turn over the ballot, and vote YES for Proposition One.

**PRESIDENT’S INITIATIVES and NEW COMMITTEES**

New Committees – At its June meeting, the Executive Committee approved the creation of two new committees. The Committee on Cannabis Law will serve as the Association’s focal point on the status of cannabis at both state and federal levels. Its membership is comprised of representatives from a number of Sections that are impacted by this developing area of the law. The Committee on Transportation will focus on issues such as automated transportation and app-based services.

Task Force on School to Prison Pipeline – In my June report, I announced the appointment of this committee to focus on ways to reduce the inmate population in state and federal prisons by reducing the number of children entering prisons. The Task Force has organized and created four subcommittees: 1) Populations Subject to Disparate Treatment; 2) Restorative Justice and other Current Productive Practices; 3) Dignity for All Students Act; 4) Data Analysis and Collection.

## **LEGISLATIVE INITIATIVES**

### Federal Legislative Priorities

I wrote to each member of New York's Congressional Delegation to express the Association's opposition to H.R.3808, the Infrastructure Expansion Act of 2017. This bill, introduced in September, would effectively overrule in all projects involving public money New York State's Labor Law, section 240, which imposes absolute liability on property owners and contractors for falls and elevation-related injuries suffered by workers. Our Association has long held that laws covering the area of civil justice characterized as "tort law" are truly within the province of the states. We have consistently urged that Congress refrain from involving itself in this area. This bill is a clear attempt to enact at the federal level what the sponsor could not achieve when he was in the New York legislature. It will take a level of vigilance because the bill is drafted in a way that only New York will be effected.

### State Legislative Priorities

#### NYSBA'S Legislation to Reform the Power of Attorney (POA)

The Association has developed an affirmative legislative proposal in order to: (1) Simplify the current power of attorney form; (2) Prevent third parties from improperly refusing to accept a consumer's valid power of attorney; (3) Provide protection for third parties who follow the process for accepting a power of attorney; and, (4) Authorize language in the power of attorney form that substantially conforms with the statutory language, in order to prevent the harsh consequence of the form being invalidated because of harmless error in the form. The legislation, A.8120-B, passed the Assembly on June 21. The Senate "same-as" bill, S6501-A, was reported out of the Senate Judiciary Committee, but was not taken up by the full Senate.

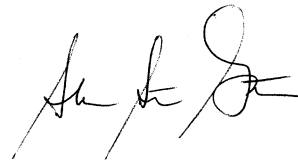
Since the June end of the Regular Legislative Session we have continued our advocacy and work with other stakeholders to ensure passage of a bill that would vastly improve the current law regarding powers of attorney. For more information on our efforts regarding power of attorney, go to <http://www.nysba.org/AssemblyPowerofAttorneyBill>.

## **OTHER ACTIVITIES**

During July, I attended the excellent meetings of our Family Law, Tax and Real Property Sections. These meetings not only provided first rate CLE, but also wonderful networking opportunities with other members and the expert speakers. I enjoyed getting to know so many of the attendees. In August, New York City was the host of the Annual Meeting of the American Bar Association. This meeting was the most successful one in decades due to the extraordinary work of Steve Younger and Mike Byowitz who put together CLE in the City, a firm-hosted cornucopia of cutting edge subjects. As the host State Bar, I was privileged to do welcomes for the National Conference of Bar Presidents (where I gave them an insider's tour of New York), and for the General Assembly (where I bragged about New York's legal history and luminaries). We saw John Feerick receive the Gold Medal (the ABA's highest honor), and heard Governor Cuomo's counsel, Alphonso David, address the House of Delegates. In September, I met with 1Ls at four of our law schools and joined the International Section at its fall meeting in Antigua,

Guatemala, where I participated on a panel on what bar associations could do to cut down on unethical behavior. In October, I was privileged to participate in the opening of the Legal Year of England and Wales, where I participated on a panel regarding technology in expansion of access to justice. There were also plenty of Road Shows, meetings and dinners with county bar associations and a full day budget meeting.

The next meeting of the House of Delegates will take place on Friday, January 26, 2018 at the New York Hilton Midtown in New York City in connection with the Association's Annual Meeting. This year's Presidential Summit is *Race, Slavery and Mass Incarceration*, and will focus on the issues of mass incarceration, implicit bias, wrongful conviction, fines and fees, and systemic litigation to counteract all of the factors which have resulted in the incarceration of so many men and women of color. The complete schedule of programs and registration information may be found online at <http://www.nysba.org/nysba18/>. I look forward to seeing you there.

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

**ANNUAL MEETING  
Agenda Item #3**

**Election of  
2018-2019 Elected Delegates to the  
House of Delegates**

- 1<sup>st</sup> District James B. Kobak, Jr., New York  
Stewart Aaron, New York  
Peter Harvey, New York
- 2<sup>nd</sup> District Andrew M. Fallek, Brooklyn  
Andrea E. Bonina, Brooklyn  
Barton Slavin, Brooklyn
- 3<sup>rd</sup> District Glinesa D. Gaillard, Albany  
Elena DeFio Kean, Albany  
Hermes Fernandez, Albany
- 4<sup>th</sup> District Marne L. Onderdonk, Albany  
Patricia L.R. Rodriguez, Schenectady  
Peter V. Coffey, Schenectady
- 5<sup>th</sup> District Courtney S. Radick, Oswego  
Donald C. Doerr, Syracuse  
L. Graeme Spicer, Syracuse
- 6<sup>th</sup> District Patrick J. Flanagan, Norwich  
Robert M. Shafer, Tully  
Michael R. May, Ithaca
- 7<sup>th</sup> District LaMarr J. Jackson, Rochester  
June M. Castellano, Rochester  
Amy L. Christensen, Bath
- 8<sup>th</sup> District Kathleen Sweet, Buffalo  
Cheryl Smith Fisher, Buffalo  
Oliver C. Young, Buffalo
- 9<sup>th</sup> District Jonah I. Triebwasser, Red Hook  
Andrew P. Schriever, White Plains  
Steven M. Stieglitz, White Plains
- 10<sup>th</sup> District William T. Ferris III, Islandia  
Rosemarie Tully, Huntington  
Peter J. Mancuso, North Bellmore

11<sup>th</sup> District    Lourdes M. Ventura, Albertson  
                      Steven Wimpfheimer, Whitestone  
                      Guy R. Vitacco, Jr., Elmhurst

12<sup>th</sup> District    Samuel M. Braverman, Bronx  
                      Carlos A. Calderón, Scarsdale  
                      Michael A. Marinaccio, White Plains

13<sup>th</sup> District    Edwina Frances Martin, Staten Island  
                      Orin J. Cohen, Staten Island  
                      Claire Cody Miller, Staten Island



# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #7

REQUESTED ACTION: Approval of a resolution proposed by the Committee on Immigration Representation with respect to the presence of Immigration and Customs Enforcement agents in New York courthouses.

Attached is a report and resolution from the Committee on Immigration Representation urging that the U.S. Immigration and Customs Enforcement (ICE) include courthouses as a “sensitive location” in its Sensitive Locations Policy and that Congress pass the Protecting Sensitive Locations Act and amend the Immigration and Nationality Act to codify ICE’s Sensitive Locations Policy. The report states that there has been a marked increase in arrests by ICE agents in New York courthouses, including family court, traffic court, and criminal court, resulting in a chilling effect on immigrants’ willingness to seek the protection of the courts.

In 2011, the then-director of ICE issued a “Sensitive Locations Policy,” listing places where, barring exigent circumstances, ICE agents may not undertake enforcement actions. Courthouses were not included on this list and, under the current administration, ICE has refused to consider courthouses a sensitive location. The committee states that this policy significantly undermines access to justice in New York courts. Accordingly, the committee urges that the court system should be encouraged to take steps to remove ICE agents from courthouses and support legislation to include courthouses as sensitive locations for purposes of immigration enforcement actions.

This report was submitted in November 2017 and posted in the Reports Community. Attached is a memorandum from the Criminal Justice Section supporting the report.

The report will be presented by Camille Mackler, chair of the Committee on Immigration Representation.

New York State Bar Association  
Committee on Immigration Representation  
Proposed Resolution

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

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

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

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

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

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

NOW, THEREFORE, IT IS

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

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

**NYSBA Committee on Immigration Representation**  
**REPORT: Immigration and Customs Enforcement Arrests in Courthouses**

The New York State Bar Association (NYSBA) has long supported and encouraged access to justice for all, including unfettered access to our courts of law. While in the past this has meant championing issues relating to access to affordable counsel or language access issues, recent changes at the Federal level have created new and troubling challenges.

One of the communities most targeted by these changes has been New York's immigrant communities, including those who support and champion them irrespective of legal status. Specifically, since January, 2017 when President Donald Trump assumed control of the White House, there has been a noted increase in arrests by U.S. Immigration and Customs Enforcement (ICE) agents at New York's courthouses, including family court, traffic courts and, most significantly, criminal courts.

These actions, in turn, have had a dramatically chilling effect on immigrants' willingness to avail themselves of the justice system and the protections of the Courts. This Report details the findings of advocates and legal service providers across New York State as to both ICE's activities in and around our courthouses and the devastating impact it has had on our immigrant communities. It further supports the issuance of a Resolution by the NYSBA House of Delegates calling upon ICE to declare courthouses as sensitive locations and upon Congress to codify these protections into law.



## SENSITIVE LOCATIONS POLICY

U.S. Immigration and Customs Enforcement (ICE) is the agency within the U.S. Department of Homeland Security (DHS) charged with internal enforcement immigration laws and other laws relating to national security. ICE is divided into multiple sub-agencies. Those relevant to this report are Enforcement and Removal Operations (ERO), which is tasked with administrative enforcement of the Immigration and Nationality Act (INA), and Homeland Security Investigations (HSI), which handles criminal investigations of crimes threatening national security, including related immigration enforcement actions that have a criminal component.<sup>1</sup> The provisions of the INA that ICE enforces are civil in nature.<sup>2</sup> These include: being present in the United States without lawful status, violating the conditions attached to immigration status, or being removable from the United States based on a criminal conviction.<sup>3</sup> The incidents described in this report relate to civil arrests either by ERO, or by HSI using their administrative authority to enforce civil immigration laws.

The INA mandates that, absent exigent circumstances, ICE civil arrests be made pursuant to administrative warrants signed by the arresting agent's supervisor.<sup>4</sup> These warrants are not reviewed or issued by a judge or other neutral party to determine whether probable

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<sup>1</sup> Immigration and Customs Enforcement, "Who We Are" (last updated September 26, 2017), <https://www.ice.gov/about>.

<sup>2</sup> *Arizona v. United States*, 567 U.S. 387, 396 (2012) ("Removal is a civil, not criminal, matter."); see also *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984) (characterizing a deportation proceeding as "a purely civil action to determine eligibility to remain in this country").

<sup>3</sup> INA § 212.

<sup>4</sup> Immigration Legal Resource Center, "The Basics on ICE Warrants and Detainers" (May 2017), [https://www.ilrc.org/sites/default/files/resources/ice\\_warrants\\_summary.pdf](https://www.ilrc.org/sites/default/files/resources/ice_warrants_summary.pdf).

cause or reasonable suspicion has been objectively established, or to review the accuracy of the charges contained within.<sup>5</sup>

In 2011, then-ICE Director John Morton issued guidance known as the “Sensitive Locations Policy,” enumerating specific places where, barring exigent circumstances, ICE agents may not undertake enforcement actions. These are:

- schools (including preschools, primary schools, secondary schools, post-secondary schools up to and including colleges and universities, and other institutions of learning such as vocational or trade schools);
- hospitals;
- churches, synagogues, mosques or other institutions of worship, such as buildings rented for the purpose of religious services;
- the site of a funeral, wedding, or other public religious ceremony; and
- a site during the occurrence of a public demonstration, such as a march, rally or parade.<sup>6</sup>

The memorandum also states that this is not an exhaustive list, and that agents should check with their supervisors if a place they intend to conduct an enforcement action could reasonably be viewed as a sensitive location.<sup>7</sup> Exigent circumstances allowing for enforcement at sensitive locations include when:

- the enforcement action involves a national security or terrorism matter;
- there is an imminent risk of death, violence, or physical harm to any person or property;
- the enforcement action involves the immediate arrest or pursuit of a dangerous felon, terrorist suspect, or any other individual(s) that present an imminent danger to public safety; or
- there is an imminent risk of destruction of evidence material to an ongoing criminal case.<sup>8</sup>

However, under President Trump, ICE has steadfastly refused to hold courthouses as a sensitive location, stating unequivocally so in a “Frequently Asked Questions” fact sheet

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<sup>5</sup> *Id.*

<sup>6</sup> Memorandum from ICE Director John Morton, Enforcement Actions at or Focused on Sensitive Locations (Oct. 24, 2011), <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

updated as recently as June, 2017.<sup>9</sup> The agency has also made clear that no one is exempt from arrests in courthouses, including victims and witnesses.<sup>10</sup>

## **IMMIGRATION AND CUSTOMS ENFORCEMENT’S INCREASED PRESENCE IN NEW YORK COURTHOUSES**

Since early 2017, immigration lawyers and immigrant advocates have noticed a marked increase in the presence of ICE agents seeking to arrest immigrants in courthouses nationwide<sup>11</sup>

In New York the Immigrant Defense Project (IDP) began tracking ICE arrests, including those made in courthouses across the state and, in June 2017, surveyed 225 attorneys and advocates from 31 New York counties to understand the impact of these increased enforcement actions.<sup>12</sup>

The results of the survey were startling:

- A third of respondents have seen ICE agents in courthouses;
- ICE agents were seen at courthouses in the 5 boroughs of New York City as well as Nassau, Suffolk, Westchester, Columbia, Dutchess, Saratoga, and Putnam Counties<sup>13</sup>;
- 74% of respondents have worked with immigrants who have expressed fear of the courts because of ICE;
- 45% have worked with immigrants who have either failed to file a petition or withdrawn a petition due to fear of encountering ICE in the courts;
- 48% say their clients have expressed fear of calling police for fear of ICE; and
- 29% have worked with immigrants who failed to appear in court due to fear of ICE.<sup>14</sup>

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<sup>9</sup> Immigration and Customs Enforcement, “FAQ on Sensitive Locations and Courthouse Arrests” (last updated June 13, 2017), <https://www.ice.gov/ero/enforcement/sensitive-loc>.

<sup>10</sup> Devlin Barrett, “DHS: Immigration Agents May Arrest Crime Victims, Witnesses at Courthouse”, The Washington Post (April 4, 2017), [https://www.washingtonpost.com/world/national-security/dhs-immigration-agents-may-arrest-crime-victims-witnesses-at-courthouses/2017/04/04/3956e6d8-196d-11e7-9887-1a5314b56a08\\_story.html?utm\\_term=.5fcacdd0ea34](https://www.washingtonpost.com/world/national-security/dhs-immigration-agents-may-arrest-crime-victims-witnesses-at-courthouses/2017/04/04/3956e6d8-196d-11e7-9887-1a5314b56a08_story.html?utm_term=.5fcacdd0ea34).

<sup>11</sup> James Queally, “ICE Agents Make Arrests at Courthouses, Sparking Backlash from Attorneys and State Supreme Court”, Los Angeles Times (March 16, 2017), <http://beta.latimes.com/local/lanow/la-me-ln-ice-courthouse-arrests-20170315-story.html>

<sup>12</sup> Immigrant Defense Project, “ICE in New York State Courts Survey”, <https://www.immigrantdefenseproject.org/ice-courts-survey>.

<sup>13</sup> In addition to these counties encompassed in the survey, news reports have also reported ICE arrests at Saratoga County courthouses. See Wendy Liberatore, “ICE Arrests Mexican Man Outside Saratoga City Court”, (November 2, 2017), <http://www.timesunion.com/news/article/ICE-arrests-Mexican-man-outside-Saratoga-city-12327064.php>

<sup>14</sup> *Id.*

In one particularly troubling incident, witnessed by a WNYC reporter who happened to be in the building at the time, ICE agents came to arrest a Chinese woman who was appearing at the Human Trafficking Intervention Court in Queens.<sup>15</sup> The woman was appearing in court to accept an adjournment in contemplation of dismissal.<sup>16</sup> In part due to this incident, and another in a Texas Court where a domestic violence victim was arrested by ICE when she appeared to request an order of protection against her abuser,<sup>17</sup> ICE's presence in courthouses have had a particularly terrible effect on survivors. According to the IDP survey:

- 67% of advocates working with survivors of violence have had clients who decided not to seek help from the courts due to fear of ICE;
- 50% have worked with immigrants who are afraid to go to court because their abusive partners have threatened that ICE will be there;
- 37% have worked with immigrants who have failed to pursue an order of protection due to fear of ICE;
- 48% have worked with immigrants who have failed to seek custody or visitation due to fear of ICE;
- 37% have worked with immigrants who have failed to seek a U certification verifying that they are a victim of violence (through the courts, from police, or from a District Attorney's office); and
- 46% have worked with immigrants who have expressed fear of serving as a complaining witness.<sup>18</sup>

In addition, ICE's presence in courts results in Immigrant New Yorkers facing criminal charges to choose between equally difficult options. They must either give up their constitutional rights and plead guilty early to avoid future court appearance; fail to appear altogether and risk a warrant being issued; or risk coming back to court in a system that is

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<sup>15</sup> Beth Fertig, "When ICE Shows Up in Human Trafficking Court", WNYC (June 22, 2017), <http://www.wnyc.org/story/when-ice-shows-court/>.

<sup>16</sup> *Id.*

<sup>17</sup> Richard Gonzales, "ICE Arrests Alleged Victim of Domestic Abuse at Texas Courthouse," National Public Radio (February 16, 2017), <https://www.npr.org/sections/thetwo-way/2017/02/16/515685385/ice-detains-a-victim-of-domestic-abuse-at-texas-courthouse>

<sup>18</sup> Immigrant Defense Project, "ICE in New York State Courts Survey", <https://www.immigrantdefenseproject.org/ice-courts-survey>.

backlogged and can take months or years to get to trial, exposing themselves to an ICE arrest at each interim court appearance. Moreover, ICE agents have picked up defendants from court and arraignments while cases are ongoing, causing judicial delay in the criminal court, resulting in their inability to defend themselves against the charges they face, and ultimately resulting in a lack of closure for victims and defendants who have not had the opportunity of a final determination on the case.<sup>19</sup> In one such case, a 38-year old Salvadoran man was charged with a DWI but did not appear in Court out of fear of ICE arrests.<sup>20</sup> In that instance, ICE came to court multiple times to find the Defendant, who was ultimately issued a bench warrant because of his failure to appear in Court out of fear of being detained by ICE.<sup>21</sup>

#### **NEW YORK'S RESPONSE TO DATE**

The Trump Administration, and ICE specifically, have been public about the fact that they are targeting jurisdictions like New York, so-called "Sanctuary Jurisdictions", to send a message that they will not tolerate policies that seek to protect immigrants.<sup>22</sup> Nonetheless, across New York State, ICE has made arrests in localities that have no sanctuary policies.<sup>23</sup> New Yorkers have responded by rejecting ICE's presence in court houses.

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<sup>19</sup> Justine Olderman, "Trapping Immigrants Using NYC Courts", The New York Daily News (April 10, 2017), <http://www.nydailynews.com/opinion/trapping-immigrants-nyc-courts-article-1.3031295>

<sup>20</sup> Liz Robbins, "A Game of Cat and Mouse With High Stakes: Deportation," The New York Times, (August 3 2017), <https://www.nytimes.com/2017/08/03/nyregion/a-game-of-cat-and-mouse-with-high-stakes-deportation.html>.

<sup>21</sup> *Id.*

<sup>22</sup> Maria Sacchetti, "Trump Administration Targets 'Sanctuary Cities' in Latest Wave of Immigration Arrests," The Washington Post (September 28, 2017), [https://www.washingtonpost.com/local/immigration/trump-administration-targets-sanctuary-cities-in-latest-wave-of-immigration-arrests/2017/09/28/9b5e7de2-a477-11e7-ade1-76d061d56efa\\_story.html?utm\\_term=.6fc2c547ecca](https://www.washingtonpost.com/local/immigration/trump-administration-targets-sanctuary-cities-in-latest-wave-of-immigration-arrests/2017/09/28/9b5e7de2-a477-11e7-ade1-76d061d56efa_story.html?utm_term=.6fc2c547ecca)

<sup>23</sup> Wendy Liberatore, "ICE Arrests Mexican Man Outside Saratoga City Court", (November 2, 2017), <http://www.timesunion.com/news/article/ICE-arrests-Mexican-man-outside-Saratoga-city-12327064.php>.

In the spring and again in the summer of 2017, 110 organizations submitted letters to state Chief Judge Janet DiFiore and Chief Administrative Judge Lawrence Marks urging them to take steps to prevent ICE from engaging in enforcement actions in courts.<sup>24</sup> Over the summer, New York Attorney General Eric Schneiderman and Kings County District Attorney Eric Gonzalez jointly called for ICE to cease enforcement activities in New York’s courts, noting that ICE’s presence interferes with the criminal justice system by making both defendants and witnesses afraid of going to court.<sup>25</sup> Similarly, after the incident at the Queens Human Trafficking Intervention Court in June, “state Chief Judge Janet DiFiore said she was ‘greatly concerned’ and that courts should be treated like schools, hospitals and other sensitive locations that the city considers off-limits to ICE.”<sup>26</sup>

In March, New York Congressman Adriano Espaillat introduced H.R. 1815, the “Protecting Sensitive Locations Act”, in Congress. A similar bill, S. 845, was introduced in the Senate by Connecticut Senator Richard Blumenthal and co-sponsored by New York Senator Kirsten Gillibrand.

Both bills intend to expand upon and codify the sensitive locations memoranda from ICE and CBP by outlawing immigration-related enforcement actions at or near sensitive locations unless (1) exigent circumstances exist; and (2) prior approval is obtained. Both bills would apply

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<sup>24</sup> Immigrant Defense Project, “ICE Out of Courts New York State Campaign”, <https://www.immigrantdefenseproject.org/ice-courts-nys/>

<sup>25</sup> Liz Robbins, “A Game of Cat and Mouse With High Stakes: Deportation,” *Supra*.

<sup>26</sup> Beth Fertig, “Should Immigration Agents Be Allowed to Wait Around Courts to Arrest People?” PRI’s The World, (June 26, 2017), <https://www.pri.org/stories/2017-06-26/should-immigration-agents-be-allowed-wait-around-courts-detain-people>.

to any agency within DHS and also include local law enforcement officials who have been deputized to conduct immigration enforcement under INA § 287(g).<sup>27</sup>

Both bills would expand the locations deemed sensitive, as compared to current ICE and CBP guidance. Notably, both bills include the space within 1,000 feet of each location, as well as the location itself.<sup>28</sup> Both bills mirror the current guidance in that they include in their list of protected locations schools (including school-related activities), medical facilities, places of worship, public ceremonies and public celebrations or demonstrations<sup>29</sup>

Both bills would expand beyond current guidance, however, by adding not only courthouses, but also lawyers' offices and probation offices. Specifically, the House bill would prevent DHS enforcement at "any Federal, State, or local courthouse, including the office of an individual's legal counsel or representative, and a probation office."<sup>30</sup> The Senate bill would go further by preventing enforcement at "any Federal, State, or local courthouse, including the office of an individual's legal counsel or representative, and a probation, parole, or supervised release office."<sup>31</sup>

Finally, both bills list as sensitive locations places that provide emergency services, shelter, and food as well as domestic violence services, rape crisis centers, and family justice centers.<sup>32</sup> The House bill would also include Congressional district offices, public assistance offices, social security offices, and motor vehicle departments.<sup>33</sup>

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<sup>27</sup> H.R. 1815, §§ 2(i)(2)(A)(i)-(ii); S. 845, §§ 2(i)(2)(A)(i)-(ii).

<sup>28</sup> H.R. 1815, § 2(i)(7)(E); S. 845, § 2(i)(1)(E).

<sup>29</sup> H.R. 1815, § 2(i)(7)(E); S. 845, § 2(i)(1)(E).

<sup>30</sup> H.R. 1815, § 2(i)(7)(E)(x).

<sup>31</sup> S. 845, § 2(i)(1)(E)(vii).

<sup>32</sup> *Id.*

<sup>33</sup> H.R. 1815, §§ 2(i)(7)(E)(xi)-(xiv).

If any DHS agent violates the bills, the information gathered during those enforcement actions could not be entered into evidence or used during removal proceedings, and the subject of the removal proceedings could move for immediate termination.<sup>34</sup>

## **CONCLUSION**

ICE's presence in New York State's courthouses has created a devastating and chilling impact on immigrant New Yorkers' ability to access the judicial system to defend themselves against criminal charges, participate in the prosecution of crimes, and obtain remedies, including sometimes life-saving protections, from our courts. These actions seriously and significantly undermine immigrant New Yorkers' access to justice through our courts, something that is antithetical to the Association's mission and the commitment we have made to our immigrant communities. For these reasons, the Committee on Immigration Representation respectfully urges the New York State Bar Association to request that ICE no longer operate in New York's courthouses, to support and encourage our court system to take all steps available to remove ICE agents from the courts, and to encourage and support our elected members of Congress who are working on passing the "Protecting Sensitive Locations Acts" in their respective chambers.

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<sup>34</sup> H.R. 1815, § 2(i)(4); S. 845, § 2(i)(2)(C).





**CRIMINAL JUSTICE SECTION**

2017-2018 Officers

12/7/2018

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**Statement from the New York State Bar Association Criminal Justice Section Executive Committee on ICE in Courts**

**ROBERT J. MASTERS**

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The New York State Bar Association Criminal Justice Section Executive Committee joins with the Committee on Immigration Representation to call on the federal government to classify courthouses as sensitive locations for the purposes of immigration enforcement.

**DAVID LOUIS COHEN**

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Arrests by Immigration and Customs Enforcement (ICE) agents in New York courthouses harm all New Yorkers who seek access to justice in our state courts. The Criminal Justice Section Executive Committee consists of judges, prosecutors and defense attorneys who practice law in criminal courts across the state. Our members are keenly aware that ICE arrests in courts deter non-citizens and their family members from filing complaints, testifying as witnesses, or from defending themselves against allegations of criminal conduct. Prosecutors, defense attorneys and judges alike have spoken out publicly against the proliferation of ICE arrests in our courts. Such arrests undermine the orderly functioning of the courts and cast a shadow on the court's ability to administer fair and impartial justice.

**LEAH R. NOWOTARSKI**

Treasurer  
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**IMMEDIATE PAST CHAIR**

Sherry Levin Wallach

No person should fear arrest, detention and deportation from this country because they sought to access justice in our courts. Courthouses are crucial components of a functioning democracy and must be accessible to all people, regardless of race, creed or country of origin. Like hospitals, schools and places of worship, courts should be classified as sensitive locations to ensure that they are open to serve all New Yorkers equally.

For these reasons, the Section recommends that the General Assembly adopt the Committee on Immigration Representation's Proposed Resolution on Immigration and Customs Enforcement Arrests in Courthouses.



# Staff Memorandum

HOUSE OF DELEGATES  
Agenda Item #7

To supplement the other materials in your package, attached is (a) a memorandum from the New York City Bar Association supporting the report and recommendations of the Committee on Immigration Representation and (b) a memorandum from the Committee on Legal Aid supporting the report and suggesting additions to the resolution being offered by the committee.



NEW YORK  
CITY BAR

**COMMITTEE ON FAMILY  
COURT AND FAMILY LAW**

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The New York City Bar Association **supports** the New York State Bar Association's Proposed Resolution, submitted by the Committee on Immigration Representation, to designate and include courthouses as "sensitive locations". Allowing all people, regardless of status, to avail themselves of judicial relief free from the fear of Enforcement Agents, will not only assist individuals needing aid and protection, but will also benefit and support our diverse communities. This designation will further enhance access to justice in communities that often need it the most. Therefore, we respectfully urge adoption of the resolution which (1) calls upon Immigration and Customs Enforcement to designate courthouses as a "sensitive location" in its Sensitive Location Policy, and (2) calls upon Congress to amend Section 287 of the Immigration and Nationality Act to codify the Sensitive Locations Policy to include courthouses as a sensitive location therein.

Family Court and Family Law Committee

Glenn Metsch-Ampel, Chair

Marjorie Cohen, Chair, Immigration & Children Subcommittee

Resolution also supported by:

Civil Court of the City of New York Committee

Council on Judicial Administration

Criminal Justice Operations Committee

Immigration and Nationality Law Committee

Pro Bono and Legal Services Committee

State Courts of Superior Jurisdiction Committee

Women in the Courts Committee

Date: January 11, 2018

From: The Committee on Legal Aid Co-chairs, Keisha Williams and Sergio Jimenez

Subject: Comments to the Committee on Immigration Representation's Report and Proposed Resolution

The Committee on Legal Aid is in support of the Committee on Immigration Representation's report and proposed resolution. Also, the Committee on Legal Aid suggests the following additions to the resolution.

(suggested addition between current 6th and 7th WHEREAS clauses)

WHEREAS, advocacy efforts by top judicial, law enforcement, and elected officials nationwide have failed to yield a change in the ICE sensitive locations policy; and

WHEREAS, ICE's enforcement actions have become more disruptive to the administration of justice and due process in New York's Unified Court System in 2017; and

(suggested addition after the first two "RESOLVED" clauses)

RESOLVED, that the New York State Bar Association urges the New York Office of Court Administration to promulgate rules that 1) require a judicial warrant when civil arrests that are not related to a proceeding in New York's Unified Court System are executed within a courthouse of the Unified Court System; 2) prohibit employees of New York's Unified Court System from seeking information about the immigration status of any individual within any courthouse of the Unified Court System unless that immigration status is necessary for the determination or provision of services or benefits; and 3) limit employees of the Unified Court System to only providing assistance or cooperation with federal immigration enforcement activities in any courthouse of the Unified Court System if such assistance or cooperation is required by 8 U.S.C. § 1373.



# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #9

**REQUESTED ACTION:** Approval of the report and recommendations of the Committee on Diversity and Inclusion.

As part of its mission, the Committee on Diversity and Inclusion is charged with conducting biennial surveys to evaluate the level of diversity in Section leadership, membership and activities. Surveys have been conducted since 2005; this year, the committee conducted its seventh survey. The attached report reviews the results of the 2017 survey and compares those results to the previous surveys.

Also included in the report is a review of diversity efforts by eight Association sections selected by the committee, to be used by sections to create and achieve goals.

The committee is making the following recommendations:

- The Association should retook its request for member profiles with respect to diversity and highlight the importance of data.
- Sections that do not currently provide a leadership opportunity for young lawyers should create such an opportunity, such as a seat on the section's Executive Committee. In addition, the Young Lawyers Section should continue to recruit diverse attorneys to serve as liaisons to sections.
- Diversity plan guidelines should be developed to assist in standardizing data collection and reporting of section diversity initiatives.
- Prior recommendations that have not been implemented should be considered for action.
- A team should be designated to collect and analyze data and research the history of prior recommendations.
- Unavailable report cards should be republished and made available on the Committee on Diversity and Inclusion's website.

- Members should receive regular communications about the importance of reviewing the diversity report card and participating in the member profile.

The report will be presented at the January 26 meeting by committee chair Sandra H. Buchanan



NEW YORK STATE BAR ASSOCIATION

DIVERSITY REPORT CARD

SEVENTH EDITION, 2017

JANUARY 2018  
COMMITTEE ON DIVERSITY AND  
INCLUSION

THIS EDITION OF THE DIVERSITY REPORT CARD IS DEDICATED TO THE MEMORY OF JOHN ERIC HIGGINS, ESQ., A MEMBER OF THE NEW YORK STATE BAR ASSOCIATION FOR OVER 25 YEARS AND AN ACTIVE PARTICIPANT IN MANY AREAS OF THE ORGANIZATION, INCLUDING HIS LEADERSHIP AND SERVICE ON THE HOUSE OF DELEGATES AND THE COMMITTEE ON DIVERSITY AND INCLUSION AS CHAIR OF THE DIVERSITY REPORT CARD SUBCOMMITTEE. JOHN WAS ALSO PAST CHAIR OF THE COMMITTEE ON MINORITIES IN THE PROFESSION, FOUNDER OF THE CONSTANCE BAKER MOTLEY SYMPOSIUM AND THE MOVING FORCE BEHIND THE MILES TO GO REPORT.

BECAUSE OF JOHN'S WORK, WE CONTINUE OUR VISION TO RAISE AWARENESS OF THE NEED FOR A DIVERSE AND VIBRANT LEGAL PROFESSION.



**NEW YORK STATE BAR ASSOCIATION, THE COMMITTEE ON DIVERSITY AND INCLUSION  
DIVERSITY REPORT CARD  
SEVENTH EDITION, 2017**

**I. INTRODUCTION**

The New York State Bar Association is deeply committed to enhancing diversity at every level of participation within the association and the profession.<sup>1</sup> Similarly, the mission of the Committee on Diversity and Inclusion is to promote and advance the full and equal participation of attorneys of color, women and other diverse attorneys in the Association and in all sectors and at every level of the legal profession through research, education, fostering involvement and leadership development in the Association and other professional activities, and to promote knowledge of and respect for the profession in communities that historically have been excluded from the practice of law. Therefore, with the support of the Association, the Committee continues to make regular requests that all NYSBA members complete their diversity profile as part of their member census as a means to evaluate the level of diversity in Section leadership, membership and activities and report those results. The initial survey was conducted in 2005 by the Committee on Diversity and Leadership Development.

The subsequent Committee on Minorities in the Profession (now known as The Committee on Diversity and Inclusion) transposed the results of that survey into a Diversity Report Card, which the Executive Committee considered as an informational item at its June 23rd and 24th meeting of 2005. The results of that survey were published as the first report, now called the Diversity Report Card. The chart below provides a brief history of the Diversity Report Card's development.

**A. DIVERSITY REPORT CARD TIMELINE**

- 2005 (First Edition) Diversity data reported included gender, ethnicity/race and disability status. Nearly half of all Sections appointed a diversity chair and/or formed a diversity committee and developed a diversity plan.
- 2007 (Second Edition) Report was circulated at the Section Leaders Conference to foster increased diversity awareness. Report was also posted on the

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<sup>1</sup> On November 8, 2003, the Association's House of Delegates adopted a diversity policy, which reads:

*The New York State Bar Association is committed to diversity in its membership, officers, staff, House of Delegates, Executive Committee, Sections and Committees and their respective leaders. Diversity is an inclusive concept, encompassing gender, race, color, ethnic origin, national origin, religion, sexual orientation, age and disability.*

*We are a richer and more effective Association because of diversity, as it increases our Association's strengths, capabilities and adaptability. Through increased diversity, our organization can more effectively address societal and member needs with the varied perspectives experiences, knowledge, information and understanding inherent in a diverse relationship.*

Association's Web site and report narrative was published in the State Bar News.

- 2009 (Third Edition) Sexual orientation was added as a category to diversity data reporting.
- 2011 (Fourth Edition) The report included diversity data on House of Delegates and NYSBA Executive Committee membership. Diversity Section Challenge – year 1.
- 2013 (Fifth Edition) The report includes member diversity data in NYSBA governance, broken down by Judicial District.
- 2015 (Sixth Edition) Age data of overall Association membership added.
- 2017 (Seventh Edition) The report spotlights eight Sections of the Association in order to highlight improvements and provide specific recommendations.

This report continues to highlight the need for raising the level of diversity awareness within the profession and increase opportunities for diverse attorneys to serve in Association leadership positions.

The Committee has worked with NYSBA staff to create surveys that collect data on specific demographics that capture and assess the current data and trends within the membership and leadership of the Association.

In order to encourage member participation, member comments are read and changes are made to the survey instruments based on this feedback. In particular, the method of data collection has changed from paper surveys to an online format in 2009, to make it easier for members to participate. Categories of interest have been added and definitions changed. Currently the profile lists sexual orientation options as either "Heterosexual" or as "Lesbian/Gay/Bisexual." Data collection will be improved in the diversity profile when the transgender category is moved and placed as a separate option for "GENDER." Plans have been made to have this accomplished by the next Diversity Report Card in 2019.

The 2017 report card's format also has been revised so that readers can more easily see trends within their Section. This new format is intended to allow the report card to be used as a tool to help all Sections reach their diversity goals. The color-coded breakdown reveals where each Section's demographics are in comparison to the general NYSBA membership and Section leadership. The format also highlights areas where each Section has made strides concerning diversity issues, and areas where improvements can be made. These observations are based on the Section's diversity data.

The latest new feature for 2017 includes recommendations for a small group of Sections, which are recognized for their diversity achievements. The Diversity Report Card Subcommittee also gathered other diversity-related data and information from the respective Section leadership to

illuminate the findings of the Report Card. Lastly, the Committee made specific recommendations for achieving additional diversity goals, which is published in the Report. The Subcommittee recommends spotlighting each Section in the next edition of the Diversity Report Card, slated for 2019.

**B. MEMBER CENSUS PARTICIPATION**

One recurring challenge for the report card has been with the collection of data in terms of full participation by all NYSBA members. The rates of participation are low as evidenced by the percentage of members who have not provided gender, race/ethnicity, sexual orientation or physical disability data. The non-participation rate includes both members who have “declined to answer” and non-responsive members from the table below.

**OVERALL DATA COLLECTION**

	<b>Decline to Answer</b>		<b>No Data Provided</b>	
	<b>2015</b>	<b>2017</b>	<b>2015</b>	<b>2017</b>
Gender	0%	0%	6.16%	17.84%
Race / Ethnicity	1.67%	2.06%	54.23%	54.75%
Sexual Orientation	3.25%	3.67%	68.31%	66.33%
Physical Disability	7.09%	5.76%	55.45%	56.24%

Although the percentage of individuals who provide gender data is high, the non-participation (no data provided) rate for gender has increased by 11.68% since 2015 to 17.84%. The non-participation rate for race/ethnicity remained steady from 2015 to 2017. The non-participation rates for sexual orientation decreased slightly, but two-thirds of NYSBA membership still does not share data in this category, with more than half of its membership not providing data regarding disability status.

The message that the Committee continues to express is that without accurate statistics on NYSBA membership and attorneys in New York State, programs and services may not accurately reflect the needs of the members. Also, data is needed to inform staff where additional outreach and training is needed. The non-responsive data, in the Committee’s view, informs us that we have not reached a majority of members in connecting the import of this information to the Association’s work and the profession.<sup>2</sup> The Association must continue to discuss issues related to and celebrate “Race/Ethnicity,” “Sexual Orientation,” and “Physical Disability” for all members of the Association. Also, in order to get more accurate statistics and increase

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<sup>2</sup> This is not just a challenge within the Association. The New York State Office of Court Administration (OCA) has been collecting demographic data for nearly 10 years, as was recommended in a 2007 report, *Miles To Go In New York: Measuring Racial and Ethnic Diversity Among New York Lawyers*.<sup>2</sup>

participation, the Committee will consider additional changes to the reporting data, including creating more areas to provide information on one's background and orientation.

## II. METHODOLOGY

While the scope of the 2017 Diversity Report Card is focused on Section data and trends since 2015, it was important to review the range of recommendations throughout the history of the report card to see what areas of interest changed or were repeated. The Committee was primarily interested in assessing any positive impacts on Section's diversity outcomes since the 2015 Diversity Report Card.

The Association and its Sections have implemented prior recommendations such as the Office of Bar Services maintaining a list of affinity bar associations and its leadership. Many Sections have developed diversity committees, selected diversity chairs and participated in our Committee meetings, sharing their diversity challenges and strides.

There are, however, recommendations that have not yet been implemented. The Committee encourages analysis of the prior Diversity Report Cards and discussion by Sections and Leadership to create future diversity goals and plans. The Diversity Report Card Subcommittee will work during the non-reporting year to discuss such planning with individual sections to encourage planning of and action on such goals.

The Committee continues to recommend adequate staffing in the Association to meet the needs of collecting, analyzing and reporting on membership data (Miles to Go In New York: Measuring Racial and Ethnic Diversity Among New York Lawyers" 2007, p.25 ["systemic reporting requires systemic staffing; that is a full-time, specialized position in the NYSBA administration"]).

A new NYSBA staff position was created in 2016 to coordinate issues concerning diversity and inclusion, including working on the report card. A full-time staff was hired in March of 2017. According to the May 2017 edition of the Section Leaders Conference handbook:

*"The Membership Diversity and Inclusion Coordinator is responsible for overseeing and facilitating the Associations efforts to increase diversity and inclusion within the Associations leadership and in the legal profession on New York State, through outreach and coordination efforts with the Associations Sections and Committees.*

*This position also "[s]erves as a resource to NYSBA Section leadership, their diversity committees and Section staff liaisons regarding educational programming focused on elimination of bias and promoting diversity and inclusion, participates in membership development, engagement and retention strategies and performs outreach to diverse communities of relevance to the professional legal community including not-for profits, affinity bar associations and law schools."*

In Summer 2017, staff began working on the Diversity Report Card. In assessing the 2015 Diversity Report Card, the Membership D&I Coordinator discovered that only two of five recommendations had been acted upon. Namely, the Committee invited liaisons from Sections to its meetings, and the Association published the Report Card online with its results shared in the *State Bar News*. However, the prior recommendation, published in each report since 2007, to create public service announcements (PSAs) explaining the need for participation in the diversity profile has not been adopted. Additionally, no action has yet been taken to (1) hire a law student or intern to help with the report card or (2) to have a calendar of diversity events created (NYSBA Diversity Report Card, Fall 2015 p.30-32).

In the fall of 2017, the new Diversity & Inclusion Coordinator addressed the repeated recommendation concerning the creation of informational PSAs highlighting the importance of participating in the diversity profile. In conjunction with the Association's new Marketing Director and Digital Media Specialist, work started on the development of a series of PSAs, with an anticipated debut of the first PSA to be at Annual meeting 2018. Additionally, a Community page was created for the Section Diversity Chairs, as an online forum for Sections to share best practices concerning diversity and inclusion efforts, to facilitate discussions about the Diversity Report Card and other diversity issues, and to provide relevant resources to the Section Diversity Chairs. One of the resources is to provide each Section's demographic data in easy-to-read graphics with corresponding summary recommendations. During the drafting of this Diversity Report Card, the D&I Coordinator resigned and recommended that outside consultants experienced in the field of Diversity and Inclusion be hired to encourage and implement structural change for the organization. This particular issue should be carefully analyzed, as no diversity initiative can survive or thrive without a proper foundation or infrastructure that supports its values and goals. Further, it is likely that the Association needs data-collecting professionals to address the reporting needs of the Association.

Nonetheless, the Committee would like this report card to be used as a tool by the Section Chairs, with the Diversity Chairs and staff liaisons, to enhance their Sections' diversity efforts. Thus, even though the Committee is compelled to recommend consultants to advise on the organizational readiness to support a sustaining diversity initiative, we also challenge the Association to continue to analyze the data and implement constructive change.

The next section analyzes the demographic data. The eight Sections with specific recommendations this year can use the Committee on Diversity and Inclusion as a resource until the organization responds to the call for D&I consultants. Additionally, other Sections can similarly analyze their respective data and call upon the Committee's help to create a plan, document their goals and implement them.

### III. STRIDES AND RECOMMENDATIONS

#### A. THE SECTIONS:<sup>3</sup>

##### ANTI-TRUST

Summary: The Anti-Trust Section is commended for having a high percentage of women as Leaders and Executive Committee Members as compared to NYSBA as a whole, specifically 45% and 43% respectively. Although approximately half of section members and more than a third of section leaders did not report ethnicity, among the members who did report, it appears that racial diversity in its general membership and leadership should be a specific goal for this section, as well as encouraging members to complete their profiles would greatly help the section and the Association increase efforts to target diverse anti-trust attorneys.

Specific recommendations: The Committee encourages the Section Chair and Diversity Chair to be proactive and recruit diverse lawyers as Members, Leaders and Executive Committee Members. Leadership can do this by promoting current members of color to leadership positions, utilizing NYSBA's Office of Bar Services to create an outreach strategy to affinity bars and coordinating with NYSBA's Membership Diversity and Inclusion Coordinator to create diversity initiatives that will attract more diverse members. Additionally, each section could join in pipeline efforts to increase diversity by showcases this practice area to college and law students.

The Anti-trust Section responded to this Committee's survey on diversity by stating its commitment to diversity as follows:

A Broad and Inclusive Definition of Diversity in the NYSBA Antitrust Section

In our experience, antitrust as a nationwide practice is not a particularly diverse area of the law. Indeed, in recent Section efforts to recruit diverse new lawyers, we sought feedback and have learned that antitrust is often viewed by law students and newer lawyers as more complex and inaccessible than other disciplines. Our perception is that a lack of diversity is an issue that is not specific to New York, and that our Section is likely more diverse than the overall antitrust bar due to its longstanding efforts on this topic. We have also contacted the ABA Antitrust Section to see if there is current data on the diversity of the nationwide practice area. Should we receive any information that is useful to our continuing efforts, we will share it with your Committee.

The Antitrust Section reflects a diversity of membership that extends beyond the categories described in the 2017 Report Card (e.g., age, disability, sexual orientation, race/ethnicity, gender). Our Section membership and inclusion efforts reflect a broad definition of "diversity" in our members, which we have found has

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<sup>3</sup> As an example of how the report card can be used as a tool to improve diversity outcomes, the Committee chose eight Sections, to highlight areas of achievement and areas where improvement is still needed based on the Section's demographic data and on their diversity plan, if they have one and initiatives.

helped to foster a constant and vigorous dialogue regarding antitrust law and policy, enforcement and cases:

- Gender
- LGBT / Sexual Orientation
- Race /Ethnicity
- Plaintiff, defense, in-house, government / public service attorneys, academia
- Upstate / northern New York practitioners
- International (vs. US-only practitioners)
- Law students and newer attorneys (e.g., attorneys in their first 5-10 years of practice)
- Attorneys who practice in related subject matter areas (e.g., litigation and white collar)

As the 2017 Diversity Report Card recognizes, the Antitrust Section has a higher percentage of women as Leaders and Executive Committee Members as compared to the NYSBA as a whole. More generally, antitrust is a practice area that reflects increasing gender diversity, but still requires more efforts to attract attorneys of color and from other diverse backgrounds.

#### Leadership of the Executive Committee and Section Committees Reflect Diversity

We understand that due to limitations of the NYSBA's data, including that members may not report their own ethnicity or other information, the data for the Antitrust Section is not complete. For example, the Report incorrectly states that the Antitrust Section leadership does not have Asian members, even though there are multiple Executive Committee members who are Asian, including the Section's Diversity Chair. The Section's Leadership and Executive Committee and substantive Committees include diverse members. For example:

- Section leadership (officer-level) includes LGBT and women attorneys.
- More than 40% of the Executive Committee's members are women, and the Committee includes LGBT members, African American and Asian attorneys, lawyers who are within their first ten years of experience, and attorneys who practice in Northern/upstate New York and outside of New York State. The Executive Committee shows the diverse thought leadership of the Section: EC members come from private practice, both the defense and plaintiff's bars, federal and state government antitrust agencies, academia, and in-house in multi-national corporations. Finally, the membership is growing in diversity due to members who are either internationally-qualified and/or frequently practice in cross-border areas of antitrust. The Section sponsored its first panel focused on merger enforcement in China this year, featuring expert panelists from Jun He, a top firm in Beijing.

- The Antitrust Section also has multiple substantive Committees, which provide significant opportunities for newer attorneys in their first 10 years of practice to gain leadership experience in the Section. These Committees develop written content (e.g., newsletters) and antitrust-related panels and other programs that showcase the talent in the Section. Each of these Committees also reflects the diversity of the Section and includes members who are diverse from a race / ethnicity and gender perspective, as well as members who are government enforcers. The following substantive Committees have diverse members: Mergers Committee, Cartel & Criminal Practice Committee, Unilateral Conduct Committee, Coordinated Conduct Committee, Class Action Committee.

Online rosters for these committees are available at:

[http://www.nysba.org/Sections/Antitrust\\_Law/Committees/Antitrust\\_Section\\_Committees.html](http://www.nysba.org/Sections/Antitrust_Law/Committees/Antitrust_Section_Committees.html)

Diversity and Membership Committee Initiatives to Increase Diversity

The Antitrust Section has undertaken important initiatives specifically aimed at increasing race / ethnicity and other diversity in its membership:

- *Antitrust Diversity Fellowship with the New York Bar Foundation:* Since 2013, the Antitrust Section has co-sponsored a summer diversity fellowship for first and second-year law students to work at federal and state antitrust enforcement agencies in New York. The selection criteria and interviews focus on diversity as one of the key factors for Fellows. Fellows benefit from a \$6,000 stipend for their summer work and exposure to cutting-edge enforcement at government agencies, which is a resume-building experience and unparalleled networking opportunity. The last class of Fellows included students who were diverse from a race / ethnicity perspective, as well as educational and other background. The Fellowship alumni include African American, Asian / Indian, and other diverse attorneys.

Fellows are invited to the Section's events and Section members have made efforts to keep in touch with past Fellows to provide mentoring and other helpful connections, including resume advice and potential opportunities.

- *2017 Diversity Fellow Alumni Lunch:* In 2017, the Section sponsored the first Diversity Fellow alumni lunch, which was attended by twelve former Fellows. The lunch was attended by Section leadership, and there was a lively discussion focused on how the Section can improve the Fellowship program and increase the number of opportunities for diverse students. From this lunch, the Diversity Committee took suggestions for the upcoming program and selection process, which has begun for 2018.
- *Mentoring Program:* This year, the Section kicked off a mentoring pilot program during which attorneys with up to five years of experience could request a Section



mentor. From January to June 2017, mentors provided guidance, direction and advice to their mentees, including insight on how to get more involved with the Antitrust Section. The program hosted a social and networking event at the close of the program for the mentees and mentors to get to know each other better.

- *Contact with New York Affinity Bars:* The Section also makes efforts to keep in touch with affinity bars in the hope of attracting new members and coordinating on programs. In the past, the challenge has been that affinity bars have their own busy calendars of events for their own members, which has impeded the planning of joint events. In addition, antitrust is a very specific focus (vs. general litigation or corporate) and some of the affinity bar associations have given feedback that more work needs to be done to determine which of their committees would be interested in the topic (e.g., litigation, corporate, IP, all of which could be connections). However, our Section continues to explore opportunities with these important diverse bar associations.

#### Diversity Reflected in Antitrust Programming and Participation Throughout the Year

In addition to showing diversity through its membership and targeted initiatives, the Antitrust Section seeks to raise the profile of diverse members and other attorneys, including newer attorneys in the practice area. Antitrust is a complex disputes practice that involves high stakes cases and economic evidence, and therefore can be a difficult area for newer lawyers to thrive and advance without mentoring and support. The Section also focuses on these newer attorneys in its programming and events during the year. This focus on fostering a diversity of viewpoints is reflected in our programs:

- During its Annual Antitrust Law Section Meeting, the Section makes efforts to identify and feature panelists from diverse viewpoints. For example, all six substantive panels at the 2017 Antitrust Law Section Meeting featured one or more women panelists and/or a panelist who was racially diverse, as well as speakers from the private vs. public sector (DOJ, FTC, and NY Attorney General speakers) and with international experience (two European-qualified women panelists).

The Diversity Committee also made efforts to reach out to affinity bars to offer free invitations to the Symposium and Annual Section Dinner, including the Metropolitan Black Bar Association (MBBA), Le-GaL (LGBT Bar Association of Greater New York), Asian American Bar Association of New York (AABANY), Hispanic Bar Association (HBA/HNBA), and others.

- “*Why Antitrust?*” Panel and Networking Event – In June 2017, as in years prior, the Antitrust Section sponsored a panel and networking event aimed at educating newer lawyers and law students about the area of antitrust law. This panel focuses on the opportunities in the area of antitrust, and aims to make the subject matter interesting and less intimidating. Invites were circulated to New York affinity bar

associations to increase attendance by diverse attorneys. Follow-up is conducted by the Membership Committee to try to recruit new Section members.

- *Cartel & Criminal Practice Committee Enforcement Panel*: In October 2017, the Cartel & Criminal Practice Committee held a substantive panel regarding trends in federal criminal enforcement. Cartel practice has historically been an area in which there were few women and diverse attorneys. This panel featured all women (and one of the three is a diverse woman attorney), from the DOJ, in-house, and private sector. Each panelist has been practicing for less than 20 years, so this panel also reflected an effort to feature younger lawyers as leads in the field.
- The Antitrust Section participates in NYSBA Committee on Diversity and Inclusion meetings to understand better what other sections are doing to increase their diverse membership.
- The Antitrust Section participates in the Diversity Reception at the NYSBA Annual Meeting and has a table to provide information to potential new members. Ongoing and Future Efforts to Increase African American and Other Diverse Membership.

We appreciate the feedback and ideas about increasing diversity from a race / ethnicity perspective in our Section, in particular African American members. In the coming year, we plan to continue our work with targeted initiatives including:

- Outreach to the Metropolitan Black Bar Association (MBBA), in addition to other affinity bar groups.
- Seeking further diverse members via the Diversity Fellowship Program and ongoing membership recruitment efforts, and continuing to ask for feedback from Fellow alumni about how to recruit more diverse members.
- Sponsor at least one New York area law school event in 2018, aimed at connecting with diverse law students. The Diversity Committee has solicited ideas from student contacts at several schools, and one of the proposals under consideration is a resume / interview preparation opportunity aimed at introducing students to the Section.
- Reach out to diversity contacts at the ABA Antitrust Section to share ideas from their recruitment efforts

## **CRIMINAL JUSTICE**

Summary: The Criminal Justice Section is commended for having a large percentage of Black/African Americans in leadership positions, approximately 14% and 12% of section leaders

and section executive committee members who responded to the profile requests identify as Black/African American; however, it appears only Black/African American and White/Caucasian members are leaders, and less than a quarter of the leaders who responded to the survey are female. The section also appears to have fewer female members than the NYSBA membership. The Criminal Justice Section has recently established a diversity committee that is focused on recruit and retain women and people of color.

Specific recommendations: We recommend that the section's diversity committee partner with this Committee, Committee on Women in the Law, the Committee on LGBT and the Committee on Civil Rights and sponsor certain activities related to criminal justice for one or more minority law school associations. The senior members should actively take interest in and mentor law students and new members to the section, where possible.

To the extent possible, the Criminal Justice Section should foster relationships with the District Attorney's offices across New York State, indigent legal services providers and public defenders' offices to recruit more women and people of color to join NYSBA and specifically the Section. Additionally, the Committee should encourage more women and people of color already in the Section to take on leadership roles. Finally, the Section can utilize the newly established diversity committee to assist in advancing the above recommendations and work with law school courses and clinics relevant to the work of the Section to bring in new and diverse members.

## **CORPORATE COUNSEL**

Summary: The Corporate Counsel Section is commended for having a diversity committee and high levels of women leaders, who make up more than half of section leaders, and 63% of the section's executive committee. Additionally, the section has excellent rates of participation in the diversity profile. While Black/African American members enjoy a higher rate in leadership in comparison with NYSBA members at approximately 16%, Asian members also have a higher percentage of members at 9%, are not reflected in leadership at all.

Specific recommendations: The section should actively recruit a diverse panel of leaders among its ranks. Because the section is in a leadership position among other sections, it should work with the Committee to develop best practices guide to help other Sections and the Association as a whole to improve their diversity participation rates.

## **FOOD, DRUG & COSMETIC LAW**

Summary: The Food, Drug and Cosmetic Law Section is NYSBA's smallest section. The Section has reached gender parity with its Members, Leaders and Executive Committee members being 50 to 55% female in each category. Section leadership has done an excellent job of sharing participation opportunities with its members. However, the Section leadership is not as racially diverse as NYSBA membership, with those in leadership positions being exclusively White/Caucasian.

Specific recommendations: The section should also work with law school associations to introduce the work of the section to bring in new and diverse members. The section should also work with the new Membership Diversity and Inclusion Coordinator and the Office of Bar Services to develop a diversity plan including outreach to attract more diverse members. Additionally, the Section can take advantage of programming and sponsorship opportunities with other Sections and Committees, for outreach purposes.

The Food, Drug and Cosmetic Law Section responded to this Committee's inquiry with the following statement:

The Food, Drug and Cosmetic Law Section makes every effort to engage all members who want to be involved in senior section leadership which includes committee chairs. The Section is open to ideas that have been successful in other sections for active engagement by their diversity members and has established a Diversity Committee. Those interested in serving can contact Brian Malkin.

## **HEALTH LAW**

Summary: The Health Law section is commended for its large number of Hispanic leaders and female membership – almost half of the section members of women and almost 10% of leadership identified as Hispanic. The section also enjoys good representation of persons in all age categories. The section has a diversity committee that offers Summer Diversity Fellowships each year. In 2016, the Committee held a luncheon to bring together current and former fellowship recipients. The section is also connected with the law school community through its diversity committee and hosted a recent panel at Brooklyn Law School.

Specific recommendations: Connect with general counsel offices of companies to recruit more members with a focus on recruiting people of color. Additionally, the diversity committee may want to host a panel at a local law school and invite attorneys from the aforementioned organizations to serve as panelists, thereby attracting them to join the section. The Committee should also work on encouraging the female section members to take on leadership roles.

The section notes that since 2011, the Health Care Section Diversity Committee has worked to expand the diversity of its membership, particularly by offering opportunities to law students interested in health law thereby developing a pipeline to membership. For example, the Committee has sponsored a Fellowship Program where it places diverse law students in paid summer positions at major medical centers. Such placements have included Montefiore Medical Center, Mt. Sinai and NYU Medical Center. The Committee sponsors panel discussions on health law careers. The first panel discussion in 2013 was sponsored by Proskauer, the second in 2015 was held at Brooklyn Law School and reflected a diverse panel from the insurance and hospital industries. In 2016, the Section co-sponsored a discussion on "What Now? The Role of Diverse Managers During the Trump Presidency" with Brooklyn Law School. From its inception, the Diversity Committee has worked with local law schools to identify and mentor diverse students interested in healthcare law.

## Action Plan

<b>Project</b>	<b>Goals and Objectives</b>	<b>Tasks</b>
<b>Diversity Summer Fellowship in Health Law</b> Dionne Shuler, Chair Lisa D. Hayes Beverly Jones Edwina Martin	Sponsor and place a Health Law Fellow in an in-house law office of a major medical center by March 1, 2018	1. Contact schools with law health programs. 2. Send out notices 3. Conduct selection process 4. Identify institutions to place a Fellow
<b>Health Law Careers Program</b> Lisa D. Hayes Karen Porter	Sponsor the Third Health Law Careers Program in the Spring of 2018.	1. Identify a partner – possibly a law school. 2. Develop budget and solicit sponsors. 3. Develop a topic. 4. Identify panelists.

## **INTELLECTUAL PROPERTY**

Summary: The Intellectual Property Law Section should is for its efforts in reaching gender equity in its Members, Leaders and Executive Committee. The Section also has matched or exceeded racial diversity in section membership and leadership compared to NYSBA membership. However, the higher percentage of Asian members is not reflected in percentages of leadership positions.

Specific recommendations: The section should recruit more members of color, specifically encourage Asian/Pacific Islander members, to be leaders or aspire to sit on the Executive Committee. The Section can further improve diversity through enhanced recruitment plans, including working with law school associations to introduce the work of the section to bring in new and diverse members.

The Section reviewed the recommendations on increasing Asian membership and leadership. The Section believes that the way to accomplish this is by ensuring that program panels are more diversified. It can only attract people when they see people who look like them on panels and in leadership positions. The Chair, Erica Klein, is committed to this and recently reminded program chairs and those heading up panels that they have to do better. Erica mentioned that the Diversity Committee can help recommend diverse speakers. The Section is looking forward to putting this to work for the annual meeting in January and beyond.

## **SENIOR LAWYERS**

Summary: The Section is commended for the high rate of its leadership participating in the diversity profiles. However, the Members and Leaders and are disproportionately male. Members, Leaders and Executive Committee Members have virtually no racial diversity. And

while the Section is limited to attorneys aged 55 and older, the Leaders and Executive Committee Members are disproportionately represented in the 66+ category.

Specific recommendations: The Section may wish to research and recruit members of color and women into the section by creating an outreach plan utilizing the new Office of Bar Services and Membership Diversity and Inclusion Coordinator. The section can also work with the Committee on Women to proactively take measures to recruit women, and promote diverse and younger attorneys within its age group to be leaders and executive committee members.

The Section provided the possible action plan:

The section is considering offering, as a special diversity effort, another one-year free section membership to all women members of NYSBA who are 55 or older and not a member of our Section.

## **TAX**

Summary: The section is commended for having a diversity chair. However, the Tax Section's ratio of female Members, Leaders and Executive Committee members falls 11 to 14% short in comparison with NYSBA members. The section has also achieved improvement in reporting in the sexual orientation category. However, there is also very little age and racial diversity among the leadership. We also note that the Section supports this Committee's Diversity Reception.

Specific recommendations: The Section's Diversity Chair can work with its staff liaison and the Membership Diversity and Inclusion Coordinator to create a diversity plan. That plan should focus on recruiting female and diverse section members and promoting more women to leadership positions. Additionally, the Section can work with the Young Lawyers Section to help create a recruitment plan to attract younger attorneys. Additionally, the section can take advantage of programming and sponsorship opportunities with other sections and committees, such as the International Section or the Civil Rights Committee, for outreach purposes. The Committee could also work with law school courses and clinics relevant to the work of the Section to bring in new and diverse members.

### **B. ACCESSING DIVERSITY RESOURCES**

These section snap shots are meant as feedback and a tool for each section to create goals and achieve them. The Association recognizes the need for resources to be available to assist the Sections reach their diversity goals.

The Committee on Diversity and Inclusion's prior recommendations on establishing Diversity chairs, diversity sub-committees and diversity plans have been widely accepted. Currently,

22 out of 25 (88%) of the Sections have a Diversity Committee

21 out of 25 (84%) of the Sections have a diversity Chair or co-Chairs

23 out of 25 (92%) have a diversity plan or at least one diversity initiative

As all sections are different, and so are their diversity plans and initiatives. There are no basic requirements for a diversity plan. The Committee recommends that guidelines or a template be developed outlining minimum requirements. This will allow data to be standardized, improve data collection and reporting. For example, one section may wish to encourage diverse speakers to participate in panels and conferences. In such instance, the section should set a goal as to how many diverse speakers it will seek to contact and include in these programs. These aspirational goals can be included in future diversity report cards, which will assist the Committee and the Association in keeping track of progress and working initiatives.

In conjunction with the section liaisons, the Association has other resources to help improve diversity outcomes. The Office of Bar Services provides contact information for Affinity bars, and a new Membership Diversity and Inclusion Coordinator will be available to coordinate diversity efforts throughout the Association. We also recommend a Section Diversity Chairs have a community and share best practices among the Sections.

It is the Committee's hope that these resources, in conjunction with the recommendations to follow, will enable each section to assess their own success and utilize the resources available to them to set and attain higher diversity goals. Each section's successes will build upon each other to make NYSBA more diverse and attract more members in the legal profession in New York State.

### **C. GENERAL RECOMMENDATIONS FOR THE DIVERSITY REPORT CARD**

#### **1. New Recommendations:**

a. The percentage of members that report their disability status and sexual orientation is extremely low. Further, approximately, 54% of NYSBA members, 39% of Section members, 31% of Section leaders do not report their race. The Committee recommends the Association retool the diversity profile requests and work with the relevant Committees to demystifying the import of the data for the Report Card. The Committee also recommends that the Section Chairs and Diversity Chairs work with their Diversity Committees to improve the data collection.

b. The Committee recommends that each section that does not currently provide a leadership opportunity for a young lawyer create a new leadership opportunity; for example, a seat on their executive committee for a young lawyer to create mentorship opportunities as well as a pathway to leadership positions in the section. The Committee recommends that the Young Lawyers Section continue to recruit attorneys with disabilities, LGBTQ attorneys, attorneys of color and female attorneys and encourage diverse attorneys to serve as liaisons to sections.

c. The Committee recommends that diversity plan guidelines be developed, to assist in standardized data collection and reporting of section diversity initiatives.

d. Based on the 2017 Section demographic data, the Committee recommends that each prior recommendation that has not had any action taken thus far should be considered for action to be taken by the Association.

**2. Repeat Recommendations:**

a. The Diversity Report Card requires many staff hours. As the report card remains a priority for the Association, the Committee recommends that a team is designated to collect and analyze data, and to research the history of each of the prior recommendations so a status update can be included in the 2019-2020 edition of the report card.

b. Any unavailable prior Diversity Report Card should be republished and have permanent home on the NYSBA's or Committee on Diversity and Inclusion's Web page, making it readily accessible to all NYSBA members.

c. Additionally, regular communication should be given to members about the importance of reviewing the diversity report card and participating in the diversity profile. Updated PSAs should be created on a biennial basis to address the current participation issues within NYSBA's membership and Section leadership.



**COMMITTEE ON DIVERSITY AND INCLUSION**

**2017-2018**

SANDRA IRBY BUCHANAN, CHAIR

NATHANIEL OWEN ASHER	JEFFREY BERNSTEIN
MICHAEL I. BERNSTEIN	CRAIG S. BROWN*
HON. CHERYL E. CHAMBERS	WILFRED URIAH CODRINGTON III
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MARTHE JANE BWALYA NGWASHI	KENDRICK P. PATTERSON
KIMBERLY WOLFE PRICE	DOMINIQUE SAINT-FORT*
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LILLIAN M. MOY, SUBCOMMITTEE CO-CHAIR  
DOMINIQUE SAINT-FORT, SUBCOMMITTEE CO-CHAIR  
JOHN HIGGINS, HONORARY CHAIR (IN MEM.)

TAA GRAYS, EXECUTIVE COMMITTEE LIAISON



# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #13

**REQUESTED ACTION:** Approval of a resolution proposed by the NYSBA/WBASNY Domestic Violence Initiative with respect to the Initiative's report and recommendations.

In 2016, the then-presidents of the New York State Bar Association and the Women's Bar Association of the State of New York jointly appointed a Domestic Violence Initiative to enhance access to legal services for victims of domestic violence. The mission of the Initiative was to help educate attorneys about domestic violence and the need for representation of victims and ensure access to training and education; to expand the pool of volunteer attorneys and opportunities for volunteer service to victims; and to examine and make recommendations with respect to legislation that seeks to protect domestic violence victims. The Initiative's members were divided into three subcommittees to address these aspects of its mission.

Attached is the Initiative's final report, outlining the work it has undertaken. Going forward, both associations will continue efforts to implement the report's recommendations; NYSBA's Family Law Section has established a new domestic violence committee.

The report makes the following recommendations:

### *Education and Training*

- Each association should maintain a roster of expert speakers on domestic violence.
- Domestic violence training should be incorporated into CLE programs in practice areas beyond family law and domestic violence.
- Bridge the Gap CLE programs should incorporate the dynamics of domestic violence as a topic in both criminal law and family law programming.

### *Pro Bono*

- Continue the work of implementing the Initiative's subcommittee proposals, including creating a Domestic Violence Advisor panel, establish a pro bono attorney list process, and supporting the dissemination of legal clinic/pro bono toolkits.
- Publicize the availability of the toolkits and other resources as widely as possible.
- Continue to work to increase the supply of pro bono resources for victims of domestic violence.
- Explore opportunities to use technology to link domestic violence victims with pro bono and legal services attorneys in different parts of the state.

### *Legislation*

- Continue to advocate for passage of the three bills approved by the NYSBA Executive Committee in 2017.
- On an ongoing basis, identify, review and advocate for passage of other legislative proposals that would support domestic violence victims.

This report was submitted in December 2017 and posted in the Reports Community. As of this writing, no comments have been received.

A resolution has been proposed by the Initiative to implement the report's recommendations; it is attached for your reference.

The report will be presented by Hon. Judy Harris Kluger and Ms. Amy Schwartz-Wallach, co-chairs of the Initiative.

NYSBA/WBASNY Domestic Violence Initiative  
Proposed Resolution

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

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

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

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

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

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

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

NOW, THEREFORE, IT IS HEREBY

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

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

# NEW YORK STATE BAR ASSOCIATION AND WOMEN'S BAR ASSOCIATION OF THE STATE OF NEW YORK DOMESTIC VIOLENCE INITIATIVE

Final Report  
November 2017

Opinions expressed in this Report are those of the NYSBA/WBASNY Domestic Violence Initiative and do not represent those of the New York State Bar Association or the Women's Bar Association of the State of New York unless and until they have been adopted the respective organization's Executive Committee, Board of Directors or House of Delegates.



# NEW YORK STATE BAR ASSOCIATION AND WOMEN'S BAR ASSOCIATION OF THE STATE OF NEW YORK DOMESTIC VIOLENCE INITIATIVE

## FINAL REPORT

### EXECUTIVE SUMMARY

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

Domestic violence is ongoing, purposeful behavior aimed at exerting power and control over one's intimate partner and can be psychological, physical, sexual or economic in nature. It can also involve other family members. The Initiative focused on domestic violence involving people in current or former intimate relationships, whether or not they have lived together. Women and men who leave abusive relationships frequently have limited resources. Many desperately need legal assistance in seeking orders of protection against their abusers and in dealing with legal issues such as housing, child custody, support and visitation, and divorce.

High-quality civil legal assistance plays a vital role in protecting the health and well-being of victims and their children. Research has shown that access to legal services is one of the most effective interrupters of domestic violence, even more effective than access to shelters, hotlines, or counseling.<sup>1</sup> Legal services are the most expensive support services for domestic violence victims, and the services to which the fewest victims have access, yet they are essential to ending the cycle of violence and making a

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<sup>1</sup> Farmer & Teifenthaler, *Contemporary Economic Policy*, Volume 21, Issue 2 (April 2003) at 158–172.

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victim whole. Despite tremendous efforts by legal services lawyers and pro bono volunteers, the need dwarfs the available resources. To increase access to justice for domestic violence victims, the Initiative worked with legal service providers, local bar associations and pro bono attorneys to educate, recruit and train additional volunteer attorneys.

The mission of the joint NYSBA/WBASNY Domestic Violence Initiative was to:

- Help educate attorneys around the state about domestic violence and the need for pro bono representation of victims, and help ensure that pro bono and civil legal services attorneys have access to the comprehensive training and education they need to provide effective legal services to address the broad range of issues faced by individuals and families affected by domestic violence, including those from diverse and traditionally underserved communities; and
- Expand the existing pool of volunteer attorneys and opportunities for volunteer service to victims of domestic violence, including by seeking to collaborate with bar associations throughout the state to help address the needs of domestic violence victims in their jurisdictions, partner with local domestic violence service providers to jointly educate their legal community and foster the recruitment of volunteers and the provision of pro bono legal services to victims through existing or newly-developed pro bono programs; and
- Examine and make recommendations concerning pending or proposed legislation that seeks to protect domestic violence victims.<sup>2</sup>

This Report summarizes the work of the Initiative, which made significant strides toward fulfilling its mission. However, the scourge of domestic violence and the accompanying need for legal services to assist victims continues. Although the Initiative will sunset after NYSBA and WBASNY approve this final report, both organizations are committed to continuing to support education and training programs, pro bono work, and legislative advocacy to assist domestic violence victims. Both organizations plan to leverage their respective domestic violence committees to house this ongoing work.

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<sup>2</sup> The Mission Statement of the Initiative is attached as Exhibit 1 to this Report.



## **DOMESTIC VIOLENCE AND THE NEED FOR LEGAL SERVICES FOR VICTIMS**

Described as ongoing, purposeful behavior aimed at exerting power and control over one's current or former intimate partner, domestic violence can be psychological, physical, sexual or economic in nature. Domestic violence victimization has no specific face, as it is experienced by New Yorkers without regard to their gender identity, sexual orientation, religion, race, ethnicity, age, disability or economic status.

Alarming, domestic violence is at an epidemic level in New York and around the country. According to the Centers for Disease Control and Prevention, nationally almost 25% of women and over 10% of men have suffered sexual violence by an intimate partner and over 22% of women and 14 percent of men have been subjected to at least one act of severe physical violence in an intimate relationship.<sup>3</sup>

Tragically, domestic violence sometimes is lethal. In 2016, although the total number of homicides increased only 2% statewide, the number of domestic violence-related homicides statewide increased by 22%.<sup>4</sup> In 2016, nearly 48% of all of New York State's female homicide victims aged 16 and older were killed by their intimate partner.<sup>5</sup> Of these intimate partner homicides, firearms and stabbing instruments were the weapons most often used in these killings.<sup>6</sup>

Not surprisingly, domestic violence victims' need for assistance dwarfs the availability of existing resources. According to New York's Office of Children and Family Services, although over 52,500 adults

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<sup>3</sup> Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization—National Intimate Partner and Sexual Violence Survey, United States, 2011 (available at: [http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm?s\\_cid=ss6308a1\\_e](http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm?s_cid=ss6308a1_e)).

<sup>4</sup> New York State Office for the Prevention of Domestic Violence, New York State Domestic Violence Dashboard (hereinafter "2016 DV Dashboard"), 2016 Data (released October 2017), p.2 (available at: <http://www.opdv.ny.gov/statistics/nydata/2016/2016-dv-dashboard.pdf>).

<sup>5</sup> Id.

<sup>6</sup> Id.

and children were served by New York’s residential and non-residential domestic violence programs in 2016, another 28,560 people were denied shelter.<sup>7</sup>

Domestic violence victims often turn to the courts to disrupt the cycle of violence. They may access the justice system by pursuing criminal charges or a civil family offense petition against their abuser. In 2016 alone, New York’s civil and criminal courts issued 310,395 orders of protection that were required to be entered in the state’s Order of Protection Registry database<sup>8</sup> – nearly 100,000 more orders than were issued just five years ago.<sup>9</sup> In some cases, a victim’s point of entry into the court system may be through other family or matrimonial proceedings to dissolve relationships or protect children and family finances through divorce, custody, spousal or child support proceedings.

High-quality civil legal assistance has been shown to be one of the most effective interventions for protecting and empowering victims and their children.<sup>10</sup> New York’s network of civil legal services programs offers assistance to many of the state’s domestic violence victims. However, legal services lawyers alone cannot meet this urgent need for legal representation for those with limited means. In the absence of adequate funding for civil legal services, access to competent *pro bono* legal services is essential to filling the access to justice gap. Access to a well-trained and domestic violence-sensitive private bar is equally critical for serving those families that do not need low-income legal assistance or for those legal issues not addressed by civil legal services.

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<sup>7</sup> New York State Office of Children and Family Services, *The Domestic Violence Prevention Act: 2016 Report to the Governor and Legislature* (released 2017), p.5 (available at: <http://ocfs.ny.gov/main/reports/DVPA/2016-DV-Annual-Report.pdf>).

<sup>8</sup> Under Executive Law § 221, the Office of Court Administration refers to orders that must be filed with the Registry as “required.” These required orders involve intimate partners or family members. Other orders of protection issued against unrelated parties, such as neighbors or strangers, are “not required” to be filed with the registry and are not included in this data.

<sup>9</sup> 2016 DV Dashboard at 1, 3.

<sup>10</sup> See Jennifer S. Rosenberg and Denise A. Grab, Institute for Policy Integrity, New York University School of Law, “Supporting Survivors: The Economic Benefits of Providing Civil Legal Assistance to Survivors of Domestic Violence” (July, 2015) (available at: <http://policyintegrity.org/documents/SupportingSurvivors.pdf>).

In addition to legal services provided to victims, New York’s legislative response to domestic violence has revolutionized the interventions available to address victim safety and stability, as well as batterer accountability. Over the years, New York’s legislature has passed new laws specifically intended to alleviate concerns directly faced by victims of domestic violence or which have the potential to provide relief that assists and supports victims and their families. The legal response to domestic violence has evolved from solely addressing immediate basic needs, such as shelter access and orders of protection, to increasingly recognizing the more long-term needs that enable victims to live lives free from the influence of abuse. Although New York’s legislative scheme has begun to more fully address critical issues such as economic protections, food and housing insecurity, access to public benefits, employment, health care, discrimination and confidentiality, still more needs to be done. Through new legislative reforms, victims and their families should have access to a full scope of legal tools they need to obtain or maintain the security and stability that will enable them to move forward after domestic violence.

### **HISTORY OF THE INITIATIVE**

In a ground-breaking move in the summer of 2016, Claire Gutekunst and Jacqueline Flug, the Presidents of the New York State Bar Association and the Women’s Bar Association of the State of New York, respectively, conceived a joint venture – the NYSBA/WBASNY Joint Domestic Violence Initiative – to bring their bars’ passions, expertise and resources to bear in supporting and improving New York’s legal response to intimate partner abuse, building on work done by WBASNY’s Domestic Violence Committee and NYSBA Sections and committees. Presidents Gutekunst and Flug tapped two long-time advocates for victims and families to lead the Initiative. Amy Schwartz-Wallace, Esq., is a Senior Attorney at the Empire Justice Center in Rochester, where she leads their well-regarded statewide domestic violence practice, and Hon. Judy Harris Kluger is Executive Director of Sanctuary for Families, a respected New York City-based domestic violence organization.

Before launching the Initiative, the Initiative Co-Chairs and Presidents Gutekunst and Flug developed a mission statement that established the Initiative’s goals to help raise awareness of domestic violence and offer training to pro bono and legal service attorneys; work with existing legal services providers, bar associations and others in the legal community to recruit more pro bono attorneys and develop pro bono programs for underserved communities across the state; and consider and make recommendations about possible legislation to strengthen protections for victims of domestic violence.<sup>11</sup>

To do this work, Presidents Gutekunst and Flug appointed as members of the Initiative representatives from legal services providers, bar associations, law firm pro bono programs, the private bar, the state domestic violence agencies, the court system and law schools. In addition to organizational diversity, the members also boasted geographic diversity, which allowed the Initiative to understand the different needs and challenges facing urban and rural communities around the state.<sup>12</sup>

To assist in creating and executing the Initiative’s deliverables, each member was assigned to serve on either the Education and Training Subcommittee or the Pro Bono Subcommittee; a number of members also chose to participate in the Legislative Subcommittee.<sup>13</sup> The Initiative Co-Chairs and subcommittee chairs developed specific goals for each subcommittee, which are set forth below at the beginning of each substantive subsection of “The Initiative’s Work and Recommendations” section of this Report. Each subcommittee was tasked with developing and managing the Initiative’s different deliverables.

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<sup>11</sup> See Exhibit 1 to this Report.

<sup>12</sup> For the full roster of Initiative members and their respective organizations and locations, see Exhibit 2 to this Report.

<sup>13</sup> For the rosters of members of each subcommittee, see Exhibits 3, 6 and 11 to this Report.

Each subcommittee was chaired by a member who created meeting agendas, ran subcommittee meetings, coordinated tasks and provided general oversight of all deliverables and drafting of reports. The Education and Training Subcommittee was led by Hon. Deborah Kaplan; the Pro Bono Subcommittee was led by Faye Polayes, Esq.; and the Legislative Subcommittee was led by Susan Pollet, Esq. Subcommittee chairs regularly met with the initiative Co-Chairs and the Bar Presidents.

The Initiative and the subcommittees were skillfully assisted throughout the year by the following NYSBA staff members: Jessica Patterson, Program Coordinator, Continuing Legal Education (general administrative support and Education and Training Subcommittee); Stacey A. Whiteley, Esq., Managing Director of Legal and Community Service (Pro Bono Subcommittee); Kevin M. Kerwin, Esq., Associate Director, Governmental Relations (Legislative Subcommittee).

The full Initiative membership met five times: October 28, 2016 (Manhattan); January 9, 2017 (Albany); March 10, 2017 (Manhattan); May 16, 2017 (Manhattan); and November 1, 2017 (by conference call). The Proskauer law firm in Manhattan and the NYSBA Bar Center in Albany served as our gracious and generous hosts. Between the full Initiative meetings, the subcommittees regularly met to do their work.

This Final Report outlines the work and recommendations of the three subcommittees, which have been approved by the full Initiative. This Report will be submitted to the NYSBA House of Delegates for approval at its meeting on January 26, 2018. It will be submitted to the WBASNY Board of Directors for approval at its meeting on January 27, 2018.

The Initiative looks to both WBASNY and NYSBA to implement the recommendations and continue the much-needed efforts to expand the availability of free legal services for domestic violence victims. WBASNY has a long-standing history of advocacy for domestic violence victims. The WBASNY Domestic Violence Committee (co-chaired by Initiative members Amanda Norejko, Esq., Susan

Pattenaude, Esq. and Susan Pollet, Esq.) will continue its efforts and implement the recommendations of the Initiative. NYSBA did not have a separate domestic violence committee.

To ensure that NYSBA continues to focus on domestic violence and implement the work of the Initiative, the Initiative encouraged President Gutekunst to find or create a home for this work within NYSBA. Recognizing the importance of institutionalizing NYSBA's efforts to continue the work of the Initiative and knowing that NYSBA has a very active and robust Family Law Section that already had presented significant programming concerning domestic violence but did not have a separate domestic violence committee, President Gutekunst reached out to the Chair of the Family Law Section and proposed that the Section create such a committee. He embraced the suggestion and the Section has now created a Domestic Violence Committee (co-chaired by Initiative members Alton Abramowitz, Esq., Elizabeth Douglas, Esq., Hon. Deborah Kaplan and Amy Schwartz-Wallace, Esq.).

Many of the Initiative's members plan to participate in one or both of the WBASNY Domestic Violence Committee and the NYSBA Family Law Section Domestic Violence Committee, to continue and build on the work of the Initiative.

## **THE INITIATIVE'S WORK AND RECOMMENDATIONS**

### **I. EDUCATION AND TRAINING**

***Goal:*** *Help ensure that pro bono and civil legal services attorneys have access to the comprehensive training and education they need to provide competent and effective services for individuals and families impacted by domestic violence, including those from diverse and traditionally underserved communities.*

***Goal:*** *Raise awareness of domestic violence issues, including among attorneys who do not regularly represent domestic violence victims, and expand the existing pool of volunteer attorneys through education and outreach.*

To achieve these goals, the Education and Training Subcommittee<sup>14</sup> identified the significant tasks of the subcommittee and the Initiative as:

- Create, present and co-sponsor domestic violence-related education and training programs to increase awareness of and response to domestic violence. This training should include issues such as domestic violence dynamics basics, appropriate screening for and addressing domestic violence issues when they are identified, as well as intersecting substantive law issues.
- Enlist/work with CLE Chairs and other bar associations to help integrate similar training into CLEs being coordinated and planned by other NYSBA and WBASNY Sections, committees and chapters and other bar associations.
- Develop and host domestic violence-focused legal trainings, and enlist trainers with specific experience and competence with these issues. To the extent feasible, videotape these trainings and create a library of programs available for viewing on NYSBA's and WBASNY's websites.
- Explore and, to the extent feasible, develop and institute a system for making certain NYSBA- and WBASNY-sponsored CLEs available at low or no cost to civil legal services, pro bono, and other practitioners who exclusively or extensively represent domestic violence survivors and their families in topic areas that will boost the quality of their representation (e.g., deposition taking, trial skills, divorce economics). Create a list of legal service providers and other practitioners who provide pro bono services to victims of domestic violence and make them aware of this CLE benefit.
- Highlight the work of the Initiative and/or domestic violence generally (through panels/presentations) at both the NYSBA Annual Meeting in January 2017 and the WBASNY Annual Conference in May 2017.

### **Educational Programming Developed by the Subcommittee**

The Education and Training Subcommittee worked diligently to design and produce a number of different CLE-eligible education programs to help raise awareness of and response to domestic violence by practitioners who do not serve litigants with domestic violence-related issues with great frequency, and to expand and improve representation of domestic violence victims and their families, including with a focus on marginalized communities (e.g., LGBT, youth, people with disabilities, immigrants,

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<sup>14</sup> The Education and Training Subcommittee was chaired by Hon. Deborah Kaplan, Statewide Coordinating Judge for Family Violence Cases. Its dedicated membership is listed in Exhibit 3 to this Report. The subcommittee thanks Jessica Patterson, Program Coordinator for Continuing Legal Education at NYSBA, for her support of the subcommittee's work.

veterans, elderly), by offering substantive legal training to both pro bono and legal services attorneys throughout New York State. It also identified, and encouraged NYSBA and/or WBASNY to co-sponsor, programs produced by other organizations that furthered the Initiative's educational goals.

The Initiative developed and/or co-sponsored five live CLE programs<sup>15</sup>:

1. "Speaking the Victim's Language," presented by the Third Judicial District Gender Fairness Committee and co-sponsored by NYSBA, WBASNY and several other organizations, on November 15, 2016, at the Third Judicial District Training Room in Castleton-on-Hudson, explored issues regarding language access and domestic violence.
2. "Ethics for the Family Law Practitioner," co-sponsored by the Initiative and several entities based in Westchester, on March 17, 2017, at the New York State Supreme Court, Westchester County in White Plains, NY, was targeted to reach attorneys who are members of the moderate means panel in the Ninth Judicial District.<sup>16</sup>
3. "A View from the Bench: An Unflinching View of Domestic Violence and New Ways To Protect Victims – the Challenges Facing Our Courts," was planned by the Initiative in collaboration with co-sponsors NYSBA Judicial and Family Law Sections and Hofstra University School of Law, to be presented at the law school on April 19, 2017, but had to be postponed and will be rescheduled at a later date.<sup>17</sup>

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<sup>15</sup> Copies of the flyers for these programs are included in Exhibit 4 to this Report.

<sup>16</sup> Faculty for this program included Hon. Alan Hochberg, Natanya L. Briendel, Esq., Deborah Scalise, Esq. and Audrey E. Stone, Esq.

<sup>17</sup> Hon. John Leventhal, Hon. Andrew Crecca and Hon. Deborah Kaplan were scheduled to be the faculty for this program.



4. “Domestic Violence Issues for the Housing Court Practitioner,” presented by the Initiative on April 25, 2017, at the NYC Family Justice Center in Manhattan.<sup>18</sup>
5. “Representation in Family Court Proceedings,” including a segment devoted to domestic violence prosecutions and defending orders of protection, co-sponsored by the Initiative, on June 9, 2017, at the State Bar Center in Albany, NY.<sup>19</sup>

The Education and Training Subcommittee also produced a five-credit CLE program that was presented by a faculty of experts in domestic violence<sup>20</sup>, videotaped at NYSBA’s headquarters in Albany, publicized by both NYSBA and WBASNY and offered at no charge to members and non-members of NYSBA and WBASNY. The topics covered were:

1. “The Importance of Orders of Protection, Firearms and Domestic Violence”;
2. “Understanding Victims and the Effect of Domestic Violence on Children”;
3. “Elder Abuse and Capacity in Domestic Violence Cases”;
4. “Interviewing Clients with a Trauma-Informed Perspective”; and
5. “Immigration Issues in Domestic Violence Cases.”

These topics reflected the subcommittee’s desire to initiate, train and educate practitioners who are new to the issues and dynamics of domestic violence, while also providing additional training for those attorneys already well-versed in domestic violence legal issues. More than 500 attorneys viewed

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<sup>18</sup> Faculty for this program included J. Kevitt Adler, Esq., Amanda Norejko, Esq. and Devi Patel, Esq.

<sup>19</sup> Faculty for this program included Hon. Deborah Kaplan, Nancy Farrell, Esq., Adele Fine, Esq., Thomas Gordon, Amanda McHenry, Esq., Jeremy Morley, Esq., Marguerite A. Smith, Esq., Gary Solomon, Esq., and Audrey E. Stone, Esq.

<sup>20</sup> Faculty for this program included Hon. Deborah Kaplan, Hon. Andrew Crecca, Amanda M. Beltz, Esq., Joan G. Levenson, Esq., Audrey E. Stone, Esq. and Kim Susser, Esq.

that program on May 9, 2017. This videotaped program has been archived on both the NYSBA and WBASNY websites and is available for viewing at no charge.<sup>21</sup>

### **Educational Programming at NYSBA's Annual Meeting**

To highlight the Initiative and raise the awareness of a large group of attorneys who do not regularly represent domestic violence victims and to complement and supplement the programming developed by the Education and Training Subcommittee, NYSBA President Gutekunst dedicated half of the annual Presidential Summit at NYSBA's Annual Meeting in New York to a panel entitled "It's Not About 'Revenge' or 'Porn': The Problem of Intimate Partner Violence and Non-Consensual Sexual Image Exploitation."<sup>22</sup>

Initiative Co-Chair Amy Schwartz-Wallace organized and moderated a panel of experts<sup>23</sup> who discussed image exploitation as a form of domestic violence and what research indicates about its particular impact on domestic violence victims, as well as legal strategies for assisting victims of this form of abuse, particularly given the limitations of New York's current legislative scheme to address this problem.<sup>24</sup> Several hundred attorneys who had registered for NYSBA's Annual Meeting attended the program in Manhattan on January 25, 2017, which provided 1.5 credits of CLE at no charge.

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<sup>21</sup> On the WBASNY website, the program can be accessed at <https://www.wbasny.org/the-domestic-violence-initiative-training-program/>. The program can be accessed on the NYSBA website at <http://www.nysba.org/store/detail.aspx?id=VER81>; when registering for the program on the NYSBA website, to view the program for free, use offer code DVCOMP17 until December 31, 2017, and after that date contact Jessica Patterson at [jpatterson@nysba.org](mailto:jpatterson@nysba.org) to obtain the effective offer code.

<sup>22</sup> This program was recorded and can be accessed on NYSBA's website at <http://www.totalwebcasting.com/view/index.php?func=VIEW&id=nysbar&date=2017-01-25&seq=1>.

<sup>23</sup> In addition to moderator Amy Schwartz-Wallace, Esq., the panelists were Carrie Goldberg, Esq. (C.A. Goldberg, PLLC), Ian Harris, Esq. (Director of the Family Law Unit at Staten Island Legal Services), and Lawrence Newman, Esq. (Chief of the Domestic Violence Unit at the New York County District Attorney's Office).

<sup>24</sup> As the panel discussed, advances in technology and the ubiquity of the Internet and social media have given rise to a damaging new form of abuse, commonly, but mistakenly, referred to as "revenge porn." The threat or actual

### **Outreach to WBASNY Chapters and NYSBA Sections and Committees**

To further the Initiative's goals of raising awareness of domestic violence and providing training concerning domestic violence to NYSBA and WBASNY members, in March 2017, Presidents Flug and Gutekunst sent a joint memo to WBASNY Chapters and to NYSBA Section and Committee Chairs.<sup>25</sup> The memo discussed domestic violence victims' need for legal assistance and the mission of the Initiative. It requested that the Chapters, Sections and committees consider collaborating with the Initiative to provide training relating to domestic violence to WBASNY and NYSBA members.

The memo asked those groups to consider whether the issue of domestic violence and serving victims could be incorporated into the programs the groups are planning, and offered the resources of the Initiative to help identify domestic violence experts in their area who could consult with the groups and speak at their CLE programs and other events. The memo also asked for the groups' help in publicizing the CLE programs developed and presented by the Initiative.

### **Access to Non-Domestic Violence-Related Training for Legal Services Domestic Violence Attorneys**

In addition to the need for education and training concerning domestic violence issues, the Initiative recognized that legal services attorneys who primarily or exclusively represent domestic violence victims may need training to improve their representation of those victims in ancillary areas, such as taking depositions, trial advocacy, economic issues in matrimonial cases, and issues relating to

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dissemination of sexually explicit images of an intimate partner without consent is a new tool for abusers to exert power and control over their victims, a hallmark of domestic violence. Abusers can obtain sexual images in many ways – with the victim's consent within the context of a romantic relationship, through coercion, unlawful surveillance, hacking, or by photo shopping fake images with the victim's face. However obtained or manufactured, they allow an abusive person to wreak havoc on the victim's life, by using threats of dissemination to force the victim to do what the abuser wants or by sending the images to family, employers or "revenge porn" websites, causing intense public humiliation, trauma, degradation, danger, job loss, and isolation. Once these images go public, victims are forced to navigate massive and complex hurdles as they attempt to remove the offending images from the public sphere.

<sup>25</sup> A copy of the memo is attached as Exhibit 5 to this Report.

employment, and that it may be difficult for their not-for-profit employers to pay for training in those areas. To address that need and to help fulfill the Initiative's goal of improving the representation of domestic violence victims, both WBASNY and NYSBA have established protocols by which attorneys employed by legal services organizations to represent domestic violence victims may take, at no cost, CLE programs offered by WBASNY Chapters and by NYSBA's CLE Department on topics that, although not directly focused on domestic violence, would enhance their representation of victims.

WBASNY and its Chapters have agreed that, at every CLE program offered by WBASNY or any of its Chapters, the WBASNY CLE fee will be waived for up to ten (10) attorneys employed by a non-profit organization in New York State that provides direct legal services to victims of domestic violence. For more information and to register for a particular CLE program, an eligible attorney or organization interested in taking advantage of this offer should contact the individual identified on that CLE program announcement or registration form as handling fee waivers for financial hardship.

NYSBA's protocol provides that any attorney who is employed by a not-for-profit organization in New York and who primarily or exclusively provides legal services to victims of domestic violence may view any NYSBA online CLE course at no charge. Attorneys or organizations wishing to take advantage of this offer should contact Jessica Patterson, CLE Program Coordinator ([jpatterson@nysba.org](mailto:jpatterson@nysba.org)) at NYSBA.

### **List of Speakers for Domestic Violence-Related Programs**

To assist WBASNY and its Chapters, NYSBA's CLE Department and Sections and committees, other bar associations and organizations that present programs relating to domestic violence in ensuring that they can find competent, experienced speakers and panelists for their programs, the subcommittee has created a list of speakers on a variety of domestic violence-related topics. The subcommittee welcomes suggested additions to this list, which will change over time, and should be prominently

available on the WBASNY and NYSBA websites. Going forward, the Domestic Violence Committee of the NYSBA Family Law Section and the Domestic Violence Committee of WBASNY will both continually maintain the updated roster of speakers.

### **Community Education and Outreach**

To complement the work of the Initiative and further its goals of raising awareness of domestic violence and increasing victims' access to legal services, NYSBA President Gutekunst recorded two public service announcements concerning the importance of recognizing domestic violence and reaching out for help in addressing it in one's own life or the life of a relative, friend or colleague. Through an arrangement between NYSBA and the New York State Broadcasters Association, these 30- and 60-second spots aired on radio stations around New York State in the fall of 2016 and the winter of 2016-2017.<sup>26</sup>

### **Education and Training Recommendations**

***Recommendation 1: NYSBA and WBASNY should maintain a roster of expert speakers for training on domestic violence. The speaker list should be displayed prominently on each association's website.***

***Recommendation 2: Practice areas beyond the NYSBA Family Law Section and the WBASNY Domestic Violence Committee should incorporate domestic violence training into related CLE training programs.***

***Recommendation 3: Bridge-the-Gap CLE programs for newly admitted attorneys should incorporate the dynamics of domestic violence as a topic in criminal and family law CLE programs.***

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<sup>26</sup> The 60-second public service announcement can be heard on NYSBA's website at <http://www.totalwebcasting.com/view/index.php?func=VIEW&id=nysbar&date=2016-11-05&seq=1>.

## II. PRO BONO

***Goal: Expand the existing pool of volunteer attorneys through education and outreach and develop model pro bono programs that can be implemented in underserved communities in New York State***

***Goal: Encourage bar associations throughout the state to make meeting the needs of victims of domestic violence in their jurisdictions a priority, to partner with local domestic violence service providers and together educate their legal community about domestic violence and the need for pro bono representation of victims, and to foster the recruitment of volunteers and the provision of pro bono legal services to victims through existing or newly-developed pro bono programs***

To achieve these sizeable goals, the Pro Bono Subcommittee<sup>27</sup> identified its significant tasks as:

- Determine geographic and substantive gaps in legal services provided to domestic violence victims and recommend strategies to fill those gaps;
- Learn how organizations attract and retain volunteers and replicate successful strategies in areas that are in need of more robust volunteer pools;
- Work with the partnering associations to identify and develop strategies to increase the supply of pro bono attorneys willing and able to work with domestic violence victims across the state;
- Identify and recommend best methods to alert volunteer attorneys to volunteer opportunities and domestic violence legal aid agency needs.

### **Surveys**

To begin its work, throughout Winter 2016-2017 the subcommittee created and disseminated several online surveys targeting local bar associations, domestic violence programs, and legal services providers statewide. The intent of these surveys was to gather data concerning domestic violence services across the state and to use these results to assess existing resources and community needs to inform and shape the subcommittee's priorities and tasks. A total of 47 surveys were returned, 11 by local bar associations, 13 by domestic violence legal service providers, and 23 by domestic violence victim service providers from around the state.

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<sup>27</sup> The Pro Bono Subcommittee was chaired by Faye Polayes, Esq. Its dedicated membership is listed in Exhibit 6 to this Report. The subcommittee thanks Stacey Whiteley, NYSBA's Managing Director of Legal and Community Service, for her support of the subcommittee's work.

### **List of Existing Pro Bono Providers**

With the significant assistance of Stacey Whiteley of NYSBA, the subcommittee created a comprehensive, statewide detailed list of existing pro bono providers of domestic violence-related legal services. This list currently is available on request from Stacey Whiteley at NYSBA ([swhiteley@nysba.org](mailto:swhiteley@nysba.org)), and may be used to direct potential pro bono attorneys interested in assisting victims of domestic violence and their families to a local project that offers volunteer opportunities. The subcommittee hopes that the web-based platform that NYSBA developed in 2017 to connect volunteers interested in providing pro bono services to immigrants with providers of legal services to immigrants can be expanded to provide a platform to link volunteers interested in providing pro bono services to domestic violence victims to domestic violence legal services providers statewide.

### **Identification of Gaps in Legal Services Provided to Domestic Violence Victims**

Through analysis of the List of Existing Pro Bono Service Providers<sup>28</sup> and the results of its Surveys, as well as group discussions, the subcommittee identified the following geographic and substantive gaps in the provision of legal services to domestic violence victims:

- Within New York City (and, to a lesser degree, in Westchester and Long Island), there is a significant supply of pro bono attorneys and legal programs serving victims of domestic violence. However, outside of the New York metropolitan area, that is generally not the case. Rather, in more than half the counties in New York (predominantly in the northeast quarter and middle of the state), there is a single legal services provider that holds itself out as providing legal services to domestic violence victims. Many of these providers use pro bono lawyers to some degree.
- There is a lack of attorneys qualified and willing to provide pro bono legal assistance to victims of domestic violence with respect to legal problems other than the domestic violence itself, such as matrimonial, landlord tenant/housing and immigration issues.
- General practice attorneys often lack awareness of the indicators and dynamics of domestic violence and are not able to identify issues of trauma or victimization in their clients. In

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<sup>28</sup> Among other activities, the subcommittee plotted the service providers (from the list it compiled) onto a map of New York State, pictorially supporting its geographic gap conclusion.

addition, these attorneys lack expertise as to how to provide the legal services needed by their clients who are victims of domestic violence.

Seeking to fill these gaps drove the development of the proposals discussed below.

## **Proposals**

The subcommittee researched and developed the following proposals, which the full Initiative has approved:

1. DOMESTIC VIOLENCE ADVISOR PANEL (“DVAP”): Modeled upon the work of several subcommittee members’ organizations, the subcommittee proposes the creation of the DVAP panel of volunteer, pro bono attorneys who would be available to provide peer information, support and general advice to other attorneys (pro bono and civil legal services) taking on pro bono cases involving domestic violence.<sup>29</sup> DVAP panelists, who would have both substantive legal expertise and domestic violence training, would provide limited back-up peer support to the pro bono attorneys. It is hoped that this type of assistance would make pro bono more attractive and effective because volunteer attorneys taking on these challenging cases would have a peer substantive law expert at the ready whom they could utilize on a limited basis to talk through thorny issues, ask questions and obtain strategic advice.
2. “LEGAL CLINIC-IN-A-BOX” TOOLKIT: Building upon the work of the award-winning Adirondack Women’s Bar Association’s Domestic Violence Clinic, as well as several successful pro bono clinical models used by subcommittee members in different parts of the state, the subcommittee developed a toolkit to be used by bar associations or other local community groups that will walk them through the process of setting up a brief advice-

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<sup>29</sup> The DVAP proposal is attached as Exhibit 6 to this Report.



service pro bono clinic for domestic violence victims, including CLE training for volunteers, as well as sample forms and brochures.<sup>30</sup>

3. CLE FOR PRO BONO TOOLKIT: To assist existing legal services providers statewide, and again based on models employed in certain counties, the subcommittee created a toolkit that existing legal services providers can use to develop a program that would provide free CLE programs on domestic violence dynamics and substantive law to attorneys, in exchange for a commitment to assist with at least one pro bono case involving a victim of domestic violence.<sup>31</sup>
4. PRO BONO ATTORNEY LIST/CONNECTING WITH LEGAL SERVICES PROVIDERS: The subcommittee proposes that NYSBA and WBASNY establish a process for identifying attorneys who may be interested in providing pro bono representation to domestic violence victims and assist in connecting them with legal services organizations that are seeking pro bono attorneys to represent domestic violence victims. This effort should include creating a list of attorneys attending domestic violence victim-focused CLE programs who are interested in providing (or helping to provide) legal support to victims of domestic violence on a pro bono basis. The bar association employees staffing the program should solicit the names of interested attorneys and their contact information. The list should be maintained and updated by the bar association on an ongoing basis and made available to organizations seeking such pro bono assistance.<sup>32</sup>

The subcommittee also recommends that NYSBA expand its new web-based immigration portal to provide a platform to link volunteers interested in providing pro bono

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<sup>30</sup> The “Legal Clinic-in-a-Box” Toolkit, including sample materials, is attached as Exhibit 8 to this Report.

<sup>31</sup> The CLE for Pro Bono Toolkit, including sample materials, is attached as Exhibit 9 to this Report.

<sup>32</sup> The Pro Bono Attorney List/Connecting with Legal Services Providers proposal is attached as Exhibit 10 to this Report.

services to domestic violence victims to domestic violence legal services providers statewide.

### **Pro Bono Recommendations**

***Recommendation 1: Through the Domestic Violence Committees of the NYSBA Family Law Section and of WBASNY, continue the work of implementing the four Pro Bono Subcommittee proposals, including creating the Domestic Violence Advisor Panel, establishing the Pro Bono Attorney list process, and supporting the dissemination and use of the Legal Clinic-in-a-Box Toolkit and CLE for Pro Bono Toolkit around the state.***

***Recommendation 2: Publicize the availability of the toolkits and the resources of the WBASNY and NYSBA Family Law Section Domestic Violence Committees as widely as possible, particularly in counties with a gap in legal resources supporting domestic violence victims.***

***Recommendation 3: Through the Domestic Violence Committees of the NYSBA Family Law Section and of WBASNY, continue to work to increase the supply of pro bono legal resources to victims of domestic violence.***

***Recommendation 4: Explore opportunities to use technology to link domestic violence victims needing legal support in one part of New York State with pro bono and legal services attorneys willing and able to provide this support in another part of the state.***

### **III. LEGISLATION**

***Goal: Identify proposed legislation that would help protect and provide access to justice for survivors of domestic violence and prepare supporting memoranda that NYSBA, WBASNY and other interested groups can use to advocate for the adoption of that legislation by the New York State legislature.***

The Legislative Subcommittee<sup>33</sup> worked to identify, review and then, with the assistance of staff from both NYSBA and WBASNY, advocate for appropriate legislation that would support domestic violence victims. After extensive research and vetting of numerous pieces of proposed legislation relating to domestic violence, the subcommittee identified three pieces of proposed legislation on which it recommended the Initiative focus its support:

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<sup>33</sup> The Legislative Subcommittee was chaired by Susan Pollet, Esq.; its dedicated membership is listed in Exhibit 11 to this Report. The subcommittee thanks Kevin Kerwin, NYSBA's Associate Director, Government Relations, for his support of the subcommittee's work and assistance in advocating for passage of the legislation supported by the Initiative.

- A. 2919 (Lavine)/S. 405 (Robach): This bill would establish a right of tenants to call police or emergency assistance without fear of losing their housing. In some communities, a nuisance ordinance violation may be triggered if police or emergency services are called to a property a certain number of times over a set period of time; as a result, a landlord may opt to evict the tenant who triggered the violation. This bill would ensure that victims of domestic violence can access police or emergency assistance without fear of eviction.
- A. 5921 (Weinstein): This bill would amend the Family Court Act and the Criminal Procedure Law to simplify the Victim’s Rights Notice (“Notice”) for victims of domestic violence in criminal and family court proceedings, to make it clearer and more understandable to victims in crisis at most literacy levels and to incorporate changes in the law that were enacted after the Notice was enacted in 1994. The Notice would provide victims with basic information about their rights and remedies available through family and criminal courts, and information about resources, including domestic violence services, legal and medical resources, and assistance available from law enforcement.
- A. 6049 (Mayer)/S. 4569 (Savino): This bill would permit Family Court to award temporary spousal support when issuing a temporary order of protection. This bill is needed because when a domestic violence victim seeks an order of protection, the abuser often retaliates by withdrawing financial support, discontinuing payments of mortgages or utilities, and cutting off access to bank accounts.

The subcommittee drafted a memorandum of support for each of these bills and the full Initiative recommended that NYSBA and WBASNY approve the memos and support the bills. Each memo was converted into separate NYSBA and WBASNY bill memos. Thereafter, the WBASNY Board of Directors approved the bills and supporting WBASNY bill memos at its meeting on January 28, 2017. The NYSBA bill memos were posted on NYSBA’s Reports Page, making them available for review and comment by all members of NYSBA’s Executive Committee and House of Delegates, all of NYSBA’s committees and Sections and all local bar associations represented on NYSBA’s House of Delegates. NYSBA’s Family Law Section supported the bill providing temporary spousal support and the Committee on Women in the Law supported all three bills and suggested minor language changes in the supporting memoranda. The final NYSBA memos in support of the three bills were formally approved by the NYSBA Executive Committee on March 31, 2017.<sup>34</sup>

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<sup>34</sup> The NYSBA and WBASNY memos and copies of the proposed legislation are attached in Exhibit 12 to this Report.

Shortly thereafter, NYSBA's Government Relations staff circulated NYSBA's bill memos to key members of the New York State Assembly and Senate, advocating for swift passage. Over 20 WBASNY members from all over the state traveled to Albany in May 2017 to urge senators to support A. 2919/S. 405, concerning local nuisance laws, and A.5921, concerning simplification of the victim's rights notice. The WBASNY representatives met with the Senate leadership as well as Republican senators who opposed these bills. Additionally, WBASNY met with Kelli Owens, Director of Women's Affairs in the Governor's Office, to advocate for these bills. Lastly, via e-blasts, WBASNY urged all its members to call their local senators and ask them to support these bills.

The Assembly passed all three of the bills. However, despite both bar associations' advocacy efforts, the bills failed to secure passage in the Senate before the close of the legislative session in June 2017.

### **Legislative Recommendations**

***Recommendation 1: Continue to advocate for passage of the three bills discussed above.***

***Recommendation 2: On an ongoing basis, identify, review and advocate for passage of legislative proposals that would support domestic violence victims.***

### **CLOSING**

The joint Domestic Violence Initiative between NYSBA and WBASNY sought to help address the needs for education and training for attorneys and increased pro bono legal services for the victims of domestic violence in New York State, as well as enactment of legislation to assist domestic violence victims. As described in this Report, the Initiative's subcommittees have implemented trainings and developed pro bono-related proposals that, if enacted by bar associations around the state, would help this vulnerable population receive the legal services they desperately need, and have developed

memoranda of support for proposed legislation that would help domestic violence victims. We have made strides but much more needs to be done to combat this ongoing problem and assist the victims.

The Initiative is pleased that this work will continue at WBASNY, under the auspices and guidance of WBASNY's long-standing Domestic Violence Committee, and at NYSBA, under the auspices and guidance of the newly-formed Domestic Violence Committee of the Family Law Section. All of the co-chairs of those committees are members of the Initiative and many of the Initiative's members plan to participate in one or both of those committees, to continue and build on the work of the Initiative. The Initiative urges the current and future leadership and Chapters, Sections and committees of WBASNY and NYSBA to embrace and assist in implementing the Initiative's recommendations.

The Co-Chairs and members of the Domestic Violence Initiative appreciate the leadership of Presidents Gutekunst and Flug in recognizing the unmet legal needs of domestic violence victims in New York and providing the members the opportunity to help to identify and address these needs.

Respectfully submitted,

The NYSBA/WBASNY Domestic Violence Initiative

November 2017

## **Exhibit 1:**

New York State Bar Association and  
Women's Bar Association  
of the State of New York  
Domestic Violence Initiative  
**Mission Statement**

## **New York State Bar Association and Women's Bar Association of the State of New York Domestic Violence Initiative**

Domestic violence is at an epidemic level in New York and around the country. Domestic violence is ongoing, purposeful behavior aimed at exerting power and control over one's intimate partner, and can be psychological, physical, sexual or economic in nature. The Centers for Disease Control and Prevention estimate that nationally, almost 25 percent of women and 10 percent of men have suffered sexual violence by an intimate partner and over 22 percent of women and 14 percent of men have been subjected to at least one act of severe physical violence in an intimate relationship. New Yorkers experience domestic violence statewide without regard to gender identity, race, sexual orientation, religion, ethnicity, age, disability, or economic or educational status. Too often, domestic violence is lethal: in 2014, 45 percent of New York State's female homicide victims aged 16 and older were killed by an intimate partner.

Domestic violence victims often have few resources and desperately need legal help in obtaining orders of protection against their abusers and in addressing collateral issues, including but not limited to housing, child support, custody and visitation, and divorce. High-quality civil legal assistance plays an invaluable role in protecting and empowering victims and their children, while reducing recidivism by abusers. However, domestic violence victims' need for assistance dwarfs the available resources. Despite the tremendous efforts by legal services lawyers and the many hours of pro bono service by members of the private bar, there continues to be an urgent need for legal representation to ensure access to justice for those who need legal relief, safety and stability.

The New York State Bar Association and Women's Bar Association of the State of New York Domestic Violence Initiative will:

- Help educate attorneys around the state about domestic violence and the need for pro bono representation of victims, and help ensure that pro bono and civil legal services attorneys have access to the comprehensive training and education they need to provide effective legal services to address the broad range of issues faced by individuals and families affected by domestic violence, including those from diverse and traditionally underserved communities; and
- Expand the existing pool of volunteer attorneys and opportunities for volunteer service to victims of domestic violence, including by seeking to collaborate with bar associations throughout the state to help address the needs of domestic violence victims in their jurisdictions, partner with local domestic violence service providers to jointly educate their legal community and foster the recruitment of volunteers and the provision of pro bono legal services to victims through existing or newly-developed pro bono programs; and
- Examine and make recommendations concerning pending or proposed legislation that seeks to protect domestic violence victims.

**Exhibit 2:**

New York State Bar Association and  
Women's Bar Association  
of the State of New York  
Domestic Violence Initiative  
**Roster**



**New York State Bar Association/Women's Bar Association of the State of New York  
Domestic Violence Initiative Roster**

Hon. Judy Harris Kluger  
Co-Chair  
Sanctuary for Families  
New York, NY

Amy E. Schwartz-Wallace, Esq.  
Co-Chair  
Empire Justice Center  
Rochester, NY

Alton L. Abramowitz, Esq.  
Mayerson Abramowitz & Kahn LLP  
New York, NY

Amy Pitcairn Barasch, Esq.  
Her Justice  
Bath, NY

Emma Louisa Buckthal, Esq.  
ECBA Volunteer Lawyers Project  
Buffalo, NY

Amy L. Christensen, Esq.  
Legal Assistance of Western New York, Inc.  
Bath, NY

Mary Beth Conway, Esq.  
Volunteer Legal Services Project of Monroe  
County, Inc.  
Rochester, NY

Hon. Andrew A. Crecca  
Supervising Judge of the Matrimonial Parts  
of Suffolk County & Presiding Justice of the  
Integrated Domestic Violence Court  
Central Islip, NY

Elizabeth Anne Douglas, Esq.  
Law Offices of Elizabeth A. Douglas  
White Plains, NY

Brett M. Figlewski, Esq.  
The LGBT Bar Association of Greater New  
York  
New York, NY

Janet R. Fink, Esq.  
New York State Office of Court  
Administration  
New York, NY

Mary C. John, Esq.  
Volunteer Lawyers Project of Onondaga  
County Inc.  
Syracuse, NY

Hon. Deborah A. Kaplan  
Education and Training Subcommittee  
Chair  
Statewide Coordinating Judge for Family  
Violence Cases  
New York, NY

Jillian Lee McGuire, Esq.  
Mackenzie Hughes LLP  
Syracuse, NY

Stephanie M. Nilva, Esq.  
Day One  
New York, NY

Amanda Beth Norejko, Esq.  
Sanctuary for Families  
New York, NY

**New York State Bar Association/Women's Bar Association of the State of New York  
Domestic Violence Initiative Roster**

Susan Patnode, Esq.  
Rural Law Center of New York, Inc.  
Plattsburgh, NY

Susan S. Pattenau, Esq.  
The Legal Project  
Albany, NY

Faye M. Polayes, Esq.  
Pro Bono Subcommittee Chair  
New York, NY

Susan L. Pollet, Esq.  
Legislative Subcommittee Chair  
New York, NY

Patricia L. R. Rodriguez, Esq.  
Law Offices of Patricia L. R. Rodriguez  
Schenectady, NY

Ellen C. Schell, Esq.  
NYS Office for the Prevention of Domestic  
Violence  
Albany, NY

Lois Schwaeber, Esq.  
The Safe Center LI, Inc.  
Bethpage, NY

William Silverman, Esq.  
Proskauer  
New York, NY

Natalie J. Sobchak, Esq.  
Pace University School of Law  
Pace Women's Justice Center  
White Plains, NY

Audrey E. Stone, Esq.  
Office of the Statewide Coordinating Judge  
for Family Violence Cases  
New York, NY

Kim Susser, Esq.  
Law Offices of Kim Susser  
New York, NY

Jessica Hugabone Vinson, Esq.  
Bartlett, Pontiff, Stewart & Rhodes PC  
Glens Falls, NY

Taa R. Grays, Esq.  
NYSBA Executive Committee Liaison  
MetLife Inc.  
New York, NY

Kevin M. Kerwin, Esq.  
Staff Liaison  
New York State Bar Association

Jessica Patterson  
Staff Liaison  
New York State Bar Association

Stacey Whiteley  
Staff Liaison  
New York State Bar Association

## **Exhibit 3:**

New York State Bar Association and  
Women's Bar Association  
of the State of New York  
Domestic Violence Initiative  
**Education and Training  
Subcommittee Roster**

**New York State Bar Association/Women's Bar Association of the State of New York  
Domestic Violence Initiative Education and Training Subcommittee Roster**

Hon. Deborah A. Kaplan  
Education and Training Subcommittee Chair  
Statewide Coordinating Judge for Family  
Violence Cases  
New York, NY

Hon. Andrew A. Crecca  
Supervising Judge of the Matrimonial Parts of  
Suffolk County & Presiding Justice of the  
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Sanctuary for Families  
New York, NY

Susan L. Pollet, Esq.  
Legislative Subcommittee Chair  
New York, NY

Patricia L. R. Rodriguez, Esq.  
Law Offices of Patricia L. R. Rodriguez  
Schenectady, NY

Ellen C. Schell, Esq.  
NYS Office for the Prevention of Domestic  
Violence  
Albany, NY

Jessica Patterson  
Staff Liaison  
New York State Bar Association

**Exhibit 4:**

**Flyers for Live CLE Programs  
Developed or Co-Sponsored by  
the NYSBA/WBASNY Domestic  
Violence Initiative**

# SPEAKING

THE

# VICTIM'S

# LANGUAGE

In the past, the voices of domestic violence victims were too often silenced by fear, intimidation and the fact that many in our systems simply were not listening. With much effort over the years, this is beginning to change.

But now a related problem has become prominent involving victims with Limited English Proficiency (LEP): A recent report by the National Center for State Courts and Center for Court Innovation revealed a nationwide lack of specialized training pertaining to

domestic violence and sexual assault cases. Domestic violence/ sexual assault proceedings are especially stressful for non-English speaking individuals and particularly challenging for interpreters.

Caregivers, advocates, police and courts, willing as they may be to victims a voice, cannot be fully effective if they are unable to understand what victims are saying—and if victims cannot comprehend what they are hearing. That language barrier discourages victims from seeking what may literally be life-or-death assistance.

The Unified Court System and its Office of Language Access have begun addressing one of the issues with a pilot program in which temporary and final orders of protection are issued in an English/ Spanish interlinear and bilingual format to ensure that the orders are fully understood by LEP parties. But more needs to be done.

## FREE 3-CREDIT CLE PROGRAM Tuesday, November 15, 2016, 12:45 - 4:00 p.m.

Third Judicial District Training Room, 2500 Pond View, Castleton-on-Hudson, NY 12033 (Exit 10 on I-90 East) just minutes from downtown Albany (free parking is available).

The Third Judicial District Gender Fairness Committee presents a free, three-credit (in order to receive credit, attendees must attend the entire program) continuing legal education program that will explore the issues and nuances regarding language access and domestic violence. A group of panelists and presenters will drill down to explore the problem, and potential solutions.

## CO-SPONSORS

Albany County Coalition Against Domestic Abuse, Albany County Bar Association, Capital District Women's Bar Association, Equinox, Inc., The Legal Project, New York State Bar Association, NYSBA Committee on Immigration Representation, Unity House, Women's Bar Association of the State of NY

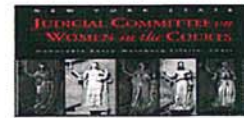
## REGISTRATION INFORMATION

For more information and to register please visit:

<http://www.nycourts.gov/IP/language-access-3jd/index.shtml>

If there are questions, please email Beth Diebel at [3rdjdadministration@nycourts.gov](mailto:3rdjdadministration@nycourts.gov)





THE PACE WOMEN'S JUSTICE CENTER, THE WESTCHESTER WOMEN'S BAR ASSOCIATION, THE NYSBA/WBASNY DOMESTIC VIOLENCE INITIATIVE and THE NINTH JUDICIAL COMMITTEE TO PROMOTE GENDER FAIRNESS IN THE COURTS

are pleased to host a *brown bag* lunch and learn CLE program:

## Ethics for the Family Law Practitioner

DATE: March 17, 2017

PLACE: Supreme Court Westchester County, Ninth Floor Conference Room

TIME: 12:30p.m. to 2:10p.m.

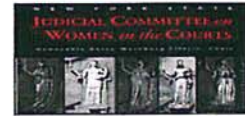
**SPEAKERS:** Presented by the Honorable Allen Hochberg, Esq. Family Court Support Magistrate (Ret.), Deborah A. Scalise, Esq. Scalise & Hamilton, LLP and Audrey E. Stone, Esq., Chief Counsel, Office of the Statewide Coordinating Judge for Family Violence Cases, New York State Office of Court Administration; Moderated by Natanya L. Briendel, Esq., Pace Women's Justice Center

**PROGRAM DESCRIPTION:** Lawyers face certain challenges on a daily basis, including the proper maintenance of escrow accounts and recordkeeping and electronic discovery issues. Additional developments in the lead case, "*Galasso*" and its related civil matters provide lessons as to the best practices in the firm and outside of the firm as to a lawyer's fiduciary responsibilities and reliance on others. In addition, the implications of the use of email and other electronic devices, as well as spyware in discovery are issues that consistently crop up. Our panel will discuss *Galasso* and its implications. Applying the New York Rules of Professional Conduct, precedent and bar association opinions, the Panel will discuss the applicable practical and ethical concerns that come into play when these issues arise.

**CLE:** Approval of CLE credit is in accordance with the requirements of the New York State Continuing Legal Education Board for a maximum of 2 Ethics credit per session. WBASNY is an accredited provider of CLE credits in New York.







REGISTRATION: [www.wwbany.org](http://www.wwbany.org)

**FEE: NO CHARGE for program attendance, \$30.00 if CLE credit is required. The fee is waived for members in good standing of the Pace Women's Justice Center Moderate Means Panel. Full and partial scholarships for this program, based on financial need, are available. Full scholarship for the \$10 CLE certificate charge (maximum of 10 attendees) for this program are available for attorneys at non-profit organizations that provide direct legal service for victims of domestic violence. For information and to apply, please contact Westchester Women's Bar Association President Susan Edwards Colson at 914-505-6045. All requests are confidential. For CLE credit, please register and pay online at [www.wwbany.org](http://www.wwbany.org).**

RSVP: By March 10, 2017 to [www.wwbany.org](http://www.wwbany.org).

FOR QUESTIONS CONTACT: Natanya L. Briendel, Esq . at [nbriendel@law.pace.edu](mailto:nbriendel@law.pace.edu)

CLE: Pending approval by WBASNY in accordance with the requirements of the New York State Continuing Legal Education Board, acceptable for transitional credit for established and newly admitted attorneys. The Westchester Women's Bar Association is a chapter of the Women's Bar Association of the State of New York.

*The opinions expressed by any program presenter are the presenter's own, and do not reflect the official position of the WWBA or WBASNY.*

*The Westchester Women's Bar Association is a chapter of the Women's Bar Association of the State of New York.*







NEW YORK STATE BAR ASSOCIATION  
**JUDICIAL SECTION**

*Continuing Legal Education Special Event*  
**A View from the Bench: An Unflinching  
View of Domestic Violence and  
New Ways to Protect Victims  
Wednesday, April 19, 2017**

*Sponsors:*

*New York State Bar Association Judicial Section; NYSBA Family Law Section; Hofstra Law School;  
NYSBA Women's Bar Association, State of New York, Domestic Violence Initiative*

**MCLE Credits: 1.0** credit in Areas of Professional Practice; Acceptable for both newly-admitted and experienced attorneys

## Wednesday, April 19, 2017

**6 to 7:35 PM** (reception to follow)

Hofstra Law School, 121 Hofstra University, Room 308, Hempstead, NY 11549

**Registration Fee:** \$20 attorneys

**FREE:** Members of the Judiciary; Law Students

Pre-registration strongly encouraged by Friday April 14th, as space is limited

### Featured Speakers:

**Hon. Deborah Kaplan**, Statewide Coordinating Judge for Family Violence Cases, *A Snapshot of Current Issues in Domestic Violence*

**Hon. John Leventhal**, Appellate Division, 2nd Department, Author of *My Partner, My Enemy: An Unflinching View of Domestic Violence and New Ways to Protect Victims*

**Hon. Andrew Crecca**, Supervising Judge for Matrimonial Parts, Suffolk County Supreme Court, *Understanding The Challenges Courts Face in Protecting Domestic Victims & Their Families*

**Registration:** [www.nysba.org/041917JUD](http://www.nysba.org/041917JUD)

For assistance with online registration: **800-582-2452**

For information (program information only): **518-487-5570**



NEW YORK STATE BAR ASSOCIATION  
One Elk Street, Albany, NY 12207

**POSTMASTER: CONTAINS DATED MATERIAL.  
PLEASE DELIVER PROMPTLY. THANK YOU.**



**WBASNY**  
WOMEN'S BAR ASSOCIATION  
*of the* STATE OF NEW YORK



## **NYSBA/WBASNY Domestic Violence Initiative**

### **Domestic Violence and Housing Law CLE**

April 25, 2017

1:00pm – 2:30pm

New York City Family Justice Center  
80 Centre Street, New York, NY

1.5 CLE credits (professional practice)

Cost – Free

Speakers:

J. Kevitt Adler, Staff Attorney, Sanctuary for Families

Devi Patel, Staff Attorney and Poverty Justice Solutions Fellow, Sanctuary for Families

Amanda Norejko, Matrimonial/Economic Justice Project Director, Sanctuary for Families

**R.S.V.P. BY APRIL 17, 2017**

TO: [EVENTS@WBASNY.ORG](mailto:EVENTS@WBASNY.ORG)

# Representation in Family Court Proceedings

Friday, June 9, 2017

Registration 9:30 am - 10:00 am

Program 10:00 am - 5:00 pm

New York State Bar Association | 1 Elk Street | Albany, NY 12207

**Description:** Leading practitioners knowledgeable about representation in Family Court proceedings will provide an overview of best practices and offer practical advice and strategies. The day-long CLE will cover the outer boundaries of Article 10, best practices for representing third parties and relatives, provide an overview of defending and prosecuting cases involving domestic violence, cover the UIFSA, UCCJEA, ICWA and the Hague Conventions, and provide insight on relevant ethical issues. The CLE will feature a panel of experienced practitioners who will discuss special considerations in Family Court proceedings and offer practical suggestions and strategies for how to best represent your clients.

**Registration Fee: THIS PROGRAM IS COMPLIMENTARY**, and lunch will be served during the biannual awards ceremony for the Outstanding Achievements in Promoting Standards of Excellence in Mandated Representation and the Denison Ray Criminal Defender Awards. **MCLE credits will be available**

## Register today [nysba.org/COMRCLE17](http://nysba.org/COMRCLE17)



## **Exhibit 5:**

New York State Bar Association and  
Women's Bar Association  
of the State of New York  
Domestic Violence Initiative  
**Joint Memo to WBASNY Chapters and to  
NYSBA Section and Committee Chairs**



To: NYSBA Committee and Section Chairs

Re: NYSBA/WBASNY Domestic Violence Initiative

Dear Committee and Section Chairs:

The New York State Bar Association and the Women's Bar Association of the State of New York have launched a joint initiative to enhance access to legal services for victims of domestic violence. Women and men who leave abusive relationships frequently have limited resources. Survivors of domestic violence need attorneys who are aware of the dynamics of domestic violence and how it can affect the lives of their clients. Trauma-informed legal representation can make a life-changing difference for these clients.

The mission of the Domestic Violence Initiative is to raise awareness of domestic violence and offer training to pro bono and legal services attorneys; work with bar associations and others in the legal community to recruit more pro bono attorneys; develop pro bono programs that can be implemented for underserved communities across the state; and support legislation to help domestic violence victims and their families.

As part of our bar associations' support for this important initiative, we are requesting our committees and Sections to consider collaborating with the NYSBA/WBASNY Domestic Violence Initiative to provide training relating to domestic violence to our members. Please consider whether the issue of domestic violence and serving victims can be incorporated into the programs you are planning this year. The Domestic Violence Initiative can help you identify domestic violence experts in your area who can consult with you and speak at your CLEs and other events. In addition, the Domestic Violence Initiative is organizing CLEs on several topics which we hope will be of interest to members of your committee or Section. We would appreciate your assistance in spreading the word about these training opportunities.

If you have any questions or wish to work with the Domestic Violence Initiative, including on organizing a CLE program or other event, and to access the resources and expertise we have available, please contact Jessica Patterson, NYSBA staff liaison to the Domestic Violence Initiative, at [jpatterson@nysba.org](mailto:jpatterson@nysba.org) or (518)487.5557.

Sincerely,

Jacqueline Flug  
WBASNY President

Claire P. Gutekunst  
NYSBA President





To: Chapter Presidents

Re: NYSBA/WBASNY Domestic Violence Initiative

Dear Chapter Presidents:

The New York State Bar Association and the Women's Bar Association of the State of New York have launched a joint initiative to enhance access to legal services for victims of domestic violence. Women and men who leave abusive relationships frequently have limited resources. Survivors of domestic violence need attorneys who are aware of the dynamics of domestic violence and how it can affect the lives of their clients. Trauma-informed legal representation can make a life-changing difference for these clients.

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As part of our bar associations' support for this important initiative, we are requesting our Chapters to consider collaborating with the NYSBA/WBASNY Domestic Violence Initiative to provide training relating to domestic violence to our members. Please consider whether the issue of domestic violence and serving victims can be incorporated into the programs you are planning this year. The Domestic Violence Initiative can help you identify domestic violence experts in your area who can consult with you and speak at your CLEs and other events. In addition, the Domestic Violence Initiative is organizing CLEs on several topics which we hope will be of interest to your chapters's members. We would appreciate your assistance in spreading the word about these training opportunities.

If you have any questions or wish to work with the Domestic Violence Initiative and access the resources and expertise we have available, including on organizing a CLE program or other event, please contact Jessica Patterson, NYSBA staff liaison to the Domestic Violence Initiative, at [jpatterson@nysba.org](mailto:jpatterson@nysba.org) or (518)487.5557.

Sincerely,

Jacqueline Flug  
WBASNY President

Claire P. Gutekunst  
NYSBA President

**Exhibit 6:**

New York State Bar Association and  
Women's Bar Association  
of the State of New York  
Domestic Violence Initiative  
**Pro Bono Subcommittee Roster**



**New York State Bar Association/Women's Bar Association of the State of New York  
Domestic Violence Initiative Pro Bono Subcommittee Roster**

Faye M. Polayes, Esq.

Pro Bono Subcommittee Chair

New York, NY

Alton L. Abramowitz, Esq.

Mayerson Abramowitz & Kahn LLP

New York, NY

Amy Pitcairn Barasch, Esq.

Her Justice

Bath, NY

Emma Louisa Buckthal, Esq.

ECBA Volunteer Lawyers Project

Buffalo, NY

Amy L. Christensen, Esq.

Legal Assistance of Western New York, Inc.

Bath, NY

Mary Beth Conway, Esq.

Volunteer Legal Services Project of Monroe  
County, Inc.

Rochester, NY

Jillian Lee McGuire, Esq.

Mackenzie Hughes LLP

Syracuse, NY

Susan Patnode, Esq.

Rural Law Center of New York, Inc.

Plattsburgh, NY

Susan S. Pattenau, Esq.

The Legal Project

Albany, NY

Lois Schwaeber, Esq.

The Safe Center LI, Inc.

Bethpage, NY

Amy E. Schwartz-Wallace, Esq.

Empire Justice Center

Rochester, NY William Silverman, Esq.

Member

Natalie J. Sobchak, Esq.

Pace University School of Law

Pace Women's Justice Center

White Plains, NY

Kim Susser, Esq.

Law Offices of Kim Susser

New York, NY

Jessica Hugabone Vinson, Esq.

Bartlett, Pontiff, Stewart & Rhodes PC

Glens Falls, NY

Stacey Whiteley

Staff Liaison

New York State Bar Association

## **Exhibit 7:**

New York State Bar Association and  
Women's Bar Association  
of the State of New York  
Domestic Violence Initiative  
**Domestic Violence Advisor Panel  
("DVAP") Proposal**

NYSBA/WBASNY Joint Domestic Violence Initiative  
*Pro Bono* Subcommittee  
Faye M. Polayes, Chair

PROPOSAL TO ESTABLISH A PANEL OF PRO BONO ATTORNEYS TO PROVIDE  
ADVICE TO LAWYERS PROVIDING *PRO BONO* (AND PAID/REDUCED FEE)  
REPRESENTATION IN DOMESTIC VIOLENCE CASES AND IN OTHER TYPES OF  
CASES WHERE DOMESTIC VIOLENCE HAS OCCURRED

I. The Panel would be known as the Domestic Violence Advisor Panel (the ‘DVAP’)

II. PURPOSE/MISSION OF THE DVAP:

- A. To encourage/attract attorneys who do not practice in the domestic violence area (including those who work for local legal service providers) to provide *pro bono* assistance (as well as paid and reduced fee representation) in domestic violence (DV) matters by improving their capacity to address the myriad of legal issues that arise in DV cases through the establishment of a panel of volunteer lawyers who would provide technical assistance (and other advice) to the *pro bono* attorneys (and certain paid and reduced fee attorneys) by offering their expertise both in the area of DV and in those legal areas affecting DV victims and in which DV issues arise.
- B. To provide technical assistance and other advice (and, in certain situations, acting as mentor) by attorneys with expertise in DV matters, to attorneys encountering DV in other areas of substantive law in order to enable them to identify DV and to assist their clients in addressing DV issues that arise in those non-DV matters.
- C. An attorney practicing in any area of law involving representation of individuals may encounter DV victims or DV issues. Examples of such areas (in alphabetical order) are:

- Criminal Law
- Litigation (including retaliatory litigation)
- Bankruptcy & Debtor/Creditor
- Elder Law
- Family and Matrimonial Law
- Housing and Landlord/Tenant
- Government entitlements
- Immigration
- Personal Injury
- Social Security & Disability
- Labor & Employment/Workers’ Compensation
- Trusts & Estates (and Tax)

I. CONTRIBUTION TO THE MISSION OF THE INITIATIVE'S *PRO BONO* SUBCOMMITTEE

The DVAP would improve the quality and scope of the *pro bono* and paid representation of DV victims through the provision of advice and technical and assistance by experienced attorneys to volunteer (and compensated) lawyers lacking knowledge or experience with DV and the overlapping areas of substantive law. The DVAP would provide advice (including, on occasion, acting as mentor) and technical assistance to the volunteer and paid lawyers that would enable them to knowledgeably and effectively represent their clients, while also providing similar assistance to lawyers in other disciplines encountering DV to help them recognize DV, to make appropriate assistance referrals of victims, and to deal with DV issues that impact their client's cases.

I. IMPLEMENTATION

- A. There would be one Panel, jointly sponsored by NYSBA and WBASNY, providing both Associations with "ownership" of the project. This co-sponsorship could be accomplished by the formation of a "joint committee" or of "cooperating committees" between the two Associations utilizing liaisons from one to the other. The participation of WBASNY would be through its Domestic Violence Committee. The participation of NYSBA would be through the new Domestic Violence Committee of the Family Law Section.
- B. An administrator of the DVAP would be required. The sponsoring organizations should be asked to address this matter. Presumably, these administrative responsibilities could be added to the duties of an existing NYSBA staff person.
- C. DV service providers would encourage their lawyers, current or retired, to serve as members of the DVAP, although the service providers would not be sponsors of the DVAP.
- D. NYSBA and WBASNY members would be would invited and encouraged to participate in the DVAP through outreach to the bar association committees and sections in the practice areas listed in Section I above.
- E. The DVAP would be contacted by telephone, e-mail or links in the websites of the sponsoring bar associations as well as of any other bar associations and organizations willing to participate by providing a link. Web pages with information related to the DVAP should be established by each organization.
- F. The administrator would ensure that the list of advisors who are serving on the DVAP remains current and would determine which volunteers would be appropriate based on expertise, geography, etc.

- G. The sponsoring committee may want to consider phasing in the practice areas (other than DV representation) in which the DVAP will advise. For example, the DVAP initially could include in addition to lawyers providing DV victim representation, family and matrimonial, housing/landlord tenant and immigration lawyers. Once the DVAP was functioning well in those initial areas, other practice areas could be added.
- H. The scope and extent of advice and technical assistance to be provided by the panel should be specified by the sponsoring committee. The role of a DVAP member should be circumscribed so that it is of limited duration and supportive only. See G above. It may be desirable to limit the practice areas covered by the DVAP.
- I. A written protocol outlining the expectations for the type, practice areas and form of advice that DVAP members would be providing is essential to attracting potential members as well as to ensure that members' time commitments are not unduly burdensome; thereby assuaging any doubts that potential DVAP members might have about committing to serve. (The question was raised as to whether or not DVAP members would be expected to do more than consulting with the volunteer – e.g., reviewing paperwork, etc. It would seem that generally this kind of support should be beyond the scope of the DVAP. Exceptions could be made in certain situations.)
- J. Essential to the success of the DVAP would be training, including training which is planned by the Initiative's subcommittee on DV training or by the Family Law section. A well-publicized "kick off" CLE would be a good starting point.
- K. In addition, ongoing training should be made available by means of webinars that would be recorded and accessible on the Sponsors' websites when needed by attorneys representing DV victims.
- L. It was suggested that paid attorneys (and perhaps reduced fee attorneys) who seek advice from the DVAP be encouraged to support the DVAP's activities and/or DV focused legal service organizations.
- M. *Pro bono* attorneys seeking to be DVAP members should be "vetted" by means of an application process at the outset where criteria would be established for minimum qualifications and for the fulfillment of minimum training requirements for which CLE credits would be granted. The sponsoring joint committee should be responsible for ensuring that DVAP members remain current by providing ongoing training and by requiring periodic recertification. That committee should also be vested with the ability to determine whether a DVAP member should continue to serve in the event of complaints by clients or others. (Provision must be made to protect the Sponsors from liability due to a member's misfeasance or malfeasance.)

N. A campaign to publicize the DVAP and its role/activities needs to be developed and maintained.

O. Periodic surveys of consumers/clients and DVAP members to monitor and improve the quality and effectiveness of the DVAP should be implemented by the Sponsors.

Respectfully submitted.

## **Exhibit 8:**

New York State Bar Association and  
Women's Bar Association  
of the State of New York  
Domestic Violence Initiative  
**"Legal Clinic-in-a-Box" Toolkit**

**NYSBA/WBASNY DOMESTIC VIOLENCE INITIATIVE  
TOOLKIT TO ESTABLISH LEGAL CLINIC FOR DOMESTIC VIOLENCE VICTIMS**

This toolkit provides the basic information, instructions and materials that your bar association or legal services organization (“Sponsoring Organization”) needs to establish a clinic that provides initial legal consultation and access to legal resources to victims of domestic violence (“Clinic”). The toolkit includes:

- Description and Purpose of the Clinic
- Steps for Clinic Creation
- Guidance regarding Clinic Operations
- Sample Materials

**Description and Purpose of the Clinic**

A legal clinic held at least once per month staffed by volunteer attorneys at an accessible office setting wherein each attendee meets individually with a volunteer attorney for a period of at least one half-hour for a consultation. The volunteer attorneys shall answer any general questions, provide information about resources and assist in completing paperwork, but shall not be required to provide representation.

The purpose of the Clinic is to increase access to legal representation and resources for survivors of domestic violence in your area with respect to their legal needs related to domestic violence, as well as legal matters ancillary to the domestic violence, such as custody, support, divorce, housing and bankruptcy.

The Clinic’s substantive scope can be as determined based on the goals of the establishing organization, attorney availability, etc.

**Clinic upon which this Toolkit Is Based**

This Legal Clinic Toolkit has been modeled on the Adirondack Women’s Bar Association Legal Clinic to Aid Survivors of Domestic Violence (“Adirondack Legal Clinic”). The Adirondack Women’s Bar Association is a chapter of the Women’s Bar Association of the State of New York. The Adirondack Legal Clinic was created in November 2010 and has been successfully operated for over six years. Through the Adirondack Legal Clinic, volunteer attorneys have provided legal advice and other assistance to hundreds of survivors of domestic violence. The Adirondack Legal Clinic is a valued asset in an area where access to civil legal services is limited. The Adirondack Legal Clinic is held the third Tuesday of each month at 5:30 pm at the offices of the Domestic Violence Project of Catholic Charities in Glens Falls, New York.

**Steps for Clinic Creation**

1. The Sponsoring Organization would provide the organizational support and structure (as well as malpractice insurance coverage and CLE credit for the volunteers) for the Clinic or would collaborate with a local bar association, if needed, to do so.



2. The Sponsoring Organization should designate a point person and create a committee to organize the creation of the Clinic and oversee implementation.
3. The point person and/or committee shall meet with local stakeholder organizations that provide services to survivors of domestic violence to ascertain the need for the Clinic, anticipated capacity of the Clinic and potential location of the Clinic. Such providers may include the licensed domestic violence service provider, the civil legal aid program(s), and other programs providing advocacy and support services to domestic violence survivors.
4. The point person and/or committee shall determine the Clinic location. The location should have office space or rooms which allow for confidential communication. The location should be easily accessible and readily available for Clinic attendees, as well as secure, if possible. Such locations may include offices of the local domestic violence services provider civil legal aid office, pro bono program, private law firm or other community agency. They should also be ADA accessible.
5. The point person and/or committee shall gather a list of volunteer attorneys who are willing to staff the Clinic. Attorneys may be recruited through state and local bar associations. Area law students may also desire to volunteer and to shadow the volunteer attorneys.
6. The point person and/or committee shall facilitate and/or provide information about CLEs or other trainings available to volunteer attorneys which address the provision of legal services to survivors of domestic violence, the safety issues that must be navigated, and other areas of concern faced by these survivors.
7. The point person and/or committee shall set the date(s) and time(s) of the Clinic and notify area service providers of the Clinic and who to contact with information for attendees.
8. The point person and/or committee shall ensure that malpractice insurance coverage is available for Clinic volunteers. If a civil legal aid program or pro bono program is the Sponsoring Organization, the program will likely be able to offer malpractice insurance coverage for volunteer attorneys.
9. The point person and/or committee shall create a client waiver form and survey. Samples attached were provided by WBASNY.
10. The point person and/or committee should consider creating a brochure to help publicize the Clinic to potential attendees. A sample brochure is attached. The point person and/or committee should also consider creating an area resource list to be given to each clinic participant, including information regarding the local civil legal aid program, LawHelpNY, and on-line filing forms.
11. The Sponsoring Organization should create a plan to address, in advance, any language access or accessibility accommodation that a domestic violence survivor clinic participant may need in order to participate in the clinic event.

## **Guidance regarding Clinic Operation**

1. The point person and/or committee shall appoint a contact to: gather attendee names, significant other's names, phone number, subject area of questions; a contact to recruit volunteer attorneys; and a contact to administer the clinic.
2. Arrange for volunteer attorneys to staff clinic. Each volunteer shall complete a volunteer attorney form which shall list contact information, practice areas, language fluency, and affirm the attorney's good standing with the New York State Bar, lack of orders of protection wherein they are the restrained party, and lack of criminal background generally associated with domestic violence. A sample survey created by WBASNY is attached.
3. Provide attendee information to volunteer attorneys prior to Clinic to perform conflict check.
4. At beginning of Clinic, have clients sign waiver form and provide resource list to clients.
5. Assign one attorney to one client (avoiding any conflicts). Match attorneys with participants by area of expertise, if possible.
6. Appoint a timekeeper to inform attorneys when a session is complete.
7. Arrange for client to complete survey before they depart.
8. Analyze and compile survey information, as needed, to address any participant concerns.
9. Keep a record of volunteer attorneys, including practice areas, language fluency, and hours of service. If the Sponsoring Organization is an accredited pro bono CLE provider, the program will provide CLE credit to participating volunteer attorneys. (Volunteer attorneys earn 1 CLE credit for each 2 hours of pro bono service up to 10 CLE credits in each biennial reporting period.) If possible and desired, publish names of volunteer attorneys to provide recognition to the volunteer attorneys and to help recruit additional volunteers.
10. Success of this type of clinic requires a person (or persons) who takes responsibility for assuring that the various components of the Clinic are present each month – that the volunteer attorneys have committed to participate, that the space is available, that the forms and timekeepers will be there, etc. This responsible person could be the point person (or a committee of people who could share the responsibilities.). The success of the Adirondack Legal Clinic depended a great deal on the dedication of those who set it up and continue to maintain it.

## **List of Toolkit Sample Materials Attached**

1. Sample Volunteer Attorney Information Form
2. Sample Brochure Informing Public regarding Clinic
3. Sample Brochure Describing Volunteer Opportunities at Clinic
4. Sample Client Intake Survey
5. Sample Legal Clinic Exit Evaluation

6. Sample Client Waiver

**For more information or with questions**, contact Stacey Whiteley of NYSBA ([swhiteley@nysba.org](mailto:swhiteley@nysba.org)), who can connect you with appropriate resources through the WBASNY Domestic Violence Committee or the Domestic Violence Committee of the NYSBA Family Law Section.

Doc. #477541

## Volunteer Attorney Information

Name (please print) \_\_\_\_\_

### Contact Information

Email Address \_\_\_\_\_

Preferred Telephone Number \_\_\_\_\_

Preferred Mailing Address \_\_\_\_\_

Name of Employer (if office) \_\_\_\_\_

Street Address \_\_\_\_\_

City, Zip \_\_\_\_\_

Are you a member of the \_\_\_\_\_ Association?  Yes  No

Please indicate your Areas of Practice:

Are you licensed to practice in New York State?  Yes  No

I hereby certify that all information on this form is true and correct. (Please sign below)

\_\_\_\_\_

## Did You Know?

- ◆ 85% of domestic violence survivors are women
- ◆ 1 in every 4 women will experience domestic violence in her lifetime.
- ◆ 1 out of 4 same-sex relationships has experienced domestic violence.

“He screamed at me in front of the children.”

“He threatened to get me deported.”

“He kicked the dog and said I would be next.”

“She slashed my tires.”

“He told our kids I didn’t love them.”

“He slapped my face and punched me in the stomach.”

“He cut up my credit cards and emptied our bank account.”

“He used the GPS on my phone to follow me everywhere.”

“She threatened to kill me and then kill herself.”

“He pointed a gun at me.”

## About

### [Sponsoring organization]

### [Sponsoring organization

contact info]

### [Partner Organizations or

### Domestic Violence Service

Providers

contact info]

This clinic was inspired by the Domestic Violence Initiative, a joint project of the New York State Bar Association and the Women’s Bar Association of the State of New York.

## Legal Clinic

to aid

## Survivors of Domestic

## Violence

*The Legal Clinic is held on the  
[third Wednesday] of each month  
at a confidential location in  
[Town], New York*

[Sponsoring organization  
logo]

[Name(s) of Sponsoring  
organization and partner  
organizations]

## What is Domestic Violence?

*A pattern of coercive behavior in which one partner or former partner attempts to control another through threats or actual use of tactics.*

Domestic Violence is NOT

- A jealousy issue
- An anger management problem
- Caused by alcohol or substance abuse
- A mental illness
- A one-time incident

## Have you or someone you know had a partner who is:

**Verbally Abusive:** using words to control, punish and damage someone's well-being. Abuser may threaten, humiliate, belittle, demean, berate, name-call.

**Emotionally Abusive:** undermining another's sense of self-worth. Abuser may constantly criticize looks, clothing, family, education or work experience, ability to love or be loved.

**Psychologically Abusive:** deliberately attempting to deceive another into questioning their own perception of reality. This is more than lying. Abusers may use false information to make partners doubt their own memory, perception, or sanity.

**Financially Abusive:** using money or access to money to make partners dependent. Abusers may keep financial information secret, limit access to funds by using an "allowance", refuse access to banking information or accounts, make financial decisions without input from partner, retain control of all assets.

**Sexually Abusive:** coercing sexual contact without consent. Abusers may manipulate or make threats to engage in intimate relations, perform sex acts they do not want to, force sex acts with others, force a woman to get pregnancy, engage in sex acts with partner who is unable to give consent because due to drugs or alcohol.

**Physically Abusive:** inflicting physical pain. Abusers may hit, punch, pinch, kick, shove, slap, restrain, strangle, drag by the hair.

Free 30-minute consultations in a confidential setting are available for people who are financially eligible.

## The Legal Clinic to Aid Survivors of Domestic Violence

If you or someone you know has experienced abusive behavior by a partner or former partner and have questions about: [insert topics to be included, such as]

- Orders of Protection
- Child Custody
- Child Support
- Divorce
- Housing issues
- Foreclosures
- Credit and Debts
- Immigration

## WE CAN HELP!

If you or someone you know is a survivor of domestic violence and needs help with legal issues such as these, please call The Legal Clinic to Aid Survivors of Domestic Violence to schedule an appointment with a volunteer attorney at:

(XXX) XXX-XXXX

## Did You Know?

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- ◆ 1 out of 4 same-sex relationships has experienced domestic violence.

“He screamed at me in front of the children.”

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## About

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[Sponsoring organization

contact info]

[Partner Organizations or

Domestic Violence Service

Providers

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Legal Clinic  
to aid

Survivors of

Domestic

Violence

Volunteer

Opportunities

[Sponsoring organization  
logo]

[Name(s) of Sponsoring  
organization and partner  
organizations]



## What is Domestic Violence?

*A pattern of coercive behavior in which one partner or former partner attempts to control another through threats or actual use of tactics.*

Domestic Violence is NOT

- A jealousy issue
- An anger management problem
- Caused by alcohol or substance abuse
- A mental illness
- A one-time incident

## The Legal Clinic to Aid Survivors of Domestic Violence

### Domestic Violence

Survivors of domestic violence have a variety of legal needs and frequently do not have access to funds in order to consult with an attorney. The Legal Clinic to Aid Survivors of Domestic Violence was created to provide survivors with an opportunity to speak to a lawyer for free about their legal issues in a private and secure setting.

Volunteer lawyers may provide guidance and general information to attendees on a variety of topics, including [insert topics to be included, such as]:

- Orders of Protection
- Child Custody
- Child Support
- Divorce
- Housing issues
- Foreclosures
- Credit and Debts
- Immigration

Attorneys and law students interested in volunteering with The Legal Clinic should contact: [include contact info]

**Training:** Volunteers are required to attend a workshop about domestic violence. Additional trainings are offered on a variety of topics, such as [insert topics to be included, such as]: orders of protection, family law issues, divorce, housing, foreclosures, consumer debt, and immigration.

**Malpractice Insurance:** Volunteer attorneys are required to show proof of malpractice insurance. If the volunteer does not have insurance, malpractice insurance coverage will be provided through [bar association? Sponsoring non-profit?]

**Time Commitment:** The clinic is open for [# ] hours on the [day] of the month. Each month, volunteers may sign-up for 30-minute consultations during clinic hours.

**Conflict checks:** Volunteer attorneys at the clinic will be given the list of attendees scheduled for consultations in advance to perform conflict checks.

## Survivors of Domestic

### Violence may

#### experience:

- ♦ Verbal Abuse
- ♦ Emotional Abuse
- ♦ Psychological Abuse
- ♦ Financial Abuse
- ♦ Sexual Abuse
- ♦ Physical Abuse



## Legal Clinic Survey

Clinic Date \_\_\_\_\_

*The information collected will be held in confidence and only used during your experience with the Clinic and statistically to determine the areas of law on which to focus, to assess whether legal clinics are helping to meet the needs of the community and to improve our services.*

1. Gender: \_\_\_\_\_ Preferred Gender pronoun (i.e. she, he, they, other): \_\_\_\_\_ ?
2. What county do you reside in?
3. What is your marital or relationship status? \_\_\_Single \_\_\_Married \_\_\_Widowed \_\_\_Civil union or Registered Domestic Partnership
4. Check below the choice that best describes your current living situation:  
\_\_\_ Own a house                      \_\_\_Rent                      \_\_\_Live in a shelter  
\_\_\_Live with Friend/Relative      \_\_\_Homeless              \_\_\_Other
5. How many people are there in your household including yourself? \_\_\_
6. Are you the head of household with children? \_\_\_Yes \_\_\_No  
If yes, number of children? \_\_\_
7. Are you currently employed?  
\_\_\_Full Time \_\_\_Part Time \_\_\_SSI/SSD \_\_\_Not Currently Employed \_\_\_Retired
8. What is your annual household income? \_\_\_\_\_
9. What is your annual individual income? \_\_\_\_\_
10. Please identify the problem that brought you to this clinic:  
\_\_\_Family /Child Support      \_\_\_Matrimonial (Divorce)      \_\_\_Wills  
\_\_\_Real Estate                      \_\_\_Contracts                      \_\_\_Elder Law  
\_\_\_Bankruptcy/Credit              \_\_\_Landlord/Tenant              \_\_\_SSI  
\_\_\_Labor & Employment      \_\_\_Discrimination (please name) \_\_\_\_\_
11. Have you ever sought advice from an attorney before today? \_\_\_Yes \_\_\_No

## Legal Clinic Exit Evaluation

1. Did you find your legal consultation helpful? \_\_\_Yes \_\_\_No

Please describe why or why not:

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2. Would you recommend the legal clinic services to others? \_\_\_Yes \_\_\_No

3. Would you use the legal services again? \_\_\_Yes \_\_\_No

4. Can you make any suggestions that would improve the legal clinic services?

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*Thank you for taking the time to complete this survey.*

## Clinic Waiver

Dear Clinic Participant:

Welcome to the \_\_\_\_\_ Association Legal Clinic.

It is our hope that by coming here you will obtain the legal information you need. Please understand that the attorney you meet with today is prepared to give you general information on a variety of topics. However, this attorney is not your legal representative in any way. Keep in mind that not every problem has a legal solution or a legal solution that is affordable.

Please be aware that the advice you receive today is of a general nature and you should consult your own attorney regarding any specific concerns such as meeting any relevant statute of limitations (time limit to bring your claim). If you need further assistance or representation we will try to provide an appropriate referral.

If you understand and agree to the above, please sign and date the form below and return it to us.

Again, we welcome the opportunity to serve you.

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Signature

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Printed Name

---

Date

## **Exhibit 9:**

New York State Bar Association and  
Women's Bar Association  
of the State of New York  
Domestic Violence Initiative  
**CLE for Pro Bono Toolkit**

**NYSBA/WBASNY DOMESTIC VIOLENCE INITIATIVE  
TOOLKIT TO ESTABLISH A PROGRAM WHICH OFFERS FREE CONTINUING  
LEGAL EDUCATION (CLE) TO ATTORNEYS IN RETURN FOR PRO BONO  
LEGAL SUPPORT TO DOMESTIC VIOLENCE VICTIMS**

This toolkit provides the basic information, instructions and materials that your legal services organization (“Sponsoring Organization”) needs to establish a program which would increase the pool of local attorneys who can provide pro bono legal services to domestic violence victims. This program (the “CLE for Pro Bono Program” or “Program”) accomplishes this by offering free CLE programs to attorneys in return for their commitment to assist the sponsoring organization in providing these legal services. The toolkit includes

- Description of the program;
- Steps for establishing the program;
- Guidance regarding program operations;
- List of required documents to be maintained in files; and
- Sample Materials.

**Description and Purpose of the Program**

The Program provides a means for sponsoring organizations with existing pro bono legal services programs to increase their capacity to provide legal representation to domestic violence victims by providing a free CLE to attorneys in return for their commitment to volunteer for the sponsoring organization. The sponsoring organization should already provide legal services to domestic violence victims. The Program would increase the sponsoring organization’s supply of willing and informed pro bono attorneys to assist it in representing these clients.

This CLE would be available to attorneys making the commitment to volunteer, as well as to other reduced fee and paid attorneys. Attorneys not making the commitment to volunteer would pay for the CLE. *(NOTE: Sponsoring organizations may have a pre-existing policy for – or against – charging attorneys for CLE when those attorneys do not take on a pro bono case. Each sponsoring organization should use the policy it is comfortable with.)*

**Program upon which this Toolkit Is Based**

This CLE for Pro Bono Program has been modeled on a successful program sponsored by the Volunteer Lawyers Project of Onondaga County.

**Steps for Establishing a CLE for Pro Bono Program**

1. The Sponsoring Organization should designate a point person and/or create a committee to organize the CLE for Pro Bono Program (the “Program committee”) and to oversee its implementation and maintenance.

2. The Sponsoring Organization should either (a) develop a CLE focusing on legal issues that typically affect domestic violence victims, such as obtaining Orders of Protection, family law matters (e.g., custody, child support, divorce), or other legal issues that may arise out of the domestic violence, or (b) partner with an existing CLE provider to provide the CLE. If the Program is to be a joint effort, the Program committee should have membership from both organizations.
3. The Sponsoring Organization should provide the organizational support for the program (as well as arrange for malpractice insurance coverage and CLE credit for the participating attorneys.)
4. The point person (or committee) should meet with staff and other members of the Sponsoring Organization and local domestic violence victim-focused organizations to determine the number and type of attorney volunteers needed.
5. Taking the results of these meetings into account, the point person (and/or the committee) should meet to determine: which agency is responsible for event registration, the topic(s) for the CLE, the desired speakers and moderator, the number of anticipated attendees, and a potential location for the CLE program. The location should have a large enough room for the anticipated number of speakers and attendees, and be ADA accessible. The available space should then be reserved or confirmed.
6. The point person and/or committee should gather a list of attorneys who are willing to speak and moderate the CLE program and then contact those speakers and moderators to confirm their availability.
7. The point person and/or committee should acquire with permission (or, if necessary, prepare) materials for the CLE program topic(s), including a timed outline as well as speaker biographies/profiles reflecting educational background and degrees. The speakers may have their own substantive and biographical materials that would meet the CLE requirements.
8. The point person and/or committee should set the date(s) and time(s) for the CLE and create a brochure or flyer to publicize the CLE to potential attendees. This flyer or brochure should be distributed to various organizations for distribution and posted on various agency websites and social media accounts as much as possible.
9. The point person and/or committee should attempt to contact potential donors (if possible) who are willing to underwrite or donate snacks and beverages for the CLE program. If that is not possible, the point person and/or committee should arrange that appropriate beverages and snacks are provided.

10. The point person and/or committee should follow up with presenters several times in advance of the program to ensure that they will be able to participate and to answer any questions.
11. The point person (and/or committee) should ensure that all materials are prepared well in advance of the CLE and reviewed to ensure they comply with CLE rules. All materials should be combined into a single document (electronic and/or hard copy, as appropriate) for distribution to attendees. The document should include a Title Page (which contains the sponsoring organization's name, date, presenter/moderator names, available CLE credits, and location). The timed outline and speaker profiles should be included as well as the substantive materials and description of the course format.
12. The point person and/or committee shall prepare a sign-up list to record each attendee's name, address, time-in and time-out for CLE purposes, practice areas of interest (e.g., family law), language fluency, and availability to take a case or volunteer.
13. The point person and/or committee shall, prior to the CLE, prepare evaluation forms and CLE certificates, ensuring that the appropriate category of CLE credit is designated (e.g., Skills, Professional Practice) and that appropriate credit is computed and provided for attendees and speakers.
14. The point person and/or committee shall maintain and keep a file with records of all of the above information for CLE purposes. The file should include copies of all materials generated for the program, including CLE required documents and timed outline, the sign-in sheets, evaluations and financial aid policy. See complete list of CLE File Requirements below.

### **Steps To Operate the CLE for Pro Bono Program**

1. After steps 5-14 of the section above are followed to establish and prepare for the CLE program, the point person and/or committee shall designate a person to distribute flyers and secure various postings to publicize the CLE.
2. The point person and/or committee should designate a person to attend the CLE program and collect attendee sign-in names and other contact information.
3. The point person and/or committee shall designates a person (perhaps the person responsible for step 2 above or another) to oversee the sign-in of attendees, collection of evaluation forms and distribution of CLE certificates of attendance. CLE certificates should be provided in exchange for a completed evaluation form.

4. The point person and/or committee shall appoint a timekeeper to inform the presenters when their time is up and to assure compliance with CLE requirements in regard to length of presentations, etc.
5. The point person and/or committee shall appoint a person (or persons) to take responsibility for assuring that a CLE file (with the required file documents listed below) is maintained for at least 4 years in order to ensure that all CLE requirements are met.
6. Many of the steps for establishing and operating a CLE for Pro Bono program would need to be followed each year that the program is operating. See in particular Steps 5-14 of the Steps for Establishing a CLE for Pro Bono Program and the above steps in this section.
7. If the Sponsoring Organization(s) intend this program to be an annual event, the organization(s) should designate a person to take responsibility for assuring that the planning and implementation of the program each year is timely and complete. Successful multi-year programs rely on continuous maintenance and involvement ideally by a group of committed individuals whose involvement extends beyond a single year.

### **CLE File Requirements**

1. Brochure or flyer/announcement (See attached sample)
2. Timed Agenda (See attached sample)
3. Speaker Biographies (See attached sample)
4. Copy of CLE materials prepared by presenters/speakers and Sponsoring Organizations
5. Completed New York CLE Certificate of Attendance. (See attached form that must be used until it is amended)
6. Evaluation Questionnaires (to be completed by attendees)\*

\*See also <http://www.courts.state.ny.us/attorneys/cle/index.shtml> for further and updated details regarding CLE Rules and Regulations.



(NAME OF AGENCY WITH LOGO TO THE LEFT OR ABOVE)  
presents a

**FREE CLE \***

\*in exchange for YOUR commitment to accept one (1) family law case pro bono from (NAME OF AGENCY) within one (1) year.

**FAMILY LAW: CHILD SUPPORT (EXAMPLE ONLY)**

Date: (INSERT DATE)

Time: - p.m. (registration starts at a.m./p.m.)

Location: (INSERT LOCATION AND ADDRESS)

Presenters: , Esq.  
, Esq.

Moderators: , Esq., Staff Attorney at (NAME OF AGENCY)

Major Topics: (EXAMPLES ONLY BELOW)

- An overview of the laws governing child support in New York State
- How to prepare a petition for child support
- Filing the child support petition and the hearing
- Modification, enforcement and violations of child support orders

**MCLE credits:** 2.0 hours (INSERT SPECIFIC CREDITS; I.E. “PROFESSIONAL PRACTICE”). This is a transitional MCLE program and is appropriate for new admittees as well as experienced attorneys. Materials will/will not be provided/will be provided via email prior to the CLE and no written materials will be provided.

This CLE program is free of charge in exchange for a commitment of each attendee to accept one (1) family law case pro bono from (NAME OF AGENCY) within one (1) year.

(NAME OF AGENCY) has been certified by the New York State Continuing Legal Education Board as an Accredited Provider of continuing legal education.

**Register for this CLE on or before (INSERT DATE)**

**by visiting our website at:**

(INSERT WEBSITE)

**For inquiries, or to register by email, please contact:**

(NAME), (TELEPHONE #),(EMAIL)

**Special thanks to our lunch sponsor: (INSERT NAME)(IF APPLICABLE)**

**(INSERT NAME OF AGENCY)  
(INSERT TITLE OF AGENCY)  
(INSERT LOCATION OF CLE)  
(INSERT ADDRESS OF CLE)**

**(INSERT DATE OF CLE)  
(INSERT TIME OF CLE)**

**: to : P.M.**

**I. WELCOME: (INSERT NAME), Esq.**

**: to : P.M.**

**II. OVERVIEW OF CLE PROGRAM:(INSERT NAME), Esq.**

**: to : P.M.**

**III:**

**Presenter: (INSERT NAME), Esq.**

**: to : P.M.**

**IV:**

**Presenter: (INSERT NAME), Esq.**

**: to : P.M.**

**V:**

**Presenter: (INSERT NAME), Esq.**

**: to : P.M.**

**VI. VIOLATION PETITIONS/PD REPRESENTATION:  
QUESTIONS AND ANSWERS**

**Presenter: (INSERT NAME), Esq.**

## **SPEAKER BIOGRAPHIES**

**(INSERT NAME), ESQ.**

**(INSERT BIO FROM SPEAKER)**

**(INSERT NAME), ESQ.**

**(INSERT BIO FROM SPEAKER)**

# NEW YORK CLE CERTIFICATE OF ATTENDANCE

Revised 01/16  
New York State CLE Board  
www.nycourts.gov/attorneys/cle

MAY BE USED ONLY FOR PROGRAMS ACCREDITED BY THE NYS CLE BOARD  
ALL INFORMATION MUST BE ENTERED BY THE CLE PROVIDER

This certificate is issued under §1500.4(b)(12) of the NYS CLE Program Rules and under §10(B) of the NYS CLE Board Regulations and Guidelines.  
By issuing this certificate, the CLE provider verifies that the attorney named below completed this program.

**Attorneys must retain their certificates of attendance for at least four (4) years from the date of the program.**

NAME OF ATTORNEY:

TITLE OF PROGRAM:

DATE(S) OF ATTENDANCE: (For self-study programs, indicate date attorney completed program.)

LOCATION (City/State): (For self-study programs, check "Not Applicable.")   Not Applicable

FORMAT OF PROGRAM: (Check only the format completed by the attorney to whom this certificate is issued.)

1 TRADITIONAL LIVE CLASSROOM FORMAT  2 FULLY INTERACTIVE VIDEOCONFERENCE

LIVE SIMULTANEOUS TRANSMISSION (webconference, teleconference, webcast, videoconference, satellite broadcast, etc.)

3 QUESTIONS ALLOWED DURING PROGRAM (SYNCHRONOUS INTERACTIVITY)  4 QUESTIONS NOT ALLOWED DURING PROGRAM

5 ON-DEMAND/RECORDED (audio/video)  6 OTHER (describe)

Newly admitted attorney format restrictions (except as provided in §2(A) and §2(F) of the Regulations):

Formats 1 & 2 --acceptable for credit in any category | Format 3 --not for Skills credit | Formats 4 & 5 --not for Skills or Ethics and Professionalism credit

ATTORNEY'S METHOD OF PARTICIPATION: (check only one)

GROUP SETTING or  INDIVIDUAL/SELF-STUDY (including an attorney individually dialing in or logging in to a webconference, teleconference or webcast, or individually viewing/listening to a recorded program)

LEVEL OF DIFFICULTY – the **content** of the course is appropriate for: (check only one)

BOTH newly admitted and experienced attorneys (transitional/nontransitional), or

experienced attorneys ONLY (nontransitional), or

newly admitted attorneys ONLY (transitional)

## CREDIT for ATTENDANCE

Credit is awarded in accordance with §8(A)(4)(a) of the Regulations.

Enter number of credits earned in each category:

Ethics and Professionalism

Skills

Areas of Professional Practice

Law Practice Management

In accordance with §10(B)(2) of the Regulations, for multiple breakout sessions, provider should attach a sheet indicating the sessions attended by the attorney.

## CREDIT for FACULTY PARTICIPATION

(Experienced attorneys only)

Award credit in accordance with §3(D) of the Regulations.

Speaker

Panel member

Moderator

Law competition faculty

Enter number of credits earned in each category:

Ethics and Professionalism

Skills

Areas of Professional Practice

Law Practice Management

## CLE PROVIDER INFORMATION

PROVIDER ORGANIZATION:

ADDRESS:

TELEPHONE:

PROVIDER AGENT SIGNATURE:

PRINT NAME:

THE CLE PROVIDER:

(check only one)

has been certified as an **Accredited Provider** by the NYS CLE Board,  
or

has had this **individual course** accredited by the NYS CLE Board as  
Course #

This certificate may **NOT** be used to award CLE credit to New York attorneys under New York's Approved Jurisdiction policy.

**CLE EVALUATION**  
**(WITH LOGO TO THE LEFT OR ABOVE)**  
**(INSERT CLE NAME/TITLE)**  
**(INSERT ADDRESS OF CLE)**  
**(INSERT DATE)**  
**(INSERT TIME(S) OF CLE)**

Thank you for attending this (INSERT NAME OF AGENCY) training program. We would appreciate if if you would complete this evaluation form, to help plan future trainings.

1. **PRESENTERS:** Please rate each presenter on the criteria below, using a scale of 1 to 5, with 1 representing unacceptable to 5 representing excellent.

	(INSERT PRESENTER NAME)	(INSERT PRESENTER NAME)
Organized	_____	_____
Knowledgeable	_____	_____
Thorough	_____	_____

2. **PROGRAM:** Please rate each presenter on the criteria below, using a scale of 1 to 5, with 1 representing unacceptable to 5 representing excellent.

Materials	_____	_____
Content	_____	_____

3. Did the program enhance your knowledge about (INSERT SUBJECT AREA(S))?  
4. Did the program make you feel more confident about handling a pro bono case in this area of law?  
5. Please provide any other comments you have about the seminar, including changes you would suggest in presentation, content, materials or time.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. How many years have you been in practice? \_\_\_\_\_

7. Do you practice in (circle one):

Large firm	Solo practice	Public sector
Medium firm	Government	
Small firm	Corporate	

8. Which months(s) are you most available to accept a pro bono case? \_\_\_\_\_

Name: (optional) \_\_\_\_\_

## **Exhibit 10:**

New York State Bar Association and  
Women's Bar Association  
of the State of New York  
Domestic Violence Initiative  
**Pro Bono Attorney List/Connecting with  
Legal Service Providers Proposal**

NYSBA/WBASNY Joint Domestic Violence Initiative  
*Pro Bono* Subcommittee  
Faye Polayes, Chair

PROPOSAL FOR NYSBA/WBASNY TO MAINTAIN AND MAKE AVAILABLE A LIST OF ATTORNEYS INTERESTED IN PROVIDING (OR HELPING PROVIDE) LEGAL SUPPORT TO VICTIMS OF DOMESTIC VIOLENCE

I. PURPOSE/MISSION OF THE LIST OF INTERESTED ATTORNEYS PROPOSAL:

- A. To compile and maintain a list of attorneys who have attended domestic violence focused CLE's and are interested in providing (or aiding in the provision of) legal services of various kinds to survivors/victims of domestic violence.
- B. To provide that list to legal service organizations seeking *pro bono* attorneys to aid in their provision of such services; thereby increasing the availability of *pro bono* attorneys providing legal services to domestic violence victims.

II. CONTRIBUTION TO THE MISSION OF THE INITIATIVE'S *PRO BONO* SUBCOMMITTEE

This list will fulfill the mission of the *Pro Bono* Subcommittee because it will increase the number of *pro bono* attorneys available to provide and providing legal services to domestic violence victims.

III. DESCRIPTION

At the beginning and end of their domestic violence focused CLE programs (or domestic violence programs that they co-sponsor), NYSBA or WBASNY staff running the program would announce that any attorneys attending the CLE who are interested in getting involved with the provision of necessary legal services to domestic violence victims should give their names and contact information to the staff and that the sponsoring bar association(s) would provide that list to legal services organizations seeking volunteer attorneys. The list would be compiled and maintained by the bar associations. It would be expected to grow over time and be updated. The list should be organized geographically. The bar associations would publicize the list and make it available to organizations asking for it.

#### IV. SPONSOR

Both NYSBA and WBASNY should sponsor this proposal. Unless the bar association staff are willing to take this on as a project, a committee or section (or multiple committees and sections) will need to “own” this project.

#### V. IMPLEMENTATION

- A. NYSBA and WBASNY decide that they are willing to compile and maintain this list and that it is a valuable service.
- B. A blank list document should be developed which is entitled, “Attorneys interested in providing (or helping others to provide) legal services to victims of domestic violence” which provides columns for name, email address and phone.
- C. Text for an announcement to be made at the beginning and end of domestic violence focused CLE programs is drafted.
- D. The sponsoring bar associations inform their staff members who run CLE programs with a domestic violence component that this announcement should be made at the beginning and end of the program.
- E. The bar associations should publicize the existence of this list on their websites and by sending emails to legal services organizations who may be in need of *pro bono* support. These emails should offer to provide a copy of the list. If the bar association has a webpage focused on domestic violence or *pro bono* activity or both, the information on the list should at least appear on these webpages. Depending on the geographic diversity of the attorneys on the list, the list should be offered to organizations anywhere in the state.
- F. The members of the sponsoring committees (or the NYSBA/WBASNY staff, as appropriate) would maintain and update the list. The list should organize the volunteering attorneys by county or city, as appropriate.

Respectfully submitted.



## **Exhibit 11:**

New York State Bar Association and  
Women's Bar Association  
of the State of New York  
Domestic Violence Initiative  
**Legislative Subcommittee Roster**

**New York State Bar Association/Women's Bar Association of the State of New York  
Domestic Violence Initiative Legislative Subcommittee Roster**

Susan L. Pollet, Esq.  
Legislative Subcommittee Chair  
New York, NY

Amanda Beth Norejko, Esq.  
Sanctuary for Families  
New York, NY

Susan S. Pattenau, Esq.  
The Legal Project  
Albany, NY

Lois Schwaeber, Esq.  
The Safe Center LI, Inc.  
Bethpage, NY

Kevin M. Kerwin, Esq.  
Staff Liaison  
New York State Bar Association

**Exhibit 12:**

NYSBA and WBASNY Memos of  
Support of Proposed Legislation  
and Copies of Proposed Legislation

## Memorandum in Support

NYSBA Memorandum #13

April 3, 2017

A. 2919  
S. 405

By: M. of A. Lavine  
By: Senator Robach

Assembly Committee: Codes  
Senate Committee: Codes  
Effective Date: Immediately

**AN ACT** to amend the civil rights law, in relation to the right to call for police and emergency assistance and providing victim protections

### **THE NEW YORK STATE BAR ASSOCIATION SUPPORTS THIS LEGISLATION**

The New York State Bar Association supports this bill, which would establish the right of tenants to call police or emergency assistance without fear of losing their housing as a result of landlord actions or local nuisance laws. This legislation would protect victims of domestic violence unfairly affected by the law as it currently exists.

#### **BACKGROUND**

Nuisance Ordinances were originally created to target abandoned properties where crime occurred with more frequency because properties were unsupervised. The objective of such ordinances was to target offenses related to drugs, property damage and weapons by requiring landlords to be responsible for ensuring that their properties were not used to harbor and enable criminal activities.

In recent years, however, such laws have been applied more broadly to regulate and sanction activities at occupied properties. In some communities, the ordinance is triggered if police or emergency services provide aid or are called to a property a certain number of times over a set period of time (i.e., three calls for help to the police over 12 months). In general, these triggers are applied without consideration of whether the call was made by the victim of a crime seeking police assistance out of legitimate fear.

These laws often hold property owners responsible for the behavior of their tenants. Therefore, once a property owner receives a nuisance citation, the owner must “abate the nuisance” or face penalties. Therefore, landlords often chose to evict the tenant who triggered the nuisance ordinance violation.

A Harvard study established that an ordinance of this type in Milwaukee punished victims of domestic violence far more frequently than the offenses it was intended to target, such as those related to drugs, property damage and weapons.

## ANALYSIS

This bill would ensure that victims of domestic violence and other crimes can access police or emergency assistance without fear of losing their housing.

The bill would add a new Article 9 to the Civil Rights Law. The bill includes language allowing a victim to be free of penalty for accessing assistance because he or she resides at a property where domestic violence or other law enforcement activity has occurred. Additionally, property owners are protected under proposed Article 9, Section 93. Section 93 would protect property owners from penalty for respecting the rights of the occupant to request police or emergency assistance. If a municipality seeks to improperly enforce a nuisance ordinance under this bill, notice is required to such tenant or occupant allowing the opportunity to contest the enforcement.

In addition to carving out protection for domestic violence victims, the bill specifically states that the protections provided shall not be deemed to prohibit a municipality from enforcing an ordinance or local law, nor restrict a landlord from terminating, evicting or refusing to renew a tenancy, when such action is premised on grounds *other than* access of police or emergency assistance, or is otherwise premised on conduct unrelated to the residential occupant's status as a target or victim of violence/harm.

Such protections are of critical importance to domestic violence victims, who need access to safe, stable long-term housing. Discrimination is a serious barrier preventing many domestic violence victims from renting, leasing, or buying a home. Studies show that when potential landlords identify that the perspective tenant is a victim of domestic violence, they frequently refuse to rent what is available or express that there is no availability. Landlords may use these nuisance ordinances as a basis to discriminate against victims of domestic violence by evicting them on the basis of the actions of their abusers. Allowing victims of domestic violence to lose their housing under these ordinances puts vulnerable families at risk and increases costs to communities who must consequently provide shelter services to survivors and their children. Domestic violence victims may be left with the options of either returning to or remaining in unsafe living conditions with abusive partners without seeking law enforcement assistance or subjecting themselves to the dangers inherent in homelessness.

## CONCLUSION

This bill would permit nuisance ordinances to be used in the manner originally intended, while avoiding unintended consequences and discrimination against victims of domestic violence and other crimes. This will ensure that all New Yorkers can request lifesaving emergency aid in response to threats and violence without fearing they will be doubly victimized by losing their housing.

This legislation would provide a meaningful step toward eliminating one of the barriers to survivors of domestic violence obtaining emergency assistance while maintaining their housing.

Based on the foregoing, the New York State Bar Association **SUPPORTS** the enactment of this bill.

# WOMEN'S BAR ASSOCIATION OF THE STATE OF NEW YORK

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(212) 362-4445  
(212) 721-1620 (fax)  
info@wbasny.org



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## Position Statement - 2017

### A.2919 Lavine/ S.405 Robach

An act to amend the civil rights law, in relation to the right to call for police and emergency assistance and providing victim protections

#### *Support*

The Women's Bar of the State of New York (WBASNY) supports A.2919 / S.405, which establishes the right of tenants to call police or emergency assistance without fear of losing their housing as a result of landlord actions or local nuisance laws. This legislation is of particular importance to our organization because it seeks to protect victims of domestic violence unfairly affected by the law as it currently exists.

#### **HISTORY:**

Nuisance Ordinances were originally created to target abandoned properties where crime occurred with more frequency because properties were unsupervised. The objective of such ordinances was to target offenses related to drugs, property damage and weapons by requiring landlords to be responsible for ensuring that their properties were not used to harbor and enable criminal activities.

In recent years, however, such laws have been applied more broadly to regulate and sanction activities at occupied properties. In some communities, the ordinance is triggered if police or emergency services provide aid or are called to a property a certain number of times over a set period of time (i.e., three calls for help to the police over 12 months). In general, these triggers are applied without consideration for whether the call was made by the victim of a crime seeking police assistance out of legitimate fear.

These laws often holds property owners responsible for the behavior of their tenants. Therefore, once a property owner receives a nuisance citation, the owner must "abate the nuisance" or face penalties. Therefore, landlords often chose to evict the tenant who triggered the nuisance ordinance violation.

A Harvard study established that an ordinance of this type in Milwaukee punished victims of domestic violence far more frequently than the offenses it was intended to target, such as those related to drugs, property damage and weapons.

#### **AMENDMENT:**

The proposed amendment, entitled "*An act to amend the civil rights law, in relation to the right to call for police and emergency assistance and providing victim protections,*" would ensure that victims of domestic violence and other crimes can access police or emergency assistance without fear of losing their housing.

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This is achieved by amending Article 9 to include language allowing a victim to be free of penalty for accessing assistance because he or she resides at a property where domestic violence or other law enforcement activity has occurred. Further, section 93 is added to Article 9, protecting property owners from penalty for respecting the rights of the occupant to request police or emergency assistance. If a municipality seeks to improperly enforce a nuisance ordinance under this bill, notice is required to such tenant or occupant allowing the opportunity to contest the enforcement.

In addition to carving out protection for domestic violence victims, the law specifically states that the protections provided shall not be deemed to prohibit a municipality from enforcing an ordinance or local law, nor restrict a landlord from terminating evicting or refusing to renew a tenancy, when such action is premised on grounds *other than* access of police or emergency assistance, or is otherwise premised on conduct unrelated to the residential occupant's status as a target or victim of violence/harm.

Such protections are of critical importance to domestic violence victims, who need access to safe, stable long-term housing. Discrimination is a serious barrier preventing many domestic violence victims from renting, leasing, or buying a home. Studies show that when potential landlords identify that the prospective tenant is a victim of domestic violence, they frequently refuse to rent what is available or express that there is no availability. Landlords may use these nuisance ordinances as a basis to discriminate against victims of domestic violence by evicting them on the basis of the actions of their abusers. Allowing victims of domestic violence to lose their housing under these ordinances puts vulnerable families at risk and increases costs to communities who must consequently provide shelter services to survivors and their children. Domestic violence victims may be left with the options of either returning to or remaining in unsafe living conditions with abusive partners without seeking law enforcement assistance or subjecting themselves to the dangers inherent in homelessness.

## **CONCLUSION:**

This amendment permits nuisance ordinances to be used in the manner originally intended, while avoiding unintended consequences and discrimination against victims of domestic violence and other crimes. This will ensure that all New Yorkers can request lifesaving emergency aid in response to threats and violence without fearing they will be doubly victimized by losing their housing.

Passing this legislation is a meaningful step toward eliminating one of barriers to survivors obtaining emergency assistance while maintaining their housing.

For the foregoing reasons, WBASNY supports A.2919/S.405.

## Memorandum in Support

NYSBA Memorandum #14

April 3, 2017

A. 5921

By: M. of A. Weinstein  
Assembly Committee: Judiciary  
Effective Date: 90<sup>th</sup> day after it shall have become  
a law

**AN ACT** to amend the family court act and the criminal procedure law, in relation to notification of rights of victims of domestic violence in criminal and family court proceedings

### **THE NEW YORK STATE BAR ASSOCIATION SUPPORTS THIS LEGISLATION**

The New York State Bar Association supports this bill, which would amend the Family Court Act and Criminal Procedure Law in relation to notification of rights to victims of domestic violence in criminal and family court proceedings.

#### **BACKGROUND**

The Victim's Rights Notice, originally enacted in 1994, was designed to ensure that victims were made aware of their rights, of the expectations they may have to obtain assistance from the civil and criminal justice systems, and of the remedies and resources available to them. The Notice is required to be distributed as part of a victim's copy of the Domestic Incident Report, and has been promulgated by the Office of Court Administration in eight languages.

#### **ANALYSIS**

While some form of the Victim's Rights Notice has been in effect for over twenty years, the Notice has not been substantially changed. This bill would substantially simplify the Notice so that it is now in plain language. It would make the Notice much more clear and understandable to victims in crisis at most literacy levels. At the same time it would considerably expand on the information it provides. The bill would also incorporate changes in the law that have taken place since the Notice was first developed. The bill would also require that the Victim's Rights Notice be translated into, at a minimum, Spanish, Russian and Chinese.

The Notice, as it would be revised by this bill, reads at an average 8.7 (middle school) level, in contrast to the 14.0 (college level) average of the current notice. It would also provide critical information to domestic violence victims throughout New York State. The information would be broken down into shorter sentences with easier to read bullet points. It would provide victims with basic yet detailed and straightforward information about their rights and remedies under the law; important information about emergency domestic violence hotlines and services; legal and medical resources; what to expect from law enforcement, including what assistance may be immediately available to them when they first call law enforcement; and what remedies may be available through criminal and family courts.



Under this bill, when law enforcement intervenes in a domestic violence call, this notice is required to be immediately shared with the victim in writing and, if necessary, orally. The bill would also require the notice to be available in plain English, Spanish, Chinese and Russian. The Notice would also be provided by a District Attorney investigating a family offense, and by family courts to victims of family offenses. The Notice would also be distributed to the state Department of Health for distribution to all hospitals.

## **CONCLUSION**

Based on the foregoing, the New York State Bar Association **SUPPORTS** the enactment of this legislation.

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## Position Statement -02017

### Update and Simplification of the Domestic Violence Victim's Rights Notice

#### A.5921 (Weinstein)

##### *Support*

The Women's Bar Association of the State of New York (WBASNY) supports bill A.5921 (Weinstein), which would amend the family court act and criminal procedure law in relation to notification of rights to victims of domestic violence in criminal and family court proceedings. The Victim's Rights Notice, originally enacted in 1994, was designed to ensure that victims were made aware of their rights, of the expectations they may have to obtain assistance from civil and criminal justice systems, and of the remedies and resources available to them. The notice was required to be distributed as part of a victim's copy of the Domestic Incident Report, and has been promulgated by the Office of Court Administration in eight languages.

When law enforcement intervenes in a domestic violence call, this notice is required to be immediately shared with the victim in writing and, if necessary, orally. The bill also requires the notice to be available in plain English, Spanish, Chinese and Russian. The notice must also be provided by a District Attorney investigating a family offense, and by all family courts to victims of family offenses. The notice shall also be distributed to the state Department of Health for distribution to all hospitals.

While some form of the Victim's Rights Notice has been in effect for over twenty years, the Notice has not been substantially changed. A.5921 substantially simplifies the Notice so that it is now in plain language that is much more clear and understandable to victims in crisis of all literacy levels, while at the same time expanding considerably on the information it provides. The bill also incorporates changes in the law that have taken place since the Notice was first developed. The bill also requires that the Victim's Rights Notice be translated into, at a minimum, Spanish, Russian and Chinese.

The revised Notice reads at an average 8.7 (middle school) level, in contrast to the 14.0 (college level) average of the current notice and provides critical information to domestic violence victims throughout New York State. The information is broken down into shorter sentences with easier to read bullet points. It provides victims with basic yet detailed and straightforward information about their rights and remedies under the law, important information about emergency domestic violence hotlines and services, legal and medical resources, what to expect from law enforcement, including what assistance may be immediately available to them when they first call law enforcement, and what remedies may be available through criminal and family courts.

The Women's Bar Association of the State of New York supports A.5921.

## Memorandum in Support

NYSBA Memorandum #12

April 3, 2017

A. 6049  
S. 4569

By: M. of A. Mayer  
By: Senator Savino  
Assembly Committee: Judiciary  
Senate Committee: Judiciary  
Effective Date: 90<sup>th</sup> day after it shall have become  
a law

**AN ACT** to amend the family court act and the domestic relations law, in relation to orders for temporary spousal support in conjunction with temporary and final orders of protection in family court and calculation of maintenance cap in family and supreme court

### **THE NEW YORK STATE BAR ASSOCIATION SUPPORTS THIS LEGISLATION**

The New York State Bar Association supports this bill, which would permit Family Courts to award temporary spousal support to victims when issuing temporary orders of protection.

#### **BACKGROUND**

An order of protection is one of the most valuable legal tools for reducing incidents of abuse. Studies indicate that the majority of victims who are granted orders of protection feel that they are protected from repeated incidents of physical and psychological abuse, in addition to helping them regain a sense of well-being. However, for many of the victims, economic dependency is a substantial factor preventing them from seeking reprieve from their abuser in court.

#### **ANALYSIS**

For thousands of domestic violence victims, the first step towards leaving their abuser is to file a petition for a temporary order of protection in Family Court. Often, once individuals take this step, their abuser retaliates by withdrawing financial support, discontinuing payments of rent or mortgage and utilities, and cutting off access to funds in marital bank accounts. As a result, many victims who seek assistance from the court find themselves facing hunger, lack of heat and electricity, and even homelessness. While these individuals can seek financial redress through spousal support petitions or divorce actions, it usually takes several months before the courts can hear those cases and grant any temporary relief. During the intervening period, victims feel forced to choose between a life of violence and a life of poverty, causing many to return to their abusers and discontinue their orders of protection. Domestic violence victims deserve the right to seek safety from their abusers without suffering financial devastation.

To help eliminate this economic barrier to seeking an order of protection, thirty-six (36) states currently permit domestic violence victims to obtain temporary spousal support at the time a temporary order of protection is issued. This bill, as recommended by the Family Court Advisory and Rules Committee and introduced at the request of the Chief Administrative Judge, would bring this remedy to New York's Family Courts, by directing the parties to appear in family court within seven business days of issuing the temporary order of protection for the court to consider issuing a temporary order of spousal support. The order may be issued notwithstanding the failure of the respondent to appear nor a lack of information regarding the income of the parties. The amount of temporary spousal support will be governed by Article 4 of the Family Court Act, which sets forth the formula for determining spousal support. This change in the law is critically important for victims who are elderly, pregnant, and those without minor children who do not qualify for temporary child support.

In addition, the bill would amend the Domestic Relations Law and Family Court Act to fix the date of the biennial adjustment of the spousal maintenance cap at March 1st, rather than the current adjustment date of January 31st, which is not an administratively feasible date for doing so. This amendment would conform the adjustment date to that which is already in effect for the child support income cap, self-support reserve and poverty level.

## **CONCLUSION**

Domestic violence victims already face numerous obstacles when making the choice to leave their abusers. This bill would empower more domestic violence victims to seek the safety that an order of protection can provide by helping them to obtain an order of temporary spousal support within seven business days of filing a family offense petition.

Based on the foregoing, the New York State Bar Association **SUPPORTS** the enactment of this legislation.

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info@wbasny.org



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## Position Statement - 2017

A.6049 / S.4569

### Temporary Spousal Support

#### *Support*

The Women's Bar Association of New York (WBASNY) supports bill A.6049 (Mayer, Weinstein) / S.4569 (Savino), which would permit Family Courts to award temporary spousal support to victims when issuing temporary orders of protection.

An order of protection is one of the most valuable legal tools for reducing incidents of abuse. Studies indicate that the majority of victims who are granted orders of protection feel that they are protected from repeated incidents of physical and psychological abuse, in addition to helping them regain a sense of well-being. However, for many of the victims, economic dependency is a substantial factor preventing them from seeking reprieve from their abuser in court.

For thousands of domestic violence victims, the first step towards leaving their abuser is to file a petition for a temporary order of protection in Family Court. Often, once individuals take this step, their abuser retaliates by withdrawing financial support, discontinuing payments of rent or mortgage and utilities, and cutting off access to funds in marital bank accounts. As a result, many victims who seek assistance from the court find themselves facing hunger, lack of heat and electricity, and even homelessness. While these individuals can seek financial redress through spousal support petitions or divorce actions, it usually takes several months before the courts can hear those cases and grant any temporary relief. During the intervening period, victims feel forced to choose between a life of violence and a life of poverty, causing many to return to their abusers and discontinue their orders of protection. Domestic violence victims deserve the right to seek safety from their abusers without suffering financial devastation.

To help eliminate this economic barrier to seeking an order of protection, thirty-six (36) states currently permit domestic violence victims to obtain temporary spousal support at the time a temporary order of protection is issued. A.6049/S.4569, as recommended by the Family Court Advisory and Rules Committee and introduced at the request of the Chief Administrative Judge, would bring this remedy to New York's Family Courts, permitting them to award temporary spousal support to victims within seven (7) business days of filing for temporary orders of protection, giving them financial support to bridge the gap until their spousal support petition or divorce can be heard by the courts. This change in the law is critically important for victims who are elderly, pregnant, and those without minor children who do not qualify for temporary child support.

Domestic violence victims already face numerous obstacles when making the choice to leave their abusers. We strongly believe that if the New York State Legislature passes A.6049/S.4569, more domestic violence victims will be empowered to seek the safety that an order of protection can provide.

For the foregoing reasons, WBASNY urges the Legislature to pass A.6049/S.4569.

**A5921** Weinstein No Same as OLD BILL: [A 9628 OF 2016](#) [Add Alert](#) [Voting](#)

**Text Versions:** [A 5921](#)

**A5921** Weinstein No Same as  
Office of Court Administration (Internal # 15 - 2017)  
Family Court Act

TITLE....Relates to notification of rights of victims of domestic violence in criminal and family court proceedings

02/17/17 referred to judiciary

04/24/17 reported referred to codes

05/02/17 reported

05/04/17 advanced to third reading cal.290

05/08/17 passed assembly

05/08/17 delivered to senate

05/08/17 REFERRED TO CODES

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# STATE OF NEW YORK

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5921

2017-2018 Regular Sessions

## IN ASSEMBLY

February 17, 2017

Introduced by M. of A. WEINSTEIN -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act and the criminal procedure law, in relation to notification of rights of victims of domestic violence in criminal and family court proceedings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 5 of section 812 of the family court act, as  
2 amended by chapter 224 of the laws of 1994, is amended to read as  
3 follows:

4 5. Notice. Every police officer, peace officer or district attorney  
5 investigating a family offense under this article shall advise the  
6 victim of the availability of a shelter or other services in the commu-  
7 nity, and shall immediately give the victim written notice of the legal  
8 rights and remedies available to a victim of a family offense under the  
9 relevant provisions of this act and the criminal procedure law~~[-, the~~  
10 ~~family court act and the domestic relations law]~~. Such notice shall be  
11 available, at minimum, in plain English [~~and~~], Spanish, Chinese and  
12 Russian and, if necessary, shall be delivered orally and shall include  
13 but not be limited to the information contained in the following state-  
14 ment:

15 ~~["If you are the victim of domestic violence, you may request that the~~  
16 ~~officer assist in providing for your safety and that of your children,~~  
17 ~~including providing information on how to obtain a temporary order of~~  
18 ~~protection. You may also request that the officer assist you in obtain-~~  
19 ~~ing your essential personal effects and locating and taking you, or~~  
20 ~~assist in making arrangement to take you, and your children to a safe~~  
21 ~~place within such officer's jurisdiction, including but not limited to a~~  
22 ~~domestic violence program, a family member's or a friend's residence, or~~  
23 ~~a similar place of safety. When the officer's jurisdiction is more than~~

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD06511-01-7

A. 5921

2

~~1 a single county, you may ask the officer to take you or make arrange-~~  
~~2 ments to take you and your children to a place of safety in the county~~  
~~3 where the incident occurred. If you or your children are in need of~~  
~~4 medical treatment, you have the right to request that the officer assist~~  
~~5 you in obtaining such medical treatment. You may request a copy of any~~  
~~6 incident reports at no cost from the law enforcement agency. You have~~  
~~7 the right to seek legal counsel of your own choosing and if you proceed~~  
~~8 in family court and if it is determined that you cannot afford an attor-~~  
~~9 ney, one must be appointed to represent you without cost to you.~~

~~10 You may ask the district attorney or a law enforcement officer to file~~  
~~11 a criminal complaint. You also have the right to file a petition in the~~  
~~12 family court when a family offense has been committed against you. You~~  
~~13 have the right to have your petition and request for an order of~~  
~~14 protection filed on the same day you appear in court, and such request~~  
~~15 must be heard that same day or the next day court is in session. Either~~  
~~16 court may issue an order of protection from conduct constituting a fami-~~  
~~17 ly offense which could include, among other provisions, an order for the~~  
~~18 respondent or defendant to stay away from you and your children. The~~  
~~19 family court may also order the payment of temporary child support and~~  
~~20 award temporary custody of your children. If the family court is not in~~  
~~21 session, you may seek immediate assistance from the criminal court in~~  
~~22 obtaining an order of protection.~~

~~23 The forms you need to obtain an order of protection are available from~~  
~~24 the family court and the local criminal court (the addresses and tele-~~  
~~25 phone numbers shall be listed). The resources available in this communi-~~  
~~26 ty for information relating to domestic violence, treatment of injuries,~~  
~~27 and places of safety and shelters can be accessed by calling the follow-~~  
~~28 ing 800 numbers (the statewide English and Spanish language 800 numbers~~  
~~29 shall be listed and space shall be provided for local domestic violence~~  
~~30 hotline telephone numbers).~~

~~31 Filing a criminal complaint or a family court petition containing~~  
~~32 allegations that are knowingly false is a crime." ] "Are you the victim  
~~33 of domestic violence? If you need help now, you can call 911 for the~~  
~~34 police to come to you. You can also call a domestic violence hotline.~~  
~~35 You can have a confidential talk with an advocate at the hotline about~~  
~~36 help you can get in your community including: where you can get treat-~~  
~~37 ment for injuries, where you can get shelter, where you can get support,~~  
~~38 and what you can do to be safe. The New York State 24-hour Domestic &~~  
~~39 Sexual Violence Hotline number is (Insert the statewide multilingual 800~~  
~~40 number). They can give you information in many languages. If you are~~  
~~41 deaf or hard of hearing, call 711. This is what the police can do:~~~~

~~42 They can help you and your children find a safe place such as a family~~  
~~43 or friend's house or a shelter in your community.~~

~~44 You can ask the officer to take you or help you and your children get~~  
~~45 to a safe place in your community.~~

~~46 They can help connect you to a local domestic violence program.~~

~~47 They can help you get to a hospital or clinic for medical care.~~

~~48 They can help you get your personal belongings.~~

~~49 They must complete a report discussing the incident. They will give~~  
~~50 you a copy of this police report before they leave the scene. It is~~  
~~51 free.~~

~~52 They may, and sometimes must, arrest the person who harmed you if you~~  
~~53 are the victim of a crime. The person arrested could be released at any~~  
~~54 time, so it is important to plan for your safety.~~

~~55 If you have been abused or threatened, this is what you can ask the~~  
~~56 police or district attorney to do:~~



1 File a criminal complaint against the person who harmed you.  
2 Ask the criminal court to issue an order of protection for you and  
3 your child if the district attorney files a criminal case with the  
4 court.  
5 Give you information about filing a family offense petition in your  
6 local family court.  
7 You also have the right to ask the family court for an order of  
8 protection for you and your children.  
9 This is what you can ask the family court to do:  
10 To have your family offense petition filed the same day you go to  
11 court.  
12 To have your request heard in court the same day you file or the next  
13 day court is open.  
14 Only a judge can issue an order of protection. The judge does that as  
15 part of a criminal or family court case against the person who harmed  
16 you. An order of protection in family court or in criminal court can  
17 say:  
18 That the other person have no contact or communication with you by  
19 mail, phone, computer or through other people.  
20 That the other person stay away from you and your children, your home,  
21 job or school.  
22 That the other person not assault, harass, threaten, strangle, or  
23 commit another family offense against you or your children.  
24 That the other person turn in their firearms and firearms licenses,  
25 and not get any more firearms.  
26 That you have temporary custody of your children.  
27 That the other person pay temporary child support.  
28 That the other person not harm your pets or service animals.  
29 If the family court is closed because it is night, a weekend, or a  
30 holiday, you can go to a criminal court to ask for an order of  
31 protection.  
32 If you do not speak English or cannot speak it well, you can ask the  
33 police, the district attorney, or the criminal or family court to get  
34 you an interpreter who speaks your language. The interpreter can help  
35 you explain what happened.  
36 You can get the forms you need to ask for an order of protection at  
37 your local family court (Insert addresses and contact information for  
38 courts). You can also get them online: [www.NYCourts.gov/forms](http://www.NYCourts.gov/forms).  
39 You do not need a lawyer to ask for an order of protection. You have a  
40 right to get a lawyer in the family court. If the family court finds  
41 that you cannot afford to pay for a lawyer, it must get you one for  
42 free.  
43 If you file a complaint or family court petition, you will be asked to  
44 swear to its truthfulness because it is a crime to file a legal document  
45 that you know is false."  
46 The division of criminal justice services in consultation with the  
47 state office for the prevention of domestic violence shall prepare the  
48 form of such written notice consistent with the provisions of this  
49 section and distribute copies thereof to the appropriate law enforcement  
50 officials pursuant to subdivision nine of section eight hundred forty-  
51 one of the executive law. Additionally, copies of such notice shall be  
52 provided to the chief administrator of the courts to be distributed to  
53 victims of family offenses through the family court at such time as such  
54 persons first come before the court and to the state department of  
55 health for distribution to all hospitals defined under article twenty-  
56 eight of the public health law. No cause of action for damages shall

1 arise in favor of any person by reason of any failure to comply with the  
2 provisions of this subdivision except upon a showing of gross negligence  
3 or willful misconduct.

4 § 2. Subdivision 6 of section 530.11 of the criminal procedure law, as  
5 amended by chapter 224 of the laws of 1994, is amended to read as  
6 follows:

7 6. Notice. Every police officer, peace officer or district attorney  
8 investigating a family offense under this article shall advise the  
9 victim of the availability of a shelter or other services in the commu-  
10 nity, and shall immediately give the victim written notice of the legal  
11 rights and remedies available to a victim of a family offense under the  
12 relevant provisions of [~~the criminal procedure law,~~ this chapter and  
13 the family court act [~~and the domestic relations law~~]. Such notice shall  
14 be prepared, at minimum, in plain English, Spanish [~~and English~~],  
15 Chinese and Russian and if necessary, shall be delivered orally, and  
16 shall include but not be limited to the information contained in the  
17 following statement:

18 [~~"If you are the victim of domestic violence, you may request that the~~  
19 ~~officer assist in providing for your safety and that of your children,~~  
20 ~~including providing information on how to obtain a temporary order of~~  
21 ~~protection. You may also request that the officer assist you in obtain-~~  
22 ~~ing your essential personal effects and locating and taking you, or~~  
23 ~~assist in making arrangements to take you, and your children to a safe~~  
24 ~~place within such officer's jurisdiction, including but not limited to a~~  
25 ~~domestic violence program, a family member's or a friend's residence, or~~  
26 ~~a similar place of safety. When the officer's jurisdiction is more than~~  
27 ~~a single county, you may ask the officer to take you or make arrange-~~  
28 ~~ments to take you and your children to a place of safety in the county~~  
29 ~~where the incident occurred. If you or your children are in need of~~  
30 ~~medical treatment, you have the right to request that the officer assist~~  
31 ~~you in obtaining such medical treatment. You may request a copy of any~~  
32 ~~incident reports at no cost from the law enforcement agency. You have~~  
33 ~~the right to seek legal counsel of your own choosing and if you proceed~~  
34 ~~in family court and if it is determined that you cannot afford an attor-~~  
35 ~~ney, one must be appointed to represent you without cost to you.~~

36 ~~You may ask the district attorney or a law enforcement officer to file~~  
37 ~~a criminal complaint. You also have the right to file a petition in the~~  
38 ~~family court when a family offense has been committed against you. You~~  
39 ~~have the right to have your petition and request for an order of~~  
40 ~~protection filed on the same day you appear in court, and such request~~  
41 ~~must be heard that same day or the next day court is in session. Either~~  
42 ~~court may issue an order of protection from conduct constituting a fami-~~  
43 ~~ly offense which could include, among other provisions, an order for the~~  
44 ~~respondent or defendant to stay away from you and your children. The~~  
45 ~~family court may also order the payment of temporary child support and~~  
46 ~~award temporary custody of your children. If the family court is not in~~  
47 ~~session, you may seek immediate assistance from the criminal court in~~  
48 ~~obtaining an order of protection.~~

49 ~~The forms you need to obtain an order of protection are available from~~  
50 ~~the family court and the local criminal court (the addresses and tele-~~  
51 ~~phone numbers shall be listed). The resources available in this communi-~~  
52 ~~ty for information relating to domestic violence, treatment of injuries,~~  
53 ~~and places of safety and shelters can be accessed by calling the follow-~~  
54 ~~ing 800 numbers (the statewide English and Spanish language 800 numbers~~  
55 ~~shall be listed and space shall be provided for local domestic violence~~  
56 ~~hotline telephone numbers).~~

A. 5921

5

1 ~~Filing a criminal complaint or a family court petition containing~~  
2 ~~allegations that are knowingly false is a crime.~~] "Are you the victim  
3 of domestic violence? If you need help now, you can call 911 for the  
4 police to come to you. You can also call a domestic violence hotline.  
5 You can have a confidential talk with an advocate at the hotline about  
6 help you can get in your community including: where you can get treat-  
7 ment for injuries, where you can get shelter, where you can get support,  
8 and what you can do to be safe. The New York State 24-hour Domestic &  
9 Sexual Violence Hotline number is (Insert the statewide multilingual 800  
10 number). They can give you information in many languages. If you are  
11 deaf or hard of hearing, call 711.

12 This is what the police can do:

13 They can help you and your children find a safe place such as a family  
14 or friend's house or a shelter in your community.

15 You can ask the officer to take you or help you and your children get  
16 to a safe place in your community.

17 They can help connect you to a local domestic violence program.

18 They can help you get to a hospital or clinic for medical care.

19 They can help you get your personal belongings.

20 They must complete a report discussing the incident. They will give  
21 you a copy of this police report before they leave the scene. It is  
22 free.

23 They may, and sometimes must, arrest the person who harmed you if you  
24 are the victim of a crime. The person arrested could be released at any  
25 time, so it is important to plan for your safety.

26 If you have been abused or threatened, this is what you can ask the  
27 police or district attorney to do:

28 File a criminal complaint against the person who harmed you.

29 Ask the criminal court to issue an order of protection for you and  
30 your child if the district attorney files a criminal case with the  
31 court.

32 Give you information about filing a family offense petition in your  
33 local family court.

34 You also have the right to ask the family court for an order of  
35 protection for you and your children.

36 This is what you can ask the family court to do:

37 To have your family offense petition filed the same day you go to  
38 court.

39 To have your request heard in court the same day you file or the next  
40 day court is open.

41 Only a judge can issue an order of protection. The judge does that as  
42 part of a criminal or family court case against the person who harmed  
43 you. An order of protection in family court or in criminal court can  
44 say:

45 That the other person have no contact or communication with you by  
46 mail, phone, computer or through other people.

47 That the other person stay away from you and your children, your home,  
48 job or school.

49 That the other person not assault, harass, threaten, strangle, or  
50 commit another family offense against you or your children.

51 That the other person turn in their firearms and firearms licenses,  
52 and not get any more firearms.

53 That you have temporary custody of your children.

54 That the other person pay temporary child support.

55 That the other person not harm your pets or service animals.

A. 5921

6

1 If the family court is closed because it is night, a weekend, or a  
2 holiday, you can go to a criminal court to ask for an order of  
3 protection.

4 If you do not speak English or cannot speak it well, you can ask the  
5 police, the district attorney, or the criminal or family court to get  
6 you an interpreter who speaks your language. The interpreter can help  
7 you explain what happened.

8 You can get the forms you need to ask for an order of protection at  
9 your local family court (Insert addresses and contact information for  
10 courts). You can also get them online: [www.NYCourts.gov/forms](http://www.NYCourts.gov/forms).

11 You do not need a lawyer to ask for an order of protection.

12 You have a right to get a lawyer in the family court. If the family  
13 court finds that you cannot afford to pay for a lawyer, it must get you  
14 one for free.

15 If you file a complaint or family court petition, you will be asked to  
16 swear to its truthfulness because it is a crime to file a legal document  
17 that you know is false."

18 The division of criminal justice services in consultation with the  
19 state office for the prevention of domestic violence shall prepare the  
20 form of such written notice consistent with provisions of this section  
21 and distribute copies thereof to the appropriate law enforcement offi-  
22 cials pursuant to subdivision nine of section eight hundred forty-one of  
23 the executive law.

24 Additionally, copies of such notice shall be provided to the chief  
25 administrator of the courts to be distributed to victims of family  
26 offenses through the criminal court at such time as such persons first  
27 come before the court and to the state department of health for distrib-  
28 ution to all hospitals defined under article twenty-eight of the public  
29 health law. No cause of action for damages shall arise in favor of any  
30 person by reason of any failure to comply with the provisions of this  
31 subdivision except upon a showing of gross negligence or willful miscon-  
32 duct.

33 § 3. This act shall take effect on the ninetieth day after it shall  
34 have become a law.

**NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Sec 1(f)**

**BILL NUMBER:** A5921

**SPONSOR:** Weinstein

**TITLE OF BILL:**

An act to amend the family court act and the criminal procedure law, in relation to notification of rights of victims of domestic violence in criminal and family court proceedings

This is one in a series of measures being introduced at the request of the Chief Administrative Judge upon the recommendation of his Family Court and Rules Advisory Committee.

The amendments to section 812 of the Family Court Act and CPL 530.11, contained in the comprehensive domestic violence statute enacted in 1994 (L. 1994, c. 222, 224), included important protections for alleged victims of domestic violence. The statutes placed a collective responsibility upon law enforcement, prosecutors and the courts to ensure that victims would be made aware of their rights, of the expectations they may have to obtain assistance from both the civil and criminal justice systems and of the remedies and resources available to them. The notice must be in writing in both English and Spanish and must recite the statutory language verbatim. Law enforcement has provided the notice as part of the victims' copy of the "Domestic Incident Report" and the court system has made the notices available in eight languages. See [www.nycourts.gov](http://www.nycourts.gov). However, the required language in the notice is overly complex and, particularly where alleged victims of domestic violence are unrepresented, has impeded the statutory goal of making the justice system fully responsive to the needs of victims of abuse.

This measure would amend section 812 of the Family Court Act and CPL 530.11 to substantially simplify the language contained in the notice to victims while, at the same time, expanding the breadth of information it provides. The measure adds flexibility by providing that the notice use the language provided and that it be made available, at a minimum, in plain English, Spanish, Chinese and Russian. As the chart below indicates, using five generally accepted means of measurement of the grade level of the language used, the notice proposed by this measure averages 8.6 (middle school) in grade level compared to the 16.3 (college senior) average level of the existing notice and its readability score is substantially higher than that of the current notice:{1}

Measurement Formula	Existing Notice	Proposed Notice
Flesch-Kincaid Grade Level	15.3	
6.7		
Gunning-Fog Score	20.5	10.6
Coleman-Liau Index	12.0	9.0
SMOG Index	17.6	10.8
Automated Readability Index	15.9	5.7
Average Grade Level	16.3	8.6
Text Statistics		
Character Count	2140	3068
Syllable Count	820	1028

Word Count	734	726
Sentence Count	15	43
Characters per Word	4.7	4.2
Syllables per Word	1.6	1.4
Words per Sentence	30.3	16.9
Readability Score	39.5	72.9
(Flesch-Kincaid; scale: 1 to 100)		

The language in the proposed notice mirrors the basic principles of writing in plain English, in particular, the use of short, declarative sentences, use of personal pronouns, use of active voice, avoidance of legal terms and organization into easy-to-read bullets. See, e.g., Federal Plain Language Guidelines ([www.plainlanguage.gov](http://www.plainlanguage.gov)); Writing for Self-represented Litigants: A Guide for Maryland Courts and Legal Services Providers (Md. Access to Justice Commission, Nov., 2012). As indicated on the web-site [www.writeclearly.org](http://www.writeclearly.org):

Limited English speakers find it particularly difficult to navigate legal texts that contain strange words and describe unfamiliar procedures. These readers are substantially disadvantaged in accessing legal information.

Research has demonstrated that where documents are too complex for readers, they generally stop reading. See W.H. DuBay, "Principles of Readability, Readability and Reader Persistence," at 30 (National Adult Literacy Database, 2004; [www.nald.ca](http://www.nald.ca)).

Utilization of plain English is particularly important for victims of domestic violence, who may be experiencing trauma as a result of the alleged abusive incident or incidents, trauma that itself makes it more difficult for victims to understand their options and to make the often difficult decisions required at the outset of abuse cases. Significantly, victims are most often not represented by counsel either at the point of a law enforcement response to a call to 911 or upon their first appearances in Family Court seeking temporary orders of protection. Noting the high incidence of unrepresented litigants in family law-related matters in New York State courts, the 2010, 2014 and 2015 Reports to the Chief Judge of the Task Force (now Permanent Commission) to Expand Access to Civil Legal Services in New York included simplification of forms among the recommendations. In drastically reducing the complexity of the statutorily-required notice to victims of domestic violence, this measure would fulfill those recommendations and would enhance the capacity of the justice system to respond effectively to victims' needs.

This measure, which would have no fiscal impact on the State, would take effect 90 days after it shall become a law.

#### **2016 LEGISLATIVE HISTORY:**

OCA 2016-82R  
Assembly 9628 (M. of A. Weinstein) (PASSED)

{1} See [www.readability-score.com](http://www.readability-score.com) (visited Nov. 29, 2016).

**A2919** Lavine (MS) Same as [S 405](#) ROBACH OLD BILL: [A 1322 OF 2016](#) [Add Alert](#) [Voting](#)

**Text Versions:** [A 2919](#)

**A 2919** Lavine (MS) Same as [S 405](#) ROBACH  
Civil Rights Law

TITLE....Establishes the right of tenants to call police or emergency assistance without fear of losing their housing

01/23/17 referred to judiciary

03/07/17 reported referred to codes

03/13/17 reported

03/16/17 advanced to third reading cal.141

05/01/17 passed assembly

05/01/17 delivered to senate

05/01/17 REFERRED TO CODES

**S405** ROBACH Same as [A 2919](#) Lavine (MS)

ON FILE: 01/04/17 Civil Rights Law

TITLE....Establishes the right of tenants to call police or emergency assistance without fear of losing their housing

01/04/17 REFERRED TO CODES

05/16/17 REPORTED AND COMMITTED TO HOUSING, CONSTRUCTION AND COMMUNITY DEVELOPMENT

06/14/17 COMMITTEE DISCHARGED AND COMMITTED TO RULES



# STATE OF NEW YORK

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2919

2017-2018 Regular Sessions

## IN ASSEMBLY

January 23, 2017

Introduced by M. of A. LAVINE, WEINSTEIN, LUPARDO, WEPRIN, ROSENTHAL, MOSLEY, BRONSON, PEOPLES-STOKES, TITUS, ABINANTI, FAHY, WALKER, ZEBROWSKI, RAIA, HARRIS, SEPULVEDA -- Multi-Sponsored by -- M. of A. LUPINACCI, PERRY, SIMON -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil rights law, in relation to the right to call for police and emergency assistance and providing victim protections

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Article 9 and sections 90 and 91 of the civil rights law,  
2 as renumbered by chapter 310 of the laws of 1962, are renumbered article  
3 10 and sections 100 and 101, and a new article 9 is added to read as  
4 follows:

### ARTICLE 9

#### RIGHT TO CALL POLICE AND EMERGENCY

#### ASSISTANCE/VICTIM PROTECTIONS

#### Section 90. Legislative findings.

- 9 91. Right to call for police and emergency assistance; victim  
10 protections.  
11 92. Protections not applicable to breaches of lease, illicit  
12 activities or other violations of law.  
13 93. Right of property owners to be free of penalty for respect-  
14 ing the rights of an occupant to request police or emer-  
15 gency assistance.  
16 94. Limitation on right to request police or emergency assist-  
17 ance prohibited.  
18 95. Defenses.  
19 96. Removal of the perpetrator of violence while assuring  
20 continued occupancy by victim.  
21 97. Remedies.  
22 98. Guidance authorized.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD02922-01-7



1 § 90. Legislative findings. No victim of domestic violence, or other  
2 person threatened with violence or in jeopardy of harm, should fail to  
3 access police or emergency assistance when needed because of the fear  
4 that doing so may result in losing their housing through eviction or  
5 other actions to remove them from the property. Some local laws or poli-  
6 cies have the effect of treating such requests for police or emergency  
7 aid as a disturbance constituting a "public nuisance" or otherwise  
8 treating the individual faced with the violence and in need of assist-  
9 ance as an undesirable tenant or undesirable influence on the neighbor-  
10 hood based upon a call for help to their home. Legislation is needed to  
11 assure that victims of violence or threats of harm or violence are not  
12 penalized in relation to any law enforcement activity and intervention  
13 necessary to address offender accountability and victim safety.

14 Municipalities throughout the state have increasingly begun to adopt  
15 local laws and ordinances to address public nuisances or other intru-  
16 sions on the quiet enjoyment of their residents and communities. Despite  
17 their intent to aid communities, overly broad ordinances have instead  
18 had a harmful chilling effect deterring victims of violence and crime  
19 from accessing police assistance and have jeopardized public safety.  
20 Given the negative impact that certain provisions have on the community  
21 at large, and to victims of crime in particular, remedial legislation is  
22 necessary that will both protect the rights of domestic violence and  
23 crime victims to access essential police assistance, as well as preserve  
24 the locality's right to address conduct that may undermine the communi-  
25 ty's safety or integrity.

26 The legislature therefore finds that it is desirable to clarify the  
27 law in this area in order to protect women and others from violence and  
28 crime.

29 The legislature further finds that there is a need to assure that  
30 victims of violence, including persons threatened with harm or violence,  
31 have a clear right to access assistance to protect personal or public  
32 safety.

33 The legislature finally finds that clarification in this area will  
34 advance the state's interest in stopping crime and further the aims of  
35 penal laws that depend on citizens to report incidents of crime to law  
36 enforcement.

37 With this remedial legislation the legislature specifically intends  
38 that the coverage of this article includes, but is not limited to, laws  
39 or ordinances that use any form of cumulative point system for the  
40 purpose of identifying any persons or properties who or which would be  
41 subject to municipal enforcement action.

42 § 91. Right to call for police and emergency assistance; victim  
43 protections. 1. Any person who is a victim of domestic violence, as  
44 defined in section four hundred fifty-nine-a of the social services law,  
45 or who otherwise believes he or she is in need of police or emergency  
46 assistance has the right to request such assistance and to be free of  
47 any direct or indirect penalty or reprisal for accessing assistance, or  
48 because he or she resides at a property where domestic violence or other  
49 law enforcement activity occurred. Other than as provided in section  
50 ninety-two of this article, no victim of conduct which has been used as  
51 the grounds for the application of a local law or ordinance established  
52 for the purpose of regulating nuisances shall be directly or indirectly  
53 penalized, or otherwise subject to reprisal by application of such local  
54 law, including by termination or refusal to renew a tenancy or by  
55 eviction.

1 2. No residential occupant shall be required, either orally or in  
2 writing, to waive rights under this article, and any such waiver shall  
3 be void and unenforceable.

4 § 92. Protections not applicable to breaches of lease, illicit activ-  
5 ities or other violations of law. The protections of this article shall  
6 not be deemed to prohibit a municipality from enforcing an ordinance or  
7 local law, nor restrict a landlord from terminating, evicting or refus-  
8 ing to renew a tenancy, when such action is premised upon grounds other  
9 than access of police or emergency assistance or is otherwise premised  
10 on conduct unrelated to the residential occupant's status as a target or  
11 victim of violence or harm.

12 § 93. Right of property owners to be free of penalty for respecting  
13 the rights of an occupant to request police or emergency assistance. No  
14 landlord or other property owner shall be subject to fines or loss of  
15 permits or licenses by a municipality for failing to take steps to  
16 remove an occupant who has exercised rights under this article.

17 § 94. Limitation on right to request police or emergency assistance  
18 prohibited. A municipality, municipal authority, landlord or property  
19 owner shall not prohibit, restrict, penalize or in any other way direct-  
20 ly or indirectly limit any person's exercise of rights under this arti-  
21 cle. The protections of this prohibition shall extend to any residential  
22 occupant upon whose behalf a third party has called for police or emer-  
23 gency assistance.

24 § 95. Defenses. 1. It is a defense to any judicial or administrative  
25 action or proceeding taken by any municipality or municipal authority  
26 enforcing any local law or ordinance that the enforcement action direct-  
27 ly or indirectly penalizes a residential occupant or property owner for  
28 the exercise of rights under this article. Prior to initiation of any  
29 such enforcement action or proceeding all parties and any residential  
30 occupant that may be so impacted shall be given written notice by the  
31 municipality of the protections of this article and shall have the right  
32 to be heard in the action or proceeding to advance the defenses provided  
33 by this article.

34 2. It is a defense in any action or proceeding by a landlord or other  
35 owner of real property to regain possession of that property that the  
36 action or proceeding directly or indirectly penalizes a residential  
37 occupant for the exercise of rights under this article. Any residential  
38 occupant whose right to continued occupancy may be impacted by the  
39 outcome shall be given notice of the action or proceeding by the party  
40 initiating the action or proceeding and shall have the right to appear  
41 as a necessary party in accordance with the provisions of the civil  
42 practice law and rules and the real property actions and proceedings law  
43 in order to advance the defenses provided by this article.

44 § 96. Removal of the perpetrator of violence while assuring continued  
45 occupancy by victim. Actions including termination, eviction or refusal  
46 to renew a leasehold interest or termination of any other form of lawful  
47 occupancy through a judicial proceeding may be carried out against the  
48 perpetrator of such violence or harm. Notwithstanding the terms of an  
49 existing lease, written or oral, or other form of occupancy agreement,  
50 any person with rights described in section ninety-one of this article  
51 shall have the right to continue in occupancy, and the court may so  
52 order, for a term equivalent to the balance of the original term and  
53 under the same terms and conditions as provided in the original lease or  
54 occupancy agreement.

55 § 97. Remedies. Any person or entity aggrieved by a violation of the  
56 protections created by this article shall have the right to bring an

A. 2919

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1 action or special proceeding in a court of appropriate jurisdiction to  
2 seek damages and/or declaratory and injunctive relief with respect to  
3 such violation. A prevailing plaintiff may be entitled to an award of  
4 costs and attorney's fees.

5 § 98. Guidance authorized. The New York state office for the  
6 prevention of domestic violence and the division of criminal justice  
7 services, upon consultation with the other, are jointly authorized to  
8 provide guidance with respect to drafting of local nuisance ordinances  
9 and evaluation of their impact on access to police and emergency  
10 services.

11 § 2. This act shall take effect immediately and shall apply to all  
12 pending actions and proceedings.

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**NEW YORK STATE ASSEMBLY**  
**MEMORANDUM IN SUPPORT OF LEGISLATION**  
**submitted in accordance with Assembly Rule III, Sec 1(f)**

**BILL NUMBER:** A2919

**SPONSOR:** Lavine (MS)

**TITLE OF BILL:** An act to amend the civil rights law, in relation to the right to call for police and emergency assistance and providing victim protections

**PURPOSE OF BILL:**

This legislation will help ensure that victims of domestic violence and crime victims can access police or emergency assistance without fear of losing their housing.

**SUMMARY OF PROVISIONS:**

Section 1 of the bill creates a new Article 9 in the Civil Rights Law that outlines rights and protections for domestic violence and other crime victims in separate sections of the Article as follows. New Section 90 of the Civil Rights Law relates to legislative findings.

New Section 91 of the Civil Rights Law provides any person who is a victim of domestic violence or who otherwise believes that he or she is in need of police or emergency assistance the right to request such assistance without penalty or reprisal, by application of a local law or ordinance, for accessing the assistance.

New Section 92 of the Civil Rights Law outlines exceptions to the protections outlined in new section 91 of the Civil Rights Law.

New Section 93 of the Civil Rights Law outlines the rights of property owners to be free of penalty for respecting the rights of an occupant to request police or emergency assistance.

New Section 94 of the Civil Rights Law prohibits limitations on a victim's rights under the article to request police or emergency assistance.

New Section 95 of the Civil Rights Law creates defenses in local ordinance enforcement actions by municipalities or property owners in violation of the protections created under the Article. It also provides for notice to residential occupants in such enforcement actions and standing to contest application of the nuisance ordinance to their residence in the face of an eviction.

New Section 96 of the Civil Rights Law provides for the removal of the perpetrator of violence while assuring continued occupancy by a victim.

New Section 97 of the Civil Rights Law creates remedies for any person or entity aggrieved by a violation of the protections created under the Article.

New Section 98 of the Civil Rights Law allows for guidance by the New

York State Office for The Prevention of Domestic Violence and the Division of Criminal Justice Services with respect to drafting of local nuisance ordinances and evaluation of their impact on access to police and emergency services.

Section 2 of the bill is the effective date.

### JUSTIFICATION:

No victim of domestic violence or other person threatened with a crime in New York should be afraid to access police or emergency assistance because doing so may jeopardize their housing. Nevertheless, numerous municipalities throughout New York have passed local laws, so called "nuisance ordinances," that have this precise result. While these local laws often aim to address drug, weapon, disorderly conduct, and property crimes and ensure the quiet enjoyment of community members, they are frequently overboard and, instead, have a chilling effect on the reporting of crime by crime victims-particularly victims of domestic violence-that undermines public safety.

Nuisance ordinances have traditionally targeted abandoned properties where crime occurred with more frequency because properties were unsupervised and unattended. Yet, in recent years, more and more municipalities in New York and nationally have employed the nuisance concept to regulate and sanction activities at occupied properties.

Nuisance ordinances take several forms. Many ordinances in New York assign points to properties where certain criminal convictions occurred or where certain conduct was merely alleged to have occurred. In some communities, ordinances are triggered if police or emergency services provide aid or are called to a property a certain number of times over a set time period, such as three calls for help to the police over 12 months. Generally, these nuisance laws are applied regardless of whether the residential occupant was a victim of the cited crime or accessed police assistance out of reasonable, legitimate fear or concern. A Harvard study established that an ordinance in Milwaukee punished victims of domestic violence far more frequently than the offenses it was intended to target, such as those related to drugs, property damage, and weapons.

These ordinances may authorize the municipality to directly penalize the residential occupant or may promote "third-party policing," the assigning of policing responsibilities to non-police actors, by holding property owners responsible for the behavior of their tenants. Under this structure, once a property receives a nuisance citation, the owner must "abate the nuisance" or face stiff fines, revocation of rental permits, or property closure. This requirement frequently results in landlords evicting the tenants at issue, for, even if not expressly required, eviction is the only certain abatement method. Under these laws, tenants often have no notice of or standing to contest application of the nuisance ordinance to their residence, even in the face of eviction.

In communities with these ordinances, domestic violence victims reasonably feel they have no choice but to endure threats, harassment, or violence without police intervention when the alternative is the likely eviction, housing insecurity, and risk of homelessness that result from a nuisance citation.

Enforcement of nuisance ordinances can also violate federal and Constitutional protections. Furthermore, when these laws pressure landlords to evict, they put landlords in an untenable position between two legal mandates.

This measure will help ensure that all New Yorkers can request lifesav-

ing emergency aid in response to violence without fearing they will be doubly victimized by housing loss because their call for help triggered a nuisance ordinance that is applied against crime victims. It will protect victims of domestic violence, as well as all residents who need to access emergency and police assistance.

**LEGISLATIVE HISTORY:**

Committed to Rules 2014  
2016 referred to Rules

**FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:**

None.

**EFFECTIVE DATE:**

Immediately and shall apply to all pending actions and proceedings.

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**A6049** Mayer Same as [S 4569](#) SAVINO [Add Alert](#) [Voting](#)

**Text Versions:** [A 6049](#)

**A 6049** Mayer Same as [S 4569](#) SAVINO  
Office of Court Administration (Internal # 19 - 2017)  
Family Court Act  
TITLE....Relates to orders for temporary spousal  
support in conjunction with temporary and final orders  
of protection in family court and calculation of  
maintenance cap in family and supreme court  
02/22/17 referred to judiciary  
03/07/17 reported referred to codes  
03/22/17 reported  
03/23/17 advanced to third reading cal.163  
03/29/17 passed assembly  
03/29/17 delivered to senate  
03/29/17 REFERRED TO JUDICIARY

**S4569** SAVINO Same as [A 6049](#) Mayer  
Office of Court Administration (Internal # 19 - 2017)  
ON FILE: 02/17/17 Family Court Act  
TITLE....Relates to orders for temporary spousal  
support in conjunction with temporary and final orders  
of protection in family court and calculation of  
maintenance cap in family and supreme court  
02/17/17 REFERRED TO JUDICIARY

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# STATE OF NEW YORK

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6049

2017-2018 Regular Sessions

## IN ASSEMBLY

February 22, 2017

Introduced by M. of A. MAYER, WEINSTEIN, OTIS -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act and the domestic relations law, in relation to orders for temporary spousal support in conjunction with temporary and final orders of protection in family court and calculation of maintenance cap in family and supreme court

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (d) of subdivision 2 of section 412 of the family  
2 court act, as amended by chapter 269 of the laws of 2015, is amended to  
3 read as follows:

4 (d) "income cap" shall mean up to and including one hundred [~~seventy-~~  
5 ~~five~~] seventy-eight thousand dollars of the payor's annual income;  
6 provided, however, beginning [~~January thirty first~~] March first, two  
7 thousand [~~sixteen~~] eighteen and every two years thereafter, the income  
8 cap amount shall increase by the sum of the average annual percentage  
9 changes in the consumer price index for all urban consumers (CPI-U) as  
10 published by the United States department of labor bureau of labor  
11 statistics for the prior two years multiplied by the then income cap and  
12 then rounded to the nearest one thousand dollars. The office of court  
13 administration shall determine and publish the income cap.

14 § 2. The section heading of section 828 of the family court act, as  
15 amended by chapter 222 of the laws of 1994, is amended and a new subdi-  
16 vision 5 is added to read as follows:

17 Temporary order of protection; temporary [~~order~~] orders for child  
18 support and spousal maintenance.

19 5. Notwithstanding the provisions of section eight hundred seventeen  
20 of this article, where a temporary order of spousal support has not  
21 already been issued, the court may, in addition to the issuance of a  
22 temporary order of protection pursuant to this section, issue an order

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 directing the parties to appear within seven business days of the issu-  
2 ance of the order in the family court, in the same action, for consider-  
3 ation of an order for temporary spousal support in accordance with arti-  
4 cle four of this act. If the court directs the parties to so appear, the  
5 court shall direct the parties to appear with information with respect  
6 to income and assets, but a temporary order for spousal support may be  
7 issued pursuant to article four of this act on the return date notwith-  
8 standing the respondent's default upon notice and notwithstanding that  
9 information with respect to income and assets of the petitioner or  
10 respondent may be unavailable.

11 § 3. Section 842 of the family court act, as amended by chapter 526  
12 and the closing paragraph as added by chapter 480 of the laws of 2013,  
13 is amended to read as follows:

14 § 842. Order of protection. An order of protection under section eight  
15 hundred forty-one of this part shall set forth reasonable conditions of  
16 behavior to be observed for a period not in excess of two years by the  
17 petitioner or respondent or for a period not in excess of five years  
18 upon (i) a finding by the court on the record of the existence of aggra-  
19 vating circumstances as defined in paragraph (vii) of subdivision (a) of  
20 section eight hundred twenty-seven of this article; or (ii) a finding by  
21 the court on the record that the conduct alleged in the petition is in  
22 violation of a valid order of protection. Any finding of aggravating  
23 circumstances pursuant to this section shall be stated on the record and  
24 upon the order of protection. The court may also, upon motion, extend  
25 the order of protection for a reasonable period of time upon a showing  
26 of good cause or consent of the parties. The fact that abuse has not  
27 occurred during the pendency of an order shall not, in itself, consti-  
28 tute sufficient ground for denying or failing to extend the order. The  
29 court must articulate a basis for its decision on the record. The dura-  
30 tion of any temporary order shall not by itself be a factor in determin-  
31 ing the length or issuance of any final order. Any order of protection  
32 issued pursuant to this section shall specify if an order of probation  
33 is in effect. Any order of protection issued pursuant to this section  
34 may require the petitioner or the respondent:

35 (a) to stay away from the home, school, business or place of employ-  
36 ment of any other party, the other spouse, the other parent, or the  
37 child, and to stay away from any other specific location designated by  
38 the court, provided that the court shall make a determination, and shall  
39 state such determination in a written decision or on the record, whether  
40 to impose a condition pursuant to this subdivision, provided further,  
41 however, that failure to make such a determination shall not affect the  
42 validity of such order of protection. In making such determination, the  
43 court shall consider, but shall not be limited to consideration of,  
44 whether the order of protection is likely to achieve its purpose in the  
45 absence of such a condition, conduct subject to prior orders of  
46 protection, prior incidents of abuse, extent of past or present injury,  
47 threats, drug or alcohol abuse, and access to weapons;

48 (b) to permit a parent, or a person entitled to visitation by a court  
49 order or a separation agreement, to visit the child at stated periods;

50 (c) to refrain from committing a family offense, as defined in subdivi-  
51 sion one of section eight hundred twelve of this act, or any criminal  
52 offense against the child or against the other parent or against any  
53 person to whom custody of the child is awarded, or from harassing,  
54 intimidating or threatening such persons;

55 (d) to permit a designated party to enter the residence during a spec-  
56 ified period of time in order to remove personal belongings not in issue

A. 6049

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1 in this proceeding or in any other proceeding or action under this act  
2 or the domestic relations law;

3 (e) to refrain from acts of commission or omission that create an  
4 unreasonable risk to the health, safety or welfare of a child;

5 (f) to pay the reasonable counsel fees and disbursements involved in  
6 obtaining or enforcing the order of the person who is protected by such  
7 order if such order is issued or enforced;

8 (g) to require the respondent to participate in a batterer's education  
9 program designed to help end violent behavior, which may include refer-  
10 ral to drug and alcohol counselling, and to pay the costs thereof if the  
11 person has the means to do so, provided however that nothing contained  
12 herein shall be deemed to require payment of the costs of any such  
13 program by the petitioner, the state or any political subdivision there-  
14 of;

15 (h) to provide, either directly or by means of medical and health  
16 insurance, for expenses incurred for medical care and treatment arising  
17 from the incident or incidents forming the basis for the issuance of the  
18 order;

19 (i) 1. to refrain from intentionally injuring or killing, without  
20 justification, any companion animal the respondent knows to be owned,  
21 possessed, leased, kept or held by the petitioner or a minor child  
22 residing in the household.

23 2. "Companion animal", as used in this section, shall have the same  
24 meaning as in subdivision five of section three hundred fifty of the  
25 agriculture and markets law;

26 (j) 1. to promptly return specified identification documents to the  
27 protected party, in whose favor the order of protection or temporary  
28 order of protection is issued; provided, however, that such order may:  
29 (A) include any appropriate provision designed to ensure that any such  
30 document is available for use as evidence in this proceeding, and avail-  
31 able if necessary for legitimate use by the party against whom such  
32 order is issued; and (B) specify the manner in which such return shall  
33 be accomplished.

34 2. For purposes of this subdivision, "identification document" shall  
35 mean any of the following: (A) exclusively in the name of the protected  
36 party: birth certificate, passport, social security card, health insur-  
37 ance or other benefits card, a card or document used to access bank,  
38 credit or other financial accounts or records, tax returns, any driver's  
39 license, and immigration documents including but not limited to a United  
40 States permanent resident card and employment authorization document;  
41 and (B) upon motion and after notice and an opportunity to be heard, any  
42 of the following, including those that may reflect joint use or owner-  
43 ship, that the court determines are necessary and are appropriately  
44 transferred to the protected party: any card or document used to access  
45 bank, credit or other financial accounts or records, tax returns, and  
46 any other identifying cards and documents; and

47 (k) to observe such other conditions as are necessary to further the  
48 purposes of protection.

49 The court may also award custody of the child, during the term of the  
50 order of protection to either parent, or to an appropriate relative  
51 within the second degree. Nothing in this section gives the court power  
52 to place or board out any child or to commit a child to an institution  
53 or agency.

54 Notwithstanding the provisions of section eight hundred seventeen of  
55 this article, where a temporary order of child support has not already  
56 been issued, the court may in addition to the issuance of an order of

1 protection pursuant to this section, issue an order for temporary child  
2 support in an amount sufficient to meet the needs of the child, without  
3 a showing of immediate or emergency need. The court shall make an order  
4 for temporary child support notwithstanding that information with  
5 respect to income and assets of the respondent may be unavailable. Where  
6 such information is available, the court may make an award for temporary  
7 child support pursuant to the formula set forth in subdivision one of  
8 section four hundred thirteen of this act. Temporary orders of support  
9 issued pursuant to this article shall be deemed to have been issued  
10 pursuant to section four hundred thirteen of this act.

11 Upon making an order for temporary child support pursuant to this  
12 subdivision, the court shall advise the petitioner of the availability  
13 of child support enforcement services by the support collection unit of  
14 the local department of social services, to enforce the temporary order  
15 and to assist in securing continued child support, and shall set the  
16 support matter down for further proceedings in accordance with article  
17 four of this act.

18 Where the court determines that the respondent has employer-provided  
19 medical insurance, the court may further direct, as part of an order of  
20 temporary support under this subdivision, that a medical support  
21 execution be issued and served upon the respondent's employer as  
22 provided for in section fifty-two hundred forty-one of the civil prac-  
23 tice law and rules.

24 Notwithstanding the provisions of section eight hundred seventeen of  
25 this article, where a temporary order of spousal support has not already  
26 been issued, the court may, in addition to the issuance of an order of  
27 protection pursuant to this section, issue an order directing the  
28 parties to appear within seven business days of the issuance of the  
29 order in the family court, in the same action, for consideration of an  
30 order for temporary spousal support in accordance with article four of  
31 this act. If the court directs the parties to so appear, the court shall  
32 direct the parties to appear with information with respect to income and  
33 assets, but a temporary order for spousal support may be issued pursuant  
34 to article four of this act on the return date notwithstanding the  
35 respondent's default upon notice and notwithstanding that information  
36 with respect to income and assets of the petitioner or respondent may be  
37 unavailable.

38 In any proceeding in which an order of protection or temporary order  
39 of protection or a warrant has been issued under this section, the clerk  
40 of the court shall issue to the petitioner and respondent and his or her  
41 counsel and to any other person affected by the order a copy of the  
42 order of protection or temporary order of protection and ensure that a  
43 copy of the order of protection or temporary order of protection [~~be~~] is  
44 transmitted to the local correctional facility where the individual is  
45 or will be detained, the state or local correctional facility where the  
46 individual is or will be imprisoned, and the supervising probation  
47 department or the department of corrections and community supervision  
48 where the individual is under probation or parole supervision.

49 Notwithstanding the foregoing provisions, an order of protection, or  
50 temporary order of protection where applicable, may be entered against a  
51 former spouse and persons who have a child in common, regardless of  
52 whether such persons have been married or have lived together at any  
53 time, or against a member of the same family or household as defined in  
54 subdivision one of section eight hundred twelve of this article.

55 In addition to the foregoing provisions, the court may issue an order,  
56 pursuant to section two hundred twenty-seven-c of the real property law,

1 authorizing the party for whose benefit any order of protection has been  
2 issued to terminate a lease or rental agreement pursuant to section two  
3 hundred twenty-seven-c of the real property law.

4 The protected party in whose favor the order of protection or tempo-  
5 rary order of protection is issued may not be held to violate an order  
6 issued in his or her favor nor may such protected party be arrested for  
7 violating such order.

8 § 4. Subparagraph 5 of paragraph (b) of subdivision 5-a of part B of  
9 section 236 of the domestic relations law, as amended by chapter 269 of  
10 the laws of 2015, is amended to read as follows:

11 (5) "Income cap" shall mean up to and including one hundred [~~seventy-~~  
12 ~~five~~] seventy-eight thousand dollars of the payor's annual income;  
13 provided, however, beginning [~~January thirty first~~] March first, two  
14 thousand [~~sixteen~~] eighteen and every two years thereafter, the income  
15 cap amount shall increase by the sum of the average annual percentage  
16 changes in the consumer price index for all urban consumers (CPI-U) as  
17 published by the United States department of labor bureau of labor  
18 statistics for the prior two years multiplied by the then income cap and  
19 then rounded to the nearest one thousand dollars. The office of court  
20 administration shall determine and publish the income cap.

21 § 5. Subparagraph 4 of paragraph (b) of subdivision 6 of part B of  
22 section 236 of the domestic relations law, as amended by chapter 269 of  
23 the laws of 2015, is amended to read as follows:

24 (4) "Income cap" shall mean up to and including one hundred [~~seventy-~~  
25 ~~five~~] seventy-eight thousand dollars of the payor's annual income;  
26 provided, however, beginning [~~January thirty first~~] March first, two  
27 thousand [~~sixteen~~] eighteen and every two years thereafter, the income  
28 cap amount shall increase by the sum of the average annual percentage  
29 changes in the consumer price index for all urban consumers (CPI-U) as  
30 published by the United States department of labor bureau of labor  
31 statistics for the prior two years multiplied by the then income cap and  
32 then rounded to the nearest one thousand dollars. The office of court  
33 administration shall determine and publish the income cap.

34 § 6. This act shall take effect on the ninetieth day after it shall  
35 have become a law.

**NEW YORK STATE ASSEMBLY**  
**MEMORANDUM IN SUPPORT OF LEGISLATION**  
**submitted in accordance with Assembly Rule III, Sec 1(f)**

**BILL NUMBER:** A6049

**SPONSOR:** Mayer

**TITLE OF BILL:**

An act to amend the family court act and the domestic relations law, in relation to orders for temporary spousal support in conjunction with temporary and final orders of protection in family court and calculation of maintenance cap in family and supreme court

This is one in a series of measures being introduced at the request of the Chief Administrative Judge upon the recommendation of his Family Court Advisory and Rules Committee.

The Family Protection and Domestic Violence Intervention Act of 1994 (L. 1994, c. 222) provided authority for Family Courts, when issuing orders of protection in family offense cases, to issue temporary orders of child support. This has provided a needed life-saver to petitioners in family offense cases at a particularly vulnerable point in their lives, that is, when they are taking steps to escape alleged domestic violence. This provision has proven invaluable in getting the process started quickly with a temporary order in place.

Experience during the two decades under the statute has revealed a significant gap - that is, that it does not provide an analogous safety net to married petitioners in family offense proceedings who do not have minor, dependent children. As the Appellate Division, Third Department noted, in *Matter of Childers v. Childers*, 260 A.D.2d 767 (3d Dept., 1999), child support, but not spousal support, may be ordered in conjunction with the issuance of an order of protection. As has been evident in cases in the Unified Court System's Integrated Domestic Violence Courts, petitioners in need of temporary spousal support are often older litigants in long-term marriages, who are victims of domestic violence, frequently including financial abuse. In many instances, they lack means of their own to cover immediate expenses, particularly the expenses of relocation, as they seek safe refuges from violence.

This measure would remedy this gap. It would amend sections 828 and 842 of the Family Court Act to provide authority for the Family Court, when issuing temporary and final orders of protection, to direct the parties to appear, in the same action, within seven business days of the issuance of the temporary order of protection for consideration of an order of temporary spousal support. While the parties will be directed to appear with information with respect to income and assets, the measure permits issuance of a temporary order of spousal support on the return date "notwithstanding the respondent's default upon notice and notwithstanding that information with respect to income and assets of the petitioner or respondent may be unavailable." Upon making an order for temporary spousal support, the court shall set the spousal support matter down for determination of the final order.

As was recognized by the Legislature in enacting recent legislation (L. 2013, c. 526), economic abuse is a significant form of domestic violence and is often inflicted upon elderly, vulnerable family members. See Memo

in Support of A. 7400 (L. 2013, c. 526). As recently documented in Under the Radar: The New York State Elder Abuse Study: Final Report, financial abuse is the most common form of abuse reported by the elderly.<sup>{1}</sup> Even where financial abuse has not been alleged, a married family offense petitioner's lack of income or access to family assets may impede his or her ability to escape to a place of safety, free of domestic violence, and is frequently the reason many domestic violence victims return repeatedly to their abusers before being able to permanently extricate themselves from abusive situations. Often a victim needs a temporary life-line, some means of securing resources to tide him or her over while seeking a more long-term order in a Supreme or Family Court proceeding. This measure would thus provide much needed emergency relief.

Finally, the measure would also amend Family Court Act § 412(10) and Domestic Relations Law § 236B(5-a)(b)(5) and § 236B(6)(b)(4) to fix the date of the biennial adjustment of the spousal maintenance "cap" at March 1st, rather than January 31st. It would commence the adjustment process in 2018, since the 2016 adjustment from \$175,000 to \$178,000 has already been made. This measure would conform the adjustment date to that already in effect for the child support income "cap," self-support reserve and poverty level.

This measure, which would have no fiscal impact, would take effect 90 days after it shall have become a law.

#### 2015-16 Legislative History:

Senate 5815-A (Sen. Savino) (amended and recommitted to Judiciary)  
Assembly 7032-A (M. of A. Mayer) (PASSED)

#### 2014 Legislative History:

OCA 2014-80  
Assembly 9465 (M. of A. Mayer) (reported ref to Codes)

<sup>{1}</sup> See Under the Radar: The New York State Elder Abuse Study: Final Report (Lifespan & Cornell-Weill Medical Center, May 2011), available at:

[http://ocfs.ny.gov/maintreports/Under %20the%20Radar%2005%2012%2011%20final%20report.pdf](http://ocfs.ny.gov/maintreports/Under%20the%20Radar%2005%2012%2011%20final%20report.pdf) (reviewed Jan. 6, 2014).



# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #13

To supplement the other materials in your package, attached is (a) a resolution from the Family Law Section supporting the report of the NYSBA/WBASNY Domestic Violence Initiative, (b) a memorandum from the Committee on Women in the Law supporting the report, and (c) a memorandum from the Erie County Bar Association indicating its support.

# RESOLUTION ON THE DOMESTIC VIOLENCE INITIATIVE FAMILY LAW SECTION

January 8, 2018

## HISTORY OF THE DOMESTIC VIOLENCE INITIATIVE

During the summer of 2016, the then-Presidents of the New York State Bar Association (NYSBA) and the Women's Bar Association of the State of New York (WBASNY) created a joint NYSBA/WBASNY Domestic Violence Initiative (the Initiative) in an effort to identify ways the bar and the judicial system might better address domestic violence and enhance access to legal services for victims of such violence in our state.

The work of the Initiative concluded with the publication of a Final Report in November, 2017. As reflected in the Final Report, the mission of the Initiative was to:

- Help educate attorneys around the state about domestic violence and the need for pro bono representation of victims, and help ensure that pro bono and civil legal services attorneys have access to the comprehensive training and education they need to provide effective legal services to address the broad range of issues faced by individuals and families affected by domestic violence, including those from diverse and traditionally underserved communities; and
- Expand the existing pool of volunteer attorneys and opportunities for volunteer service to victims of domestic violence, including by seeking to collaborate with bar associations throughout the state to help address the needs of domestic violence victims in their jurisdictions, partner with local domestic violence service providers to jointly educate their legal community and foster the recruitment of volunteers and the provision of pro bono legal services to victims through existing or newly-developed pro bono programs; and
- Examine and make recommendations concerning pending or proposed legislation that seeks to protect domestic violence victims.

With the publication of the Final Report, the Initiative concluded its work. As part of the Final Report, it was recommended that both the NYSBA and the WBASNY commit themselves to achieving the following goals:

- *Help ensure that pro bono and civil legal services attorneys have access to the comprehensive training and education they need to provide competent and effective services for individuals and families impacted by domestic violence, including those from diverse and traditionally underserved communities.*
- *Raise awareness of domestic violence issues, including among attorneys who do not*



*regularly represent domestic violence victims, and expand the existing pool of volunteer attorneys through education and outreach.*

- *Develop model pro bono programs that can be implemented in underserved communities in New York State.*
- *Encourage bar associations throughout the state to make meeting the needs of victims of domestic violence in their jurisdictions a priority, to partner with local domestic violence service providers and together educate their legal community about domestic violence and the need for pro bono representation of victims, and to foster the recruitment of volunteers and the provision of pro bono legal services to victims through existing or newly-developed pro bono programs.*
- *Identify proposed legislation that would help protect and provide access to justice for survivors of domestic violence and prepare supporting memoranda that NYSBA, WBASNY and other interested groups can use to advocate for the adoption of that legislation by the New York State legislature.*

The Initiative's Final Report includes explicit recommendations for the achievement of each of those goals.

The Family Law Section enthusiastically and wholeheartedly approves of the Final Report of the NYSBA/WBASNY Domestic Violence Initiative, and the Recommendations and Goals identified and set forth in the Final Report. The Family Law Section has established a Domestic Violence Committee and is committed to achieving the goals identified by the Domestic Violence Initiative.

Memorandum prepared by:  
Chair of the Section:

Erik Kristensen, Esq.  
Mitchell Y. Cohen, Esq.



To: The Executive Committee and House of Delegates, New York State Bar Association

From: Legislative Affairs Subcommittee, Committee on Women in the Law, New York State Bar Association

Re: Memorandum in Support

Date: January 11, 2018

The Committee on Women in the Law's (CWIL's) Legislative Affairs Subcommittee **supports** the "New York State Bar Association and Women's Bar Association of the State of New York Domestic Violence Initiative's Final Report (November 2017)" to provide greater access to legal services to victims of domestic violence in New York State.

Domestic violence is a pervasive societal problem that has reached epidemic levels in New York State. Domestic violence is described as ongoing, purposeful behavior by an individual aimed at exerting control over a current or former intimate partner, and it can be physical, psychological, sexual or economic in nature. Domestic violence touches the lives of individuals in every segment of the population, with no distinction based on race, ethnicity, sexual orientation, age, ability or socioeconomic status. Domestic violence is an acutely dangerous problem, and individuals in abusive relationships are at increased risk of homicide at the hands of their intimate partner. Many individuals in abusive relationships rely on the legal system to help them break the cycle of violence. Access to legal assistance is documented in studies as one of the most effective ways to disrupt domestic violence. Unfortunately, the overwhelming need on the part of abuse victims and their children cannot be met by the existing available resources.<sup>1</sup>

The Report recommends and outlines three key areas to address these deficiencies, and includes proposals to enhance legal services to domestic violence victims, including: education, pro bono efforts and legislation.

The education element includes both educating attorneys who currently provide services to domestic violence victims and increasing awareness of domestic violence issues among attorneys generally. To accomplish this, the Task Force recommends (1) that a roster of expert speakers is maintained and displayed on NYSB's and WBASNY's websites; (2) incorporating domestic violence CLE training in practice areas beyond the NYSBA Family Law Section and the WBASNY Domestic Violence Committee; and (3) incorporating the dynamics of domestic violence as a topic in criminal and family law programs in Bridge-the-Gap CLEs.

Education training and resources are crucial elements in supporting attorneys' effective representation of domestic violence clients. The CWIL's Subcommittee endorses the Report's recommendations concerning CLE education and training programs in other practices and in

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<sup>1</sup> "New York State Bar Association and Women's Bar Association of the State of New York Domestic Violence Initiative 's Final Report" (Released November 2017).

junior years of practice, including on-demand video resources, to properly train and prepare attorneys to recognize and meet the representation challenges unique to domestic violence victims.

The pro bono component, which we also strongly support, focuses on increasing the number of available pro bono attorneys engaging in this work both individually and through the collaborative work of the bar associations. As outlined in the Report, there are vast areas in New York State where there are few attorneys to represent domestic violence victims. This gap in legal services puts women and children in jeopardy because they do not have representation to help them when they are most vulnerable. To address this gap, the Subcommittee endorses the four recommendations in the Report including: (1) the creation of a Domestic Violence Advisor Panel, establishing a Pro Bono Attorney list process, supporting the dissemination and use of the Legal Clinic-in-a-Toolkit and CLE for Pro Bono Toolkit; (2) publicizing the available Toolkits and resources, particularly in counties with a gap in legal resources supporting domestic violence victims; (3) increasing pro bono legal resources to victims of domestic violence; and (4) exploring the opportunities to use technology to link domestic violence victims needing legal support in one part of New York State with pro bono and legal services attorneys willing and able to provide this support in another part of the state.

The legislative initiatives mentioned in the Report were previously endorsed by this Subcommittee, with minor modifications suggested to some of the bills. (See Memorandum in Support, dated March 21, 2017). While passage of these bills was not completed by the end of the legislative session in 2017, the Subcommittee remains supportive of these efforts and is hopeful that the three pieces of legislation currently being advocated for are sent to the Governor's desk this year.

Based on the foregoing, the Committee on Women in the Law's Legislative Affairs Subcommittee **supports** the "New York State Bar Association and Women's Bar Association of the State of New York Domestic Violence Initiative's Final Report (November 2017)" and **strongly urges** NYSBA's Executive Committee and House of Delegates to adopt the Report and the recommendations made therein.

Submitted by:

Chair of the Committee on Women in the Law: Susan L. Harper

Co-Chairs of the Legislative Affairs Subcommittee: Michal Ovadia and Sarah Simpson

Subcommittee Members: Denise Bricker, Marilyn Flood, Pamela Dale Bass, Carrie Goldberg, and Deirdre Lidell Hay



BAR ASSOCIATION  
OF ERIE COUNTY

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To: NYSBA/WBASNY Domestic Violence Initiative  
Via email to [reportsgroup@nysba.org](mailto:reportsgroup@nysba.org)

From: Melinda G. Disare, President, Bar Association of Erie County

Date: 01/11/2018

Re: **NYSBA & WBASNY Domestic Violence Initiative**

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To Whom it May Concern,

As its meeting on January 9, 2018, the Board of Directors of the Bar Association of Erie County voted unanimously to support the recommendations set forth in the NYSBA & WBASNY Domestic Violence Initiative Report.

If you have any questions, feel free to contact me.

Sincerely,

Melinda G. Disare, President  
Bar Association of Erie County



# Staff Memorandum

**HOUSE OF DELEGATES  
Agenda Item #16  
(New Business)**

REQUESTED ACTION: Approval of a proposed resolution offered by the Criminal Justice Section with respect to bail reform.

Attached is a resolution prepared by the Criminal Justice Section with respect to bail reform. The resolution notes that in this year's State of the State book, the Governor included a framework for a bail reform package to eliminate cash bail for people facing misdemeanor or non-violent felony charges and called upon the Association to support this framework. In addition, the resolution calls for enhanced training of judges, court personnel and lawyers to the availability of alternatives to cash bail; add supervised release as a recognized form of release on recognizance; amend the Criminal Procedure Law to provide that a court may not impose financial conditions on a defendant unless the defendant is charged with a violent crime or there is a risk that the defendant will not appear; and amend the Criminal Procedure Law with respect to the valuing of posted real estate.

Tucker C. Stanclift, chair of the Criminal Justice Section, will present the resolution at the January 26 meeting.

**NEW YORK STATE BAR ASSOCIATION  
CRIMINAL JUSTICE SECTION  
BAIL REFORM RESOLUTION**

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

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

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

WHEREAS, New York Governor Andrew Cuomo recently released a framework for a bail reform package<sup>1</sup> that would:

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

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

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

BE IT THEREFORE RESOLVED, the Office of Court Administration and the Chief Administrator of the Courts are urged to enhance and increase the training and education of judges and courtroom personnel and the Bar to the availability of alternatives to cash bail including but not limited to unsecured and partially secured bonds, as well as (i) simplify and make available forms compliant with the Criminal Procedure Law facilitating secured, partially

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

secured and unsecured (non-financial) release, and (ii) suggest that judges not impose financial conditions unless the arrested person is charged with a crime of violence or there is a likely risk that the arrested person will not appear in court; and be it further

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

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

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

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

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

Respectfully Submitted,



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Tucker Stanclift  
Chair, Criminal Justice Section

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF EXECUTIVE COMMITTEE MEETING  
BAR CENTER, ALBANY, NEW YORK  
NOVEMBER 3, 2017**

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Present: Alyssa M. Barreiro, Jonathan B. Behrins, Norman P. Effman, Margaret J. Finerty, Michael L. Fox, Michael W. Galligan, Sharon Stern Gerstman, Sarah E. Gold, Henry M. Greenberg, Claire P. Gutekunst, Richard M. Gutierrez, Bryan D. Hetherington, Drew Jaglom, Scott M. Karson, Elena DeFio Kean, Stuart J. LaRose, Sherry Levin Wallach, Peter H. Levy, Michael Miller, Steven E. Millon, Domenick Napoletano, Bruce J. Prager, Sandra Rivera, William T. Russell (via conference call), Carol A. Sigmond, David H. Tennant,.

Guests: Jill Choate Beier, Mark A. Berman, Ira M. Bloom, T. Andrew Brown, Michael S. Farber, Sarah Jo Hamilton, Hilary F. Jochmans, Mitchell J. Katz, Sherry S. Kraus, Glenn Lau-Kee, Bernice K. Leber, Thomas J. Maroney, Ronald J. Minkoff, Lillian M. Moy, Sharon L. Wick.

Ms. Gerstman presided over the meeting as President of the Association.

1. Approval of minutes of meetings. The minutes of the June 15-16, 2017 meeting and the August 22, 2017 telephone conference were approved as distributed.
2. Consent calendar:
  - a. Amendments to bylaws of Local and State Government Law Section
  - b. Amendments to bylaws of Business Law Section
  - c. Confirmation of presidential appointee to House of Delegates
  - d. Proposal for award from President's Committee on Access to Justice
  - e. Amendments to bylaws of Trial Lawyers Section

The consent calendar, consisting of the five above items, was approved by voice vote.

3. Report of Treasurer. In his capacity as Treasurer, Mr. Karson reported that through September 30, 2017, the Association's total revenue was \$20.7 million, a decrease of approximately \$964,000 from the previous year, and total expenses were \$17 million, a decrease of approximately \$60,000 over 2016. Mr. Karson also provided a report on the status of the long-term reserve investments. The report was received with thanks.
4. Report and recommendations of Tax Section. Michael S. Farber, chair of the Tax Section, and Sherry S. Kraus, member-at-large of the section's Executive Committee, presented an affirmative legislative proposal to amend New York State Tax Law §171-v to provide a hardship exemption to driver's license suspensions of tax debtors. After discussion, a motion was adopted to approve the proposal.
5. Report of staff leadership. Pamela McDevitt, Executive Director, together with David Weinstein, Senior Director of Marketing and Communications, and Jason Nagel, Managing Director of IT, reviewed the process to develop the 2018 budget, staff



reductions, marketing and communication initiatives, and technology updates. The report was received with thanks.

6. Report of President. Ms. Gerstman highlighted the items contained in her written report, a copy of which is appended to these minutes. In addition, she updated the Executive Committee with respect to new committees, judicial vacancies, and membership initiatives.
7. Report of Committee on Continuing Legal Education. James R. Barnes, chair of the Committee on Continuing Legal Education, together with Senior Director Katherine Suchocki, provided an update on the Association's continuing legal education program, including revenue and expenses and new policies and initiatives. The report was received with thanks.
8. Report and recommendations of Trusts and Estates Law Section. Prof. Ira M. Bloom, chair of the section's Uniform Trust Code Committee, together with section chair Sharon L. Wick, outlined a proposal for a New York Trust Code, which would enable the codification of changed practices and case law. After discussion, a motion was adopted to endorse the report and recommendations for favorable action by the House.
9. Report of Executive Committee Subcommittee on Publications. In his capacity as chair of the subcommittee, Mr. Fox provided an interim report on the subcommittee's work to date, including a member survey that the subcommittee conducted. He noted that the subcommittee plans to present a final report at the January 2018 meeting. The report was received with thanks.
10. Report on legislative matters. In her capacity as chair of the Committee on State Legislative Policy, Ms. Rivera provided a preview of the 2018 legislative session, noting that the current focus is on the budget. Hilary F. Jochmans, chair of the Committee on Federal Legislative Priorities, updated the Executive Committee on federal legislative activities. The reports were received with thanks.
11. Report and recommendations of Steering Committee on Legislative Priorities.
  - a. Committee on State Legislative Policy. In her capacity as chair of the Committee on State Legislative Policy, Ms. Rivera reported on the committee's recommendations of the following items for inclusion on the list of the Association's state legislative priorities: integrity of New York's justice system; reform statutory power of attorney; right to discovery in criminal justice matters; privileged communications for lawyer referral services; and support for the legal profession.

After discussion, a motion was adopted to approve these items as the Association's 2018 state legislative priorities.

- b. Committee on Federal Legislative Priorities. Hilary F. Jochmans, chair of the Committee on Federal Legislative Priorities, presented the committee's recommendations of the following items for inclusion on the list of the Association's 2018 federal legislative priorities: integrity of the justice system; support for the Legal Services Corporation; support criminal justice reform; support for legislation to address immigration representation; support for states' authority to regulate the tort system; and support for the legal profession.

After discussion, a motion was adopted to approve these items as the Association's 2018 federal legislative priorities.


12. Report regarding Executive Committee liaisons. Ms. Gerstman asked members to attend as many section and committee meetings as possible and ask them to keep in mind that reports for issuance by a section or committee must be submitted to the President at least five days in advance of the planned issuance of a report.
13. Report and recommendations of Finance Committee re 2018 proposed income and expense budget. T. Andrew Brown, chair of the Finance Committee, reviewed the proposed budget for 2018, which projects income of \$23,704,125, expenses of \$23,797,360, and a projected deficit of \$93,225. A motion was adopted to endorse the proposed budget for favorable action by the House.
14. Report of Committee on Membership. Thomas J. Maroney, chair of the Membership Committee, together with Associate Executive Director Elizabeth Derrico, reported on recent committee developments, including the work of the committee's subcommittees. He noted that the committee's January 2018 meeting will be an open meeting and he encouraged members to attend. The report was received with thanks.
15. Reports and recommendations of Trusts and Estates Law Section. Sharon L. Wick, chair of the section, together with Jill Choate Beier, member-at-large of the section's Executive Committee, presented three affirmative legislative proposals.
  - a. SCPA 1001 and 1418. The proposal would harmonize the issuance of letters of administration and letters of administration c.t.a. and bring the statutes into accord with current judicial interpretation. A motion was adopted to approve the proposal.
  - b. SCPA 2308 and 2309. The proposal would eliminate income commissions for trustees of charitable trusts. A motion was adopted to approve the proposals. Ms. Barreiro abstained from participating in the discussion and vote.
  - c. EPTL 8-1.8(b-1) and Not-For-Profit Corporation Law 406 (b-1). The proposal would abolish existing statutes that require certain trusts to publish information each year about the availability of annual returns for public inspection. A motion was adopted to approve the proposal.

16. Report and recommendations of Commercial and Federal Litigation Section. Past President Bernice K. Leber, together with section chair Mitchell J. Katz and immediate past section chair Mark A. Berman, presented the section's report on the number of women lawyers who serve as litigators, arbitrators and mediators, with recommendations as to steps firms, ADR providers, and clients can take to increase the number of women in litigation and ADR settings. After discussion, a motion was adopted to endorse the report and recommendations for favorable action by the House.
17. Report of Committee on Technology and the Legal Profession. Mark A. Berman, chair of the committee, updated the Executive Committee with respect to the committee's work to date, including the designation of subcommittees. The report was received with thanks.
18. Report and recommendations of New York County Lawyers Association. Sarah Jo Hamilton, director of NYCLA's Ethics Institute, and Ronald C. Minkoff, chair of NYCLA's Committee on Professionalism and Professional Discipline, presented a report that reviews issues related to providers of online legal documents and makes recommendations for regulations/best practices. They noted that NYCLA had accepted amendments to the report to reference a related ABA report. After discussion, a motion was adopted to endorse the report and recommendations as amended for favorable action by the House.
19. Report of Committee on Diversity and Inclusion. Lillian M. Moy, past chair of the committee, reviewed the committee's draft biennial diversity report card, which focuses on eight of the Association's sections. The report will be presented to the House in January. The report was received with thanks.
20. Report of Nominating Committee. Glenn Lau-Kee, chair of the Nominating Committee, reported that the Committee had nominated the following individuals for election to the indicated offices for the 2018-2019 Association year: President Elect: Henry M. Greenberg, Albany; Secretary: Sherry Levin Wallach, White Plains; Treasurer: Scott M. Karson, Melville; Vice Presidents: 1st District – Taa R. Grays, New York City and Carol A. Sigmond, New York City; 2nd District – Aimee L. Richter, Brooklyn; 3rd District – Robert T. Schofield, IV, Albany; 4th District – Matthew R. Coseo, Ballston Spa; 5th District – Jean Marie Westlake, East Syracuse; 6th District – Richard C. Lewis, Binghamton; 7th District – David H. Tennant, Rochester; 8th District – Norman P. Effman, Warsaw; 9th District – Michael L. Fox, Newburgh; 10th District – Peter H. Levy, Jericho; 11th District – Karina E. Alomar, Ridgewood; 12th District – Steven E. Millon, New York; 13th District – Jonathan B. Behrins, Staten Island. The following individuals were nominated to serve as Executive Committee Members-at-Large for a 2-year term beginning June 1, 2018: Earamichia Brown (Diversity Seat), New York City; Mark A. Berman, New York City; Evan M. Goldberg, New York City; Erica M. Hines, Albany; and Tucker C. Stanclift, Queensbury Nominated as Section Member-at-Large was Rona G. Shamon, Scarsdale. The following individuals were nominated as delegates to the American Bar Association House of Delegates for the 2018-2020 term: Sharon Stern Gerstman, Buffalo; Henry M. Greenberg, Albany; Kathryn Grant Madigan,

Binghamton; David P. Miranda, Albany; Kenneth G. Standard, New York City; and Alena Shautsova, Brooklyn (Young Lawyer Delegate).

19. New Business. Ms. Gerstman announced that Associate Executive Director Elizabeth Derrico plans to retire as of the end of 2017 and that this would be her last meeting. Ms. Gerstman thanked her for her service to the Association.
20. Date and place of next meeting.  
Thursday, January 25, 2018  
Hilton Midtown New York, New York City
21. Adjournment. There being no further business, the meeting of the Executive Committee was adjourned.

Respectfully submitted,



Sherry Levin Wallach  
Secretary