



**GENERAL ASSEMBLY  
SATURDAY, JANUARY 30, 2021 – 9:00 A.M.  
REMOTE MEETING**

**AGENDA**

- ANNUAL MEETING OF THE NEW YORK STATE BAR ASSOCIATION** **9:00 a.m.**  
**Mr. Scott M. Karson**  
**President, presiding**
1. Call to order and Pledge of Allegiance – Mr. Scott M. Karson
  2. Approval of the minutes of the January 31, 2020 Annual Meeting
  3. Report of Nominating Committee and election of elected delegates to the House of Delegates – Ms. Sharon Stern Gerstman
  4. Address by Hon. Janet DiFiore, Chief Judge of the State of New York
  5. Report of President – Mr. Scott M. Karson
  6. Report of Treasurer – Mr. Domenick Napoletano
  7. Report and recommendations of Committee on Bylaws – Mr. Robert T. Schofield, IV
  8. Adjournment
- HOUSE OF DELEGATES MEETING** **10:15 a.m.**  
**Mr. T. Andrew Brown**  
**Chair, presiding**
1. Approval of minutes of November 7, 2020 meeting **10:15 a.m.**
  2. Report of Nominating Committee and election of officers and members-at-large of the Executive Committee – Ms. Sharon Stern Gerstman **10:20 a.m.**
  3. Report of Committee on NYSBA Facilities – Mr. David Miranda, Ms. Sandra D. Rivera, and Mr. Michael J. McNamara **10:25 a.m.**
  4. Report and recommendations of Committee on Immigration Representation – Mr. Hasan Shafiqullah **10:40 a.m.**
  5. Report and recommendations of the Committee on Mandated Representation

- Mr. Norman P. Effman 11:05 a.m.
6. Report of LGBTQ People and the Law Section – Mr. Christopher R. Riano 11:30 a.m.
7. Report of Committee on Communications and Publications – Prof. Michael L. Fox 11:40 a.m.
8. Administrative items – Mr. T. Andrew Brown 11:50 a.m.
9. New business 11:55 a.m.
10. Date and place of next meeting:  
Saturday, April 10, 2021  
Remote Meeting

**THE NEW YORK BAR FOUNDATION ANNUAL MEETING**

**12:00 p.m.**

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

**Ms. Lesley Rosenthal**  
**President, presiding**

1. Approval of the minutes of the January 31, 2020 Annual Meeting
2. Report of the officers, ratification and confirmation of the actions of the Board of Directors since the 2020 Annual Meeting – Ms. Lesley Rosenthal
3. Report of the Nominating Committee – Mr. David M. Schrauer
4. Other matters
5. Adjournment

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF ANNUAL MEETING  
NEW YORK HILTON MIDTOWN, NEW YORK CITY  
JANUARY 31, 2020**

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**PRESENT:** Aaron; Adigwe; Alcott; Alomar; Arenson; Baum; Behrins; Bennett; Berman; Billings; Braunstein; Breding; Brown, T.A.; Buholtz; Burke; Buzard; Caceres; Castellano; Chang, V.; Christensen; Christian; Christopher; Cilenti; Coffey; Cohen, D.; Cohen, M.; Cohen, O.; Cohn; Connery; Crawford; Dean; Disare; Doerr; Doxey; Eberle; Effman; Eng; Fallek; Fennell; Fernandez; Ferrara; Finerty; First; Fishberg; Fogel; Foley; Fox; Freedman, H.; Friedman; Frumkin; Genoa; Gerstman; Grady; Graves-Poller; Greenberg; Griesemer; Griffin; Grimaldi; Gross; Gutekunst; Gutenberger Grossman; Gitierrez; Haig; Harper; Heller; Fines; Hobika; Holtzman; Jackson; Jaglom; James; Kamins; Karson; Katz; Kean; Kearns; Kelly, K.; Kelly, M.; Kiernan; Koch; Krajewski; Kretser; LaBarbera; Lau-Kee; Lawrence; Leber; Leventhal; Levin Wallach; Levin; Levy; Lewis; Lindenauer; Lugo; MacLean; Madden; Madigan; Maldonado; Mandell; Margolin; Marinaccio; Markowitz; Marotta; Martin Owens; Martin; Matos; May; McCasnn; McNamara, C.; McNamara, M.; Meyer; Miller, C.; Miller, M.; Minkoff; Minkowitz; Miranda; Mohun; Montagnino; Moore; Muller; Mulry; Napoletano; Nowotarski; O’Connell; O’Donnell; Onderdonk; Palermo, C.; Perlman; Pessala; Pitegoff; Pleat; Poster-Zimmerman; Purcell; Radick; Ranni; Richardson; Rivera, J.; Russell; Ryan; Santiago; Scheinkman; Schofield; Schrag; Schraver; Schriever; Scott; Sen; Shafer; Shamoan; Sharkey; Sheldon; Sigmond; Silkenat; Simon; Singer; Skidelsky; Sonberg; Spolzino; Standard; Starkman; Sweet; Taylor; Tennant; Tesser; Triebwasser; van der Meulen; Ventura; Vigdor; Warner; Westlake; Wimpfheimer; Yeung-Ha; Young; Younger.

Mr. Greenberg 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 and National Anthem sung by Court Officer Jaleesa Copeland.
2. Approval of minutes of the January 18, 2019 meeting. The minutes, as previously distributed, were accepted.
3. Report of the Nominating Committee and election of elected delegates to the House of Delegates. Claire P. Gutekunst, 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 2020-2021 Association year:

First District: Susan B. Lindenauer, Hon. Cheryl E. Chambers, and Peter Harvey, all of New York City;

Second District: Andrew M. Fallek, Anthony W. Vaughn, and Pauline Yeung-Ha, all of Brooklyn;

Third District: Hermes Fernandez, Elena DeFio Kean, and Sandra Rivera, all of Albany;

Fourth District: Margaret E. Gilmartin of Saratoga Springs, Matthew R. Coseo of Ballston Spa, and Peter V. Coffey of Schenectady;

Fifth District: Courtney S. Radick of Oswego, Donald C. Doerr of Syracuse, and Stuart Larose of Syracuse;

Sixth District: Andria R. Adigwe of Binghamton, Robert M. Shafer of Tully, and Michael R. May of Ithaca;

Seventh District: Duwaine T. Bascoe of Penfield, Stephen M. Kelley of Geneseo, and Amy E. Schwartz-Wallace of Rochester;

Eighth District: Kathleen Sweet of Buffalo, Michael M. Mohun of Warsaw, and Ericka N. Bennett of Buffalo;

Ninth District: John A. Pappalardo of White Plains, Andrew P. Schriever of White Plains, and Joseph J. Ranni of Florida;

Tenth District: Steven G. Leventhal of Roslyn, Peter H. Levy of Jericho, and A. Craig Purcell of Stony Brook;

Eleventh District: Hon. Lourdes M. Ventura of Albertson, Steven Wimpfheimer of Whitestone, and Hon. Karina E. Alomar of Kew Gardens;

Twelfth District: Steven E. Millon of the Bronx, Carlos M. Calderón of Scarsdale, and Adam J. Sheldon of New York City;

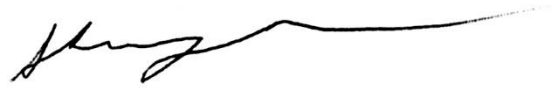
Thirteenth District: Orin J. Cohen, Allyn J. Crawford, and Sheila T. McGinn, all of Staten Island.

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. Domenick Napoletano, Treasurer, reported on the 2019 operating budget through December 31, 2019. He reported that the Association's total revenue was \$22 million, a decrease of approximately \$285,000 from the previous year, and total expenses were \$22 million, a decrease of approximately \$136,000 from the previous year. The operating surplus prior to audit was approximately \$1 million. The report was received with thanks.
5. Report and recommendations of Committee on Bylaws. Robert T. Schofield, IV, chair of the Bylaws Committee, presented the Committee's proposals to amend the Bylaws to provide for a class of Non-Attorney Affiliates. After discussion, a motion was adopted to approve the bylaws amendment. Prof. Fox abstained from participating and voting.

6. Adjournment. There being no further business, the Annual Meeting of the Association was adjourned.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Sherry', followed by a long horizontal line that tapers to the right.

Sherry Levin Wallach  
Secretary



**ANNUAL MEETING**  
**Agenda Item #3**

**Election of 2021-2022**  
**Elected Delegates to the House of Delegates**

1 <sup>st</sup> District	Hon. Cheryl Chambers, New York City Peter Harvey,, New York City Susan B. Lindenauer, New York City
2 <sup>nd</sup> . District	Andrew M. Fallek, Brooklyn Anthony Vaughn, Brooklyn Pauline Yeung-Ha, Brooklyn
3 <sup>rd</sup> District	Elena DeFio Kean, Albany Jane Bello Burke, Albany TBD
4 <sup>th</sup> District	Mary Elizabeth Coreno, Saratoga Springs Margaret E. Gilmartin, Saratoga Springs Nicole L. Clouthier, Schenectady
5 <sup>th</sup> District	Donald C. Doerr, Syracuse Stuart LaRose, Syracuse Courtney S. Radick, Oswego
6 <sup>th</sup> District	Andria R. Adigwe, Binghamton Michael R. May, Ithaca Robert M. Shafer, Tully
7 <sup>th</sup> District	Duwayne T. Bascoe, Penfield Stephen M. Kelley, Geneseo Amy Schwartz-Wallace, Rochester
8 <sup>th</sup> District	Norman P. Effman, Warsaw Michael M. Mohun, Warsaw Leah Nowotarski, Warsaw
9 <sup>th</sup> District	Karen Beltran, White Plains Claire J. Degnan, White Plains Hon Linda S. Jamieson, White Plains

10 <sup>th</sup> District	Steven G. Leventhal, Roslyn Peter H. Levy, Jericho A. Craig Purcell, Stony Brook
11 <sup>th</sup> District	Hon. Karina E. Alomar, Kew Gardens Kristen Dubowski Barba, Steven Wimpfheimer, Whitestone
12 <sup>th</sup> District	Samuel Braverman, Bronx Steven E. Millon, Bronx Adam J. Sheldon, New York City
13 <sup>th</sup> District	Allyn J. Crawford, Staten Island Edwina Frances Martin, Staten Island Sheila T. McGinn, Staten Island



**NEW YORK STATE BAR ASSOCIATION  
2020 OPERATING BUDGET  
TWELVE MONTHS OF CALENDAR YEAR 2020**

**REVENUE**

	2020 BUDGET	ADJUST- MENTS	2020 BUDGET AS ADJUSTED	UNAUDITED RECEIVED 12/31/2020	% RECEIVED 12/31/2020	2019 BUDGET	UNAUDITED RECEIVED 12/31/2019	% RECEIVED 12/31/2019
<b>MEMBERSHIP DUES</b>	9,732,250		9,732,250	9,317,495	95.74%	10,050,000	9,637,873	95.90%
<b>SECTIONS:</b>								
Dues	1,321,800		1,321,800	1,241,688	93.94%	1,302,000	1,288,049	98.93%
Programs	3,123,430		3,123,430	769,606	24.64%	3,160,640	2,483,202	78.57%
<b>INVESTMENT INCOME</b>	500,800		500,800	388,435	77.56%	478,000	564,518	118.10%
<b>ADVERTISING</b>	250,000		250,000	242,683	97.07%	219,000	290,456	132.63%
<b>CONTINUING LEGAL EDUCATION</b>	3,220,000		3,220,000	3,081,836	95.71%	3,130,000	3,153,234	100.74%
<b>USI AFFINITY PAYMENT</b>	2,306,000		2,306,000	2,389,144	103.61%	2,196,800	2,184,419	99.44%
<b>ANNUAL MEETING</b>	1,312,000		1,312,000	1,586,876	120.95%	850,000	938,791	110.45%
<b>HOUSE OF DELEGATES &amp; COMMITTEES</b>	174,750		174,750	24,094	13.79%	78,250	77,096	98.53%
<b>PUBLICATIONS, ROYALTIES AND OTHER</b>	216,200		60,738	209,135	344.32%	268,200	248,327	92.59%
<b>REFERENCE MATERIALS</b>	1,250,000		1,250,000	1,025,991	82.08%	1,274,000	1,097,627	86.16%
<b>TOTAL REVENUE</b>	<b>23,407,230</b>	<b>0</b>	<b>23,251,768</b>	<b>20,276,983</b>	<b>87.21%</b>	<b>23,006,890</b>	<b>21,963,592</b>	<b>95.47%</b>

**EXPENSE**

	2020 BUDGET	ADJUST- MENTS	2020 BUDGET AS ADJUSTED	UNAUDITED EXPENDED 12/31/2020	% EXPENDED 12/31/2020	2019 BUDGET	UNAUDITED EXPENDED 12/31/2019	% EXPENDED 12/31/2019
<b>SALARIES &amp; FRINGE</b>	8,790,034		8,790,034	8,548,425	97.25%	9,382,242	8,716,606	92.91%
<b>BAR CENTER:</b>								
Rent	284,000		284,000	283,623	99.87%	284,000	284,367	100.13%
Building Services	397,000		397,000	462,633	116.53%	230,750	402,246	174.32%
Insurance	170,000		170,000	177,692	104.52%	162,000	159,734	98.60%
Taxes	7,750		7,750	221,880	2862.97%	2,750	113,231	4117.49%
Plant and Equipment	890,500		890,500	706,191	79.30%	862,000	471,657	54.72%
Administration	537,600		537,600	510,280	94.92%	539,100	358,331	66.47%
<b>SECTIONS</b>	4,445,230		4,445,230	1,755,303	39.49%	4,466,940	3,838,851	85.94%
<b>PUBLICATIONS:</b>								
Reference Materials	312,800		312,800	146,293	46.77%	306,752	222,214	72.44%
Journal	396,500		396,500	298,433	75.27%	360,200	365,980	101.60%
Law Digest	156,000		156,000	83,846	53.75%	172,300	154,153	89.47%
State Bar News	122,300		122,300	80,471	65.80%	135,300	101,163	74.77%
<b>MEETINGS:</b>								
Annual Meeting	714,700		714,700	952,838	133.32%	338,500	380,226	112.33%
House of Delegates, Officers and Executive Committee	468,825		468,825	212,736	45.38%	519,300	439,279	84.59%
<b>COMMITTEES:</b>								
Continuing Legal Education	1,480,500		1,480,500	498,640	33.68%	1,659,000	1,706,570	102.87%
LPM / Electronic Communication Committee	38,100		38,100	18,072	47.43%	55,950	28,964	51.77%
Marketing / Membership	877,050		877,050	518,197	59.08%	924,350	756,298	81.82%
Media Services	144,720		144,720	230,545	159.30%	30,450	113,104	371.44%
All Other Committees and Departments	2,983,790		2,983,790	3,466,856	116.19%	2,574,705	2,816,252	109.38%
<b>TOTAL EXPENSE</b>	<b>23,217,399</b>	<b>0</b>	<b>23,217,399</b>	<b>19,172,954</b>	<b>82.58%</b>	<b>23,006,589</b>	<b>21,429,226</b>	<b>93.14%</b>
<b>BUDGETED SURPLUS</b>	<b>189,831</b>	<b>0</b>	<b>34,369</b>	<b>1,104,029</b>		<b>301</b>	<b>534,366</b>	

**NEW YORK STATE BAR ASSOCIATION  
STATEMENTS OF FINANCIAL POSITION  
AS OF DECEMBER 31, 2020**

<u>ASSETS</u>	<u>UNAUDITED</u> <u>12/31/2020</u>	<u>UNAUDITED</u> <u>12/31/2019</u>	<u>UNAUDITED</u> <u>12/31/2019</u>
<b>Current Assets:</b>			
General Cash and Cash Equivalents	16,143,934	16,424,055	16,424,055
Accounts Receivable	176,684	111,401	111,401
Prepaid expenses	604,389	1,082,754	1,082,754
Royalties and Admin. Fees receivable	716,795	716,588	716,588
Total Current Assets	17,641,802	18,334,798	18,334,798
<b>Board Designated Accounts:</b>			
<u>Cromwell Fund:</u>			
Cash and Investments at Market Value	2,962,151	2,633,478	2,633,478
Accrued interest receivable	0	0	0
	2,962,151	2,633,478	2,633,478
<u>Replacement Reserve Account:</u>			
Equipment replacement reserve	1,117,826	1,117,659	1,117,659
Repairs replacement reserve	794,550	794,431	794,431
Furniture replacement reserve	220,000	219,967	219,967
	2,132,376	2,132,057	2,132,057
<u>Long-Term Reserve Account:</u>			
Cash and Investments at Market Value	30,171,927	26,428,136	26,428,136
Accrued interest receivable	0	138,364	138,364
	30,171,927	26,566,500	26,566,500
<u>Sections Accounts:</u>			
Section Accounts Cash equivalents and Investments at market value	4,046,948	3,876,815	3,876,815
Cash	255,990	-67,601	-67,601
	4,302,938	3,809,214	3,809,214
<b>Fixed Assets:</b>			
Furniture and fixtures	1,463,037	1,448,300	1,448,300
Leasehold Improvements	1,470,688	1,470,688	1,470,688
Equipment	9,865,034	9,223,256	9,223,256
Telephone	107,636	107,636	107,636
	12,906,395	12,249,880	12,249,880
Less accumulated depreciation	10,002,622	10,193,121	10,193,121
Net fixed assets	2,903,773	2,056,759	2,056,759
Total Assets	60,114,967	55,532,806	55,532,806
<b><u>LIABILITIES AND FUND BALANCES</u></b>			
<b>Current liabilities:</b>			
Accounts Payable & other accrued expenses	746,436	837,151	837,151
Deferred dues	6,162,500	7,798,323	7,798,323
Deferred income special	230,768	461,538	461,538
Deferred grant revenue	44,222	29,906	29,906
Other deferred revenue	995,669	1,069,153	1,069,153
Unearned Income - CLE	0	93,111	93,111
Payable To The New York Bar Foundation	19,965	26,307	26,307
Total current liabilities & Deferred Revenue	8,199,560	10,315,489	10,315,489
<b>Long Term Liabilities:</b>			
Accrued Pension Costs	0	0	0
Accrued Other Postretirement Benefit Costs	9,015,883	8,065,883	8,065,883
Accrued Supplemental Plan Costs and Defined Contribution Plan Costs	360,000	312,381	312,381
Total Liabilities & Deferred Revenue	17,575,443	18,693,753	18,693,753
<b>Board designated for:</b>			
Cromwell Account	2,962,151	2,633,478	2,633,478
Replacement Reserve Account	2,132,376	2,132,057	2,132,057
Long-Term Reserve Account	20,796,044	18,049,872	18,049,872
Section Accounts	4,302,938	3,809,214	3,809,214
Invested in Fixed Assets (Less capital lease)	2,903,773	2,056,759	2,056,759
Undesignated	9,442,242	8,157,673	8,157,673
Total Net Assets	42,539,524	36,839,053	36,839,053
Total Liabilities and Net Assets	60,114,967	55,532,806	55,532,806

**New York State Bar Association**  
**Statement of Activities**  
**For the Twelve Months Ending December 31, 2020**

	<u>December 2020</u>	<u>December 2019</u>	<u>December 2019</u>
<b>REVENUES AND OTHER SUPPORT</b>			
Membership dues	9,317,495	9,637,873	9,637,873
Section revenues			
Dues	1,241,688	1,288,049	1,288,049
Programs	769,606	2,483,202	2,483,202
Continuing legal education program	3,081,836	3,153,234	3,153,234
Administrative fee and royalty revenue	2,578,468	2,464,041	2,464,041
Annual meeting	1,586,876	938,791	938,791
Investment income	1,415,590	1,099,904	1,099,904
Reference Books, Formbooks and Disk Products	1,025,991	1,097,627	1,097,627
Other revenue	220,349	328,069	328,069
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Total revenue and other support	21,237,899	22,490,790	22,490,790
<b>PROGRAM EXPENSES</b>			
Continuing legal education program	1,259,753	2,535,399	2,535,399
Graphics	1,220,242	1,418,158	1,418,158
Government relations program	449,539	380,376	380,376
Law, youth and citizenship program	142	75,284	75,284
Lawyer assistance program	204,034	172,636	172,636
Lawyer referral and information services	14,895	121,435	121,435
Law practice management services	58,022	72,534	72,534
Media / public relations services	726,960	483,920	483,920
'Business Operations	1,453,369	-	-
Marketing and Membership services	1,291,671	1,600,124	1,600,124
Pro bono program	186,861	171,387	171,387
Local bar program	41,869	102,000	102,000
House of delegates	198,716	388,462	388,462
Executive committee	14,020	50,818	50,818
Other committees	337,223	494,134	494,134
Sections	1,755,303	3,838,851	3,838,851
Section newsletters	191,130	128,880	128,880
Reference Books, Formbooks and Disk Products	728,223	811,426	811,426
Publications	462,750	621,296	621,296
Annual meeting expenses	952,838	380,226	380,226
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Total program expenses	11,547,560	13,847,346	13,847,346
<b>MANAGEMENT AND GENERAL EXPENSES</b>			
Salaries and fringe benefits	2,664,488	2,910,524	2,910,524
Pension plans and other employee benefit plan costs	1,310,629	1,251,456	1,251,456
Rent and equipment costs	1,434,122	1,492,289	1,492,289
Consultant and other fees	1,404,846	1,346,720	1,346,720
Depreciation and amortization	600,000	317,887	317,887
Other expenses	211,305	263,005	263,005
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Total management and general expenses	7,625,390	7,581,881	7,581,881
<b>CHANGES IN NET ASSETS BEFORE INVESTMENT TRANSACTIONS AND OTHER ITEMS</b>			
Realized and unrealized gain (loss) on investments	2,064,949	1,061,563	1,061,563
Realized gain (loss) on sale of equipment	3,609,025	5,309,924	5,309,924
26,500			
Gain relating to defined benefit plan curtailment			
Realized gain (loss) on sale of equipment			
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<b>CHANGES IN NET ASSETS</b>	<b>5,700,474</b>	<b>6,371,487</b>	<b>6,371,487</b>
Net assets, beginning of year	36,839,051	30,467,564	30,467,564
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Net assets, end of year	42,539,525	36,839,051	36,839,051
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# Staff Memorandum

## **ANNUAL MEETING Agenda Item # 8**

**REQUESTED ACTION:** Approval of the Bylaws amendments proposed by the Committee on Bylaws.

At its June 2020 meeting, the House of Delegates approved the report of the Special Committee on Association Structure and Operations recommended that the Association Bylaws be amended to address remote meetings of the Association, the House of Delegates, and sections and committees. The Committee on Bylaws was charged with developing appropriate Bylaws amendments to implement this recommendation, and the committee's report with proposed amendments is attached.

The committee is proposing amendments to Article V, Section 5 to add a reference to remote meetings of the House of Delegates; to Article XII, Section 3 to clarify "in person" attendance at meetings of the Association; and to re-title Article XIII, currently named "Meetings by Telephonic Equipment," as "Remote Meetings and be expanded to cover new forms of interactive communications technology. The committee also recommends that (a) an Association entity study whether to recommend legislation to amend Not-for-Profit Corporation Law §603 to make permanent the permissibility of holding annual / membership meetings of not-for-profit corporations by remote means and (b) the Nominating Committee be asked to consider whether the Model Rules of the Nominating Committee should be amended to provide for remote meetings given the unique aspects of the Committee's charge and process.

Under procedures established in the Bylaws, the proposed amendments must be subscribed to by a majority of all members of the House of Delegates in order to be considered at a meeting of the Association. The required number of subscriptions have been received.

The report will be presented at the January 30 meeting by Robert T. Schofield, IV, Chair of the Committee on Bylaws.





**COMMITTEE ON BYLAWS**

**ROBERT T. SCHOFIELD, IV**

Chair

Whiteman Osterman & Hanna LLP

One Commerce Plaza, 19<sup>th</sup> Floor

Albany, NY 12260

518-487-7616

[rschofield@woh.com](mailto:rschofield@woh.com)

**October 20, 2020**

**To: Members of the House of Delegates**

**Re: Report on Proposed Bylaws Amendment to Govern Remote Association Meetings**

**INTRODUCTION**

At its June 27, 2020 meeting, the House of Delegates approved a recommendation from the Special Committee on Association Structure and Operations that the Association Bylaws be amended to address remote meetings of the Association, the House of Delegates, and sections and committees. The Special Committee’s recommendation is attached is Exhibit “A.” This Committee subsequently was asked by leadership to develop Bylaws amendments to implement this House action.

After considering the issues, the committee recommends that Article V, Section 5 be amended to add a reference to remote meetings of the House of Delegates; that Article XII, Section 3 be amended to clarify “in person” attendance at meetings of the Association; and that Article XIII, previously titled “Meetings by Telephonic Equipment,” be re-titled “Remote Meetings” and be expanded to cover new forms of interactive communications technology. The Committee also recommends that (a) an appropriate Association entity be requested to consider the recommendation of legislation to amend Not-for-Profit Corporation Law §603 to make permanent the permissibility of holding annual / membership meetings of not-for-profit corporations by remote means and (b) the Nominating Committee be asked to consider whether the Model Rules of the Nominating Committee should be amended to provide for remote meetings given the unique aspects of the Committee’s charge and process.

**STUDY OF ISSUES**

As set forth in the report of the Special Committee, until April 2020 all meetings of the House of Delegates were held in-person only. As a result of the COVID-19 pandemic, House meetings since April 2020 have been held remotely, and it is anticipated that meetings will continue to be held in a similar manner for the foreseeable future. While a return to in-person

meetings is important and highly desirable, remote meetings have demonstrated advantages including increased participation and travel cost savings. We therefore propose amendment of Article V, Section 5 of the Bylaws to provide for remote attendance at House meetings on an ongoing basis.

For a number of years, Article XIII of the Bylaws has provided for “meetings by telephonic equipment” that has enabled sections and committees to hold remote meetings. However, this article is silent with respect to the House of Delegates. Aside from making clear that remote meetings are available for the House, this article is in need of updating to make it relevant to current and future technology.

Historically, Not-for-Profit Corporation Law §603 required that membership meetings of not-for-profit corporations be held in person. A recent amendment to the statute provides an exemption for meetings taking place through December 31, 2021; it is unclear whether that exemption will be extended. We propose the amendment of Article XII AND Article XIII to account for this possibility. We also believe that an appropriate entity of the Association should be asked to review whether legislation should be proposed to eliminate the requirement that membership meetings (such as the Annual Meeting) be held in person.

Finally, we considered whether amendments to the Bylaws with respect to the Nominating Committee are needed to account for remote meetings. We concluded that the existing provisions for the Nominating Committee, coupled with the amendments we propose in this report, are sufficient. However, the Model Rules of the Nominating Committee clearly contemplate in-person meetings. While the Nominating Committee is permitted to adopt amendments to the Model Rules for a given committee year, such amendments are not permanent; any permanent amendments must be adopted by the House. Given the unique aspects of the Nominating Committee’s charge and process, we recommend that the Nominating Committee be asked to consider whether the Model Rules of the Nominating Committee should be amended to provide for remote meetings under any circumstances.

## **PROPOSED LANGUAGE**

The Committee proposes that Article V, Section 5 of the Association’s Bylaws be amended as follows:

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### **Section 5. Meetings.**

**A.** Upon not less than 15 days’ written notice, the House of Delegates shall meet at such times and places as it shall fix, but not less than four times each year including one meeting to be held in conjunction with the Annual Meeting of the Association. Such meetings shall be conducted in person or as authorized by Article XIII.



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The Committee proposes that Article XII, Section 3 of the Association's Bylaws be amended as follows:

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**Section 3. Quorum.** At every meeting of the Association the presence in person, as defined by Article XIII, of 100 members shall constitute a quorum. Only active members of the Association shall have the right to vote at any meeting of the Association, and no vote shall be cast by proxy.

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The Committee proposes that Article XIII of the Association's Bylaws be amended as follows:

### **XIII. MEETING BY TELEPHONIC EQUIPMENT REMOTE MEETINGS**

**Section 1.** If authorized by law, the Annual Meeting and any special meeting of the Association may be conducted by means of communications technology which allows all members attending the remote meeting to have a reasonable opportunity to participate in the meeting. A written record of all action taken at such meetings shall be maintained.

**Section 2.** The House of Delegates may, upon not less than 24 hours' written notice by mail or electronic means, conduct an otherwise properly noticed meeting by means of a conference telephone or similar communications equipment technology which allows allowing all members participating in attending the remote meeting to have a reasonable opportunity to participate in the meeting able to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting. A written record of all action taken at such meetings shall be maintained.

**Section 3.** Any section and any committee, including but not limited to the Executive Committee and excepting the Nominating Committee unless it adopts changes to its Model Rules to specifically adopt this authority, may, upon not less than 24 hours' written notice by mail or electronic means, conduct an otherwise properly noticed meeting by means of a teleconference or other communications technology which allows all members attending the remote meeting to have a reasonable opportunity to participate in the meeting. A written record of all action taken at such meetings shall be maintained.

**Section 4.** Whenever used in these Bylaws, Pparticipation through communications technology by such means shall constitute presence in person at a meeting.

**Section 5.** Whenever a meeting is held in accordance with this article, the place of the meeting shall be deemed to be Albany, New York.

A complete set of redlined Bylaws is attached as Appendix “B.”

The Committee makes the following recommendations to the House of Delegates:

- **Recommendation #1:** That the House subscribe to the proposed amendments of the Bylaws in the form set forth above such that the proposed amendments can be put forth for a vote of the membership at the January 2021 Annual Meeting.
- **Recommendation #2:** That an appropriate entity of the Association should be asked to review whether legislation should be proposed to eliminate the requirement in Not-For-Profit Corporation Law §603 that membership meetings be held in person.
- **Recommendation #3:** That the Nominating Committee be asked to consider whether to recommend permanent amendments to the Model Rules to provide for remote meetings under any circumstances.

## CONCLUSION

Our Committee proposes the foregoing amendments to the Association’s Bylaws to enhance flexibility in conducting its meetings, remotely or in person. We commend them to you for your consideration and subscription at the November 7, 2020 meeting of the House of Delegates. If subscribed, the above amendments will be presented for discussion and adoption at the 2021 Annual Meeting of the Association.

Respectfully submitted,

## COMMITTEE ON BYLAWS

Robert T. Schofield, IV, Chair

Anita L. Pelletier, Vice Chair

Eileen E. Buholtz

Michael E. Getnick

LaMarr J. Jackson

A. Thomas Levin

Steven G. Leventhal

David M. Schraver

Oliver C. Young

Executive Committee liaison: T. Andrew Brown

Staff liaison: Kathleen R. Mulligan Baxter

Staff reporter: Thomas J. Richards

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
REMOTE MEETING  
NOVEMBER 7, 2020**

.....

**PRESENT:** Abneri; Adigwe; Alcott; Alomar; Alsina; Bahn; Bartolotto; Bascoe; Battistoni; Baum; Behrins; Beltran; Ben-Asher; Billings; Bladykas; Boston; Brown; Buholtz; Buzard; Calderón; Carbajal=Evangelista; Chambers; Chandrasekhar; Chang; Christian; Christopher; Coffey; Cohen, D.; Cohen, M.; Cohen, O.; Crawford; Dean; Degnan; Doerr; Doxey; Doyle; Eberle; Effman; Engel; Eng; England; Fallek; Fennell; Fernandez; Filabi; Finerty; First; Fishberg; Fogel; Foley; Fox, G.; Fox, M.; Freedman, H.; Friedman; Frumkin; Gallinari; Galvan; Genoa; Gerbini; Gerstman; Getnick; Gilmartin; Gold; Good; Grady; Grays; Greenberg; Greisemer; Griffin; Grimaldi; Gross; Gutekunst; Gutenberger; Harper; Hartman; Heath; Heller; Holtzman; Jaglom; James; Jimenez; Jochmans; Kamins; Kapnick; Karson; Katz; Kelley; Kelly; Kendall; Kiernan; Kimura; Kobak; Kretser; Kretzing; LaBarbera; Lara; LaRose; Lau-Kee; Lawrence; Leber; Leo; Lessard; Leventhal; Levin; Levin Wallach; Levy; Lewis; Lindenauer; Lugo; MacLean; Madigan; Marinaccio; Markowitz; Maroney; Marotta; Martin Owens; Matos; May; McElwreath; McGinn; Meyer, H.; Meyer, J.; Miller; Millett; Milone; Minkoff; Miranda; Montagnino; Moretti; Morrissey; Mukerji; Muller; Mulry; Napoletano; Newman; Noble; Nolfo; Nussbaum; O’Connell, B.; O’Connell, D.; O’Donnell; Onderdonk; Owens; Palermo, A.; Palermo, C.; Perlman; Pessala; Pitegoff; Poster-Zimmerman; Purcell; Radick; Rangachari; Redeye; Reed, L.; Reed, M.; Richman; Richter; Rivera; Rivera Agosto; Robinson; Rosner; Rus; Russell; Ryan; Ryba; Safer; Samuels; Santiago; Scheinkman; Schofield; Schraver; Schwartz-Wallace; Scott; Seiden; Sen; Shafer; Shampnoi; Shishov; Sigmond; Silkenat; Simon; Slaviv; Smith; Sonberg; Spicer; Starkman; Stoeckmann; Strassler Rosenthal; Swanson; Sweet; Tarson; Taylor; Teff; Tesser; Triebwasser; van der Meulen; Ventura; Waterman; Weiss; Welden; Westlake; Wimpfheimer; Wolff; Woodley; Yeung; Young; Younger.

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

1. Approval of minutes of June 13 and 27, 2020 meeting. The minutes were deemed accepted as distributed.
2. Report of Treasurer. Domenick Napoletano, Treasurer, reported that through September 30, 2020, the Association’s total revenue was \$17.7 million, a decrease of approximately \$1.5 million from the previous year, and total expenses were \$14.9 million, a decrease of approximately \$1.3 million over 2019. The report was received with thanks.
3. Report and recommendations of Finance Committee re proposed 2021 income and expense budget. John H. Gross, chair of the Finance Committee, reviewed the proposed budget for 2021, which projects income of \$19,292,955, expenses of \$18,802,064, and a projected surplus of \$490,891. After discussion, a motion was adopted to approve the proposed 2021 budget.
4. Address by Hon. Gerard J. Whalen – Presiding Justice, Appellate Division, Fourth Department. Presiding Justice Whalen provided an update on initiatives being undertaken

in the Fourth Department with respect to technology, virtual oral argument, and virtual bar admissions. The Chair received the report with thanks

5. Report and recommendations of the Committee on Bylaws. Robert T. Schofield, IV, chair of the Bylaws Committee, outlined proposed bylaws amendments to implement the recommendation of the Special Committee on Association Structure and Operations, approved by the House in June, to govern remote meetings of Association entities. The House was asked to subscribe to the proposed amendments to allow them to be placed on the agenda of the 2021 Annual Meeting. The proposed amendments received the required subscriptions to permit their consideration at the Annual Meeting.
6. Presentation of 2019 Root-Stimson Award. President Karson presented the Root-Stimson Award, which honors members of the profession for outstanding community service, to Prof. Elora Mukherjee of New York City. Prof. Mukherjee was recognized as the founder and director of Columbia Law School's Immigrants' Rights Clinic, which provides legal services to immigrants facing deportation hearings.
7. Report and recommendations of Committee on LGBTQ People and the Law. Christopher R. Riano, chair of the committee, presented a proposal to create a LGBTQ Law Section. After discussion, a motion was adopted to approve the proposal.
8. Report of President. Mr. Karson highlighted items contained in his written report, a copy of which is appended to these minutes.
9. Report of Nominating Committee. Sharon Stern Gerstman, chair of the Nominating Committee, reported that the Committee had nominated the following individuals for election to the indicated offices for the 2021-2022 Association year: President-Elect: Sherry Levin Wallach, White Plains; Secretary: Taa R. Grays, New York City; Treasurer: Domenick Napoletano, Brooklyn; Vice Presidents: 1st District – Diana S. Sen, New York City and Michael McNamara, New York City; 2nd District – Aimee L. Richter, Brooklyn; 3rd District – Robert T. Schofield, IV, Albany; 4th District – Nancy Sciochetti, Saratoga Springs; 5th District – Jean Marie Westlake, East Syracuse; 6th District – Richard C. Lewis, Binghamton; 7th District – Mark J. Moretti, Rochester; 8th District – Kathleen M. Sweet, Buffalo; 9th District – Adam Seiden, Mount Vernon; 10th District – Donna England, Centereach; 11th District – David L. Cohen, Kew Gardens; 12th District – Michael A. Marinaccio, White Plains; 13th District – Orin Cohen, Staten Island. The following individuals were nominated to serve as Executive Committee Members-at-Large for a 2-year term beginning June 1, 2021: La Marry Jackson, Rochester (Diversity Seat); Sandra Rivera, Albany, and Thomas J. Maroney, New York City. Nominated as Section Member-at-Large was Simeon Baum, New York City. The following individuals were nominated as delegates to the American Bar Association House of Delegates for the 2021-2023 term: Claire P. Gutekunst, Yonkers; Scott M. Karson, Melville; Bernice K. Leber, New York City; Michael Miller, New York City, and Sherry Levin Wallach, White Plains. The report was received with thanks.
10. Report of Task Force on Racial Injustice and Police Reform. T. Andrew Brown and Taa R. Grays, co-chairs of the Task Force, presented an informational report on the work of the

Task Force to date. They noted that the Task Force plans to present an interim report in January and final report in April 2021. The report was received with thanks.

11. Report and recommendations of Health Law Section. Karen Gallinari, the section chair, together with immediate past chair Hermes Fernandez and COVID-19 Task Force chair Mary Beth Morrissey, reviewed the section’s report containing recommendations with respect to the COVID-19 pandemic and the resolutions being offered by the section for the House’s consideration. After discussion, a motion to amend Resolution #1 to delete that portion relating to the suspension of resident physicians was approved, after which a motion to approve Resolution #1 was approved. Motions were then adopted to approve Resolutions #2 and #3. Mr. Brown abstained from voting on Resolution #3. The resolutions as adopted are as follows:

### **Resolution #1 Public Health Legal Reforms**

The seriousness and magnitude of the present COVID-19 pandemic are unprecedented over the course of the last hundred years by any measure - the number of lives lost, the number of people afflicted with serious COVID-19 illness and the complications of pre-existing co-morbidities, the risks to health care workers and other frontline and essential workers, disruptions to businesses and the New York State (“the State”) economy, impacts upon employment and family life, and the profound trauma, losses and bereavement persons, families, communities, especially communities of color, have suffered and continue to suffer. Public health law and preparedness play an essential role in addressing disasters and emergencies. New York, like the rest of the country, was unprepared to deal with the pandemic. The report of the Health Law Section recommends reforms to public health law addressing identified gaps in the law to strengthen the preparedness and capacities of the State both during the present and in future pandemics, and to protect the public’s health.

The New York State Bar Association recommends: State Government to: A.1.(a) Enact a state emergency health powers act addressing gaps in existing laws in New York, drawing upon the Model State Emergency Health Powers Act (MSEHPA), developed by the Center for Law and Public Health at Georgetown and John Hopkins Universities (2001), and other sources as appropriate; A.1.(b) Adopt crisis standards of care addressing gaps in existing laws in New York, drawing upon the Crisis Standards of Care, developed by the Institute of Medicine (2012); The Arc, Bazelon Center for Mental Health Law, Center for Public Representation and Autistic Self Advocacy Network Evaluation Framework for Crisis Standard of Care Plans (Evaluation Framework); and other sources as appropriate. A.1.(c) Provide comprehensive workforce education and training in the implementation of the above state emergency health powers act and crisis standards, including proper use and disposal of PPE and other equipment; A.2.(a) Appoint and maintain a core team of emergency preparedness experts to review evidentiary sources and draft legislation to strengthen emergency preparedness planning; and A.2.(b) Evaluate the public benefit and costs of laws and/or regulations waived during the COVID-19 emergency, and the Executive Orders and emergency regulations issued in response to the COVID-19 emergency and consider eliminating or amending those laws and/or regulations, as appropriate.

B.1.(a) Adopt resource allocation guidelines addressing gaps in existing laws in New York, drawing upon the New York State Task Force on Life and the Law 2015 Report, Ventilator Allocation Guidelines, the Evaluation Framework, and other sources as appropriate; B.1.(b) Issue emergency regulations mandating all providers and practitioners follow the ethics guidelines, and ensure: i. the needs of vulnerable populations, including persons and communities of color, older adults and nursing home residents, persons with disabilities, persons who are incarcerated, and immigrants, are met in a nondiscriminatory manner in the implementation of emergency regulations and guidelines; ii. provision of palliative care to all persons as an ethical minimum to mitigate suffering among those who are in institutional, facility, residential, or home care settings during the COVID-19 crisis; iii. provision of education and training to physicians, health care practitioners, and institutional triage and ethics committees; and iv. provision of generalist-level palliative care education and training for all health care workers and health-related service workers in all settings who are providing supportive care. B.2. Amend the New York State Public Health Law: Article 29-C “Health Care Proxy,” to require in the case of a State Disaster Emergency Declaration: B.2.(a) at least one, rather than two, witnesses, or B.2.(b) attestation by a notary public in person or remotely; B.2.(c) adoption of legislation or regulation as necessary to implement: i. procedural requirements for remote witnessing and execution of a health care proxy; ii. specific language to be included in the attestation of the notary public; iii. that the services of a witness and a notary public be made available by the facility where the individual executing the health care proxy is being treated; and iv. that the services of a witness and notary public be provided to institutionalized individuals without charge and regardless of their ability to pay. B.3. Nothing contained in the Resolutions herein calls for consideration of any proposed change to New York Law as to authority to terminate treatment over the objection of a patient or the patient’s surrogate.

## **Resolution #2 Legal Reforms in Care Provision, Congregate and Home Care, Workforce and Schools**

The New York State Bar Association recommends: State Government to: A.1. Evaluate the public benefit and costs of continuing the following laws and/or regulations which were waived by executive orders, for possible repeal and/or amendment: A.1.(a) Ability to Exceed Certified Bed Capacity for Acute Care Hospitals: Continue the waiver by the Governor’s Executive Orders 202.1 and 202.10 of the DOH regulations governing certified bed restrictions for the pendency of the State Disaster Emergency. A.1.(b) Temporary Changes to Existing Hospital Facility Licenses Services and the Construction and Operation of Temporary Hospital Locations and Extensions: Continue the waiver provided in Executive Orders 202.1 and 202.10 of the State requirements that restrict the ability of Article 28 facilities to reconfigure and expand operations as necessary, for the pendency of the State Disaster Emergency. A.1.(c) Anti-Kickback and Stark (AKS) Law Compliance during the COVID-19 Emergency: New York State to adopt the waivers provided by CMS and the OIG as to the Anti-Kickback and Stark Laws in substantially similar form for the state versions of the Stark Law and AKS during the State Disaster Emergency, each as tailored for the particular statute at issue. A.2. Congregate Care and Home Care: Ensure, as applicable to all congregate settings and residents thereof, and recipients of home care, including: A.2.(a) Older Adults, Persons with disabilities, Persons with disabilities in Residential Facilities or Group Homes, Persons confined in

Psychiatric Centers, Nursing Home and Adult Care Facilities Residents, and Nursing Home Providers and Adult Care Facilities Operators: i. Equitable allocation of scarce resources from the Public Health and Social Services Emergency Fund—established by the CARES Act—to older adults and their health care providers, prioritizing under-resourced long-term care providers; ii. Adequate provision of PPE; iii. Adequate levels of staffing; iv. Adequate funding of employee testing; v. Consistent and timely tracking and reporting of case and death data; vi. Adoption of non-discriminatory crisis standards and ethics guidelines; vii. Recognition and honoring of Older New Yorkers’ and New Yorkers’ with disabilities right to health and human rights, including rights to be free from abuse and neglect and to care in the most integrated setting, as protected under federal law and international conventions; and viii. Adequate resources for the Office of the State Long Term Care Ombudsman, which provides advocacy for nursing home residents and families and helps residents understand and exercise their rights to quality care and quality of life. A.2.(b) Persons incarcerated and correctional facilities and care: Ensure: i. Adequate access of persons incarcerated to COVID-19 testing, medical care and mental health and supportive services; ii. COVID-19 testing of correctional staff and adequate provision of gloves, masks and other protective equipment; iii. Release to the community of older persons and persons with disabilities who are incarcerated or living with advanced illness who do not pose a danger to the community; iv. Adequate funding of prison-to-community transitions including access to housing, meals, and supportive services, and non-discriminatory access to employment opportunities; A.2.(b): Recognition and honoring of the right to health and human rights of persons who are incarcerated, as protected under international conventions. A.2.(c) Immigrants in detention facilities: In its exercise of state police powers in the COVID-19 public health emergency, New York State must take steps, similar to those outlined above, in cooperation with federal agencies, to ensure: i. Reduction of risk of the spread of COVID-19 among immigrants being held in detention centers, and recognition and honoring of immigrants’ right to health and human rights, as protected under international conventions. A.3. Telehealth: Eliminate restrictions on the provision of care by telehealth and increase reimbursement for services provided via telehealth.

B.1.(a) Prioritize additional childcare funding and implementing novel childcare staffing strategies, such as utilizing staffing firms dedicated to child care to supplement the childcare workforce, to ensure quality childcare services, effective and sustainable facility operations and the health and safety of our children and childcare providers, enabling businesses to effectively reopen with sufficient childcare resources and support; B.1.(b) Prioritize education and training pertaining to crisis standards to assure all practitioners are supported as they exercise professional medical judgment in triage, treatment and services; and B.1.(c) Prioritize enhanced employee assistance and other mental health counseling programs to address and mitigate the moral distress suffered by frontline workers under crisis conditions. B.2. Enhance regulatory oversight, to ensure: B.2.(a) adequate and non-discriminatory allocation of resources to persons and communities of color and vulnerable populations in conformity with state and federal laws; B.2.(b) equitable access of persons and communities of color and vulnerable populations to health and mental health services in conformity with state and federal law, including palliative care as an ethical minimum to mitigate suffering among those persons who remain in institutional, facility, residential or home care settings, or are hospitalized during the COVID-19 crisis; and B.2.(c) provision of PPE and testing to

essential workers at highest risk in delivering essential services to vulnerable populations.  
B.3. Monitor conformity with state and federal laws barring discrimination.

### **Resolution #3 COVID-19 Vaccine and Virus Testing: Legal Reforms and Guidelines**

The authority of the State to respond to a public health threat and public health crisis is well-established in constitutional law and statute. In balancing protection of the public's health and civil liberties, the Public Health Law recognizes our interdependence, and that a person's health, or her/his/their lack of health, can and does affect others. This is particularly true for communicable and infectious diseases. Since the discovery of the smallpox vaccine in 1796, vaccines have played a crucial role in preventing the spread of dangerous and often fatal diseases. The New York Public Health Law mandates several vaccinations for students at school-age up through post-secondary degree educational levels, and for health care workers. The Public Health Law also mandates treatment for certain communicable diseases, such as tuberculosis. The New York State Bar Association recommends:

To protect the public's health, it would be useful to provide guidance, consistent with existing law or a state emergency health powers act as proposed in Resolution #1, to assist state officials and state and local public health authorities should it be necessary for the state to consider the possibility of enacting a vaccine mandate. A vaccine must not only be safe and efficacious; it must be publicly perceived as safe and efficacious. Diverse populations, including people of color, older adults, women, and other marginalized groups, must be represented in clinical trials. The trials also must follow rigorous protocols that will establish a vaccine's safety and efficacy through expert consensus of the medical and scientific communities. It is noted further that nothing in this Resolution or the underlying Report should be regarded as suggesting that emergency use authorization should be considered in determinations concerning any immunization requirement.

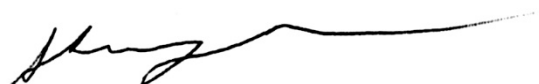
State Government to: A.1. Ensure Access to Virus Testing: Establish a coordinated statewide plan for Virus Testing to ensure: A.1.(a) frontline health care workers are prioritized in access to rapid diagnostic testing; and A.1.(b) the most vulnerable individuals from health status and essential business/employee standpoint have equitable access to rapid diagnostic testing. A.2. Adopt Ethical Principles Guiding Equitable Allocation and Distribution: Once available, a vaccine should first be equitably allocated and distributed based upon widely accepted ethical principles including maximizing benefit to the society as a whole through reducing transmission and morbidity and mortality; recognizing the equal value, worth and dignity of all human persons and human lives; mitigating suffering, health inequities and disparities; and ensuring fairness and transparency in decision making. Health care workers and other essential workers most endangered by COVID-19 and populations at highest risk must be afforded priority access to a vaccine. A.3. Encourage Public Acceptance and Educational Programs: Efforts must be made to encourage public acceptance. Public health authorities should build on existing systems and infrastructures including community-based organizations and networks. The campaign must acknowledge distrust in communities of color from a history of medical exploitation. Efforts should include linguistically and culturally competent educational and acceptance programs, and stakeholder community



engagement strategies, to build public trust, widely encouraging vaccine uptake and addressing vaccine hesitancy. A.4. Take Steps to Protect the Public's Health and Consider Mandate As May Be Necessary to Reduce Risks of Transmission and Morbidity and Mortality: Our state and nation have suffered terrible losses from COVID-19. As of September 3, 2020, 186,000 Americans, including 26,000 New Yorkers, have lost their lives. Unemployment has been at the highest levels since the Great Depression. Numerous businesses have closed. Should the level of immunity be deemed insufficient by expert medical and scientific consensus to check the spread of COVID-19 and reduce morbidity and mortality, a mandate and state action should be considered, as may be warranted, only after the following conditions are met and as a less restrictive and intrusive alternative to isolation, subject to exception for personal medical reasons: A.4.(a) evidence of properly conducted and adequate clinical trials; A.4.(b) reasonable efforts to promote public acceptance; A.4.(c) fact-specific assessment of the threat to the public health in various populations and communities; and A.4.(d) expert medical and scientific consensus regarding the safety and efficacy of a vaccine and the need for immunization. Enforcement of any immunization requirement should be along the lines of current New York law.

12. Report and recommendations of Task Force on Mass Shootings and Assault Weapons. Margaret J. Finerty and David M. Schraver, co-chairs of the Task Force, reviewed the Task Force's report and recommendations with respect to the role of mass shootings and assault weapons on gun violence in the United States. After discussion, a motion to table the report failed, as did motions to amend by deleting Recommendation #7 and Recommendation #8. A motion was then adopted to approve the report and recommendations.
13. Report of The New York Bar Foundation. Lesley Rosenthal, President of The Foundation, update the House members on Foundation activities, including the awarding of grants and the appointment of a lease negotiation team. The report was received with thanks.
14. Administrative items. Mr. Brown reported that the 2021 Annual Meeting schedule was available online and encouraged members to register for programs and events.
15. Date and place of next meeting. Mr. Brown announced that the next meeting of the House of Delegates would take place on Saturday, January 30, 2021 as a remote meeting.
16. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,



Sherry Levin Wallach  
Secretary





**SCOTT M. KARSON**

President

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**President's Report  
to the House of Delegates  
November 7, 2020**

2020 has been a challenging year – to say the least. The COVID-19 pandemic has affected all aspects of our lives – including the practice of law. Our members have worked tirelessly – around the clock – over the past eight months to meet the needs of their clients and the demands of their practices, through the myriad challenges wrought by the crisis. From advising on the safe reopening of law firms and courts, to advocating for solo and small firm practitioners struggling to maintain their practices, to helping recent law graduates prepare for the first-ever online bar exam, our members have risen to the occasion and helped steer our society and profession forward – a great testament to the vitality of our vocation. The members of our association have earned my respect, admiration and thanks.

And on the subject of thanks, I offer my sincere thanks to my fellow NYSBA officers for their support and wise counsel: President Elect T. Andrew Brown, Secretary Sherry Levin Wallach, Treasurer Domenick Napoletano and Immediate Past President Hank Greenberg. My thanks also go to our new Finance Committee Chair, John Gross, for his terrific work in assembling the Association's 2021 budget.

And thanks as well to our incomparable staff, led by Executive Director Pam McDevitt. By their dedication and hard work – much of it performed remotely – they have kept our association running efficiently and effectively during the pandemic with which we have lived for the past nine months. Special thanks to NYSBA's Director of Communications, Susan DeSantis, with whom I speak several times each day, consultant Liz Benjamin and the talented members of our Communications Department and Publications Department. In these tumultuous times, these folks have enabled NYSBA's voice to be heard publicly – loud and clear – on matters of great significance.

For example, I have issued statements on the following topics:

New York State Bar Association President Urges Patience Because No Voter Should Be Disenfranchised

<https://nysba.org/new-york-state-bar-association-president-urges-patience-because-no-voter-should-be-disenfranchised/>

NYSBA President Scott M. Karson Alarmed by Recent Spate of Attorney Harassment

<https://nysba.org/nysba-president-scott-m-karson-alarmed-by-recent-spate-of-attorney-harassment/>

Statement From NYSBA President Regarding Reports That 545 Parents of Children Separated at U.S. Border Cannot Be Found

<https://nysba.org/statement-from-nysba-president-regarding-reports-that-545-parents-of-children-separated-at-u-s-border-cannot-be-found/>

New York State Bar Association President Scott M. Karson Issues Statement on the Passing of Supreme Court Justice Ruth Bader Ginsburg

<https://nysba.org/new-york-state-bar-association-president-scott-m-karson-issues-statement-on-the-passing-of-supreme-court-justice-ruth-bader-ginsburg/>

New York State Bar Association President Scott M. Karson Issues Statement on the 100<sup>th</sup> Anniversary of the Enactment of the 19<sup>th</sup> Amendment

<https://nysba.org/new-york-state-bar-association-president-scott-m-karson-issues-statement-on-the-100th-anniversary-of-the-enactment-of-the-19th-amendment/>

New York State Bar Association President Scott M. Karson Issues Statement Mourning the Loss of Congressman John Lewis

<https://nysba.org/new-york-state-bar-association-president-scott-m-karson-issues-statement-mourning-the-loss-of-congressman-john-lewis/>

NYSBA President Scott M. Karson Says President Trump's New Policy on Diversity and Inclusion Is Unconstitutional and Abhorrent

<https://nysba.org/nysba-president-scott-karson-says-president-trumps-new-policy-on-diversity-and-inclusion-is-unconstitutional-and-abhorrent/>

Statement From NYSBA President Scott M. Karson Regarding Bostock v. Clayton County, Georgia

<https://nysba.org/statement-from-nysba-president-scott-karson-regarding-todays-u-s-supreme-court-decision/>

NYSBA Issues Statement Regarding New York's Remote Bar Exam

<https://nysba.org/nysba-issues-statement-regarding-new-yorks-remote-bar-exam/>

New York State Bar Association Condemns Effort To Remove U.S. Attorney Geoffrey Berman

<https://nysba.org/new-york-state-bar-association-condemns-effort-to-remove-u-s-attorney-geoffrey-berman/>

One member of our staff is deserving of special recognition: Ron Kennedy, who is retiring as NYSBA's Director of Government Relations at the end of this year, after 25 years of exemplary service. I have been privileged to work with Ron, as have many of you, and I know that you join me in offering him our very best wishes.

Technology has in many ways made our collective achievements possible. Videoconferences, whether via Zoom or Microsoft Teams, are now such a ubiquitous part of our lives that they have spurred the creation of a whole new class of online meeting etiquette.

Today is the third virtual meeting of the House of Delegates, and my second President's Report via Zoom. Public health and safety may prevent us from being together in Albany, but it has not prevented us from continuing to gather to adopt policy, acquire knowledge from distinguished members of the bench and bar, and carry on the business of the Association. The virtual meetings of the House of Delegates have had record attendance – over 200 delegates at both the April and June meetings – and have allowed for the participation of members who might otherwise have been unable to attend. The power of technology – the virtual bar center – will allow NYSBA to continue to reach and support its members in the years to come.

As you have probably heard me say by now, since I became your President on June 1, 2020, more than five months ago, I have not made a single live appearance at any Association event: no meeting; no program; no dinner; no reception; no travel – you get the picture. Nevertheless, technology has afforded me – and our Association – a full and productive schedule.

I have participated in as many as eight NYSBA-related Zoom conferences on a given day.

Regarding the Association, dozens of CLE webinars on numerous topics have been recorded over the past few months and are available on-demand through the NYSBA online store.

Our sections have produced virtual section meetings, networking events, and informational programming, keeping their members updated within their areas of practice while also attracting new members.

Our task forces and committees have relied on technology to continue their cutting-edge public policy work, including the virtual dialogues with members held by the Health Law Section and the Task Force on Mass Shootings and Assault Weapons.

Preparations are well underway for the 2021 Virtual Annual Meeting and for other virtual events and programming next year. We do look forward to the day that we can again gather in-person, and to the collegiality and warmth that these in-person gatherings bring.

The lease to One Elk Street – the Bar Center – will expire on December 31, 2021. I have appointed a team of negotiators to meet with the New York Bar Foundation – the owner of the Bar Center – to discuss terms of renewal. The Association loves this building, its location, its character and its history. We hope to remain here.

The crisis has taken a toll on the legal profession. Rates of mental illness, fatigue, substance abuse, and stress, already high for attorneys, risk rising even higher in these uncertain times. Yet we cannot lose sight that we are all in this together and can rely on our colleagues for support, despite the pressures of separation and quarantine. I am pleased to report that the Attorney Well-Being Task Force, superbly chaired by Hon. Karen Peters and Libby Coreno, is hard at work developing a report and recommendations to advance an innovative and comprehensive culture of wellness across all levels of the legal profession. These efforts will help improve the quality of life and legal practice for all members of the bar, from law students and young associates to senior partners and practitioners planning for retirement.

The Attorney Well-Being Task Force holds a weekly support group on Thursday at 4 p.m. via Zoom. These meetings are free, confidential, and open to all our members. Many of our members look forward to these weekly meetings as a chance to unwind, destress, and connect with their peers. I encourage you to participate, and to urge your colleagues to participate as well.

Our members have admirably supported the most vulnerable members of our community throughout the crisis, no more so than through exemplary pro bono service. The NYSBA Pro Bono Network, created by Chief Judge Janet DiFiore and my predecessor, Hank Greenberg, and chaired by former Chief Judge Jonathan Lippman, launched in April 2020. Since then more than 2,000 New Yorkers with unemployment insurance and small estates Surrogate's Court matters have been helped by pro bono services provided by this Network.

I am excited to announce that NYSBA and its Committee on Veterans will soon launch a new pro bono initiative to help those who were discharged from military service for reasons such as sexual orientation, gender identity, post-traumatic stress disorder, traumatic brain injuries and access to certain state veterans benefits.

Pro bono service is a hallmark of the legal profession and has always been a component of my own legal practice. I ran for the office of President Elect on a promise that I would lead by example by taking on a pro bono matter during my presidential term, and I am now in the process of fulfilling that promise. I encourage you, if able during this time of exceptional need, to do the same. There are many opportunities statewide, including through legal service providers, clinics, and bar association initiatives.

The advancement of access to justice is the foundation on which NYSBA is built. In September, I had the privilege to participate at the Chief Judge's 2020 Hearing on Civil Legal Services at the magnificent Court of Appeals, held under the auspices of the Permanent Commission on Access to Justice and its indefatigable leader Helaine Barnett. I sat on a panel with Chief Judge Janet DiFiore, Chief Administrative Judge Lawrence Marks and the Presiding Justices of our four Appellate Divisions: Rolando Acosta; Alan Scheinkman; Elizabeth Garry; and Gerald Whelan. We heard compelling and enlightening testimony from legal service providers and their clients. NYSBA stands ready to continue advocating for the full and fair funding of civil legal services and indigent defense.

2021 legislative priorities for the Association include an increase in the rate of compensation for attorneys who provide mandated representation; the provision of legal representation for persons in immigration matters; reform of New York State's parole system; and funding for the expansion of broadband access nationwide. The crisis has made it abundantly clear that broadband access not only expands access to justice, but facilitates telehealth, remote education, and connects rural communities with the virtual world.

NYSBA will also continue to advocate for the future of the profession, including through calling on the federal government to provide greater student loan relief for the many Americans carrying this heavy burden. More than 40 million Americans, mostly under 35 years of age, have student loan debt, and this financial pressure has been exacerbated by the COVID-19 crisis. Support for the next generation of attorneys will guarantee a bright future for the rule of law.

Additionally, I would like to applaud the Task Force on the New York Bar Examination and the Committee on Legal Education and Admission to the Bar (known as "CLEAB") for their recent work and guidance on the controversial New York Bar Exam. Initially, the Task Force called for a return to the traditional New York State Bar Examination in lieu of the UBE. Then, when the July 2020 examination was postponed because of the coronavirus, the Task Force recommended – and the Court of Appeals agreed – that the exam should be rescheduled for September 2020. However, limitations created by the coronavirus necessitated that the September exam be postponed as well, and the exam was postponed once again, this time to October, when it was administered as an on-line exam. The February 2021 exam will also be administered on-line.

As this process unfolded, we were called upon to address the strident demands of law school graduates, law school deans and others that because of the uncertainty and hardship brought about by these extraordinary circumstances, we should support their demands for what is known as the

“diploma privilege” whereby a diploma from an accredited law school would entitle the graduate to a license to practice of law – dispensing with the requirement of a bar examination. We thoroughly vetted the diploma privilege demand and opposed it as being contrary to the public interest.

NYSBA remains committed to supporting the integrity of the justice system throughout these troubling times. Specifically, NYSBA will advocate for a modern reorganization of our byzantine state court system; reform of the statutory power of attorney; and repeal of the archaic Judiciary Law Section 470 and its restrictive effect on the practice of law in New York State. These reforms would remove regulatory burdens on the profession and ensure that attorneys are able to protect their clients’ interests and effectively engage in the practice of law.

As the result of the coronavirus and its devastating impact on our state’s finances, the unified court system has been called upon to reduce its spending by \$300 million dollars. While the impact of those cuts is uncertain, the initial impact involved the denial of certification to 46 of 49 supreme court justices. A number of those justices have now commenced an age discrimination action. More to follow . . .

NYSBA members will continue to respond to the latest developments in law and policy. The Task Force on Racial Injustice and Police Reform, so ably co-chaired by President-Elect T. Andrew Brown and Taa Grays, will continue its important work in examining the disproportionate impact of police brutality on persons of color. The Task Force on Nursing Homes and Long-Term Care has been charged with examining the tragic effects of the COVID-19 crisis on institutional and community-based providers, the individuals they serve, and their families. The recently-formed Task Force on COVID-19 Immunity and Liability is hard at work reviewing the tort and contractual issues arising from the COVID-19 public health crisis, and the Task Force on Free Expression in the Digital Age is finalizing its review of how free speech and a free press have evolved in this turbulent digital age. Finally, the Task Force on the Presidential Election will continue to advise as our state and nation navigates through the most important election of our lifetimes.

The members of our sections and committees are hard at work as well addressing pertinent legal issues, and I am proud that during this meeting we will be converting our LGBTQ Committee into our newest section.

This week, we lost a great lawyer, public servant and valued member of our Association: Senator John Dunne. A formal memorial will be presented in due course. For now, I would simply ask that we observe a moment of silence in John’s memory.

It is the greatest honor of my professional life to serve as the 123<sup>rd</sup> President of the New York State Bar Association. I look forward to continuing this work, and to the day – hopefully before the end of my term – that we can see each other live once again.  
Thank you.





**HOUSE OF DELEGATES  
Agenda Item #2**

**ELECTION OF 2021-2022  
OFFICERS AND MEMBERS-AT-LARGE  
OF THE EXECUTIVE COMMITTEE**

**PRESIDENT-ELECT**

Sherry Levin Wallach, White Plains

**SECRETARY**

Taa R. Grays, New York City

**TREASURER**

Domenick Napoletano, Brooklyn

**DISTRICT VICE PRESIDENTS**

**FIRST:**

Michael McNamara, New York City  
Diana S. Sen, New York City

**SEVENTH:**

Mark J. Moretti, Rochester

**SECOND:**

Aimee L. Richter, Brooklyn

**EIGHTH:**

Kathleen M. Sweet, Buffalo

**THIRD:**

Robert T. Schofield, IV, Albany

**NINTH:**

Hon. Adam Seiden, Mount Vernon

**FOURTH:**

Nancy Sciocchetti, Saratoga Springs

**TENTH:**

Donna England, Centerech

**FIFTH:**

Jean Marie Westlake, East Syracuse

**ELEVENTH:**

David Louis Cohen, Kew Gardens

**SIXTH:**

Richard C. Lewis, Binghamton

**TWELFTH:**

Michael A. Marinaccio, White Plains

**THIRTEENTH:**

Orin J. Cohen, Staten Island

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

Sandra Rivera, Albany  
Thomas J. Maroney, New York City  
LaMarr Jackson, Rochester (Diversity Seat)  
Simeon H. Baum, New York City (Section Seat)





# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #4

REQUESTED ACTION: Approval of the report and recommendations of the Committee on Immigration Representation.

In October 2020, the Association of the Bar of the City of New York adopted a Report on the Independence of the Immigration Courts. The report, which was authored by the City Bar's Immigration and Nationality Law Committee, Task Force on the Rule of Law, and Task Force for the Independence of Lawyers and Judges, recommends the creation of an independent Article I immigration court outside the administrative jurisdiction of the Department of Justice.

The report is attached together with a supporting memorandum and resolution from the NYSBA Committee on Immigration Representation.

This report was posted for comment in December 2020. A waiver of the rules for submission of reports was granted to allow timely consideration of the report at the January meetings. Comments were received from the Committee on Legal Aid and are appended to the report.

The report will be presented at the January 30 meeting by NYSBA Committee on Immigration Representation chair Hasan Shafiqullah.



## Memorandum

From: Hasan Shafiqullah, Chair, NYSBA Committee on Immigration Representation

To: Scott Karson, NYSBA President

Date: December 22, 2020

Re: Request to adopt the New York City Bar Association Report on the Independence of the Immigration Courts and the Committee on Immigration Representation's Proposed Resolution on Calling for the Creation of an Independent, Article I Immigration Court

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The Committee on Immigration Representation recognizes the urgent need to create an independent, Article I immigration court to insulate immigration adjudication from political pressure. Currently, the Executive Office for Immigration Review ("EOIR"), comprised of immigration courts and the Board of Immigration Appeals ("BIA"), is housed within the U.S. Department of Justice ("DOJ"), a law enforcement agency. There is an inherent conflict of interest in housing a judicial adjudicatory body such as EOIR within the DOJ, a federal agency primarily charged with law enforcement.

This conflict of interest was brought into stark relief under the Trump Administration, which has implemented several policies that erode judicial decisional independence and neutrality by aligning the immigration courts and the BIA more closely with the Administration's goals of enforcing harsher and more restrictive immigration policies.

These policies are well-documented in the New York City Bar Association's (NYCBA) October 2020 "Report on the Independence of the Immigration Courts" ("NYCBA Report"), jointly issued by the NYCBA Immigration and Nationality Law Committee, Task Force on the Rule of Law, and Task Force on the Independence of Lawyers and Judges. The report, which is available at <https://s3.amazonaws.com/documents.nycbar.org/files/2020792-IndependentImmigrationCourts.pdf>, details how the Trump Administration has attacked judicial independence by politicizing personnel decisions, restricting immigration judges ("IJ") with performance metrics, reassigning cases, attempting to silence IJs, bypassing the appeals process by having the Attorney General certify immigration cases to himself, restricting IJs' ability to manage their dockets, and restricting immigrants' substantive rights.

These policies have undermined the integrity of the immigration court system and the public's confidence in this court process.

After the issuance of the NYCBA Report, the Administration took additional steps to undermine the independence of the immigration judiciary, first by issuing an Executive Order creating a Schedule F in the excepted service to subject policy-making federal employees to termination at

will,<sup>1</sup> and then by decertifying the IJs' union on the basis that IJs and BIA members are management officials because they are policymakers.<sup>2</sup> Together, these steps will allow the DOJ to terminate any IJs and BIA members who incur the disfavor of the DOJ or the President. Regardless of who may be in the White House, no administration should have the authority to manipulate and undermine the integrity of the immigration judiciary.

The NYSBA Committee on Immigration Representation urges NYSBA to adopt the NYCBA Report, and to join the many other voices<sup>3</sup> that have called for an independent, Article I immigration court.

Further, the NYSBA Committee on Immigration Representation urges NYSBA to adopt the following proposed resolution calling on Congress to establish an independent, Article I immigration court system.

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<sup>1</sup> See Executive Order on Creating Schedule F In The Excepted Service, issued Oct. 21, 2020, available at <https://www.whitehouse.gov/presidential-actions/executive-order-creating-schedule-f-excepted-service/>

<sup>2</sup> See DOJ v. NAIJ, 71 FLRA 207 (Nov. 2, 2020), available at [https://www.flra.gov/system/files/decisions/v71\\_207%20REGION%20COMBINED.pdf](https://www.flra.gov/system/files/decisions/v71_207%20REGION%20COMBINED.pdf)

<sup>3</sup> E.g., American Bar Association, American Immigration Lawyers Association, Federal Bar Association, National Association of Immigration Judges, Congress Should Establish An Independent Immigration Court (July 11, 2019), [https://www.naij-usa.org/images/uploads/publications/ABA\\_-\\_Congress\\_Should\\_Establish\\_an\\_Independent\\_Innigration\\_Court.pdf](https://www.naij-usa.org/images/uploads/publications/ABA_-_Congress_Should_Establish_an_Independent_Innigration_Court.pdf); American Bar Association, ABA Again Calls for an Independent Immigration Court (July 23, 2019), [https://www.americanbar.org/advocacy/governmental\\_legislative\\_work/publications/washingtonletter/july\\_2019\\_washington\\_letter/immigration\\_article\\_0719/](https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/july_2019_washington_letter/immigration_article_0719/); Federal Bar Association, Article I Immigration Court (last visited Oct. 9, 2020), <https://www.fedbar.org/government-relations/policy-priorities/article-i-immigration-court/>; American Immigration Lawyers Association, AILA Calls for Independent Immigration Courts (Jan. 31, 2020), <https://www.aila.org/infonet/aila-calls-for-independent-immigration-courts>; Marcia Brown, The Best Way to Protect Immigrants From the Whims of Politics, *The New Republic* (Oct. 5, 2020), [https://newrepublic.com/article/159530/best-way-protect-immigrants-whims-politics?utm\\_source=AILA%20Mailing&utm\\_campaign=5ee067ea28-AILA8-10-05-2020&utm\\_medium=email&utm\\_term=0\\_3c0e619096-5ee067ea28-292020705](https://newrepublic.com/article/159530/best-way-protect-immigrants-whims-politics?utm_source=AILA%20Mailing&utm_campaign=5ee067ea28-AILA8-10-05-2020&utm_medium=email&utm_term=0_3c0e619096-5ee067ea28-292020705) (all websites last visited Oct. 19, 2020); Letter to Rep. Zoe Lofgren from nearly 120 organizations, urging her to introduce legislation creating an Article I immigration court (Dec. 14, 2020), <https://www.aila.org/advo-media/aila-correspondence/2020/aila-and-partners-send-letter-requesting-intro>

New York State Bar Association  
Committee on Immigration Representation  
Proposed Resolution

WHEREAS, the New York State Bar Association (NYSBA) has long supported and encouraged a fair and impartial judiciary; and

WHEREAS, the Executive Office for Immigration Review (“EOIR”), comprised of immigration courts and the Board of Immigration Appeals (“BIA”), is housed within the U.S. Department of Justice (“DOJ”), a law enforcement agency;

WHEREAS, there is an inherent conflict of interest in housing a judicial adjudicatory body such as EOIR within the DOJ, a federal agency primarily charged with law enforcement;

WHEREAS, the self-certification of BIA decisions by Attorneys General under the Trump Administration has undermined the independence of immigration judges (“IJ”) and BIA members;

WHEREAS, EOIR policies under the Trump Administration have undermined the independence of IJs and BIA members;

WHEREAS, President Trump issued an Executive Order on Creating Schedule F in the Excepted Service on October 21, 2020, to subject policy-making federal employees to termination at will;

WHEREAS, the National Association of Immigration Judges was decertified as a union by the Federal Labor Relations Agency on November 2, 2020, on the basis that IJs are management officials with policymaking authority;

WHEREAS, no Administration should have the authority to issue such policies and decisions that undermine the integrity of the immigration court system and the public's confidence in the immigration court process;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association urges Congress to establish an independent, Article I immigration court system.





The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

**NEW YORK  
CITY BAR**

# **REPORT ON THE INDEPENDENCE OF THE IMMIGRATION COURTS**

**Immigration and Nationality Law Committee  
Task Force on the Rule of Law  
Task Force on the Independence of Lawyers and Judges**

**OCTOBER 2020**

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK  
42 West 44<sup>th</sup> Street, New York, NY 10036  
212.382.6600 | [www.nycbar.org](http://www.nycbar.org)



**REPORT ON THE INDEPENDENCE OF THE  
IMMIGRATION COURTS**

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## **I. INTRODUCTION**

The Executive Office for Immigration Review (“EOIR”), which is housed within the U.S. Department of Justice (“DOJ”), is the federal agency responsible for the fate of millions of immigrants in removal proceedings, determining whether noncitizens in detention will be released on bond, and whether, in some circumstances, they may be permitted to proceed to present an asylum claim. EOIR has three components: the approximately 69 immigration courts located throughout the United States, the Board of Immigration Appeals (“BIA”), which reviews appealed Immigration Judge (“IJ”) decisions, and the Office of the Chief Administrative Hearing Officer, the agency that handles employer sanctions and discrimination issues.

There is an inherent conflict of interest in housing a judicial adjudicatory body such as EOIR within DOJ, a federal agency primarily charged with law enforcement. Over the years, many academics, immigration practitioners, bar associations, and judges have criticized the placement of EOIR within DOJ and called for the creation of an independent Article I court.<sup>1</sup>

The EOIR’s lack of independence as a sub-agency of DOJ is apparent in the actions that the Trump administration has undertaken to reshape EOIR. Such actions have included hiring Immigration Court and BIA judges who appear to favor more restrictive immigration policies, issuing directives to IJs restricting their ability to control their own dockets and speeding up decisions at the expense of providing immigrants due process, using the power of the Attorney General to certify BIA decisions to himself with the purpose of establishing restrictive policies, and changing long-standing precedent to limit immigrants’ access to humanitarian forms of relief. The inevitable and foreseeable result of these various actions is to tip the scales towards more and faster deportations, at the expense of due process. In addition, DOJ has prevented IJs from speaking out about the effects of these restrictions on their ability to fully and fairly adjudicate immigration cases, and has attempted to decertify the National Association of Immigration Judges (“NAIJ”), a union representing approximately 460 United States immigration judges that has criticized the administration’s actions.

The New York City Bar Association (“City Bar”) has previously issued statements calling for the Trump administration to withdraw individual policy decisions that undermine the independence of IJs and due process in courts. Further, it has reiterated its position calling for Congress to establish immigration courts as independent Article I courts.<sup>2</sup> Following our previous statements and reports, the City Bar takes this opportunity to examine recent immigration policy changes and to highlight its concerns about their impact on the independence of the immigration court system as well as the due process rights of those who pass through the immigration system.

## **II. ATTACKS ON JUDICIAL INDEPENDENCE**

Under the current administration, DOJ has taken control over EOIR in a manner that appears to prioritize the administration’s political agenda over fairness in the immigration court system. The changes detailed in this section raise grave concerns about the independence of IJs.

## A. Politicized Personnel Decisions and Reorganization

DOJ, through EOIR, has taken several steps to reorganize immigration courts and the BIA in a way that aligns them more closely with the administration's goals of enforcing harsher and more restrictive immigration policies. Along with rules publicly issued by EOIR, memos obtained through Freedom of Information Act ("FOIA") requests detail DOJ's and EOIR's efforts to effect structural changes to the immigration court system that undermine its independence.

First, an Office of Policy has been newly created within EOIR. There is a serious question presented by its mere existence within an agency that ostensibly adjudicates cases one by one and in an impartial manner according to law and established precedent, not at the direction of policy makers. Originally established in 2017, the Office of Policy's role was expanded in 2019,<sup>3</sup> adding oversight of key functions related to due process, for example, the management of the program that accredits non-lawyers to provide assistance to indigent respondents, with the resulting concern that this important program is being undermined.<sup>4</sup> Furthermore, it appears the Office of Policy has been responsible for establishing the metrics and time limits placed on IJs and the BIA,<sup>5</sup> which have adversely affected IJs' ability to control their dockets and ensure that individuals appearing in immigration court are afforded due process. Advocates and judges alike have raised concerns that the creation of the Office of Policy has a political focus beyond the administration of a fair and impartial adjudicatory court system.

Second, we take note of the hiring changes made to the BIA, the administrative body charged with reviewing appeals of IJ decisions. Its decisions are binding on IJs, making it a powerful agency in determining the outcome of cases and defining the contours of immigration law.

One of the initial changes implemented under the Trump Administration was to increase the size of the BIA from seventeen members to twenty-one in 2018, and then to twenty-three in March 2020. In doing so, EOIR quietly changed the hiring process, allowing it to fast track candidates by removing the two year probationary period for applicants who had been IJs and making them permanent BIA members immediately.<sup>6</sup> Under the new procedures, openings at the BIA are posted publicly for fourteen days instead of the previous thirty days, and the time for current board members to submit their evaluations of candidates was shortened from a week to three days.<sup>7</sup> While EOIR maintains that the shortened hiring timelines make the process more efficient, these changes raise concerns about whether the expedited process allows DOJ, through EOIR, to limit the number of applicants and advance its preferred candidates.<sup>8</sup>

Notably, the recent hires to the BIA (with the exception of one who had been a DOJ trial attorney) have all been IJs with records of much higher than average asylum denial rates. The average asylum-denial rate among newly-appointed judges was just over 92%, compared to the national average of 63.1%.<sup>9</sup> Further, the fact that most of the new hires were former IJs means that, under the newly crafted rule, the BIA probationary period did not apply to them. This has allowed former IJs to be named as permanent board members immediately, and makes it harder to remove them from their positions, even for cause. For example, Judge Philip J. Montante Jr. was recently appointed as a permanent member despite ethics complaints that include a 2014 complaint for allegedly showing bias in adjudicating an immigration case.<sup>10</sup>

In addition, DOJ has actively sought to replace BIA members appointed under prior administrations and whose asylum denial rates are generally lower than those of newer appointees. In a recently obtained memo to nine BIA members appointed by previous administrations, DOJ offered buyouts and voluntary separation incentive payments to encourage them to resign or retire.<sup>11</sup> Although this type of financial incentive may be typical in workforce reduction efforts, the circumstances here indicate that the goal was not primarily to reduce costs but, instead, to reshape the BIA, as the members would be replaced by those holding the newly created position of “appellate immigration judge.”<sup>12</sup> EOIR Director McHenry advised that these appellate IJs can now be assigned to immigration courts around the country and have the ability to review cases at both the trial and appellate levels.<sup>13</sup> Tasking BIA members to handle both trial and appellate cases creates potential conflicts of interest that would further undermine the independence of the immigration judicial system.

### **B. Restricting Judges with Performance Metrics**

In addition to these changes in the composition of the BIA, new metrics have been instituted by EOIR to evaluate each IJ’s performance, further raising concerns over interference with IJs’ independence and the resulting erosion of due process. In order to receive a *satisfactory* review, IJs must complete 700 cases per year, maintain a remand rate from the BIA and federal circuit courts of appeal of less than fifteen percent per year, and meet at least three of the following six additional requirements:

- Issue decisions within three days of completing a merits hearing in 85% of non-status detained removal decisions
- Issue decisions within 10 days of completing a merits hearing in 85% of non-status non-detained removal decisions (unless completion is prohibited by statute, such as cancellation caps)
- Decide motions within 20 days of receipt in 85% of their cases
- Make bond decisions on the day of the hearing in 90% of cases
- Complete individual hearings on the initial scheduled hearing date in 95% of the cases (unless the Department of Homeland Security does not produce a detained respondent), and
- Issue decisions in 100% of cases on the day of the initial hearing in credible fear and reasonable fear reviews (unless DHS does not produce a detained respondent)<sup>14</sup>

The minimum requirement of fully adjudicating 700 cases per year averages out to approximately three cases per day.<sup>15</sup> DOJ has maintained that the requirements are aimed at reducing the large backlog of immigration cases, which on average can take longer than two years to adjudicate. However, this ignores the underlying reasons for the backlog, including the varying degrees of complexity in adjudicating these cases, the historical underfunding of the immigration court system, the insufficient number of judicial law clerks, and the increased enforcement that have led to the large current backlog.<sup>16</sup>

On January 29, 2020, Judge Ashley Tabaddor testified in her capacity as President of the National Association of Immigration Judges (“NAIJ”) at a congressional hearing on the “State of Judicial Independence and Due Process in U.S. Immigration Courts.” Judge Tabaddor detailed how the application of the metrics unfairly penalizes judges who choose to manage proceedings at a measured and deliberate pace such that respondents, who often appear unrepresented and do not speak English fluently, understand the proceedings and are afforded due process. As explained in greater detail below, attempts to rush through a hearing to adjudication puts judges in a difficult position of choosing between meeting the metric for a satisfactory evaluation to maintain their jobs and ensuring due process rights for respondents because, as Judge Tabaddor testified, “. . .it is often quicker for an immigration judge to deny a case than to grant the respondent’s application for relief....”<sup>17</sup>

While DHS is always represented by counsel and increasingly opposes and appeals any grant of relief to an immigrant, respondents, many of whom appear *pro se*, often do not have the resources or knowledge to appeal cases. Respondents also carry the evidentiary burden in most immigration proceedings, other than those where DHS seeks to remove people previously admitted into the United States, such as lawful permanent residents. These and other factors make it easier for IJs to speed up decisions and maintain a favorable appeal rate in compliance with metrics by ruling in favor of DHS rather than immigrants. It is far simpler and quicker to say an unrepresented child has not met his or her burden of proof than to devote time to developing the record and engaging in the complex analysis of fact and law that due process requires.

In addition, in August of 2019, EOIR issued an interim ruling that delegated authority to decide appellate cases from the Attorney General to the Director of EOIR, a position that previously had no adjudicatory role. The rule charges the EOIR Director with issuing a decision within fourteen days if the BIA does not decide a case within 90 days for detained cases or 180 days for non-detained cases.<sup>18</sup> Like the metrics placed on IJs, this rule is problematic because it provides additional incentive for the BIA to adjudicate cases with a focus on speed rather than substantive review. Further, it is concerning that the director, a political appointee, would have authority to issue a precedential ruling, outside the regular appellate process.

### **C. Reassigning Cases**

Compounding the concerns over the effect of quotas and time limits on the independence of the immigration courts, IJs’ dockets have been reassigned on a large scale in a manner that undermines judicial independence.

Perhaps the clearest example of this is the removal of Immigration Judge Steven Morley from the high-profile remand of *Matter of Castro-Tum*.<sup>19</sup> The troubling chain of events began when Judge Morley administratively closed a case over concern that notice may have been sent to an incorrect address for the respondent, an unaccompanied and unrepresented minor.<sup>20</sup> In 2018, then Attorney General Jeff Sessions self-certified the case to issue a decision restricting the ability of judges to manage their dockets with administrative closure.<sup>21</sup> According to a complaint filed by NAIJ, when the case subsequently was remanded to Judge Morley, EOIR Director James McHenry instructed Judge Morley that he must hear the case within 14 days, an extraordinarily expedited schedule.<sup>22</sup> On the day of the hearing, after an attorney acting as friend of the court appeared and requested a continuance to allow for the respondent to be located and questions of notice to be

resolved, Judge Morley granted a continuance.<sup>23</sup> The case allegedly was reassigned to a different judge within days of the decision, even though Judge Morley was only informed of the reassignment more than a month later.<sup>24</sup> According to the complaint filed by NAIJ on Judge Morley's behalf:

On July 19, 2018, [Assistant Chief Immigration Judge] Jack Weil sent an email to Judge Morley stating that the Castro-Tum case had been reassigned because the Court had been expected to make a decision at the May 31, 2018 hearing, either by terminating proceedings or entering an *in absentia* order of removal. ACIJ Jack Weil telephoned Judge Morley later the same day and the two discussed the contents of the email. ACIJ Weil conveyed the position of management that Judge Morley should not have continued the matter "at the request of the friend of the court," but rather should have issued a final order in the case. ACIJ Weil asserted that the AG's decision stated that if the Respondent did not appear, the Judge "should" proceed by way of an *in absentia* order of removal....

In addition, Judge Morley learned that the 26 cases in which he sought certification due to the identical issue of the adequacy of the [Office of Refugee Resettlement] documentation were also being reassigned. Most, but not all, were remanded from the BIA. Furthermore, Judge Morley next learned that approximately 60 cases which Judge Morley had administratively closed due to the inadequacy of ORR documentation, and for which DHS had filed motions to re-calendar, were to be reassigned.<sup>25</sup>

This example demonstrates DOJ and EOIR's use of case reassignment to interfere in normal judicial processes and override IJ decisions.

Beyond this specific case, IJs generally no longer have the ability to manage and prioritize their own dockets. For example, they may be reassigned cases by EOIR that are on a "rocket docket" that expedites cases to removal by creating obstacles and disincentives for asylum applicants, including children.<sup>26</sup>

In addition to the creation of "rocket dockets," EOIR has also created border/tent courts to quickly adjudicate asylum cases presented by mostly Central American applicants who have crossed the southern border without inspection. IJs with their own dockets in cities around the country have been assigned to adjudicate matters at the border via video or even in person, forcing them to put off hearing their regular docket cases, often for many years.<sup>27</sup> Indeed, rather than reducing the significant backlog of cases, case reassignments, managing of IJs dockets, fast-tracking of cases and border/tent courts have failed to increase efficiencies, as demonstrated by the steadily increasing numbers of pending cases, now totaling over one million.<sup>28</sup> Furthermore, the constant re-shuffling of cases and subsequent delays in hearings keep respondents in legal limbo and undermine due process by causing evidence to grow stale and witnesses to become unavailable.



The fast tracking of cases that EOIR deems priorities, along with the implementation of case quotas and time limits, effectively hamper the ability of judges to control their dockets and has helped to create a system that improperly uses EOIR as an extension of DOJ enforcement rather than independent adjudication. The new metrics which emphasize speed over careful deliberation, along with internal policy changes and modifications to the BIA, have created an environment in which many immigration judges and BIA members feel they are unable to continue effectively and independently adjudicating cases, and have led many to transfer or retire from their positions.<sup>29</sup>

The resulting open positions have been filled by a corps of less-experienced IJs, which would logically call for stepped-up training and resources; however, EOIR is providing less training and fewer resources than in the past. In 2019, the in-person IJ training conference was cancelled. And judges who attended the 2018 conference reported that the focus was on how to deport respondents faster, often based on unfounded assumptions that their claims are likely false.<sup>30</sup> The Department of Justice also recently announced that it is canceling diversity and inclusion trainings, including those for IJs, following an executive order that called such trainings “offensive and anti-American.”<sup>31</sup> EOIR has also ended the practice of having judicial law clerks provide legal updates to judges and, instead, funnels all updates through the new Office of Policy (discussed below), whose reports have been untimely and lack in-depth analysis.<sup>32</sup> All of this allows DOJ the opportunity to use training and legal updates to further its goal of restricting immigration at the expense of due process and the independence of IJs and board members.

#### **D. Attempts to Silence Immigration Judges**

The DOJ also has prevented IJs from speaking publicly and has made efforts to decertify the union of IJs in a manner that further undermines the independence of the immigration courts.

The National Association of Immigration Judges (“NAIJ”) was formed in 1979 and represents the roughly 460 IJs employed by EOIR. NAIJ represents IJs on the issues typically handled by other labor unions, such as engaging in collective bargaining on pay and working conditions and representing its members in disciplinary proceedings. During the current COVID-19 epidemic, NAIJ has also taken a leading role in demanding the temporary closure of the Immigration Courts and that other safety measures be taken in order to protect the health and safety of its members, in addition to the attorneys and immigrants who must appear before them.<sup>33</sup> More broadly, NAIJ’s mission is “to promote independence and enhance the professionalism, dignity, and efficiency of the Immigration Courts . . . work[ing] to improve [the] court system through educating the public, legal community and media, testimony at congressional oversight hearings, and advocating and lobbying for immigration court reform.”<sup>34</sup>

Since IJs are employees of the DOJ, and subject to DOJ rules, they are limited by DOJ policy from speaking publicly regarding the court and its procedures. In prior administrations, IJs were permitted to present their views as long as they made it clear that the views were their own and not those of EOIR. In 2017, EOIR changed its policy to require that judges seek prior approval before speaking, even for such routine events as being a guest speaker at a law school class. Then, in January 2020, EOIR went even further, prohibiting judges from speaking altogether about immigration law or policy, even in their personal capacity.<sup>35</sup> Judges can be disciplined or even fired for speaking publicly about immigration-related issues.

On July 1, 2020, NAIJ filed a federal lawsuit in the U.S. District Court Eastern District of Virginia alleging that the speaking restrictions are “an unconstitutional prior restraint on judges who wish to write or speak publicly in their personal capacities.” NAIJ seeks a preliminary injunction to stop EOIR from continuing to enforce the policy.<sup>36</sup>

In an important exception to the DOJ speaking ban, IJs who are officers of the NAIJ are permitted to speak publicly in their role as union officials. Due to DOJ restrictions, the ability of NAIJ officials to speak publicly is critical to informing the public, Congress and government policy makers about EOIR practices and the inherent conflicts that arise from housing a judicial function within DOJ, a law enforcement agency.

Indeed, the NAIJ has played an active role in opposing policy changes made by the Trump administration’s DOJ that impinge on the independence of IJs and, as a consequence, erode the due process rights of the immigrants who appear before them. This information and criticism come from those who are best situated to present them—the judges themselves.<sup>37</sup>

The NAIJ has opposed the imposition of case quotas on IJs and the promulgation of rules reorganizing EOIR, charging that such changes are meant to advance the improper transformation of EOIR into a deportation enforcement tool rather than allowing it to perform as an independent judicial body. The union criticized the changes delegating authority from the Attorney General to the EOIR Director (Director), a politically appointed position, and expanding the Director’s authority to decide cases even though the position was never intended to have adjudicatory power. The union has spoken out against the establishment of an Office of Policy within EOIR, and against the changes to the organizational roles of the Office of General Counsel (OGC) and the Office of Legal Access Programs (OLAP), changes that enhance law enforcement rather than independent decision making, and that undermine the proper role of the courts. The NAIJ has also criticized EOIR’s mismanagement of funds allotted for its operation.<sup>38</sup>

In August 2019, NAIJ issued a report responding to questions from members of Congress about DOJ policies affecting the court. The report stated:

The U.S. Department of Justice (DOJ)’s troubling and indefensible mismanagement of the Immigration Court system is unacceptable. Administering a court system is incongruous with DOJ’s role as a law enforcement agency. This inherent conflict of interest precludes the judicial independence of IJs and ultimately compromises due process of the parties appearing before the court.<sup>39</sup>

The NAIJ concluded its report by calling for the removal of the immigration court from the DOJ and supporting the formation of an independent Article I immigration court.

Given the important role the NAIJ plays and its criticism of the DOJ’s mismanagement of the court, it is perhaps not surprising that the current administration initiated proceedings with the Federal Labor Relations Authority to decertify the NAIJ. DOJ filed a complaint with that body in August 2019 claiming that IJs are “management” and are, therefore, not entitled to form a union. The apparent goal of DOJ was to dissolve the NAIJ and effectively silence the voice of its officers who represent all IJs. The FLRA held a hearing on the petition in January 2020. In a decision

issued on July 31, 2020, the FLRA denied the administration’s request and held that IJs are not “management,” citing as support for its conclusion, in part, several of the new DOJ restrictions on the power of IJs to control their own dockets.<sup>40</sup>

### III. ATTORNEY GENERAL SELF-CERTIFICATION TO BYPASS APPEALS PROCESS

The DOJ has also taken the unusual step of embracing a previously rarely-used procedural tool, self-certification. Certification allows the Attorney General—simultaneously the United States’ head immigration adjudicator and head immigration prosecutor—to intervene directly in the immigration appeals process by selecting specific cases to review and then issuing binding rulings. To refer any decision to himself, the Attorney General need only serve the interested parties with a written notice of the referral. Though prior administrations used this power sparingly, the current administration has wielded it with vigor. In the last three years, the Trump Administration’s Attorney Generals have issued thirteen certified immigration decisions,<sup>41</sup> in comparison, over the course of eight years, the Obama administration issued only four such decisions.<sup>42</sup>

These recent certified decisions range from outlining administrative policies limiting IJs’ discretion and ability to manage their dockets, to substantive holdings vacating or reversing established precedential decisions. A number of the decisions undermine asylum protections: *Matter of A-B*-<sup>43</sup> and *Matter of L-E-A*-<sup>44</sup> specifically seek to limit grounds for asylum by overturning precedential decisions, while *Matter of R-A-F*-<sup>45</sup> limits the definition of torture.

But perhaps the most frequent use of the self-certification power in recent years has been in the area of procedural matters. A series of Attorney General-certified cases severely limit the ability of IJs to manage their own dockets by restricting their use of judicial tools including continuances, administrative closure, and termination. Against the backdrop of an over one million case backlog, with new performance metrics focused almost exclusively on the quick disposition of cases, the inevitable result of the new procedural restrictions on IJs is the fast-tracking of cases and increased removal orders, at the expense of the measured deliberation required by due process of law.

As these cases demonstrate, Attorney Generals in recent years are using this procedural tool to rewrite immigration court policies through changes in substantive case law, rather than following more traditional pathways of issuing regulations and legislative recommendations, both of which, notably, are more lengthy and transparent processes.

This unprecedented use of attorney general self-certification to bypass the legislative process is apparent in cases like *Matter of A-B*-, which sought to end asylum protections for survivors of domestic violence. In that case, the Attorney General referred the case to himself directly from the IJ. Although this act drew swift criticism, then-Attorney General Sessions dismissed allegations of bias based on his prior comments hostile to asylum seekers. Similarly, in *Matter of Thomas and Matter of Thompson*, Attorney General Barr rejected criticism that rulemaking rather than certification is a more appropriate approach to shaping immigration law, and emphasized “[his] authority as agency head to proceed by adjudication.”<sup>46</sup> Yet it is precisely this duality of being both adjudicator and agency head that raises due process concerns.

In response to the DOJ's aggressive use of self-certification to reshape immigration law, the American Bar Association in 2019 issued a resolution urging DOJ to set clear standards for when such intervention is permissible. The ABA's resolution further urged DOJ to certify decisions only "sparingly" and within "the ordinary administrative appeal process."<sup>47</sup>

The use of this procedural tool to bypass normal adjudicative and legislative processes is further evident when considering the decision *Matter of E-F-H-L*.<sup>48</sup> This precedential 2014 BIA decision held that all asylum applicants were entitled to a full and fair hearing without having to first meet a threshold of *prima facie* eligibility. After issuing this precedential opinion, the case itself was remanded back to the IJ, where it was subsequently administratively closed for reasons unrelated to the substance of the BIA's decision. In 2018, the Attorney General self-certified this closed case and, in a one-page decision, vacated *E-F-H-L* as moot because, after remand, the applicant had withdrawn the asylum application at issue. Thus, the DOJ vacated a precedential decision critical to the due process rights of respondents by using the self-certification process to revive a case that was not before an immigration judge or the BIA, and based on a tangential procedural reason.

Two years later, the administration then used *Matter of E-F-H-L* as justification for sweeping proposed regulatory changes severely limiting asylum seekers' right to a full hearing, arguing that the regulatory change was consistent with its self-created precedent.<sup>49</sup> Similarly, several of the certified cases build upon each other: for example, *Matter of A-B* cites to *Matter of Castro-Tum* to support the broad use of authority to select a case in any posture, noting that the BIA exercises "only the authority provided by statute or delegated by the Attorney General."<sup>50</sup>

The Attorney General's dual position as both the nation's chief immigration adjudicator and chief prosecutor is an inherent conflict of interest. The current Administration's liberal use of self-certification to reshape immigration case law and limit individual IJ discretion throws this conflict into greater relief. Moving the immigration court system out of the DOJ and making it into an independent Article I court would safeguard immigration law from being rewritten by each administration, and would thus ensure due process for the immigrants appearing before the courts.

#### **IV. UNDERMINING DUE PROCESS**

In addition, recent changes to procedural rules limit how immigration judges handle cases. Restrictions on continuances, administrative closure, termination, and changes of venues, case completion quotas, processing fees, barriers to appeal, and the allocation of court resources all impact the judicial role of a court and can undermine due process.

##### **A. Temporal Restrictions through Case Quotas and Limits on Continuances, Administrative Closure, the Status Docket, and Termination**

In addition to undermining judicial independence, case quotas and other restrictions have serious implications for procedural due process. Docket management is a critical component of any judge's responsibility, both to ensure due process for respondents and to maintain a reasonable court workload. However, changes in policy over the last few years have sought to force parties and IJs to make rushed decisions that endanger both of these functions.

The immigration courts have traditionally used several mechanisms to provide a party with additional time—for example, to find counsel, prepare evidence, or pursue collateral matters. A continuance adjourns a matter to another date, the status docket requires parties to file an update by a set date, administrative closure removes a case from the court’s active docket until one of the parties asks that it be re-calendared, and termination without prejudice disposes of a case unless the government chooses to initiate proceedings anew.

However, DOJ increasingly has limited access to these tools through the Attorney General self-certification process and policy memoranda. In 2018, the Attorney General restricted judicial discretion to administratively close cases in *Matter of Castro-Tum*.<sup>51</sup> The Attorney General subsequently limited the use of continuances and made granting them more difficult in *Matter of L-A-B-R*.<sup>52</sup> Later that same year, in *Matter of S-O-G- & F-D-B-*, the Attorney General announced that judges had no authority to terminate or dismiss cases unless expressly set out in statute or regulations.<sup>53</sup>

In 2019, EOIR released a policy memorandum narrowing the permissible reasons for placing a case on the status docket.<sup>54</sup> While the EOIR acknowledged that status dockets were in widespread use at many courts for years,<sup>55</sup> they “systematized” their use in 2018 in a memorandum dictating performance metrics for IJs.<sup>56</sup> This memorandum constrained IJs’ discretion in scheduling their cases by basing the judge’s performance on whether cases were completed within sixty days and, simultaneously, narrowed IJs’ discretion to use status dockets—a tool that judges could have used to prevent cases that required more time from counting against their performance.<sup>57</sup>

Finally, on August 26, 2020, EOIR published another round of proposed regulatory changes to “make clear that there is no freestanding authority of line immigration judges or BIA members to administratively close cases.”<sup>58</sup>

Combined with case quotas and deadlines, these restrictions have further pressured judges to decide cases faster at the expense of due process.<sup>59</sup> While DOJ justified these measures as efforts to improve efficiency, they appear to have had the opposite effect as the backlog of cases continues to climb.<sup>60</sup> Indeed, evidence suggests that administrative closure actually helped reduce case backlogs.<sup>61</sup>

Given that immigration applications often involve a complex and lengthy process, rushed decisions inevitably equate to more removal orders before people have a reasonable opportunity to find counsel or identify relief. This is especially concerning given that more time is often the best solution for many of the other due process challenges inherent in immigration court—language barriers, no right to free counsel, unaccompanied children, international evidence and witnesses, and vulnerable respondents such as asylum seekers who often need to address symptoms of trauma before they can meaningfully engage with the legal system.<sup>62</sup>

Tools to provide parties with more time are also important given that there are certain immigration applications over which other agencies have exclusive jurisdiction or which have waiting lists.<sup>63</sup> As a result of these separate but interwoven processes, it is important for the courts to have a means for placing cases on hold while related cases are adjudicated by other bodies, which often involves a wait of several years. For example, judges commonly put cases aside for

noncitizens who will soon be able to pursue permanent residency through immediate relatives who are U.S. citizens or permanent residents; abandoned, neglected, and abused children with pending Special Immigrant Juvenile Status (“SIJS”) cases which require proceedings in state court; or survivors of domestic violence pursuing U nonimmigrant status as victims of crime which require steps with law enforcement agencies. By eliminating mechanisms for putting cases on hold, DOJ has effectively pressured judges to order the removal of people with viable paths to lawful status based in statute, but whose requests for relief have not yet been granted.

Constrained judicial discretion is particularly problematic in the SIJS context, where a juvenile or family court has determined that it is not in the child’s best interest to be returned to his or her home country.<sup>64</sup> The SIJS process requires determinations by a juvenile court,<sup>65</sup> followed by applications<sup>66</sup> to immigration authorities. The government, for a substantial part of the process, dictates the timeline for these applications,<sup>67</sup> which can take years.<sup>68</sup> Previously, these cases would likely be placed on the status docket. However, the Status Docket Memorandum limited the use of status dockets to three instances: (1) where “an immigration judge is required to continue the case pursuant to binding authority in order to await the adjudication of an application or petition by U.S. Citizenship and Immigration Services..., (2) where an immigration judge is required to reserve a decision rather than completing the case pursuant to law or policy, or (3) in a case that is subject to a deadline established by a federal court order.”<sup>69</sup> The new policy effectively eliminates a docket-management tool that had promoted efficiency, and has sown confusion amongst practitioners.<sup>70</sup> In its absence, performance metrics incentivize IJs to resolve cases quickly without waiting for children to complete their SIJS proceedings so that they may receive lawful permanent residence. This creates a risk that juvenile applicants may be removed from the United States in contravention of what a court has determined to be their best interests, and in spite of their statutory eligibility for relief.

In addition, multiple administrations have accelerated cases at the border and cases with family units (currently called “FAMU” cases) with the apparent goal of deterring Central American families from crossing the Southern Border.<sup>71</sup>

In these ways, basic procedural mechanisms and immigration court scheduling functions are being limited or curtailed in a manner that promotes political objectives over due process.

## **B. Accessibility Restrictions through Administrative Barriers**

In recent years, the courts have become less accessible for immigrants—from the physical location of the courts to the services provided in them—in a manner that undermines due process. As discussed *infra*, DOJ has increasingly sought to move court functions to remote regions away from urban centers where immigrants would be more likely to have access to family, attorneys, and supportive services. This is exacerbated by EOIR discouraging changes of venue, beginning in 2018.<sup>72</sup>

EOIR also has scaled back access to in-court interpreters, replacing them with general orientation videos or interpretation by telephone.<sup>73</sup> While purportedly a cost-saving measure, the absence of interpretation means that noncitizens struggle to understand the proceedings and their rights and to convey their wishes.<sup>74</sup>

Even simple barriers such as understaffed court phone lines, failure to notify parties of hearing changes, delays in replying to motions, double- or triple-booked hearing slots, monolingual signs, and rules announced via Twitter all wear parties down, requiring them to unnecessarily expend additional resources and making it difficult to present a case.<sup>75</sup> Respondents in immigration court face death by a thousand cuts. While many challenges relate to staffing and funding, EOIR decides where and how to focus its resources. For example, when the administration wanted to draw attention to the southern border, it sent judges from across the country on details to border courts regardless of actual need, disrupting and delaying cases on their regular dockets, sometimes by several years.<sup>76</sup> DOJ may take political objectives into consideration when considering how to allocate court resources. Housing the immigration courts within the executive branch thus politicizes what should be objective court procedures and undermines due process. Establishing an independent Article I immigration court would solve this problem.

### **C. Access to Appellate Review**

Such changes, purportedly adopted to improve efficiency, have undermined due process at the trial level, and are especially concerning given that EOIR also has sought to limit access to meaningful appellate review.

For example, DOJ has proposed an extraordinary increase in fees that would result in the limitation of low-income and working-class immigrants' access to justice. EOIR has proposed increasing the fee for appealing an IJ decision to the BIA from \$110 to \$975.<sup>77</sup> This and other proposed fee increases effectively price people out of justice.

On August 26, 2020, EOIR also published proposed regulations that would prevent the BIA from remanding most cases back to the immigration court, limit the ability of respondents to reopen proceedings *sua sponte*, and expand DHS's ability to reopen proceedings.<sup>78</sup> The proposal also further limits the use of administrative closure as addressed *supra*, and requires simultaneous briefings such that parties will not be able to fully respond to opposition arguments.

The limits on remands would make it more difficult for immigrants to submit new evidence and address changes in law. However, perhaps most striking is the explicit double standard that allows the BIA to remand cases at any time based on new evidence from DHS while disallowing remands based on new evidence from noncitizens.<sup>79</sup>

Immigrants and their counsel face an increasingly impossible series of obstacles while the regulations favor DHS. For example, the Attorney General's recent decision in *Matter of A-C-A-A-* states that the BIA will consider every element of a claim *de novo* and will not honor stipulations made at the trial level.<sup>80</sup> This means that respondents, who usually carry the evidentiary and persuasive burden, must engage in the resource-intensive act of addressing even noncontentious elements of a case, all while facing the pressure of rushed hearings with fewer and fewer opportunities to request more time or appeal injustices. Meaningful access to the appellate process is a critical safeguard against these injustices, especially considering more than a third of immigrants in court are unrepresented.<sup>81</sup>

## V. LIMITING TRANSPARENCY & ACCOUNTABILITY

Transparency and accountability operate in tandem, and both are currently at a critical juncture in the immigration court system. The most significant negative impact of the issues discussed above is on the many immigrants who must navigate the court system as new legal, structural, and policy changes turn its corridors into a maze. Without transparency and accountability, due process is inevitably eroded. The lack of transparency also impedes meaningful attempts at reform.

### A. Restricting Public Access to Information

In May 2018, EOIR announced a new initiative promoting transparency, stating that it would release statistics on immigration court adjudications to the public on a regular basis.<sup>82</sup> Yet just over a year later, Syracuse University's Transactional Records Access Clearinghouse ("TRAC"), a nonpartisan and nonprofit data research center, issued a report noting "gross irregularities" in recently-released EOIR data.<sup>83</sup> TRAC operates by using FOIA data to provide detailed reports on important aspects of the immigration court, including asylum grant and denial rates (analyzed by various factors including by judge, by country of applicant, by immigration court location), representation rates, enforcement trends, and topical issues like the rising use of videoconference instead of in-person hearings.

In October 2019, TRAC noticed that over 1,500 records were missing from that month's EOIR data release.<sup>84</sup> Since that date, records have continued to disappear. In one report, TRAC noted that 68,282 of the asylum applications included in the March 2020 data release were missing from the April release.<sup>85</sup> This is just one month, and the problem is cumulative, reaching back to October 2019. The data points missing include what applications for relief were filed and the final decisions on those applications.<sup>86</sup> These data are critical to providing any objective oversight of the true functioning of the system, especially given explicit legal and policy directives to resolve cases as quickly as possible.

As TRAC notes, "the management of the court system itself, including the quota system recently imposed on IJs, presupposes the accuracy of the court's own records." EOIR denied any issues and accused TRAC of making "inflammatory and inaccurate accusations."<sup>87</sup> In September 2020, TRAC announced that EOIR had restored some records due to public outcry but warned that others continue to go missing.<sup>88</sup>

In addition and as discussed above, EOIR has also taken steps to limit the ability of IJs to speak publicly about their work. This forecloses a meaningful avenue for public engagement with and knowledge about the immigration court system. IJs are perhaps the best situated of any actor to shed light on the interworking of new policies and procedures. Yet they may not, or else risk losing their jobs.

The COVID-19 pandemic also has brought to light unanticipated challenges with transparency. EOIR's response during the pandemic has been disjointed and reactionary; its communications regarding new policies and procedures were often made at the last minute and showed little regard for litigants, which include a high percentage of *pro se* individuals.<sup>89</sup>



EOIR chose the pandemic as the moment to embrace social media and online announcements. Immigration courts were opened and closed by tweet without individual notice, alongside standing orders regarding filings and telephonic appearances. EOIR's online portal was updated on a lagging basis. Representatives were expected to monitor social media to determine whether hearings were proceeding. Because EOIR only announced court closures extending one or two weeks into the future, lawyers were forced to spend time preparing clients, witnesses, and documentary filings in the midst of stay-home orders, or else risk missing a filing deadline. Yet these efforts were often ultimately a waste of time and effort, as EOIR continued to extend court closures on an *ad hoc* basis. EOIR also often announced unplanned court closures hours *after* courts had already shut their doors, deleted tweets without keeping a record of changes, and announced new policies without sufficient notice.<sup>90</sup> Even worse, EOIR seemingly expected *pro se* applicants to also receive these critical updates via Twitter or by continuously refreshing the EOIR webpage regarding the operational status of the immigration courts. Many individuals traveled on public transportation in the midst of a pandemic only to reach buildings that were closed.

## **B. Removing Courts and Respondents from the Public Eye**

The Trump Administration has taken a series of steps never taken before to force asylum-seekers to remain abroad while awaiting their hearings in the U.S. via the Migrant Protection Protocols ("MPP") or to force certain asylum seekers to seek asylum in third countries via Asylum Cooperative Agreements ("ACAs").<sup>91</sup> Many subject to these programs have been forced to abandon their claims altogether, and return to their home countries or third countries where they will face serious harms. Given the humanitarian concerns at stake, rigorous accountability and transparency of how asylum seekers are treated by the U.S. government are essential. Instead, by forcing asylum seekers to wait in Mexico or referring them to third countries for asylum adjudication, DHS removes asylum seekers from the public eye by forcing them to adjudicate their claims in closed, temporary facilities at the U.S.-Mexico border or in third countries far outside the purview of U.S. legal observers and press.

DHS began implementing MPP at the San Ysidro, California, port of entry in January 2019. By the end of Spring 2019, MPP was expanded across the length of the Southern Border.<sup>92</sup> Those subject to MPP are forced to remain in Mexico for extended periods of time while awaiting their hearings in the U.S. These asylum seekers are often vulnerable to poverty, crime and disease and are not offered the rudimentary protections and resettlement services that international refugee populations are offered by the office of the United Nations High Commissioner for Refugees and other non-governmental organizations in other similarly-situated global refugee processing sites.

While attempting to survive in this environment, asylum seekers under MPP are forced to gather evidence and prepare for hearings without access to counsel and whilst navigating a disorganized immigration process rife with logistical barriers, errors and confusion. For example, asylum seekers subject to MPP often report receiving hearing notices with incorrect dates and times.<sup>93</sup> While logistical and due process challenges permeate the MPP process, less than 5% of asylum seekers subject to MPP are able to secure counsel.<sup>94</sup> Given their forced placement in Mexico, lack of counsel and inherently vulnerable positions, it is essential to ensure asylum seekers placed in MPP receive a full and fair hearing and an opportunity to meaningfully avail themselves of requisite protections mandated by the Immigration and Nationality Act and international law. Instead, as asylum seekers are forced to wait out the asylum process in Mexico or apply for asylum

in third countries, the DHS essentially removes these vulnerable populations from the public eye with no means of observation or accountability to ensure that the U.S. is meeting its obligations under international law.

### **C. Immigration Adjudication Centers and Limited Access**

Since September 2019, DHS has been expanding the use of tent facilities where IJs appear via video teleconference (VTC) to adjudicate asylum and other forms of humanitarian relief for those under MPP.<sup>95</sup> By systematically moving immigration adjudication at the Southern Border to tent courts whose access is regulated by the DHS, not only are applicants subject to limited judicial oversight (i.e., IJs are unable to review documents applicants are receiving from the Office of Chief Counsel), but attorney-observers, press and the public, who normally have access to Immigration Courts, are allowed only limited access, at best.<sup>96</sup> After receiving criticism for limiting access to tent courts, DHS directed component agencies to allow public access to the facilities.<sup>97</sup> Despite these directives, the agency has failed to operationalize these directives in a manner that allows meaningful access to tent court facilities and have constructed new obstacles to transparency.<sup>98</sup> For example, though Master Calendar hearings have long been open to the public at immigration courts across the country, logistical obstacles such as DHS prohibitions on writing materials have impeded press access and transparency.<sup>99</sup>

To further complicate efforts to achieve transparency, DOJ has judges appear remotely from Immigration Adjudication Centers (IACs) via teleconference at tent court hearings. These adjudication centers serve as a hub for IJs who beam into courtrooms remotely to hear cases, and are completely cut off from the public.<sup>100</sup> Coupled with the obstacles to access tent court themselves, DHS's closure of IACs to the public essentially seals off the immigration adjudication process from public view for those subject to MPP.

### **D. Pushing People Back to Third Countries**

The Trump Administration also has modified DHS and DOJ regulations implementing the asylum provisions at INA Section 208(a)(2)(A) to bar a noncitizen from even applying for asylum in the United States, without any evaluation of the merits of the underlying asylum claim, in certain situations where the United States has entered into an Asylum Cooperative Agreement (ACA) with a Central American country.<sup>101</sup> The current policies change screening requirements, allowing an asylum officer to make a threshold determination as to whether an asylum seeker falls under selected criteria, a decision which is not reviewable by any federal court. Devastatingly, if an asylum seeker is denied the opportunity to apply for asylum in the United States, the U.S. government will also not consider applications for withholding of removal and protection under the Convention against Torture, reasoning that the United States could simply remove the noncitizen to the third country under the agreement.

The United States has recently entered into ACAs with El Salvador, Guatemala and Honduras. These countries are neither "safe" as required by the INA, nor do they provide "access to a full and fair procedure for determining a claim to asylum."<sup>102</sup> Instead, the U.S. government is essentially sending asylum seekers directly back into countries where their lives are threatened while denying them fair and full access to asylum protections mandated under international human rights law, leaving little accountability, transparency or review over how decisions are made about

who is subject to ACAs or what protections asylum-seekers have and receive in ACA countries. Though these agreements have been enacted with the express purpose of increasing efficiency and decreasing backlogs, they serve to create a framework for thwarting legitimate asylum claims without any means of accountability.

## **VI. CONCLUSION**

The New York City Bar Association joins the scores of legal and human rights organizations around the country that have declared the immigration court system hopelessly untethered to providing justice. Given the inherent conflict in housing a judicial body within the nation's top law enforcement agency, the Department of Justice, we call for the removal of the court from DOJ and the creation of a truly independent Article I court. While this call predates the Trump Administration, the many steps that the current administration has taken to politicize the court, as described in this report, have frayed the bare threads of justice that existed before to the point of a complete rupture, leaving not even the appearance of justice or due process of law. It is time – past time – to remedy this conspicuous failure in our legal system and this abuse of the fundamental rights of millions of people.

Immigration and Nationality Law Committee  
Danny Alicea, Chair

Task Force on the Rule of Law  
Stephen L. Kass, Chair

Task Force for the Independence of Lawyers and Judges  
Jessenia Vazcones-Yagual, Co-Chair  
Christopher Pioch, Co-Chair

October 2020

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<sup>1</sup> E.g., American Bar Association, American Immigration Lawyers Association, Federal Bar Association, National Association of Immigration Judges, *Congress Should Establish An Independent Immigration Court* (July 11, 2019), [https://www.naij-usa.org/images/uploads/publications/ABA - Congress Should Establish an Independent Innigration Court.pdf](https://www.naij-usa.org/images/uploads/publications/ABA_-_Congress_Should_Establish_an_Independent_Innigration_Court.pdf); American Bar Association, *ABA Again Calls for an Independent Immigration Court* (July 23, 2019), [https://www.americanbar.org/advocacy/governmental\\_legislative\\_work/publications/washingtonletter/july\\_2019\\_washington\\_letter/immigration\\_article\\_0719/](https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/july_2019_washington_letter/immigration_article_0719/); Federal Bar Association, *Article I Immigration Court* (last visited Oct. 9, 2020), <https://www.fedbar.org/government-relations/policy-priorities/article-i-immigration-court/>; American Immigration Lawyers Association, *AILA Calls for Independent Immigration Courts* (Jan. 31, 2020), <https://www.aila.org/infonet/aila-calls-for-independent-immigration-courts>; Marcia Brown, *The Best Way to Protect Immigrants From the Whims of Politics*, *The New Republic* (Oct. 5, 2020), [https://newrepublic.com/article/159530/best-way-protect-immigrants-whims-politics?utm\\_source=AILA%20Mailing&utm\\_campaign=5ee067ea28-AILA8-10-05-2020&utm\\_medium=email&utm\\_term=0\\_3c0e619096-5ee067ea28-292020705](https://newrepublic.com/article/159530/best-way-protect-immigrants-whims-politics?utm_source=AILA%20Mailing&utm_campaign=5ee067ea28-AILA8-10-05-2020&utm_medium=email&utm_term=0_3c0e619096-5ee067ea28-292020705) (all websites last visited Oct. 19, 2020).

<sup>2</sup> See New York City Bar Association, *Comment Letter Urging EOIR to Withdraw Rule That Would Dramatically Increase Fees for Immigration Court Filings and Appeals*, March 30, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/opposition-to-drastic-eoir-fee-increases-comments>; See, The State of Judicial Independence & Due Process in U.S. Immigration Courts: Written Testimony, January 29, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/the-state-of-judicial-independence-and-due-process-in-us-immigration-courts-written-testimony>; See, Opposition to Proposed Third-Country Asylum agreements: Comments, December 19, 2019, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/opposition-to-proposed-third-country-asylum-agreements-comments>; See, Opposition to Interim Rule and Subsequent Organizational Changes to EOIR: Letter; October 23, 2019, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/opposition-to-interim-rule-and-subsequent-organizational-changes-to-eoir-letter>; See, Strengthening America's Immigration Court System-Testimony, April 18, 2018, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/strengthening-and-reforming-americas-immigration-court-system-testimony>; See, Quotas in Immigration Courts Would Be Neither Efficient Nor Just; April 10, 2018, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/quotas-in-immigration-courts-would-be-neither-efficient-nor-just>.

<sup>3</sup> Judge Ashley Tabaddor, *supra*.

<sup>4</sup> Letter from Bitta Mostofi, Commissioner, The Mayor's Office of Immigrant Affairs (MOIA), *Organization of the Executive Office for Immigration Review Public Comment Opposing Interim Rule*, (October 25, 2019), <https://www1.nyc.gov/assets/immigrants/downloads/pdf/comments/public-comment-opposing-interim-rule-organization-of-eoir-20191025.pdf>.

<sup>5</sup> *Id*; Judge Ashley Tabaddor, *supra*.

<sup>6</sup> *Id*.

<sup>7</sup> Tanvi Misra, *DOJ Hiring Changes May Help Trump's Plan To Curb Immigration*, *Roll Call*, (May 4, 2020), <https://www.rollcall.com/2020/05/04/doj-hiring-changes-may-help-trumps-plan-to-curb-immigration/>.

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

<sup>9</sup> Suzanne Monyak, *Immigration Board Picks Under Trump To Set Lasting Policy*, *Law 360*, (May 8, 2020), <https://www.law360.com/appellate/articles/1271825/immigration-board-picks-under-trump-to-set-lasting-policy>.

<sup>10</sup> Suzanne Monyak, *Immigration Board Picks Under Trump To Set Lasting Policy*, *Law 360*, (May 8, 2020), <https://www.law360.com/appellate/articles/1271825/immigration-board-picks-under-trump-to-set-lasting-policy>.

<sup>11</sup> Tanvi Misra, *DOJ Memo Offered To Buy Out Immigration Board Members*, *Roll Call*, (May 27, 2020), <https://www.rollcall.com/2020/05/27/doj-memo-offered-to-buy-out-immigration-board-members/>.

<sup>12</sup> *Id*.

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<sup>13</sup> 8 C.F.R. pts. 1001, 1003, and 1292 (2019); Tanvi Misra, *DOJ Changed Hiring To Promote Restrictive Immigration Judges*, Roll Call, (October 29, 2019), <https://www.rollcall.com/2019/10/29/doj-changed-hiring-to-promote-restrictive-immigration-judges/>.

<sup>14</sup> Victoria Nielson, *DOJ Requires Immigration Judges To Meet Quotas*, Catholic Legal Immigration Network, (April 27, 2018), <https://cliniclegal.org/resources/doj-requires-immigration-judges-meet-quotas>; Joel Rose, *Justice Department Rolls Out Quotas For Immigration Judges*, NPR, (April 3, 2018), <https://www.npr.org/2018/04/03/599158232/justice-department-rolls-out-quotas-for-immigration-judges>.

<sup>15</sup> *Id.*

<sup>16</sup> Maria Sacchetti, *Immigration Judges Say Proposed Quotas From Justice Department Threaten Independence*, Washington Post, (October 12, 2017), [https://www.washingtonpost.com/local/immigration/immigration-judges-say-proposed-quotas-from-justice-dept-threaten-independence/2017/10/12/3ed86992-ae11-11e7-be94-fabb0f1e9ffb\\_story.html](https://www.washingtonpost.com/local/immigration/immigration-judges-say-proposed-quotas-from-justice-dept-threaten-independence/2017/10/12/3ed86992-ae11-11e7-be94-fabb0f1e9ffb_story.html); Southern Poverty Law Center, *The Attorney General's Judges: How the U.S. Immigration Courts Became a Deportation Tool*, (June 25, 2019), <https://www.splcenter.org/20190625/attorney-generals-judges-how-us-immigration-courts-became-deportation-tool>.

<sup>17</sup> Statement of J. Ashley Tabaddor, President, National Association of Immigration Judges before H.R. Subcomm. on Immigration and Citizenship Hearing, *The State of Judicial Independence and Due Process in U.S. Immigration Courts*, 116<sup>th</sup> Congress, 1<sup>st</sup> sess., (January 29, 2020) <https://docs.house.gov/meetings/JU/JU01/20200129/110402/HHRG-116-JU01-Wstate-TabaddorA-20200129.pdf>.

<sup>18</sup> Catholic Legal Immigration Network, *EOIR Reorganizes Under New Interim Rule, Effective Aug. 26, 2019*, (September 6, 2019), <https://cliniclegal.org/resources/federal-administrative-advocacy/eoir-reorganizes-under-new-interim-rule-effective-aug-26>.

<sup>19</sup> See *Matter of Castro-Tum*, 27 I. & N. Dec. 271 (A.G. 2018). See also Stephen H. Legomsky, David B. Thronson, Rose Cuison Villazor, & Anil Kalhan, *2020 Supplement to The Seventh Edition of Immigration and Refugee Law and Policy* 114 (7th ed. 2020), available at <https://faculty.westacademic.com/Book/Detail/252886#supplementupdate>.

<sup>20</sup> See *id.* at 273-74.

<sup>21</sup> See Section VI(A), *infra*.

<sup>22</sup> Nat'l Ass'n of Immigr. Judges, *Grievance Pursuant to Art. 8 of the Collective Bargaining Agreement Between EOIR and NAIJ* (Aug. 8, 2018), <https://assets.documentcloud.org/documents/4639659/NAIJ-Grievance-Morley-2018-Unsigned.pdf>.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See TRAC Immigration Project, *With the Immigration Court's Rocket Docket Many Unrepresented Families Quickly Ordered Deported* (Oct. 18, 2016), <https://trac.syr.edu/immigration/reports/441/>.

<sup>27</sup> Nicole Acevedo, *New Border Tent Courts Create a Faux Process for Asylum Seekers, Attorneys Say*, NBC News, September 12, 2019, <https://www.nbcnews.com/news/latino/new-border-tent-courts-create-faux-process-asylum-seekers-attorneys-n1053196>.

<sup>28</sup> Southern Poverty Law Center, *supra*.

<sup>29</sup> Alexandra Kelley, *Immigration Judges Are Quitting or Retiring Early Due to Job Stress*, The Hill, January 27, 2020, <https://thehill.com/changing-america/well-being/mental-health/480165-immigration-judges-are-retiring-and-quitting-early>; Hamed Aleaziz, *Being An Immigration Judge Was Their Dream. Under Trump, It Became Untenable*, BuzzFeed, February 13, 2019, <https://www.buzzfeednews.com/article/hamedaleaziz/immigration-policy-judge-resign-trump>; Priscilla Alvarez, *Immigration Judges Quit in Response to Administration Policies*, CNN, December 27, 2019, <https://www.cnn.com/2019/12/27/politics/immigration-judges-resign/index.html>.

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<sup>30</sup> National Association of Immigration Judges (NAIJ), *The Immigration Court-In Crisis and in Need of Reform* (August 2019), [https://www.naij-usa.org/images/uploads/publications/Immigration\\_Court\\_in\\_Crisis\\_and\\_in\\_Need\\_of\\_Reform.pdf](https://www.naij-usa.org/images/uploads/publications/Immigration_Court_in_Crisis_and_in_Need_of_Reform.pdf); Hamed Aleaziz, *supra*.

<sup>31</sup> Tal Kopan, *Justice Department cancels diversity training, including for immigration judges*, San Francisco Chronicle (Oct. 9, 2020), <https://www.sfchronicle.com/politics/article/Justice-Department-cancels-diversity-training-15635203.php>.

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

<sup>33</sup> Letter by the American Federation of Government Employees (AFGE) Local 511 (the Immigration and Customs Enforcement Professionals Union) and the American Immigration Lawyers Association (AILA) (March 15, 2020), <https://www.naij-usa.org/images/uploads/newsroom/2020.03.15.00.pdf>; NAIJ, *National Grievance Coronavirus Health and Safety* (May 11, 2020), <https://www.naij-usa.org/images/uploads/newsroom/2020.07.13.01.pdf>.

<sup>34</sup> National Association of Immigration Judges, <https://www.naij-usa.org/>.

<sup>35</sup> *Submission and Processing of Requests for Speaking Engagements*, EOIR Revised Speaking Engagement Policy (January 2020), <https://knightcolumbia.org/documents/eoir-revis>.

<sup>36</sup> *National Association of Immigration Judges v. McHenry*, Civil Action No. 20-cv-731 (U.S. District Court for the Eastern District of Virginia, Complaint for Declaratory and Injunctive Relief, July, 1, 2020) [https://knightcolumbia.org/documents/3c53028907/2020.07.01\\_ECF-1\\_Complaint.pdf](https://knightcolumbia.org/documents/3c53028907/2020.07.01_ECF-1_Complaint.pdf).

<sup>37</sup> *See, e.g.* <https://www.naij-usa.org/publications/testimony-in-congress>; Written Testimony of J. Ashley Tabbador, before the S. Subcomm. on Border Security and Immigration, *At the Breaking Point: The Humanitarian and Security Crisis at our Southern Border*, 116<sup>th</sup> Cong., 1<sup>st</sup> sess., (May 7, 2019) [https://www.naij-usa.org/images/uploads/publications/NAIJ\\_Written\\_Testimony\\_Before\\_Senate\\_Subcommittee%2C\\_May\\_2019.pdf](https://www.naij-usa.org/images/uploads/publications/NAIJ_Written_Testimony_Before_Senate_Subcommittee%2C_May_2019.pdf); Letter from J. Ashley Tabbador, President, National Association of Immigration Judges to the Hon. José E. Serrano, Chairman, and Hon. Robert Aderholt, Ranking Member, House Appropriations Committee, Commerce, Justice, Science and Related Agencies Subcomm., (March 12, 2019) [https://www.naij-usa.org/images/uploads/publications/NAIJ\\_letter\\_to\\_House\\_Approps\\_Cmte\\_3\\_12\\_19.pdf](https://www.naij-usa.org/images/uploads/publications/NAIJ_letter_to_House_Approps_Cmte_3_12_19.pdf); Letter from J. Ashley Tabbador, President, National Association of Immigration Judges to the House of Representatives, (January 9, 2019) [https://www.naij-usa.org/images/uploads/publications/NAIJ\\_letter\\_to\\_House\\_of\\_Representatives%2C\\_1-9-19\\_1.pdf](https://www.naij-usa.org/images/uploads/publications/NAIJ_letter_to_House_of_Representatives%2C_1-9-19_1.pdf); Statement of J. Ashley Tabbador, President, National Association of Immigration Judges before the S. Subcomm. on Border Security and Immigration Hearing, *Strengthening and Reforming America's Immigration Court System*, 116<sup>th</sup> Congress, 1<sup>st</sup> sess., (April 18, 2018) [https://www.naij-usa.org/images/uploads/publications/NAIJ\\_Senate\\_Final\\_Testimony\\_4.18\\_2018\\_.pdf](https://www.naij-usa.org/images/uploads/publications/NAIJ_Senate_Final_Testimony_4.18_2018_.pdf), J. Amiena Khan and J. Dorothy Harbeck, NAIJ-USA, DOJ Tries to Silence the Voice of the Immigration Judges—Again! (March/April 2020) <https://www.naij-usa.org/images/uploads/newsroom/2020.04.22.02.pdf>; Mimi Tsankov, *Judicial Independence Sidelined: Just One More Symptom of an Immigration Court System Reeling*, 56 California Western Law Review 36 (2020).

<sup>38</sup> National Association of Immigration Judges, Statement on DOJ OIG Report on Executive Office for Immigration Review FY 2019 Financial Management Practices (June 10, 2020) <https://www.naij-usa.org/images/uploads/newsroom/2020.06.10.00.pdf> (citing OIG report at <https://oig.justice.gov/sites/default/files/reports/a20068.pdf>).

<sup>39</sup> National Association of Immigration Judges (NAIJ), *The Immigration Court-In Crisis and in Need of Reform* (August 2019), [https://www.naij-usa.org/images/uploads/publications/Immigration\\_Court\\_in\\_Crisis\\_and\\_in\\_Need\\_of\\_Reform.pdf](https://www.naij-usa.org/images/uploads/publications/Immigration_Court_in_Crisis_and_in_Need_of_Reform.pdf).

<sup>40</sup> *U.S. Dept. of Justice Executive Office for Immigration v. Nat'l Assoc. of Immigr. Judges, Int'l Fed. of Professional and Technical Engineers Judicial Council 2*, WA-RP-19-0067 (July 31, 2020) <https://www.naij-usa.org/images/uploads/newsroom/2020.07.31.00.pdf>.

<sup>41</sup> *Matter of E-F-H-L*, 27 I. & N. Dec. 226 (A.G. 2018) (holding that hearing not required in asylum case); *Matter of Castro-Tum*, 27 I. & N. Dec. 271 (A.G. 2018) (limiting authority to suspend cases using the procedure known as “administrative closure”); *Matter of A-B-*, 27 I. & N. Dec. 316 (A.G. 2018) (limiting grounds for asylum claims based on persecution by private actors, potentially affecting claims related to domestic violence and gang violence); *Matter of L-AB-R-*, 27 I. & N. Dec. 405 (A.G. 2018) (making it more difficult and burdensome to obtain a



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continuance in immigration proceedings in which the noncitizen is or plans to seek a collateral form of immigration relief); *Matters of S-O-G- & F-D-B-*, 27 I. & N. Dec. 462 (A.G. 2018) (constraining immigration judge's inherent authority to dismiss or terminate removal proceedings); *Matter of Negusie*, 27 I. & N. Dec. 481 (A.G. 2018) (pending); M-G-G-, 27 I. & N. Dec. 475 (A.G. 2018) (pending); *Castillo-Perez*, 27 I. & N. Dec. 664 (A.G. 2019) (holding that two DUIs bar cancellation of removal); *Matter of M-S-*, 27 I. & N. 509 (A.G. 2019); *Matter of Thomas and Matter of Thompson*, 27 I. & N. Dec. 674 (A.G. 2019); *L-E-A-*, 27 I. & N. Dec. 581 (A.G. 2019) (narrowing the viability of family as a particular social group); *Matter of R-A-F-*, 27 I. & N. Dec. 778 (A.G. 2020); *Matter of O-F-A-S-*, 28 I. & N. Dec. 35 (A.G. 2020) (narrowing the definition of torture); *Matter of A-M-R-C-*, 28 I. & N. Dec. 7 (A.G. 2020) (pending); *Matter of Reyes*, 28 I. & N. Dec. 52 (A.G. 2020) (advancing a new theory of what constitutes an aggravated felony); *Matter of A-C-A-A-*, 28 I. & N. Dec. 84 (A.G. 2020) (expanding the scope of the BIA's authority in considering matters on appeal).

<sup>42</sup> The Bush administration issued 16 such decisions; the Clinton administration issued three.

<sup>43</sup> *Supra*, note 40.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> See *Matter of Thomas and Matter of Thompson*, 27 I. & N. Dec. 674, 688 (A.G. 2019).

<sup>47</sup> American Bar Association, Resolution 121A (Aug. 12-13, 2019), available at <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2019/121a-annual-2019.pdf>.

<sup>48</sup> *Matter of E-F-H-L*, 27 I. & N. Dec. 226 (A.G. 2018).

<sup>49</sup> Notice of Proposed Rulemaking: Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 36264, 36277 (proposed June 15, 2020).

<sup>50</sup> *Matter of Castro-Tum*, 27 I. & N. Dec. 271, 282 (A.G. 2018).

<sup>51</sup> *Matter of Castro-Tum*, 27 I. & N. Dec. 271 (A.G. 2018).

<sup>52</sup> *Matter of L-A-B-R-et al.*, 27 I. & N. Dec. 405 (A.G. 2018).

<sup>53</sup> *Matter of S-O-G- & F-D-B-*, 27 I. & N. Dec. 462 (A.G. 2018).

<sup>54</sup> Memorandum from James R. McHenry, III, Dir., EOIR, Use of Status Dockets (Aug. 16, 2019), <https://www.justice.gov/eoir/page/file/1196336/download>.

<sup>55</sup> *Id.*

<sup>56</sup> EOIR, in establishing performance metrics for Immigration Judges discussed the availability of a status docket in 2018, stating, "Eighty-five percent (85%) of all non-status detained removals cases should be completed within 60 days of filing of the Notice to Appear (NTA), reopening or recalendar of the case, remand from the Board of Immigration Appeals (BIA), or notification of detention." Memorandum from James R. McHenry III, Director, Executive Office for Immigration Review on Case Priorities and Immigration Court Performance Measures to The Office of the Chief Immigration Judge, et al (Jan. 17, 2018), <https://www.justice.gov/eoir/page/file/1026721/download>.

<sup>57</sup> *Id.*

<sup>58</sup> Notice of Proposed Rulemaking: Administrative Closure: Appellate Procedures and Decisional Finality in Immigration Proceedings, 85 Fed. Reg. 52491 (proposed Aug. 26, 2020).

<sup>59</sup> See Immigration. And Nationality Law Committee, NYCBA, *Quotas in Immigration Courts Would Be Neither Efficient Nor Just* (April 10, 2018), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/quotas-in-immigration-courts-would-be-neither-efficient-nor-just>; Lous C. LaBrecque, *Immigration Judges Not Meeting DOJ Production Goals, House Told*, *Daily Labor Report*, Bloomberg (Jan. 29, 2020), <https://news.bloomberglaw.com/daily-labor-report/immigration-judges-not-meeting-doj-production-goals-house-told>.

<sup>60</sup> See TRAC Immigration Project, *Crushing Immigration Judge Caseloads and Lengthening Hearing Wait Times* (Oct. 25, 2019), <https://trac.syr.edu/immigration/reports/579/>; American Immigration Lawyers Association, FOIA

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<sup>61</sup> TRAC Immigration Project, *The Life and Death of Administrative Closure* (Sept. 10, 2020), <https://trac.syr.edu/immigration/reports/623/>.

<sup>62</sup> See USCIS, *Refugee, Asylum and International Operations Combined Training Course: Interviewing Survivors of Torture and Other Severe Trauma* (Oct. 11, 2012), available beginning at p. 301 at [https://www.uscis.gov/sites/default/files/files/nativedocuments/Legal\\_standards\\_governing\\_Asylum\\_claims\\_and\\_issues\\_related\\_to\\_the\\_adjudication\\_of\\_children.pdf](https://www.uscis.gov/sites/default/files/files/nativedocuments/Legal_standards_governing_Asylum_claims_and_issues_related_to_the_adjudication_of_children.pdf).

<sup>63</sup> See Catholic Legal Immigr. Network, Inc., *Seeking Continuances in Immigration Court in the Wake of the Attorney General's Decision in Matter of L-A-B-R-* (Dec. 6, 2018), <https://cliniclegal.org/file-download/download/public/611>.

<sup>64</sup> U.S. Citizenship and Immigration Services, *Special Immigrant Juveniles* (last accessed July 20, 2020), available at <https://www.uscis.gov/working-united-states/sij>.

<sup>65</sup> In order to qualify for SIJS status, an applicant must demonstrate that he or she, amongst other qualifications, is “dependent on the [juvenile] court, or in the custody of a state agency or department or an individual or entity appointed by the court;” cannot be reunified with one or both parents due to abuse, abandonment, neglect, or a similar basis; and it is not in the best interest of the child to return to his or her country of nationality or last residence or that of his or her parents. *Id.*

<sup>66</sup> Following this determination, a SIJS applicant can petition for SIJS classification by filing a form I-360. If a SIJS classification is obtained, he or she may apply for register permanent residence and adjust his or her status adjustment based on his or her SIJS determination using an I-485. *Id.*

<sup>67</sup> While the Trafficking Victims Protection and Reauthorization Act provides that a “SIJ” petition pursuant to an I-360 must be adjudicated in 180 days, USCIS has declined to recognize that this constitutes a legal requirement. U.S. Citizenship and Immigration Services, Chapter 4 – Adjudication, Policy Manual Vol. 6 n. 3 (last accessed July 20, 2020), <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4#footnotelink-3>; see also, Immigration Legal Res. Ctr., *Special Immigrant Juvenile Status and Other Immigration Options for Children & Youth* 4 n. 5 (June 2018), [https://www.ilrc.org/sites/default/files/resources/sijs-5th-2018-ch\\_03.pdf](https://www.ilrc.org/sites/default/files/resources/sijs-5th-2018-ch_03.pdf); Complaint - Class Action for Injunctive and Declaratory Relief, *Moreno v. Cissna*, 2:19-cv-00321 (W.D. Wash. March 5, 2019), <https://www.nwirp.org/wp-content/uploads/2019/03/Moreno-Galvez-v-Cissna--Complaint.pdf> (Alleging that on numerous occasions, the Government had exceeded the deadlines imposed on it by Congress and, as a result, applicants had aged out of SIJS status, with the court later enjoining these deportations.)

<sup>68</sup> The timeline for an adjustment of status pursuant to an I-485 application is based on a quota controlled by the Department of Homeland Security. To apply using an I-485, an applicant's “Final Action Date” must be current. An applicant's final action date is determined by the date on which he or she submitted his or her I-360 petition. As of the July 2020 bulletin, the final action date for SIJS status adjustments, for applicants from El Salvador, Guatemala, and Honduras, was February 1, 2017. For January, February, March, and May 2020, the current date was August 2016 with the date retrogressing to July 2016 during April 2020. *Special Immigrant Juvenile Status Manual*, SAFE PASSAGE PROJECT 54 (3d ed. 2017) <https://www.safeassageproject.org/wp-content/uploads/2017/09/Safe-Passage-Project-SIJS-Manual-summer.2017.pdf>; *Adjustment of Status Filing Charts from the Visa Bulletin*, U.S. Citizenship and Immigration Services (last accessed July 20, 2020), available at <https://www.uscis.gov/visabulletininfo>.

<sup>69</sup> Status Docket Memorandum, *supra* n. 1.

<sup>70</sup> Lenni Benson & Alexandra Rizio, *EOIR Policy Memo 19-13, “Use of Status Dockets” How the Court Administration is Constraining Local Control*, Safe Passage Project (Sept. 4, 2019) (finding that the policy did left some ambiguity as to when, in the SIJS process, a status docket might be used), <https://www.safeassageproject.org/2019/09/eoir-policy-memo-19-13-use-of-status-dockets-how-the-court-administration-is-constraining-local-control/#:~:text=On%20August%2016%2C%202019%2C%20Executive,the%20use%20of%20status%20dockets.&text=The%20status%20docket%20allowed%20young,to%20become%20available%20to%20them>.

<sup>71</sup> See TRAC Immigration Project, *With the Immigration Court's Rocket Docket Many Unrepresented Families Quickly Ordered Deported* (Oct. 18, 2016), <https://trac.syr.edu/immigration/reports/441/>; Jeffrey S. Chase, *EOIR*



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*Creates More Obstacles for Families* (Dec. 13, 2018), <https://www.jeffreyschase.com/blog/2018/12/13/eoirs-creates-more-obstacles-for-families>.

<sup>72</sup> Memorandum Mary Beth Keller, Chief Immigration Judge, Executive Office for Immigration Review on Operating Policies and Procedures Memorandum 18-0 1: Change of Venue to All Immigration Judges, et al. (Jan. 17, 2018), <https://www.justice.gov/eoir/page/file/1026726/download>.

<sup>73</sup> Hamed Aleaziz, *Immigration Judges Are Railing Against A Plan To Replace Court Interpreters With Videos*, BuzzFeed (July 12, 2019), <https://www.buzzfeednews.com/article/hamedaleaziz/immigration-judges-court-interpreters-videos>.

<sup>74</sup> Laura Abel, *Language Access in Immigration Courts*, Brennan Center for Justice at New York University School of Law (2011), [https://www.brennancenter.org/sites/default/files/legacy/Justice/LangAccess/Language\\_Access\\_in\\_Immigration\\_Courts.pdf](https://www.brennancenter.org/sites/default/files/legacy/Justice/LangAccess/Language_Access_in_Immigration_Courts.pdf).

<sup>75</sup> E.g., Kate Brumback, Deepti Hajela & Amy Taxin, *AP visits immigration courts across US, finds nonstop chaos*, Associated Press (Jan. 19, 2020), <https://apnews.com/7851364613cf0afbf67cf7930949f7d3>; Camila DeChalus, *Immigration attorneys face courtroom challenges amid pandemic*, Roll Call (June 17, 2020), <https://www.rollcall.com/2020/06/17/immigration-attorneys-face-courtroom-challenges-amid-pandemic/>.

<sup>76</sup> See Meredith Hoffman, *Trump Sent Judges to the Border. Many Had Nothing to Do.*, Politico (Sept. 27, 2017), <https://www.politico.com/magazine/story/2017/09/27/trump-deportations-immigration-backlog-215649>.

<sup>77</sup> 85 Fed. Reg. 11866 at 11870 (Feb. 28, 2020).

<sup>78</sup> Notice of Proposed Rulemaking: Administrative Closure: Appellate Procedures and Decisional Finality in Immigration Proceedings, 85 Fed. Reg. 52491 (proposed Aug. 26, 2020).

<sup>79</sup> See *id.* at 52500 (proposed 8 CFR § 1003.1 (d)(7)(v)).

<sup>80</sup> *Matter of A-C-A-A-*, 28 I. & N. Dec. 84 (A.G. 2020).

<sup>81</sup> EOIR, *Current Representation Rates* (Apr. 15, 2020), <https://www.justice.gov/eoir/page/file/1062991/download>.

<sup>82</sup> Office of Public Affairs, Dep't. of Justice, Executive Office for Immigration Review Releases Court Statistics, Announces Transparency Initiative, Justice News ( May 9, 2018) <https://www.justice.gov/opa/pr/executive-office-immigration-review-releases-court-statistics-announces-transparency>.

<sup>83</sup> TRAC Immigration Project, *Incomplete and Garbled Immigration Court Data Suggest Lack of Commitment to Accuracy* (Oct. 31, 2019), <https://trac.syr.edu/immigration/reports/580/>.

<sup>84</sup> *Id.*

<sup>85</sup> TRAC Immigration Project, *EOIR's Data Release on Asylum So Deficient Public Should Not Rely on Accuracy of Court Records* (June 3, 2020), <https://trac.syr.edu/immigration/reports/611/>.

<sup>86</sup> *Id.*

<sup>87</sup> Letter from James R. McHenry III, Director, Executive Office for Immigration Review to Susan B. Long & David Burnham, TRAC Immigration Project Co-Directors (June 12, 2020) <https://trac.syr.edu/immigration/reports/614/include/EOIR.McHenry.Response.--.TRAC.Letter.Response.6.12.20.pdf>.

<sup>88</sup> TRAC Immigration Project, *After EOIR Fixes Most Egregious Data Errors, TRAC Releases New Asylum Data— But with a Warning* (Sept. 16, 2020), <https://trac.syr.edu/immigration/reports/624/>.

<sup>89</sup> Senators Call for GAO Investigation of Trump Politicization of Immigration Courts as COVID-19 Crisis Rages (Aug. 21, 2020), available at <https://www.judiciary.senate.gov/press/dem/releases/senators-call-for-gao-investigation-of-trump-politicization-of-immigration-courts-as-covid-19-crisis-rages>; Austin Kocher, *ICE Filed Over 100,000 New Cases and Clogged the Courts at the Peak of the Pandemic*, Documented (Sept. 16, 2020), <https://documentedny.com/2020/09/16/ice-filed-over-100000-new-cases-and-clogged-the-courts-in-the-peak-of-the-pandemic/>.

<sup>90</sup> E.g., DOJ EOIR (@DOJ\_EOIR), Twitter (Sept. 17, 2020, 4:28 PM), [https://twitter.com/DOJ\\_EOIR/status/1306691484142448643](https://twitter.com/DOJ_EOIR/status/1306691484142448643) (“Due to civil unrest, the New York – Broadway, New York – Federal Plaza, and New York

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– Varick Street Immigration Courts closed at 3 p.m. today.”); DOJ EOIR (@DOJ\_EOIR), Twitter (Mar. 24, 2020, 6:12 PM) (deleted) (“Effective tomorrow, the below immigration courts reopen for the limited purpose of accepting filings. All filings due during the closures and today are now due.”). *See also* Suzanne Monyak, *6 Immigration Courts Reopened For Filings Amid Pandemic*, Law360 (Mar. 25, 2020), <https://www.law360.com/articles/1256947/6-immigration-courts-reopened-for-filings-amid-pandemic>.

<sup>91</sup> U.S. Dep’t of Homeland Security, Fact Sheet: DHS Agreements with Guatemala, Honduras, and El Salvador (2019) [https://www.dhs.gov/sites/default/files/publications/19\\_1028\\_opa\\_factsheet-northern-central-america-agreements\\_v2.pdf](https://www.dhs.gov/sites/default/files/publications/19_1028_opa_factsheet-northern-central-america-agreements_v2.pdf).

<sup>92</sup> U.S. Customs and Border Protection, Migrant Protection Protocols (Jan. 28, 2019), <https://www.cbp.gov/document/guidance/migrant-protection-protocols>.

<sup>93</sup> Mica Rosenberg, Kristina Cooke, & Reade Levinson, *Hasty rollout of Trump immigration policy has 'broken' border courts*, Reuters (Sept. 10 2019), <https://www.reuters.com/article/us-usa-immigration-courts-insight/hasty-rollout-of-trump-immigration-policy-has-broken-border-courts-idUSKCN1VV115>; Krista Kshatriya & S. Deborah Kang, *Walls to Protection: The Grim Reality of Trump’s “Remain in Mexico” Policy*, U.S. Immigration Policy Center (Oct. 29, 2019), <https://usipc.ucsd.edu/publications/usipc-walls-to-protection-final.pdf>.

<sup>94</sup> According to an independent analysis of data obtained from the Executive Office for Immigration Review (the office that oversees the immigration courts), less than 5% of asylum seekers in MPP have a lawyer. Through the end of December 2019, just 2,765 people subject to MPP had secured lawyers out of 59,241 people who had been placed in court proceedings. American Immigration Council, Fact Sheet: Policies Affecting Asylum Seekers at the Border (Jan. 29, 2020), <https://www.americanimmigrationcouncil.org/research/policies-affecting-asylum-seekers-border>.

<sup>95</sup> Michelle Hackman, *U.S. Opens Immigration ‘Tent Courts’ to Public*, WSJ (Dec. 29, 2019), <https://www.wsj.com/articles/u-s-opens-immigration-tent-courts-to-public-11577620801?mod=searchresults&page=1&pos=2>.

<sup>96</sup> *See* <https://www.aila.org/advo-media/aila-policy-briefs/public-access-tent-courts-allowed-not-meaningful>.

<sup>97</sup> *See* American Immigration Lawyers Association, Policy Brief: Public Access to Tent Courts Now Allowed, but Meaningful Access Still Absent, AILA Doc. No. 20011061 (Jan. 10, 2020), <https://www.aila.org/advo-media/aila-policy-briefs/public-access-tent-courts-allowed-not-meaningful>. “Individual Merits Hearings only at the brick-and-mortar courtrooms where the judges appearing by VTC were located. However, remote observation is not an adequate substitute for access to the tent courts because observers are not able to assess how the proceedings are operating from the vantage point of the individual respondent, who is the most gravely impacted by these proceedings.” *See Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> Adolfo Flores, *Immigration “Tent Courts” Aren’t Allowing Full Access To The Public, Attorneys Say* (Jan. 13, 2020), <https://www.buzzfeednews.com/article/adolfoflores/immigration-tent-courts-arent-allowing-full-public-access>.

<sup>101</sup> INA § 208(a)(2)(A), 8 U.S.C. § 1158(a)(2)(A) (2018).

<sup>102</sup> Human Rights Watch, *Deportation with a Layover: Failure of Protection under the US-Guatemala Asylum Cooperative Agreement* (May 19, 2020), <https://www.hrw.org/report/2020/05/19/deportation-layover/failure-protection-under-us-guatemala-asylum-cooperative>.



COMMITTEE ON LEGAL AID

January 12, 2021

RE: Report and Recommendations of the Committee on Immigration Representation

The Committee on Legal Aid enthusiastically supports the recommendation to establish an independent Article I federal immigration court. The independence of such a court would safeguard against abusive immigration control policies, validate the integrity of our immigration and naturalization system, and, for the benefit of our clients, ensure that all those seeking citizenship or residency in the United States are able to do so with dignity, respect, and the support of the rule of law.

Thank you.

Very truly yours,

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Sally Curran  
Co-Chair, Committee on Legal Aid

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Adriene Holder  
Co-Chair, Committee on Legal Aid





# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item # 5

REQUESTED ACTION: Approval of the report and recommendations of the Committee on Mandated Representation.

Attached are proposed revisions to the Standards for Mandated Representation. These Standards originally were approved by the House of Delegates in 2005 and are intended to provide guidance to providers of mandated representation to ensure the provision of high-quality legal representation. Since their adoption in 2005, the standards have been amended several times; those revisions are set forth in the attached 2018 standards. The Committee on Mandated Representation has proposed several amendments for your approval at this meeting.

Also included in your materials is a letter from William J. Leahy, Director of the NYS Office of Indigent Legal Services, supporting the revisions.

The report will be presented by past committee chair Norman P. Effman.



## STANDARDS FOR MANDATED PAROLE REPRESENTATION

### I-11. Parole Matters

Zealous, effective, and quality representation of clients on parole matters (rescission and revocation hearings, as well as administrative appeals) requires, at a minimum:

- a. Researching the functions of the Board of Parole and Department of Corrections and Community Supervision, including but not limited to (i) Executive Law § 259-i; (ii) 9 NYCRR 8000, et seq.; (iii) relevant provisions of the Corrections Law and Penal Law; and (iv) determining their application to the practice of parole;
- b. Researching and applying all applicable sentencing laws;
- c. Requesting and reviewing all records available in the parole file that are relied upon by DOCCS and/or by the Board of Parole;
- d. Investigating the facts concerning the basis for rescission or revocation, including: (i) interviewing the client; (ii) seeking discovery and disclosure of the evidence, exculpatory information, and impeaching material; (iii) obtaining relevant information from other sources; (iv) interviewing witnesses to the relevant events; and (v) obtaining corroborating evidence for any relevant defenses;
- e. Investigating all relevant defenses;
- f. Counseling the client at the earliest opportunity about their constitutional or statutory rights;
- g. Obtaining at the earliest possible time all available information concerning the client's background and circumstances for the purposes of (i) arguing for revoke and restore or for alternatives to incarceration; (ii) negotiating the most favorable pre-hearing disposition possible, if such disposition is in the client's best interests; (iii) presenting mitigating evidence at the hearing if appropriate; (iv) advocating for the lowest legally permissible sanction, if that becomes necessary; and (v) avoiding, if at all possible, collateral consequences including but not limited to deportation or eviction
- h. Considering using relevant experts, such as social workers, mitigation specialists, etc., to obtain the above-referenced information or to assist counsel in representing clients;
- i. Communicating and working with attorneys representing clients on other pending matters regarding the effect of the parole matter on other pending matters and vice versa;
- j. Negotiating with the Parole Commissioners, Offender Rehabilitation Coordinators, Parole Revocation Specialists, and Administrative Law Judges regarding available dispositions of the matter, including providing documentation of mitigating information, mental health diagnoses, or

medical diagnoses relevant to a potential disposition;

k. Advising the client about (i) alternatives to incarceration; (ii) new sentence minimum and maximum dates (where concurrent or consecutive sentences are at issue); (iii) time assessments and their impact on release dates; (iv) potential defenses and their viability; (v) the strengths and weaknesses in Parole's case; (vi) plea offers; (vii) collateral consequences; (viii) the potential outcomes of a final hearing; (ix) and any other information necessary to enable the client to make appropriate decisions;

l. Assessing the client's competency and requesting a competency examination, where appropriate;

m. Preserving the client's options at all stages of the proceedings, such as (i) to seek dismissal of the warrant; (ii) to raise a defense of incompetency (where appropriate); (iii) to proceed with a hearing; (iv) to testify in one's defense; (v) to seek preclusion or suppression of evidence; (vi) to seek discovery, exculpatory, or impeaching information; and (vii) to seek an appropriate disposition consistent with the client's best interests and instructions;

n. In the event of, and before a final hearing: (i) developing a legal and factual strategy; (ii) using whatever investigative and forensic resources are appropriate; (iii) preparing for cross examination of parole witnesses and direct examination of defense witnesses; (iv) developing a foundation for the introduction of defense evidence; and (v) formulate a closing argument;

o. In the event of, and during the course of a hearing and all related proceedings: (i) making specific and timely objections where appropriate and consistent with trial strategy; (ii) ensuring that such objections are made on the record and recorded; and (iii) identifying the particular element or elements for which the evidence is insufficient when moving to dismiss at the close of Parole's case or at the close of the hearing;

p. Following a disposition adverse to the client's interests: (i) advising the client of the right to appeal and the requirement to file a notice of appeal; (ii) advising the client of the advantages and disadvantages of an appeal; and (iii) cooperating fully with appellate counsel;

q. Following loss of an administrative appeal, advising the client whether to pursue additional proceedings, such as a CPLR Article 78 proceeding or CPL Article 440 proceeding;

r. Maintaining a workload that allows counsel to provide the necessary time and attention to each case in accordance with the standards developed by the New York State Office of Indigent Legal Services.



AMENDMENTS TO NYSBA STANDARDS  
FOR PROVIDING MANDATED REPRESENTATION

Standard I-7. d. In the first sentence, replace “at all stages of” by “throughout”

Standard I-7. h. Replace by “During all proceedings: (i) make specific and timely objections where appropriate and consistent with defense strategy, including identifying the particular element or elements for which the evidence is insufficient when moving to dismiss; and (ii) ensure that such objections are on the record and recorded.”

Standard I-7. k.

Replace subsection (iii) to read as follows: “taking all available steps to keep in touch with the client until the time to file a notice of appeal passes or the prosecutor files a notice of appeal, whichever comes first; and”. Add a new subsection (iv) to read as follows: “advising the client if the time for the prosecutor to appeal has lapsed or if the prosecutor files a notice of appeal and, in the latter case, applying for the appointment of counsel if the counsel requests.”

Standard I-7. l. In the fourth line, replace “successor” by “appellate”

Standard I-10. j. Add, following the words “may actually be innocent,” the following: “or which otherwise suggests a credible claim pursuant to Article 440 of the criminal procedure law”



NEW YORK STATE BAR ASSOCIATION



**NYSBA**

## **2018 Revised Standards for Providing Mandated Representation**

Prepared by the Committee on Mandated  
Representation

Approved as Revised by the New York State  
Bar Association House of Delegates,  
November 3, 2018





## PREFACE

The 2018 Revised Standards for Providing Mandated Representation reflect a change approved by the House of Delegates of the New York State Bar Association on November 3, 2018, to Section B-1(a), which modifies the provision to provide for the pre-petition representation of parents in child welfare cases.

In 2015, changes were made to Section I-7 Criminal Matters and Section I-10 Criminal Appeals.

New subdivisions (h) and (l) were added to Section I-7, resulting in the re-lettering of former subdivisions (h)-(j) to current subdivisions (i)-(k). New subdivision (h) corrected an oversight in the original standards which failed to require trial counsel to preserve the record. New subdivision (l) codified existing Court of Appeals case law that held that the case file maintained by counsel belongs to the client and that (i) counsel has a duty to maintain the file under reasonably secure conditions for that period of time as required by law; and (ii) to promptly give the file to successor counsel upon request.

Ministerial changes made to former subdivisions I-7(i)(iv) and (j)(iii) were intended to better facilitate the appointment of appellate counsel. Previously, these provisions required only that counsel “assist” the client in applying for appellate counsel. The phrase “assisting the client” was removed from each subdivision to clarify that counsel has an affirmative duty to apply on behalf of the client for poor person relief so that appellate counsel may be assigned to represent the client either on direct appeal from a judgment of conviction or in an appeal brought by the prosecution. This change not only conformed to the Second Department’s rule (22 N.Y.C.R.R. § 671(b)(3)-(4)), but removed a substantial barrier to the appointment of appellate counsel, particularly for those individuals with limited comprehension or low literacy skills.

Three new subdivisions were added to Section I-10 Criminal Appeals. The new subdivisions (i) – (k) addressed: assigned counsel’s responsibility to the client if the case is remanded for other proceedings during or after the appeal; appellate counsel’s responsibility in the event s/he becomes aware of a credible claim of actual innocence during the course of appellate representation; and appellate counsel’s availability if asked by the trial court to represent a pro se defendant in an Article 440 or other post-conviction proceeding which would be compensated pursuant to Article 722 of the County Law. None of these issues were previously addressed in the original or Amended Standards.

Earlier revisions to the original 2005 Standards were made in 2010 and 2013. The 2010 revisions were the result of statutory changes in the Family Law eliminating the designation of “Law Guardian” and replacing it with “Attorney for the Child.” 2010 revisions also were necessitated due to the promulgation of the New York Rules of Professional Conduct, effective April 1, 2009, which replaced the former Lawyer’s Code of Professional Responsibility. Another important change which occurred was that the Office of Court Administration (“OCA”) promulgated caseload standards for attorneys representing children in Family Court proceedings.

The Standards were revised again in 2013 to incorporate references to the Conflict Defender Standards developed by the Office of Indigent Legal Services and later made applicable to all delivery systems. The Conflict Defender Standards were in large part based on the NYSBA 2010 Revised Standards. The 2013 Revised Standards adopted language from the ILS Standards where that language amplified or supplemented the language of the 2010 Revised Standards.

Consistent with each revision, the 2018 Revised Standards for Providing Mandated Representation are intended to apply in any provider system, whether in Criminal, Civil, or Family Court, and whether the mandated provider is an attorney for the defendant, respondent/petitioner, parent or child, except where explicitly limited to a particular type of provider.

The Committee on Mandated Representation is committed to undertaking periodic review of the Standards and will continue to revise same so as to reflect best practices.

The Committee is especially grateful to committee member Linda Gehron who worked tirelessly to revise Section B-1(a) during the 2018 revision so that it is consistent with standards and best practices.

## MEMBERS OF THE COMMITTEE

**Robert S. Dean, Chair**

Robert N. Convissar

Mardi E. Crawford

Clare J. Degnan

Barbara A. DiFiore

Clotelle L. Drakeford

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Norman P. Effman,  
Executive Committee Liaison

Daniel McMahon,  
NYSBA Staff Liaison

## INTRODUCTION

Both constitutional and statutory laws require New York to provide counsel to certain individuals financially unable to obtain counsel. Most “mandated representation” is provided under a representation plan devised by each county in the state, and the City of New York,<sup>1</sup> pursuant to County Law Article 18-B.

County Law Article 18-B authorizes each county to choose one or a combination of several options for providing representation to eligible clients: a public defender office; a private legal aid bureau or society or, in Family Court matters, any corporation or voluntary association or organization permitted to practice law under Judiciary Law §495(7); or the assignment of private practitioners pursuant to an assigned counsel plan. County Law §722. The statute for providing representation to juveniles in various matters provides other options, including allowing the appropriate Appellate Division department to contract with one or more qualified attorneys to act as attorney for the child or establish panels to represent children, and provides for the Office of Court Administration to enter into contracts with legal aid organizations for children’s representation. *See*, Family Court Act §243. Other statutory directives mandating representation or governing its provision include Judiciary Law §§35, 35-a and 35-b and Surrogate’s Court Procedure Act §407.

The objective of any representation plan should be to ensure high quality legal services for every individual represented under the plan. A county or other governmental entity is entitled to consider costs as a relevant factor in devising its representation plan, but it cannot ignore its constitutional, statutory and moral duty to provide quality counsel to those who cannot afford representation.

Although the County Law currently allows each county to devise its own configuration for an adult provider system, in a great majority of cases, a proper representation plan will establish a mixed representation system that integrates the use of institutional providers and assigned counsel. Such mixed representation systems can combine the advantages of institutional providers with the advantages of assigned counsel plans to engage a broad segment of the bar in achieving the objective of the plan.

The following standards are designed for those devising, reviewing and working within representation plans to provide mandated representation. Unless a specific application or limitation is noted, these standards apply to all mandated representation, except capital defense, which has special requirements. The standards are designed to apply in any provider system, except where explicitly limited to a particular type of provider. The standards are designed to apply to representation by providers of mandated representation in existing systems and in systems developed in the future. It is the intention of the drafters that these standards be viewed and implemented as a whole. These standards do not define the ideal system or attempt to establish the norm. Rather they establish the minimum requirements for a mandated representation system.

The standards are also intended to apply to Family Court cases in which counsel is assigned to represent an adult or to represent a child. In Family Court proceedings, proceedings which differ significantly from criminal proceedings, such as child protective, child custody and juvenile delinquency, the duration of representation may be extremely lengthy, spanning several years including permanency hearings, modifications, and extensions of placement or supervision. In addition, the focus frequently relates to family treatment and other support services, the proceedings are divided into discrete fact-finding and dispositional phases, jury trials are unavailable, and, except in juvenile delinquency and persons in need of supervision cases, a civil standard of proof is applied.

Historically, the largest impediment to the provision of quality mandated representation is under-funding of the provider. It is vital that funding sources provide funding adequate to enable providers to meet or exceed the requirements of these standards.

## DEFINITIONS

**Mandated Representation** - Legal representation of any person financially unable to obtain counsel without substantial hardship who is (1) accused of an offense punishable by incarceration; (2) entitled to or is afforded representation under §249, §262 or §1120 of the Family Court Act; Judiciary Law §35 including child custody and habeas corpus cases; Article 6-C of the Correction Law; §407 of the Surrogate’s Court Procedure Act; §259-i of the Executive Law; or §717 of the County Law; or (3) otherwise entitled to counsel pursuant to constitutional, statutory or other authority.

**Providers of Mandated Representation** - Attorneys who, or organizations of any form, that provide mandated representation, including, but not limited to, individual attorneys; public defender offices; legal aid bureaus or societies; corporations, voluntary associations or organizations permitted to practice law under the authority of Judiciary Law §495(7); and assigned counsel plans. The term “providers of mandated representation” includes both the individual attorneys and whatever entity employs those attorneys or by which those attorneys are assigned to provide mandated representation.

**Institutional Providers of Mandated Representation** - Providers of mandated representation identified in County Law §722(1) and (2), including public defenders; legal aid bureaus or societies; any corporation, voluntary association or organization permitted to practice law under the authority of Judiciary Law §495(7); and any legal aid organization, attorney or attorneys with whom an Appellate Division, The Office of Court Administration or any other governmental entity has contracted for the provision of mandated representation under the authority of Family Court Act §243. The term “institutional provider of mandated representation” is used to distinguish the institutions from the individual attorneys working for the institutional providers. An assigned counsel plan is not an “institutional provider of mandated representation.”

**Assigned Counsel Plan** - A plan for the assignment of private attorneys pursuant to County Law §722(3).

**Assigned Counsel** - Private attorneys assigned to provide mandated representation pursuant to County Law §722(3).

1. Hereinafter the term “counties” includes the City of New York.



## **A. INDEPENDENCE**

**A-1.** Providers of mandated representation shall be guided at all times by a commitment to quality representation of all clients and the integrity of the attorney-client relationship. The function of providing mandated representation, including the selection, funding and payment of counsel, shall be independent. In the performance of their legal duties, providers of mandated representation should therefore be free from political influence or any influences other than the interests of the client that erode the ability to provide quality representation,<sup>2</sup> and should be subject to judicial supervision only in the same manner and to the same extent as all other practicing lawyers. Each provider of mandated representation shall have an independent board or other entity to protect professional independence.

**A-2.** The selection of providers of mandated representation, including the head of any institutional provider of mandated representation, shall be made solely on the basis of merit.

**A-3.** The selection of the individual attorney as part of an assigned counsel plan shall be made by someone outside the court system in order to ensure the independence of counsel. Assignments should be made on a rotational basis from a list created pursuant to a plan established under County Law Article 18-B and shall be motivated by the goal of providing high quality mandated representation. Where mandated representation is to be provided by assigned counsel, the selection of the individual attorney to whom cases are to be assigned shall not be made by a judge or court official except in an emergency or in exceptional circumstances.

## **B. EARLY ENTRY OF REPRESENTATION**

**B-1.** Effective representation should be available for every eligible person whenever counsel is requested during government investigation or when the individual is in custody. Provision of counsel shall not be delayed while a person's eligibility for mandated representation is being determined or verified.

**B-1(a).** Effective representation includes representation during both the pre- and post-petition stages of a Family Court case, including, but not limited to representation in emergency removal hearings and advocacy for the provision of social work, counseling, mental health, and other services.

**B-1(b).** Counsel must be present at arraignment or the first appearance in court in criminal cases.<sup>3</sup>

**B-2.** Eligible persons shall have counsel available for any court appearance.

**B-3.** Counsel shall be available when a person reasonably believes that a process will commence that could result in a proceeding where representation is mandated.

**B-4.** Systematic procedures shall be implemented to ensure that prompt mandated representation is available to all eligible persons, particularly those held in detention facilities and where a child has been removed by a governmental agency from the person's home.

## **C. ELIGIBILITY OF CLIENT**

**C-1.** Any person who is financially unable to obtain counsel without substantial hardship or entitled to assigned counsel regardless of financial circumstances shall be eligible to receive mandated representation in all situations in which a constitutional, statutory or other right to counsel exists.

**C-2.** Mandated representation shall not be denied because of a person's ability to pay part of the cost of representation, because friends or relatives have resources to retain counsel or because bond has been or can be posted.

**C-3.** A judge shall decide a person's initial eligibility and continuing eligibility for mandated representation.

**C-4.** Rules, regulations and procedures concerning the determination of initial eligibility and continuing eligibility for mandated representation shall be designed so as to protect the client's privacy and constitutional rights and to not interfere with the attorney's relationship with his or her client.

**C-5.** Provision of counsel shall not be delayed while a person's eligibility for mandated representation is being determined or verified.

**C-6.** Any attempts to obtain partial payment from any person for the costs of mandated representation or associated services shall be made in accordance with County Law §722-d.

2. ILS 1

3. ILS 5a



## **D. PARTIAL PAYMENT**

**D-1.** No person shall be subject to a partial payment order under County Law §722-d<sup>4</sup>, unless that person was informed, prior to the offer of mandated representation, of any possible obligation to make any payment, as well as the standards that permit the court to order any such payment. No advice about partial payment shall be given in a way that discourages exercise of the right to counsel.

**D-2.** Partial payment shall not be imposed if doing so would cause financial hardship to the person or the person's dependents and unless satisfactory safeguards are provided.

**D-3.** Where partial payment pursuant to County Law §722-d is appropriate, the court shall determine the amount to be paid and such payment shall be made directly to the general fund of the county or other appropriate funding agency.

**D-4.** The amount of payment to be made shall be decided objectively on a case-by-case basis in accordance with predetermined standards. The predetermined standards shall take into account the cost of living in the particular community in which the person provided mandated representation resides and in which the case is pending and shall also consider all aspects of the person's family circumstances, including but not limited to number of dependents, employment status, housing and health care costs and indebtedness. The standards shall be adjusted periodically to reflect increases in the cost of living. At a minimum, the person seeking counsel shall be given an opportunity to be heard and to present information to the court concerning whether the person can afford the partial payment.

**D-5.** No provider of mandated representation shall be responsible for collection of payment.

**D-6.** Payment toward the cost of representation shall never be a factor in the determination of bail and shall never be made a condition of probation or other sentence.

**D-7.** Failure to make any ordered payment shall not result in the denial of counsel at any stage of proceedings.

**D-8.** Partial payment shall only be ordered based on existing circumstances during the pendency of the matter for which mandated representation has been provided and shall not be ordered based on future ability to pay.

## **E. QUALIFICATION OF COUNSEL**

**E-1.** Attorneys who provide mandated representation shall have sufficient qualifications and experience to enable them to render quality representation to a client in each particular case. Providers of mandated representation shall never allow an attorney to accept a case if that attorney lacks the ability,<sup>5</sup> experience or training to handle it competently, unless the attorney is associated with another attorney on the case who does possess the necessary experience and training.

**E-2.** Institutional providers of mandated representation and assigned counsel plans shall have written minimum qualifications for attorneys who provide mandated representation. If mandated representation is to be provided in more than one category of cases, then, to the extent appropriate, there shall be different minimum qualifications for each category and, if appropriate, for different levels of cases within each category.

## **F. TRAINING**

**F-1.** All attorneys and staff who provide mandated representation shall be provided with entry-level and<sup>6</sup> continuing legal education and training sufficient to ensure that their skills and knowledge of the substantive and procedural law and ethical rules relevant to the area of law in which they are or will be practicing are sufficient to enable them to provide quality representation.

**F-2.** Continuing legal education and training programs shall be made available and affordable for attorneys and staff providing mandated representation, and public funds shall be provided to enable all attorneys and staff to attend such programs.

**F-3.** Attorneys who provide mandated representation shall allocate a significant portion of their annual mandatory continuing legal education credit requirement toward courses directly related to the subject matter of the mandated representation they provide.

## **G. WORKLOADS**

**G-1.** The objective of providing high quality mandated representation to all eligible persons cannot be accomplished by even the ablest and most industrious attorneys in the face of excessive workloads. To permit counsel to satisfy their ethical obligations to their clients, every institutional provider of mandated representation and every assigned counsel plan shall establish workload limits for individual attorneys. Workloads shall be at a level to allow counsel to meet the Performance Standards set forth herein and in Family

4. This section of the County Law reads as follows:

*Whenever it appears that the defendant is financially able to obtain counsel or to make partial payment for the representation or other services, counsel may report this fact to the court and the court may terminate the assignment of counsel or authorize payment, as the interests of justice may dictate, to the public defender, private legal aid bureau or society, private attorney, or otherwise.*

*Though the statute suggests that "counsel may report" information about the defendant's financial ability to the court, the Committee notes that the Rules of Professional Conduct prohibit an attorney from revealing "confidential information"; see Rule 1.6(a). Such confidences or secrets could include information regarding the client's financial status, which therefore cannot be revealed by a lawyer unless the client consents or some other exception exists under the Rules of Professional Conduct: Rules 1.6(a), 1.6(b), 3.3(c).*

5. ILS 7a

6. ILS 7d

Court cases shall comply with the Office of Court Administration workload standards for attorneys for the child (*see*, §127.5 of the rules of the Chief Administrator of the Courts) and for attorneys in criminal cases in New York City (*see*, §127.7 of the rules of the Chief Administrator of the Courts).

**G-2.** Where OCA has not promulgated a workload standard, each institutional provider and assigned counsel plan shall develop local numerical workload standards, taking into consideration different procedures, policies and circumstances in each locality. Among the factors that shall be considered in establishing maximum workloads are (a) the types of cases being handled; (b) the qualifications and experience of the attorney; (c) the workload and resources of the prosecutor or other attorney(s) handling such cases for the government; (d) the distance between court(s) and attorney offices; (e) the time needed to interview clients and witnesses, taking into consideration the travel time and the location of confidential interview facilities; (f) any other factors relevant to the local practice or the types of cases being handled; and (g) existing national and other recognized workload standards.

In no event, however, shall the local workload standards exceed the national workload standards established in criminal cases by the National Advisory Commission on Criminal Justice Standards and Goals (Task Force on Courts, 1973) Standard 13.12, which sets forth the following maximum cases per year: 150 felonies or 400 misdemeanors or 200 mental health matters or 25 appellate assignments.<sup>7</sup>

In cases other than criminal and juvenile delinquency proceedings, each provider of mandated representation is responsible to set its own numerical workload limits based on the factors noted above.

Each provider's workload must be reviewed on a regular basis to ensure that the provider is not responsible for more cases than it can reasonably be expected to handle effectively, bearing in mind the factors set forth above.

**G-3.** Each provider's workload should be continuously monitored, assessed and predicted so that whenever possible, excessive workload problems can be anticipated and preventive action taken.

**G-4.** Whenever the workload of a provider of mandated representation exceeds maximum workload standards, it is the obligation of the provider to take appropriate steps, which may include, but are not limited to (a) declining additional cases; (b) seeking leave to withdraw from existing cases; (c) seeking additional funding to hire additional attorneys and/or support staff; (d) actively seeking the support of the judiciary, the private bar and the community in the resolution of the workload problem; and/or (e) seeking assistance from an appropriate state or national organization as a means of independently documenting the problem.

**G-5.** Courts shall not require providers of mandated representation to accept excessive workloads and shall take all steps necessary to ensure that excessive workloads are not imposed.

**G-6.** Government funders shall not require providers of mandated representation to accept excessive workloads and shall take all steps necessary to ensure that excessive workloads are not imposed.

## **H. SUPPORT SERVICES/RESOURCES**

**H-1.** The institutional provider of mandated representation shall provide counsel with the investigatory, expert, and other support services necessary to provide quality legal representation, including, but not limited to, social work, mental health and other relevant social services. The institutional service shall also provide secretarial, interpretation and other support services and facilities necessary to provide quality legal representation.

**H-2.** The facilities provided to counsel by institutional providers of mandated representation shall include professional quality office facilities that are comparable to a similarly sized private law firm, such as adequate working space for each attorney and staff member, private office and conference room space in which attorneys can meet with clients, sufficient library facilities and/or access to online legal research materials, and computers and other necessary technical and communication equipment.

**H-3.** The support services and facilities provided to counsel at institutional providers of mandated representation shall be at least comparable to the support services and facilities provided to attorneys for the government.

**H-4.** The administrative office of an assigned counsel plan shall be equipped with suitable staff, space, equipment and supplies to carry out its duties under County Law §722(3).

**H-5.** Assigned counsel plans shall ensure that assigned counsel have the investigatory, expert, and other support services, including, but not limited to, social work, mental health and other relevant social services, and facilities necessary to provide quality legal representation. Such services and facilities shall include access to meeting facilities that ensure confidentiality, sufficient library facilities and/or online legal research materials, any necessary foreign language interpretation services, and sufficient technical and communications equipment and means, including a means for clients to contact the attorney telephonically without incurring long-distance charges. This does not mean that the assigned counsel plan itself is obligated to provide these support services and/or facilities.

**H-6.** Because persons eligible for mandated representation have the right to all appropriate investigatory and expert services, courts should routinely grant requests for such services made by assigned counsel. In Family Court expert services, including social worker, family treatment, and forensics, are often crucial at the outset and should be requested by counsel prior to fact finding. In Family Court, attorneys should also ensure to the extent feasible that social worker and mental health personnel possess adequate qualifications, experience and training.

<sup>7</sup> These numerical standards do not apply to the defense of capital cases, which are unique. *See, Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation (Judicial Conference of the United States, 1998); see also, ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (rev. 2003).*

**H-7.** Institutional providers of mandated representation and assigned counsel plans shall establish means by which incarcerated clients can have confidential communication with their counsel, telephonically or otherwise. Correctional and detention facilities shall cooperate in establishing such means.

**H-8.** Support services and resources shall be available to all clients and used as needed and shall not be restricted by type or level of case.<sup>8</sup>

**H-9.** Providers of mandated representation shall establish and maintain data collection and evaluation systems.<sup>9</sup>

## **I. PERFORMANCE**

**I-1.** An attorney can provide zealous, effective and high quality representation only if the attorney has the time, resources, knowledge and expertise that a conscientious and professional attorney familiar with the particulars of the case would consider necessary.

**I-2.** If at any time during the representation the attorney concludes that he or she is not able to provide zealous, effective and high quality representation, the attorney must immediately seek to withdraw from the case, unless the attorney can associate with another attorney and thereby be able to provide zealous, effective and high quality representation.

The following are basic Performance Standards and are not intended to be exhaustive.

### **General Performance Standards**

**I-3.** An attorney must (a) interview the client as soon as possible, and in a setting in which client confidentiality can be maintained and an attorney-client relationship can be established;<sup>10</sup> (b) communicate with his or her client on a regular basis during the course of representation, preferably in a private face-to-face discussion; (c) communicate with family or friends of the client, to the extent that the client waives the attorney-client privilege as to such communication; (d) communicate with professionals and service providers relevant to the case, including, but not limited to, physicians, mental health workers and caseworkers; (e) inform the client on a regular basis of the progress of the case; (f) ensure that the client sees copies of all documents prepared or received by the attorney and provide copies of such documents where appropriate;<sup>11</sup> and (g) provide the client with the opportunity to make an intelligent and well-informed decision in those instances when a decision is to be made by the client (e.g., whether to plead guilty or enter an admission, whether to be tried by a jury or judge and whether to testify).

**I-4.** An attorney shall abide by the Rules of Professional Conduct (Part 1200 of Title 22 of the New York Codes, Rules and Regulations), and in particular those Rules concerning conflicts of interest (Rules 1.7, 1.8, 1.9, 1.10, 1.11).

**I-5.** Under an assigned counsel plan, the assignment procedures must ensure that the same counsel will represent the client continuously from the inception of the representation until the initiation of the appellate proceeding, if any, unless a court determines that (a) there is a conflict of interest; (b) there is a breakdown in the attorney-client relationship that interferes with counsel's ability to provide zealous, effective and high quality representation; or (c) some unforeseen circumstance, such as illness, prevents counsel from continuing to provide zealous, effective and high quality representation. Similarly, counsel assigned at the appellate, post-conviction or post-disposition stage shall provide continuity of representation during that proceeding.

**I-6.** When a client has multiple pending proceedings, the attorney on any one of them shall immediately and thereafter regularly communicate with the attorney(s) on the other matter(s), to the extent that the client waives the attorney-client privilege as to such communication. If feasible, and with the approval of the client, the attorneys shall make every effort to transfer the representation on all pending matters to a single attorney.

### **Specific Types of Matters**

#### **I-7. Criminal Matters**

No attorney shall accept a criminal case unless that attorney can provide, and is confident that he or she can provide, zealous, effective and high quality representation. Such representation at the trial court stage means, at a minimum:

a. Obtaining at the earliest possible time<sup>12</sup> all available information concerning the client's background and circumstances for purposes of (i) obtaining the client's pretrial release on the most favorable terms possible; (ii) negotiating the most favorable pretrial disposition possible, if such a disposition is in the client's interests, including dismissal or pretrial diversion;<sup>13</sup> (iii) presenting character evidence at trial if appropriate; (iv) advocating for the lowest legally permissible sentence, if that becomes necessary; and (v) avoiding, if at all possible, collateral consequences including but not limited to deportation or eviction;

b. Investigating the facts concerning the offense charged, including: (i) interviewing the client; (ii) aggressively<sup>14</sup> seeking discovery and disclosure of the People's evidence, exculpatory information and impeaching material; (iii) obtaining relevant information from other sources; (iv) interviewing witnesses to the relevant events; and (v) obtaining corroborating evidence for any relevant defenses;

8. ILS 3,4

9. ILS 10a

10. ILS 5b

11. ILS 6

12. ILS 5

13. ILS 5d

14. ILS 5e

c. Researching the law, including, as appropriate, state statutory and constitutional law and federal constitutional law relevant to (i) the offenses charged (and any lesser included offenses); (ii) any possible defenses; (iii) relevant sentencing provisions; and (iv) other matters such as issues concerning the accusatory instrument, the admissibility of evidence, the prosecutor's obligations, speedy trial rights and any other relevant federal or state, constitutional, common law or statutory issue;

d. Preserving the client's options at all stages of the proceedings, such as (i) to seek a jury trial; (ii) to proffer a defense; (iii) to seek dismissal of the indictment; (iv) to seek dismissal of the charges for denial of statutory or constitutional speedy trial rights; (v) to seek preclusion or suppression of evidence; (vi) to seek discovery, exculpatory and impeaching information; and (vii) to seek an appropriate disposition consistent with the client's best interests and instructions;

e. Providing the client with full information concerning such matters as (i) potential defenses and their viability; (ii) the weaknesses and strengths in the People's case; (iii) plea offers; (iv) potential sentence exposure under all possible eventualities, including the relationship to any other sentences, potential release dates and available correctional programs; and (v) immigration, motor vehicle licensing and other collateral consequences under all possible eventualities;

f. Filing prompt and<sup>15</sup> appropriate pretrial motions for, among other things, (i) dismissal of the charging instrument for facial or evidentiary insufficiency; (ii) joinder or severance; (iii) dismissal of the charges for denial of statutory or constitutional speedy trial rights; (iv) suppression or preclusion of evidence; and (v) additional resources not available due to the client's financial circumstances;

g. In the event of, and in advance of trial: (i) developing a legal and factual strategy, using whatever investigative and forensic resources are appropriate; (ii) preparing for cross examination of the People's witnesses and direct examination of defense witnesses; (iii) developing a foundation for the introduction of defense evidence; (iv) formulating an opening statement; and (v) drafting requests for jury instructions;

h. In the event of, and during the course of trial and all related proceedings: (i) make specific and timely objections where appropriate and consistent with trial strategy; (ii) ensure that such objections are made on the record and recorded; and (iii) identify the particular element or elements for which the evidence is insufficient when moving to dismiss at the close of the prosecution's case.

i. In the event of, and in advance of, sentence: (i) gathering favorable information and, where appropriate, presenting that information in written form; (ii) reviewing the probation department report to ensure that it is accurate and taking whatever steps are necessary to correct errors; and (iii) utilizing forensic resources if appropriate;

j. Following a final disposition other than a dismissal or acquittal: (i) advising the client of the right to appeal and the requirement to file a notice of appeal; (ii) filing a notice of appeal on the client's behalf if the client requests; (iii) advising the client of the right to seek appointment of counsel and a free copy of the transcript; (iv) applying for appointment of counsel and a free copy of the transcript if the client requests; and (v) cooperating fully with appellate counsel;

k. Following a disposition from which the prosecutor has a right to appeal: (i) advising the client of the possibility that the prosecutor will pursue an appeal; (ii) advising the client of the client's right to appointment of counsel should the prosecutor appeal; and (iii) applying for appointment of counsel if the client requests; and

l. The case file maintained by counsel belongs to the client. Following any disposition: (i) retaining the file under as secure conditions as reasonably feasible for that period of time as required by law, unless directed otherwise; and (iii) promptly furnishing a client's file to successor counsel upon counsel's request, except for confidential information unless the client gives permission.

#### **I-8. Juvenile Delinquency and Juvenile Offender Matters**

a. Attorneys representing children in Family Court shall investigate, research and prepare in the same manner and using the same tools as attorneys in criminal cases. Thus, to the extent consistent with these types of matters, the Performance Standards contained in §I-7, *supra*, apply here. Counsel in Family Court shall also comply with the New York State Bar Association standards for representing children in the relevant proceeding.

b. The attorney shall take into consideration the age of the client and any attendant emotional and psychological needs of the client. Where appropriate, the attorney shall employ the services of a forensic social worker or other qualified professionals.

c. Considering the flexibility available to judges in entering dispositional orders in cases involving children, attorneys representing them shall be especially vigorous in advocating for the least restrictive alternative, including dismissal.

#### **I-9. Abuse and Neglect Matters**

a. Attorneys representing adults in abuse and neglect cases shall investigate, research and prepare in the same manner and using the same tools as attorneys in criminal cases. Thus, to the extent consistent with these types of matters, the Performance Standards contained within §I-7, *supra*, apply here.

b. The attorney shall take into consideration any attendant emotional and psychological needs of the client. Where appropriate, the attorney shall employ the services of a forensic social worker or other qualified professionals.

c. The attorney shall be aware of the possibility of criminal prosecution based upon the same conduct at issue and plan strategy and advise the client accordingly.

d. When an attorney has been appointed to represent children of the client, the attorney shall advise the client regarding the role of the child's attorney and, when appropriate, shall prepare the client for contact or interviews with the child's attorney.

e. Attorneys shall counsel clients regarding all of the potential consequences of any particular resolution of the matter before clients are asked to make decisions regarding potential dispositions.

**I-10. Appeals**

Zealous, effective and high quality representation at the appellate stage means, at a minimum:

- a. Obtaining and reviewing all relevant portions of the record;
- b. Researching the applicable law, including substantive law, procedural law and rules regarding the appeal;
- c. Strategically selecting among the issues presented by the facts, considering the strength of authority, the facts, and the standard and scope of review. The selection of issues must be made with an awareness of the consequences for later post-conviction or post-disposition proceedings;
- d. Preparing a statement of facts that accurately sets out the significant and relevant facts, with supporting record citations;
- e. Presenting legal arguments that apply the most relevant and persuasive law to the facts of the case;
- f. Writing in a clear, cogent and persuasive manner;
- g. Requesting oral argument when such argument would be in the client's interests and, when oral argument is granted, being thoroughly prepared and presenting the argument in a clear, cogent and persuasive manner;
- h. Preparing and filing an application for leave to appeal to the New York State Court of Appeals should the client not prevail on the appeal to the intermediate appellate court, and preparing and filing an opposition to the prosecutor's application for leave to appeal to the Court of Appeals, should the client prevail on the appeal to the intermediate appellate court;
- i. In the event of a favorable determination of the appeal that results in a remand to the trial court for further proceedings, ensuring that appropriate action is taken in that court.
- j. Where, during the course of appellate representation, new and material evidence comes to light which suggests that the defendant may actually be innocent, undertaking reasonable efforts to investigate the viability of such a claim, and if warranted either raising such a claim or else attempting to secure other representation of the defendant to pursue such a claim;
- k. Making oneself available to the trial courts for assignment pursuant to Article 722 to pro se Article 440 or other pro se post-conviction motions, where the court believes counsel should be assigned, if such representation would be compensated pursuant to Article 722; and
- l. In the event of affirmance of an unfavorable intermediate appellate disposition, reversal of a favorable intermediate appellate disposition or denial of leave to the Court of Appeals, advising the client of (i) the right to petition the United States Supreme Court for a writ of certiorari and the procedures by which the client may do so; (ii) the circumstances under which the client may file a state court application for post-conviction or post-disposition relief; and (iii) the circumstances under which the client may file a federal petition for a writ of habeas corpus, including the time limitations and the requirements of preservation and exhaustion.

## **J. QUALITY ASSURANCE**

- J-1.** Institutional providers of mandated representation shall provide both professional and support staff with meaningful periodic and ongoing evaluation of their work according to objective criteria. Institutional providers of mandated representation shall establish objective criteria to be used in determining whether they are providing quality representation. Such objective criteria shall include, but are not limited to, the Performance Standards contained herein.
- J-2.** Discipline or discharge should be options where staff performance evaluations indicate a failure to meet the institutional provider's standards of quality representation.
- J-3.** Institutional providers of mandated representation shall develop procedures for tracking and managing individual cases to ensure that performance standards are met at all stages of proceedings.
- J-4.** Institutional providers of mandated representation shall establish procedures for the receipt, investigation and resolution of comments and complaints from clients and the client community.<sup>16</sup> All staff must be informed of and required to comply with such procedures.
- J-5.** Assigned counsel plans shall provide assigned counsel with meaningful, periodic and ongoing evaluation of their work according to objective criteria. The standards against which an assigned counsel's performance is measured should be those of a skilled, knowledgeable and conscientious practitioner in the same field. An assigned counsel plan's objective criteria shall be publicized and shall include, but not be limited to, the Performance Standards contained herein.
- J-6.** Assigned counsel plans shall establish a system for the periodic and ongoing evaluation of assigned counsel performance according to objective criteria. Assigned counsel plans shall establish policies for the imposition of penalties, including removal from the roster of counsel eligible for assignment to cases, when counsel fails to provide quality representation according to these objective criteria.
- J-7.** Assigned counsel plans shall establish procedures for the receipt, investigation and resolution of client complaints. Assigned counsel shall be informed of, and be required to comply with, such procedures.
- J-8.** An independent monitoring and enforcement mechanism shall be established for the evaluation of providers of mandated representation. This mechanism shall ensure that all providers of mandated representation meet the standards of quality representation contained herein.



**J-9.** All attorneys providing mandated representation, regardless of whether pursuant to an assigned counsel plan, a public defender office, a legal aid bureau or society or any other institutional or associational structure, shall keep records of all time spent on the representation of each individual client, indicating the duration and nature of the work done and the dates on which the work was performed.

## **K. COMPENSATION**

**K-1.** There shall be parity between the compensation provided to counsel who provide mandated representation and the compensation provided to attorneys for the government working on the same matters.

**K-2.** Contracts with institutional providers of mandated representation shall require that there be parity between the compensation paid to their attorneys and other staff and to attorneys and other staff performing comparable duties for the government on the same matters.

**K-3.** Assigned counsel shall receive prompt compensation at a reasonable hourly rate sufficient to cover their actual overhead costs and expenses and to provide them in addition with a reasonable fee.

**K-4.** No distinction shall be made between the rates paid to assigned counsel for work performed in court and work performed out of court.

**K-5.** The rates of compensation paid to assigned counsel shall be reviewed on an annual basis to ensure their adequacy.

**K-6.** Assigned counsel shall be compensated for all hours necessary to provide quality legal representation, including work done post-disposition.

**K-7.** Assigned counsel shall be promptly reimbursed for all of their reasonable out-of-pocket expenses.

**K-8.** Under no circumstances may any attorney who has represented a person pursuant to assignment to provide mandated legal representation accept any payment whatsoever on behalf of the client in connection with the matter that is the subject of the assignment.

**K-9.** Assigned counsel plans shall have policies allowing payment of interim vouchers for fees and expenses and payment of supplemental vouchers for post-disposition work.

**K-10.** Where an assigned counsel's request for compensation is reduced in any respect, counsel must be afforded a meaningful opportunity to contest said reduction, including the right to be heard and present relevant information and argument supporting the request. A reduction shall be made and sustained only where the request clearly overstates the amount of hours necessary to provide quality legal representation or the expenses incurred in the particular case.





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William J. Leahy  
Director

Patricia J. Warth  
Counsel

**Improving the Quality of Mandated Representation Throughout the State of New York**

January 19, 2021

*Via email: [kbaxter@nysba.org](mailto:kbaxter@nysba.org)*

Ms. Kathleen Baxter, General Counsel  
New York State Bar Association  
1 Elk Street  
Albany, NY 12207

**Re: Amendments to Mandated Representation Standards**

Dear Ms. Baxter:

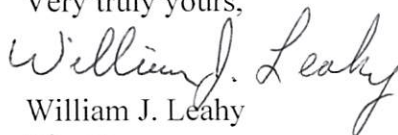
The New York State Office of Indigent Legal Services supports the amendments to the NYSBA 2018 Revised Standards for Providing Mandated Representation, as proposed by the NYSBA Committee on Mandated Representation, and to be reviewed by the NYSBA Executive Committee on January 29 and presented to the House of Delegates on January 30. The NYSBA Standards are an invaluable set of performance guidelines which have inspired some of our own agency's standards for attorneys providing mandated representation.

The substantive proposed amendments would provide important expansions and/or clarifications regarding: (A) the duty of a criminal defendant's trial counsel to protect the rights of the client post-disposition (Standard I-7 [k]); and (B) the duty of appellate counsel to investigate when new evidence suggests a credible CPL Article 440 claim (Standard I-10 [j]). A proposed change to Standard I-7 (l) would replace "successor" with "appellate" in subsection (iii). We note that subdivision (l) contains only subsections (i) and (iii), no subsection (ii).

Further, a proposed section I-11 would be added to Part I, Performance Standards, and would provide clear and comprehensive guidance for attorneys providing representation in parole matters, including rescission and revocation hearings and administrative appeals. This proposed new section would fill a gap in existing performance standards, since currently there are no statewide standards in New York for public defenders and assigned counsel providing parole representation.

Thank you for considering these comments.

Very truly yours,



William J. Leahy  
Director





# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item # 7

REQUESTED ACTION: None, as the report is informational in nature.

The Committee on Communications and Publications has responsibility for the development and production of NYSBA publications and its overall communications with members, including the *State Bar Journal*, *State Bar News*, section publications and digital content. Attached is an informational report outlining the committee's activities and goals for 2021. These goals are as follows:

- Examine ways to place NYSBA communications more prominently on the homepage of the NYSBA website.
- Explore partnering and collaborating with the NYSBA sections to encourage an increased presence from the sections on social media and in print and online.
- Update the NYSBA social media policy every couple of years and ensure that the policy has been widely distributed.

The report will be presented by Prof. Michael L. Fox, chair of the Committee on Communications and Publications.





NEW YORK STATE  
BAR ASSOCIATION

# 2020 Update by the NYSBA Communications and Publications Committee

## Committee on Communications and Publications

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Assistant Professor and Pre-Law Advisor  
Mount Saint Mary College, School of Business

Kelly L. McNamee, Esq., Vice Chair  
Greenberg Traurig LLP

Prof. Hannah R. Arterian  
Syracuse University College of Law

Marvin N. Bagwell, Esq.  
Old Republic National Title Insurance Company

Jacob Baldinger, Esq.  
Weiss And Arons, LLP

Brian J. Barney, Esq.  
Barney & Affronti, LLP

Mark Arthur Berman, Esq.  
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New York State Court of Appeals

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Prof. Michael J. Hutter, Jr.  
Albany Law School

Hon. Barry Kamins  
Aidala, Bertuna & Kamins P.C.

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Hinman Straub, P.C.

Paul R. Kietzman, Esq.  
Barclay Damon LLP

Daniel J. Kornstein, Esq.  
Emery Celli Brinckerhoff & Abady LLP

Ronald J. Levine, Esq.  
Herrick Feinstein LLP

Peter H. Levy, Esq.

Julia J. Martin, Esq.  
Bousquet Holstein PLLC

David P. Miranda, Esq.  
Heslin Rothenberg Farley & Mesiti, PC

Gary R. Mund, Esq.

Marian C. Rice, Esq.  
L'Abbate Balkan Colavita & Contini, LLP

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Pamela McDevitt, Esq.  
Executive Director  
New York State Bar Association

Daniel J. McMahon, Esq.  
Director of Publications  
New York State Bar Association

Susan DeSantis  
Chief Communications Strategist  
New York State Bar Association

## **Committee on Communications and Publications**

### **Mission Statement**

The mission of the Committee on Communications and Publications is to oversee the development and production of all New York State Bar Association publications and other methods by which the State Bar communicates with its members, including, but not limited to, the *Journal*, the *State Bar News*, Section and Committee publications and communications, and digital content. The Committee is tasked with reviewing and evaluating all State Bar publications and will, when appropriate, recommend revisions, updates and/or changes needed to redesign, reshape or redirect State Bar publications and communication efforts. The Committee shall provide suggestions to State Bar staff and editors concerning format, schedule, market, advertisers/advertising, and distribution of all State Bar publications.

The Committee also will stay abreast of members' needs and interests, technological advancements, production costs, distribution channels, and in an effort to maximize the value of content for State Bar members and strengthen NYSBA's brand within the legal community.

In conducting its work, the Committee shall consult with and engage State Bar leaders and other entities and individuals, including the NYSBA President, Executive Committee, House of Delegates, Membership Committee, Section and Committee Chairs, and others with an interest in the Committee's mission and activities.

### **2020 Update of the Communications Department**

The Communications Department has undergone a transformation over the last three years to keep up with the constantly changing media landscape.

Our results have been noted with press coverage in The New York Times, Wall Street Journal, NY Daily News, CNN, and Fox News.

We have largely moved from stagnant monthly/bimonthly print publications to communicate with members to more dynamic, digital content delivered in real time.

We are one of the most successful bar associations on social media in terms of followers and member engagement.

Throughout this report, you will see how our department functions and we will examine specific areas and projects of our department.

### **Structure of Our Department**

Chief Communications Strategist Susan DeSantis leads the department staff of Content and Communications Specialist Brendan Kennedy, Senior Writer Christian Nolan and Social Media Strategist Brandon Vogel.



## **How the Communications Department Works**

### **What we do everyday**

**We post new stories on the homepage.** These stories are written by our staff writers, freelancers, and members. They are posted online first, even if they are planned for the Journal, a section publication, or State Bar News. Stories chosen for the homepage have practical value and help members in their practice area and with their businesses. These stories include ones that promote our most newsworthy CLEs. If it is to our advantage to hold back on posting a story online in favor of putting it in print first, we may choose to do that occasionally.

**We post on social media.** We have editorial responsibility for Twitter, Facebook, LinkedIn, Instagram and YouTube. We post all NYSBA media mentions, articles of interest to members, CLE and section event promotions, as well as lighter posts to entertain and engage our members. Social media is the fastest way we can break our content to members and the public.

**We track NYSBA media mentions.** When the State Bar Association or NYSBA president or leadership is quoted or mentioned in a newspaper article, blog, radio or TV story, it is posted on social media immediately and then organized into a 'NYSBA in the News' post on the website. These stories also make up the majority of the 'President's Daily Brief,' an email sent to senior leadership and executive committee members.

**We measure our work.** We keep track of every article/podcast/content item via Google Analytics. From here, we measure how our content performs from email marketing, social media and homepage placements. Our NYSBA Weekly, delivered every Wednesday to all members, curates our best and most important content for members. By adapting a digital first strategy, we have been able to ascertain what content our members most value in the format they want.

**We facilitate member-to-member communications.** Through the online communities, we allow members from sections and committees to interact with each other. They discuss practical items regarding the practice of law or develop strategies for their groups. Some members say it is one of our best member benefits.

### **What we do every week**

**We issue statements in the name of the president or the association.** Statements issued in response to a press inquiry most often go only to the reporter making the request. But statements on other subjects, such as the death of a former NYSBA president, are sent to press contacts. Sometimes these statements are suggested by government affairs, a NYSBA task force or a NYSBA section. In addition to sending to our press contacts, these statements are posted on our website and on social media. We also do personal outreach to reporters on statements that we think might interest them.

**We eblast a coronavirus update.** The update comes out every Monday and throughout the week as needed in the afternoon. Its main purpose is to update members about the virtual courts, coronavirus task forces, gubernatorial executive orders and federal stimulus information. It includes links to coronavirus related CLEs and to new content on the website. Information in the email is put first on social media and on our coronavirus webpage, which we update constantly. The email is sometimes sent early in the day if the information is deemed to be pressing enough to warrant that. We sometimes send

out more than one coronavirus eblast in a day and occasionally skip it altogether if nothing newsworthy happens.

**We answer media inquiries requesting NYSBA comment or response.** If the president can be reached quickly and is willing to do the interview, we make those arrangements. If the president is not immediately available, we look for a section chair or staff member when appropriate but do not let this search deter us from meeting the reporter's deadline. Most media inquiries require a very quick response. Under certain circumstances, someone from the Communications Department may speak for the association.

**We field general media inquiries on legal issues.** We regularly hear from journalists who are writing about a legal development and looking for attorneys with expertise to provide insights or comment for a story. We try to be helpful with these requests and typically contact section chairs for suggestions about members to whom we can reach out. Since we are effectively acting only as a connector, NYSBA is not always mentioned in the stories, but this work is still valuable as a relationship-builder with journalists.

**We release podcasts on numerous digital platforms.** Podcasts feature discussions on the most pressing legal issues of our time. All episodes are posted on our website and promoted on our social media channels and in NYSBA Weekly. Select episodes that feature a well-known guest or focus on a subject that has broad appeal are promoted digitally and recapped.

#### **What we do as needed**

**We issue news releases.** News releases are prepared to announce the formation of task forces, the adoption of a NYSBA policy, the findings of a panel, the installation of a president, the presentation of an award or plans for a NYSBA event, among other things. When we issue a news release to the press, we most often give an exclusive to one reporter before issuing it to everyone else. That is the best way to ensure that the news release gets coverage. Once it is released, we pitch it to several reporters through personal notes and relationships to amplify the coverage.

**We cover House of Delegates meetings, as well as open task force meetings and hearings.** Task force reports are pitched as exclusives to reporters at different publications unless we have concerns about releasing a report ahead of time. We space the reports out in the week or two leading up to the meeting to try to get as much coverage as possible. We write stories for our own website about each report and the president's speech. These stories are prepared in advance and posted as soon as each report is approved. We send out a breaking news e-blast to members at the end of the House of Delegates meetings with links to each story.

**We write speeches for the NYSBA president and president-elect.** A freelance writer produces a draft of every speech the president makes and often does so for the president-elect too. These are written in consultation with the leader giving the speech and may go through a few drafts to make sure that the tone is right for the occasion and the speaker.

**We edit and produce the NYSBA Journal and State Bar News.** The Journal is published nine times per year (dropping to six issues in 2021), and includes feature articles on the law and legal issues; longer pieces on legal analysis, history and other topics; shorter pieces about NYSBA news that appear on 'State Bar News' branded pages; and regular columns. The State Bar News is published three times per year (dropping to two issues in 2021) and focuses on news about NYSBA. Both publications generate

revenue through outside advertising but the revenue does not pay for the cost of producing them; the Association's general revenues cover the remaining expenses. Most material that appears in the Journal and State Bar News has already been published on the NYSBA website.

**We act as NYSBA's inhouse writing team.** We write and edit opinion pieces, letters to the editors and commentaries for outside publications as well as promotional and program descriptions, solicitations to members and material for in-house publications and newsletters.

While this captures our day-to-day and weekly activities, let us examine how we have changed some of our projects and processes for the better.

### **Bar Journal and State Bar News**

The Journal is our flagship publication, and the April 2018 Journal started a new chapter for us with a new design, shorter articles, and a greater emphasis on theming. Nine issues are published each year currently. Well-received issues have included the Wellness issue, The LGBTQ issue, and the Technology issues. One issue of note was our April 2020 edition on the Coronavirus. Because of our digital first strategy, we had multiple articles ready for the website as the pandemic started. We quickly shifted gears on the issue and were able to produce a timely issue in just two weeks.

Examples of well-read articles include: Reflections of a Former Law Clerk (14,891 clicks), Lawrence Garbuz, New York's First Known COVID-19 Case, Reveals What He Learned About Attorney Well-Being From the Virus (7,219), and the Juror Who Exchanged 7,000 Text Messages (4,237).

Susan DeSantis oversees the print publication process. Christian Nolan serves as senior writer, often writing the cover story, and editing the publication. Along with Christian, Brandon Vogel and Brendan Kennedy contribute to each issue with articles, artwork, copy editing and web postings.

Communications works closely with our Publications Design Team in Marketing and Copy Editing/Proofreading staff in Publications.

The State Bar News has gone from six issues annually to three issues each year. State Bar News articles are often featured in the Journal, which is published more frequently, to reach members. Like the Journal, staff assume similar roles with editing, writing and print production.

Both publications reach about 45,000 members across the globe.

### **Social Media**

Our social media can be summed up in one word: growth.

Our LinkedIn presence has doubled in the last year alone from 8,500 followers to now over 18,000 followers. It recently became our largest social media platform with more than 18,000 followers and more than 150 new followers each week.

Our post highlighting the mom who went into labor during the bar exam was our single biggest post on any platform this year with 106,152 impressions and over 2,000 likes.

We have nearly 18,000 Twitter followers, 10,000+ Facebook likes and recently crossed 4,000 Instagram followers, second only to the American Bar Association.

We took the lead on coronavirus updates to our members and the public with round-the-clock postings as updates came in. Member Tom Kretchmar tweeted this praise on March 21:

The @NYSBA is doing a great job of getting news out on legislative and legal steps being taken in response to the pandemic crisis. Very worthwhile twitter follow right now.

Postings include summaries of executive orders, live tweets from the Governor's press briefings, and information from the Small Business Administration on loan programs.

NYSBA broke the news about the remote bar exam in July before the press. Our tweet reached over 65,000 people and was retweeted by reporters and actress Mia Farrow.

On average, NYSBA's tweets are seen by 400,000 to 500,000 people monthly. During Annual Meeting, we set a record with more than 764,000 impressions.

Facebook remained our go-to for legal humor posts, stories about Ruth Bader Ginsburg, and promoting CLE events.

### **Content Emails**

The NYSBA Weekly, a content-driven email delivered to members every Wednesday around 11 am, launched in April 2018. This email has been extraordinarily helpful to our department in learning what content our members want. In real time, we are able to ascertain the content that is the most valuable. By employing careful data-driven decision making, our open rates have improved 10 percent in the last year while our click rates have tripled.

An October 2020 edition highlighting a new ethics opinion had a record-high click rate of nearly 11 percent.

We have been able to continuously refine our content strategy quickly and effectively. We have studied send times, subject lines and article placements to help us deliver a premium product to our members each week.

We also send daily update emails for any breaking news related to the coronavirus or news at large. The numbers for these emails are among our most-read emails each week with open rates consistently between 30-35 percent. By comparison, a CLE message attracts about 14 percent.

### **NYSBA Podcasts**

We have two regular shows that are in production in various stages throughout the year, produced by Brendan Kennedy. Both shows have seen growth in audience with Miranda Warnings (hosted by David Miranda) having its most successful two months, August 2020 and September 2020, with 2,500 downloads combined. During the most recent season of Miranda Warnings, the show was mentioned in the New York Post, when Page 6 ran a story about the episode featuring the defense counsel for Harvey Weinstein. Gold/Fox: Non-Billable (hosted by Michael L. Fox and Sarah Gold), has seen growth since it began last year with October 2020 being the most successful month for the show with 250 downloads.

## **2020 Annual Meeting**

For historical comparison and perspective, in 2017, internal Annual Meeting coverage was limited to social media and articles in the March/April State Bar News that didn't reach members' mailboxes until late March.

In 2019, we posted several articles as the week occurred.

In 2020, our team reported on events with articles posted that same day on the website. The aforementioned NYSBA Weekly included coverage of the Annual Meeting as it occurred.

Perhaps the best example of this new strategy and workflow is the 2020 Presidential Summit. Brandon Vogel tweeted the live event as Christian Nolan reported on the program. Within two hours of the program, we had an article live on the website, a press release containing highlights of the event, and a video of the event. An hour later, we had an all member email sent to all NYSBA members with the article and video. We have employed the same strategy at subsequent House of Delegates Meetings – four Saturdays this year. Articles are published as reports are approved and then promoted on social media. Within an hour of the meeting, an email with links to each article is sent to all members.

## **Press Coverage**

CNN. Fox News. Wall Street Journal. New York Times. Law360. New York Post. New York Daily News. Bloomberg.

These are not aspirations for us. These are examples of press coverage we've received since June 2019. Our leadership on topics such as autonomous vehicles, the mental health question on bar admissions, health law and the court reorganization proposal have made us a reliable source for news and subject matter experts to the press.

## **Goals for 2021-2022**

Examine ways to place NYSBA communications more prominently on the homepage of the NYSBA website.

Explore partnering and collaborating with the NYSBA sections to encourage an increased presence from the sections on social media and in print and online.

Update the NYSBA social media policy every couple of years and ensure that the policy has been widely distributed.

## **Conclusion**

Over the past few years, we have fully digitized our publications and deliver our content according to their preferences, web or print. We have modernized our publications as well by moving them to one department for consistent editorial oversight. We have produced articles that go beyond our membership and are widely read and shared by other bar associations, non-members and the public at large. We deliver content that highlights and demonstrates the value of bar membership. We have expanded our social media team and presence as we became not just a source, but the source for breaking legal news and articles of interest. We reach members on their preferences, via social media, podcasts, or magazines. We are routinely sought by the press for expert legal commentary on a variety of hot topics. We have redefined the role of a communications department within an association. We adapted to the current climate and are well positioned to meet future needs.





**GENERAL ASSEMBLY  
FRIDAY, JANUARY 30, 2021 12:00 p.m.  
VIA ZOOM DUE TO PANDEMIC**

**AGENDA**

**THE NEW YORK BAR FOUNDATION ANNUAL MEETING** **12:00 p.m.**  
(The members of the House of Delegates also serve as members of The New York Bar Foundation)

**Ms. Lesley Rosenthal President, presiding**

1. Approval of the minutes of the January 31, 2020 Annual Meeting
2. Report of the officers, ratification and confirmation of the actions of the Board of Directors since the 2020 Annual Meeting – Ms. Lesley Rosenthal
3. Report of the Nominating Committee – Mr. David M. Schraver
4. Other matters
5. Adjournment





**The New York Bar Foundation  
Annual Meeting  
MINUTES**

**January 31, 2020  
New York Hilton Midtown, New York City**

**PRESENT:**

Aaron; Adigwe; Alcott; Alomar; Arenson; Baum; Behrins; Bennett; Berman; Billings; Braunstein; Breeding; Brown, T.A.; Buholtz; Burke; Buzard; Caceres; Castellano; Chang, V.; Christensen; Christian; Christopher; Cilenti; Coffey; Cohen, D.; Cohen, M.; Cohen, O.; Cohn; Connery; Crawford; Dean; Disare; Doerr; Doxey; Eberle; Effman; Eng; Fallek; Fennell; Fernandez; Ferrara; Finerty; First; Fishberg; Fogel; Foley; Fox; Freedman, H.; Friedman; Frumkin; Genoa; Gerstman; Grady; Graves-Poller; Greenberg; Griesemer; Griffin; Grimaldi; Gross; Gutekunst; Gutenberger Grossman; Gutierrez; Haig; Harper; Heller; Fines; Hobika; Holtzman; Jackson; Jaglom; James; Kamins; Karson; Katz; Kean; Kearns; Kelly, K.; Kelly, M.; Kiernan; Koch; Krajewski; Kretser; LaBarbera; Lau-Kee; Lawrence; Leber; Leventhal; Levin Wallach; Levin; Levy; Lewis; Lindenauer; Lugo; MacLean; Madden; Madigan; Maldonado; Mandell; Margolin; Marinaccio; Markowitz; Marotta; Martin Owens; Martin; Matos; May; McCasnn; McNamara, C.; McNamara, M.; Meyer; Miller, C.; Miller, M.; Minkoff; Minkowitz; Miranda; Mohun; Montagnino; Moore; Muller; Mulry; Napoletano; Nowotarski; O'Connell; O'Donnell; Onderdonk; Palermo, C.; Perlman; Pessala; Pitegoff; Pleat; Poster-Zimmerman; Purcell; Radick; Ranni; Richardson; Rivera, J.; Russell; Ryan; Santiago; Scheinkman; Schofield; Schrag; Schraver; Schriever; Scott; Sen; Shafer; Shamoon; Sharkey; Sheldon; Sigmond; Silkenat; Simon; Singer; Skidelsky; Sonberg; Spolzino; Standard; Starkman; Sweet; Taylor; Tennant; Tesser; Triebwasser; van der Meulen; Ventura; Vigdor; Warner; Westlake; Wimpfheimer; Yeung-Ha; Young; Younger.

President Lesley F. Rosenthal called the meeting to order at 8:50 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 18, 2019 were approved.

**Report of officers:** Lesley F. Rosenthal, President presented the 2019 Annual Report 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 2019. Ms. Rosenthal shared highlights including:

- Applying a data driven approach to enhance Access to Justice and the Rule of Law, the Foundation awarded 87 grants to legal services organizations addressing essentials of life across New York State.
- With the support of Chief Judge DiFiore, the Foundation administered 57 paid public service summer internships through every law school in New York State through the Catalyst program.
- The Foundation welcomed 65 new Fellows, the highest year-over-year increase in recent memory, surpassing our goal. 31 Fellows moved into higher Circles of Giving.

- Fueled by social media, the Foundation surpassed our fundraising goal to assist veterans in need of legal assistance through our 2019 online Veteran’s Day appeal.

Ms. Rosenthal closed her report by thanking generous donors for making our good works possible and reminding attendees about forthcoming opportunities to give in honor of the Foundation’s upcoming 70<sup>th</sup> anniversary.

**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 2019 Annual Meeting.

**Report of Nominating Committee:** Reporting on behalf of the Nominating Committee, Chair David M. Schraver provided an overview of the matrix utilized to assess the needs and skill sets of the board for recruitment purposes. Mr. Schraver placed in nomination the following slate of nominees presented by the Committee for the position of Director for terms commencing June 1, 2020 for term ending May 31, 2023:

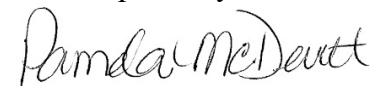
- William T. Russell, New York City
- Mirna M. Santiago, Pawling

A motion was adopted electing said Directors.

**Presentation of the Lifetime Achievement Award:** President Rosenthal presented Robert L. Haig with the Foundation’s Lifetime Achievement Award in honor of his outstanding professional achievements, dedication to the legal profession, exemplary service to the public good, and commitment to the ideals of the Foundation.

Adjournment: There being no further business, the meeting was thereupon adjourned.

Respectfully submitted,



Pamela McDevitt  
Secretary



TO: Members of The New York Bar Foundation

FROM: Nominating Committee of The New York Bar Foundation  
David M. Schraver, Chair  
Hon. Cheryl E. Chambers  
Cristine Cioffi  
John Gross  
Lucia Whisenand

DATE: January 30, 2021

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, 2021.

**For a term ending May 31, 2024**

New directors for a term commencing June 1, 2021 and concluding May 31, 2024

- Vincent E. Doyle, Buffalo
- Lauren E. Sharkey, Schenectady

# Vincent E. Doyle III

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Connors LLP  
716-852-5533

Vincent E. Doyle III is a recognized leader in the New York State legal community, having served as the 114th president of the New York State Bar Association, the nation's largest and oldest voluntary state bar association. He is also a widely-respected commercial litigator whose practice includes serving as an arbitrator and mediator in commercial and other matters.

Vince's practice focuses on complex commercial disputes, as well as internal and governmental investigations. He regularly handles trials, appeals, arbitrations and mediations for corporate clients and individuals. Vince also regularly represents attorneys and a number of the region's largest law firms in litigation, disciplinary and ethical matters.

Vince has held a number of leadership positions with state and local bar associations, and has served on numerous government and independent panels seeking to improve the legal system. He served on the Board of Directors of the Bar Association of Erie County, and is a past president of the Erie County Aid to Indigent Prisoners Society, which administers the county's assigned counsel program. Vince is also a Fellow of the American College of Trial Lawyers, and serves on the panel that screens applicants for judicial appointment by the Governor of the State of New York. He served on the Transition Committee for New York State Attorney General Letitia "Tish" A. James.

Vince received the 2012 Lawyer of the Year Award from the Bar Association of Erie County, and a Distinguished Alumni Award from the State University of New York at Buffalo Law School, where he earned his J.D. magna cum laude. Vince earned his B.A. from Canisius College, with All College and English Honors.

**Did You Know?** Vince served as a legal consultant to a network television show for many years, helping the writers make the legal plotlines more true to life. As a tribute, the writers named a short-lived character after Vince.

## Education

- State University of New York at Buffalo Law School, J.D., *magna cum laude*
- Canisius College, B.A., *cum laude*

## Affiliations

- President, Neighborhood Legal Services
- Adjunct Instructor, State University of New York at Buffalo Law School
- 114th President, New York State Bar Association
- Director, Bar Association of Erie County
- Past President, Erie County Aid to Indigent Prisoners Society
- Fellow, American College of Trial Lawyers
- Member, New York's Governor's Judicial Screening Committee
- American Bar Association
- New York State Bar Association
- Bar Association of Erie County

## Honors

- Bar Association of Erie County, Lawyer of the Year Award
- State University of New York at Buffalo Law School, Distinguished Alumni Award

# LAUREN E. SHARKEY, ESQ.

f/k/a Lauren E. Palmer  
1473 Erie Boulevard, 1<sup>st</sup> Floor  
Schenectady, NY 12305  
(518) 377-6700  
lsharkey@cswlawfirm.com

<b>EXPERIENCE</b>	<b>Cioffi · Slezak · Wildgrube P.C.</b> , Schenectady, NY <i>Partner, 1/2019 – Present</i> <i>Associate Attorney, 9/2011 – 12/2018</i> <i>Law Clerk, 05/2011 – 8/2011</i> <ul style="list-style-type: none"><li>• Represent fiduciaries and beneficiaries in all aspects of estate and trust administration.</li><li>• Handle residential and commercial real estate transactions.</li><li>• Provide estate planning and special needs planning to clients.</li><li>• Provide Medicaid planning analysis to clients and assist with Medicaid applications.</li><li>• Represent Petitioner in Article 17, Article 17A and Article 81 Guardianship matters.</li><li>• Form small businesses, prepare liquor license applications, draft employment agreements.</li><li>• Supervise attorneys and paralegals; implement internal procedures for firm management.</li></ul>
	<b>NYS Office of Alcohol &amp; Substance Abuse Services</b> , Albany, NY <span style="float: right;"><i>1/2011 – 5/2011</i></span> <i>Intern.</i> Conducted legislative research and prepared guidance documents relating to patient rights, patient searches, and reporting.
	<b>NYS Office of Attorney General</b> , Brooklyn, NY <span style="float: right;"><i>6/2010 – 8/2010</i></span> <i>Intern, Consumer Frauds Bureau.</i> Prepared documents for litigation, mediated consumer complaints, and provided information to consumers on their rights.
	<b>Civil Rights &amp; Disabilities Clinic, Albany Law</b> , Albany, NY <span style="float: right;"><i>8/2009 – 12/2009</i></span> <i>Intern, Albany Law Clinic &amp; Justice Center.</i> Counseled low-income clients with disabilities and attended Special Education meetings to advocate for my clients.
	<b>New York Legal Assistance Group (NYLAG)</b> , New York, NY <span style="float: right;"><i>6/2009 – 8/2009</i></span> <i>Intern, LegalHealth Unit.</i> Researched legal health issues and counseled low-income clients relating to housing, public benefits, and immigration.
	<b>Rose Mary Bailly, Albany Law School</b> , Albany, NY <span style="float: right;"><i>6/2009 – 5/2009</i></span> <i>Research Assistant, Government Law Center.</i> Conducted legal research on senior citizen housing issues and creating home-sharing programs in Albany.
<b>EDUCATION</b>	<b>Albany Law School</b> , J.D., May 2011, ALBANY GOVERNMENT LAW REVIEW, Article Editor; Kate Stoneman Student Award; Joseph Foiadelli Fellowship <b>Pace University</b> , B.B.A. in Business Management, <i>cum laude</i> , May 2008; Pforzheimer Honors College; President's Scholarship; Athletic Scholarship (Div. II Soccer, NE Conference)
<b>BAR ADMISSION</b>	New York, 3 <sup>RD</sup> Department, Admitted January 2012 United States Supreme Court, Admitted June 2017
<b>BAR LEADERSHIP &amp; AFFILIATIONS</b>	<b>New York State Bar Association:</b> <ul style="list-style-type: none"><li>• <i>Young Lawyers Section</i>, Chair <span style="float: right;">2019 – 2020</span></li><li>• <i>Young Lawyers Section</i>, Delegate to the NYSBA House of Delegates <span style="float: right;">2017 – 2020</span></li><li>• <i>Young Lawyers Section</i>, Section Liaison to Elder Law Section <span style="float: right;">2014 – Present</span></li><li>• <i>Elder Law Section</i>, Executive Committee, Membership Vice Chair <span style="float: right;">2017 – Present</span></li></ul>

- Schenectady County Bar Association:** 2016 – Present
- *Young Lawyers Committee*, Co-Chair 2015 – Present
- *Trusts, Estates, and Elder Law Committee*, Co-Chair
- Capital District Women’s Bar Association**
- American Bar Association**
- The New York Bar Foundation:**
- *Young Lawyer Friend of the Foundation*, Member 2015 – Present

**COMMUNITY  
SERVICE**

- Foundation for Ellis Medicine**, Trustee 2017 – Present
- *Young Donors Committee*, Founder and Chair 2018 – Present
- Visiting Nurse Service Foundation of Northeastern NY**, Board Member 6/2015 – 12/ 2016
- Umbrella of the Capital District**, Board Member, Treasurer 6/2012 – 10/2016
- The Legal Project**, Volunteer Attorney 2012 - Present
- Legal Aid Society of Northeastern NY, Inc.**, Volunteer Attorney 2015 – Present