

Memorandum in Support

WOMEN IN LAW SECTION

WILS #1-A

May 25, 2021

S. 812-A
A. 2035-A

By: Senator Biaggi

By: M. of A. Niou

Senate Committee: Finance

Assembly Committee: Governmental Employees

Effective Date: 120th day after it shall have
become a law

AN ACT to amend the executive law, in relation to establishing a toll free confidential hotline for complainants of workplace sexual harassment.

LAW AND SECTIONS REFERRED TO: Section 295 of the Executive Law.

The New York State Bar Association's Women in Law Section (WILS) supports this bill to amend the Executive Law by establishing a toll-free confidential hotline through which complainants of sexual harassment in the workplace may receive information and fundamental legal advice about their rights.

ANALYSIS

The proposed bill seeks to establish a confidential toll-free hotline housed within the State Division of Human Rights, through which callers would be referred to volunteer (pro bono) attorneys "experienced in providing counsel related to sexual harassment matters." These attorneys would advise callers of their legal right to be free of sexual harassment and provide information as to how to exercise those rights.¹ This is a laudable endeavor that should be undertaken.

The Section applauds that the attorneys who will be available to hotline callers will be experienced in the specific area of federal and state harassment and discrimination laws. Sexual harassment litigation is extremely complicated and bad advice at the outset could do more damage than good.

We also endorse that the attorney's role will be limited to providing accurate information about a caller's rights and suggesting next steps, and that no further attorney-client relationship should be allowed to be formed by the caller and pro bono attorney or their firms beyond the scope of the hotline call. Allowing the hotline to become a means for

¹ See N.Y.S. Sen. Introducer's Memorandum in Support.

attorneys to obtain clients, especially on a paying or contingency basis, would create an apparent, if not actual, conflict of interest for both the attorney and the referring association (e.g., the NYSBA).

Additionally, we agree that it is essential that the call to the hotline for initial intake by non-attorney staff be confidential. While the limited scope of representation provided by pro bono attorneys assures confidentiality through the attorney/client privilege, earlier intake discussions with non-attorneys would not be covered. Including confidentiality as a component of the hotline will allow callers to speak frankly without fear of repercussions from the outset of the phone call, allowing for the best possible advice to be provided.

Finally, the citation of Rule 6.5 of the Rules of Professional Conduct, which outlines the responsibilities of and protections for lawyers volunteering with certain limited scope programs, is a critical provision of the legislation. This addition to the legislation was suggested for the protection of the public and the participating volunteer attorneys; it is important that the program created by this legislation comply with the requirements of Rule 6.5.

CONCLUSION

Sexual harassment in the workplace continues to be a significant problem, undermining livelihoods by making places of employment uncomfortable, if not dangerous. Providing individuals free and confidential access to expert legal advice would encourage them to advocate for themselves in their workplace and, if that fails, give them the tools they need to seek appropriate legal counsel.

Based on the foregoing, the New York State Bar Association's Women in Law Section **SUPPORTS** this legislation.

Submitted by: Women in Law Section (WILS):
Terri A. Mazur, Chair

Prepared by:
WILS Legislative Affairs Committee:
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