NEW YORK STATE BAR ASSOCIATION

NYSBA

THE NEW YORK BAR FOUNDATION

GENERAL ASSEMBLY
SATURDAY, JANUARY 22, 2022 – 8:30 A.M.
REMOTE MEETING

AGENDA

ANNUAL MEETING OF THE NEW YORK STATE BAR ASSOCIATION **8:30 a.m.**
Mr. T. Andrew Brown
President, presiding

1. Call to order and Pledge of Allegiance – Mr. T. Andrew Brown

2. Approval of the minutes of the January 30, 2021 Annual Meeting

3. Report of Nominating Committee and election of elected delegates to the House of Delegates – Mr. Michael Miller

4. Address by Hon. Janet DiFiore, Chief Judge of the State of New York

5. Remarks by Ms. Elizabeth R. Fine, Counsel to the Governor

6. Report of President – Mr. T. Andrew Brown

7. Report of Treasurer – Mr. Domenick Napoletano

8. Report and recommendations of Committee on Bylaws – Mr. Robert T. Schofield, IV

9. Adjournment

THE NEW YORK BAR FOUNDATION ANNUAL MEETING **9:30 a.m.**
(The members of the House of Delegates also serve as members of The New York Bar Foundation)
Ms. Carla M. Palumbo
President, presiding

1. Approval of the minutes of the January 30, 2021 Annual Meeting

2. Report of the officers, and ratification and confirmation of the actions of the Board of Directors since the 2021 Annual Meeting – Ms. Carla M. Palumbo

3. Report of the Nominating Committee – Mr. David M. Schraver

4. Other matters

5. Adjournment

HOUSE OF DELEGATES MEETING **9:45 a.m.**

Ms. Sherry Levin Wallach
Chair, presiding

1.	Approval of minutes of October 30, 2021 meeting	9:48 a.m.
2.	Report and recommendations of Nominating Committee and election of officers and members-at-large of the Executive Committee – Mr. Michael Miller	9:50 a.m.
3.	Report of Task Force on the Post-Pandemic Future of the Profession – Messrs. Mark A. Berman and John H. Gross	9:55 a.m.
4.	Report and recommendations of Committee on Diversity and Inclusion – Ms. Lillian M. Moy and Ms. Nihla F. Sikkander	10:15 a.m.
5.	Report and recommendations of Local and State Government Law Section – Hon. James F. Horan and Hon. James T. McClymonds	10:45 a.m.
6.	Report and recommendations of Working Group on New York Bar Application Question 26 – Messrs. Eulas G. Boyd, Jr., and David R. Marshall	11:15 a.m.
7.	Report and recommendations of The New York City Bar Association on Proposed Amendment to the New York Court of Appeals Part 523 Rules for the Temporary Practice of Law in New York – Mr. David G. Keyko	11:45 a.m.
8.	Report and recommendations of Committee on Cannabis Law – Ms. Lynelle K. Bosworth	12:15 p.m.
8.	Administrative items – Ms. Sherry Levin Wallach	12:45 p.m.
9.	New business	12:50 p.m.
10.	Date and place of next meeting: Saturday, April 2, 2022 Remote Meeting	

NEW YORK STATE BAR ASSOCIATION
MINUTES OF ANNUAL MEETING
REMOTE MEETING
JANUARY 30, 2021

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PRESENT: Abneri; Adigwe; Alcott; Alicea; Alomar; Alsina; Bahn; Barnes; Bascoe; Battistoni; Baum; Behrins; Beltran; Berkey; Berman; Betz; Billings; Bladykas; Boston; Brown; Buholtz; Buzard; Castellano; Chambers; Chandrasekhar; Chang; Christopher; Cohen, D.; Cohen, M.; Cohn; Dean; DeFio Kean; Degnan; Doerr; Doxey; Doyle; Eberle; Effman; England; Fallek; Fennell; Fernandez; Filabi; Filemyr; Finerty; First; Fishberg; Foley; Fox, J.; Fox, M.; Freedman; Frumkin; Genoa; Gerstman; Getnick; Gilmartin; Gold; Good; Grady; Grays; Griesemer; Grimaldi; Gross; Gutekunst; Gutenberger; Gutierrez; Hack; Harper; Hartman; Heath; Hobika; Holtzman; Jaglom; James; Jimenez; Jochmans; Joseph; Kamins; Kamholz; Kapnick; Katz; Kehoe; Kelly; Kendall; Kenney; Kiernan; Kimura; Kirby; Kobak; Kretser; Kretzing; LaBarbera; Lanouette; Lara; LaRose; Lau-Kee; Lawrence; Leber; Leo; Lessard; Leventhal; Levin; Levy; Lewis; Lindenauer; Lisi; Lugo; MacLean; Madigan; Maldonado; Marinaccio; Markowitz; Maroney; Marotta; Matos; May; McElwreath; McGinn; McNamara, C.; McNamara, M.; Meyer, H.; Meyer, J.; Middleton; Miller, M.; Miller, R.; Millett; Milone; Minkoff; Minkowitz; Miranda; Montagnino; Moore; Moretti; Morrissey; Mukherji; Muller; Mulry; Napoletano; Newman; Noble; Nolfo; O'Connell, B.; O'Connell, D.; Onderdonk; Owens; Palermo, A.; Palermo, C.; Pappalardo; Perlman; Pessala; Pitegoff; Pleat; Poster-Zimmerman; Purcell; Radick; Reed, L.; Reed, M.; Riano; Richardson; Richman; Richter; Rivera Agosto; Robinson; Rosenthal; Russ; Russell; Ryan; Ryba; Safer; Samuels; Santiago; Scheinkman; Schofield; Schraver; Schwartz-Wallace; Scott; Seiden; Sen; Shafer; Shampnoi; Shapiro; Sheldon; Shoemaker; Sigmond; Silkenat; Sise; Slavit; Sonberg; Starkman; Stoeckmann; Swanson; Sweet; Tambasco; Taylor; Tesser; Triebwasser; van der Meulen; Vaughn; Ventura; Vigdor; Warner; Waterman; Weiss; Westlake; Wimpfheimer; Wolff; Woodley; Yeung-Ha; Young; Younger; Zimmerman.

Mr. Karson presided over the meeting as President of the Association.

1. The meeting was called to order and the Pledge of Allegiance recited.

2. Approval of minutes of the January 31, 2020 meeting. The minutes, as previously distributed, were accepted.

3. Report of the Nominating Committee and election of elected delegates to the House of Delegates. Sharon Stern Gerstman, 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 2021-2022 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: Jane Bello Burke, Elena DeFio Kean, and a member to be announced, all of Albany;

Fourth District: M. Elizabeth Coreno and Margaret E. Gilmartin of Saratoga Springs and Nicole L. Clouthier 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: Norman P. Effman, Michael M. Mohun and Leah Nowotarski, all of Warsaw;

Ninth District: Karen Beltran, Claire J. Degnan, and Hon. Linda S. Jamieson, all of White Plains;

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

Eleventh District: Karen Dubowski Barba of Jamaica, Steven Wimpfheimer of Whitestone, and Hon. Karina E. Alomar of Kew Gardens;

Twelfth District: Steven E. Millon of the Bronx, Samuel Braverman of the Bronx, and Adam J. Sheldon of New York City;

Thirteenth District: Edwina Frances Martin, 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. Address by Hon, Janet DiFiore, Chief Judge of the State of New York. Chief Judge DiFiore updated the members with respect to the status of Unified Court System initiatives with a particular focus on the court system's efforts to address access to justice in light of the Covid-19 pandemic. Mr. Karson thanked her for her report.

5. Report of President. Mr. Karson highlighted the items contained in his written report, a copy of which is appended to these minutes.

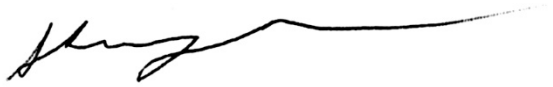
6. Report of Treasurer. Domenick Napoletano, Treasurer, reported on the 2020 operating budget through December 31, 2020. noting that through December 31, 2020, the Association's total revenue was $22,031,000, a decrease of approximately $1.7 million

from the previous year, and total expenses were $19.2 million, a decrease of approximately $2.3 million over 2019. The report was received with thanks.

7. 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 address remote meetings of the Association, the House of Delegates, and sections and committees. After discussion, a motion was adopted to approve the bylaws amendments.

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

Respectfully Submitted,



Sherry Levin Wallach
Secretary

ANNUAL MEETING
Agenda Item #3

Election of 2022-2023
Elected Delegates to the House of Delegates

1st District	Bridgette Y. Ahn, New York City
	James B. Kobak, New York City
	Stephen Charles Lessard, New York City
2nd District	Arthur L. Aidala, Brooklyn
	Aimee L. Richter, Brooklyn
	Anthony Vaughn, Brooklyn
3rd District	Jane Bello Burke, Albany
	Hermes Fernandez, Albany
	Mishka Woodley, Albany
4th District	Mary Elizabeth Coreno, Saratoga Springs
	Margaret E. Gilmartin, Saratoga Springs
	Nicole L. Clouthier, Schenectady
5th District	Stuart LaRose, Syracuse
	John T. McCann, Syracuse
	Jean Marie Westlake, East Syracuse
6th District	Andria R. Adigwe, Binghamton
	Alyssa M. Barreiro, Binghamton
	Jeri Ann Duvall, Cortland
7th District	Duwaine T. Bascoe, Penfield
	Stephen M. Kelley, Geneseo
	Amy Schwartz-Wallace, Rochester
8th District	Norman P. Effman, Warsaw
	Sophie I. Feal, Buffalo
	Leah Nowotarski, Warsaw
9th District	Karen Beltran, White Plains
	Claire J. Degnan, White Plains
	Hon Linda S. Jamieson, White Plains

10th District	Ilene S. Cooper, Uniondale
	John H. Gross, Happauge
	Steven G. Leventhal, Roslyn
11th District	Hon. Karina E. Alomar, Kew Gardens
	Kristen Dubowski, Queens
	Arthur N. Terranova, Queens
12th District	Samuel Braverman, Bronx
	Renee Corley Hill, Bronx
	Steven E. Millon, Bronx
13th District	Allyn J. Crawford, Staten Island
	Hon. Edwina Frances Martin, Staten Island
	Sheila T. McGinn, Staten Island

Staff Memorandum

ANNUAL MEETING
Agenda Item # 7

REQUESTED ACTION: None, as the report is informational.

Attached are the Operating Budget, Statement of Financial Position, and Statements of Activities for the period ending December 31, 2021.

The report will be presented by Association treasurer Domenick Napoletano.

NEW YORK STATE BAR ASSOCIATION
2021 OPERATING BUDGET
TWELVE MONTHS OF CALENDAR YEAR 2021

REVENUE

	2021 BUDGET	ADJUST-MENTS	2021 BUDGET AS ADJUSTED	UNAUDITED RECEIVED 12/31/2021	% RECEIVED 12/31/2021	2020 BUDGET	UNAUDITED RECEIVED 12/31/2020	% RECEIVED 12/31/2020
MEMBERSHIP DUES	8,764,295		8,764,295	9,335,487	106.52%	9,732,250	9,339,925	95.97%
SECTIONS:								
Dues	1,200,000		1,200,000	1,175,901	97.99%	1,321,800	1,216,608	92.04%
Programs	1,733,315		1,733,315	695,522	40.13%	3,123,430	769,606	24.64%
INVESTMENT INCOME	494,420		494,420	503,868	101.91%	500,800	489,631	97.77%
ADVERTISING	183,000		183,000	308,397	168.52%	250,000	259,859	103.94%
CONTINUING LEGAL EDUCATION	2,950,000		2,950,000	2,714,281	92.01%	3,220,000	3,043,386	94.52%
USI AFFINITY PAYMENT	2,154,000		2,154,000	2,143,644	99.52%	2,306,000	2,389,144	103.61%
ANNUAL MEETING	276,225		276,225	489,977	177.38%	1,312,000	1,582,326	120.60%
HOUSE OF DELEGATES & COMMITTEES	27,000		27,000	24,771	91.74%	174,750	24,094	13.79%
PUBLICATIONS, ROYALTIES AND OTHER	210,700		210,700	244,528	116.06%	216,200	168,906	78.12%
REFERENCE MATERIALS	1,300,000		1,300,000	1,028,872	79.14%	1,250,000	1,032,334	82.59%
TOTAL REVENUE	**19,292,955**	**0**	**19,292,955**	**18,665,248**	**96.75%**	**23,407,230**	**20,315,819**	**86.79%**

EXPENSE

	2021 BUDGET	ADJUST-MENTS	2021 BUDGET AS ADJUSTED	UNAUDITED EXPENDED 12/31/2021	% EXPENDED 12/31/2021	2020 BUDGET	UNAUDITED EXPENDED 12/31/2020	% EXPENDED 12/31/2020
SALARIES & FRINGE	8,334,264		8,334,264	8,508,160	102.09%	8,790,034	8,166,428	92.91%
BAR CENTER:								
Rent	284,000		284,000	283,623	99.87%	284,000	283,623	99.87%
Building Services	365,000		365,000	400,272	109.66%	397,000	463,551	116.76%
Insurance	164,000		164,000	197,354	120.34%	170,000	177,692	104.52%
Taxes	180,250		180,250	186,015	103.20%	7,750	221,880	2862.97%
Plant and Equipment	893,500		893,500	838,862	93.88%	890,500	763,701	85.76%
Administration	526,100		526,100	510,638	97.06%	537,600	513,924	95.60%
SECTIONS	2,920,715		2,920,715	649,508	22.24%	4,445,230	1,756,235	39.51%
PUBLICATIONS:								
Reference Materials	248,800		248,800	104,759	42.11%	312,800	141,973	45.39%
Journal	245,700		245,700	228,021	92.80%	396,500	298,433	75.27%
Law Digest	75,000		75,000	46,416	61.89%	156,000	83,846	53.75%
State Bar News	85,500		85,500	67,947	79.47%	122,300	80,471	65.80%
MEETINGS:								
Annual Meeting	24,250		24,250	13,811	56.95%	714,700	958,195	134.07%
House of Delegates, Officers and Executive Committee	309,000		309,000	279,853	90.57%	468,825	212,736	45.38%
COMMITTEES:								
Continuing Legal Education	435,000		435,000	102,185	23.49%	1,480,500	498,640	33.68%
LPM / Electronic Communication Committee	1,400		1,400	-	0.00%	38,100	18,072	47.43%
Marketing / Membership	850,000		850,000	648,946	76.35%	877,050	518,708	59.14%
Media Services	269,450		269,450	210,784	78.23%	144,720	230,545	159.30%
All Other Committees and Departments	2,590,135		2,590,135	2,655,080	102.51%	2,983,790	3,441,882	115.35%
TOTAL EXPENSE	**18,802,064**	**0**	**18,802,064**	**15,932,234**	**84.74%**	**23,217,399**	**18,830,535**	**81.11%**
BUDGETED SURPLUS	**490,891**	**0**	**490,891**	**2,733,014**		**189,831**	**1,485,284**	

NEW YORK STATE BAR ASSOCIATION
STATEMENTS OF FINANCIAL POSITION
AS OF DECEMBER 31, 2021

ASSETS	UNAUDITED 12/31/2021	UNAUDITED 12/31/2020	UNAUDITED 12/31/2020
Current Assets:			
General Cash and Cash Equivalents	19,852,949	16,151,359	16,151,359
Accounts Receivable	8,086	30,527	30,527
Prepaid expenses	661,027	602,714	602,714
Royalties and Admin. Fees receivable	494,222	803,397	803,397
Total Current Assets	21,016,284	17,587,997	17,587,997
Board Designated Accounts:			
Cromwell Fund:			
Cash and Investments at Market Value	3,366,406	2,962,151	2,962,151
Accrued interest receivable	0	0	0
	3,366,406	2,962,151	2,962,151
Replacement Reserve Account:			
Equipment replacement reserve	1,117,938	1,117,826	1,117,826
Repairs replacement reserve	794,629	794,550	794,550
Furniture replacement reserve	220,022	220,000	220,000
	2,132,589	2,132,376	2,132,376
Long-Term Reserve Account:			
Cash and Investments at Market Value	34,513,658	30,108,641	30,108,641
Accrued interest receivable	124,042	117,962	117,962
	34,637,700	30,226,603	30,226,603
Sections Accounts:			
Section Accounts Cash equivalents and Investments at market value	4,022,992	4,046,948	4,046,948
Cash	1,221,915	229,979	229,979
	5,244,907	4,276,927	4,276,927
Fixed Assets:			
Furniture and fixtures	1,463,037	1,463,037	1,463,037
Leasehold Improvements	1,470,688	1,470,688	1,470,688
Equipment	4,053,020	3,906,126	3,906,126
	6,986,745	6,839,851	6,839,851
Less accumulated depreciation	4,738,789	3,993,589	3,993,589
Net fixed assets	2,247,956	2,846,262	2,846,262
Total Assets	68,645,842	60,032,316	60,032,316
LIABILITIES AND FUND BALANCES			
Current liabilities:			
Accounts Payable & other accrued expenses	653,311	784,252	784,252
Deferred dues	6,095,477	6,165,151	6,165,151
Deferred income special		230,768	230,768
Deferred grant revenue	29,906	29,906	29,906
Other deferred revenue	307,358	888,104	888,104
Payable To The New York Bar Foundation	480	19,965	19,965
Total current liabilities & Deferred Revenue	7,086,532	8,118,146	8,118,146
Long Term Liabilities:			
Accrued Other Postretirement Benefit Costs	9,616,735	8,706,735	8,706,735
Accrued Supplemental Plan Costs and Defined Contribution Plan Costs	423,000	299,674	299,674
Total Liabilities & Deferred Revenue	17,126,267	17,124,555	17,124,555
Board designated for:			
Cromwell Account	3,366,406	2,962,151	2,962,151
Replacement Reserve Account	2,132,589	2,132,376	2,132,376
Long-Term Reserve Account	24,473,923	21,102,232	21,102,232
Section Accounts	5,244,907	4,276,927	4,276,927
Invested in Fixed Assets (Less capital lease)	2,247,956	2,846,262	2,846,262
Undesignated	14,053,794	9,587,813	9,587,813
Total Net Assets	51,519,575	42,907,761	42,907,761
Total Liabilities and Net Assets	68,645,842	60,032,316	60,032,316

New York State Bar Association
Statement of Activities
For the Twelve Months Ending December 31, 2021

	December 2021	*December 2020*	*December 2020*
REVENUES AND OTHER SUPPORT			
Membership dues	9,335,487	9,339,925	9,339,925
Section revenues			
Dues	1,175,901	1,216,608	1,216,608
Programs	695,522	769,606	769,606
Continuing legal education program	2,714,281	3,043,386	3,043,386
Administrative fee and royalty revenue	2,387,819	2,594,862	2,594,862
Annual meeting	489,977	1,582,326	1,582,326
Investment income	1,386,890	1,469,869	1,469,869
Reference Books, Formbooks and Disk Products	1,028,872	1,032,334	1,032,334
Other revenue	412,030	236,995	236,995
Total revenue and other support	19,626,779	21,285,911	21,285,911
PROGRAM EXPENSES			
Continuing legal education program	791,422	1,260,881	1,260,881
Graphics	1,169,872	1,222,630	1,222,630
Government relations program	313,014	476,962	476,962
Law, youth and citizenship program	47	(185)	(185)
Lawyer assistance program	107,378	216,082	216,082
Lawyer referral and information services	1,148	14,518	14,518
Law practice management services	37,163	58,309	58,309
Media / public relations services	575,068	726,958	726,958
Business Operations	2,203,240	2,623,807	2,623,807
Marketing and Membership services	1,517,058	1,293,354	1,293,354
Pro bono program	145,303	187,586	187,586
Local bar program	-	41,105	41,105
House of delegates	266,187	198,716	198,716
Executive committee	13,666	14,020	14,020
Other committees	79,549	337,223	337,223
Sections	649,508	1,756,235	1,756,235
Section newsletters	243,933	192,810	192,810
Reference Books, Formbooks and Disk Products	659,886	726,284	726,284
Publications	342,384	462,750	462,750
Annual meeting expenses	13,811	958,195	958,195
Total program expenses	9,129,637	12,768,240	12,768,240
MANAGEMENT AND GENERAL EXPENSES			
Salaries and fringe benefits	2,950,817	2,575,654	2,574,654
Pension plans and other employee benefit plan costs	1,314,259	932,832	932,832
Rent and equipment costs	1,181,693	1,201,869	1,201,869
Consultant and other fees	576,768	503,319	503,319
Depreciation and amortization	745,200	657,511	657,511
Other expenses	45,424	195,334	195,334
Total management and general expenses	6,814,161	6,066,519	6,065,519
CHANGES IN NET ASSETS BEFORE INVESTMENT TRANSACTIONS AND OTHER ITEMS	**3,682,981**	**2,451,152**	**2,452,152**
Realized and unrealized gain (loss) on investments	3,445,877	3,590,055	3,590,055
Realized gain (loss) on sale of equipment	-	26,500	26,500
Loan Forgiveness	1,482,957	-	-
CHANGES IN NET ASSETS	**8,611,815**	**6,067,707**	**6,068,707**
Net assets, beginning of year	42,907,759	36,839,052	36,839,052
Net assets, end of year	51,519,574	42,906,759	42,907,759

NYSBA

Staff Memorandum

ANNUAL MEETING
Agenda Item #8

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

Attached is a memorandum from the Committee on Bylaws proposing the removal of gender-specific language from the Bylaws. Under procedures established in the Bylaws, the proposed amendments were subscribed to by a majority of all members of the House of Delegates at the November 2021 meeting. They are now before you for approval and addition to the Bylaws.

The report will be presented at the January 22 meeting by Robert T. Schofield, IV, Chair of the Committee on Bylaws.

NEW YORK STATE BAR ASSOCIATION
One Elk Street, Albany, New York 12207 • PH 518.463.3200 • www.nysba.org

COMMITTEE ON BYLAWS
ROBERT T. SCHOFIELD, IV
Chair
Whiteman Osterman & Hanna LLP
One Commerce Plaza, 19th Floor
Albany, NY 12260
518/487-7616
rschofield@woh.com

October 20, 2021

To: Members of the House of Delegates

Re: Report on Proposed Bylaws Amendment

INTRODUCTION

At the request of President-elect Levin Wallach, the Bylaws Committee reviewed the Bylaws to weed-out any remaining instances of gender-specific language. The Committee has been sensitive to this issue for several years, so most such language has previously be excised. Nevertheless, three lingering instances were identified by our most recent review and it is our recommendation that the Bylaws be amended to remove these last examples of gender-specific language.

For ease of reference, our proposed amendment is set forth below. New language is indicated by underlining, and deleted language is indicated by strikethrough.

REMOVAL OF GENDER SPECIFIC LANGUAGE

The Committee proposes the Bylaws amendments set forth below:

Article VIII, Section 1(A)(6)(a)

VIII. NOMINATING COMMITTEE AND NOMINATIONS FOR OFFICE

Section 1. Nominating Committee.

A. * * *

6. Election of New York State Bar Association Delegates to the American Bar Association House of Delegates**.** Delegates to the American Bar Association House of Delegates shall be nominated and elected pursuant to the following procedures:

(a**)** Ten delegates to the American Bar Association House of Delegates, or such number as the Association may be entitled to select from time to time, shall be elected, each for a term of two years commencing at the adjournment of the Annual Meeting of the American Bar Association House of Delegates. The term of such delegates shall be alternated beginning with an even numbered year, so that the terms

are staggered as equally as possible, in accordance with the appropriate provisions of the American Bar Association Constitution and Bylaws. In addition, one lawyer less than thirty-five years of age at the beginning of ~~his or her~~the lawyer's term shall be elected as Young Lawyer Delegate in even-numbered years for a term of two years commencing at the adjournment of the Annual Meeting of the American Bar Association House of Delegates.

Article IX, Section 2(B)(1):

IX. FINANCE, AUDIT AND COMPENSATION COMMITTEES

Section 2. Audit Committee.

B. Members. * * *

(1) The members being appointed in any given year shall serve for two-year terms. All appointments shall be subject to confirmation by the Executive Committee and ratification by the House of Delegates. The Executive Committee shall determine that each appointee is free from any relationship that in its opinion would interfere with the exercise of ~~his or her~~ independent judgment while serving as a member of the Audit Committee. Members completing their terms shall be eligible for reappointment.

Appendix B, Section I(2):

Appendix B AUDIT COMMITTEE COMPOSITION, DUTIES AND RESPONSIBILITIES

I. The Audit Committee shall consist solely of "Independent Members." An Independent Member is person who must satisfy all three of the following criteria:

1. * * *
2. The individual and ~~his or her~~the individual's relatives have not received compensation or other payments exceeding a total of $10,000 during the last three fiscal years of the organization from the Association or its affiliate, other than compensation for services provided in the capacity as a member of the Executive Committee or Audit Committee or reimbursement for expenses reasonably incurred as a member of the Executive Committee or Audit Committee; and

CONCLUSION

Our committee believes that the foregoing amendments, which we are recommending, foster the Association's continuing efforts to encourage diversity and the inclusion of all people in connection with the affairs of the Association. We commend them to you for your consideration and subscription at the October 30, 2021 meeting of the House of Delegates. If subscribed, the above amendment will presented for discussion and adoption at the 2022 Annual Meeting.

Respectfully submitted,

COMMITTEE ON BYLAWS

Robert T. Schofield, IV, Chair
Anita L. Pelletier, Vice Chair
Samantha Peikoff Adler
Eileen E. Buholtz
Michael E. Getnick
LaMarr J. Jackson
A. Thomas Levin
Steven G. Leventhal
David M. Schraver
Oliver C. Young

THE NEW YORK BAR FOUNDATION
One Elk Street, Albany, NY 12207 (518) 487-5650

The New York Bar Foundation
Annual Meeting
MINUTES

REMOTE MEETING
JANUARY 30, 2021

PRESENT:
Abneri; Adigwe; Alcott; Alicea; Alomar; Alsina; Fernandez; Bahn; Barnes; Bascoe; Battistoni; Baum; Behrins; Beltran; Berkey; Berman; Betz; Billings; Bladykas; Boston; Buholtz; Buzard; Castellano; Chambers; Chandrasekhar; Chang; Christopher; Cohen; Cohen; Cohen; Cohn; Cooper; Dean; DeFio Kean; Degnan; Doerr; Doxey; Doyle; Eberle; Effman; England; Fallek; Fennell; Fernandez; Filabi; Filemyr; Finerty; First; Fishberg; Foley; Fox; Fox; Freedman; Frumkin; Genoa; Gerstman; Getnick; Gilmartin; Gold; Good; Grady; Grays; Griesemer; Grimaldi; Gross; Gutekunst; Gutenberger; Gutierrez; Hack; Harper; Hartman; Heath; Hobika; Holtzman; Jaglom; James; Jimenez; Jochmans; Joseph; Kamins; Kammholz; Kapnick; Katz; Kehoe; Kelly; Kendall; Kenney; Kiernan; Kimura; Kirby; Kobak; Kretser; Kretzing; LaBarbera; Lanouette; Lara; LaRose; Lau-Kee; Lawrence; Leber; Leo; Lessard; Leventhal; Levin; Levy; Lewis; Lindenauer; Lisi; Lugo; MacLean; Madigan; Maldonado; Marinaccio; Markowitz; Maroney; Marotta; Matos; May; McAvey; McElwreath; McGinn; McNamara; McNamara; Meyer; Meyer; Middleton; Miller; Miller; Millett; Milone; Minkoff; Minkowitz; Miranda; Montagnino; Moore; Moretti; Morrissey; Mukerji; Muller; Mulry; Napoletano; Newman; Noble; Nolan; Nolfo; O'Brien; O'Connell; O'Connell; O'Donnell; Onderdonk; Owens; Palermo; Palermo; Palumbo; Pappalardo; Perlman; Pessala; Pitegoff; Pleat; Poster-Zimmerman; Purcell; Radick; Reed; Reed; Riano; Riano; Richardson; Richman; Richter; Rivera Agosto; Robinson; Rosenthal; Rosenthal; Russ; Russell; Ryan; Ryba; Safer; Samuels; Santiago; Scheinkman; Schofield; Schraver; Schwartz-Wallace; Scott; Seiden; Sen; Shafer; Shafiqullah; Shampnoi; Shapiro; Sheldon; Shoemaker; Sigmond; Silkenat; Sise; Slavit; Sonberg; Starkman; Stockli; Stoeckmann; Swanson; Sweet; Tambasco; Taylor; Tesser; Triebwasser; van der Meulen; ;Vaughn; Ventura; Vigdor; Warner; Waterman; Weiss; Westlake; Whiteley; Wimpfhiemer; Wolff; Woodley; Yeung-Ha; Young; Younger;
Zimmerman

President Lesley F. Rosenthal called the meeting to order at 12:00 p.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, 2020 were approved.

Report of officers: Lesley F. Rosenthal thanked the lease negotiating teams for their efforts in working toward a positive outcome of the building discussions, reaffirming the desire of the Foundation to continue to work together and their appreciation of the long and valuable relationship with the association. She noted that the Foundation would welcome an opportunity to meet to discuss the matter. Ms. Rosenthal noted the distribution of the Annual Report which sets forth in detail the operations and activities of the Foundation during 2020. Ms. Rosenthal shared Foundation highlights including:

- Allocated more than $750,00 in grants to 138 grantees across the State for innovative legal services providing access to justice to the least fortunate among us. Through special purpose fundraising efforts, grants were also distributed for COVID19 Emergency Legal Relief as well as assisting veterans in need. Page 35 of the report was referenced that outlines the grants distribution.

- Despite the pandemic, the Foundation distributed $236,000 in fellowships and scholarships benefiting eighty-two students. This included 60 Catalyst Fellowships from the program inspired by Chief Judge Janet DiFiore and matched by every law school in the state.

- In the Foundation's call to action report on Racial Justice, the Foundation researched the connections between racial justice and the rule of law. The Foundation has committed to investing in organizations tackling racism in a systematic and sustained way and has been in touch with NYSBA Task Force Co-chairs T. Andrew Brown and Taa Grays to see how we can work together on this important issue.

- On the topic of women and access to justice, Ms. Rosenthal presented at the 2020 second circuit judicial conference on behalf of the Foundation highlighting the Foundation's work in funding access to justice programs assisting women in human trafficking cases, family law matters, and immigration matters.

Ms. Rosenthal thanked the sponsors of the recent Annual Assembly of the Fellows held on January 29, noting that the inaugural President's award was presented to the Honorable Sol Wachtler.

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 2020 Annual Meeting.

Report of Nominating Committee: Reporting on behalf of the Nominating Committee, Chair David M. Schraver placed in nomination the following slate of nominees presented by the Committee for the position of Director for terms commencing June 1, 2021 for term ending May 31, 2024:

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

A motion was adopted electing said Directors.

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

Respectfully submitted,

Pamela McDevitt
Secretary

THE NEW YORK BAR FOUNDATION
One Elk Street, Albany, NY 12207 (518) 487-5650

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 22, 2022

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, 2022 and concluding May 31, 2025.

- John Christopher, Glen Head
- C. Bruce Lawrence, Rochester
- David Singer, New York City
- David Schraver, Rochester

Statement of Activities
For the year ended December 31, 2021
(Before Audit)

REVENUES:	
Contributions received:	
Unrestricted	$ 228,022
Restricted	283,966
Cy Pres	0
	511,988
Rent	302,229
Income from investments	425,001
Fellows dinner income	0
Other	36,056
	763,286
TOTAL REVENUES	**1,275,274**
GRANTS AND DISTRIBUTIONS:	
Unrestricted grants	611,633
Grants from restricted contributions	84,499
Grants from Cy Pres funds	0
Distributions from restricted funds	216,900
	913,032
EXPENSES:	
Auditing	5,000
Salaries & fringe	195,260
General and administrative	130,246
	330,506
DEPRECIATION	**110,004**
TOTAL GRANTS AND EXPENSES	**1,353,542**
DECREASE IN NET ASSETS	**$ (78,268)**

The New York Bar Foundation has adopted for 2021 only, a total return investment and expenditure policy under which 6% of the rolling five years of the net realized and unrealized appreciation is available for expenditure. Investment appreciation of $855,300 is not recorded in this statement, however it is used in part to support the grant program.

Financial Report

THE NEW YORK BAR FOUNDATION
As of December 31, 2021
(Before Audit)

Statement of Financial Position

ASSETS	
CURRENT ASSETS:	
Cash, including interest bearing accounts	$ 527,588
Investments	7,556,462
Cy Pres Fund	9,293
Endowed Funds	1,052,882
Catalyst Fund	1,375,923
Other current assets	6,812
TOTAL CURRENT ASSETS	**10,528,960**
FIXED ASSETS AT COST:	
Land	766,731
Building	9,655,174
Furniture, fixtures and library	209,392
	10,631,297
Less accumulated depreciation	6,396,027
NET FIXED ASSETS	**4,235,270**
TOTAL ASSETS	**$ 14,764,230**
LIABILITIES AND FUND BALANCE	
CURRENT LIABILITIES:	
Deferred Income	
Accounts Payable	36,891
TOTAL CURRENT LIABILITIES	**36,891**
BOARD DESIGNATED FOR:	
Endowed Assets	1,782,922
Restricted Assets	1,052,882
Cy Pres Net Assets	9,293
Undesignated	11,882,242
TOTAL NET ASSETS	**14,727,339**
TOTAL LIABILITIES AND NET ASSETS	**$ 14,764,230**

NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
THE OTESAGA, COOPERSTOWN, NEW YORK AND REMOTE
OCTOBER 30, 2021

PRESENT: Alcott; Alomar; Barreiro; Baum; Beltran; Ben-Asher; Berlin; Berman; Bladykas; Boston; Bray; Brown; Bunshaft; Burke; Buzard; Caceres; Chambers; Chandrasekhar; Chang; Clouthier; Cohen, B.; Cohen, D.; Cohen, O.; Cohn; Coreno; Crawford; D'Angelo; De Jesus-Rosenwasser; Degnan; Doerr; Doyle; Dubowski; Duvall; Effman; Eng; England; Fallek; Fellows; Filemyr; Finerty; Fox; Friedman; Gayle; Gerstman; Getnick; Gilbert; Gilmartin; Gold; Good; Grady; Grays; Griesemer; Griffin; Gross; Gutekunst; Haig; Hartman; Hecker; Hill; Himes; Hobika; Hoffman; Holder; Islam; Jackson; Jaglom; James; Jamieson; Jimenez; Joseph; Kamins; Kammholz; Karson; Kean; Kehoe; Kelley; Kelly; Kendall; Kenney; Kiernan; Kimura; Klass; Klugman; Kobak; Kretser; Kretzing; Lau-Kee; Leo; Leventhal; Levin; Levin Wallach; Lewis; Lindenauer; Lisi; Loyola; Lugo; Lynn; Madigan; Marinaccio; Markowitz; Maroney; Marotta; Martin; Mathews; Matos; Mazur; McElwreath; McGinn; McGrath; McNamara; Messina; Meyer; Middleton; Miller, C.; Miller, M.; Minkoff; Minkowitz; Miranda; Montagnino; Moretti; Morrissey; Mukerji; Muller; Napoletano; Newman; Nielson; Nowotarski; O'Connell; Palermo, C.; Porzio; Pruzansky; Purcell; Quaye; Quiñones; Radick; Ravala; Reed, L.; Reed, M.; Riano; Richardson; Richman; Richter; Robinson; Rosenthal; Russ; Russell; Ryan; Safer; Samuels; Scheinkman; Schofield; Schram; Schraver; Schwartz-Wallace; Sciocchetti; Scott; Seiden; Sen; Shafiqullah; Shapiro; Silkenat; Silverman; Simon; Slavit; Smith; Sonberg; Spring; Stanclift; Stephenson; Stoeckmann; Stong; Swanson; Sweet; Tambasco; Tarson; Treff; Triebwasser; van der Meulen; Vaughn; Vigdor; Ward; Warner; Washington; Watanabe; Waterman; Weis; Welden; Wesson; Westlake; Wolff; Yanas; Yeung-Ha; Younger; Zweig.

Ms. Levin Wallach presided over the meeting as Chair of the House.

1. Approval of minutes of June 12, 2021 meeting. The minutes were deemed accepted as distributed.

2. Report of Treasurer. Domenick Napoletano, Treasurer, reported that through September 30, 2021, the Association's total revenue was $16.3 million, a decrease of approximately $1.3 million from the previous year, and total expenses were $10.9 million, a decrease of approximately $3.9 million over 2020. The report was received with thanks.

3. Report and recommendations of the Committee on Bylaws. Robert T. Schofield, IV, chair of the Bylaws Committee, outlined proposed bylaws amendments to remove gender-specific language from the Bylaws. The proposed amendments received the required subscriptions to permit their consideration at the Annual Meeting.

4. Report and recommendations of Finance Committee re proposed 2022 income and expense budget. Michael J. McNamara, chair of the Finance Committee, reviewed the proposed budget for 2022, which projects income of $20,907,870, expenses of $20,786,426, and a projected surplus of $121,444. After discussion, a motion was adopted to approve the proposed 2021 budget.

5. Report of President. Mr. Brown highlighted items contained in his written report, a copy of which is appended to these minutes.

6. Report and recommendations of Task Force on Attorney Wellbeing. Task Force co-chairs Hon. Karen K. Peters and M. Elizabeth Coreno outlined the Task Force's report on factors that impact the health and well-being of the legal community and its recommendations on steps to be taken to improve well-being. After discussion, a motion was adopted to approve the report and recommendations. Ms. Nielson abstained.

7. Memorial for Past President Robert L. Ostertag. Robert L. Ostertag, President of the New York State Bar Association 1991-1992, passed away in July 2021. Past President Kathryn Grant Madigan presented a memorial in his honor, and a moment of silence was observed in his memory.

8. Report and recommendations of Emergency Task Force on Solo and Small Firm Practitioners. Task Force co-chairs June M. Castellano and Domenick Napoletano presented the Task Force's report on the effect of the Covid-19 pandemic on solo and small firm practitioners and its proposed blueprint for dealing with this and future crises. After discussion, a motion was adopted to approve the report and recommendations. Mr. Cohn and Mr. Riano abstained.

9. Report of Nominating Committee. Michael Miller, chair of the Nominating Committee, reported that the Committee had nominated the following individuals for election to the indicated offices for the 2022-2023 Association year: President-Elect: Richard C. Lewis, Binghamton; 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 – Pauline Yeung-Ha, Brooklyn; 3rd District – Elena DeFio Kean, Albany; 4th District – Nancy Sciochetti, Saratoga Springs; 5th District – Hon. James P. Murphy, Syracuse; 6th District – Michael R. May, Ithaca; 7th District – Mark J. Moretti, Rochester; 8th District – Kathleen M. Sweet, Buffalo; 9th District – Hon. 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, 2022: Mirna M. Santiago, Pawling (Diversity Seat); Sarah E. Gold, Albany; Violet E. Samuels, Rosedale; and Kaylin L. Whittingham, New York City. Nominated as Section Member-at-Large was Gregory K. Arenson, New York City. The following individuals were nominated as delegates to the American Bar Association House of Delegates for the 2022-2024 term: T. Andrew Brown, Rochester; Sharon Stern Gerstman, Buffalo; Henry M. Greenberg, Albany; Richard C. Lewis, Binghamton; David P. Miranda, Albany; and Jacob Petterchak, New York City (Young Lawyer Delegate). The report was received with thanks.

10. Report and Recommendations of Committee on Standards of Attorney Conduct. Committee members James B. Kobak, Jr., Ronald C. Minkoff, and James Q. Walker outlined proposed amendments to the Comments of Rule 5.6 of the Rules of Professional Conduct. After discussion, a motion was adopted to approve the amendments. Mr. Doyle abstained. The members also presented an informational report concerning a proposed new

Rule 5.9 and accompanying comments; they noted that the committee is seeking additional comments on the proposal before presenting it for debate and vote. The report was received with thanks.

11. Report and recommendations of Committee on Immigration Representation, Committee on Legal Aid, Committee on Mandated Representation, and Criminal Justice Section. Hasan Shafiqullah, co-chair of the Committee on Immigration Representation, and committee member Joanne Macri outlined the groups' report calling for the New York Governor and Legislature to adopt the findings of a 2020American Bar Association report regarding the treatment of immigrants who have contact with the criminal justice system. After discussion, a motion was adopted to approve the following resolution:

WHEREAS, the New York State Bar Association (NYSBA) has long supported and encouraged measures to foster equity and racial justice for immigrants and all New Yorkers; and

WHEREAS, in the past, NYSBA has actively promoted and participated in efforts to provide immigrants in New York and nationwide with access to justice by promoting access to legal representation through the establishment of a committee specifically for that purpose, support for policies that invest in universal representation, and through partnerships with the Liberty Defense Project and;

WHEREAS, numerous provisions of immigration law impact people who have had contact with the criminal legal system; and WHEREAS, the United States Department of Justice ("DOJ") has the authority to rectify a body of administrative opinions previously issued by the DOJ that misinterpret and wrongfully expand the application of the criminal provisions of the immigration laws and which improperly interpret the immigration laws; and

WHEREAS, Improper DOJ administrative opinions have caused hundreds of thousands of disproportionately Black people and other people of color to be civilly detained, deported, denied immigrations status, and criminally incarcerated; and

WHEREAS, the American Bar Association has adopted a resolution calling for the United States Attorney General to limit the immigration law impacts of criminal legal system engagement by utilizing the "certification process to withdraw certain Attorney General opinions and replace them with opinions that are consistent with congressional intent, the U.S. Constitution, and U.S. treaty obligations, and which uphold . . . well-settled legal concepts;" and

WHEREAS, immigration detention and enforcement poses grave risks to immigrant New Yorkers, particularly immigrant New Yorkers who are people of color; and

WHEREAS, NYSBA believes that an immigration system that is welcoming and inclusive will benefit all New Yorkers;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association hereby urges the New York State Governor and the New York State Legislature to adopt the findings and recommendations of the American Bar Association Resolution 103B.

12. Report of The New York Bar Foundation. Carla M. Palumbo, President of The Foundation, update the House members on Foundation activities, including the awarding of grants fellowships and scholarships. The report was received with thanks.

13. Memorial for Ronald F. Kennedy. Past President Vincent E. Doyle, III observed that Ronald F. Kennedy, longtime Director of Governmental Relations for the Association, passed away in August. A motion was adopted to approve the following resolution in his memory:

WHEREAS Ronald F. Kennedy served the New York State Bar Association for many years with distinction, including as the Director of the Government Relations Department, prior to his retirement in 2020, and

WHEREAS during his tenure, Ronald F. Kennedy was intimately involved with all of the Association's advocacy efforts, with a particular focus on the state and federal legislative priorities, and

WHEREAS during that time, the Association had many significant victories in the area of legislative advocacy, including passage of the Marriage Equality Act, establishment of the Office of Indigent Legal Services, and the passage of numerous measures to combat the problem of wrongful convictions, and

WHEREAS, in the year before the retirement of Ronald F. Kennedy, the Association's efforts yielded particularly significant legislative reforms in the area of criminal discovery and pre-trial bail, two of the most impactful criminal legislative changes in New York in the last 25 years, and

WHEREAS Ronald F. Kennedy's knowledge, leadership and tireless efforts on behalf of the Association's legislative goals undoubtedly improved the lives of millions of individuals who now enjoy the benefits of laws that are more fair, more just and more inclusive, and

WHEREAS Ronald F. Kennedy was committed to the mission of the New York State Bar Association, and

WHEREAS Ronald F. Kennedy was admired and respected by all who knew him, and will be sorely missed by his legion of friends, and

WHEREAS Ronald F. Kennedy passed away on August 27, 2021, surrounded by his beloved wife Honor, and children Sean and Mariah, it is hereby

RESOLVED that the New York State Bar Association hereby expresses its deep gratitude to Ronald F. Kennedy for his service, and it is further

RESOLVED that when the New York State Bar Association House of Delegates adjourns its meeting of October 30, 2021, it does so out of respect for and in memory of Ronald F. Kennedy.

14. Administrative items. Ms. Levin Wallach reported on the following items:

a. Sandra Rivera, a member-at-large of the Executive Committee, had resigned her position in August 2021, and the Executive Committee had approved the appointment of Christopher R. Riano to fill the vacancy. A motion was adopted to ratify the appointment.

b. Ms. Rivera had also resigned as a member of the Finance Committee, and President Brown had appointed Jacqueline J. Drohan to fill the vacancy. A motion was adopted to ratify the appointment.

c. She reported that the 2022 Annual Meeting events would be a combination of in-person and remote, and encouraged members to register for the meeting.

15. New Business.

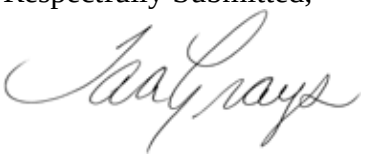
a. On behalf of the Torts, Insurance, and Compensation Law Section, House member Matthew J. Kelly moved a resolution calling for an immediate stay of the Uniform Rules for Supreme and County Courts pending the review and determination of the Administrative Board of the report submitted to it by the association in July 2021. After discussion, a motion was adopted to table the resolution.

b. House member Steven Richman moved a resolution calling for the Governor to sign S4379/A6044 regarding the certification of judges. The Chair ruled the motion out of order; upon appeal of the ruling to the House, the ruling was sustained.

15. Date and place of next meeting. Ms. Levin Wallach announced that the next meeting of the House of Delegates would take place on Saturday, January 22, 2022 at the New York Hilton Midtown.

16. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,



Taa R. Grays
Secretary

NEW YORK STATE BAR ASSOCIATION
NYSBA One Elk Street, Albany, New York 12207 • 518.463.3200 • www.nysba.org

Report of President T. Andrew Brown to the
NYSBA House of Delegates
October 30, 2021

Dear Colleagues:

It is with such pleasure that I welcome you to the October 2021 meeting of the House of Delegates, the first time that so many of us have met in person in almost two years. I am thrilled to report that the scheduling of in-person NYSBA events is slowly resuming – I've had the privilege to recently attend bar events in Staten Island, Vermont, Brooklyn, Rochester, Saratoga, Albany, and now Cooperstown.

I am sure that many of you join me in my fervent hope for continued progress in the vaccination efforts and the gradual emergence from the COVID-19 pandemic in the months to come. In this regard, I salute the work of our Emergency Task Force on Mandatory Vaccination and Safeguarding the Public's Health, chaired by Mary Beth Morrissey, whose seminal report of this summer has done so much to propel vaccination efforts forward here in New York State.

For our delegates participating remotely, I greet you as well. Today's meeting is the first true "hybrid" meeting of the House of Delegates – and indeed, the majority of our delegates are here with us today remotely, much as they have been for meetings of the House since April of last year. I am so proud of our Association's ability to instantaneously switch to remote operations and governance early in the crisis. I pledge to you that we will continue to find innovative ways to engage with each other in the future as we have done with our upcoming hybrid Annual Meeting. The Virtual Bar Center is living up to its promise.

But I would be remiss to not state the obvious and recognize that the past nineteen months have clearly taxed us – our profession, our Association, our state, and our nation – in ways no one could have predicted.

We witnessed levels of unemployment, isolation, and indeed forced societal change unseen before in our lifetimes – perhaps even in recent human history. We witnessed our democracy stretched to a near breaking point. Along with the pandemic, we witnessed social upheaval, discrimination, and injustice, ugly reminders of a stain that still blights America and blocks many from the true promise of the American Dream. We've more closely examined our personal lives and relationships, searching for meaning and what really matters.

Coming out of the pandemic, we now face a time of further reflection, a time of reckoning, a time for renewal and a time to re-imagine our highest ideals. There is no turning back to the way things used to be in our noble profession. We have learned so much and will come back stronger than ever.

The good news is that lawyers are uniquely positioned to lead the way. This is our collective moment. As the New York State Bar Association approaches it sesquicentennial anniversary in 2026 – 150 years of NYSBA – we are keenly aware of the power and the prestige of the collective voice of New York's bench and bar. Indeed, this is your moment. I can say with every confidence that this is a very exciting time to be a lawyer and to be a member of NYSBA.

Throughout my tenure as a leader within the Association – as a delegate, a task force chair, a section chair, the finance chair, and as president-elect and now as president – I have focused on making NYSBA membership even more valuable and relevant for practicing attorneys. We must all now intensify that focus more than ever. In the coming months, I will assemble a working group to prepare a strategic plan for the Association, with a focus on maintaining and increasing relevancy and value.

On the legislative advocacy front, I am pleased to announce the Association's legislative priorities for 2022, which include the repeal of Judiciary Law 470, a fair and long-overdue raise in the rate of compensation for assigned counsel, creation of a right to counsel in immigration proceedings and in housing proceedings statewide, funding for universal broadband access, and broader and more significant student loan debt relief. Building off the herculean efforts of our Health Law Section, Task Force on Nursing Homes and Long-Term Care, and Emergency Task Force on Mandatory Vaccination and Safeguarding the Public's Health, we will also advocate for reforms to the public health law to strengthen the capacity of the state to respond to public health emergencies, while ensuring that issues of equity for disadvantaged and vulnerable populations are front-and-center in these considerations. And we will continue to monitor and engage on other legislative and policy developments of interest to our members, including parole reform, the roll-out of legalized cannabis in New York State, and changes related to civil practice and the tort system, among others.

I am especially proud that NYSBA will advocate for legislation to modernize policing. We are at a crisis point with policing in New York. Harmful policing practices are resulting in misconduct that disproportionately impacts Black people and a culture that allows these practices to continue unchecked. Policing needs to be brought into the 21st century and the recommendations developed by our Task Force on Racial Injustice and Police Reform will do much to bring about much needed change in this most important societal issue. NYSBA will continue to engage and advocate on legislation and policy to reduce mass shootings, including through a forthcoming resolution at the upcoming meeting of the ABA House of Delegates.

In reviewing the agenda for today's meeting, I would be amiss to not mention the many exciting developments and programs generated by our active sections, task forces, and committees. Our sections continue to assiduously produce programming, articles, and other content of value to their members. They actively generate policy as well – the Executive Committee in its meeting yesterday considered legislative proposals either sponsored or co-sponsored from five of our sections – and this does not include the many legislative memoranda that sections issue over the course of the year. I extend my hearty thanks to our section leadership, many of whom are represented in the House, and to the diligent staff of our Sections and Meeting Services Department, led by Pat Stockli, who service and support our sections in their important work.

In terms of CLE programming, NYSBA continues to be an active producer of CLE webinars and seminars to ensure that our members are trained and kept abreast of the latest developments in the law. Over 490 CLE webinars have already taken place during this calendar year. These programs – which cover the full range of legal topics from animal law to the administration of trusts and estates to cybersecurity – are only possible through the dedicated efforts of you, our members, and the driving force of our sections and committees. I thank James Barnes and Shawndra Jones, the co-chairs of the Committee on Continuing Legal Education, for their leadership in overseeing our CLE programming, and for the tireless work of senior director of CLE and Law Practice Management Kathy Suchocki and the entire CLE departmental staff.

I would also like to highlight some developments pertaining to membership. We are, after all, a membership organization, and our volunteer leadership and staff are continually at work identifying new programs and incentives to better engage both current and potential members. Amongst these key efforts are monthly billing and auto-renew payment options; dues packages that include a certain number of online or on-demand CLE credits; cybersecurity insurance coverage offered through our partner USI Affinity; a streamlined online dues assistance process; and the ongoing effort to streamline the online user experience, especially for membership renewals, and continue the advancement of the "Virtual Bar Center." I thank our Committee on Membership, chaired by Hyun Suk-Choi and Mitch Katz, and our resolute Membership and Member Services Department, led by Victoria Shaw, Senior Director of Attorney Engagement and Retention, for driving forward these most essential initiatives for our Association.

Our membership focus extends beyond the borders of New York State to include international growth as well. NYSBA is unrivaled in its reputation as an international bar association. Recognizing that thousands of our members – and tens of thousands of potential members – practice internationally, we continue our global efforts in partnership with our International Section. Just law month I had the privilege, together with International Section chair Ed Lenci, of signing a historic memorandum of understanding with the Georgian Bar Association and launching a new International Section chapter in the Republic of Georgia. Earlier this summer I participated in MOU ceremonies and signings with the Philippine Bar Association and the Osaka Bar Association of Japan. NYSBA plans to pursue many more such MOUs with international partners in the years to come and expand our global footprint. Additionally, NYSBA and its members will continue to speak and act on matters of international legal concern, including immigration and refugee issues resulting from the conflict in Afghanistan. Above all else on the international front, NYSBA is committed to defending the rule of law, the integrity of the legal profession and the independence of the judiciary, and the importance of public trust and faith in democratic processes – and we shall continue to speak out should these core values be assaulted abroad.

Indeed, the defense of these very same values is at the core of NYSBA's mission at home as well. The challenges of the past in many ways remain the challenges of the future, and I am intensely proud of the dedicated work of so many of our members to take on the two major societal scourges of our day – the lingering effects of the COVID-19 pandemic, and the blight of racism. The Task Force on the Post-Pandemic Future of the Profession has been charged with helping steer both the profession and the Association out of and beyond the COVID-19 pandemic, and we are looking forward to its upcoming forums. The Task Force on Racism, Social Equity, and the Law has already produced a major virtual public forum on "How Structural Racism Built Today's Education, Health and Economic Outcomes," which was attended by over 600 attorneys and

members of the public and is hard at work on preparing a report with recommendations for the ultimate review of this House.

Racial injustice also encapsulates strident efforts to advance access to justice, especially as it pertains to bridging the access to justice gap for all New Yorkers. Last month, in September, I had the privilege of participating in the annual hearing on civil legal services, together with Chief Judge DiFiore, Chief Administrative Judge Marks, and the four presiding justices of the state's appellate divisions. I was struck by repeated reference in the participants' testimony to the benefits that would come to all New Yorkers through an expanded right to counsel and efforts to bridge the digital divide – both goals of NYSBA. NYSBA remains committed to full and fair funding for civil legal services, and we will be tireless in our advocacy on behalf of legal aid, mandated representation, and the many clients – our neighbors and fellow citizens – helped through these programs.

There is much discussion in Washington these days about infrastructure. Infrastructure is more than just roads and pipes and bridges – infrastructure must include the systems to support healthy people, families, and communities. NYSBA's pro bono programs continue to help our fellow New Yorkers in need of assistance with unemployment insurance, small estates administration, workers' compensation claims, and the restoration of veterans' benefits, and have recently been expanded to include a hotline to connect Hurricane Ida survivors with the necessary legal service providers. Our Lawyer Assistance Program has also expanded its efforts to assist our members through a new Women's Support Group. And later today we will hear from the Task Force on Attorney Wellbeing, the report of which contains so many key recommendations that when implemented will do much to improve the wellbeing, and indeed happiness, of our members.

NYSBA continues to lead on other fronts as well. The recently launched Task Force on the Treatment of Transgender Youth in Sports will provide respectful, objective, and fact-based dialogue and programming on this seminal societal matter. Our members are also continuing our principled advocacy for necessary and prudent changes to improve the practice of law – including the Emergency Task Force on Solo and Small Firm Practitioners, who today will present their seminal report and recommendations on safeguarding and strengthening solo and small firm practitioners – a demographic that makes up over half of the NYSBA membership; and the Task Force on COVID-19 Immunity and Liability, which is preparing a series of articles on changes in civil practice, torts, and contracts brought on by the COVID-19 pandemic.

I would also like to touch on the achievements of our Task Force on Uniform Rules, whose ongoing work has prompted a current reexamination of the Uniform Civil Rules for the Supreme Court and the County Court. This Task Force, chaired by vice-president Richard Lewis, was formed by this House at the April meeting, and tasked to review and comment on recently implemented changes to the Rules by the Office of Court Administration. The Task Force proceeded to host four public forums in the spring to solicit the views of our membership - and ultimately prepared a report on the efficacy of the new rules. This report, which was approved by our Executive Committee in August, recommended the elimination of twenty-three of the new rules. The report was conveyed to the Administrative Board of the Courts, and I, together with Chair Lewis, met with Chief Administrative Judge Lawrence Marks to convey and discuss the serious and vested concern of the Association in this matter. As a result of this activity, the court system now plans to revise twelve of the twenty-nine rules in question and has solicited public comment by December 6, 2021.

Our Task Force has now scheduled two additional forums for November 8 and 9 to solicit the feedback of members on these planned revisions and to consider submission of additional comments for review and consideration by the Administrative Board.

In June the House approved the transfer of One Elk from the Foundation to NYSBA. This is in the long-term interests of both organizations. NYSBA and Foundation leadership are joining in the effort to make the necessary improvements at One Elk, to continue safe and shared occupancy. Fundraising initiatives are being planned and will be shared with you all soon.

I look to you as leaders in the legal profession, in our communities, and in society at large. You, the delegates, come from across our great state, representing the thirteen judicial districts and a variety of practice settings, together with your own unique personal background – a true reflection of the Empire State's bench and bar.

What I have most valued about leadership is the ability to bring out the best in people. That's what leaders do. That's what each of us as a leader of this Association must do. We must work to right wrongs and make a more just society. Every single lawyer has the ability to solve someone's problem – together our solutions are all the more impactful.

As we continue to navigate out of the pandemic, as we continue to confront the scourge of racism as we continue to bridge the access to justice gap, as we continue to spotlight and value the mental, physical, and social wellbeing of ourselves and our colleagues, and as we continue to aggressively advocate for the legal profession and measures to strengthen and assist the practitioner and the practice of law, we must continue to band together as a profession, as lawyers, as leaders, to confront the challenges of the future.

Just look at how much has changed in the practice of law, and indeed our own lives, over the last nineteen months. We remain relevant; we gain strength; we lead, not by cautious hesitation but by careful progress as an association. By constant reimagination we will boldly fortify the New York State Bar Association, the legal profession, and ourselves as lawyers. The future, although not free from challenge, is certainly full of excitement and progress. Thank you for joining me on this journey – there is much work left to be done.

HOUSE OF DELEGATES
Agenda Item #2

ELECTION OF 2022-2023 OFFICERS AND MEMBERS-AT-LARGE OF THE EXECUTIVE COMMITTEE

PRESIDENT-ELECT
Richard C. Lewis, Binghamton

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

SECOND:
Pauline Yeung-Ha, Brooklyn

THIRD:
Elena DeFio Kean, Albany

FOURTH:
Nancy Sciocchetti, Saratoga Springs

FIFTH:
Hon. James P. Murphy, Syracuse

SIXTH:
Michael R. May, Ithaca

SEVENTH:
Mark J. Moretti, Rochester

EIGHTH:
Kathleen M. Sweet, Buffalo

NINTH:
Hon. Adam Seiden, Mount Vernon

TENTH:
Michael A. Markowitz, Hewlett

ELEVENTH:
David Louis Cohen, Kew Gardens

TWELFTH:
Michael A. Marinaccio, White Plains

THIRTEENTH:
Orin J. Cohen, Staten Island

AT-LARGE MEMBERS OF THE EXECUTIVE COMMITTEE

Sarah E. Gold, Albany
Ronald C. Minkoff, New York City
Kaylin L. Whittingham, New York City
Violet E. Samuels, Rosedale
Mirna M. Santiago, Pawling (Diversity Seat)
Gregory K. Arenson (Section Seat)

Staff Memorandum

HOUSE OF DELEGATES
Agenda Item #4

REQUESTED ACTION: Approval of the 2021 Diversity Report Card the Committee on Diversity and Inclusion.

As part of its mission, the Committee on Diversity and Inclusion is charged with conducting biennial surveys to evaluate the level of diversity in Section leadership, membership and activities. Surveys have been conducted since 2005; this year, the committee conducted its seventh survey. The attached report reviews the results of the 2021 survey and compares those results to the previous surveys. Also included in the report is a review of diversity efforts by eight Association sections selected by the committee, to be used by sections to create and achieve goals.

The report contains a series of general recommendations for sections as well as a section reviewing progress being made toward implementation of the Diversity Plan approved by the House in 2020. In addition, the report makes the following recommendations for the Association:

- Consider a presidentially appointed member of the Executive Committee to serve as a liaison.
- Take action to improve submission of all demographic information by 10% more members and 25% more Association leaders at every level (section, committee, HOD, Executive committee) by June 2022.
- The President should have 13 diversity appointment to the House, one from each judicial district.
- Conduct aa survey for a clearer understanding of why younger lawyers are not joining NYSBA.
- Improve communications with members via social media.

The report will be presented by Nihla F. Sikkander, a member of the committee's Diversity Report Card Subcommittee.

NEW YORK STATE BAR ASSOCIATION

A report and recommendations from the Committee on Diversity and Inclusion including the **Diversity Report Card, Eighth Edition, 2021**

January 2022

The views expressed in this report are solely those of the Task Force and do not represent those of the New York State Bar Association unless and until adopted by the House of Delegates.

NEW YORK STATE BAR ASSOCIATION

Diversity Report Card

from the New York State Bar Association Committee on Diversity & Inclusion

Fall 2021

The views expressed in this report are solely those of the Committee and do not represent those of the New York State Bar Association unless and until adopted by the House of Delegates.

NEW YORK STATE BAR ASSOCIATION

NYSBA

DIVERSITY REPORT CARD

EIGHTH EDITION

2021

January 2022

COMMITTEE ON DIVERSITY AND INCLUSION

THE DIVERSITY REPORT CARD IS DEDICATED TO THE MEMORY OF JOHN ERIC HIGGINS, ESQ., A MEMBER OF THE NEW YORK STATE BAR ASSOCIATION FOR OVER 25 YEARS AND AN ACTIVE PARTICIPANT IN MANY AREAS OF THE ORGANIZATION, INCLUDING HIS LEADERSHIP AND SERVICE ON THE HOUSE OF DELEGATES AND THE COMMITTEE ON DIVERSITY AND INCLUSION AS CHAIR OF THE DIVERSITY REPORT CARD SUBCOMMITTEE. JOHN WAS ALSO PAST CHAIR OF THE COMMITTEE ON MINORITIES IN THE PROFESSION, FOUNDER OF THE CONSTANCE BAKER MOTLEY SYMPOSIUM, AND THE MOVING FORCE BEHIND THE MILES TO GO REPORT. JOHN RECEIVED THE 2018 DIVERSITY TRAILBLAZER AWARD POSTHUMOUSLY.

BECAUSE OF JOHN'S WORK, WE CONTINUE OUR VISION TO RAISE AWARENESS OF THE NEED FOR A DIVERSE AND VIBRANT LEGAL PROFESSION AND NOTE THAT EVEN IN 2021 THERE ARE MILES TO GO BEFORE WE REST.

COMMITTEE ON DIVERSITY AND INCLUSION
2021-2022

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MIRNA M. SANTIAGO, EXECUTIVE COMMITTEE LIAISON
ERNESTO GUERRERO, NYSBA STAFF LIAISON

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INTRODUCTION

The New York State Bar Association (NYSBA or Association) is deeply committed to enhancing diversity at every level of participation within the association and the profession.* On January 31, 2020, the NYSBA House of Delegates adopted its Diversity Plan. The Diversity Plan will promote and advance the full and equal participation of attorneys of color and other diverse attorneys (including diversity based on gender, race, color, ethnic origin, national origin, religion, sexual orientation, gender identity and expression, age, and disability) in NYSBA. The Diversity Plan sets forth numerous implementation recommendations as specific actions the NYSBA is urged to undertake in the immediate future such as: the wide dissemination of the diversity plan within NYSBA, the promoting and tracking of diversity within NYSBA's leadership, and in NYSBA's leadership nominations and leadership development process. Further recommendations include promoting diversity in NYSBA membership through marketing and membership solicitation materials that are welcome to diverse populations. NYSBA is encouraged to promote diversity in CLE and other programming, both live and virtual, and throughout its publications. The plan encourages the enhancement of current tracking and reporting of progress in diversity efforts. The plan urges NYSBA to create a diverse speaker database, in conjunction with the Committee on Diversity and Inclusion, as well as follow the Mansfield rule with respect to leadership positions in all NYSBA entities.

* On November 8, 2003, NYSBA's House of Delegates adopted a diversity policy, which was amended by passage at the House of Delegates on January 31, 2020, to read:

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

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

The mission of the Committee on Diversity and Inclusion is to promote and advance the full and equal participation of attorneys of color, women, and other diverse attorneys in the Association, and in all sectors and at every level of the legal profession through research, education, fostering involvement and leadership development in the Association and other professional activities, and to promote knowledge of and respect for the profession in communities that historically have been excluded from the practice of law. Therefore, with full support of NYSBA leadership, the Committee continues to make regular requests that all NYSBA members complete their diversity profile as part of their membership renewal to evaluate the level of diversity in Section and Association leadership, membership, and activities, and report those results.

The Committee on Minorities in the Profession (now known as The Committee on Diversity and Inclusion) reported the results of the 2005 survey in a Diversity Report Card, which the Executive Committee considered as an informational item at its June 23rd and 24th meeting of 2005. The results of that survey were published as the Diversity Report Card.

In 2005, the data reported in the First Diversity Report Card included gender, ethnicity/race, and ancestry status. Since then, diversity data has grown more granular to include sexual orientation, age, and disability, and has focused on leadership entities within NYSBA. In 2017, the 7th Report Card also focused on eight NYSBA Sections: Antitrust Law, Criminal Justice, Corporate Counsel, Food, Drug & Cosmetic Law, Health Law, Intellectual Property, Senior Lawyers (now 50+ Section), and Tax Sections. In 2021, the spotlight continues on a different eight sections: Business Law, Commercial and Federal Litigation, Elder Law and Special Needs, Family Law, Judicial, Real Property Law, Trusts and Estates Law, and Young Lawyers Sections.

Before we rest, in an effort to stay on the cutting edge, this Committee is in the process of changing its name to the Committee on Diversity , Equity, and Inclusion.

MEMBER AND LEADERSHIP PARTICIPATION

A recurring challenge for the report card has been the lack of full participation in data collection by all NYSBA members and those in leadership positions. The rates of participation are low, as evidenced by the percentage of members who declined to answer or failed to provide gender, race/ethnicity, sexual orientation, or disability data. Non-participation rate includes both members who "declined to answer" each and every question and non-responsive members, as noted in the table below.

2021 NYSBA MEMBER DATA*

	Declined to Answer			No Data Provided		
	2015	2017	2021	2015	2017	2021
Gender	0%	0%	0%	6.16%	17.84%	10.1%
Race/Ethnicity	1.67%	2.06%	2.8%	54.23%	54.75%	35.9%
Sexual Orientation	3.25%	3.67%	5.0%	68.31%	66.33%	50.1%
Disability	7.09%	5.76%	7.5%	55.45%	56.24%	38.1%
Age					0%	9%

2021 NYSBA LEADERSHIP DATA COLLECTION*

	Declined to Answer					No Data Provided				
	Age	Disability	Gender	Race/ Ethnicity	Sexual Orientation	Age	Disability	Gender	Race/ Ethnicity	Sexual Orientation
House of Delegates		8%		3.40%	5.70%	2.30%	18%	1.50%	13.80%	29.10%
Executive Committee		6.10%		3.00%	9.10%	0%	18.20%	0%	9.10%	21.20%
Nomination Committee		5.50%		1.80%	5.50%	1.80%	21.80%		18.20%	30.90%
Section Leaders		6.70%		1.90%	5.70%		20%		16.20%	24.80%
Standing Committee Chairs		2.30%		2.30%	2.30%		21.60%		11.40%	27.30%

The percentage of individuals who provide gender data is high, with no data reported for only 10.1% of members. The non-participation rate for race/ethnicity is down to 38.7% from almost 57% in 2017. 55% of individuals have not provided data in the sexual orientation/gender identity category, while 45.6% of the membership has not provided data regarding disability status.

*Subsequent data found in later comparisons in this report card are solely based off of the members who filled out the appropriate demographic questions.

MEMBER AND LEADERSHIP PARTICIPATION

The Committee continues to note that without accurate data on NYSBA membership and leadership, programs and services will not accurately reflect or respond to the needs of members. Also, data is needed to inform NYSBA staff of areas where additional outreach and training may be needed. The non-responsive data, in the Committee's view, informs us that both the leadership and the Committee have failed to reach a significant number of NYSBA members in connecting the importance of this information to NYSBA's work and the profession.* NYSBA must continue to discuss the need to know the "Race/Ethnicity," "Sexual Orientation and Gender Identity," "Age," and "Physical or Other Disability" of all of its members. In order to get more accurate statistics and increase responsiveness to the demographic questions, the Committee will recommend additional changes to collecting and reporting data, including the timing of data collection, diversity responsibilities of staff, and the role of our leaders.

The Committee would like this report card to be used as a tool by the Section Chairs, along with the Diversity Chairs and staff liaisons, to enhance their Sections' diversity efforts. We challenge the Association to continue to gather and analyze data and to implement constructive change.

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

DIVERSITY DATA OVERALL

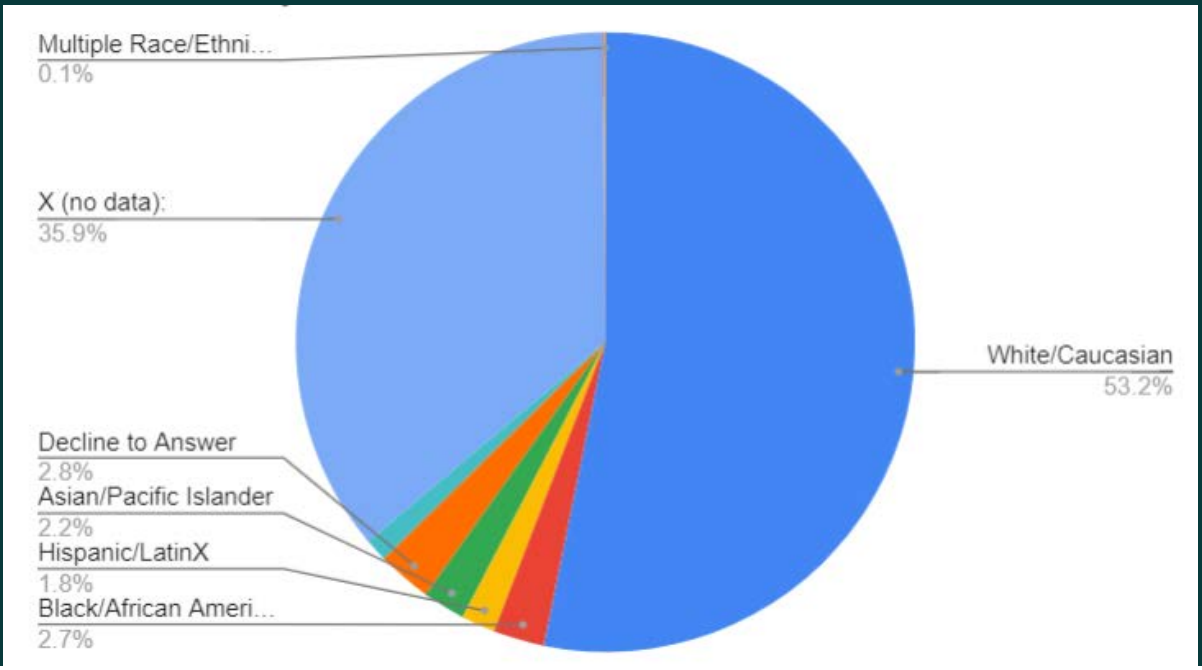
The next sections analyze the demographic data overall, followed by the demographic data for the eight Sections examined this year: Business Law, Commercial and Federal Litigation, Elder Law and Special Needs, Family Law, Judicial, Real Property Law, Trusts and Estates Law, and Young Lawyers. All Sections can continue to use the Committee on Diversity and Inclusion as a resource. Additionally, other Sections can similarly analyze their respective data and call upon the Committee's help to create a plan, document their goals, and implement them.

RACE, ETHNICITY, GENDER, SEXUAL ORIENTATION, GENDER IDENTITY, DISABILITY STATUS, AGE, NEW ATTORNEYS

RACE/ETHNICITY

2021 DATA

MEMBERSHIP



In 2017, NYSBA members could not decline to answer questions on race/ethnicity or simply elect to provide no data. The 2017 membership data shows that 87% of the members self-identified as White/Caucasian, versus in 2021 where only 53.2% self-identified as White/Caucasian. In contrast, self-identification as Black/African American was about the same in 2017 (3%) and 2021 (2.7%). The number of members who self-identified as Hispanic/LatinX decreased from 3% in 2017 to 1.8% in 2021, and members who self-identified as Asian/Pacific Islander decreased from 5% to 2.2% during the same period. In 2021, 2.8% of members declined to answer, while 35.9% of members provided no data. A very small percentage of members self-identified as Native American (0.1%) and Multiple Race/Ethnic Group (0.1%).

Among members of the House of Delegates (HOD), 64.4% self-identified as White/Caucasian in 2021, compared to 82% in 2017, and 7.7% of HOD members self-identified as Black/African American in 2021, compared to 9% in 2017. During the same period, the percentage of members who self-identified as Hispanic/LatinX increased from 5% to 6.1%, while the percentage of members who identified as Asian/Pacific Islander remained fairly constant (2.7% in 2021 vs 3% in 2017). In 2021, 3.4% of HOD members declined to answer, and 13.8% reported no data.

RACE/ETHNICITY

Among members of the Executive Committee, 75.8% of members self-identified as White/Caucasian in 2021, compared to 83% in 2017. Only 3% of members self-identified as Black/African American in 2021, compared to 7% in 2017, while the percentage of members who self-identified as Hispanic/LatinX remained fairly constant (9.1% in 2021, compared to 10% in 2017). In 2021, 3% of Executive Committee members declined to answer, and 9.1% reported no data.

For the first time in 2021, we also surveyed the Nominating Committee. Of the 55 members in 2021, 36 members (or 65.5%) self-identified as White/Caucasian, four members (or 7.3%) self-identified as Asian/Pacific Islander, three members (or 5.5%) self-identified as Black/African American, one member (or 1.8%) self-identified as Hispanic/LatinX, one member (or 1.8%) declined to answer, and 10 members (or 18.1%) provided no data. In total, 19.9% of the Nominating Committee failed to provide demographic data.

The data with respect to Section Leaders, also available for the first time in 2021, yields the following results: 73 of 105 leaders (or 69.5%) self-identified as White/Caucasian; 6.7% self-identified as Black/African American; 2.9% self-identified as Asian/Pacific Islander; 1.9% self-identified as Hispanic/LatinX; and one leader (or 1%) identified as Other. Two leaders (or 1.90%) declined to answer, and 17 leaders (or 16.10%) provided no demographics. In terms of membership, NYSBA does a reasonably good job of attracting lawyers of color. In 2021, approximately 6.9% of the membership self-identified as people of color. Data from the American Bar Association (ABA) data indicates that 17% of lawyers are of color. In total, 18% of 2021 Section leaders failed to provide demographic data.

Current New York State Census data* indicates that 63.66% of the population identify as White/Caucasian; 15.66% identify as Black; 8.66% identify as other; 8.42% identify as Asian; 3.15% identify as two or more races; 0.41% identify as American Indian or Alaska Native; and 0.05% identify as Native Hawaiian and Other Pacific Islander.

The most recent data reflects that a significant number (16.5%) of NYSBA leadership (75 of 454) either provided no data or declined to answer. It is especially disappointing that 19.9% of the members of the Nominating Committee—which determines who becomes an Officer of the Association or a member of the Executive Committee—declined to answer race/ethnicity questions or to provide other relevant data.

See World Population Review: New York Population 2021, https://worldpopulationreview.com/states/new-york-population.

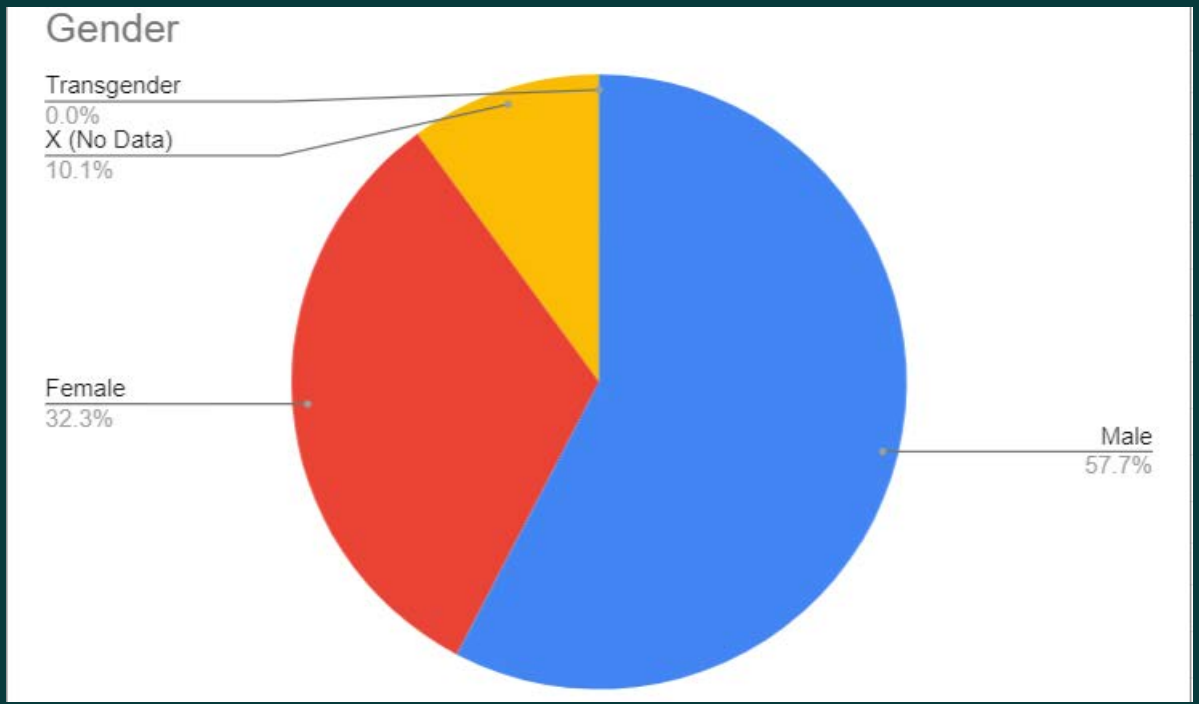
RACE/ETHNICITY

This Committee strongly urges all persons serving on the Nominating Committee, or acting as a Section Leader, to provide race/ethnicity and all other required data. Any person who is nominated to serve on the Nominating Committee or as a Section Leader should self-report their demographic data. In addition, NYSBA's leadership (i.e., President, President-Elect, Secretary, Treasurer) should regularly call upon NYSBA members, and other leadership, to provide all data requested for future report cards. Without this data, NYSBA cannot adequately respond to the needs of all its members.

GENDER

2021 DATA

MEMBERSHIP



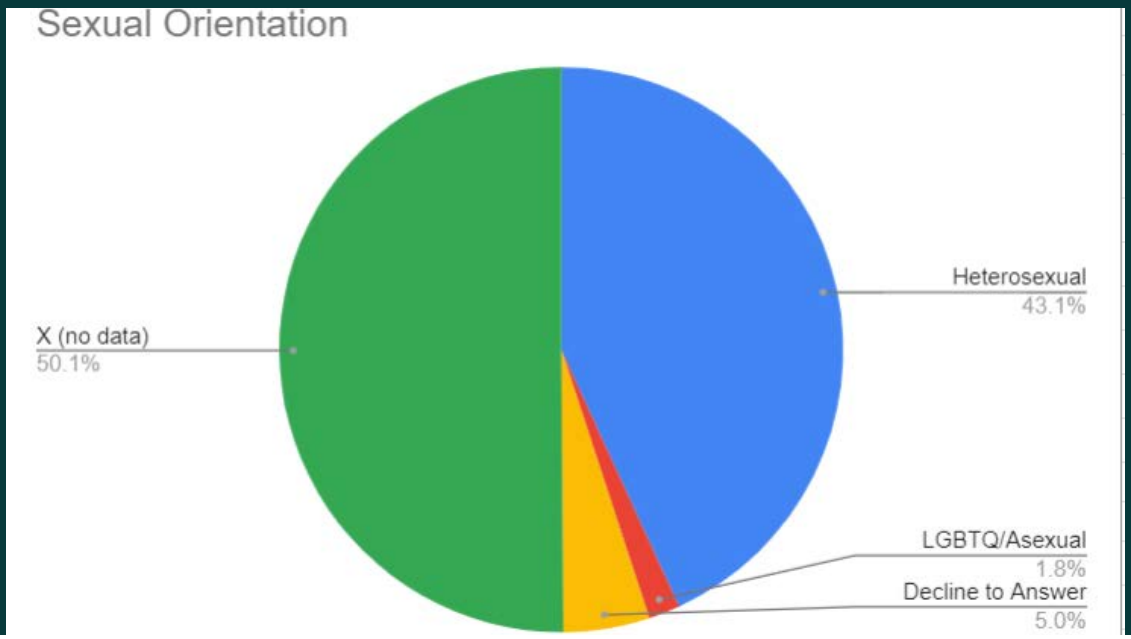
In 2021, NYSBA membership reported a 25.4% disparity between its male and female members, with males comprising 57.7% of overall membership, females comprising 32.3% of overall membership, and 10% of members reporting no data. The currently standing disparity between male and female members within NYSBA's overall membership, the HOD, Executive Committee, Nominating Committee, Section Leaders, and Standing Committee Chairs, collectively and separately evidences smaller disparities between its male and female members. With a historic record of majority male members, we commend NYSBA for its increased achievement of equity with respect to females in leadership positions.

In comparison with previously reported data, NYSBA should continue to do its due diligence so that the gender gap in leadership and overall NYSBA membership will further narrow. Trends over time are evident of a bright future ahead for women in the legal sector, as the proportion of women in NYSBA Leadership are, in some sectors, in excess of men.

SEXUAL ORIENTATION & GENDER IDENTITY

2021 DATA

MEMBERSHIP



No NYSBA member identified as either transgender or cisgender in 2021, which has remained unchanged since 2017. Two possible reasons for the lack of reporting in this area could include: (1) the fact that the demographics section on the NYSBA website does not clearly indicate that more than one gender identity can be selected; and (2) a general lack of awareness and understanding of the terms.

According to the available demographic information, no NYSBA member identified as either non-binary or intersex in 2021. Notably, these options were not available selections in 2017.

Overall, there is a great deal of missing data in regard to sexual orientation. For the general NYSBA membership, 50.1% of members have not provided sexual orientation-related demographic information. These numbers are lower for NYSBA leadership, with 29.1% of the HOD and 21.2% of the Executive Committee not reporting any data.

SEXUAL ORIENTATION & GENDER IDENTITY

In addition to the missing data, a significant portion of the NYSBA membership declined to answer the demographic questions related to sexual orientation. Notably, in 2021, 5% of the NYSBA membership, 5.7% of the HOD, and 9.1% of the Executive Committee declined to answer this portion of the demographic information.

For those who reported sexual orientation demographic information, the number of NYSBA members who identified as lesbian, gay, bisexual, queer, or asexual has remained relatively unchanged between 2017 (1% of members) and 2021 (1.8% of members). The same is true for the HOD (3% of delegates in 2017 and 3.4% of delegates in 2021).

There was a decrease in the amount of Executive Committee members who identified as lesbian, gay, bisexual, queer, or asexual in 2021 versus 2017. In 2017, 3% of the Executive Committee identified as lesbian, gay, bisexual, queer, or asexual, as opposed to 0% in 2021.

Based on the sexual orientation demographic information report, the NYSBA HOD has more sexual orientation diversity than the general NYSBA membership (3.4% of the HOD, compared to 1.8% of NYSBA membership). Importantly, however, the NYSBA Executive Committee reported less sexual orientation diversity than the general NYSBA membership (0% of the Executive Committee, compared to 1.8% of NYSBA membership).

The vast majority of NYSBA's membership identifies as heterosexual, with demographic information showing an increase from 29% in 2017 to 43.1% in 2021. Although both the HOD and Executive Committee showed a decrease in the number of members who identified as heterosexual in 2021 compared to 2017 (from 63% to 61.7% and from 80% to 69.7%), this decrease may be explained by an increase in the number of members who declined to answer the sexual orientation demographic information (from 0% to 5.7% for the HOD, and from 0% to 9.1% for the Executive Committee).

SEXUAL ORIENTATION & GENDER IDENTITY

The lack of identified gender identity and sexual orientation diversity in the general NYSBA membership may be explained by the membership's lower representation of younger generations. Importantly, 0.3% of the NYSBA membership reported being age 24 and under (Generation Z), 9.1% between ages 25 and 25 (Millennials), 29.9% between 36 and 55 (Generation X),* and 51.7% ages 56 and older (Baby Boomers and Traditionalists). According to a 2021 Gallup poll, Millennials (those born between 1981 and 1996) are 3 times more likely to identify as LGBT then Generation X and Baby Boomers, and an even larger increase is shown for members of Generation Z.** Based on this data, if NYSBA's Millennial membership were to increase, it is likely that its percentage of LGBT members would also increase. The same is also true for membership as Generation Z begins to enter into the practice of law.

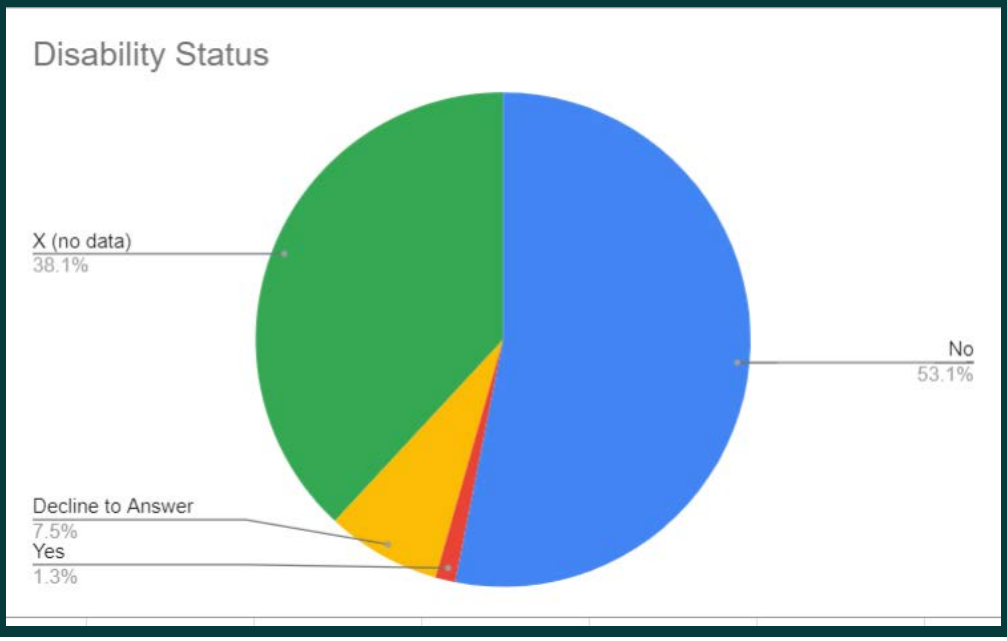
*Note that some of this percentage may be representative of Millennials, rather than Generation X, as the Millennial generation is generally understood to have been born between the years of 1981 and 1996.

**See LGBT Identification Rises to 5.6% in Latest U.S. Estimate, Gallup (Feb. 24, 2021), https://news.gallup.com/poll/329708/lgbt-identification-rises-latest-estimate.aspx.

DISABILITY STATUS

2021 DATA

MEMBERSHIP



The percentage of members in 2021 who responded to the question of physical disability status was 54.4%, a 15.4% increase from 2017 when only 39% of members responded either "yes" or "no" to the question of disability status. The non-participation rate for this demographic declined in 2021 by 16.4% over 2017, although nearly 8% of members affirmatively declined to answer this question compared to a declination rate of 0% in 2017. The response rate to the question of disability status has steadily risen since data was reported in the 2015 Diversity Report Card. In 2015, the response rate was 37.66%.

The increase in the response rate in 2021 is attributable to those responding "no" to the question of whether they have a physical disability. Only 1.3% of individuals responding to the question in 2021 answered "yes," while a slightly higher percentage —2%—responding to the question in 2017 reported that they have a physical disability.

DISABILITY STATUS

The data for the HOD, Executive Committee, Nominating Committee, Section Leaders, and Standing Committee Chairs indicates that roughly 20% to 25% of individuals in these leadership groups did not respond or affirmatively declined to answer whether they had a physical disability.

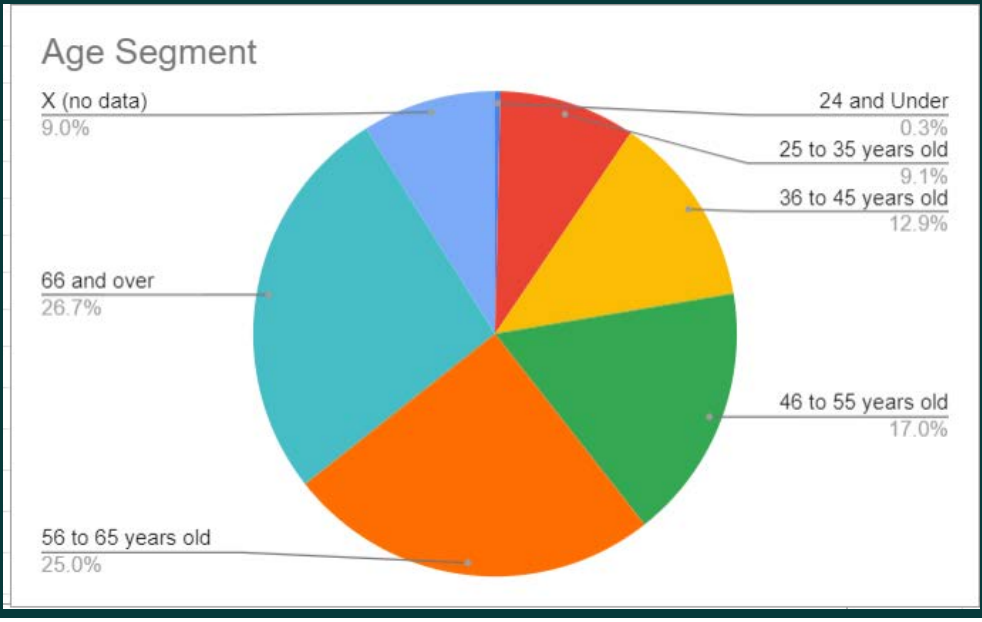
Though NYSBA has more information about the physical disability status of its members than in the previous six years, there continues to be a high nonparticipation rate for this data point and a very small percentage of members and individuals in leadership positions reporting as having a disability. The numbers are incongruous with data from the Centers for Disease Control and Prevention (CDC), which indicates that approximately 25% of adults in New York State have a physical or cognitive disability.* Consideration should be given to drafting a more detailed definition of what constitutes a disability, as many responders may be applying a narrower definition of disability in responding to this question.

*See the CDC website: https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/new-york.html (visited 11/4/21).

AGE

2021 DATA

MEMBERSHIP



Very little informative data regarding age is available at this time, as the data from 2017 contains different age breakdowns than the 2021 data. Additionally, not all types of data collected in the recent survey were collected in 2017. Accordingly, it is difficult to make many meaningful comparisons. However, this fact alone highlights the importance of maintaining consistency in data collecting categories in future polling years to allow for more information to be pulled from the data.

While it is difficult to draw direct comparisons between the age of members from 2017 to 2021, an important trend is visible in the data. Enrollment among the youngest age group(s) has precipitously declined. In 2017, 21% of members were between 21-35, while only 9.4% of members are under 35 in the most recent data collection for 2021. Also of note is the fact that the 2017 information showed that 27% of members were between 51-65, while in 2021, the percentage of members between 46-55 was 52%. The remaining age groups remain somewhat steady in membership percentages.

Overall, it would appear that membership is skewing older over time. Efforts to recruit more younger members should be a priority.

NEWLY ADMITTED ATTORNEYS

Over the course of the past three years, 29,000 newly admitted attorneys have joined NYSBA. However, no conclusive or substantive information can be pulled from the available data as most of these members have not provided responsive information to the demographic questions. Specifically, the following percentages of new members did not provide requested information: Gender - 85%; Race/Ethnicity - 97%; Age - 83%; Sexual Orientation - 98%; Disability - 98%.

Efforts to encourage all members, not only the newly admitted attorneys, to complete their personal information during or after registration would be beneficial going forward as it would allow us to better understand who we are and what efforts need to be made to encourage further diversity.

DATA ANALYSIS SELECTED SECTIONS

The Committee selected eight Sections in order to extensively review each section's demographic data and individual diversity plans.

Business Law Section

Commercial and Federal Litigation Section

Elder Law and Special Needs Section

Executive Committee and Council of Judicial Associations

Family Law Section

Real Property Law Section

Trust and Estates Law Section

Young Lawyers Section

BUSINESS LAW SECTION

The Business Law Section should be commended for having a female Section Chair. However, the Section's members and leaders are disproportionately male, with 72.4% male members, 20.2% female members, and 7.4% of members reporting no data. This trend is consistent with past data reported to the NYSBA — i.e., older males comprising the vast majority of Business Law Section membership. This disparity between male and female members is particularly large when compared with NYSBA's overall membership demographic.

The Business Law Section has developed its own plan to align with the NYSBA Diversity Plan previously approved at the January 2020 HOD meeting. The activities comprising the Business Law Section's plan are as follows: (1) having liaisons from various diverse bar organizations external and internal to NYSBA; (2) increased partnership opportunities via members participating as panelists and/or serving as a resource; (3) circulating available job opportunities to other Diverse Bar listservs; (4) co-hosting heritage month celebrations; (5) making available speaking and writing opportunities at Business Law Section forums, programs, and publications; (6) targeting law students and young lawyers of color for mentoring programs, subsiding membership fees for all students and young lawyers; and (7) the creation of a fellowship program by making work opportunities available to diverse students at Business Law Section member firms subsidized by Business Law Section grant funds.

The Business Law Section Diversity Committee is executing its plan in partnership with eight bar associations (Asian American Bar Association of NY, Association of Black Women Attorneys, Bronx Women's Bar Association, Dominican Bar Association, Korean American Lawyers Association of Greater NY, Metropolitan Black Bar Association, Muslim Bar Association, and Puerto Rican Bar Association) and one NYSBA section (Women in the Law). Although there is a decrease in overall Business Law Section membership for men and women, over the past few years there has been a reported increase of male Executive Committee members, and an overall increase in data reported for areas of sexual orientation and disability.

BUSINESS LAW SECTION

The Business Law Section's decision to implement the mentoring program is a large step forward for achieving greater diversity in NYSBA's overall demographics. The program's purpose—centered around connecting mentors and mentees of diverse backgrounds—will be crucial to further support and empower diverse students and attorneys in their careers, and developing their skills and network to increase leadership succession. With the leadership of its current female Section Chair, the Business Law Section may potentially see an increase in overall membership by subsidizing membership fees for all students and young lawyers, and the implementation of the above-referenced mentoring program. Doing so may lead to an especially hopeful increase in its female members securing positions of leadership, as well as an increase in students and young attorneys joining in the Business Law Section in the foreseeable future.

In terms of specific recommendations, the Business Law Section's Diversity Committee could work with law school associations and the Young Lawyers Section for outreach purposes to introduce the work of the Business Law Section and to bring in new and diverse members. The Business Law Section could also work with law school leadership to partner on courses and clinics relevant to the work of the Section which, if implemented and conducted correctly, could vastly increase the proportion of its younger members, which currently stands at 6.1% for members between the ages of 24 and 35.

COMMERCIAL AND FEDERAL LITIGATION SECTION

The Commercial and Federal Litigation Section's (COMFED) membership is predominantly male, comprising of 73.3% of its membership. This gender breakdown appears to have remained consistent with past data reported to NYSBA. Approximately 42% of the Section's membership did not report their race/ethnicity, which doesn't allow for an accurate analysis of this demographical data, though it appears that the Section is comprised of a majority of White/Caucasian members. 70% of the Section's membership is 46 years or older and the Section would benefit from focusing on recruiting young attorneys to its membership.

The COMFED Section's diversity plan has focused on outreach to affinity groups at law schools in an effort to effectuate recruitment and engagement of law students and attorneys within three years of practice. It is likely this initiative will assist with infusing its membership pipeline with more diverse attorneys. Moreover, the Section has committed to sponsor various panel discussions geared towards diverse attorneys. The Section should continue to reach out to and coordinate with the diversity and inclusion committees of other NYSBA Sections to enable it to pool its resources to provide value added programming activities to better serve its diversity goals.

ELDER LAW & SPECIAL NEEDS SECTION

Based on available demographic information, the Elder Law & Special Needs Section has 10% more male members than female members (53.7% versus 43.3%). Additionally, the Section's membership is largely White/Caucasian (63.2%), with only 5% of membership identifying as Black/African American, Hispanic/LatinX, Asian/Pacific Islander, other, or as a multiple race/ethnic group. The majority of the Section's members also identify as heterosexual (46.4%), as having no disabilities (57.4%), and as age 56 years old and over (59.9%).

Notably, the Elder Law & Special Needs Section's demographic information may be skewed by the amount of non-reported demographic data, including instances where data was not available, and those where the membership declined to report demographic information. For example, in terms of race/ethnicity demographic information, no data was available for 27.9% of the Section and 3.5% of Section members declined to answer. These percentages only increase for demographic information such as sexual orientation and disability: 46.2% of the Section's membership did not report and 6.1% declined to answer demographic information regarding sexual orientation, and 32.1% did not report and 8.6% declined to answer the demographic questions related to disability.

The Elder Law & Special Needs Section's Diversity Plan highlighted three main efforts for the Section: (1) efforts to improve cultural competence in the legal profession; (2) efforts to appeal to diverse communities; and (3) efforts to promote diversity in NYSBA membership. In terms of efforts to improve cultural competence in the legal profession, the Section has focused on attorneys needing opportunities to develop their cultural competence to improve the way they interact with clients. The Section intends to increase these opportunities through CLE programs at the Section's summer or fall meetings, which will include speakers with a cross-cultural understanding of the legal profession. In the alternative, if the Section is unable to pool enough resources in time for a CLE event, the Section plans to publish an article in the 2021 summer or fall Elder Law & Special Needs Journal.

ELDER LAW & SPECIAL NEEDS SECTION

The Section's second effort, efforts to appeal to diverse communities, includes translating published legal information in various languages commonly spoken in New York State, and disseminating the information to long-term care facility residents who are unaware of their rights and the professional legal help available. Finally, the Elder Law & Special Needs Section plans to promote diversity within NYSBA's membership by reaching prospective NYSBA members. The Section plans to implement this effort by partnering with law schools to hold virtual mentoring or networking events to expose law students to the elder law practice. These events will have a particular emphasis on recruitment of non-traditional students, students for whom English is a second language, and students with disabilities.

In addition to its Diversity Plan, the Elder Law & Special Needs Section also has a Diversity Committee. The Section's Diversity Committee recruits new members from diverse backgrounds from both NYSBA and from law schools throughout the State and is also working to expand the number of speakers with diverse backgrounds at Section events. The Section has also hosted a Diversity Writing Competition annually since 2014, where law students and recent law graduates submit articles on any law or legal issue affecting seniors and/or persons with disabilities, with a specific focus on historically underserved populations.

Over the past five years, the Elder Law & Special Needs Section has had a small increase in the number of Section members who identify as female (from 41% in 2017 to 43.3% in 2021). The Section also has a diverse membership in terms of age, with 6.2% of members being between 25 and 35 years old, 12.8% between 36 and 45 years old, 16.7% between 46 and 55 years old, 26.9% between 56 and 65 years old, and 33% being 66 years old and over.

The Section has also made progress towards its goals as identified in its diversity plan, specifically in the area of implementing its plan to offer CLEs to improve attorney cultural competency. For example, the Elder Law and Special Needs Section Summer 2021 Meeting included an LGBTQ Cultural Competence for Lawyers program.

JUDICIAL SECTION EXECUTIVE COMMITTEE & COUNCIL OF JUDICIAL ASSOCIATIONS

JUDICIAL SECTION EXECUTIVE COMMITTEE

Based on available demographic information, in 2017 the Judicial Section Executive Committee (JSEC) comprised 14% (57% versus 43%) more female than male participants. By 2021, this number had increased to 66% (83% versus 17%) more female than male participants. These numbers tend to suggest higher female involvement over time. In terms of race/ethnicity, in 2017, the racial makeup of the JSEC was predominantly White/Caucasian (86%), as opposed to 2021 when that number dropped to 33%. The number of Black/African American members of the JSEC rose from 14% to 33% and Hispanic/LatinX rose from 0% to 17%. These numbers indicate a general trend to a more diverse representation among members of the JSEC. Demographic reports indicate that the majority of members of the JSEC identify as heterosexual and that number has increased from 71% to 83% from 2017 to 2021. But, there is also a corresponding increase in the number of members who declined to answer. Additionally, currently 100% of the members of the JSEC identify as not having a disability. That number is fairly reliable as 0% declined to answer. Over time, the general age of JSEC members has remained fairly constant, with about half of respondents being over 50 years old.

COUNCIL OF JUDICIAL ASSOCIATIONS

Based on available demographic information, the number of male versus female members of the Council of Judicial Associations (CJA) has remained fairly constant over time (53% and 54% female and 47% and 46% male). As was the case with the JSEC, the number of White/Caucasian members of the CJA has fallen dramatically from 2017 to 2021 with increasing participation by minority groups. The members of the CJA who identify as heterosexual has remained constant over time (42% versus 46%). Reports indicate that the members of the CJA who do not have a disability has increased over time. The average age of CJA members remains constant: most respondents were over 50 years old.

JUDICIAL SECTION EXECUTIVE COMMITTEE & COUNCIL OF JUDICIAL ASSOCIATIONS

JUDICIAL SECTION'S EFFORTS TO IMPROVE DIVERSITY

The Bylaws of the Judicial Section (JS) limit membership of the Section to a dues paying member of NYSBA "who is or has been a judge or justice of any court of the State of New York, or who resides in New York State and is or has been a judge or justice of a United States Court." Thus, the JS is limited in its potential membership to current or former judges, as specified. Nonetheless, the JS draws its membership from judges from every corner of the State and from every possible court. There are four officers of the Section, and each year, the JS makes a deliberate and concerted effort to alternate between one officer from the five boroughs of New York City and one from Long Island or upstate New York. The Section believes this effort contributes to establishing the diversity of ideas and opinions.

Additionally, the Council of Judicial Associations meets at least four times per year and is comprised of the officers of the Section and all former presiding members, as well as the Presidents of the various judicial associations throughout the state, which include:

- Association of Supreme Court Justices by Designation;
- The Surrogates Association of the State of New York;
- County Judges Association of the State of New York;
- Court of Claims Judges Association;
- Association of Judges of the Family Court of the State of New York;
- Family Court Judges Association of the City of New York;
- District Court Judges Association of the State of New York;
- Association of Civil Court Judges of the City of New York;
- Association of Judges of the Criminal Court of the City of New York;
- New York State Association of City Court Judges;
- Supreme Court Justices Association of the City of New York;
- Association of Housing Judges of the Civil Court of the City of New York;
- New York State Magistrates Association;
- The National Association of Women Judges, New York State Chapter;
- The Latino Judges Association, Inc.;
- The Judicial Friends Association;
- The Association of Lesbian and Gay Judges; and
- Asian American Judges Association of New York State.

JUDICIAL SECTION EXECUTIVE COMMITTEE & COUNCIL OF JUDICIAL ASSOCIATIONS

Thus, there is input from many different judges and judicial groups, with a variety of interests, on all issues of importance to the judiciary and the State Bar.

Additionally, each year during the NYSBA Annual Meeting in January, the JS presents an award (Advancement of Judicial Diversity Award), which serves to recognize individuals for their efforts to promote diversity on the bench throughout New York State. The recipients are chosen for their ability to embody NYSBA's commitment to diversity and inclusion at all levels of the judiciary.

The Judicial Section continues to place issues of diversity and inclusion at the top of its agenda and will continue to work with the court system and NYSBA in every way it can to advance equal access to justice in our legal system.

FAMILY LAW SECTION

The Family Law Section's (FLS) membership is predominantly female, comprising 52.6% of its membership. This gender breakdown appears to have remained consistent with past data reported to NYSBA and is mirrored in the Section's leadership. There appears to be a significant improvement in the FLS's race and ethnicity representation where, in 2017, 90% of the FLS's membership was White/Caucasian as opposed to the current 57.6%. However, this current data may not be entirely reliable since 34% of the FLS did not report information on race/ethnicity. A specific area of concern is the FLS's aging membership, as 72% of its membership is over 46 years old or older. Past data indicates that this is a growing trend within the Section's membership, and indicates a need to promote membership among younger lawyers.

The FLS has strived to bridge these gaps by developing its own diversity plan to align with NYSBA's Diversity Plan, approved by the HOD in January 2020. The FLS has understood the need to promote diversity within its membership and its leadership. To this end, the FLS monitors qualitative and quantitative data on the diversity of its membership to inform its planning of diversity and inclusion initiatives. For example, the FLS utilizes the data it gathers to increase its focus on diversity in its programming and publications by paying close attention to increasing diversity among program attendees, ensuring program and publication content appeals to diverse communities, and working to showcase diversity accomplishments. By way of illustration, its 2021 Annual Meeting featured programs on topics such as Compensated Gestational Surrogacy Has Arrived: The Child Parent Security Act Becomes Effective February 2021; Transgender Parents/Transgender Children: Sensitivity, Bias and Diversity Considerations in Lawyers Advocacy; and The Tiers (Tears) of Parentage: All Parents are Not Equal in the Eyes of the Law.

FAMILY LAW SECTION

Notably, the Section has dedicated its substantial surplus to increase membership and specifically to initiatives that increase, promote, and retain diversity in its membership. The Section's Fellowship Program is one such initiative where the FLS utilizes its surplus towards selecting fellows based on diversity of race, ethnicity, gender, age, sexual orientation, geographic location, and area/type of practice within family law and pairs them with a mentor from their Executive Board who provides assistance in the fellow's career development. Additionally, the FLS has provided grants to programs which do not otherwise qualify for funding from the New York Bar Foundation, including Justice LaTia Martin's Scales of Justice Program, which provides young women of high school age from diverse backgrounds and underserved communities with the skills necessary to succeed in life and, should their interests continue, in law school.

The FLS would benefit from renewing its commitment to enlist younger and diverse attorneys to its membership fold. This objective could be achieved through a variety of partnerships from joint activities with NYSBA's Young Lawyers' Section, to collaborating with law schools on family law focused events, clinics, and guest speakers. Additionally, many new members thrive in a collaborative environment that they feel an affiliation toward. The FLS should designate current members to reach out to new or potential members to introduce them to the work done by the Section. The Section would also benefit from highlighting the successes of its diversity initiatives and its members. Overall, we commend the FLS's commitment towards enhancing the diversity and inclusion activities for the benefit of NYSBA's membership.

REAL PROPERTY LAW SECTION

The percentage of Real Property Law Section members identifying as male or female fell in 2021 from 2017 by 4% and 1% respectively. However, this may be accounted for by the 4.3% of membership where no data was collected in 2021. Section members identifying as female lag behind general membership and Executive Committee representation by 7% and 14%, respectively.

In 2021, members who identified as White/Caucasian fell from 91% to 56.8%. Unlike the 100% membership reporting in 2017, in 2021 no data was collected for 34.7% of the Section members, which could account for the decrease. Between 2017 and 2021, the number of Section members who identified as Black/African American or Hispanic/LatinX decreased by approximately half a percentage point, while membership that identified as Asian/Pacific Islander fell 50%. Black/African American Section membership is half of that of the general membership and the Executive Committee.

In 2021, there was a slight increase in LGBTQAI+ section membership from 2017, but, again, we see a higher number of members declining to answer or where no data was collected. LGBTQAI+ members are well represented in this Section compared to general membership. However, almost 60% of the Section's membership either did not respond or refused to answer this question.

Between 2017 and 2021, there was a decrease in membership in the 24 - 35 age group. This may be due to the fact that in 2017 the age range started at 21, not 24. This again highlights the need to stabilize how and when we collect our data. Compared to the general membership, this Section is representative of all of the age segments, only falling behind 2.5% of the general membership in the 24 - 35 age segment.

REAL PROPERTY LAW SECTION

The Real Property Law Section's Diversity and Inclusion Plan, as amended in January 2020, identified the increase in membership of, and engagement with, diverse attorneys as its goal. The Diversity Committee Chair is Harry G. Meyer, Esq. Some of the action steps stated in its plan to promote diversity and achieve its goal include coordinating with Section committees and other NYSBA Sections in offering joint programs and networking events, conducting outreach to affinity groups in law schools, organizing events geared toward promoting attorney diversity in the Section, and encouraging/enlisting panelists from diverse groups.

The Section's diversity plan encouraged Section leadership to use leaders from underrepresented areas of the State to speak at County Bar Association meetings. The Plan also called for all existing and incoming committee and program Chairs to receive a copy of the Section's Diversity Plan along with a copy of the Section's Speaker Selection Guidelines. As part of its initiative, the Real Property Law Section has held diversity receptions in various locations.

Based on the demographic data available for this Section—compared to 100% reporting in 2017—there was a slight decrease in the membership of attorneys identifying as Black/African American (2% in 2017 as compared to 1.5% in 2021) and Hispanic/LatinX (2% in 2017 as compared to 1.1% in 2021). Attorneys identifying as Asian/Pacific Islander fell by almost half in that same time period, from 3% in 2017 to 1.6% in 2021. There is a slight increase in the members identifying as LGBTQIA+; however, more than half the membership declined to answer this demographic question.

This Section has outlined some good first steps in its Diversity and Inclusion Plan that could help increase membership of a diverse group of attorneys. The Section could ramp up its efforts by, for example, sponsoring events at different law schools in collaboration with various student organizations (BALSA, ALSA, LALSA, OUTLAW, among others). The Section could also identify topics relevant to the Section that have an impact on diverse groups and could solicit participation from a diverse group of panelists.

TRUSTS & ESTATES LAW SECTION

The Trusts and Estates Law Section ("T&E") has 2,181 members, and is one of the largest Sections of NYSBA. 62.70% of the T&E members are White/Caucasian, which is consistent with the general make-up of the membership of NYSBA. In 2021, other racial and ethnic groups of NYSBA represented 7.9% of NYSBA's membership. In 2021, 3.8% of the T&E members were of other racial and ethnic groups, substantially lower than the NYSBA demographics: 1.4% Black/African American; 0.8% Hispanic/LatinX; 1.4% Asian /Pacific Islander; and 0.1 % Native American members. Interestingly, the percentage of Black/African American T&E members is the same as the percentage of Asian/Pacific Islanders T&E members. However, there was a decline from 2017 in Asian/Pacific Islanders membership from 2% to 1.4 % in 2021.

There is no significant change in the membership demographics relating to gender or sexual orientation. There was a slight decrease in the percentage of male members from 2017 to 2021, and a slight increase in the percentage of female members.

9.4% of the members of the T&E Section are under 36. 25% of its members are 56 to 55 years of age, while 26.7% of its members are 66 years of age and older. The T&E Section seems to attract older members. The T&E Section may understand, and it may have considered why 51% of its members are older than 56 years of age. This demographic should be explored to determine what the T&E Section can do to attract younger members. Oftentimes, but not always, inclusion of younger members results in more inclusion and diversity.

TRUSTS & ESTATES LAW SECTION

The T&E Section identified only one specific goal that addresses diversity and inclusion. That the T&E Section has set forth only one specific goal that addresses diversity and inclusion suggests that the T&E Section has not seriously considered diversity and inclusion with respect to achieving diversity and inclusion in the Section. That one identifiable and specific goal is: "To reach out to all student-led minority groups (BLSA, AALSA, etc.) in each law school in the New York State. The purpose of the outreach will be to encourage members of said groups to join the Association upon graduation, or to apply to a fellowship program as a student." The other more general goal of the T&E Section is to encourage leadership of its Section to offer diversity CLE credit at a T&E Section meeting to offer continuing legal education and "to offer a standalone diversity CLE program on behalf of the Association during the course of the Year."

While it is important to reach out to recent graduates, it is equally important to address diversity and inclusion among individuals who are NYSBA members of diverse ethnic and other diverse backgrounds. That significant component of the T&E Section's goals is glaringly omitted and should be addressed by the T&E Section if it indeed intends to pursue a meaningful effort to increase diversity and inclusion in its Section among NYSBA members when the demographics show that only 3.8% of its 2,181 members are not White/Caucasian. While it is important to reach out to recent graduates, the first priority of NYSBA is to address and meet the needs of the members of NYSBA. The T&E Section's goals fail to address the goal to increase diversity and inclusion among NYSBA members in a meaningful way.

The T&E Section should give serious consideration to what programs and goals the Section can implement to increase its diversity among NYSBA members of diverse ethnic and other diverse backgrounds. There are several diverse NYSBA members who practice in the trusts and estates area, although not exclusively, and these members would benefit from CLEs, and other programs offered by the T&E Section to attract them to the T&E Section. In addition, the T&E Section might consider expanding upon its Continuing Legal Education goal to offer substantive CLE courses to recent law graduates and those considering expanding their practices to include trusts and estates. Expanding CLE course offerings to recent law graduates is consistent with the T&E Section's goal to reach out to student-led minority groups, such as BLSA and ALSA in each law school in New York State.

YOUNG LAWYERS SECTION

The demographics of the Young Lawyers Section are largely unclear, due to a significant amount of unreported information. Critically, 55.9% of Section members did not report a gender identity, 83.8% did not report a race or ethnicity, 86.5% did not report a sexual orientation, 85.3% did not report a disability, and 45.3% did not report an age segment.

Based on the limited data available, the Young Lawyers Section's membership is nearly evenly split between those who identify as male (22.1%) and those who identify as female (21.9%). Most of the Section identifies as White/Caucasian (10.9%), and the remainder of the Section identifies as Black/African American, Hispanic/Latinx, Asian/Pacific Islander, Native American, multiple race/ethnic group, or other (5.3%). Importantly, 0.4% of Section members declined to answer the race/ethnicity demographic question, and no data was available for 83.8% of members. The Section's membership largely identifies as heterosexual (11.7%), with only 1.1% identifying as lesbian, gay, bisexual, queer, or asexual, and 0.7% declining to answer. Most Section members who reported disability-related demographic information reported having no disabilities (13.4%, as opposed to 0.3% reporting yes and 1% declining to answer). Finally, most Section members are between 25 and 35 years old (39.2%); with the second largest age group being 36 to 45 years old (10.5%).

The Young Lawyers Section, through its Diversity Committee, has developed a diversity plan that includes five strategic goals for the Section. The Section's strategic goals include: (1) increasing membership diversity and promoting inclusivity within the Section; (2) increasing engagement and collaboration between the Section and minority bar associations and diverse law student organizations; (3) establishing a diversity mentorship program whereby diverse law students are mentored and sponsored by more senior members of the Section; (4) increasing funding/sponsorships opportunities for diverse members to attend different Section, NYSBA, and minority bar associations events; and (5) creating a Diversity Scholars Program that give participants an opportunity to become involved in the Section's work, provide opportunities for leadership roles, and enhance participants' knowledge of the Section.

YOUNG LAWYERS SECTION

In terms of increasing membership diversity and promoting inclusivity within the Section, the Young Lawyers Section is aiming to increase its membership diversity in line with the United States population (i.e., 13.4% Black or African American, 18.5% Hispanic, 6% Asian, and 1.3% Native American). To increase engagement and collaboration between the Young Lawyers Section and minority bar associations and diverse law student organizations, the Section intends to strengthen its ties with, and support of a variety of minority bar associations and diverse law student organizations. To reach this goal, the Section intends to undertake steps including co-sponsoring programming, networking, and social events, providing funding for Section leaders, representatives, and staff to attend meetings and events, and providing membership materials to diverse law school organizations.

The Section's third strategic goal, establishing a diversity mentorship program, is aimed at connecting diverse law students with senior attorneys within the Section to provide guidance and assistance with navigating law school and the early stages of their legal career, as well as assisting with integration into the Young Lawyers Section. The Section intends for this mentorship program to be available to all diverse law students but will give preference to those students in their final year of law school, and the program will be a 12 month experience. To help diverse members network and increase their visibility within the profession, the Section has also adopted a goal of increasing funding and sponsorship opportunities for diverse members to attend different Section, NYSBA, and minority bar association events. Finally, the Section will create a Diversity Scholars Program to give participants an opportunity to become involved in the Section's work, provide opportunities for leadership roles, and to enhance participants' knowledge of the Section. Three scholars will be selected at the start of each Bar year for each of the following scholarship categories: (1) government, military, public service, and non-profit lawyers; (2) minorities in the profession; and (3) solo and small firm practitioners.

The Young Lawyers Section has also outlined a method for accountability in its Diversity Plan. To ensure the continuity of the Plan's provisions, the Diversity Committee Chair(s) or Chair-elect will: (1) appoint an individual within the Section, who will be given the title of "Diversity & Inclusion Champion," and whose primary goal will be to carry out the Plan; (2) work with NYSBA staff to compile statistics regarding the diversity of the Section's applicants and appointees; (3) review the Plan bi-annually to ensure that the Section is on track to meet its strategic goals; and (4) review and revise the Plan annually to ensure that it aligns with NYSBA's Plan and the legal industry.

YOUNG LAWYERS SECTION

In addition to its diversity plan, the Young Lawyers Section also holds a variety of events that promote diversity and inclusion. The Section has held diversity receptions over the years and has a law student development committee. The Section has also held an annual Young Lawyers Trial Academy to train and to mentor young lawyers in trial practice. The Academy's attendees network with experienced trial attorneys throughout the weeklong program, and attendees tend to stay active in NYSBA activities. Finally, the Section holds a joint admission to practice before the Supreme Court which fosters inclusion in Association events among younger attorneys.

Over the past five years (i.e., 2017 to 2021), the Young Lawyers Section has been able to maintain diversity in the gender identity of its members, including a nearly equal number of members who identify as male and female (22.1% and 21.9%). Additionally, about one-third of the Section's membership identify as Black/African American, Hispanic/Latinx, Asian/Pacific Islander, other, or as a multiple race/ethnic group (5.3%). Importantly, however, the data points on both gender identity and race/ethnicity may be skewed by the lack of data available for the majority of the Section's membership. Despite the lack of overall reporting noted above, there has been increased reporting related to sexual orientation over the past five years, with the amount of no data available decreasing from 91% in 2017 to 86% in 2021. The same is true in regard to demographic information related to disability, which has decreased from 90% in 2017 to 85.3% in 2021.

The Section has also been active in implementing the strategic goals outlined in its Diversity Plan. For example, the Section has held a variety of CLE presentations in collaboration with other NYSBA Sections and diverse bar associations throughout 2021. These CLE programs include, for example, The History of Juneteenth & The Importance of Diversifying the Legal Profession (June 22, 2021), Let the Youth Lead the Way: A Dialogue with Future Lawyers (March 16, 2021), and NY Law Student Virtual Coffee Hour: LGBTQ+ Law and Policy During the Biden Administration (March 9, 2021). Finally, the Section has made its Diversity Plan publicly available on the NYSBA website, which shows a commitment to diversity and inclusion, and a willingness to be held accountable for implementation of the Section's strategic goals.

GENERAL RECOMMENDATIONS

A. The Committee recommends NYSBA change the timing of diversity profile requests: this data should be collected at the time someone joins NYSBA. NYSBA leadership should work with the relevant Committees to emphasize the importance of the data for the Report Card. The Committee also recommends that NYSBA leadership, the Diversity and Inclusion Committee, and Diversity Chairs work with their Diversity Committees to improve the data collection.

B. The Committee recommends that each Section that does not currently provide a leadership opportunity for a diverse lawyer create a new leadership opportunity; for example, seats on their Executive Committee for diverse lawyers to create mentorship opportunities as well as a pathway to leadership positions in the Section. The Committee recommends that the Young Lawyers Section continue to recruit attorneys with disabilities, LGBTQAI+ attorneys, attorneys of color, and female attorneys and encourage diverse attorneys to serve as liaisons to Sections.

C. This Committee strongly urges all persons serving on the Nominating Committee, or acting as a Section Leader, to provide race/ethnicity and all other required data. Any person who is nominated to serve on the Nominating Committee or as a Section Leader should self-report their demographic data. In addition, NYSBA's leadership (i.e., President, Secretary, Treasurer) should regularly call upon NYSBA members, and other leadership, to provide all data requested for this report card. Without this data, NYSBA cannot adequately respond to the needs of its members.

D. NYSBA should set aside special funding for use to recruit diverse members for leadership positions. Funds could pay for membership or expenses for persons this Committee or the Committee on Leadership Development identify for current or potential future leadership positions. It appears the Business Law and Young Lawyers Sections are taking this approach by subsidizing certain fees. NYSBA should set aside $5,000 to support such a pilot program.

E. NYSBA should consider statistically sampling a portion of the membership to determine if the results would be more accurate, easier to obtain, and more useful to direct NYSBA's efforts to meet membership needs and desires.

IMPLEMENT OUR DIVERSITY PLAN

We acknowledge and thank NYSBA for implementing the following recommendations from the 2020 Diversity Plan:

Implementation Recommendation 4: That the NYSBA present at least one Presidential Showcase CLE program focused on diversity at each Annual Meeting.

This past year, NYSBA coordinated the Constance Baker Motley Symposium, the Diversity Award Ceremony, and hosted a Celebrating Diversity in the Bar Reception.

Implementation Recommendation 6: That the NYSBA coordinate a centralized and accessible data collection and reporting center for diversity information that can be readily used to assess diversity data with stated goals. See above regarding our goals for improved data collection.

NYSBA has initiated a data collection and reporting center that has helped improve diversity data collection needed for the report card.

Implementation Recommendation 8: That all NYSBA entities create and submit personalized diversity plans by January 31, 2021.

It is commendable that all NYSBA Sections have submitted their Diversity plans in a timely manner.

The following Implementation Recommendations are in progress:

I**mplementation Recommendation 7:** That NYSBA leadership and Sections Caucus leadership express to Sections the necessity of incepting Diversity Committees for all sections and appointing liaisons to the standing NYSBA Committee on Diversity and Inclusion. Notably, 22 out of 27 NYSBA Sections currently have Diversity Committees.

IMPLEMENT OUR DIVERSITY PLAN - IN PROGRESS

We call on NYSBA leadership to implement the following additional recommendations adopted by NYSBA as part of our 2020 Diversity Plan:.

Implementation Recommendation 1: That the Association designate a principal staff person to provide oversight of the implementation of this Diversity Plan. Each year, that person will develop and secure approval of specific annual implementation steps with a corresponding timeline, budget and assessment procedure.

Shifts in NYSBA staffing have caused a lack of stability in oversight of the implementation of the plan. NYSBA is currently recruiting for this position. NYSBA should immediately hire a Diversity Coordinator to lead the Association's efforts to further diversity of membership and programming. This position should be filled by June 2022.

Implementation Recommendation 2: That the NYSBA review the composition of the House of Delegates and its Nominating Committee, including the number of positions reserved for women, minorities, lesbian, gay, bisexual and transgender individuals, and persons with disabilities, and the manner of selecting the individuals for those positions, to ensure that the purpose of this Diversity Plan is being served in the nominations process.

The data has been collected but has not been presented to NYSBA's leadership. This Committee should join with the Committee on Leadership Development to make specific recommendations on how to improve the composition with a timeline. It needs to reflect representation from all 13 judicial districts. These recommendations should be presented to the Executive Committee by June 2022.

IMPLEMENT OUR DIVERSITY PLAN - IN PROGRESS

Implementation Recommendation 3: That the NYSBA consider creating an event, award or other form of recognition to honor on an annual basis the NYSBA entity that has shown outstanding leadership in diversity-related membership initiatives and other diversity efforts.

There is a need to create an awards proposal that must be reviewed and approved by NYSBA's Executive Committee and House of Delegates. This should be incorporated into the annual diversity awards ceremony presented during the Annual Meeting. This event, going forward, should be a hybrid so that the broadest possible number of members can participate.

Implementation Recommendation 5: That the NYSBA prepare a Diversity Impact Statement as recommended in the 2010 ABA Presidential "Next Steps" Report (recommendation E.2. for Bar Associations) for every Executive Committee action item.
This process has not been initiated and is required to shape the dialogue and provide continuity of efforts around diversity within the profession.

ADDITIONAL RECOMMENDATIONS

NYSBA should also consider a presidentially appointed member on its Executive Committee as a diversity liaison on behalf of the Committee.

NYSBA shall take action as discussed above to improve submission of all demographic information by 10% more members and 25% more Association leaders at every level (section, committee, HOD, Executive committee) by June 2022.

NYSBA's President currently makes 12 diversity seat appointments each year for three year terms, but there are 13 judicial districts and there should be 13 appointments, one from each judicial district.

There are several recommendations regarding the recruitment of younger members to Sections and overall NYSBA membership. NYSBA should implement a major survey, which includes focus groups around the State, to get a clearer understanding of why younger attorneys are not joining NYSBA. Statistical sampling may yield good results here.

NYSBA needs to improve how it is engaging with members and potential members via social media and be more strategic and dynamic in how it is communicating. This is an important, underutilized recruitment tool.

NEW YORK STATE BAR ASSOCIATION
COMMITTEE ON DIVERSITY & INCLUSION
One Elk Street
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COMMITTEE ON LEGAL AID
PRESIDENT'S COMMITTEE ON ACCESS TO JUSTICE

January 7, 2022

TO: Members of the House of Delegates

FROM: NYSBA Committee on Legal Aid
and President's Committee on Access to Justice

RE: 2022 Committee on Diversity, Equity and Inclusion's Diversity Report Card

The New York State bar association is the policy making arm for attorneys in New York State, and improving diversity, equity and inclusion in the profession, including demonstrating a strong professional commitment to supporting and welcoming attorneys and judges of color, is a vital access to justice issue for the President's Committee on Access to Justice and to the constituencies represented by the legal services and pro Bono programs represented by the Association's Committee on Legal Aid. Accordingly, both committees support the 2022 Committee on Diversity, Equity and Inclusion's Diversity Report Card.

In addition to updating the status of the Association on past commitments it has made to this critical issue, the report also takes a fresh look at new data, such as the low percentage of Nominating Committee members reporting demographic information, which is concerning as it is the body that selects the leadership of this organization.

We urge the House of Delegates to join us in support of this report, and to adopt the report and all of its recommendations.

NEW YORK STATE BAR ASSOCIATION
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TASK FORCE ON RACISM, SOCIAL EQUITY AND THE LAW

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November 16, 2021

The Task Force on Racism, Social Equity, and the Law stands in strong support of the 8th Diversity Report Card. The Task Force calls upon all NYSBA leaders to provide their own demographic information and to encourage other members and leaders to do so as well.

The Task Force on Racism, Social Equity, and the Law stands for the Association's commitment to address the long-lingering effects of structural racism in our legal system. Continuing to enhance the diversity of this Association and our profession is the first step to doing so. Measuring progress, or the lack thereof, is the only way to ensure it continues.

We applaud the efforts of the Committee on Diversity, Equity, and Inclusion and urge the House of Dleegates to adopt it without comment or amendment. If any additional information can be provided, please let us know.

Sincerely,

Taa R. Grays
Co-Chair

Lillian M. Moy
Co-Chair

NYSBA Task Force on Racism, Social Equity, and the Law

New York State Bar Association

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January 5, 2022

Re: Report and Recommendations from the Committee on Diversity and Inclusion including the Diversity Report Card, Eighth Edition, 2021

Dear NYSBA Executive Committee and House of Delegates:

It appears that disability has been defined as limited to physical disability. We would like to encourage the Committee to act on their musings on pg. 19 of the report that they should draft "a more detailed definition of what constitutes a disability, as many responders may be applying a narrower definition of disability in responding to this question." It is our position that the survey should reflect the inclusive definition of disability in order to be meaningful and accurate. We also have concerns regarding the limited response to the survey which, in light of the CDC statistics, appears to grossly underrepresent disabled members. We are requesting that this section be re-written to make clear the Bar only asked about physical disability, and this accounts for a lower response rate.

Respectfully Submitted,

Joseph J. Ranni, Co-Chair

Alison Morris, Co-Chair

Staff Memorandum

HOUSE OF DELEGATES
Agenda Item #5

REQUESTED ACTION: Approval of the report and recommendations of the Local and State Government Law Section.

In 2009, the Committee on Attorneys in Public Service prepared a Model Code of Judicial Conduct for State Administrative Law Judges; that Model Code was approved by the House at its April 2009 meeting. The committee subsequently was folded into the Local and State Government Law Section, which is now proposing amendments to the Model Code for your consideration.

As noted in the Preamble to the 2021 edition, (page 3), in 2016 the National Conference of the Administrative Law Judiciary, Judicial Division, of the ABA issued revisions to the 1995 ABA Model Code of Judicial Conduct for Administrative Law Judges. Thereafter, the Local and State Government Law Section's Committee on the Administrative Law Judiciary undertook a review of the revised ABA Model Code to determine whether revisions should be made to the 2009 Model Code. Although the committee decided to retain the format of the 2009 Model Code, it recommended a number of changes based upon the 2016 ABA Model Code; these changes are outlined on pages 3 and 4 of the report.

Upon completing its review, the committee distribute the proposed revisions to state and municipal agencies for comment; it then incorporated revisions based upon comments received. As revised, the report was approved by the section in September 2021.

No comments have been received from NYSBA entities with respect to this report.
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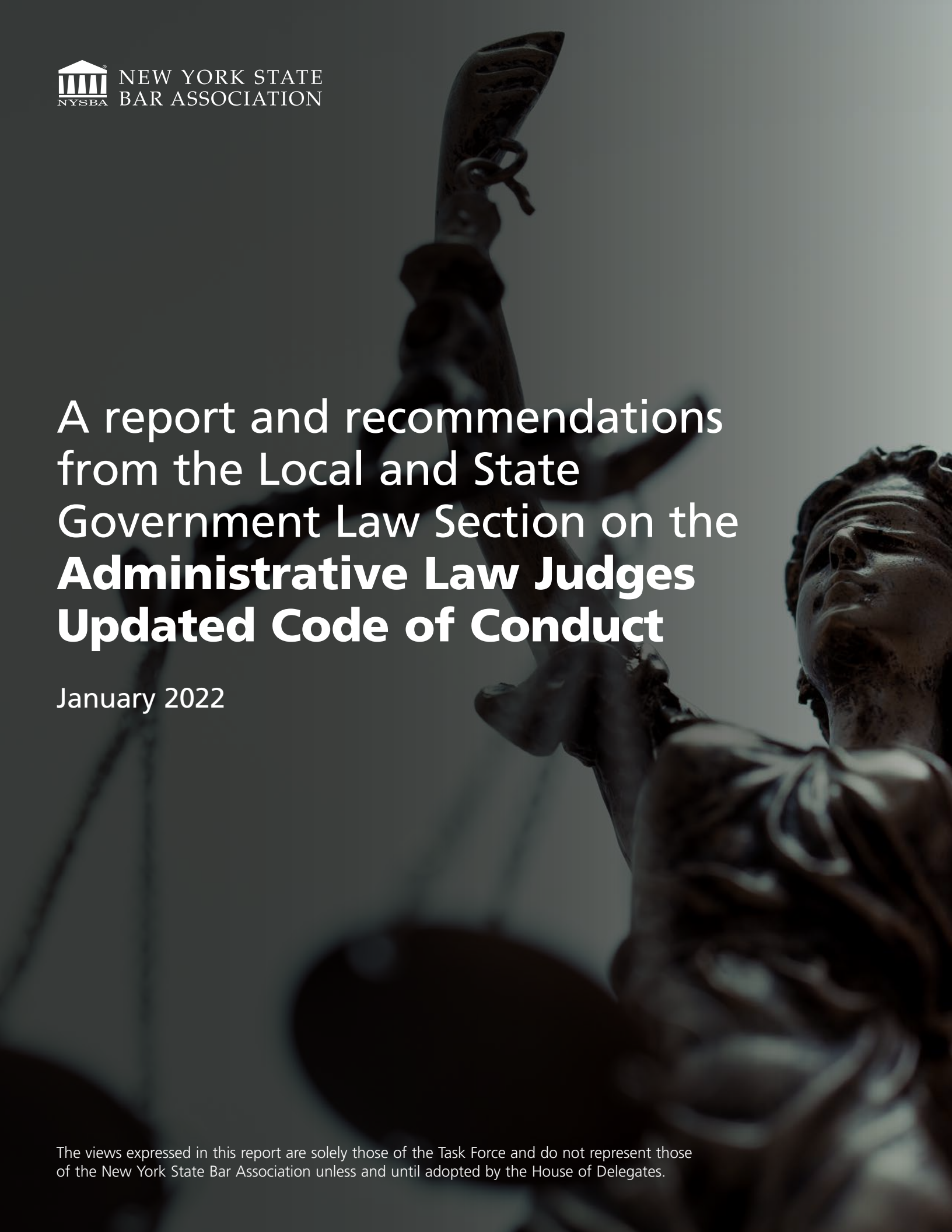
The report will be presented by Hon. James T. McClymonds, co-chair of the section's Administrative Law Judges Committee.

NEW YORK STATE BAR ASSOCIATION



A report and recommendations from the Local and State Government Law Section on the **Administrative Law Judges Updated Code of Conduct**

January 2022

The views expressed in this report are solely those of the Task Force and do not represent those of the New York State Bar Association unless and until adopted by the House of Delegates.

NEW YORK STATE BAR ASSOCIATION

LOCAL AND STATE GOVERNMENT LAW SECTION
COMMITTEE ON ADMINISTRATIVE LAW JUDGES

2021 MODEL CODE OF JUDICIAL CONDUCT FOR STATE ADMINISTRATIVE LAW JUDGES

Adopted by the
Committee on Administrative Law Judges
August 30, 2021

Adopted by the
Local & State Government Law Section
September 10, 2021

COMMITTEE ON ATTORNEYS IN PUBLIC SERVICE
SUBCOMMITTEE ON THE ADMINISTRATIVE LAW JUDICIARY

COMMITTEE ON THE 2009 MODEL CODE OF JUDICIAL CONDUCT FOR STATE ADMINISTRATIVE LAW JUDGES[*]

Hon. Catherine M. Bennett, ALJ

Hon. John H. Farrell, ALJ

Spencer Fisher, Esq.

David B. Goldin, Esq.

Hon. James F. Horan, ALJ

Hon. Elizabeth H. Liebschutz, Chief ALJ

Hon. Peter S. Loomis, Chief ALJ

Hon. Marjorie A. Martin, ALJ

Hon. James T. McClymonds, Chief ALJ

Hon. Edward R. Mevec, ALJ

Christina L. Roberts, Esq.

Joanna Weiss, Esq.

Hon. Marc P. Zylberberg, ALJ

[*] **The Committee would like to especially recognize and thank Quinn Morris, Legal Intern and recent Albany Law School graduate, and Paul Buchbinder, Legal Intern, for their invaluable assistance in preparing this Model Code of Judicial Conduct for State Administrative Law Judges.**

LOCAL AND STATE GOVERNMENT LAW SECTION
COMMITTEE ON ADMINISTRATIVE LAW JUDGES

COMMITTEE ON THE 2021 REVISIONS TO THE MODEL CODE OF JUDICIAL CONDUCT FOR STATE ADMINISTRATIVE LAW JUDGES

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Hon. Peter S. Loomis, Chief ALJ

Hon. James T. McClymonds, Chief ALJ

Hon. Anne W. Murphy, Chief ALJ

MODEL CODE OF JUDICIAL CONDUCT FOR STATE ADMINISTRATIVE LAW JUDGES

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PREAMBLE

New York State's administrative legal system is based on the principle that an independent, fair and competent administrative judiciary will interpret and apply the laws and regulations that govern consistently with American concepts of justice. Intrinsic to all sections of this Code are precepts that state administrative law judges, individually and collectively, must respect and honor their office as a public trust and strive to enhance and maintain confidence in our legal system. State administrative law judges decide questions of fact and law for the resolution of disputes and are a highly visible symbol of government under the rule of law.

The Model Code of Judicial Conduct for State Administrative Law Judges is intended to identify standards for ethical conduct for state administrative law judges, and to provide comprehensive and centralized guidance for judges in dealing with the ethical dilemmas that arise in the course of their duties. The Code of Professional Responsibility for Attorneys provides no such guidance, because state administrative law judges act in a quasi-judicial capacity rather than as advocates for clients. Further, not all state administrative law judges in New York State are attorneys. The New York State Code of Judicial Conduct (CJC) specifically excludes state administrative law judges from coverage. Both the American Bar Association (ABA) and the National Association for the Administrative Law Judiciary (NAALJ) have issued model codes for administrative law judges, but those codes make no reference to specific provisions in New York law that address state administrative law judges. Provisions in the State Administrative Procedure Act (SAPA), the New York Public Officers Law and Executive Order No. 131 provide some standards that cover state administrative law judges, but nothing comprehensive. In instances in which SAPA, the Public Officers Law or Executive Order No. 131 set a standard for certain conduct that the Code addresses, the Code reflects and refers to those pre-existing standards. In this way, the Code provides a single reference document for state administrative law judges in seeking ethical guidance. The Code also seeks to do more than merely impose standards of conduct. The Code seeks to provide protection for the independence of state administrative law judges and, thus, enhance confidence in our legal system.

The Code consists of broad statements called Canons, specific rules set forth in Sections under each Canon, and Commentary. The Code also contains a Definition Section and an Application Section. The text of the Canons and Sections, including the Definition and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not meant as additional rules. If the Code is adopted as a regulation, the intent is that the Canons and Sections (all text in roman type) would be the regulation. The Commentary (text in italics) would not be adopted as the regulation, but be provided only as explanatory material.

When the Code uses "shall or "shall not," it is intended to impose binding obligations. When the Code uses "should" or "should not," the statement is intended as hortatory and as a statement of what is or is not appropriate conduct, rather than as a binding rule. When the Code

uses “may,” the text denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The term state administrative law judge includes all hearing officers, administrative officers, hearing examiners, impartial hearing officers, referees or any other person whom a state agency has designated and empowered to conduct administrative adjudicatory proceedings. The Code is intended to apply to all such quasi-judicial administrative officials, whether the persons serving that function are attorneys or not, and whether they are employed full time or part time, or retained on a contract or per diem basis while acting in their capacity as administrative adjudicators.

Except where modified, the Code follows the language of the New York State Code of Judicial Conduct. The Canons and Sections contained in this Code governing state administrative judicial conduct are rules of reason. They should be applied consistently with constitutional requirements, statutes, regulations, administrative rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of state administrative law judges in making judicial decisions.

The Code is designed to provide guidance to state administrative law judges and may provide a structure for regulating conduct if adopted by any agency. The Code is not designed or intended as a basis for civil liability or criminal prosecution.

The Code is intended to govern conduct of state administrative law judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the administrative judicial system.

The Code is not intended as an exhaustive guide for conduct. Strict adherence to this Code would not exempt a state administrative law judge from applying other ethical standards that apply to any person. However, as noted above, this Code is designed to reconcile, encompass and expand upon the aspects of professional conduct addressed by the CJC and the ABA and NAALJ Model Codes for State Administrative Law Judges, as well as, where relevant, SAPA, Public Officers Law, and Executive Order No. 131, in order to provide a single source of guidance for state administrative law judges in the subject areas addressed here.

PREAMBLE TO THE 2021 REVISIONS

In 2016, the National Conference of the Administrative Law Judiciary, Judicial Division, of the ABA issued a revision to the 1995 ABA Model Code of Judicial Conduct for State Administrative Law Judges. In response, beginning in 2018, the Committee on the Administrative Law Judiciary of the recently formed Local and State Government Law Section of the New York State Bar Association undertook a comparison of the 2016 ABA Model Code with NYSBA's 2009 Model Code to see whether revisions to the 2009 Model Code should be recommended.

The Committee's comparison revealed that the most significant change in the 2016 ABA Model Code was the use of the Canon and Rule format, rather than the Canon and Section format used in the 1995 ABA Model Code and the 2009 NYSBA Model Code. Beyond that, the substantive provisions of the 2016 ABA Model Code remained generally consistent with the substantive provisions of both the 1995 ABA Code and the 2009 NYSBA Code.

Because New York State's Code of Judicial Conduct uses the Canon and Section format, the Committee decided to retain that format for any proposed revisions to the 2009 NYSBA Code. However, the Committee concluded that the 2016 ABA Code contained several improvements and clarifications to the substantive provisions of the Code that should be considered for revisions to the 2009 NYSBA Code. The revisions the Committee recommends include:

- Including references to the core judicial principles of independence, integrity, and impartiality throughout the Code.

- Including a definition of "domestic partner" and adding references to domestic partners wherever "spouses" are mentioned in the Code, to reflect recent changes to New York State law.

- Clarifying a state administrative law judge's obligations when serving as a character witness.

- Clarifying a state administrative law judge's obligations with respect to organizations that practice invidious discrimination.

- Clarifying a state administrative law judge's administrative responsibilities.

- Providing that the making of public statements that commit or appear to commit a state administrative law judge to a particular outcome in a matter is a ground for disqualification.

- Clarifying a state administrative law judge's obligations regarding service in governmental, civic, or charitable organizations.

- Clarifying a per diem state administrative law judge's obligations with respect non-judicial legal work.

- Clarifying the obligations of a state administrative law judge seeking appointive administrative judicial or judicial office.

- Avoiding the use of any gender-specific language throughout the Code.

The 2016 ABA Code also contained several revisions the Committee decline to adopt, primarily on the grounds that they conflicted with New York law, or did not appear to advance appropriate ethical behavior. As an example of the latter, the 2016 ABA Code would allow a state administrative law judge to respond to social media directed to the judge. The Committee was of the opinion that publicly responding to social media criticism of a state administrative law judge is not appropriate for a judicial officer.

In 2019, after completing its review, the Committee distributed a proposed revised Code for public comment. The 2019 revised Code was distributed to multiple State agencies and several municipal agencies in New York City. Comments were received from the New York State Department of State, the New York State Department of Labor, the New York State Workers Compensation Board, and the New York City Mayor's Office of Criminal Justice. The Committee further revised the 2019 Code to incorporate many of the commenters' recommendations.

In sum, the Committee is of the opinion that the revisions described above provide a useful addition to the 2009 Code that is consistent with the goals and principles of the Code as articulated in the Preamble to the 2009 Code. Accordingly, we urge the Bar Association to consider their adoption.

DEFINITIONS

The following terms used in this Code are defined as follows:

(A) A "candidate" is a person seeking selection for or retention in public office by any public election, including primary and general elections and including partisan and nonpartisan elections. A person becomes a candidate for public office as soon as the person makes a public announcement of candidacy, or authorizes solicitation or acceptance of contributions.

(B) The "degree of relationship" is calculated according to the civil law system. That is, where the state administrative law judge and the party are in the same line of descent, degree is ascertained by ascending or descending from the judge to the party, counting a degree for each person, including the party but excluding the judge. Where the state administrative law judge and the party are in different lines of descent, degree is ascertained by ascending from the judge to the common ancestor, and descending to the party, counting a degree for each person in both lines, including the common ancestor and the party but excluding the judge. The following persons are relatives within the fourth degree of relationship: great-grandparent, grandparent, parent, sibling of a parent, sibling, first cousin, child, grandchild, great-grandchild, child of a parent's sibling. The sixth degree of relationship includes second cousins.

(C) "Domestic partner" means a person as defined by New York Workers' Compensation Law § 4(1).

(D) "Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, provided that:

(1) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the state administrative law judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(2) service by a state administrative law judge as an officer, director, advisor or other active participant in an educational, religious, charitable, cultural, fraternal or civic organization, or service by a judge's spouse, domestic partner, or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(3) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization, unless a proceeding pending or impending before the state administrative law judge could substantially affect the value of the interest;

(4) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the state administrative law judge could substantially affect the value of the securities;

(5) "de minimis" denotes an insignificant interest that could not raise reasonable questions as to a judge's impartiality.

(E) An "ex parte communication" is a communication that concerns a pending or impending proceeding before a state administrative law judge and occurs, directly or indirectly, between the judge and a party, or a representative of a party, to the proceeding without notice to and outside the presence of one or more other parties to the proceeding.

(F) "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.

(G) "Impartial" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the state administrative law judge.

(H) An "impending proceeding" is one that is reasonably foreseeable but has not yet been commenced.

(I) An "independent" administrative judiciary is one free of outside influences or control.

(J) "Integrity" denotes probity, fairness, honesty, uprightness and soundness of character. Integrity also includes a firm adherence to this Code and its standard of values.

(K) To "know" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(L) "Law" includes regulations as well as statutes, constitutional provisions and decisional law.

(M) "Member of the state administrative law judge's family" denotes a spouse or domestic partner, child, grandchild, parent, grandparent or other relative or person with whom the judge maintains a close familial relationship.

(N) "Member of the state administrative law judge's family residing in the judge's household" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

(O) "Non-judicial personnel" does not include the lawyers or representatives of parties in a proceeding before a state administrative law judge.

(P) "Nonpublic information" denotes confidential information of which a state administrative

law judge become aware as a result of the judge's judicial duties and which is not otherwise available to the public.

(Q) A "pending proceeding" is one that has begun but not yet reached its final disposition.

(R) "Political organization" denotes a political party, political club or other group, the principal purpose of which is to further the election or appointment of candidates to political office.

(S) "Primarily employed by the state" means employed on a full-time basis or the equivalent or regularly scheduled to work the equivalent of 20 hours per week at one or more state agencies.

(T) "Public election" includes primary and general elections; it includes partisan elections, nonpartisan elections and retention elections.

(U) "Require." The rules prescribing that a state administrative law judge "require" certain conduct of others, like all of the rules in this Code, are rules of reason. The use of the term "require" in that context means a state administrative law judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.

(V) A "state administrative law judge" is an administrative law judge, hearing officer, administrative officer, hearing examiner, impartial hearing officer, referee or any other person whom a state agency has designated and empowered to conduct administrative adjudicatory proceedings. The term "state administrative law judge" does not include the head of an agency or the members of a state board or commission.

CANON 1

A STATE ADMINISTRATIVE LAW JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE ADMINISTRATIVE JUDICIARY.

An independent and honorable administrative judiciary is indispensable to justice in our society. A state administrative law judge should participate in establishing, maintaining, and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the administrative judiciary is preserved. The provisions of this code shall be construed and applied to further that objective.

Commentary:

*[1.1] Deference to the judgments and rulings of administrative judiciaries depends upon public confidence in the independence, integrity, and impartiality of state administrative law judge*s. *The independence, integrity, and impartiality of state administrative law judges depends in turn upon their acting without fear or favor. Although state administrative law judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the administrative judiciary is maintained by the adherence of each state administrative law judge to this responsibility. Conversely, violation of this code diminishes public confidence in the administrative judiciary and thereby does injury to the system of government under law.*

[1.2] To the extent that this code conflicts with applicable statutes, regulations, or codes, including but not limited to the Public Officers Law, State Administrative Procedure Act, Executive Order No. 131 (9 NYCRR 4.131), and any codes adopted by individual agencies, the more restrictive rule will govern.

CANON 2

A STATE ADMINISTRATIVE LAW JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES.

(A) A state administrative law judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the administrative judiciary.

Commentary:

[2.1][2A] Public confidence in the administrative judiciary is eroded by irresponsible or improper conduct by state administrative law judges. A state administrative law judge must avoid all impropriety and appearance of impropriety. A state administrative law judge must

expect to be the subject of constant public scrutiny. Such a state administrative law judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

[2.2][2A] The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a state administrative law judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by state administrative law judges that is harmful although not specifically mentioned in the Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the state administrative law judge's ability to carry out administrative judicial responsibilities independently, with integrity, impartiality and competence is impaired.

[2.3][2A] See also Commentary under 2C.

(B) A state administrative law judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment.

(C) A state administrative law judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a state administrative law judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

Commentary:

[2.4][2C] Maintaining the prestige of administrative judicial office is essential to a system of government in which the administrative judiciary must to the maximum extent possible function independently. Respect for the office facilitates the orderly conduct of legitimate administrative judicial functions. State administrative law judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a state administrative law judge to allude to the judge's administrative judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, administrative judicial letterhead must not be used for conducting a state administrative law judge's personal business. A state administrative law judge who is authorized to practice law may not use or permit the use of a title or honorific such as "judge" or "honorable" in connection with the judge's law practice.

[2.5][2C] A state administrative law judge must avoid lending the prestige of administrative judicial office for the advancement of the private interests of others. For example, a state administrative law judge must not use the judge's administrative judicial position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of the state administrative law judge's writings, a judge should retain control over the

advertising to avoid exploitation of the judge's office. As to the acceptance of awards, see Section 4D(4)(a) and Commentary.

[2.6][2C] Although a state administrative law judge should be sensitive to possible abuse of the prestige of office, such a judge may, based upon the judge's personal knowledge, serve as a reference or provide a letter of recommendation.

[2.7][2C] State administrative law judges may participate in the process of selection of members of the judiciary and administrative judiciary by cooperating with appointing authorities and screening committees seeking names for consideration and by responding to official inquiries concerning a person being considered for a judicial position. See also Canon 5 regarding use of a state administrative law judge's name in political activities.

[2.8][2C] A state administrative law judge must not testify voluntarily as a character witness because to do so may lend the prestige of the administrative judicial office in support of the party for whom the judge testifies. Moreover, when a state administrative law judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A state administrative law judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, a state administrative law judge should discourage a party from requiring the judge to testify as a character witness.

(D) A state administrative law judge shall not hold membership in any organization that practices invidious discrimination on the basis of actual or perceived age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status, or any other protected status enumerated by law. This provision does not prohibit a state administrative law judge from holding membership in an organization that is dedicated to the preservation of religious, ethnic, cultural or other values of legitimate common interest to its members.

Commentary:

[2.9][2D] Membership of a state administrative law judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Section 2D refers to the current practice of the organization. Whether an organization practices invidious discrimination is often a complex question to which state administrative law judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of actual or perceived age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status, or any other protected status enumerated by law, persons who would

otherwise be admitted to membership. See New York State Club Assn. Inc. v City of New York, 487 US 1, 108 S Ct 2225, 101 L Ed 2d 1 (1988); Board of Directors of Rotary Intl. v Rotary Club of Duarte, 481 US 537, 107 S Ct 1940, 95 L Ed 2d 474 (1987); Roberts v United States Jaycess, 468 US 609, 104 S Ct 3244, 82 L Ed 2d 462 (1984).

[2.10][2D] Although Section 2D relates only to membership in organizations that invidiously discriminate on the basis of actual or perceived age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status, or any other protected status enumerated by law, a state administrative law judge's membership in an organization that engages in any discriminatory membership practices prohibited by the law of the jurisdiction also violates Canon 2 and Section 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and Section 2A for a state administrative law judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of actual or perceived age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status, or any other protected status enumerated by law, in its membership or other policies, or for the judge to regularly use such a club. Moreover, public manifestation by a state administrative law judge of the judge's knowing approval of invidious discrimination on any actual or perceived basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the administrative judiciary, in violation of Section 2A.

[2.11][2D] When a person who is a state administrative law judge on the date this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Section 2D or under Canon 2 and Section 2A, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practice as promptly as possible (and in all events within a year of the state administrative law judge's first learning of the practices), the judge is required to resign immediately from the organization.

(E) A state administrative law judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination onr one or more of the bases identified in Section 2D. A judge's attendance at an event or facility of an organization that the judge is not permitted to join is not a violation of this Section when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

CANON 3

A STATE ADMINISTRATIVE LAW JUDGE SHALL PERFORM THE DUTIES OF ADMINISTRATIVE JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY.

(A) Administrative judicial duties in general. The administrative judicial duties of a state administrative law judge take precedence over all the judge's other activities. The state administrative law judge's administrative judicial duties include all the duties of the judge's office prescribed by law. The standards below apply to the performance of these duties.

(B) Adjudicative responsibilities.

(1) A state administrative law judge shall be faithful to the law and maintain professional competence in it. A state administrative law judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(2) A state administrative law judge shall require order and decorum in proceedings before the judge.

(3) A state administrative law judge shall be patient, dignified and courteous to parties, witnesses, lawyers, representatives, staff, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, representatives, staff members and others subject to the judge's direction and control.

Commentary:

[3.1][3B(3)] The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the state administrative law judge. State administrative law judges can be efficient and businesslike while being patient and deliberate.

(4) A state administrative law judge shall perform administrative judicial duties without bias or prejudice against or in favor of any person. A state administrative law judge in the performance of administrative judicial duties shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon actual or perceived age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, or any other protected status enumerated by law, and shall require staff and others subject to the judge's direction and control to refrain from such words or conduct.

Commentary:

[3.2][3B(4)] A state administrative law judge must perform judicial duties impartially and fairly. A state administrative law judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers

in the proceeding, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial. Prejudicial behavior may include (1) being overly deferential to one person, such as addressing a party, attorney, or representative by an honorific title such as "judge"; (2) being overly familiar with a person, such as referring to a party, attorney, or representative by the person's first name; or (3) being disrespectful or demeaning to a person. A state administrative law judge can also engage in prejudicial behavior by tolerating such conduct by a party, attorney, or representative, such as allowing an attorney to address a witness disrespectfully as "Smith" rather than "Mr. Smith." This rule does not prohibit addressing a party, attorney or representative appearing in the capacity as a public official by the title of the office, addressing a party or a witness by a professional title such as "Doctor," or addressing a member of the clergy by a title such as "Reverend."

[3.3][3B(4)] A state administrative law judge must refrain from speech, gestures or other conduct that could reasonably be perceived as harassment of any kind, including sexual harassment and harassment against any protected class member, among others. The judge must require the same standard of conduct of others subject to the judge's direction and control.

(5) A state administrative law judge shall require participants in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon actual or perceived age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, or any other protected status enumerated by law, against parties, representatives or others. This paragraph does not preclude legitimate advocacy when age, race, sex, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, any other protected status enumerated by law, or other similar factors, are issues in the proceeding.

(6) A state administrative law judge shall accord to all persons who are legally interested in a proceeding, or their lawyers or representatives, full right to be heard according to law. Unless otherwise authorized by law and except as provided in paragraphs (a) through (e) below, a state administrative law judge shall not communicate, directly or indirectly, in connection with any issue that relates in any way to the merits of an adjudicatory proceeding pending or impending before the judge with any person except upon notice and opportunity for all parties to participate.

(a) Ex parte communications that are made for scheduling or administrative purposes and that do not affect a substantial right of any party are authorized, provided:

(i) the state administrative law judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the state administrative law judge, insofar as practical and appropriate, makes provision for prompt notification of other parties, or their lawyers or representatives of the substance of the ex parte

communication and allows an opportunity to respond.

(b) A state administrative law judge may consult on questions of law with supervisors, agency attorneys or other state administrative law judges, provided that such supervisors, state administrative law judges or attorneys have not been engaged in investigative or prosecuting functions in connection with the adjudicatory proceeding under consideration or a factually related adjudicatory proceeding.

(c) A state administrative law judge may consult with supervisors, other state administrative law judges, support staff or court reporters on ministerial matters such as scheduling or the location of a hearing.

(d) Unless otherwise prohibited by law, a state administrative law judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and a copy of such advice if the advice is given in writing and the substance of the advice if it is given orally, and affords the parties reasonable opportunity to respond.

(e) A state administrative law judge, with the consent of the parties, may confer separately with the parties and their lawyers or representatives on agreed-upon matters.

(f) A state administrative law judge may initiate or consider any ex parte communications when authorized by law to do so.

(g) Decisions of a state administrative law judge shall be based exclusively on evidence in the record of the proceeding and material that has been officially noticed.

Commentary:

[3.4][3B(6)] The ex parte communication rule contained herein is adapted from Executive Order No. 131 (see 9 NYCRR 4.131), which was continued by Governor Andrew M. Cuomo on January 1, 2011 (see Executive Order No. 2, 9 NYCRR 8.2). The ex parte communication rule contained in Executive Order No. 131 is more limited than the rule contained in State Administrative Procedure Act (SAPA) § 307(2). Executive Order No. 131 applies to state administrative law judges; it does not apply to agency heads or boards acting in an adjudicatory capacity. Agency heads and boards remain subject to SAPA § 307(2). To the extent statutes or regulations applicable to a particular state administrative law judge impose limitations on ex parte communications that are more stringent than Executive Order No. 131, such statutes or regulations should be followed.

[3.5][3B(6)] The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

[3.6][3B(6)] To the extent reasonably possible, all parties or their lawyers or other representatives shall be included in communications with a state administrative law judge.

[3.7][3B(6)] Whenever presence of a party or notice to a party is required by Section 3B(6), it is the party's lawyer or other representative, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

[3.8][3B(6)] Certain ex parte communication is approved by Section 3B(6) to facilitate scheduling, other administrative purposes, or emergencies. In general, however, a state administrative law judge must discourage ex parte communication and allow it only if all the criteria stated in Section 3B(6) are clearly met. A state administrative law judge must disclose to all parties all ex parte communications described in Section 3B(6)(a) regarding a proceeding pending or impending before the judge.

[3.9][3B(6)] Executive Order No. 131, as well as this Code, would allow a state administrative law judge to consult on questions of law with an agency attorney outside of the administrative tribunal or hearings office who is not otherwise involved in the matter before the judge or a factually related matter. Moreover, Executive Order No. 131 does not require a state administrative law judge to report such consultations with agency attorneys outside the administrative tribunal or hearings office, to the parties to the proceeding before the judge. Consistent with the provision concerning consultations with disinterested legal experts, the better practice is to give notice to the parties of the agency attorney consulted and a copy of such advice if the advice is given in writing and the substance of the advice if it is given orally, and afford the parties a reasonable opportunity to respond.

Note that Section 3B(6)(b) does not apply when the administrative tribunal or hearings office is a separate, independent agency from the administrative agency whose actions are under review. In that context, communications with involved agency attorneys employed outside the administrative tribunal or hearings office are governed by Section 3B(6)(d).

[3.10][3B(6)] An appropriate and often desirable procedure for a state administrative law judge to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

[3.11][3B(6)] A state administrative law judge must not independently investigate facts in a case, unless authorized by law, and must consider only the evidence presented.

[3.12][3B(6)] A state administrative law judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

[3.13][3B(6)] A state administrative law judge may delegate the responsibilities of the judge under Section 3B(6) to a member of the judge's staff. A state administrative law judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that

Section 3B(6) is not violated through law clerks or other personnel on the judge's staff. This provision does not prohibit the judge or the judge's staff from informing all parties individually of scheduling or administrative decisions.

[3.14][3B(6)] The ex parte communication rule applies primarily in adjudicatory proceedings where the state administrative law judge is presiding as an impartial decision maker in a quasi-judicial role. The ex parte communication rule may be modified in other administrative proceedings presided over by a state administrative law judge, such as legislative or rule making proceedings, depending on the requirements and necessities of such hearings, and any applicable law and regulations.

(7) A state administrative law judge shall be attentive to language barriers that may affect parties or witnesses, and provide such qualified interpreter services as are available or otherwise required by law to provide meaningful access and participation in administrative proceedings.

Commentary:

[3.15] [3B(7)] A State agency may be under an affirmative obligation pursuant to Title VI of the Civil Rights Act of 1964 to provide language services to limited English proficient (LEP) individuals participating in administrative proceedings. In such cases, the state administrative law judge may be required to take further action to assure that interpretive services are provided. Absent such a statutory obligation, however, a state administrative law judge nonetheless should be continually attentive to the issue whether parties who may not be proficient in English are afforded a full and fair opportunity to be heard. The obligation to provide such interpretive services as are available applies whether a party or witness is represented or not.

(8) A state administrative law judge shall take appropriate steps to ensure that any party not represented by an attorney or other relevant professional has the opportunity to have the party's case fully heard on all relevant points.

(a) Where the state administrative law judge deems it necessary to advance the ability of a litigant not represented by an attorney or other relevant professional to be fully heard, the judge may, or, where required by law, the judge shall:

(i) liberally construe and allow amendment of papers that a party not represented by an attorney has prepared;

(ii) provide brief information concerning statutory procedures and substantive law, including but not limited to charges and defenses;

(iii) provide brief information about the nature of the hearing, who else is participating in the hearing and how the hearing will be conducted;

(iv) provide brief information about what types of evidence that may be presented;

(v) question witnesses to elicit general information and to obtain clarification;

(vi) modify the traditional order of taking evidence;

(vii) minimize the use of complex legal terms;

(viii) explain the basis for a ruling when made during the hearing or when made after the hearing in writing;

(ix) make referrals to resources that may be available to assist the party in the preparation of the case.

(b) A state administrative law judge shall ensure that any steps taken in fulfillment of the obligations of this paragraph are reflected in the record of the proceeding. A communication between a state administrative law judge and a litigant made in fulfillment of the obligations of this paragraph remains subject to the restrictions on ex parte communications contained in the preceding paragraph.

Commentary:

[3.16][3B(8)] In contrast to court proceedings, administrative proceedings often involve pro se litigants and non-attorney representatives. See Matter of Board of Educ. of Union-Endicott Cent. School Dist. v New York State Pub. Empl. Relations Bd., 233 AD2d 602 (3d Dept 1996). Some agency regulations impose an affirmative duty on state administrative law judges to ensure a complete record and to provide non-attorney litigants with certain basic information about the hearing process (see, e.g., 18 NYCRR 358-5.6[b]). A state administrative law judge should conduct hearings with pro se and non-attorney litigants in a manner that is fair to both parties, that assures the efficient conduct of administrative justice, that ensures the rights of the litigants, and that equalizes the field for the parties. This Section provides specific guidance to state administrative law judges in dealing with these issues.

(9) A state administrative law judge shall dispose of all judicial matters promptly, efficiently and fairly.

Commentary:

[3.17][3B(9)] In disposing of matters promptly, efficiently and fairly, a state administrative law judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental

rights of parties also protects the interests of witnesses and the general public. A state administrative law judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. A state administrative law judge should encourage and seek to facilitate settlement, but the judge should not take any action or make any comment that might reasonably be interpreted by any party or its counsel as (a) coercion to settle, or (b) impairing the party's right to have the controversy resolved by the administrative tribunal in a fair and impartial manner in the event settlement negotiations are unsuccessful. In matters that will be tried before the state administrative law judge without a separate fact finder, a judge who seeks to facilitate settlement should exercise extreme care to avoid prejudging or giving the appearance of prejudging the case.

[3.18][3B(9)] Prompt disposition of the state administrative law judge's business requires a judge to devote adequate time to judicial duties, to be punctual in attending hearings and expeditious in determining matters under submission, and to insist that personnel subject to the judge's direction and control, litigants and their lawyers cooperate with the judge to that end.

(10) A state administrative law judge shall not make any public comment about a pending or impending proceeding before any: (i) state administrative agency, or (ii) court within the United States or its territories, concerning a matter which originated within the agency. The state administrative law judge shall require similar abstention on the part of agency personnel subject to the judge's direction and control. This paragraph does not prohibit state administrative law judges from making public statements in the course of their official duties or from explaining for public information the procedures of the administrative judiciary. This paragraph does not apply to proceedings in which the state administrative law judge is a litigant or representative in a personal capacity.

Commentary:

[3.19][3B(10)] The requirement that state administrative law judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. A state administrative law judge should not be influenced by the potential for personal publicity when making decisions in pending cases. Release of decisions to the media or notifying the media that the decision is available before counsel or representatives for the parties have been notified may be embarrassing or prejudicial to the private rights of the litigants. This Section does not prohibit a state administrative law judge from commenting on proceedings in which the judge is a litigant in a personal capacity. "Agency personnel" does not include the lawyers in a proceeding before a state administrative law judge. The conduct of lawyers relating to trial publicity is governed by DR 7-107 of the Code of Professional Responsibility.

[3.20][3B(10)] This Section is not intended to preclude participation in an association of state administrative law judges merely because such association makes public comments about a pending or impending proceeding in the administrative process. The Section is directed primarily at public comments by a state administrative law judge concerning a proceeding

before another judge.

(11) A state administrative law judge shall not:

(a) make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office;

(b) with respect to cases, controversies or issues that are likely to come before the tribunal, make commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

(12) A state administrative law judge shall not intentionally or recklessly disclose or use, for any purpose unrelated to administrative judicial duties, nonpublic information acquired in an administrative judicial capacity.

(C) Administrative responsibilities.

(1) A state administrative law judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in administrative judicial administration and cooperate with other judges and non-judicial personnel in the administration of judicial business.

(2) A state administrative law judge shall require staff, hearing officials, non-judicial personnel and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge, to refrain from manifesting bias and prejudice in the performance of their official administrative duties, and to act in a manner consistent with the judge's obligations under this Code.

(3) A state administrative law judge with supervisory authority for the performance of other state administrative law judges shall take reasonable measures to ensure that those judges properly discharge their adjudicative responsibilities, including the timely disposition of matters before them.

Commentary:

[3.21][3C(2)] A state administrative law judge is responsible for their own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct staff to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

[3.22][3C(3)] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under their supervision timely administer their workloads.

[3.23][3C(3)] A supervisory state administrative law judge should not interfere with the

decisional independence of other judges. Reasonable docket control, case assignments, logistical matters and other administrative concerns are appropriate; provided, that these are done in an impartial manner and in no way operate to favor any particular outcome in any case.

(D) Disciplinary responsibilities.

(1) A state administrative law judge who receives information indicating a substantial likelihood that another state administrative law judge has committed a substantial violation of this Code shall take appropriate action.

(2) A state administrative law judge who receives information indicating a substantial likelihood that a lawyer or other representative has engaged in unprofessional conduct shall take appropriate action.

(3) Acts of a state administrative law judge in the discharge of disciplinary responsibilities are part of the judge's administrative judicial duties.

Commentary:

[3.24][3D] A state administrative law judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action. For purposes of paragraphs (1) and (2), "appropriate" action includes a state administrative law judge's referral of a lawyer or another judge to treatment or to a lawyer or judicial assistance program when the referring judge has a reasonable belief that the performance of the lawyer or other judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition .

[3.25][3D] Appropriate action may include direct communication with the state administrative law judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority or other agency or body. Internal agency procedure which routes the complaint can be utilized.

(E) Disqualification.

(1) A state administrative law judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) (i) the state administrative law judge has a personal bias or prejudice concerning a party,

(ii) the state administrative law judge has personal knowledge of disputed evidentiary facts concerning the proceeding, or

(iii) the state administrative law judge has made a public statement, other than in a tribunal proceeding, adjudicative decision, or adjudicative opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy;

(b) the state administrative law judge knows that:

(i) the state administrative law judge served as a lawyer in the matter in controversy, or

(ii) a lawyer with whom the state administrative law judge previously practiced law served during such association as a lawyer concerning the matter, or

(iii) the state administrative law judge has been a material witness concerning it;

(c) the state administrative law judge knows that the judge, individually or as a fiduciary, or the judge's spouse or domestic partner, or a person known by the judge to be within the sixth degree of relationship to either of them, or the spouse or domestic partner of such a person:

(i) is a party to the proceeding;

(ii) is an officer, director or trustee of a party;

(iii) has an economic interest in the subject matter in controversy;

(iv) has any other interest that could be substantially affected by the proceeding; or

(v) is likely to be a material witness in the proceeding; or

(d) the state administrative law judge knows that the judge or the judge's spouse or domestic partner, or a person known by the judge to be within the fourth degree of relationship to either of them, or the spouse or domestic partner of such a person, is acting as a lawyer in the proceeding.

(e) Notwithstanding the provisions of subparagraph (c) above, if a state administrative law judge would be disqualified because of the appearance or discovery, after the matter was assigned to the judge, that the judge individually or as a fiduciary, the judge's spouse or domestic partner, or a person known by the judge to be within the sixth degree of relationship to either of them, or the spouse or domestic partner of such a person has an economic interest in a party to the proceeding, disqualification is not required if the state

administrative law judge, spouse, domestic partner, or other relevant persons, as the case may be, divest themselves of the interest that provides the grounds for the disqualification.

(2) A state administrative law judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interest of the judge's spouse or domestic partner, and minor children residing in the judge's household.

Commentary:

[3.26][3E(1)] Under this rule, a state administrative law judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply.

[3.27][3E(1)] A state administrative law judge should disclose on the record information that the judge believes the parties or their lawyers or representatives might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

[3.28][3E(1)] By decisional law, the rule of necessity may override the rule of disqualification. For example, a state administrative law judge might be required to participate in judicial review of a matter where no other forum is available to decide the matter and no provision is available for delegating the authority to hear the matter to another adjudicator. Or, a state administrative law judge might be the only judge available in a matter requiring immediate judicial action. In the latter case, the state administrative law judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as possible.

[3.29][3E(1)(b)] A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b). A state administrative law judge formerly employed as agency counsel, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association. See NY St Bar Assn Comm on Prof Ethics Op 617 (1991).

[3.30][3E(1)(d)] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the state administrative law judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the state administrative law judge's impartiality might reasonably be questioned" under Section 3E(1), or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the proceeding" under Section 3E(1)(c)(iv) may require that judge's disqualification.

(F) Remittal of disqualification.

(1) A state administrative law judge disqualified by the terms of subdivision (E) above may disclose on the record the basis for the judge's disqualification. Thereafter, subject

to paragraph (2) below, if the parties who have appeared and not defaulted and their representatives, without participation by the state administrative law judge, all agree that the judge should not be disqualified, and the judge believes that the judge will be impartial and is willing to participate, the state administrative law judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

(2) Notwithstanding paragraph (1) above, disqualification of a state administrative law judge shall not be remitted if participation in the proceeding by the judge would violate this Code or if the basis for disqualification is that:

(a) the state administrative law judge has a personal bias or prejudice concerning a party;

(b) the state administrative law judge, while in private practice, served as a lawyer in the matter in controversy;

(c) the state administrative law judge has been or will be a material witness concerning the matter in controversy; or

(d) the state administrative law judge or the judge's spouse or domestic party is a party to the proceeding or is an officer, director or trustee of a party to the proceeding.

Commentary:

[3.31][3F] A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification in the event a remittal is available under the Section. To assure that consideration of the question of remittal is made independently of the state administrative law judge, a judge must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a state administrative law judge may wish to have all parties and their lawyers or representatives sign the remittal agreement.

CANON 4

A STATE ADMINISTRATIVE LAW JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRA-JUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS.

(A) Extra-judicial activities in general. A state administrative law judge shall conduct all of the judge's extra-judicial activities so that they:

(1) do not cast reasonable doubt on the state administrative law judge's capacity to act independently, impartially, or with integrity as a state administrative law judge;

(2) do not detract from the dignity of judicial office;

(3) do not interfere with the proper performance of judicial duties;

(4) are not incompatible with judicial office; and

(5) will not lead to frequent disqualification of the judge.

Commentary:

[4.1][4A] Complete separation of a state administrative law judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

[4.2][4A] Expressions of bias or prejudice by a state administrative law judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of actual or perceived age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status. See Section 2D and accompanying Commentary.

(B) Avocational activities. A state administrative law judge may speak, write, lecture, teach and participate in extra-judicial activities subject to the requirements of this Code.

Commentary:

[4.3][4B] In this and other Sections of Canon 4, lists of permissible activities are intended to be illustrative and not exclusive.

[4.4][4B] As a judicial officer and person specially learned in the law, a state administrative law judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revisions of substantive and procedural

law. To the extent that time permits, a state administrative law judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. State administrative law judges may participate in efforts to promote the fair administration of justice, the independence of the administrative judiciary and the integrity of the legal profession.

[4.5][4B] In this and other Sections of Canon 4, the phrase "subject to the requirements of this Code" is used, notably in connection with a state administrative law judge's governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various Sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

[4.6][4B] See Section 2B regarding the obligation to avoid improper influence.

(C) Governmental, civic, or charitable activities.

(1) A state administrative law judge shall not appear at a public hearing before an executive or legislative body or official if doing so would cast doubt on the judge's ability to decide impartially regarding any issue or party that with reasonable foreseeability might come before the judge unless the issue or party is one with respect to which the state administrative law judge would in any event be disqualified under this Code or any other provision of law.

(2) A state administrative law judge shall not accept:

(a) appointment to a governmental committee, board, commission, or other governmental position, unless such appointment does not conflict with the judge's official duties and there is no appearance of conflict, bias or prejudice concerning the judge's official position; or

(b) appointment or employment as a peace officer or police officer, as those terms are defined in Criminal Procedure Law §§ 1.20 and 2.10, unless the judge is a member of the uniformed force of the police department exercising adjudicative duties.

Commentary:

[4.7][4C(2)] The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the administrative judiciary from involvement in extra-judicial matters that may prove to be controversial. State administrative law judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the administrative tribunal on which the judge serves.

(3) Unless otherwise prohibited by law, a state administrative law judge may be a member or serve as an officer, director, trustee or non-legal advisor of an organization or

governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, cultural, fraternal or civic organization not conducted for profit subject to the following limitations and the other requirements of this Code.

(a) A state administrative law judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

(i) will be engaged in proceedings that ordinarily would come before the state administrative law judge, or

(ii) will be regularly engaged in adversary proceedings before the agency in which the state administrative law judge serves.

(b) In connection with civic or charitable activities, a state administrative law judge may participate in fund-raising or solicitation for membership if:

(i) the state administrative law judge does not use or permit use of the prestige of judicial office for fund-raising or solicitation for membership;

(ii) the fund-raising or solicitation for membership is not directed at persons who have appeared, are appearing or are foreseeably likely to appear before the state administrative law judge;

(iii) the state administrative law judge's participation in the fund-raising or solicitation for membership would not detract from the dignity of judicial office or interfere with the proper performance of judicial duties or be incompatible with judicial office; and

(iv) the fund-raising or solicitation for membership is not otherwise prohibited by law.

Commentary:

[4.8][4C(3)] See Commentary to Section 4B regarding use of the phrase "subject to the following limitations and the other requirements of this Code." As an example of the meaning of the phrase, a state administrative law judge permitted by Section 4C(3) to serve on the board of a fraternal institution may be prohibited from such service by Section 2D or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

[4.9][4C(3)] Service by a state administrative law judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Section 4C. For example, a state administrative law judge is prohibited by Section 4G from appearing on behalf

of a civic or charitable organization in matters before the agency in which the judge serves.

[4.10][4C(3)(a)] The changing nature of some organizations and of their relationship to the law makes it necessary for a state administrative law judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the relationship to that organization.

[4.11][4C(3)(b)] Use of an organization letterhead for fund-raising or membership solicitation does not violate Section 4C(3)(b) provided the letterhead lists only the state administrative law judge's name and office or other position in the organization and, if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

(4) Unless otherwise proscribed by law or agency regulation, a state administrative law judge may accept duty assignments in addition to serving as a state administrative law judge provided that (i) such duties do not conflict with the state administrative law judge's responsibilities as a state administrative law judge, and (ii) such duties do not involve functions related to prosecutions or adversarial presentations of agency positions. State administrative law judges may be assigned to conduct investigatory hearings provided that the standards of independence and objectivity specified in this Code are adhered to.

Commentary:

[4.12][4C(4)] Section 4C(4) is derived from paragraph IIIB(2)(a) of Executive Order No. 131 (see 9 NYCRR 4.131[III][B][2][a]).

(D) Financial activities.

(1) A state administrative law judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to reflect adversely on the state administrative law judge's impartiality or exploit the judge's judicial position;

(b) involve the state administrative law judge with any business, organization or activity that ordinarily will come before the judge; or

(c) involve the state administrative law judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the agency in which the judge serves.

(2) A state administrative law judge, subject to the requirements of this Code, may

hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.

(3) State administrative law judges shall manage the judges' investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as state administrative law judges can do so without serious financial detriment, judges shall divest themselves of investments and other financial interests that might require frequent disqualification.

(4) Consistent with state law and agency regulation, a state administrative law judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse, domestic partner, or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse, domestic partner, or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse, domestic partner, or other family member and the judge (as spouse, domestic partner, or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) a gift which is customary on family and social occasions;

(d) a gift from a relative or friend, for a special occasion such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Section 3(E) of this Code;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) any other gift, bequest, favor or loan, only if the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge, and if the gift is required by law to be reported, the judge shall do so.

Commentary:

[4.13][4D] The specific prohibition contained in the Code of Judicial Conduct against a judge's services as an officer, director, manager, advisor or an employee of any business (which has sometimes been interpreted to bar such participation in a family business) has been deleted, because the general prohibitions in Canon 3(C)(1) and statutes or rules prohibiting such activities by state administrative law judges involving agencies wherein they serve render the specific prohibition somewhat superfluous and because generic prohibition of involvement in a family business is regarded as unnecessary and undesirable. Involvement in a business that neither affects the independent professional judgment of the state administrative law judge nor the conduct of the judge's official duties is not prohibited.

[4.14][4D] When a state administrative law judge acquires in a judicial capacity information, such as materials contained in filings with the administrative tribunal, that is not yet generally known, the judge must not use the information for private gain. See Section 2B; see also Section 3B(11).

[4.15][4D] A state administrative law judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's administrative tribunal. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of a state administrative law judge with law firms appearing before the judge, see Commentary to Section 3E(1) relating to disqualification.

[4.16][4D] Participation by a state administrative law judge in financial and business dealings is subject to the general prohibitions in Section 4A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Section 2C against the misuse of the prestige of judicial office. In addition, a state administrative law judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See Commentary for Section 4B regarding use of the phrase "subject to the requirements of this Code."

[4.17][4D(2)] This Section provides that, subject to the requirements of this Code, a state administrative law judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by the judge and members of the judge's family.

[4.18][4D(4)] Section 4D(4) does not apply to contributions to a state administrative law judge's campaign for judicial office, a matter governed by Canon 5.

[4.19][4D(4)] Because a gift, bequest, favor or loan to a member of the state administrative law judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

[4.20][4(D)(4)(a)] Acceptance of an invitation to a law-related function is governed by Section 4D(4)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Section 4D(4)(h).

[4.21][4(D)(4)(a)] A state administrative law judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See Sections 4A(1) and 2B.

[4.22][4D(4)(d)] A gift to a state administrative law judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Section 4D(4)(e).

[4.23][4D(4)(h)] Section 4D(4)(h) prohibits state administrative law judges from accepting any gifts, favors, bequests or loans not otherwise enumerated in Section 4D(4) from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

(E) Fiduciary activities.

(1) A state administrative law judge shall not serve as an executor, administrator, trustee, guardian or other fiduciary if such service will interfere with the proper performance of judicial duties or if it is likely that as a fiduciary the judge will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in an agency in which the judge serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary, a state administrative law judge is subject to the same restrictions on financial activities that apply to the judge in the judge’s personal capacity.

Commentary:

[4.24][4E(2)] The restrictions imposed by this Canon may conflict with the state administrative

law judge's obligation as a fiduciary. For example, a state administrative law judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Section 4D(3).

(F) Service as arbitrator, mediator or hearing officer. Unless otherwise prohibited by law or agency regulation, a state administrative law judge may act as an arbitrator or mediator or otherwise perform judicial functions independent of the judge's administrative judicial duties, so long as such activity affects neither the independent professional judgment of the state administrative law judge nor the conduct of the judge's official duties.

Commentary:

[4.25][4F] Service as an arbitrator or mediator as part of a state administrative law judge's official duties is not covered by this provision.

[4.26][4F] This Code does not prohibit state administrative law judges from acting as arbitrators or mediators in capacities outside their official administrative judicial duties and in circumstances where it is unlikely that their decisions as arbitrators or mediators will be submitted to their agency for administrative review. In considering whether to adopt this Code, the agency should consider whether it is appropriate to prohibit its staff from acting as arbitrators or mediators in capacities outside official agency proceedings, consistent with substantive law and the needs of the agency (see NY St Bar Assn Comm on Prof Ethics Op 594 [1988]).

(G) Practice of law.

(1) Consistent with all other provisions of this Code, and with any applicable agency regulations and with all other provisions of law, a state administrative law judge may practice law, as long as such activity affects neither the independent professional judgment of the judge nor the conduct of the judge's official duties.

(2) A state administrative law judge shall not represent or appear on behalf of private interests before the agency in which the judge serves.

(3) A state administrative law judge primarily employed by the state shall not represent or appear on behalf of private interests before any state administrative tribunal or agency.

(4) A state administrative law judge shall not be associated or affiliated with any firm, company or organization that regularly represents or appears on behalf of private interests before the agency in which the judge serves.

Commentary:

[4.27][4G] This Section does not prohibit a state administrative law judge from engaging in the private practice of law. However, consistent with ethics opinions, and the general principles underlying this Code, this Section does prohibit a state administrative law judge or members of the judge's law firm from appearing in a representative capacity before the agency in which the judge serves (see NY St Bar Assn Comm on Prof Ethics Op 543 [1982]; NY St Bar Assn Comm on Prof Ethics Op 365 [1974]).

[4.28][4G] This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A state administrative law judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a state administrative law judge must not abuse the prestige of office to advance the interests of the judge or the judge's family. See Section 2C.

[4.29][4G] A state administrative law judge who maintains a private legal practice should use letterhead for matters involving official administrative judicial duties that is separate and distinct from the letterhead for matters in private practice. The letterhead for private practice shall omit any reference to the person's status as a state administrative law judge.

[4.30][4G] Certain state agencies and local governments contract with administrative law judges. State administrative law judges who perform legal work outside the judges' judicial duties should avoid any legal work that conflicts or appears to conflict with their work as a judge.

(H) Compensation and reimbursement. Consistent with applicable law and regulation, a state administrative law judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety, and the acceptance of such compensation would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality, subject to the following restrictions:

(1) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a state administrative law judge would receive for the same activity.

(2) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the state administrative law judge and, where appropriate to the occasion, by the judge's spouse, domestic partner, or guest. Any payment in excess of such an amount is compensation.

Commentary:

[4.31][4H(2)] See Section 4D(4) regarding reporting of gifts, bequests and loans.

[4.32][4H(2)] The Code does not prohibit a state administrative law judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A state administrative law judge should ensure, however, that no conflicts are created by the arrangement. A state administrative law judge must not appear to trade on the judicial position for personal advantage. Nor should a state administrative law judge spend significant time away from judicial duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the state administrative law judge's ability or willingness to be impartial.

(I) Financial disclosure. A state administrative law judge shall disclose income, debts, investments, or other assets to the extent required by law.

Commentary:

[4.33][4I] A state administrative law judge has the rights of any other citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations established by law are required to safeguard the proper performance of the judge's duties.

CANON 5

A STATE ADMINISTRATIVE LAW JUDGE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE ADMINISTRATIVE LAW JUDICIARY

(A) Political activities in general.

A state administrative law judge shall not directly or indirectly engage in any political activity that detracts from, or reduces public confidence in, the fairness, impartiality or dignity of the judge's office or the tribunal the judge serves. In addition, a state administrative law judge shall not permit the judge's title or position to be used to promote any activity of a political organization. Prohibited political activity shall include the following:

(1) A state administrative law judge shall not act as a leader, committee member, or an officer in any political party or organization.

(2) A state administrative law judge shall not publicly endorse or publicly oppose (other than by running against) another candidate for public office in a way that allows for identification of the state administrative law judge as such.

(3) A state administrative law judge shall not make speeches on behalf of a political organization or other candidate.

(4) A state administrative law judge shall not solicit funds for or contributions to a political organization or candidate.

(B) Candidates for appointive administrative law judge or appointive judicial positions. A candidate for appointment to an administrative law judge position, or a state administrative law judge seeking appointment to a judicial position, may:

(1) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar organization, and

(2) request a reference, recommendation, or endorsements for the appointment from any person or organization other than a partisan political organization.

(C) State administrative law judge as candidate for elective nonjudicial office. A state administrative law judge shall resign or, if authorized by law, take a leave of absence from administrative judicial office, and withdraw the judge's name from any roster for assignment or employment as a state administrative law judge upon becoming a candidate for elective nonjudicial office either in a primary or in a general election, except that the state administrative law judge may continue to hold administrative judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted

by law to do so.

(D) State administrative law judge as candidate for elective judicial office. A state administrative law judge who is a candidate for elective judicial office shall comply with the Rules of the Chief Administrator of the Courts for the State of New York governing the conduct of such candidates, 22 NYCRR 100.5. A determination by the State Commission on Judicial Conduct, a court of the State of New York or any other authorized entity that a state administrative law judge has violated those Rules shall constitute misconduct and a violation of this Code.

Commentary:

[5.1][5A] In two opinions from the 1970s, the Committee on Professional Ethics of the New York State Bar Association has taken the position that as quasi-judicial officers, state administrative law judges are subject to the same constraints against political activity as judges in the judicial branch (see NY St Bar Assn Comm on Prof Ethics Op 337 [1974]; NY St Bar Assn Comm on Prof Ethics Op 327 [1974]; see also Code of Judicial Conduct Commentary 6.1). The drafters of this Model Code, however, conclude that the strict application of Canon 5 of the Code of Judicial Conduct ("CJC"), in particular section 5A(1), to state administrative law judges is unduly and unnecessarily restrictive. Divergence from the strict application of CJC Canon 5 is warranted for several reasons.

First, although state administrative law judges are quasi-judicial officers responsible for unbiased and independent decision making within the agency context and, thus, function as a limited check on agency power, state administrative law judges do not serve the same separation of powers function as judges in the third branch. Specifically, while state administrative law judges have the authority to rule on as-applied constitutional challenges to agency action, they lack the authority to strike as facially invalid an act of the Legislature. Second, in contrast to most judicial offices in New York, state administrative law judges are appointed and, therefore, are not required to engage in partisan political campaigns to achieve judicial office. Given the path by which most third branch judges obtain judicial office, and the significant power they exercise once in office, the heightened restrictions against political activities imposed upon third-branch judges by CJC Canon 5 are warranted to avoid even the mere appearance of improper political influence. Such considerations are less compelling in the context of state administrative law judges.

Moreover, courts have recently concluded that proscriptions against political speech by even third-branch judicial officers are subject to First Amendment limitations (see Republican Party of Minnesota v White, 536 US 765, 122 S Ct 2528, 153 L Ed 2d 694 [2002]). Thus, the strict application of each section of CJC Canon 5 to state administrative law judges does not appear justified.

Nevertheless, because of their role as quasi-judicial officers, some of the specific restrictions on political activities contained in CJC Canon 5 are applicable to state

administrative law judges. Under Section 2B, a state administrative law judge should not allow political considerations to influence the judge's judicial conduct or judgment. The public political activities prohibited by section 5A of this Code are justified to eliminate suspicion that a judge's judgment is affected by such political influences.

Any State agencies considering the adoption of this Code should consider whether the limitations imposed herein, or those applied by CJC Canon 5, are appropriate and apply those limitations on political activity most consistent with the characteristics of the particular agency and state administrative law judges employed by such agency.

[5.2][5A] A state administrative law judge retains the right to participate in the political process as a voter, to be enrolled as a member of a political party, to make private and voluntary contributions to political campaigns and candidates, and to participate in non-fund raising activities on behalf of candidates. The activities prohibited by Section 5A are those public displays of political endorsement that raise the suspicion that a state administrative law judge's judgment is affected by political influences, or that the prestige of judicial office is being used to advance political interests.

The specific prohibitions set forth in Section 5A are to be interpreted in light of the general language of that section which prohibits the state administrative law judge from lending the judge's status as a judge to political activities. The goal is to permit the state administrative law judge to exercise as much political freedom as possible as a private citizen within this constraint, while recognizing that few political activities are truly private. In complying with this section, state administrative law judges must exercise discretion so that their role in political activities is relatively anonymous, "low-profile," and divorced from their professional status. Thus, for example, it might be appropriate for a state administrative law judge to make non-fund raising phone calls or to circulate petitions on behalf of a candidate for office if the judge is identified only by a first name. Similarly, a state administrative law judge might appropriately attend a political gathering where the judge is not otherwise well-known and does not wear a name tag, or does not wear a name tag identifying the judicial office. In contrast, it would not be appropriate to sit at a head table or to be publicly recognized and welcomed by a master of ceremonies. Application in particular circumstances will depend upon such factors as the size of the community, the notoriety of a particular state administrative law judge, the size of the event or scope of the particular activity, and the publicity likely to attend a given event or activity, among other considerations.

[5.3][5A(1)] The restrictions in this Code concerning political activity do not prohibit a state administrative law judge from membership in a union or other non-political organization, merely because the organization has an associated political action committee ("PAC") that endorses political candidates. With respect to PAC-related activities, however, the provisions of Section 5A apply.

Other provisions of this Code, however, might bar membership in some non-political organizations. For example, Section 2D bars a state administrative law judge outright from

membership in an organization that practices invidious discrimination. Otherwise, a state administrative law judge must remain and appear impartial at all times. Under the provisions in Section 4A, a state administrative law judge must be sensitive to whether any extra-judicial activities, including political activity, raise questions about the judge's capacity to act impartially.

[5.4][5A(2)] Section 5A(2) does not prohibit a state administrative law judge from privately expressing the judge's views on judicial candidates or other candidates for public office.

[5.5][5A(4)] Section 5A(4) does not prohibit a state administrative law judge from making contributions to a political campaign. However, such contributions must be private and voluntary. A state administrative law judge may make contributions to political campaigns as a private citizen only and, unless otherwise required by law, should not reference the judge's judicial office when making such contributions. A state administrative law judge should make reasonable efforts to prevent the recipient of a political contribution from using the prestige of the judge's office or otherwise publicizing the judge's contribution. A state administrative law judge should not be compelled to make political contributions, including the purchase of tickets for politically sponsored dinners or other functions, including any such function for a non-political purpose.

[5.6][5C] Section 5C requires a state administrative law judge to resign from office or take a leave of absence, if allowed by law and subject to the appointing authority's approval, when the judge become a candidate for elective non-judicial office. Section 5C does not require a state administrative law judge to resign from office or take a leave of absence when the judge becomes a candidate for elective judicial office.

APPLICATION OF THE CODE OF JUDICIAL CONDUCT FOR STATE ADMINISTRATIVE LAW JUDGES

(A) Effective date of compliance. Persons to whom this Code becomes applicable should arrange their affairs as soon as reasonably possible to comply with it.

(B) Application to Agency Heads, to Members of a State Board or Commission, or to Other Officers or Tribunals Serving an Administrative Appellate Function. The provisions of this Code are not applicable to the head of an agency, to members of a State board or commission, or to other State officers or tribunals serving an administrative appellate function, unless adopted by the rules of the employing agency.

Commentary:

[6.1][6B] If an agency chooses to apply the provisions of the Model Code of Judicial Conduct for State Administrative Law Judges to an agency head, members of a State board or commission, or other officers or tribunals serving an administrative appellate function, it should do so with due regard to the different role and function performed by such officers as compared

to the role and function performed by state administrative law judges. Due to their role as the initial finders of fact in the administrative adjudicatory process, state administrative law judges are subject to stricter limitations than agency heads, members of a State board or commission, or other State officers or tribunals serving an administrative appellate function (see, e.g., Executive Order No. 131 [9 NYCRR 4.131]). In general, however, the provisions addressing partiality, conflicts of interest and disqualification may be applicable to persons performing quasi-judicial administrative appellate functions.

NEW YORK STATE BAR ASSOCIATION

LOCAL AND STATE GOVERNMENT LAW SECTION
COMMITTEE ~~ATTORNEYS IN PUBLIC SERVICE SUBCOMMITTEE~~ ON ADMINISTRATIVE LAW JUDGES

2021 MODEL CODE OF JUDICIAL CONDUCT FOR STATE ADMINISTRATIVE LAW JUDGES

Adopted by the
~~Subcommittee~~Committee on Administrative Law Judges
Judic~~iary November 7,~~ 2008

~~**Adopted by the**~~
~~**Committee on Attorneys in Public Service**~~
~~**December 3, 2008**~~

~~**Adopted by the**~~
~~**New York State Bar Association**~~
~~**House of Delegates**~~
~~**April 4, 2009**~~**August 30, 2021**

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Local & State Government Law Section
September 10, 2021

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* **The Committee would like to especially recognize and thank ~~Ms.~~ Quinn Morris, Legal Intern and recent Albany Law School graduate, and ~~Mr.~~ Paul Buchbinder, Legal Intern, for their invaluable assistance in preparing this Model Code of Judicial Conduct for State Administrative Law Judges.**

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MODEL CODE OF JUDICIAL CONDUCT FOR STATE ADMINISTRATIVE LAW JUDGES

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PREAMBLE

New York State's administrative legal system is based on the principle that an independent, fair and competent administrative judiciary will interpret and apply the laws and regulations that govern consistently with American concepts of justice. Intrinsic to all sections of this Code are precepts that state administrative law judges, individually and collectively, must respect and honor their office as a public trust and strive to enhance and maintain confidence in our legal system. State administrative law judges decide questions of fact and law for the resolution of disputes and are a highly visible symbol of government under the rule of law.

The Model Code of Judicial Conduct for State Administrative Law Judges is intended to identify standards for ethical conduct for state administrative law judges, and to provide comprehensive and centralized guidance for judges in dealing with the ethical dilemmas that arise in the course of their duties. The Code of Professional Responsibility for Attorneys provides no such guidance, because state administrative law judges act in a quasi-judicial capacity rather than as advocates for clients. Further, not all state administrative law judges in New York State are attorneys. The New York State Code of Judicial Conduct (CJC) specifically excludes state administrative law judges from coverage. Both the American Bar Association (ABA) and the National Association for the Administrative Law Judiciary (NAALJ) have issued model codes for administrative law judges, but those codes make no reference to specific provisions in New York law that address state administrative law judges. Provisions in the State Administrative Procedure Act (SAPA), the New York Public Officers Law and Executive Order No. 131 provide some standards that cover state administrative law judges, but nothing comprehensive. In instances in which SAPA, the Public Officers Law or Executive Order No. 131 set a standard for certain conduct that the Code addresses, the Code reflects and refers to those pre-existing standards. In this way, the Code provides a single reference document for state administrative law judges in seeking ethical guidance. The Code also seeks to do more than merely impose standards of conduct. The Code seeks to provide protection for the independence of state administrative law judges and, thus, enhance confidence in our legal system.

The Code consists of broad statements called Canons, specific rules set forth in Sections under each Canon, and Commentary. The Code also contains a Definition Section and an Application Section. The text of the Canons and Sections, including the Definition and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not meant as additional rules. If the Code is adopted as a regulation, the intent is that the Canons and Sections (all text in roman type) would be the regulation. The Commentary (text in italics) would not be adopted as the regulation, but be provided only as explanatory material.

When the Code uses "shall or "shall not," it is intended to impose binding obligations. When the Code uses "should" or "should not," the statement is intended as hortatory and as a statement of what is or is not appropriate conduct, rather than as a binding rule. When the Code

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uses "may," the text denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The term state administrative law judge includes all hearing officers, administrative officers, hearing examiners, impartial hearing officers, referees or any other person whom a state agency has designated and empowered to conduct administrative adjudicatory proceedings. The Code is intended to apply to all such quasi-judicial administrative officials, whether the persons serving that function are attorneys or not, and whether they are employed full time or part time, or retained on a contract or per diem basis while acting in their capacity as administrative adjudicators.

Except where modified, the Code follows the language of the New York State Code of Judicial Conduct. The Canons and Sections contained in this Code governing state administrative judicial conduct are rules of reason. They should be applied consistently with constitutional requirements, statutes, regulations, administrative rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of state administrative law judges in making judicial decisions.

The Code is designed to provide guidance to state administrative law judges and may provide a structure for regulating conduct if adopted by any agency. The Code is not designed or intended as a basis for civil liability or criminal prosecution.

The Code is intended to govern conduct of state administrative law judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the administrative judicial system.

The Code is not intended as an exhaustive guide for conduct. Strict adherence to this Code would not exempt a state administrative law judge from applying other ethical standards that apply to any person. However, as noted above, this Code is designed to reconcile, encompass and expand upon the aspects of professional conduct addressed by the CJC and the ABA and NAALJ Model Codes for State Administrative Law Judges, as well as, where relevant, SAPA, Public Officers Law, and Executive Order No. 131, in order to provide a single source of guidance for state administrative law judges in the subject areas addressed here.

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PREAMBLE TO THE 2021 REVISIONS

In 2016, the National Conference of the Administrative Law Judiciary, Judicial Division, of the ABA issued a revision to the 1995 ABA Model Code of Judicial Conduct for State Administrative Law Judges. In response, beginning in 2018, the Committee on the Administrative Law Judiciary of the recently formed Local and State Government Law Section of the New York State Bar Association undertook a comparison of the 2016 ABA Model Code with NYSBA's 2009 Model Code to see whether revisions to the 2009 Model Code should be recommended.

The Committee's comparison revealed that the most significant change in the 2016 ABA Model Code was the use of the Canon and Rule format, rather than the Canon and Section format used in the 1995 ABA Model Code and the 2009 NYSBA Model Code. Beyond that, the substantive provisions of the 2016 ABA Model Code remained generally consistent with the substantive provisions of both the 1995 ABA Code and the 2009 NYSBA Code.

Because New York State's Code of Judicial Conduct uses the Canon and Section format, the Committee decided to retain that format for any proposed revisions to the 2009 NYSBA Code. However, the Committee concluded that the 2016 ABA Code contained several improvements and clarifications to the substantive provisions of the Code that should be considered for revisions to the 2009 NYSBA Code. The revisions the Committee recommends include:

- Including references to the core judicial principles of independence, integrity, and impartiality throughout the Code.

- Including a definition of "domestic partner" and adding references to domestic partners wherever "spouses" are mentioned in the Code, to reflect recent changes to New York State law.

- Clarifying a state administrative law judge's obligations when serving as a character witness.

- Clarifying a state administrative law judge's obligations with respect to organizations that practice invidious discrimination.

- Clarifying a state administrative law judge's administrative responsibilities.

- Providing that the making of public statements that commit or appear to commit a state administrative law judge to a particular outcome in a matter is a ground for disqualification.

- Clarifying a state administrative law judge's obligations regarding service in governmental, civic, or charitable organizations.

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- Clarifying a per diem state administrative law judge's obligations with respect non-judicial legal work.

- Clarifying the obligations of a state administrative law judge seeking appointive administrative judicial or judicial office.

- Avoiding the use of any gender-specific language throughout the Code.

The 2016 ABA Code also contained several revisions the Committee decline to adopt, primarily on the grounds that they conflicted with New York law, or did not appear to advance appropriate ethical behavior. As an example of the latter, the 2016 ABA Code would allow a state administrative law judge to respond to social media directed to the judge. The Committee was of the opinion that publicly responding to social media criticism of a state administrative law judge is not appropriate for a judicial officer.

In 2019, after completing its review, the Committee distributed a proposed revised Code for public comment. The 2019 revised Code was distributed to multiple State agencies and several municipal agencies in New York City. Comments were received from the New York State Department of State, the New York State Department of Labor, the New York State Workers Compensation Board, and the New York City Mayor's Office of Criminal Justice. The Committee further revised the 2019 Code to incorporate many of the commenters' recommendations.

In sum, the Committee is of the opinion that the revisions described above provide a useful addition to the 2009 Code that is consistent with the goals and principles of the Code as articulated in the Preamble to the 2009 Code. Accordingly, we urge the Bar Association to consider their adoption.

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DEFINITIONS

The following terms used in this Code are defined as follows:

(A) A "candidate" is a person seeking selection for or retention in public office by any public election, including primary and general elections and including partisan and nonpartisan elections. A person becomes a candidate for public office as soon as ~~he or she~~the person makes a public announcement of candidacy, or authorizes solicitation or acceptance of contributions.

(B) The "degree of relationship" is calculated according to the civil law system. That is, where the state administrative law judge and the party are in the same line of descent, degree is ascertained by ascending or descending from the judge to the party, counting a degree for each person, including the party but excluding the judge. Where the state administrative law judge and the party are in different lines of descent, degree is ascertained by ascending from the judge to the common ancestor, and descending to the party, counting a degree for each person in both lines, including the common ancestor and the party but excluding the judge. The following persons are relatives within the fourth degree of relationship: great-grandparent, grandparent, parent, ~~uncle, aunt, brother, sister~~sibling of a parent, sibling, first cousin, child, grandchild, great-grandchild, ~~nephew or niece~~child of a parent's sibling. The sixth degree of relationship includes second cousins.

~~(C~~(C) "Domestic partner" means a person as defined by New York Workers' Compensation Law § 4(1).

(D) "Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, provided that:

(1) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the state administrative law judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(2) service by a state administrative law judge as an officer, director, advisor or other active participant in an educational, religious, charitable, cultural, fraternal or civic organization, or service by a judge's spouse, domestic partner, or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(3) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization, unless a proceeding pending or impending before the state administrative law judge could substantially affect the value of the interest;

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(4) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the state administrative law judge could substantially affect the value of the securities;

(5) "de minimis" denotes an insignificant interest that could not raise reasonable questions as to a judge's impartiality.

(~~D~~E) An "ex parte communication" is a communication that concerns a pending or impending proceeding before a state administrative law judge and occurs, directly or indirectly, between the judge and a party, or a representative of a party, to the proceeding without notice to and outside the presence of one or more other parties to the proceeding.

(~~E~~F) "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.

(~~F~~G) "Impartial" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the state administrative law judge.

(~~G~~H) An "impending proceeding" is one that is reasonably foreseeable but has not yet been commenced.

(~~H~~I) An "independent" administrative judiciary is one free of outside influences or control.

(~~I~~J) "Integrity" denotes probity, fairness, honesty, uprightness and soundness of character. Integrity also includes a firm adherence to this Code and its standard of values.

(~~J~~K) To "know" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(~~K~~L) "Law" includes regulations as well as statutes, constitutional provisions and decisional law.

(~~L~~M) "Member of the state administrative law judge's family" denotes a spouse or domestic partner, child, grandchild, parent, grandparent or other relative or person with whom the judge maintains a close familial relationship.

(~~M~~N) "Member of the state administrative law judge's family residing in the judge's household" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

(~~N~~O) "Non-judicial personnel" does not include the lawyers or representatives of parties in a proceeding before a state administrative law judge.

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(~~O~~P) "Nonpublic information" denotes confidential information of which a state administrative law judge become aware as a result of ~~his or her~~the judge's judicial duties and which is not otherwise available to the public.

(~~P~~Q) A "pending proceeding" is one that has begun but not yet reached its final disposition.

(~~Q~~R) "Political organization" denotes a political party, political club or other group, the principal purpose of which is to further the election or appointment of candidates to political office.

(~~R~~S) "Primarily employed by the state" means employed on a full-time basis or the equivalent or regularly scheduled to work the equivalent of 20 hours per week at one or more state agencies.

(~~S~~T) "Public election" includes primary and general elections; it includes partisan elections, nonpartisan elections and retention elections.

(~~T~~U) "Require." The rules prescribing that a state administrative law judge "require" certain conduct of others, like all of the rules in this Code, are rules of reason. The use of the term "require" in that context means a state administrative law judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.

(~~U~~V) A "state administrative law judge" is an administrative law judge, hearing officer, administrative officer, hearing examiner, impartial hearing officer, referee or any other person whom a state agency has designated and empowered to conduct administrative adjudicatory proceedings. The term "state administrative law judge" does not include the head of an agency or the members of a state board or commission.

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CANON 1

A STATE ADMINISTRATIVE LAW JUDGE SHALL UPHOLD AND PROMOTE THE ~~INTEGRITY AND~~ INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE ADMINISTRATIVE JUDICIARY.

An independent and honorable administrative judiciary is indispensable to justice in our society. A state administrative law judge should participate in establishing, maintaining, and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the administrative judiciary is preserved. The provisions of this code shall be construed and applied to further that objective.

Commentary:

[1.1] Deference to the judgments and rulings of administrative judiciaries depends upon public confidence in the independence, integrity, and ~~independence~~impartiality of state administrative law judges. The independence, integrity, and ~~independence~~impartiality of state administrative law judges depends in turn upon their acting without fear or favor. Although state administrative law judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the administrative judiciary is maintained by the adherence of each state administrative law judge to this responsibility. Conversely, violation of this code diminishes public confidence in the administrative judiciary and thereby does injury to the system of government under law.

[1.2] To the extent that this code conflicts with applicable statutes, regulations, or codes, including but not limited to the Public Officers Law, State Administrative Procedure Act, Executive Order No. 131 (9 NYCRR 4.131), and any codes adopted by individual agencies, the more restrictive rule will govern.

CANON 2

A STATE ADMINISTRATIVE LAW JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES.

(A) A state administrative law judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the administrative judiciary.

Commentary:

[2.1][2A] Public confidence in the administrative judiciary is eroded by irresponsible or improper conduct by state administrative law judges. A state administrative law judge must avoid all impropriety and appearance of impropriety. A state administrative law judge must

expect to be the subject of constant public scrutiny. Such a state administrative law judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the

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ordinary citizen and should do so freely and willingly.

[2.2][2A] The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a state administrative law judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by state administrative law judges that is harmful although not specifically mentioned in the Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the state administrative law judge's ability to carry out administrative judicial responsibilities independently, with integrity, impartiality and competence is impaired.

[2.3][2A] See also Commentary under 2C.

(B) A state administrative law judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment.

(C) A state administrative law judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a state administrative law judge convey or permit others to convey the impression that they are in a special position to influence the judge. ~~A state administrative law~~ A judge shall not testify ~~voluntarily~~ as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

Commentary:

[2.4][2C] Maintaining the prestige of administrative judicial office is essential to a system of government in which the administrative judiciary must to the maximum extent possible function independently. Respect for the office facilitates the orderly conduct of legitimate administrative judicial functions. State administrative law judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a state administrative law judge to allude to ~~his or her~~the judge's administrative judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, administrative judicial letterhead must not be used for conducting a state administrative law judge's personal business. A state administrative law judge who is authorized to practice law may not use or permit the use of a title or honorific such as "judge" or "honorable" in connection with ~~his or her~~the judge's law practice.

[2.5][2C] A state administrative law judge must avoid lending the prestige of administrative judicial office for the advancement of the private interests of others. For example, a state administrative law judge must not use ~~his or her~~the judge's administrative judicial position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of the state administrative law judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office. As to the acceptance of awards, see Section 4D(4)(a) and Commentary.

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[2.6][2C] Although a state administrative law judge should be sensitive to possible abuse of the prestige of office, such a judge may, based upon the judge's personal knowledge, serve as a reference or provide a letter of recommendation.

[2.7][2C] State administrative law judges may participate in the process of selection of members of the judiciary and administrative judiciary by cooperating with appointing authorities and screening committees seeking names for consideration and by responding to official inquiries concerning a person being considered for a judicial position. See also Canon 5 regarding use of a state administrative law judge's name in political activities.

[2.8][2C] A state administrative law judge must not testify voluntarily as a character witness because to do so may lend the prestige of the administrative judicial office in support of the party for whom the judge testifies. Moreover, when a state administrative law judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A state administrative law judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, a state administrative law judge should discourage a party from requiring the judge to testify as a character witness.

(D) A state administrative law judge shall not hold membership in any organization that practices invidious discrimination on the basis of actual or perceived age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status, or any other protected status enumerated by law. This provision does not prohibit a state administrative law judge from holding membership in an organization that is dedicated to the preservation of religious, ethnic, cultural or other values of legitimate common interest to its members.

Commentary:

[2.9][2D] Membership of a state administrative law judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Section 2D refers to the current practice of the organization. Whether an organization practices invidious discrimination is often a complex question to which state administrative law judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of actual or perceived age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status, or any other protected status enumerated by law, persons who would otherwise be admitted to membership. See New York State Club Assn. Inc. v City of New York, 487 US 1, 108 S Ct 2225, 101 L Ed 2d 1 (1988); Board of Directors of Rotary Intl. v Rotary Club

of Duarte, 481 US 537, 107 S Ct 1940, 95 L Ed 2d 474 (1987); Roberts v United States Jaycess, 468 US 609, 104 S Ct 3244, 82 L Ed 2d 462 (1984).

[2.10][2D] Although Section 2D relates only to membership in organizations that invidiously discriminate on the basis of actual or perceived age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status, or any other protected status enumerated by law, a state administrative law judge's membership in an organization that engages in any discriminatory membership practices prohibited by the law of the jurisdiction also violates Canon 2 and Section 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and Section 2A for a state administrative law judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of actual or perceived age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status, or any other protected status enumerated by law, in its membership or other policies, or for the judge to regularly use such a club. Moreover, public manifestation by a state administrative law judge of the judge's knowing approval of invidious discrimination on any actual or perceived basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the administrative judiciary, in violation of Section 2A.

[2.11][2D] When a person who is a state administrative law judge on the date this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Section 2D or under Canon 2 and Section 2A, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practice as promptly as possible (and in all events within a year of the state administrative law judge's first learning of the practices), the judge is required to resign immediately from the organization.

(E) A state administrative law judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination onr one or more of the bases identified in Section 2D. A judge's attendance at an event or facility of an organization that the judge is not permitted to join is not a violation of this Section when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

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CANON 3

A STATE ADMINISTRATIVE LAW JUDGE SHALL PERFORM THE DUTIES OF ADMINISTRATIVE JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY.

(A) Administrative judicial duties in general. The administrative judicial duties of a state administrative law judge take precedence over all the judge's other activities. The state administrative law judge's administrative judicial duties include all the duties of the judge's office prescribed by law. The standards below apply to the performance of these duties.

(B) Adjudicative responsibilities.

(1) A state administrative law judge shall be faithful to the law and maintain professional competence in it. A state administrative law judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(2) A state administrative law judge shall require order and decorum in proceedings before the judge.

(3) A state administrative law judge shall be patient, dignified and courteous to parties, witnesses, lawyers, representatives, staff, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, representatives, staff members and others subject to the judge's direction and control.

Commentary:

[3.1][3B(3)] The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the state administrative law judge. State administrative law judges can be efficient and businesslike while being patient and deliberate.

(4) A state administrative law judge shall perform administrative judicial duties without bias or prejudice against or in favor of any person. A state administrative law judge in the performance of administrative judicial duties shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon actual or perceived age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, or any other protected status enumerated by law, and shall require staff and others subject to the judge's direction and control to refrain from such words or conduct.

Commentary:

[3.2][3B(4)] A state administrative law judge must perform judicial duties impartially and fairly. A state administrative law judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers

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proceeding, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial. Prejudicial behavior may include (1) being overly deferential to one person, such as addressing a party, attorney, or representative by an honorific title such as "judge"; (2) being overly familiar with a person, such as referring to a party, attorney, or representative by ~~his or her~~the person's first name; or (3) being disrespectful or demeaning to a person. A state administrative law judge can also engage in prejudicial behavior by tolerating such conduct by a party, attorney, or representative, such as allowing an attorney to address a witness disrespectfully as "Smith" rather than "Mr. Smith." This rule does not prohibit addressing a party, attorney or representative appearing in ~~his or her~~the capacity as a public official by the title of the office, addressing a party or a witness by a professional title such as "Doctor," or addressing a member of the clergy by a title such as "Reverend."

[3.3][3B(4)] A state administrative law judge must refrain from speech, gestures or other conduct that could reasonably be perceived as harassment of any kind, including sexual harassment and harassment against any protected class member, among others. The judge must require the same standard of conduct of others subject to the judge's direction and control.

(5) A state administrative law judge shall require participants in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon actual or perceived age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, or any other protected status enumerated by law, against parties, representatives or others. This paragraph does not preclude legitimate advocacy when age, race, sex, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, any other protected status enumerated by law, or other similar factors, are issues in the proceeding.

(6) A state administrative law judge shall accord to all persons who are legally interested in a proceeding, or their lawyers or representatives, full right to be heard according to law. Unless otherwise authorized by law and except as provided in paragraphs (a) through (e) below, a state administrative law judge shall not communicate, directly or indirectly, in connection with any issue that relates in any way to the merits of an adjudicatory proceeding pending or impending before the judge with any person except upon notice and opportunity for all parties to participate.

(a) Ex parte communications that are made for scheduling or administrative purposes and that do not affect a substantial right of any party are authorized, provided:

(i) the state administrative law judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the state administrative law judge, insofar as practical and appropriate, makes provision for prompt notification of other parties, or

their lawyers or representatives of the substance of the ex parte

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communication and allows an opportunity to respond.

(b) A state administrative law judge may consult on questions of law with supervisors, agency attorneys or other state administrative law judges, provided that such supervisors, state administrative law judges or attorneys have not been engaged in investigative or prosecuting functions in connection with the adjudicatory proceeding under consideration or a factually related adjudicatory proceeding.

(c) A state administrative law judge may consult with supervisors, other state administrative law judges, support staff or court reporters on ministerial matters such as scheduling or the location of a hearing.

(d) Unless otherwise prohibited by law, a state administrative law judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and a copy of such advice if the advice is given in writing and the substance of the advice if it is given orally, and affords the parties reasonable opportunity to respond.

(e) A state administrative law judge, with the consent of the parties, may confer separately with the parties and their lawyers or representatives on agreed-upon matters.

(f) A state administrative law judge may initiate or consider any ex parte communications when authorized by law to do so.

(g) Decisions of a state administrative law judge shall be based exclusively on evidence in the record of the proceeding and material that has been officially noticed.

Commentary:

[3.4][3B(6)] The ex parte communication rule contained herein is adapted from Executive Order No. 131 (see 9 NYCRR 4.131), which was continued by Governor ~~David A. Paterson~~Andrew M. Cuomo on ~~June 18, 2008~~January 1, 2011 (see Executive Order No. ~~9~~2, 9 NYCRR 8.2). The ex parte communication rule contained in Executive Order No. 131 is more limited than the rule contained in State Administrative Procedure Act (SAPA) § 307(2). Executive Order No. 131 applies to state administrative law judges; it does not apply to agency heads or boards acting in an adjudicatory capacity. Agency heads and boards remain subject to SAPA § 307(2). To the extent statutes or regulations applicable to a particular state administrative law judge impose limitations on ex parte communications that are more stringent than Executive Order No. 131, such statutes or regulations should be followed.

[3.5][3B(6)] The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

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[3.6][3B(6)] To the extent reasonably possible, all parties or their lawyers or other representatives shall be included in communications with a state administrative law judge.

[3.7][3B(6)] Whenever presence of a party or notice to a party is required by Section 3B(6), it is the party's lawyer or other representative, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

[3.8][3B(6)] Certain ex parte communication is approved by Section 3B(6) to facilitate scheduling, other administrative purposes, or emergencies. In general, however, a state administrative law judge must discourage ex parte communication and allow it only if all the criteria stated in Section 3B(6) are clearly met. A state administrative law judge must disclose to all parties all ex parte communications described in Section 3B(6)(a) regarding a proceeding pending or impending before the judge.

[3.9][3B(6)] Executive Order No. 131, as well as this Code, would allow a state administrative law judge to consult on questions of law with an agency attorney outside of the administrative tribunal or hearings office who is not otherwise involved in the matter before the judge or a factually related matter. Moreover, Executive Order No. 131 does not require a state administrative law judge to report such consultations with agency attorneys outside the administrative tribunal or hearings office, to the parties to the proceeding before the judge. Consistent with the provision concerning consultations with disinterested legal experts, the better practice is to give notice to the parties of the agency attorney consulted and a copy of such advice if the advice is given in writing and the substance of the advice if it is given orally, and afford the parties a reasonable opportunity to respond.

Note that Section 3B(6)(b) does not apply when the administrative tribunal or hearings office is a separate, independent agency from the administrative agency whose actions are under review. In that context, communications with involved agency attorneys employed outside the administrative tribunal or hearings office are governed by Section 3B(6)(d).

[3.10][3B(6)] An appropriate and often desirable procedure for a state administrative law judge to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

[3.11][3B(6)] A state administrative law judge must not independently investigate facts in a case, unless authorized by law, and must consider only the evidence presented.

[3.12][3B(6)] A state administrative law judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

[3.13][3B(6)] A state administrative law judge may delegate the responsibilities of the judge under Section 3B(6) to a member of the judge's staff. A state administrative law judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that

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Section 3B(6) is not violated through law clerks or other personnel on the judge's staff. This provision does not prohibit the judge or the judge's staff from informing all parties individually of scheduling or administrative decisions.

[3.14][3B(6)] The ex parte communication rule applies primarily in adjudicatory proceedings where the state administrative law judge is presiding as an impartial decision maker in a quasi-judicial role. The ex parte communication rule may be modified in other administrative proceedings presided over by a state administrative law judge, such as legislative or rule making proceedings, depending on the requirements and necessities of such hearings, and any applicable law and regulations.

(7) A state administrative law judge shall be attentive to language barriers that may affect parties or witnesses, and provide such qualified interpreter services as are available or otherwise required by law to provide meaningful access and participation in administrative proceedings.

Commentary:

[3.15] [3B(7)] A State agency may be under an affirmative obligation pursuant to Title VI of the Civil Rights Act of 1964 to provide language services to limited English proficient (LEP) individuals participating in administrative proceedings. In such cases, the state administrative law judge may be required to take further action to assure that interpretive services are provided. Absent such a statutory obligation, however, a state administrative law judge nonetheless should be continually attentive to the issue whether parties who may not be proficient in English are afforded a full and fair opportunity to be heard. The obligation to provide such interpretive services as are available applies whether a party or witness is represented or not.

(8) A state administrative law judge shall take appropriate steps to ensure that any party not represented by an attorney or other relevant professional has the opportunity to have ~~his or her~~the party's case fully heard on all relevant points.

(a) Where the state administrative law judge deems it necessary to advance the ability of a litigant not represented by an attorney or other relevant professional to be fully heard, the judge may, or, where required by law, the judge shall:

(i) liberally construe and allow amendment of papers that a party not represented by an attorney has prepared;

(ii) provide brief information concerning statutory procedures and substantive law, including but not limited to charges and defenses;

(iii) provide brief information about the nature of the hearing, who else is participating in the hearing and how the hearing will be conducted;

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(iv) provide brief information about what types of evidence that may be presented;

(v) question witnesses to elicit general information and to obtain clarification;

(vi) modify the traditional order of taking evidence;

(vii) minimize the use of complex legal terms;

(viii) explain the basis for a ruling when made during the hearing or when made after the hearing in writing;

(ix) make referrals to resources that may be available to assist the party in the preparation of the case.

(b) A state administrative law judge shall ensure that any steps taken in fulfillment of the obligations of this paragraph are reflected in the record of the proceeding. A communication between a state administrative law judge and a litigant made in fulfillment of the obligations of this paragraph remains subject to the restrictions on ex parte communications contained in the preceding paragraph.

Commentary:

[3.16][3B(8)] In contrast to court proceedings, administrative proceedings often involve pro se litigants and non-attorney representatives. See Matter of Board of Educ. of Union-Endicott Cent. School Dist. v New York State Pub. Empl. Relations Bd., 233 AD2d 602 (3d Dept 1996). Some agency regulations impose an affirmative duty on state administrative law judges to ensure a complete record and to provide non-attorney litigants with certain basic information about the hearing process (see, e.g., 18 NYCRR 358-5.6[b]). A state administrative law judge should conduct hearings with pro se and non-attorney litigants in a manner that is fair to both parties, that assures the efficient conduct of administrative justice, that ensures the rights of the litigants, and that equalizes the field for the parties. This Section provides specific guidance to state administrative law judges in dealing with these issues.

(9) A state administrative law judge shall dispose of all judicial matters promptly, efficiently and fairly.

Commentary:

[3.17][3B(9)] In disposing of matters promptly, efficiently and fairly, a state administrative law judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental

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rights of parties also protects the interests of witnesses and the general public. A state administrative law judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. A state administrative law judge should encourage and seek to facilitate settlement, but the judge should not take any action or make any comment that might reasonably be interpreted by any party or its counsel as (a) coercion to settle, or (b) impairing the party's right to have the controversy resolved by the administrative tribunal in a fair and impartial manner in the event settlement negotiations are unsuccessful. In matters that will be tried before the state administrative law judge without a separate fact finder, a judge who seeks to facilitate settlement should exercise extreme care to avoid prejudging or giving the appearance of prejudging the case.

[3.18][3B(9)] Prompt disposition of the state administrative law judge's business requires a judge to devote adequate time to judicial duties, to be punctual in attending hearings and expeditious in determining matters under submission, and to insist that personnel subject to the judge's direction and control, litigants and their lawyers cooperate with the judge to that end.

(10) A state administrative law judge shall not make any public comment about a pending or impending proceeding before any: (i) state administrative agency, or (ii) court within the United States or its territories, concerning a matter which originated within the agency. The state administrative law judge shall require similar abstention on the part of agency personnel subject to the judge's direction and control. This paragraph does not prohibit state administrative law judges from making public statements in the course of their official duties or from explaining for public information the procedures of the administrative judiciary. This paragraph does not apply to proceedings in which the state administrative law judge is a litigant or representative in a personal capacity.

Commentary:

[3.19][3B(10)] The requirement that state administrative law judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. A state administrative law judge should not be influenced by the potential for personal publicity when making decisions in pending cases. Release of decisions to the media or notifying the media that the decision is available before counsel or representatives for the parties have been notified may be embarrassing or prejudicial to the private rights of the litigants. This Section does not prohibit a state administrative law judge from commenting on proceedings in which the judge is a litigant in a personal capacity. "Agency personnel" does not include the lawyers in a proceeding before a state administrative law judge. The conduct of lawyers relating to trial publicity is governed by DR 7-107 of the Code of Professional Responsibility.

[3.20][3B(10)] This Section is not intended to preclude participation in an association of state administrative law judges merely because such association makes public comments about a pending or impending proceeding in the administrative process. The Section is directed primarily at public comments by a state administrative law judge concerning a proceeding

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before another judge.

(11) A state administrative law judge shall not:

(a) make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office;

(b) with respect to cases, controversies or issues that are likely to come before the tribunal, make commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

(12) A state administrative law judge shall not intentionally or recklessly disclose or use, for any purpose unrelated to administrative judicial duties, nonpublic information acquired in an administrative judicial capacity.

(C) Administrative responsibilities.

(1) A state administrative law judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in administrative judicial administration and cooperate with other judges and non-judicial personnel in the administration of judicial business.

(2) A state administrative law judge shall require staff, hearing officials, non-judicial personnel and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge ~~and~~, to refrain from manifesting bias and prejudice in the performance of their official administrative duties, and to act in a manner consistent with the judge's obligations under this Code.

(3) A state administrative law judge with supervisory authority for the performance of other state administrative law judges shall take reasonable measures to ensure that those judges properly discharge their adjudicative responsibilities, including the timely disposition of matters before them.

Commentary:

[3.21][3C(2)] A state administrative law judge is responsible for their own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct staff to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

[3.22][3C(3)] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under their supervision timely administer their workloads.

[3.23][3C(3)] A supervisory state administrative law judge should not interfere with the

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decisional independence of other judges. Reasonable docket control, case assignments, logistical matters and other administrative concerns are appropriate; provided, that these are done in an impartial manner and in no way operate to favor any particular outcome in any case.

(D) Disciplinary responsibilities.

(1) A state administrative law judge who receives information indicating a substantial likelihood that another state administrative law judge has committed a substantial violation of this Code shall take appropriate action.

(2) A state administrative law judge who receives information indicating a substantial likelihood that a lawyer or other representative has engaged in unprofessional conduct shall take appropriate action.

(3) Acts of a state administrative law judge in the discharge of disciplinary responsibilities are part of the judge's administrative judicial duties.

Commentary:

~~*[3.21][3D] Referral of a state administrative law judge or lawyer to a substance abuse treatment agency is "appropriate" action under paragraphs (1) and (2).*~~

[3.24][3D] A state administrative law judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action. For purposes of paragraphs (1) and (2), "appropriate" action includes a state administrative law judge's referral of a lawyer or another judge to treatment or to a lawyer or judicial assistance program when the referring judge has a reasonable belief that the performance of the lawyer or other judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition .

[3.~~22~~25][3D] Appropriate action may include direct communication with the state administrative law judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority or other agency or body. Internal agency procedure which routes the complaint can be utilized.

(E) Disqualification.

(1) A state administrative law judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) (i) the state administrative law judge has a personal bias or prejudice concerning a party, ~~or~~

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(ii) the state administrative law judge has personal knowledge of disputed evidentiary facts concerning the proceeding~~.~~, or

(iii) the state administrative law judge has made a public statement, other than in a tribunal proceeding, adjudicative decision, or adjudicative opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy;

(b) the state administrative law judge knows that:

(i) the state administrative law judge served as a lawyer in the matter in controversy, or

(ii) a lawyer with whom the state administrative law judge previously practiced law served during such association as a lawyer concerning the matter, or

(iii) the state administrative law judge has been a material witness concerning it;

(c) ~~-~~the state administrative law judge knows that ~~he or she~~the judge, individually or as a fiduciary, or the judge's spouse or domestic partner, or a person known by the judge to be within the sixth degree of relationship to either of them, or the spouse or domestic partner of such a person:

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(i) is a party to the proceeding;

(ii) is an officer, director or trustee of a party;

(iii) has an economic interest in the subject matter in controversy;

(iv) has any other interest that could be substantially affected by the proceeding; or

(v) is likely to be a material witness in the proceeding; or

(d) the state administrative law judge knows that the judge or the judge's spouse or domestic partner, or a person known by the judge to be within the fourth degree of relationship to either of them, or the spouse or domestic partner of such a person, is acting as a lawyer in the proceeding.

(e) Notwithstanding the provisions of subparagraph (c) above, if a state administrative law judge would be disqualified because of the appearance or discovery,

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after the matter was assigned to the judge, that the judge individually or as a fiduciary, the judge's spouse or domestic partner, or a person known by the judge to be within the sixth degree of relationship to either of them, or the spouse or domestic partner of such a person has an economic interest in a party to the proceeding, disqualification is not required if the state administrative law judge, spouse, domestic partner, or other relevant ~~person~~persons, as the case may be, ~~divests himself or herself~~divest themselves of the interest that provides the grounds for the disqualification.

(2) A state administrative law judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interest of the judge's spouse or domestic partner, and minor children residing in the judge's household.

Commentary:

[3.~~23~~26][3E(1)] Under this rule, a state administrative law judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply.

[3.~~24~~27][3E(1)] A state administrative law judge should disclose on the record information that the judge believes the parties or their lawyers or representatives might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

[3.~~25~~28][3E(1)] By decisional law, the rule of necessity may override the rule of disqualification. For example, a state administrative law judge might be required to participate in judicial review of a matter where no other forum is available to decide the matter and no provision is available for delegating the authority to hear the matter to another adjudicator. Or, a state administrative law judge might be the only judge available in a matter requiring immediate judicial action. In the latter case, the state administrative law judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as possible.

[3.~~26~~29][3E(1)(b)] A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b). A state administrative law judge formerly employed as agency counsel, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association. See NY St Bar Assn Comm on Prof Ethics Op 617 (1991).

[3.~~27~~30][3E(1)(d)] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the state administrative law judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the state administrative law judge's impartiality might reasonably be questioned" under Section 3E(1), or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the

proceeding" under Section 3E(1)(c)(iv) may require that judge's disqualification.

(F) Remittal of disqualification.

(1) A state administrative law judge disqualified by the terms of subdivision (E) above may disclose on the record the basis for ~~his or her~~the judge's disqualification. Thereafter, subject to paragraph (2) below, if the parties who have appeared and not defaulted and their representatives, without participation by the state administrative law judge, all agree that the judge should not be disqualified, and the judge believes that ~~he or she~~the judge will be impartial and is willing to participate, the state administrative law judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

(2) Notwithstanding paragraph (1) above, disqualification of a state administrative law judge shall not be remitted if participation in the proceeding by the judge would violate this Code or if the basis for disqualification is that:

(a) the state administrative law judge has a personal bias or prejudice concerning a party;

(b) the state administrative law judge, while in private practice, served as a lawyer in the matter in controversy;

(c) the state administrative law judge has been or will be a material witness concerning the matter in controversy; or

(d) ~~-~~the state administrative law judge or ~~his or her~~the judge's spouse or domestic party is a party to the proceeding or is an officer, director or trustee of a party to the proceeding.

Commentary:

[3.~~28~~31][3F] A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification in the event a remittal is available under the Section. To assure that consideration of the question of remittal is made independently of the state administrative law judge, a judge must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a state administrative law judge may wish to have all parties and their lawyers or representatives sign the remittal agreement.

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CANON 4

A STATE ADMINISTRATIVE LAW JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRA-JUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS.

(A) Extra-judicial activities in general. A state administrative law judge shall conduct all of ~~his or her~~the judge's extra-judicial activities so that they:

(1) do not cast reasonable doubt on the state administrative law judge's capacity to act independently, impartially, or with integrity as a state administrative law judge;

(2) do not detract from the dignity of judicial office;

(3) do not interfere with the proper performance of judicial duties; ~~and~~

(4) are not incompatible with judicial office~~.~~; and

(5) will not lead to frequent disqualification of the judge.

Commentary:

[4.1][4A] Complete separation of a state administrative law judge from extra-judicial activities is neither possible nor wise; ~~—~~a judge should not become isolated from the community in which the judge lives.

[4.2][4A] Expressions of bias or prejudice by a state administrative law judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of actual or perceived age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status. See Section 2D and accompanying Commentary.

(B) Avocational activities. A state administrative law judge may speak, write, lecture, teach and participate in extra-judicial activities subject to the requirements of this Code.

Commentary:

[4.3][4B] In this and other Sections of Canon 4, lists of permissible activities are intended to be illustrative and not exclusive.

[4.4][4B] As a judicial officer and person specially learned in the law, a state administrative law judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revisions of substantive and procedural

law. To the extent that time permits, a state administrative law judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization

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dedicated to the improvement of the law. State administrative law judges may participate in efforts to promote the fair administration of justice, the independence of the administrative judiciary and the integrity of the legal profession.

[4.5][4B] In this and other Sections of Canon 4, the phrase "subject to the requirements of this Code" is used, notably in connection with a state administrative law judge's governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various Sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

[4.6][4B] See Section 2B regarding the obligation to avoid improper influence.

(C) Governmental, civic, or charitable activities.

(1) A state administrative law judge shall not appear at a public hearing before an executive or legislative body or official if doing so would cast doubt on ~~his or her~~the judge's ability to decide impartially regarding any issue or party that with reasonable foreseeability might come before ~~him or her~~the judge unless the issue or party is one with respect to which the state administrative law judge would in any event be disqualified under this Code or any other provision of law.

(2) A state administrative law judge shall not accept:

(a) appointment to a governmental committee ~~or~~, board, commission, or other governmental position ~~if his or her activity in~~, unless such ~~capacity would cast doubt on his or her ability to decide impartially regarding any issue or party that~~appointment does not conflict with ~~reasonable foreseeability might come before him or her~~the judge's official duties and there is no appearance of conflict, bias or prejudice concerning the judge's official position; or

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(b) appointment or employment as a peace officer or police officer, as those terms are defined in Criminal Procedure Law §§ 1.20 and 2.10, unless ~~he or she~~the judge is a member of the uniformed force of the police department exercising adjudicative duties.

Commentary:

[4.7][4C(2)] The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the administrative judiciary from involvement in extra-judicial matters that may prove to be controversial. State administrative law judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the administrative tribunal on which the judge serves.

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(3) Unless otherwise prohibited by law, a state administrative law judge may be a member or serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, cultural, fraternal or civic

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organization not conducted for profit subject to the following limitations and the other requirements of this Code.

(a) A state administrative law judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

(i) will be engaged in proceedings that ordinarily would come before the state administrative law judge, or

(ii) will be regularly engaged in adversary proceedings before the agency in which the state administrative law judge serves.

(b) In connection with civic or charitable activities, a state administrative law judge may participate in fund-raising or solicitation for membership if:

(i) the state administrative law judge does not use or permit use of the prestige of judicial office for fund-raising or solicitation for membership;

(ii) the fund-raising or solicitation for membership is not directed at persons who have appeared, are appearing or are foreseeably likely to appear before the state administrative law judge;

(iii) the state administrative law judge's participation in the fund-raising or solicitation for membership would not detract from the dignity of judicial office or interfere with the proper performance of judicial duties or be incompatible with judicial office; and

(iv) the fund-raising or solicitation for membership is not otherwise prohibited by law.

Commentary:

[4.8][4C(3)] See Commentary to Section 4B regarding use of the phrase "subject to the following limitations and the other requirements of this Code." As an example of the meaning of the phrase, a state administrative law judge permitted by Section 4C(3) to serve on the board of a fraternal institution may be prohibited from such service by Section 2D or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

[4.9][4C(3)] Service by a state administrative law judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Section 4C. For example, a state administrative law judge is prohibited by Section 4G from appearing on behalf of a civic or charitable organization in matters before the agency in which the judge serves.

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[4.10][4C(3)(a)] The changing nature of some organizations and of their relationship to the law makes it necessary for a state administrative law judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the relationship to that organization.

[4.11][4C(3)(b)] Use of an organization letterhead for fund-raising or membership solicitation does not violate Section 4C(3)(b) provided the letterhead lists only the state administrative law judge's name and office or other position in the organization and, if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

(4) Unless otherwise proscribed by law or agency regulation, a state administrative law judge may accept duty assignments in addition to serving as a state administrative law judge provided that (i) such duties do not conflict with the state administrative law judge's responsibilities as a state administrative law judge, and (ii) such duties do not involve functions related to prosecutions or adversarial presentations of agency positions. State administrative law judges may be assigned to conduct investigatory hearings provided that the standards of independence and objectivity specified in this Code are adhered to.

Commentary:

[4.12][4C(4)] Section 4C(4) is derived from paragraph IIIB(2)(a) of Executive Order No. 131 (see 9 NYCRR 4.131[III][B][2][a]).

(D) Financial activities.

(1) A state administrative law judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to reflect adversely on the state administrative law judge's impartiality or exploit ~~his or her~~the judge's judicial position;

(b) involve the state administrative law judge with any business, organization or activity that ordinarily will come before the judge; or

(c) involve the state administrative law judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the agency in which the judge serves.

(2) A state administrative law judge, subject to the requirements of this Code, may hold and manage investments of the judge and members of the judge's family, including real

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estate, and engage in other remunerative activity.

(3) ~~A state~~State administrative law ~~judge~~judges shall manage the ~~judge's~~judges' investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as ~~the~~ state administrative law ~~judge~~judges can do so without serious financial detriment, ~~the judge~~judges shall divest ~~himself or herself~~themselves of investments and other financial interests that might require frequent disqualification.

(4) Consistent with state law and agency regulation, a state administrative law judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse, domestic partner, or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse, domestic partner, or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse, domestic partner, or other family member and the judge (as spouse, domestic partner, or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) a gift which is customary on family and social occasions;

(d) a gift from a relative or friend, for a special occasion such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Section 3(E) of this Code;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) any other gift, bequest, favor or loan, only if the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge, and if the gift is required by law to be reported, the judge shall do so.

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[4.13][4D] The specific prohibition contained in the Code of Judicial Conduct against a

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judge's services as an officer, director, manager, advisor or an employee of any business (which has sometimes been interpreted to bar such participation in a family business) has been deleted, because the general prohibitions in Canon 3(C)(1) and statutes or rules prohibiting such activities by state administrative law judges involving agencies wherein they serve render the specific prohibition somewhat superfluous and because generic prohibition of involvement in a family business is regarded as unnecessary and undesirable. Involvement in a business that neither affects the independent professional judgment of the state administrative law judge nor the conduct of the judge's official duties is not prohibited.

[4.14][4D] When a state administrative law judge acquires in a judicial capacity information, such as materials contained in filings with the administrative tribunal, that is not yet generally known, the judge must not use the information for private gain. See Section 2B; see also Section 3B(11).

[4.15][4D] A state administrative law judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's administrative tribunal. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of a state administrative law judge with law firms appearing before the judge, see Commentary to Section 3E(1) relating to disqualification.

[4.16][4D] Participation by a state administrative law judge in financial and business dealings is subject to the general prohibitions in Section 4A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Section 2C against the misuse of the prestige of judicial office. In addition, a state administrative law judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See Commentary for Section 4B regarding use of the phrase "subject to the requirements of this Code."

[4.17][4D(2)] This Section provides that, subject to the requirements of this Code, a state administrative law judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by the judge and members of the judge's family.

[4.18][4D(4)] Section 4D(4) does not apply to contributions to a state administrative law judge's campaign for judicial office, a matter governed by Canon 5.

[4.19][4D(4)] Because a gift, bequest, favor or loan to a member of the state administrative law judge's family residing in the judge's household might be viewed as intended to influence the

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judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

[4.20][4(D)(4)(a)] Acceptance of an invitation to a law-related function is governed by Section 4D(4)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Section 4D(4)(h).

[4.21][4(D)(4)(a)] A state administrative law judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See Sections 4A(1) and 2B.

[4.22][4D(4)(d)] A gift to a state administrative law judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Section 4D(4)(e).

[4.23][4D(4)(h)] Section 4D(4)(h) prohibits state administrative law judges from accepting any gifts, favors, bequests or loans not otherwise enumerated in Section 4D(4) from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

(E) Fiduciary activities.

(1) A state administrative law judge shall not serve as an executor, administrator, trustee, guardian or other fiduciary if such service will interfere with the proper performance of judicial duties or if it is likely that as a fiduciary the judge will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in an agency in which the judge serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary, a state administrative law judge is subject to the same restrictions on financial activities that apply to the judge in the judge’s personal capacity.

Commentary:

[4.24][4E(2)] The restrictions imposed by this Canon may conflict with the state administrative law judge's obligation as a fiduciary. For example, a state administrative law judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Section 4D(3).

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(F) Service as arbitrator, mediator or hearing officer. Unless otherwise prohibited by law or agency regulation, a state administrative law judge may act as an arbitrator or mediator or otherwise perform judicial functions independent of ~~his or her~~the judge's administrative judicial duties, so long as such activity affects neither the independent professional judgment of the state administrative law judge nor the conduct of ~~his or her~~the judge's official duties.

Commentary:

[4.25][4F] Service as an arbitrator or mediator as part of a state administrative law judge's official duties is not covered by this provision.

[4.26][4F] This Code does not prohibit state administrative law judges from acting as arbitrators or mediators in capacities outside their official administrative judicial duties and in circumstances where it is unlikely that their decisions as arbitrators or mediators will be submitted to their agency for administrative review. In considering whether to adopt this Code, the agency should consider whether it is appropriate to prohibit its staff from acting as arbitrators or mediators in capacities outside official agency proceedings, consistent with substantive law and the needs of the agency (see NY St Bar Assn Comm on Prof Ethics Op 594 [1988]).

(G) Practice of law.

(1) Consistent with all other provisions of this Code, and with any applicable agency regulations and with all other provisions of law, a state administrative law judge may practice law, as long as such activity affects neither the independent professional judgment of the judge nor the conduct of ~~his or her~~the judge's official duties.

(2) A state administrative law judge shall not represent or appear on behalf of private interests before the agency in which ~~he or she~~the judge serves.

(3) A state administrative law judge primarily employed by the state shall not represent or appear on behalf of private interests before any state administrative tribunal or agency.

(4) A state administrative law judge shall not be associated or affiliated with any firm, company or organization that regularly represents or appears on behalf of private interests before the agency in which ~~he or she~~the judge serves.

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Commentary:

[4.27][4G] This Section does not prohibit a state administrative law judge from engaging in the private practice of law. However, consistent with ethics opinions, and the general principles underlying this Code, this Section does prohibit a state administrative law judge or members of the judge's law firm from appearing in a representative capacity before the agency in which the

judge serves (see NY St Bar Assn Comm on Prof Ethics Op 543 [1982]; NY St Bar Assn Comm on Prof Ethics Op 365 [1974]).

[4.28][4G] This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A state administrative law judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a state administrative law judge must not abuse the prestige of office to advance the interests of the judge or the judge's family. See Section 2C.

[4.29][4G] A state administrative law judge who maintains a private legal practice should use letterhead for matters involving official administrative judicial duties that is separate and distinct from the letterhead for matters in private practice. The letterhead for private practice shall omit any reference to the person's status as a state administrative law judge.

[4.30][4G] Certain state agencies and local governments contract with administrative law judges. State administrative law judges who perform legal work outside the judges' judicial duties should avoid any legal work that conflicts or appears to conflict with their work as a judge.

(H) Compensation and reimbursement. Consistent with applicable law and regulation, a state administrative law judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety, and the acceptance of such compensation would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality, subject to the following restrictions:

(1) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a state administrative law judge would receive for the same activity.

(2) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the state administrative law judge and, where appropriate to the occasion, by the judge's spouse, domestic partner, or guest. Any payment in excess of such an amount is compensation.

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Commentary:

[4.~~30~~31][4H(2)] See Section 4D(4) regarding reporting of gifts, bequests and loans.

[4.~~31~~32][4H(2)] The Code does not prohibit a state administrative law judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A state administrative law judge should ensure, however, that no conflicts are created by the arrangement. A state administrative law judge must not appear to trade on the judicial position for personal advantage. Nor should a state administrative law judge spend significant time away from judicial duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the state administrative law judge's ability or willingness to be impartial.

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(I) Financial disclosure. A state administrative law judge shall disclose income, debts, investments, or other assets to the extent required by law.

Commentary:

[4.~~32~~33][4I] A state administrative law judge has the rights of any other citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations established by law are required to safeguard the proper performance of the judge's duties.

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CANON 5

A STATE ADMINISTRATIVE LAW JUDGE SHALL ~~REFRAIN FROM INAPPROPRIATE~~NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY~~.~~ THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE ADMINISTRATIVE LAW JUDICIARY

(A) Political activities in general.

A state administrative law judge shall not directly or indirectly engage in any political activity that detracts from, or reduces public confidence in, the fairness, impartiality or dignity of ~~his or her~~the judge's office or the tribunal ~~he or she~~the judge serves. In addition, a state administrative law judge shall not permit ~~his or her~~the judge's title or position to be used to promote any activity of a political organization. Prohibited political activity shall include the following:

(1) A state administrative law judge shall not act as a leader, committee member, or an officer in any political party or organization.

(2) A state administrative law judge shall not publicly endorse or publicly oppose (other than by running against) another candidate for public office in a way that allows for identification of the state administrative law judge as such.

(3) A state administrative law judge shall not make speeches on behalf of a political organization or other candidate.

(4) A state administrative law judge shall not solicit funds for or contributions to a political organization or candidate.

~~(B~~(B) Candidates for appointive administrative law judge or appointive judicial positions. A candidate for appointment to an administrative law judge position, or a state administrative law judge seeking appointment to a judicial position, may:

(1) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar organization, and

(2) request a reference, recommendation, or endorsements for the appointment from any person or organization other than a partisan political organization.

(C) State administrative law judge as candidate for elective nonjudicial office. A state administrative law judge shall resign or, if authorized by law, take a leave of absence from administrative judicial office, and withdraw ~~his or her~~the judge's name from any roster for assignment or employment as a state administrative law judge upon becoming a candidate for elective nonjudicial office either in a primary or in a general election, except that the state

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administrative law judge may continue to hold administrative judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

(~~C~~D) State administrative law judge as candidate for elective judicial office. A state administrative law judge who is a candidate for elective judicial office shall comply with the Rules of the Chief Administrator of the Courts for the State of New York governing the conduct of such candidates, 22 NYCRR 100.5. A determination by the State Commission on Judicial Conduct, a court of the State of New York or any other authorized entity that a state administrative law judge has violated those Rules shall constitute misconduct and a violation of this Code.

Commentary:

[5.1][5A] In two opinions from the 1970s, the Committee on Professional Ethics of the New York State Bar Association has taken the position that as quasi-judicial officers, state administrative law judges are subject to the same constraints against political activity as judges in the judicial branch (see NY St Bar Assn Comm on Prof Ethics Op 337 [1974]; NY St Bar Assn Comm on Prof Ethics Op 327 [1974]; see also Code of Judicial Conduct Commentary 6.1). The drafters of this Model Code, however, conclude that the strict application of Canon 5 of the Code of Judicial Conduct ("CJC"), in particular section 5A(1), to state administrative law judges is unduly and unnecessarily restrictive. Divergence from the strict application of CJC Canon 5 is warranted for several reasons.

First, although state administrative law judges are quasi-judicial officers responsible for unbiased and independent decision making within the agency context and, thus, function as a limited check on agency power, state administrative law judges do not serve the same separation of powers function as judges in the third branch. Specifically, while state administrative law judges have the authority to rule on as-applied constitutional challenges to agency action, they lack the authority to strike as facially invalid an act of the Legislature. Second, in contrast to most judicial offices in New York, state administrative law judges are appointed and, therefore, are not required to engage in partisan political campaigns to achieve judicial office. Given the path by which most third branch judges obtain judicial office, and the significant power they exercise once in office, the heightened restrictions against political activities imposed upon third-branch judges by CJC Canon 5 are warranted to avoid even the mere appearance of improper political influence. Such considerations are less compelling in the context of state administrative law judges.

Moreover, courts have recently concluded that proscriptions against political speech by even third-branch judicial officers are subject to First Amendment limitations (see Republican Party of Minnesota v White, 536 US 765, 122 S Ct 2528, 153 L Ed 2d 694 [2002]). Thus, the strict application of each section of CJC Canon 5 to state administrative law judges does not appear justified.

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Nevertheless, because of their role as quasi-judicial officers, some of the specific restrictions on political activities contained in CJC Canon 5 are applicable to state administrative law judges. Under Section 2B, a state administrative law judge should not allow political considerations to influence the judge's judicial conduct or judgment. The public political activities prohibited by section 5A of this Code are justified to eliminate suspicion that a judge's judgment is affected by such political influences.

Any State agencies considering the adoption of this Code should consider whether the limitations imposed herein, or those applied by CJC Canon 5, are appropriate and apply those limitations on political activity most consistent with the characteristics of the particular agency and state administrative law judges employed by such agency.

[5.2][5A] A state administrative law judge retains the right to participate in the political process as a voter, to be enrolled as a member of a political party, to make private and voluntary contributions to political campaigns and candidates, and to participate in non-fund raising activities on behalf of candidates. The activities prohibited by Section 5A are those public displays of political endorsement that raise the suspicion that a state administrative law judge's judgment is affected by political influences, or that the prestige of judicial office is being used to advance political interests.

The specific prohibitions set forth in Section 5A are to be interpreted in light of the general language of that section which prohibits the state administrative law judge from lending ~~his or her~~the judge's status as a judge to political activities. The goal is to permit the state administrative law judge to exercise as much political freedom as possible as a private citizen within this constraint, while recognizing that few political activities are truly private. In complying with this section, state administrative law judges must exercise discretion so that their role in political activities is relatively anonymous, "low-profile," and divorced from their professional status. Thus, for example, it might be appropriate for a state administrative law judge to make non-fund raising phone calls or to circulate petitions on behalf of a candidate for office if the judge is identified only by a first name. Similarly, a state administrative law judge might appropriately attend a political gathering where the judge is not otherwise well-known and does not wear a name tag, or does not wear a name tag identifying the judicial office. In contrast, it would not be appropriate to sit at a head table or to be publicly recognized and welcomed by a master of ceremonies. Application in particular circumstances will depend upon such factors as the size of the community, the notoriety of a particular state administrative law judge, the size of the event or scope of the particular activity, and the publicity likely to attend a given event or activity, among other considerations.

[5.3][5A(1)] The restrictions in this Code concerning political activity do not prohibit a state administrative law judge from membership in a union or other non-political organization, merely because the organization has an associated political action committee ("PAC") that endorses political candidates. With respect to PAC-related activities, however, the provisions of Section 5A apply.

Other provisions of this Code, however, might bar membership in some non-political organizations. For example, Section 2D bars a state administrative law judge outright from membership in an organization that practices invidious discrimination. Otherwise, a state administrative law judge must remain and appear impartial at all times. Under the provisions in Section 4A, a state administrative law judge must be sensitive to whether any extra-judicial activities, including political activity, raise questions about the judge's capacity to act impartially.

[5.4][5A(2)] Section 5A(2) does not prohibit a state administrative law judge from privately expressing ~~his or her~~the judge's views on judicial candidates or other candidates for public office.

[5.5][5A(4)] Section 5A(4) does not prohibit a state administrative law judge from making contributions to a political campaign. However, such contributions must be private and voluntary. A state administrative law judge may make contributions to political campaigns as a private citizen only and, unless otherwise required by law, should not reference the judge's judicial office when making such contributions. A state administrative law judge should make reasonable efforts to prevent the recipient of a political contribution from using the prestige of the judge's office or otherwise publicizing the judge's contribution. A state administrative law judge should not be compelled to make political contributions, including the purchase of tickets for politically sponsored dinners or other functions, including any such function for a non-political purpose.

[5.6][~~5B~~5C] Section ~~5B~~5C requires a state administrative law judge to resign from office or take a leave of absence, if allowed by law and subject to the appointing authority's approval, when the judge become a candidate for elective non-judicial office. Section ~~5B~~5C does not require a state administrative law judge to resign from office or take a leave of absence when the judge becomes a candidate for elective judicial office.

APPLICATION OF THE CODE OF JUDICIAL CONDUCT FOR STATE ADMINISTRATIVE LAW JUDGES

(A) Effective date of compliance. ~~A person~~Persons to whom this Code becomes applicable should arrange ~~his or her~~their affairs as soon as reasonably possible to comply with it.

(B) Application to Agency Heads, to Members of a State Board or Commission, or to Other Officers or Tribunals Serving an Administrative Appellate Function. The provisions of this Code are not applicable to the head of an agency, to members of a State board or commission, or to other State officers or tribunals serving an administrative appellate function, unless adopted by the rules of the employing agency.

Commentary:

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[6.1][6B] If an agency chooses to apply the provisions of the Model Code of Judicial Conduct for State Administrative Law Judges to an agency head, members of a State board or commission, or other officers or tribunals serving an administrative appellate function, it should do so with due regard to the different role and function performed by such officers as compared to the role and function performed by state administrative law judges. Due to their role as the initial finders of fact in the administrative adjudicatory process, state administrative law judges are subject to stricter limitations than agency heads, members of a State board or commission, or other State officers or tribunals serving an administrative appellate function (see, e.g., Executive Order No. 131 [9 NYCRR 4.131]). In general, however, the provisions addressing partiality, conflicts of interest and disqualification may be applicable to persons performing quasi-judicial administrative appellate functions.

NEW YORK STATE BAR ASSOCIATION
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PRESIDENT'S COMMITTEE ON ACCESS TO JUSTICE

January 10, 2022

TO: Executive Committee and Members of the House of Delegates

FROM: President's Committee on Access to Justice

RE: Support of the Proposed Model Code of Conduct for State Administrative Judges

The President's Committee on Access to Justice fully supports the Report on the Proposed Model Code of Conduct for State Administrative Judges. The committee voted in support of the conclusion and recommendations on December 17, 2021.

Staff Memorandum

HOUSE OF DELEGATES
Agenda Item #6

REQUESTED ACTION: Approval of the report and recommendations of the Working Group on Question 26 of the New York State Bar Examination Admission Application.

Question 26 on the Application for Admission to Practice as an Attorney and Counselor-at-Law in the State of New York ("Admission Application"), asks an applicant, "Have you ever, either as an adult or a juvenile, been cited, ticketed, arrested, taken into custody, charged with, indicted, convicted, or tried for, or pleaded guilty to, the commission of any felony or misdemeanor or the violation of any law, or been the subject of any juvenile delinquency or youthful offender proceeding? Traffic violations that occurred more than ten years before the filing of this application need not be reported, except alcohol or drug-related traffic violations, which must be reported in all cases, irrespective of when they occurred. Do not report parking violations." Concerns have been raised as to the inequity inherent in criminal record screening and the resulting chilling effect on people of color considering admission to higher education and the legal profession.

In June 2021 the New York City Bar Association contacted the Administrative Board and the State Board of Law Examiners to request that the Admission Application be revised to conform to the requirements of the State Human Rights Law and the Family Court Act as to record information requests. Thereafter, OCA sought NYSBA's position on this issue, and President T. Andrew Brown appointed the Working Group with representatives from sections and committees with relevant experience.

The Working Group recommends that NYSBA support revision of the Admission Application to conform to the Human Rights Law and the Family Court Act. In addition, the Working Group recommends training for Character and Fitness committee members and court staff to ensure that review is in compliance with these requirements as well as the Corrections Act. To this end, the Working Group recommends revision of the Admission Application to clearly state that applicants are not required to disclose arrests not then pending that did not result in conviction; sealed convictions; adjournments in contemplation of dismissal; and youthful offender adjudications.

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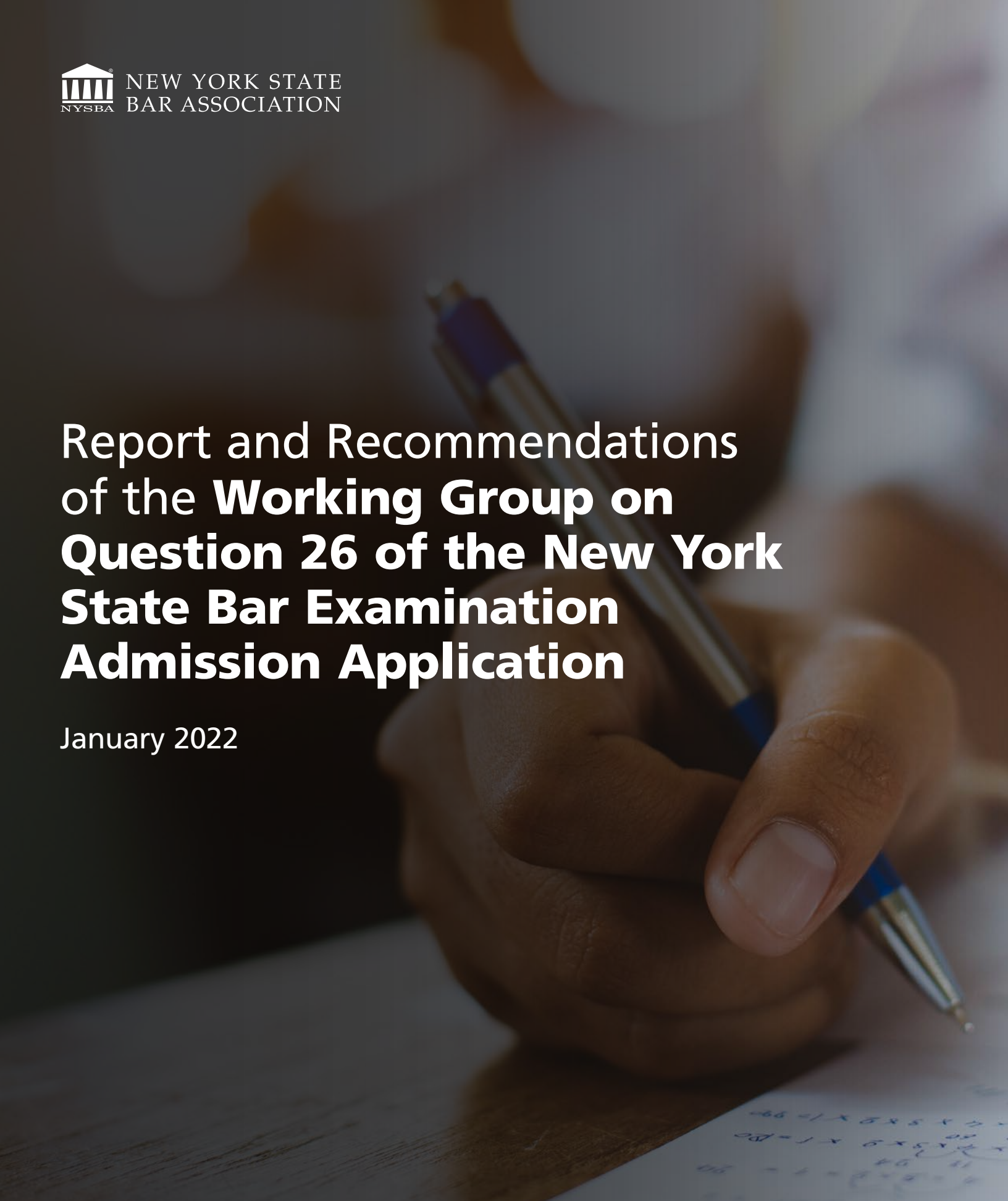
The report will be presented by David R. Marshall, chair of the Working Group.

NEW YORK STATE BAR ASSOCIATION

Report and Recommendations of the **Working Group on Question 26 of the New York State Bar Examination Admission Application**

January 2022



The views expressed in this report are solely those of the Working Group and do not represent those of the New York State Bar Association unless and until adopted by the House of Delegates.

REPORT OF THE WORKING GROUP ON QUESTION 26 OF THE NEW YORK STATE BAR EXAMINATION ADMISSION APPLICATION

Working Group on Question 26 of the New York State Bar Examination Admission Application

David R. Marshall, Esq. | Chair

Co-Sponsoring Entities

Criminal Justice Section
David Louis Cohen, Esq. | Chair

Young Lawyers Section
Anne L. LaBarbera, Esq. | Chair

Task Force on Racism, Social Equity, and the Law
Taa R. Grays, Esq. | Co-Chair
Lillian M. Moy, Esq. | Co-Chair

Committee on Children and the Law
Lorraine R. Silverman, Esq. | Chair

Committee on Legal Aid
Sally F. Fisher, Esq. | Co-Chair
Adriene L. Holder, Esq. | Co-Chair

Committee on Legal Education and Admission to the Bar
David R. Marshall, Esq. | Co-Chair
Marta Galan Ricardo, Esq. | Co-Chair

Committee on Diversity, Equity, and Inclusion
Violet E. Samuels, Esq. | Co-Chair
Mirna M. Santiago, Esq. | Co-Chair

REPORT OF THE WORKING GROUP ON QUESTION 26 OF THE NEW YORK STATE BAR EXAMINATION ADMISSION APPLICATION

INTRODUCTION AND EXECUTIVE SUMMARY

In October 2020, the Court-appointed Special Adviser on Equal Justice in the New York State Courts reported that interviews with nearly 300 court personnel, court users and court watchers painted a "sad picture" of "a second-class system of justice for people of color in New York State," mirroring the finding of the Court-appointed Minorities Commission in 1991 that "'there are two justice systems at work in the courts of New York State, one for Whites, and a very different one for minorities and the poor.'"[1] Noting that "[t]he very notion of equality under law is today cast in serious doubt,"[2] the Court's Special Adviser called for "a strong and pronounced rededication to equal justice under law by the New York State court system."[3]

The magnitude of the Special Adviser's concern is amplified by data regarding the adverse disparate impact that contact with the criminal justice system has on people of color who are New York State residents. A 2018 analysis showed that whites make up 55% of the State's population but only 33% of total arrests, while Blacks make up only 15% of the population but account for 38% of total arrests.[4] Racial disparities are particularly egregious with respect to drug-related arrests. Although surveys show that marijuana and other drug use does not differ by ethnicity or race, except for comparatively higher marijuana use by white college students, "at the height of New York's prosecution of drug crimes, about 90% of people incarcerated for such crimes were Black and Latino."[5] Because contact with law enforcement can generate a criminal record even in the absence of a conviction, an estimated 7.4 million people in New York State have a criminal record, according to a 2010 survey of Bureau of Justice Statistics data.[6]

The racial disparities associated with our criminal justice system prompted the authors of a paper on the use of criminal records in evaluating applicants for college admission to conclude that, "Because racial bias, whether deliberate or inadvertent, occurs at every stage of the criminal justice system, screening for criminal records cannot be a race-

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[1] Report From the Special Adviser On Equal Justice In the New York State Courts, at 3 (October 1, 2020), https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf.

[2] *Id.* at 8.

[3] *Id.* at 8–9.

[4] Report to the New York State Court's Commission On Equal Justice In the Courts, THE JUDICIAL FRIENDS ASSOCIATION, INC., at 24–25 (August 31, 2020), https://www.nycourts.gov/LegacyPDFS/ip/ethnic-fairness/pdfs/Judicial-Friends-Report-on-Systemic-Racism-in-the-NY-Courts.pdf.

[5] Boxed Out: Criminal History Screening and College Application Attrition, CENTER FOR COMMUNITY ALTERNATIVES, at 41–42. (March 1, 2015), https://www.communityalternatives.org/wp-content/uploads/2019/11/boxed-out.pdf.

[6] *Id.*

neutral practice."[7] Data showing the effects of criminal record screening are difficult to collect, especially with respect to the chilling effect screening may have on people of color considering whether or not to begin the application process, given the reputational, emotional and financial burdens of disclosing and explaining a criminal record to a group of strangers on a screening committee. However, a survey conducted by the Stanford Center on the Legal Profession found that "many individuals with criminal records are deterred from applying to law school in the first place. Of our 88 survey respondents – all with criminal records – 47 indicated they were 'considering applying to law school.' When asked the question, 'Why have you not yet applied for law school' over half cited concern about passing the moral character component as one of the top three reasons. One individual wrote, in the space provided for comments: 'I thought because I had a felony there was no chance [,] so I never tried.'"[8] Similarly, a study of criminal record screening on applicants for admission to the SUNY system of colleges and universities found that "for every one applicant rejected by Admissions Review Committees because of a felony conviction, 15 applicants are excluded by felony application attrition. This suggests it is the questions about criminal history records, rather than rejection by colleges, that are driving would-be college students from their goal of getting a college degree."[9]

Despite the inequity inherent in criminal record screening, and its chilling effect on people of color considering admission to higher education and the legal profession, there is no reliable evidence that criminal record screening has benefits for the public or the legal profession that outweigh the disparate adverse impact on people of color. Reviewing the literature in the social and psychological sciences concerning the relationship between conduct and character, Deborah Rhode, a pre-eminent scholar of legal ethics, concluded, "There is no basis for assuming that one illegal act, committed many years earlier under vastly different circumstances, is a good predictor of current threats to the public."[10] A team of investigators who examined criminal record disclosure on the Connecticut bar application found that "the information collected during the character and fitness inquiry

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[7] Marsha Weissman et al., The Use of Criminal History Records in College Admissions: Reconsidered, at 25 (Nov. 2010), http://www.communityalternatives.org/pdf/Reconsidered-criminal-hist-recs-in-college-admissions.pdf.

[8] Caroline Cohn, Debbie Mukamal, Robert Weisberg, *UNLOCKING THE BAR: Expanding Access to the Legal Profession for People with Criminal Records in California*, STANFORD LAW SCHOOL, STANFORD CENTER ON THE LEGAL PROFESSION, at 31 (July 15, 2019), https://law.stanford.edu/publications/unlocking-the-bar-expanding-access-to-the-legal-profession-for-people-with-criminal-records-in-california/.

[9] Boxed Out: Criminal History Screening and College Application Attrition, CENTER FOR COMMUNITY ALTERNATIVES, at 13 (March 1, 2015), https://www.communityalternatives.org/wp-content/uploads/2019/11/boxed-out.pdf.

[10] Deborah L. Rhode, *Virtue and the Law: The Good Moral Character Requirement in Occupational Licensing, Bar Regulation, and Immigration Proceedings*, 43 Law & Social Inquiry 1027, 1034 (2018).

does not appear to be very useful in predicting subsequent lawyer misconduct."[11] The investigators cautioned, moreover, that because "the focus on past criminal conduct may perpetuate racial and class biases" due to "disparate treatment in the criminal justice system," the Connecticut bar's requirement that applicants disclose criminal record information in connection with "the character and fitness inquiry may deter some people from applying to law school who might have made good lawyers had they done so."[12]

New York State law governing the use of criminal records by the State's licensing agencies and employers has made it clear how the people of New York, acting through their elected officials, have decided to strike the balance between protecting the public from discrimination and protecting the public from crime. In the New York State Human Rights Law (Executive Law § 296(16)) and the Family Court Act (§ 380.1(3)), New York State has prohibited mandated disclosure of certain arrest records, sealed convictions, juvenile proceedings, and youthful offender adjudications in connection with applications for professional licensing and employment. Although specific exemptions are set forth in the statutes – including, for example, for the licensing of firearms or the employment of law enforcement personnel – no exemption is provided for licensing lawyers. Indeed, Judiciary Law § 53.1, in authorizing the Court of Appeals to adopt rules regulating admission of attorneys to practice, authorizes only rules which are "not inconsistent with the constitution or statutes of the state." The misalignment between the spirit and letter of New York State law regarding permissible criminal record inquiry and the breadth of disclosure demanded by the bar admission application will widen further in the event of enactment of the Clean Slate Bill, which is pending before the State Legislature and requires automatic sealing of criminal records on a timetable related to the type of offense.

Notwithstanding the explicit requirements of State law, the Application for Admission to Practice as an Attorney and Counselor-at-Law in the State of New York ("Admission Application") currently requires applicants to disclose any and all criminal justice system involvement, regardless of the outcome or seriousness of the offense, except for parking tickets and certain stale traffic violations. For example, Question 26 on the Admission Application asks: "Have you ever, either as an adult or a juvenile, been cited, ticketed, arrested, taken into custody, charged with, indicted, convicted, or tried for, or pleaded guilty to, the commission of any felony or misdemeanor or the violation of any law, or been the subject of any juvenile delinquency or youthful offender proceeding? Traffic violations that occurred more than ten years before the filing of this application need not be reported, except alcohol or drug-related traffic violations, which must be reported in all cases, irrespective of when they occurred. Do not report parking violations." Question 26 is one of at least four questions on the Admission Application that require disclosure of criminal justice system involvement.[13] To ensure that applicants interpret and respond to

[11] Leslie C. Levin, Christine Zozula, Peter Siegelman, *A Study of the Relationship between Bar Admissions Data and Subsequent Lawyer Discipline*, UNIVERSITY OF CONNECTICUT, at 42 (March 15, 2013), http://ssrn.com/abstract=2258164.

[12] *Id. at* 5.

[13] Bar Admissions Questions Pertaining to Mental Health, School/Criminal History, and Financial Issues, JUDGE DAVID L. BAZELON CENTER FOR MENTAL HEALTH LAW, at 79 (February 2019),

these questions in the broadest manner, the Admission Application warns: "Candor throughout the admission process is required of all applicants, and even convictions that have been expunged should be disclosed in response to this question."

In June 2021, the New York City Bar Association ("NYCBA") wrote to Chief Judge Janet DiFiore, the four Presiding Justices of the Appellate Divisions, and the Chair of the State Board of Law Examiners to request that Question 26 be revised to conform to the provisions of the New York Human Rights Law and the Family Court Act limiting criminal record information requests. In September 2021, Counsel for the New York State Office of Court Administration ("OCA") asked T. Andrew Brown, president of the New York State Bar Association ("NYSBA"), for NYSBA's position on the issue of criminal record disclosure in the bar admission process. President Brown, in turn, solicited opinions from representatives of a number of NYSBA committees and sections with relevant experience and expertise, including the Criminal Justice Section, the Children and the Law Committee, the Committee on Legal Aid, the Committee on Legal Education and Admission to the Bar, the Young Lawyers Section, and the Committee on Diversity and Inclusion (collectively, the "Select Committees' Representatives"). Statements from the Select Committees' Representatives are appended hereto.

For the reasons detailed in the appended statements, the Select Committees' Representatives recommend that the NYSBA join the NYCBA in requesting that the Court of Appeals revise the Admission Application so that it complies fully with the New York State Human Rights Law and Family Court Act.[14] It is also recommended that the Court arrange for the instruction and training of Character & Fitness (C&F) Committee members and court personnel involved in the bar admission process to ensure that their review and certification of bar applicants is limited to adult convictions and, as to those convictions, complies with Article 23-A of the New York Corrections Law. To accomplish that purpose, it is respectfully submitted that the Admission Application should be revised to clearly state in the preamble to Sections F, G and H of the Application that applicants are not required to disclose in response to any question, oral or written, including but not limited to Question 26, information about (i) arrests not then pending that did not result in

http://www.bazelon.org/wp-content/uploads/2019/05/Bar-Application-Character-and-Fitness-Questions.pdf.

[14] The OCA recently informed President Brown that it had decided to reject the NYCBA's request regarding Question 26 at its December 2021 meeting without waiting for the NYSBA's report because it had considered and rejected a similar request in 2018 and the NYCBA's report, in its view, offered no new information requiring reconsideration of that 2018 decision. It is the hope and expectation of the NYSBA's Working Group that the OCA and the Administrative Board of the Courts will give careful consideration to the data and scholarly sources cited in this report, as well as the first-hand information provided in the appendices from practicing lawyers and law school officials who work every day with the individuals adversely affected by impermissibly broad criminal record screening. It is submitted, respectfully, that ample grounds for re-consideration can be found there.

conviction, (ii) sealed convictions, (iii) adjournments in contemplation of dismissal, (iv) juvenile proceedings, and (v) youthful offender adjudications.[15]

[15] Whether the Admission Application should distinguish between disclosure of criminal justice involvement within the U.S. and disclosure of criminal records accumulated outside the U.S. is an issue that may require separate consideration in light of the large number of foreign applicants for admission to the New York bar. Because this report focuses on factors specific to criminal justice and legal education in the U.S., no recommendation is made here regarding disclosure of criminal records from foreign jurisdictions.

APPENDIX A: STATEMENT FROM THE CRIMINAL JUSTICE SECTION

The Criminal Justice Section of the New York State Bar Association has examined Question Number 26 and submits that the question not only violates provisions of Executive Law § 296 (16) and Family Court Act § 380.1, but has a disparate impact on people of color when it requires applicants for admission to disclose contacts with the criminal legal system, especially those that do not result in a formal arrest or prosecution; cases that have been sealed or dismissed; juvenile delinquency proceedings or youthful offender adjudications. Sealing of some criminal convictions became law in New York as a result of a Report and Recommendation of the Criminal Justice Section. The House of Delegates adopted the Report, and, after much NYSBA lobbying and lengthy negotiations, Criminal Procedure Law § 160.59 was enacted. The thrust of the Report was a recommendation to permit those convicted of certain crimes to be able to have their records sealed so that they could move on with their lives and not have opportunities to obtain a job or rent an apartment (just as examples) denied to them as a result of a prior record. Question 26 goes beyond inquiring about convictions when it mandates disclosure of incidents where "you were taken into custody." This would require anyone subjected to "stop and frisk," for example, to reveal that, as "custody" in the criminal justice world means, "if a reasonable person in that situation believes that they are not free to leave." The litigation over "stop and frisk" established that it was overwhelmingly conducted against young people of color. Certainly, it would not be unreasonable for a young person, especially if that person is a minority, who is stopped by the police and frisked, to believe that they were not "free to leave" – and thus were in custody and required to reveal this in response to Question 26. A recent Court of Appeals decision, *People v. Wortham*, 2021 N.Y. Slip Op. 06350, 11- 23-21, described a New York City Police Department policy of handcuffing and questioning all occupants of a home or apartment that is being searched, regardless if any contraband is recovered or an arrest made. The Court indicates that the People conceded that this resulted in these individuals being "in custody." Again, an applicant would have to reveal this when answering Question 26. What a negative impact this question must have on any individual, especially an individual from a disadvantaged community, when considering a career in the law.

The NYSBA Task Force on Racial Justice and Police Reform highlighted the implicit bias faced and the disparate treatment of minorities in the criminal legal system. Question 26 requires an applicant to reveal any violations of law. When an individual is convicted of a "violation" they are routinely advised that this is not a criminal conviction and will not result in a criminal record. In addition, violation pleas are "sealed." Many cases are resolved in this fashion, not necessarily because of the validity of the charges, but as an expeditious vehicle to get an individual out from the criminal legal system or in some instances out of custody. As people of color comprise a majority of those involved in the criminal legal system, this question has a significantly disproportionate impact on their ability to enter the legal profession. The same holds true for a plea that results in a youthful offender ("YO") adjudication. The accused and their family are properly advised that this will not result in a criminal record or a conviction, and the proceedings will be sealed. Question 26, by requiring an applicant to list youthful offender adjudications violates the intent of the youthful offender statute with a resulting disparate impact on minority youth who make up a majority of those prosecuted in our criminal legal system. As those of us who practice

in this area know all too well, many cases regardless of the guilt of the accused are resolved with “YO” to enable an accused to get out of the system without a record and without spending countless days in court rather than in work or school. Raise the Age was a national movement to remove certain teenagers from the adult legal system. The intent of this legislation was to provide young people, whose brain functioning was not fully developed, with an opportunity not to have a criminal record that would follow them for the rest of their lives. Once again Question 26 eliminates the protection that this legislation sought to provide. It clearly violates Family Court Act § 380.1 and should not remain in its current overly broad form. The trend today is to minimize, to the extent possible, the impact of contacts with the criminal legal system that can prevent individuals from leading a lawful and productive life. The Criminal Justice Section submits that Question 26 goes in the completely opposite direction, especially as the criminal legal system has a disparate impact on and implicit bias against people of color, and therefore should be eliminated or amended as proposed.

APPENDIX B: STATEMENT FROM THE COMMITTEE ON CHILDREN & THE LAW

Our committee studied the marked impact of Question 26 on juveniles with records who have rehabilitated themselves or are trying to do so by pursuing legal studies and careers.

Question 26 is at clear odds with the rehabilitative purpose of the juvenile justice system. That system is built upon the premise that with appropriate treatment and training, youth who have committed crimes are capable of becoming law-abiding members of society who should not be forever tainted by their youthful mistakes. Both the Family Court Act ('FCA") and the Human Rights Law ("NYHRL") include provisions reflecting this important premise.

According to the FCA, "No adjudication under this article shall operate as a forfeiture of any right or privilege or disqualify any person from holding any public office or receiving any license granted by public authority. Such adjudication shall not operate as a disqualification of any person to pursue or engage in any lawful activity, occupation, profession or calling."[16] Similarly, the NYHRL provides, "It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute . . . to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual . . . or by a youthful offender adjudication . . ."[17]

No statute authorizes the Board to ask applicants to the bar about their sealed criminal records. And, because there seems to be no reason for the inquiry regarding youthful involvement in the criminal justice system, apart from adversely impacting the application, that inquiry is entirely irrelevant to the application for admission to the bar and should be eliminated.

Requiring applicants to divulge information regarding youthful interactions with the criminal justice system presents an untenable conflict with the sealing provisions of the FCA and NYHRL. The FCA declares, in no uncertain terms, "[u]pon termination of a delinquency proceeding in favor of the respondent, all official records and papers, including judgments and orders of the court, relating to the arrest, the prosecution and the probation service proceedings, shall be sealed and not made available to any person or public or private agency."[18] And, "[e]xcept where specifically required by statute, no person shall be required to divulge information pertaining to the arrest of the respondent or any subsequent proceeding under this article."[19] Similarly, the Human Rights Law provides "An individual required or requested to provide information in violation of this subdivision may respond as if the arrest, criminal accusation, or disposition of such arrest

[16] FCA § 381.1(2).

[17] Exec. Law § 296(16).

[18] FCA § 375.1.

[19] FCA § 380.1(3).

or criminal accusation did not occur."[20] Question 26 gives applicants an untenable choice: either disclose the confidential/sealed information and risk facing the adverse inferences that may be drawn therefrom, or withhold the information and face the ramifications that may flow from their omission. That choice seems all the more impossible for an applicant who has, indeed, been rehabilitated and had no further brush with the law.

On disposition of a juvenile delinquency proceeding, family court judges often reassure the youth that – as provided for in the statute – records pertaining to the matter are not public and should not prevent them from seeking higher education, gainful employment, or public office. The message is, to say the least, encouraging. It tells them that the law recognizes that adolescents are capable of growth and if they comply with the law, they need not fear that the matter impact their ability to become anything they want to be – even an attorney.

The law appropriately tells youth that the future is theirs to create. And so, it is not hard to imagine the disappointment, shock and horror that must be felt by an aspiring lawyer who learns that despite all they have accomplished, and despite the reassurances of the family court judge, and despite the clear language of the law, information regarding that juvenile justice involvement may be revealed as part of the inquiry into whether they should be permitted to practice law.

For these reasons, Question 26 must be revised.

[20] Exec. Law § 296(16).

APPENDIX C: STATEMENT FROM THE COMMITTEE ON LEGAL AID

As our country undergoes a long-overdue reckoning on race, institutions must take action to advance diversity, equity, and inclusion. Recent highly visible acts of police brutality against Black, Indigenous and other people of color (BIPOC) and COVID-19's cruel and disparate impact on communities of color amplify the urgent need to root out racial inequities. Chief Judge Janet DiFiore has taken an important step toward this end by commissioning the October 1, 2020 *Report from the Special Adviser on Equal Justice in the New York State Courts*. The Report calls for a "Commitment From the Top" to eliminate racial bias, including a review of rule changes pertaining to the State judiciary. Consistent with this recommendation we call on the Administrative Board of the Courts (the "Administrative Board") to reform the bar admission process to reduce racial injustice in the legal profession.

Inclusion and diversity in the legal profession will not only improve the quality of representation but will enhance the perceived legitimacy of the profession's institutions. As providers of legal services, we meet BIPOC New Yorkers who are reluctant to apply to law school or have decided not to do so at all because they are afraid their arrest record will prevent them from being admitted to the bar. Law school is very expensive. That expense simply does not make sense for people who believe they will subsequently be denied bar admission due to their arrest record. Also, prospective law students with arrest records are well aware of Question 26 even before they begin law school; most New York law schools include language identical or similar to Question 26 in their admission applications. Question 26 has a chilling effect and contributes to BIPOC underrepresentation in our profession, especially in legal services and defender organizations where we strive to recruit lawyers with shared lived experiences similar to the communities we serve.

As gatekeepers to the legal profession, the Administrative Board must act now to reassess its practices through a racial justice lens and remove institutional barriers to bar admission. As an initial step, we urge the Administrative Board to revise Question 26 of the Character and Fitness Application for Admission to Practice Law in New York State, which unlawfully requires bar applicants to divulge information about all arrests, including juvenile delinquency arrests and sealed arrests. Specifically, Question 26 on the bar application asks:

> Have you ever, either as an adult or a juvenile, been cited, ticketed, arrested, taken into custody, charged with, indicted, convicted or tried for, or pleaded guilty to, the commission of any felony or misdemeanor or the violation of any law, or been the subject of any juvenile delinquency or youthful offender proceeding? Traffic violations that occurred more than ten years before the filing of this application need not be reported, except alcohol or drug-related traffic violations, which must be reported in all cases, irrespective of when they occurred. Do not report parking violations.

This question violates public policy, has a racially discriminatory impact, and patently violates the law. As a necessary first step to removing racially discriminatory structural

barriers and in order to bring this question into compliance with the Family Court Act and the Human Rights Law, Question 26 must now be amended.

APPENDIX D: STATEMENT FROM THE COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR

The Committee on Legal Education and Admission to the Bar ("CLEAB") focused its analysis of Question 26 on two issues: (1) how do the Character & Fitness ("C&F") Committees in the judicial departments use the information requested by Question 26; and (2) what impact does Question 26 have at the law school level, both on individuals with criminal justice involvement who are considering applying to law school and on law school admissions officials who handle admissions. In that connection, interviews were conducted with officials in the judicial departments who have a role in the C&F process and with deans of the 15 law schools in New York who play a role in recruiting and admitting students to their schools.

The C&F Committee Process

The statutory authority for C&F Committees is found in New York CPLR 9401, which provides that "[t]he appellate division in each judicial department shall appoint a committee of not less than three practicing lawyers for each judicial district within the department, for the purpose of investigating the character and fitness of every applicant for admission to practice as an attorney and counselor at law in the courts of this state." C&F Committee members are typically attorneys in good standing with at least five years of practice experience who are appointed by and serve at the pleasure of the presiding justice of the judicial department in which they serve. In one judicial department, for example, where more than 100 attorneys serve as C&F Committee members, they are appointed to serve a five-year term and are limited to two terms of service.

A prerequisite for admission to the New York bar is a certificate from a C&F Committee stating that the Committee "has carefully investigated the character and fitness of the applicant and that, in such respects, he is entitled to admission." CPLR 9404. The CPLR empowers the C&F Committees to conduct their investigation by means of a "statement or questionnaire" from the applicant but does not define what constitutes good character or fitness to practice law or specify what evidence shows satisfactory character and fitness to practice. Likewise, the CPLR does not dictate the contents of the applicant statement or questionnaire, except to mandate disclosure of the applicant's prior addresses and dates of residence. The CPLR directs the C&F Committees to refuse to certify an applicant in only one circumstance, namely, when the applicant cannot prove: "1. that he supports the constitutions of the United States and of the state of New York; and 2. that he has complied with all the requirements of the applicable statutes of this state, the applicable rules of the court of appeals and the applicable rules of the appellate division in which his application is pending, relating to the admission to practice as an attorney and counselor at law." Notably for the purposes of this analysis, the CPLR does not direct C&F Committees to inquire about an applicant's criminal justice involvement or to deny certification to an applicant with a criminal record.

An application that discloses a criminal record in response to Question 26 will be flagged during the initial screening of applications conducted by staff attorneys in the office of the judicial department clerk. The screeners may request supplemental information from the

applicant about the incidents disclosed and, when a more serious criminal history is disclosed, assign that application for review by a panel of three C&F Committee members rather than the customary single-member review. Most applicants, including those with minor criminal justice system involvement, are interviewed by a single C&F Committee member shortly before or the same day that the applicant is scheduled to take the oath of admission to the bar. In rare instances raising substantial issues regarding admissibility, an applicant may be scheduled for a more formal hearing before a C&F Committee panel. It was estimated that fewer than 1% of the thousands of applications for admission processed each year require a hearing. Included in that 1% are applicants whose disclosures about prior employment or educational discipline, financial difficulties, or other negative events (i.e., not simply a record of criminal justice involvement) raise character and fitness concerns. Only a handful of these hearings result in denial of admission to the bar and, in the recollection of the departmental officials interviewed, denials based solely on an unacceptable criminal history are exceedingly rare. Because the bar admissions process, including the basis for a denial of admission, must by law be kept confidential, unless the denial is challenged in a court action, no data are publicly available concerning the handling of applicants with criminal justice involvement. Consequently, it is not possible to describe how many applicants – and with what degree of criminal justice involvement – are asked for supplemental information, assigned to a three-member C&F panel for review, scheduled for a hearing, or denied admission.

Interviews with well-informed court personnel indicate that the number of applicants denied admission due to criminal justice involvement is very low. On the other hand, it is clear that the opportunity for stereotypical thinking, implicit bias, or even actual prejudice to taint the bar admission process is high. C&F Committee members are not necessarily experienced in the practice of criminal law, family law, or civil rights law, nor are they required to be familiar with the requirements of the New York Human Rights Law and the Family Court Act concerning criminal record issues. Newly appointed C&F Committee members are mentored by seasoned members and can shadow them at the outset of their terms of service; they receive a formal two-hour orientation in at least one judicial department; and they can consult experienced attorneys in the clerk's office for guidance. However, there does not appear to be any written policy statement or practice handbook given to C&F Committee members that describes the categories and quantum of evidence they should rely upon to evaluate applicants or the standards they should and should not apply to that evidence to determine whether the applicant has the character and fitness to practice. Enlisting the personal and professional beliefs and experiences of hundreds of individual attorneys to certify, without formal training or guidance, "good moral character" simply cannot guarantee uniform and fair consideration of bar applicants in accord with the policy judgments and legal requirements set forth in the New York Human Rights Law and Family Court Act. As Justice Hugo Black candidly observed in *Konigsberg v. State Bar of California*, 353 U.S. 252, 262–63 (1975):

> The term "good moral character" has long been used as a qualification for membership in the Bar and has served a useful purpose in this respect. However, the term, by itself, is unusually ambiguous. It can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer. Such a vague qualification, which is easily adapted

to fit personal views and predilections, can be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law.

To eliminate any potential for the inequities inherent in criminal record screening to infect the bar admission process, the Court of Appeals and the Administrative Board of the Courts should (i) revise the questionnaire used by the four judicial departments to state that an applicant need not supply any information, orally or in writing, that licensing agencies are prohibited from requesting by the Human Rights Law and Family Court Act; (ii) prohibit the C&F Committees from relying on such information from other sources in evaluating applicants for admission to the bar; (iii) ensure compliance with Corrections Law §§ 752-753 when inquiring about and evaluating convictions, and (iv) adjust the questionnaire and C&F process, as appropriate, to conform to the requirements of the Clean Slate Bill, if enacted, which is described in detail below.

The Effect of the Pending Clean Slate Bill on Attorney Admissions

Among the factors that need to be considered regarding questions related to an applicant's criminal history are the restrictions imposed by law on the ability of the committees to ask such questions. There are some restrictions found in current law, but a bill pending in the legislature would significantly increase these restrictions. Neither would prohibit such questions in every instance.

We first examine current law. Subdivision 16 of section 296 of the Executive Law prohibits any "person, agency, bureau, corporation or association, *including the state* . . ." (emphasis added) from inquiring about any arrest or criminal accusation not currently pending that was terminated in favor of the individual whose response is sought. Similarly, these entities may not inquire about a criminal proceeding that concluded with an order adjourning the proceeding in contemplation of dismissal or about a youthful offender adjudication.[21]

They are also barred from seeking information when a conviction is sealed after completion of a rehabilitative program[22] or by the court pursuant to an application for sealing by the defendant under a procedure that was added in 2017.[23] However, these sealing provisions are quite limited. The rehabilitative provisions apply only in narrow circumstances. The 2017 statute has seldom been used because the burden is on the person who was convicted to apply for a sealing order by commencing a new proceeding.

In addition, all of these provisions apply in defined situations, such as those relating to employment or credit. Among the situations to which they are applicable is licensing. There are exceptions, such as when an applicant seeks a gun license or a position in a

[21] Inquiry about adult convictions that have not been sealed is permissible, provided the inquiring licensor or employer complies with Article 23-A of the Corrections Law, NY Corr. Law §§ 750, *et seq*. (2016).

[22] Criminal Procedure Law §§ 160.59 and 160.60.

[23] Criminal Procedure Law § 160.55.

police department. However, there is no exception for lawyers seeking admission to the bar.

Finally, the law provides that an individual who is asked a question that is prohibited by any of the above provisions may respond "as if the arrest, criminal accusation, or disposition . . . did not occur."

As noted above, the legislature is seeking to amend these provisions with a bill commonly known as the "Clean Slate Bill".[24] It would substantially enhance the criminal matters that are sealed. The sponsor's memorandum, which would become part of the legislative history if the bill were enacted, describes its purpose as follows: "This bill gives effect and meaning to the often-repeated aphorism that people who have completed their sentences have 'paid their debt to society.'" It will help to assure that their "'continued punishment . . . will end . . .'."

The memorandum further explains that "Once an individual's 'debt to society' is paid, justice requires that the individual not be further punished . . . . This Act will provide such individuals with a Clean Slate to move on with their lives and not be punished in perpetuity. It aims to end perpetual punishment by requiring the expungement of certain records . . . ."

The fundamental provisions of this complex bill are that the records of vehicle and traffic violations are expunged after three years; misdemeanor convictions are expunged three years from the date of sentencing; and felony convictions are expunged seven years from the date of sentencing. For these provisions to be implemented, the defendant may not have a criminal charge pending at the time of expungement, be under probation or parole supervision for the crime or have been convicted of a sex offense. Like the current law, the bill contains exceptions.

Under the bill, the formerly convicted individual would not need to take any action. Rather, the Division of Criminal Justice Services would be required to take the necessary steps when the record of an individual is to be sealed. It would notify the Office of Court Administration, the court in which the individual was convicted, and all appropriate prosecutors' offices, police departments and law enforcement agencies. Upon receiving such a notice, each recipient must immediately seal the record.

There is a provision in the statute that would result in its provisions being applied retroactively. For convictions prior to the effective date, the statute would require "appropriate relief promptly," with sealing to take place no later than two years from that date.

Finally, the statute would amend current subdivision 16 of section 296 of the Executive Law, described above, so that its current provisions would apply to records sealed by virtue of the clean slate statute. Clearly, this statute would greatly expand the number of

[24] A. 6399A.

cases in which the records are sealed and about which the convicted person cannot be questioned, or, if questioned, decline to answer.

For the Character and Fitness Committees, the bill, if enacted, would severely limit their ability to ask candidates about their prior convictions. Basically, all convictions, other than those that fall within an exception, would be sealed after the applicable time period had expired, and the information would not be available to the committees.

The Impact of Question 26 on Law School Admissions

Of the 15 law schools in New York, all but one – SUNY Buffalo Law School – require applicants for admission to disclose at least some criminal record information on their application forms. Most of them request disclosure that is identical or substantially similar in scope to the information requested in Question 26. A few limit their requests to convictions, but even they request disclosure of juvenile and youthful offender convictions. When law schools were asked why their schools request criminal record information, nearly two-thirds answered that they do so because the bar application asks for that information. About one-third answered that they make the request as part of their effort to comply with ABA Accreditation Council rules requiring law schools to admit only students who they reasonably believe are capable of obtaining admission to the bar, including passing the character and fitness review.

The number of applicants who disclose criminal justice involvement on their law school applications is small but not negligible. Ninety percent of the respondents to our survey of New York law schools said that criminal justice involvement appears in at least 1% of their applications each year, and two-thirds reported that such disclosure appears on more than 5% of their applications annually. It is worth noting in connection with that statistic that applicants to law school are required to have a college degree, so that the chilling effect of criminal record screening identified in one study at the college level has already eliminated some criminal-justice-involved individuals from the law school applicant pool.[25] Although there are many reasons applicants to law school fail to complete their applications, and our survey did not probe those reasons, two-thirds of survey respondents who answered reported that up to 10% of applicants to their law schools who disclose criminal justice involvement fail to complete the application process.

Admissions committee officials at the law schools, like their counterparts handling admissions in the State's judicial departments, exclude only a small number of applicants because of their criminal records. At the law school level, survey respondents reported that the applicant's criminal record played a role in denying admission to between 1% and

[25] "Our data analysis and review of SUNY policies show that asking applicants about past felony convictions has a chilling effect, discouraging people from completing the application process, and often ending their hopes of a college degree. We see that many people abandon their plans for a college education when faced with the gauntlet of questions and investigation into their background." *See* Boxed Out: Criminal History Screening and College Application Attrition**,** CENTER FOR COMMUNITY ALTERNATIVES, at 43 (March 1, 2015), https://www.communityalternatives.org/wp-content/uploads/2019/11/boxed-out.pdf.

10% of applicants who disclosed such a record. In other words, at least 90% of applicants with criminal records are offered admission to law school. According to our survey respondents, once admitted to the law school, students with criminal records are indistinguishable from other students with respect to involvement in post-admission disciplinary actions or conduct code violations. Thus, the predictive value of criminal record disclosure in identifying applicants who pose a risk of future misconduct is as much a poor justification for such disclosure in law school admissions as it is in bar admissions.[26]

Whether there is a genuine need to revise Question 26, and whether it is worth the time and effort to do so, should be evaluated in light of two particularly noteworthy survey responses:

1. Our survey respondents were unanimous in predicting that their law schools would revise their applications to reflect any change by the Court of Appeals to Question 26.

2. One admissions dean, after reporting that he has given presentations to college students about law school at which students have publicly and vocally criticized law schools for asking about criminal justice involvement in the face of abundant evidence that the criminal justice system is biased against people of color, and those students of color have demanded to know why they should attend a school or join a profession that acquiesces in that injustice, observed: "Magnitude of harm is not the issue – any single person of color chilled [by the disclosure requirement] is too much."

[26] "The information collected during the character and fitness inquiry does not appear to be very useful in predicting subsequent lawyer misconduct." *See* Leslie C. Levin, Christine Zozula, Peter Siegelman, *A Study of the Relationship between Bar Admissions Data and Subsequent Lawyer Discipline*, UNIVERSITY OF CONNECTICUT, at 42 (March 15, 2013), http://ssrn.com/abstract=2258164.

APPENDIX E: STATEMENT FROM THE YOUNG LAWYERS SECTION

Impact on Attorneys from Underrepresented Groups

The Young Lawyers Section sought the input and view of those directly affected by stop and frisk and similar policies regarding Question 26. Anecdotally, we can confirm that people privately share that they were indeed worried about the effect that this question would have on whether or not they could be admitted to practice in New York following successful completion of the bar exam. Almost all of those who shared this anecdotal evidence with us were Black men. We were unsuccessful in getting anyone to come forward to tell their story and, though powerful, this evidence remains anecdotal.

Given the underrepresentation of Black men and women in the legal profession, coupled with the anecdotal evidence, we suggest that Question 26 should be seen as a potential barrier to the profession given the expensive and time-consuming process to become an attorney. It is likely that this process, combined with a history of being targeted by police conduct which might require a disclosure under Question 26's unjustifiably broad wording, may have deterred an immeasurable number of young people from the study of law.

The Question does not appear to provide any benefit which would even come close to justifying the deterrent effect that we have found in anecdotal evidence alone. In this context, the broad nature of this question could be characterized as an endorsement of structural racism by the profession.

Amplification of These Consequences by Student Debt

Any time we discuss attorney admission, we must place it in the context of student debt and the effect of growing debt on young people and their decision to study law. Many law students and young attorneys find themselves to be in debt by amounts that far exceed those of attorneys who entered the job market a few decades ago. For example, in 2009, the New York Times reported that a bar applicant was denied admission based on his debts of nearly half a million dollars.[27] While this applicant had a larger debt than the average student, it is not uncommon for recent law school graduates and newly admitted attorneys to experience debts of a quarter of a million dollars.

Making the decision to study law with no guarantee that one will be admitted to practice is a gamble that has now become a high stakes gamble. Given that certain aspiring attorneys may be deterred from beginning that journey because the breadth of Question 26 essentially requires them to make disclosures that we know have resulted from these individuals having been targeted for unconstitutional and inappropriate reasons, it cannot

[27] *See* Jonathan D. Glater, *Finding Debt a Bigger Hurdle Than Bar Exam*, N.Y. TIMES (July 1, 2009), https://www.nytimes.com/2009/07/02/business/02lawyer.html?_r=1; In the Matter of Anonymous, an Applicant for Admission to the Bar, N.Y. App. Div. 3d. (March 6, 2009), http://decisions.courts.state.ny.us/ad3/Decisions/2009/D-11-09Anonymous.pdf (the applicant was later admitted to practice in 2012 and is currently registered with no history of public discipline).

be ignored that this can create a significant barrier to undertaking the study of law that will have a negative effect on the diversity of the profession.

It cannot be ignored that, in the 20th Century, discriminatory practices in character and fitness were consciously used to prevent diversity in the profession and even became a vehicle for McCarthyism.[28] If Question 26 still has the effect of deterring diverse individuals from pursuing a career in law, it must be viewed as a relic of the purposeful exclusion of these individuals from the practice of law and as something that has no place in the modern process of bar admission.

No Justification for Requiring a Broader Disclosure to Enter the Profession

Question 26 is significantly broader and vaguer than the disclosure requirements for admitted attorneys. Whereas admitted attorneys are only required to disclose convictions, those applying for admission have to report everything from convictions to mere accusations to even brief stops for questioning. The legal profession is charged with protecting the rights of those accused of a crime on the understanding that mere accusation without conviction should not negatively affect the accused. And yet, in deciding who becomes a part of this profession, Question 26 sends the strong message that accusations and even mild or brief suspicions, often based in bias, should subject the individual – even unreasonably accused or suspected – to deterrence from the process of joining the profession. This is absurdly inappropriate in its hypocrisy.

As the natural home of law students and those applying for admission within the New York State Bar Association, the Young Lawyers Section strongly objects to applicants being subjected to any disclosure requirement broader than that required of practicing attorneys.

[28] *See* Derek Davis, *A Higher Bar*, CHARACTER AND FITNESS Vol. 4 Issue 3 (March/April 2018), https://thepractice.law.harvard.edu/article/a-higher-bar/.

APPENDIX F: STATEMENT FROM THE COMMITTEE ON DIVERSITY, EQUITY, AND INCLUSION

I. INTRODUCTION AND EXECUTIVE SUMMARY

Several NYSBA entities – including the Committee – were directed to expeditiously review and report on the matter. In response to NYSBA President Brown's directive, the Committee has collectively reviewed Question 26 and analyzed the legal and policy considerations surrounding the proposed amendment or elimination of Question 26. Throughout our review and preparation of this response, we have focused specifically on Question 26 and its impact on our ongoing efforts to foster diversity, equity, and inclusion within the profession.

a. Question 26 on the Application for Admission

Question 26 on the application for admission to the New York State bar currently reads as follows:

> *"Have you ever, either as an adult or a juvenile, been cited, ticketed, arrested, taken into custody, charged with, indicted, convicted or tried for, or pleaded guilty to, the commission of any felony or misdemeanor or the violation of any law, or been the subject of any juvenile delinquency or youthful offender proceeding? Traffic violations that occurred more than ten years before the filing of this application need not be reported, except alcohol or drug-related traffic violations, which must be reported in all cases, irrespective of when they occurred. Do not report parking violations."*

b. The NYC Bar's Report and Recommendation

On June 1, 2021, the New York City Bar Association ("NYC Bar") published a report which set forth its concerns regarding the legality and potential inequities contained within Question 26. The NYC Bar report identified the following two core issues in its report: (1) that Question 26 violates New York State law by requiring disclosure of *all* arrests and convictions in express contradiction of the protections afforded and limitations imposed by the Family Court Act and the New York Human Rights Law; and (2) that Question 26, as written, is in direct conflict with efforts to address racial equity and inclusion in the legal profession and undermines principles of fairness.

With respect to the first issue, the NYC Bar noted that Family Court Act ("FCA") § 380.1(3) and the New York Human Rights Law ("NYHRL"), New York Executive Law § 296(16) include limitations on employers, licensing agencies, and other entities on inquiries regarding arrests and/or certain convictions unless otherwise expressly required or permitted by law. Both laws are intended to protect individuals who have (1) juvenile contacts with the criminal justice system, (2) convictions that have been sealed, or (3) obtained dispositions of criminal matters in their favor. In each instance, the law should shield those individuals from future repercussions or further penalties.

With respect to the second issue, the NYC Bar report raised concerns of systemic inequities that are so intertwined in our society, including the disproportionate prosecution and arrests of those in Black and brown communities, that any inquiry of arrests and conviction would likewise disproportionately affect and chill members of those communities from even pursuing admission to the profession and practice of law.

c. **The Office of Court Administration's Request for NYSBA's views concerning the revision of Question 26**

The Office of Court Administration referred this matter to NYSBA for a comprehensive review and report. For reasons explained in greater detail herein, the NYSBA Committee on Diversity and Inclusion concurs with the NYC Bar's assessment and conclusion that the current language in Question 26 is in violation of the letter and spirit of New York law, specifically the protections afforded to individuals under the FCA and the NYHRL as it relates to inquiries about arrests and certain convictions.

At the conclusion of its report, the NYC Bar provided a proposed amendment to Question 26 that removes the obligation to report sealed convictions, juvenile delinquency arrests or adjudications, youthful offender adjudications, criminal cases currently adjourned in contemplation of dismissal, or sealed criminal cases. It is the Committee's position that such an amendment would bring the question into compliance with New York law and improve deeply rooted systemic racial inequities, while simultaneously maintaining the integrity of the profession and achieving the general purpose of Question 26 in the overall attorney application and admission process.

II. **QUESTION 26 IS UNLAWFUL AS WRITTEN**

a. **The New York State Human Rights Law Applies to Licensing Agencies, Including BOLE and C&F Committees**

The NYHRL exists as "an exercise of the police power of the state for the protection of the public welfare, health and peace of the people of this state, and in fulfillment of the provisions of the constitution of this state concerning civil rights."[29] NYHRL § 290(3) provides, *inter alia*, that:

> "[T]he state has the responsibility to act to assure that every individual within this state is afforded an equal opportunity to enjoy a full and productive life and that the failure to provide such equal opportunity . . . not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants."

In essence, the NYHRL was promulgated to eliminate and prevent discrimination in employment and licensing, among other things.

[29] *See* NYHRL § 290(2).

Although the term "licensing agency" is not a defined term in NYHRL § 292, we can conclude from the language set forth in the relevant section of the NYHRL that it applies to licensing agencies, including the Board of Law Examiners ("BOLE") and/or the Character and Fitness (C&F) Committees, because such agencies are responsible for, and serve as the gateway to, admission to the bar and the ability to practice law in the state.

b. **The NYHRL Prohibits Questions About Arrests Not Pending and Sealed Convictions, with Exceptions Not Applicable to Bar Applicants**

New York Human Rights Law § 296(15) prevents licensing agencies from denying admission to candidates based on the applicant's "having been convicted of one or more criminal offenses, or by reason of a finding of lack of 'good moral character' which is based upon his or her having been convicted of one or more criminal offenses". However, the NYHRL does not specifically bar licensing agencies from inquiring as to an individual's conviction history.

Notwithstanding the foregoing, the fact that the NYHRL does not expressly forbid licensing agencies and other entities from inquiring into an applicant's conviction history leads us to question what other purpose the gathering of such information could serve. Considering the potentially inflammatory nature of such an inquiry alongside the extremely high likelihood that such information would adversely impact or negatively skew a licensing agency's overall assessment of an applicant, the continued inclusion of Question 26 as it currently reads must be intensely scrutinized.

Even though the NYHRL does not specifically preclude inquiry into an applicant's conviction history, it unequivocally precludes licensing agencies from posing questions about arrests that are not pending and sealed criminal convictions. Specifically, NYHRL § 296(16) provides that it is unlawful for a licensing agency to make any inquiry into an arrest that is not pending, or which was sealed, or resulted in a youthful offender adjudication. While NYHRL § 296(16) contains exceptions to this rule, none of those exceptions apply to New York State bar applicants.

To comply with the NYHRL, BOLE and/or the C&F Committees must limit their respective inquiries regarding prior arrests to matters that are currently pending. For practical reasons, the likelihood of an applicant having such information to report is unlikely. Accordingly, this Committee recommends that BOLE and/or the C&F Committee cease inquiry on this subject, or, at the very least, narrowly tailor the question to seek only lawful and relevant information about the applicant's past.

c. **The Family Court Act Prohibits Compelling a Person to Disclose a Juvenile Arrest or Conviction**

Family Court Act § 380.1(3) prohibits the compelled disclosure of any information pertinent to the arrest of a respondent juvenile, but there is an exception, "where [disclosure is] specifically required by statute". However, other provisions of the FCA

state unequivocally that a limited number of agencies will invariably have access to juvenile court records.[30] Thus, disclosure is both prohibited and authorized under the FCA, and there is no legal guidance to reconcile these provisions.

BOLE administers bar admissions under the auspices of the New York State Court of Appeals ("Court of Appeals"). This affiliation clouds our ability to fully ascertain whether BOLE is entitled to sealed court records. It is not clear whether BOLE is an "Agency" within the meaning of the statute. Moreover, it is unclear whether the Court of Appeals is authorized to open sealed court records when there is no case or controversy at issue.

With regard to bar admissions, each respective New York State Appellate Division has the ultimate discretion to determine an applicant's character and fitness in any way it sees fit. Thus, we are left questioning whether an inquiry into juvenile adjudication qualifies as a situation that is "specifically required by statute" under FCA § 380.1(3). Such inquiries do not appear to be statutory because they are discretionary and could differ among various Appellate Division C&F Committees.

Unlike the NYHRL, which seemingly includes BOLE and C&F Committees as a "licensing agency," it would be a stretch to place the C&F Committees into the limited category of agencies – including law enforcement agencies – that have access to court records under the FCA. In addition, the FCA directs certain acts or proceedings to be automatically sealed under § 375.1; but again, there are specific people and agencies, including Federal and State Law Enforcement, that are permitted to ask the Court for access to sealed juvenile adjudications.

The latter category could be where authorization can be found for a bar examiner to request a sealed record from the court but in no way meets the standard "where specifically provided by statute". The law is very clear that Professional Licenses can be obtained with sealed records – no unsealing necessary. The agencies that may request sealed records from the court for vetting a job applicant are statutorily limited: agencies within the criminal justice system; courts; law enforcement related jobs; and any employer who will be issuing a firearm for job duties.

Accordingly, Question 26 is unlawful under the FCA insofar as it asks for an applicant's disclosure of "any juvenile delinquency or youthful offender proceeding". Taking the position that BOLE is not an "agency" under the FCA, BOLE does not qualify for access to sealed juvenile records, and the inquiry is improper. Furthermore, such records cannot be unsealed absent a showing that the Court of Appeals can open sealed juvenile records when there is no case or controversy; or that the C&F Committees that are delegated to the Appellate Divisions fit within any of the definitions set forth in FCA § 375.1 for who is entitled to apply to unseal records.

[30] *See e.g.*, FCA Section 380.1(3) and Section 380.1(4).

Notwithstanding the sealed or unsealed status of a juvenile proceeding, FCA § 380.1 specifically restores respondents in a juvenile proceeding their rights and privileges, including the right to hold elected office.

For all of these reasons, Question 26 violates citizens' civil rights expressly granted under FCA § 380.1(2).

III. QUESTION 26 TENDS TO EXCLUDE UNDER-REPRESENTED GROUPS FROM THE LEGAL PROFESSION IN NEW YORK

a. The New York State Bar and Bench are Not Representative of the Diversity of the State's Population or the State's Law School Students

It is axiomatic to state that people of color are under-represented in all facets of the law. The New York State bar and bench are no exception. In July 2020, the American Bar Association reported that although African Americans represent roughly 13 percent of the United States population, only 5 percent of all lawyers in the United States are African American.[31] African Americans have been consistently underrepresented; there has been no change in their participation in the legal field in more than a decade.

This disparity in the legal profession extends beyond the African American community specifically and is prevalent among almost all communities of color. Under-representation within the Hispanic community is even more glaring. The Hispanic community composes an identical 5 percent of the legal population despite representing roughly 19 percent of the United States population. Less than 3 percent of licensed attorneys are Asian American even though the Asian American community accounts for roughly 6 percent of the United States population. Native Americans represent less than one-half of a percent of licensed attorneys. There are no reliable statistics concerning the number of LGBTQIA+ practicing attorneys, but approximately 3 percent of attorneys practicing in firms identified as members of that community.

By contrast, white men and women have been and continue to be over-represented within the legal profession. Though 60 percent of all United States residents identify as non-Hispanic whites, that particular ethnic group makes up the overwhelming majority of licensed attorneys in this country, accounting for nearly 86 percent of the legal profession. Throughout the nation, our profession has fallen short in its efforts to diversify the practice of law. There exists a widening chasm within the legal profession wherein minorities and people of color are under-represented while the majority segment of our population is over-represented.

Given minority under-representation and majority over-representation within the legal profession, it is not surprising that the state and federal judiciary does not reflect the

[31] *See* American Bar Association, *ABA Profile of the Legal Profession 2020* at 34, https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf.

diversity of our society at large. More than 80 percent of all federal judges identify as non-Hispanic whites. Diversity on the federal bench is underwhelming with less than 10 percent of federal judges identifying as African American, and less than 7 percent identifying as Hispanic. Representation from both groups has decreased over the last four years. Though Asian American representation on the federal bench increased in the last four years, Asian Americans still represent less than 3 percent of federal judges. There are only two Native American federal judges in the United States.

The New York State judiciary is more diverse than the federal system in that approximately seventy percent of New York State judges identify as non-Hispanic whites.[32] African Americans represent 14 percent of the New York State Judiciary, with Hispanic Americans representing 9 percent and Asian Americans comprising another 3 percent.[33]

b. Question 26 Has a Chilling Effect on Potential Applicants to Law Schools and Prospective Applicants to the New York State Bar

This committee agrees without exception that Question 26 should be amended insofar as the question explores arrests without conviction, youthful offender adjudications, and sealed criminal dispositions. It is impossible to objectively quantify the effect that such an inquiry has on a given applicant, but there is no doubt that many individuals with prior arrests and sealed criminal dispositions are uncomfortable and embarrassed disclosing information that should not be open for public discussion as a matter of law. This places a prospective law student in the unenviable position of determining whether to invest in a legal education without any assurances that they will be deemed morally fit to practice law after receiving their law degree and passing the bar examination.

c. Question 26 Has a Disparate Impact on BIPOC Applicants

Additionally, inquiries such as those found in Question 26 adversely impact diversity within the legal profession because people of color are between five and 10 times more likely to be arrested than their white counterparts.[34] Insofar as a mere arrest is evidence of nothing, that portion of question 26 has little probative value, if any at all. Moreover, as discussed above, youthful offender adjudications and sealed criminal matters exist so that youthful indiscretions and trivial criminal matters do not burden or restrict individuals who may go on to become productive members of our society. Forcing prospective applicants to disclose such information only serves to reinforce negative stereotypes that far too often plague people of color in society as a whole and the legal profession in particular.

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[32] *See* Statewide Judicial Demographics Report, https://ww2.nycourts.gov/court-research/srjd-report.shtml.

[33] *Id*.

[34] *See* Pierre Thomas, John Kelly & Tonya Simpson, *ABC News Analysis of Police Arrests Nationwide Reveals Stark Racial Disparity,* ABC NEWS (New York) (June 11, 2020), https://abcnews.go.com/US/abc-news-analysis-police-arrests-nationwide-reveals-stark/story?id=71188546.

d. Question 26 Interferes with the Rehabilitative Purposes of the Juvenile and Adult Criminal Justice System

It is difficult to fully prepare for the future if a person is routinely reminded of past errors. The policy behind sealing certain criminal convictions is consistent with the purpose of the FCA and NYHRL in general; to dissuade individuals from criminal behavior and place them on a path toward productive citizenship. The idea that the legal profession has the ability to disregard the laws of New York State in order to inquire about arrests and other matters that are no longer accessible is contrary to the purpose of the laws that have been discussed in this report. As such, Question 26 should be amended or eliminated.

This is not to suggest that an amendment to question 26 will have a significant impact on diversity within New York's legal profession. Indeed, the lack of complete diversity within the legal profession is rooted directly in the socioeconomic disparities that have existed in this country since its inception. Those issues must be addressed at their core if we intend to truly diversify this profession so that New York State attorneys are as diverse as the clients they represent.

IV. REVISING QUESTION 26 WILL NOT IMPAIR THE CHARACTER AND FITNESS COMMITTEE'S ABILITY TO PROTECT THE INTEGRITY AND REPUTATION OF THE STATE'S LEGAL PROFESSION AND CONSUMERS OF LEGAL SERVICES

a. Information about Arrests not Resulting in Conviction and Sealed Convictions has Little Relevance on an Applicant's Fitness to Practice Law

There is no legitimate legal basis to inquire into an arrest that did not result in a conviction. Although probable cause is determined based upon a law enforcement officer's subjective assessment, the standard for criminal liability and conviction is objective, based upon the judgment of the community in the form of a jury, or the observations of a judge. The inability to prove that an individual is guilty beyond a reasonable doubt will inevitably result in the dismissal and disposition of all criminal matters. An applicant for admission to the New York State bar should not be compelled to re-litigate, or even discuss, an arrest that did not result in a conviction in a court of law.

Similarly, the minor infractions, violations, and low-level misdemeanors that are subject to sealing under New York State Law have little to no bearing on an applicant's character and fitness to practice law. In fact, the adjournment in contemplation of dismissal ("ACD") procedure found in the FCA and New York Criminal Procedure Law ("CPL") § 170.55 state without equivocation that such dismissals are ordered "in the furtherance of justice". The FCA requires consent from the accused individual and endows the court with discretion to grant the order. ACD dispositions in adult criminal matters on the other hand require consent from all parties and the court. As such, ACD dispositions are in most instances the result of consent from at least one party to the litigation and the court. Regardless, the end result is a dismissal that the parties have concluded is in the interest

and furtherance of justice. Such dismissal should not be a subject of inquiry for potential applicants to the New York State bar.

Prior convictions may also be sealed under CPL § 160.59. The statute sets forth the criteria for sealing prior convictions and requires (1) that it has been at least ten years since the conviction(s), (2) that the applicant has not been convicted of a crime with those 10 years, and (3) that the matter is not a sex offense, violent felony, or serious felony. Thus, although convictions that are ultimately sealed pursuant to CPL § 160.59 may have some relevance to an applicant's fitness to practice law, the relevance of those sealed convictions is diminished by the passage of time and the subsequent lawful behavior that is a prerequisite to such sealing.

To be sure, there are prior convictions that have and should have prevented individuals from being licensed to practice law. Few could legitimately argue that prior adult criminal conduct is relevant and probative to an applicant's fitness to practice law. However, these are the situations in which additional information must be obtained during the C&F interview process. Conversely, an isolated arrest has little bearing on an individual's character or fitness to practice law. Juvenile adjudications and sealed criminal matters are similarly irrelevant.

b. The Improper Information About Arrests and Sealed Convictions Received from Question 26 Has No Actual Use or Practical Utility to C&F Committees Aside from Evaluating Whether the Applicant is Forthright in Their Response

The main issue of contention is the current requirement to disclose sealed convictions, arrests, and youthful offender adjudication. In preparing these comments, our subcommittee representatives spoke with C&F Committee members within the State's jurisdiction. We were informed that that question 26 is designed to determine whether the candidate will be candid and open. In some jurisdictions, the inquiry is cursory and often limited to follow-up questions concerning the final disposition and whether the candidate was represented by counsel.

We were further informed that there is routinely no opposition from applicants, and the information is readily provided in most instances in this jurisdiction. Although the committee can access an individual candidate's RAP sheet, we were told that such requests are rarely made. The information provided suggested that no applicant has been denied admission to the bar based upon an arrest that was disclosed during the admissions process.

Thus, it seems the purpose of Question 26's inquiry into otherwise non-public contacts with the criminal justice system is to test an applicant's ability to be forthright about matters that they may not be comfortable disclosing. This legitimate purpose must be balanced against the governing principles of law that we are bound to uphold, as well as our collective desire to welcome under-represented populations into a legal profession that undoubtedly needs increased diversity.

BOLE and the C&F Committees should not be permitted to inquire into arrests that did not result in criminal convictions because the presumption of innocence was never rebutted. Likewise, the FCA and NYHRL protections surrounding sealed convictions are meaningless if an otherwise law-abiding applicant must disclose and discuss those same matters years later. Surely, there are other methods that can be used to test an applicant's candor that are consistent with law and policy.

V. REVISING QUESTION 26 WILL HAVE A POSITIVE EFFECT ON THE NEW YORK STATE BAR AND THE BAR ADMISSION PROCESS

Each of the foregoing points demonstrate that Question 26 must be revised at a minimum. Insofar as the current iteration of Question 26 results in an inquiry into non-pending arrests, sealed convictions, and juvenile adjudications, it does not comply with the mandates of the NYHRL and FCA.

Moreover, Question 26 disproportionately impacts those communities of color that have proven more likely to have contacts with the criminal justice system and presents yet another obstacle to creating representative diversity within our profession. Lastly, those portions of Question 26 that delve into matters that are otherwise not accessible to the public have no probative value regarding a candidate's fitness to practice law. The integrity and reputation of the New York State Legal Profession are best served when our state bar promulgates policies and procedures that comport with the laws of our state.

In light of the foregoing, we propose that Question 26 of the application for admission to the New York State bar should be amended to read as follows:

> *Do you have any unsealed convictions or are you the defendant in a pending criminal case? Traffic violations that occurred more than ten years before the filing of this application need not be reported, except alcohol- or drug-related traffic violations, which must be reported unless they are sealed. Do not report parking violations, juvenile delinquency arrests or adjudications, youthful offender adjudications, criminal cases that have been adjourned in contemplation of dismissal or sealed criminal cases.*

As noted at the outset, this Committee concurs in large part with the NYC Bar's assessment of question 26, and we believe the proposed amendment complies with the laws of New York State and the objectives of NYSBA.

Staff Memorandum

HOUSE OF DELEGATES
Agenda Item #7

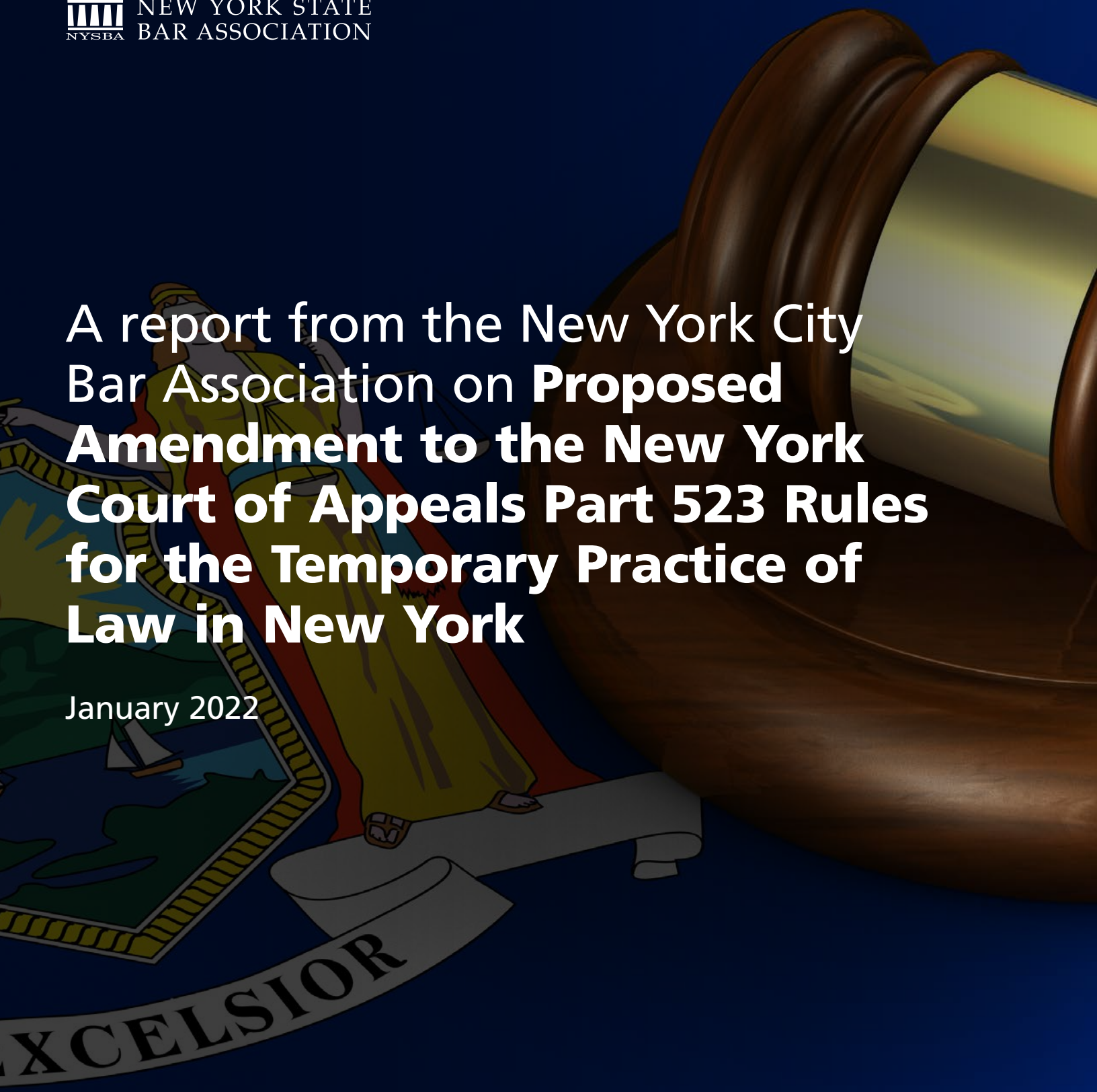
REQUESTED ACTION: Approval of the report and recommendations of the New York City Bar Association with respect to Part 523 of the Rules of the Court of Appeals.

Attached is a report from the New York City Bar Association recommending amendments to Part 523 of the Rules of the Court of Appeals relating to temporary practice in New York by lawyers admitted in other jurisdictions. The amendments would clarify that a lawyer does not engage in the practice of law in New York solely by reason of physically working remotely in New York. It is the nature of the work being performed, not the lawyer's physical location, that is determinative of whether the lawyer is engaging in unauthorized practice.

No comments have been received with respect to this report.

The report will be presented by David G. Keyko, immediate past chair of the City Bar Legal Referral Service Committee.

NEW YORK STATE BAR ASSOCIATION



A report from the New York City Bar Association on **Proposed Amendment to the New York Court of Appeals Part 523 Rules for the Temporary Practice of Law in New York**

January 2022

The views expressed in this report are solely those of the Task Force and do not represent those of the New York State Bar Association unless and until adopted by the House of Delegates.

NEW YORK CITY BAR

FOR CONSIDERATION BY THE NEW YORK STATE BAR ASSOCIATION
HOUSE OF DELEGATES, JANUARY 2022

REPORT BY THE PROFESSIONAL RESPONSIBILITY COMMITTEE, PROFESSIONAL ETHICS COMMITTEE, PROFESSIONAL DISCIPLINE COMMITTEE, LEGAL REFERRAL SERVICE COMMITTEE, SMALL LAW FIRM COMMITTEE AND THE COUNCIL ON THE PROFESSION

PROPOSED AMENDMENT TO NEW YORK COURT OF APPEALS PART 523 RULES FOR THE TEMPORARY PRACTICE OF LAW IN NEW YORK

I. SUMMARY

We propose amendments to the New York Court of Appeals Part 523 ("Rules for the Temporary Practice of Law in New York") in order to confirm that lawyers who practice law outside New York State do not engage in the practice of law in this State solely by virtue of physically working remotely from their homes in this State.[1]

II. RATIONALE FOR THE PROPOSAL

Prior to the recent COVID-19 pandemic, lawyers and other professionals worked from their homes on an occasional basis. Since the pandemic and because of improvements to video communications and the proliferation of software facilitating working remotely, it appears that work patterns have changed. It is expected that lawyers may continue to work remotely from their homes, but now on a more long-term basis. This report proposes the adoption of a new court rule designed to formalize what we believe has always been the case: namely, that the fact that a person is physically situated in this State while practicing law in another jurisdiction does not mean that they are practicing law in this State. In other words, it is the nature of the person's work and their public presence, not their physical location, which is determinative of whether a person is engaged in the unauthorized practice of law.

To take the view that, say, Connecticut or New Jersey lawyers working from their residence in New York on Connecticut or New Jersey matters are engaged in the unauthorized practice of law in New York would be to discourage such lawyers from residing in this State, with all of the revenue and other benefits such residence brings to this State. It would also ignore the growing reality of "work from home" situations in law practice and a variety of other industries. Further, the New York rules against unauthorized practice are primarily designed to protect the New York public, and the public is not put at risk when lawyers happen to be working remotely from their New York residence while practicing law in other jurisdictions.

[1] This proposal, as originally drafted in early 2021, was reviewed by the Committee on Statewide Attorney Conduct, after which COSAC's suggested modifications were incorporated. The final proposed language of the amendment is set forth in an appendix immediately following this report and has COSAC's support and endorsement.

Similarly, many New York lawyers reside in adjoining states, such as Connecticut and New Jersey. Although we do not believe that New York considers those lawyers to be engaged in the unauthorized practice of law every time they cross the New York border to return home, our hope is that clarifying New York's position will encourage such other states to reciprocate and thus provide similar comfort that New York lawyers need not fear that working from their homes in such states will result in liability for unauthorized practice of law claims.

Arizona, Minnesota, New Hampshire, North Carolina and Ohio have temporary practice rules which specifically permit remote practice, as does Colorado so long as the lawyer is not domiciled there. Arizona Rule 5.5, Minnesota Rule 5.5, New Hampshire Rule 5.5, North Carolina Rule 5.5, Colorado R. Civ. P. 205.1, Ohio Rule 5.5. And the bars in Florida, Maine, Utah, Virginia and New Jersey have issued advisory opinions interpreting their respective temporary practice rules to permit remote practice. Florida 2019-4 (2020), Maine 189 (2005), Utah 19-03 (2019), Virginia 1856 (2016), New Jersey 59/742 (2021).

Our proposed amendments are also in accord with the recent American Bar Association ethics opinion, which observes that unauthorized law prohibitions are designed to "protect the public from unlicensed and unqualified practitioners of law. That purpose is not served by prohibiting a lawyer from practicing the law of a jurisdiction in which the lawyer is licensed, for clients with matters in that jurisdiction, if the lawyer is for all intents and purposes invisible *as a lawyer* to a local jurisdiction where the lawyer is physically located, but not licensed." ABA 495 (2020).

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We respectfully urge adoption of these amendments.

Council on the Profession
Dean Matthew Diller and Melissa Colon-Bosolet, Chairs

Professional Discipline Committee
Brenda Correa, Chair

Professional Ethics Committee
Tyler Maulsby, Chair

Professional Responsibility Committee
Aegis Frumento, Chair; Wally Larson, Immediate Past Chair

Legal Referral Service Committee
David G. Keyko, Immediate Past Chair and primary contact person
david.keyko@pillsburylaw.com

Small Law Firm Committee
Anne Wolfson, Chair

Reissued November 2021

APPENDIX

Part 523 with proposed new language in bold and double underlined (the only proposed changes are in § 523.1 and to add a new § 523.5)

Part 523 - Rules for the Temporary Practice of Law in New York

Table of Contents

§ 523.1 General regulation as to lawyers admitted in another jurisdiction

A lawyer who is not admitted to practice in this State shall not:

(a) except as authorized by other rules or law **such as §523.5 below**, establish an office or other systematic and continuous presence in this State for the practice of law; or

(b) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this State.

§ 523.2 Scope of temporary practice

(a) A lawyer who is not admitted to practice in this State may provide legal services on a temporary basis in this State provided the following requirements are met.

(1) The lawyer is admitted or authorized to practice law in a state or territory of the United States or in the District of Columbia, or is a member of a recognized legal profession in a non-United States jurisdiction, the members of which are admitted or authorized to practice as attorneys or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority; and

(2) The lawyer is in good standing in every jurisdiction where admitted or authorized to practice; and

(3) the temporary legal services provided by the lawyer could be provided in a jurisdiction where the lawyer is admitted or authorized to practice and may generally be provided by a lawyer admitted to practice in this State, and such temporary legal services:

(i) are undertaken in association with a lawyer admitted to practice in this State who actively participates in, and assumes joint responsibility for, the matter; or

(ii) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer or a person the lawyer is assisting is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized; or

(iii) are in or reasonably related to a pending or potential arbitration, mediation or other alternative dispute resolution proceeding held or to be held in this or another jurisdiction, if the services are not services for which the forum requires pro hac vice admission; or

(iv) are not within paragraph (3) (ii) or (3) (iii) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted or authorized to practice.

(b) A person licensed as a legal consultant pursuant to 22 NYCRR Part 521, or registered as in-house counsel pursuant to 22 NYCRR Part 522, may not practice pursuant to this Part.

§ 523.3 Disciplinary authority

A lawyer who practices law temporarily in this State pursuant to this Part shall be subject to the New York Rules of Professional Conduct and to the disciplinary authority of this State in connection with such temporary practice to the same extent as if the lawyer were admitted or authorized to practice in the State. A grievance committee may report complaints and evidence of a disciplinary violation against a lawyer practicing temporarily pursuant to this Part to the appropriate disciplinary authority of any jurisdiction in which the attorney is admitted or authorized to practice law.

§ 523.4 Annual report

On or before the first of September of each year, the Office of Court Administration shall file an annual report with the Chief Judge reviewing the implementation of this rule and making such recommendations as it deems appropriate.

§ 523.5 Working from home

A lawyer who is not admitted to practice in this State but who is authorized to practice law in one or more other jurisdictions identified in § 523.2(a)(1), may practice law from a temporary or permanent residence or other temporary or permanent location in this State to the same extent that such lawyer is permitted to practice law in the jurisdiction(s) where the lawyer is duly admitted or authorized, provided:

(a) the lawyer does not practice the law of this State except to the extent permitted by this Part, by other laws of this State, and by the laws of jurisdictions in which the lawyer is authorized to practice;

(b) the lawyer does not use advertising, oral representations, business letterhead, websites, signage, business cards, email signature blocks or other communications to hold himself or herself out, publicly or privately, as authorized to practice law in this State or as having an office for the practice of law in this State;

(c) the lawyer does not solicit or accept residents or citizens of New York as clients on matters that the lawyer knows primarily require advice on the state or local law of New York, except as permitted by 22 NYCRR § 522.4 (in the in-house registration rule) or by other New York or federal law;

(d) the lawyer does not regularly conduct in-person meetings with clients or third persons in New York except as would otherwise be permitted under § 523.2 of this Part; and

(e) when the lawyer knows or reasonably should know that a person with whom the lawyer is dealing mistakenly believes that the lawyer is authorized to practice in this State, the lawyer shall make reasonable efforts to correct the misunderstanding.

NYSBA

Staff Memorandum

HOUSE OF DELEGATES
Agenda Item #8

REQUESTED ACTION: Approval of the report and recommendations of the Committee on Cannabis Law to become the Cannabis Law Section.

Attached is a report from the Committee on Cannabis Law outlining the work it has undertaken since its formation in 2017, including proposals for NYSBA policy, comments on proposed legislation, and the development of CLE programming. The committee notes that it has seen a large increase in applications for membership on the committee; section status would enable more members to engage in activities. Accordingly, the committee requests the House's approval for it to be converted to a section. Under the Bylaws, House approval is required for creation of a section.

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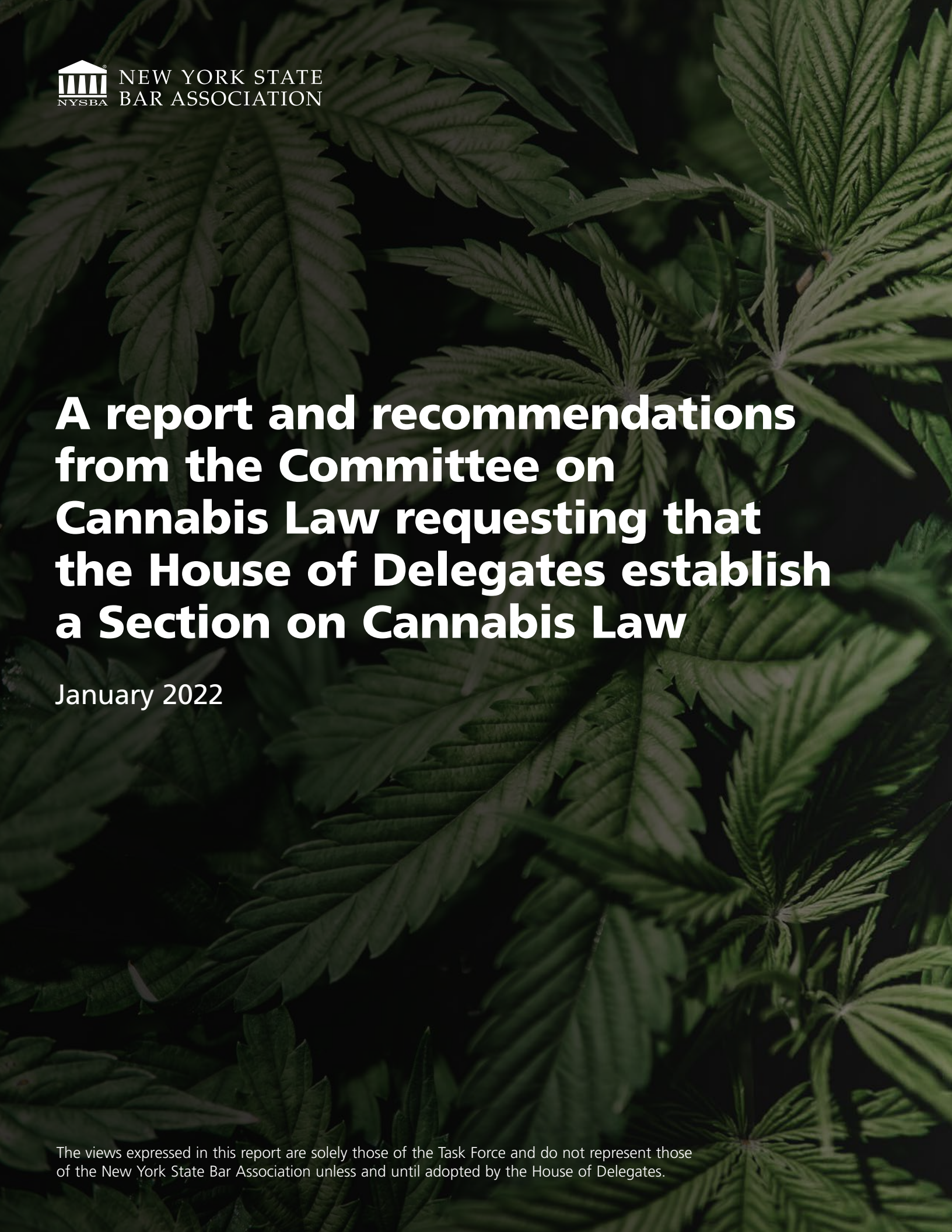
The report will be presented by committee chair Lynelle Bosworth.

NEW YORK STATE BAR ASSOCIATION

A report and recommendations from the Committee on Cannabis Law requesting that the House of Delegates establish a Section on Cannabis Law

January 2022



The views expressed in this report are solely those of the Task Force and do not represent those of the New York State Bar Association unless and until adopted by the House of Delegates.

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

COMMITTEE ON CANNABIS LAW

LYNELLE KATHLEEN BOSWORTH, ESQ.
Chair
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Phone: (518) 689-1469
Email: bosworthl@gtlaw.com

To: House of Delegates, New York State Bar Association
From: Lynelle Bosworth, Chair of the Committee on Cannabis Law
RE: Section Status for the Committee

The Committee on Cannabis Law ("Committee") respectfully requests that the House of Delegates authorize Committee to establish a Section on Cannabis Law, pursuant to Article X., Section 1, of the NYSBA's Bylaws.

The Committee on Cannabis Law serves as the New York State Bar Association's panel of experts regarding the emerging body of law related to cannabis, both on the state and federal level. The Committee drafts legal comments, proposes legislation, pushes for the adoption and implementation of policy by the Executive Committee and House of Delegates, and creates CLEs for the Association in the practice area.

The recent enactment of the Marijuana Regulation and Taxation Act ("MRTA"), legalized adult-use cannabis, expanded the State's medical cannabis and cannabinoid hemp programs and implemented a number of criminal law reforms. The MRTA also created the Cannabis Control Board ("CCB") and Office of Cannabis Management ("OCM"), a new regulatory agency, charged with implementing the provisions of the law, promulgating regulations, issuing licenses for operation, and pursuing enforcement actions. Practitioners throughout the state are advising their clients on how to navigate this new and evolving frontier. In addition, cannabis is not legal in all 50 states nor on the federal level, creating a complex patchwork of laws and presenting a broad spectrum of challenges for attorneys and their clients. In the last several years, the Committee has sought to give attorneys the information that they need to navigate this area of law by sharing updates, resources, and best practices to set the highest possible legal and business standards for licensed entities and their cannabis products.

With the appointments to the CCB and staff to the OCM, the implementation activities are underway in earnest. Emerging business are seeking to expand into a brand-new market and the industry in New York is building itself from scratch. New York will soon implement a robust regulatory framework which will require the advice of attorneys. Moreover, there are a number of criminal law provisions practitioners are navigating. The Committee of the Association is a key resource for New York's attorneys and to assist in shaping ongoing regulatory activities.

Converting the Committee into a Section will expand the resources of the Committee to better respond to the rapidly emerging area of law and allow materials produced by the Committee to be distributed more widely, thereby increasing the influence of the Section and the value of membership in the Association.

The Current Cap on the Committee's Membership

The Committee currently has 39 members due to the cap placed on the number of attorneys who can join the Committee each year. Upon passage of the MRTA, the committee saw a dramatic increase in applications for appointment to the committee during the normal appointment process -- a direct reflection of the increase in interest from the membership of the Association in this area of law. However, with the cap, we were unable to capitalize on this interest.

As a practice area, cannabis law is wide-ranging and affects business law, criminal law, environmental and employment law, among others. Cannabis legalization will also impact other traditional practice areas such as state and local government, food drug and cosmetic law, intellectual property, and trusts and estates.

The current cap deprives the Committee and other Sections of useful cross-communication and collaboration efforts on educational materials, knowledge sharing, and CLE opportunities.

The Current Problem with Limited Resources

Committees get their resources from the Association directly. This can be a limitation for Committees in a large, or emerging practice area. As a Section, the Committee would be able to leverage the demonstrated interest in this area into section dues. Given the widespread interest in joining the Committee, as a Section, it is conceivable that the resources raised from membership dues and CLEs will make the Section self-sustaining.

Another resource is a greater pool of participating members. As was touched on before, the conversion to a Section will allow a virtually unlimited number of members to participate. The Executive Committee of the Section can leverage larger section membership into more CLE, and educational materials. As the Committee is currently comprised, an increase in membership would allow the committee to create a wider range of CLE topics as more members will be available and will lessen the burden on the relatively small number of Committee members to satisfy the voracious appetite of our members and the public at large for Cannabis CLEs.

Conclusion

Converting the Cannabis Committee to a Section will contribute to Association growth and will position the Association as a leader for practitioners looking for guidance in an emerging market and practice area.

The Committee respectfully requests that the House of Delegates authorize the establishment of a Section on Cannabis Law.

Respectfully Submitted,

Lynelle Bosworth, Chair
Committee on Cannabis Law

THE NEW YORK BAR FOUNDATION
One Elk Street, Albany, NY 12207 (518) 487-5650

The New York Bar Foundation
Annual Meeting
MINUTES

REMOTE MEETING
JANUARY 30, 2021

PRESENT:
Abneri; Adigwe; Alcott; Alicea; Alomar; Alsina; Fernandez; Bahn; Barnes; Bascoe; Battistoni; Baum; Behrins; Beltran; Berkey; Berman; Betz; Billings; Bladykas; Boston; Buholtz; Buzard; Castellano; Chambers; Chandrasekhar; Chang; Christopher; Cohen; Cohen; Cohen; Cohn; Cooper; Dean; DeFio Kean; Degnan; Doerr; Doxey; Doyle; Eberle; Effman; England; Fallek; Fennell; Fernandez; Filabi; Filemyr; Finerty; First; Fishberg; Foley; Fox; Fox; Freedman; Frumkin; Genoa; Gerstman; Getnick; Gilmartin; Gold; Good; Grady; Grays; Griesemer; Grimaldi; Gross; Gutekunst; Gutenberger; Gutierrez; Hack; Harper; Hartman; Heath; Hobika; Holtzman; Jaglom; James; Jimenez; Jochmans; Joseph; Kamins; Kammholz; Kapnick; Katz; Kehoe; Kelly; Kendall; Kenney; Kiernan; Kimura; Kirby; Kobak; Kretser; Kretzing; LaBarbera; Lanouette; Lara; LaRose; Lau-Kee; Lawrence; Leber; Leo; Lessard; Leventhal; Levin; Levy; Lewis; Lindenauer; Lisi; Lugo; MacLean; Madigan; Maldonado; Marinaccio; Markowitz; Maroney; Marotta; Matos; May; McAvey; McElwreath; McGinn; McNamara; McNamara; Meyer; Meyer; Middleton; Miller; Miller; Millett; Milone; Minkoff; Minkowitz; Miranda; Montagnino; Moore; Moretti; Morrissey; Mukerji; Muller; Mulry; Napoletano; Newman; Noble; Nolan; Nolfo; O'Brien; O'Connell; O'Connell; O'Donnell; Onderdonk; Owens; Palermo; Palermo; Palumbo; Pappalardo; Perlman; Pessala; Pitegoff; Pleat; Poster-Zimmerman; Purcell; Radick; Reed; Reed; Riano; Riano; Richardson; Richman; Richter; Rivera Agosto; Robinson; Rosenthal; Rosenthal; Russ; Russell; Ryan; Ryba; Safer; Samuels; Santiago; Scheinkman; Schofield; Schraver; Schwartz-Wallace; Scott; Seiden; Sen; Shafer; Shafiqullah; Shampnoi; Shapiro; Sheldon; Shoemaker; Sigmond; Silkenat; Sise; Slavit; Sonberg; Starkman; Stockli; Stoeckmann; Swanson; Sweet; Tambasco; Taylor; Tesser; Triebwasser; van der Meulen; ;Vaughn; Ventura; Vigdor; Warner; Waterman; Weiss; Westlake; Whiteley; Wimpfhiemer; Wolff; Woodley; Yeung-Ha; Young; Younger;
Zimmerman

President Lesley F. Rosenthal called the meeting to order at 12:00 p.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, 2020 were approved.

Report of officers: Lesley F. Rosenthal thanked the lease negotiating teams for their efforts in working toward a positive outcome of the building discussions, reaffirming the desire of the Foundation to continue to work together and their appreciation of the long and valuable relationship with the association. She noted that the Foundation would welcome an opportunity to meet to discuss the matter. Ms. Rosenthal noted the distribution of the Annual Report which sets forth in detail the operations and activities of the Foundation during 2020. Ms. Rosenthal shared Foundation highlights including:

- Allocated more than $750,00 in grants to 138 grantees across the State for innovative legal services providing access to justice to the least fortunate among us. Through special purpose fundraising efforts, grants were also distributed for COVID19 Emergency Legal Relief as well as assisting veterans in need. Page 35 of the report was referenced that outlines the grants distribution.

- Despite the pandemic, the Foundation distributed $236,000 in fellowships and scholarships benefiting eighty-two students. This included 60 Catalyst Fellowships from the program inspired by Chief Judge Janet DiFiore and matched by every law school in the state.

- In the Foundation's call to action report on Racial Justice, the Foundation researched the connections between racial justice and the rule of law. The Foundation has committed to investing in organizations tackling racism in a systematic and sustained way and has been in touch with NYSBA Task Force Co-chairs T. Andrew Brown and Taa Grays to see how we can work together on this important issue.

- On the topic of women and access to justice, Ms. Rosenthal presented at the 2020 second circuit judicial conference on behalf of the Foundation highlighting the Foundation's work in funding access to justice programs assisting women in human trafficking cases, family law matters, and immigration matters.

Ms. Rosenthal thanked the sponsors of the recent Annual Assembly of the Fellows held on January 29, noting that the inaugural President's award was presented to the Honorable Sol Wachtler.

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 2020 Annual Meeting.

Report of Nominating Committee: Reporting on behalf of the Nominating Committee, Chair David M. Schraver placed in nomination the following slate of nominees presented by the Committee for the position of Director for terms commencing June 1, 2021 for term ending May 31, 2024:

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

A motion was adopted electing said Directors.

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

Respectfully submitted,

Pamela McDevitt
Secretary

THE NEW YORK BAR FOUNDATION
One Elk Street, Albany, NY 12207 (518) 487-5650

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 22, 2022

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, 2022 and concluding May 31, 2025.

- John Christopher, Glen Head
- C. Bruce Lawrence, Rochester
- David Singer, New York City
- David Schraver, Rochester