



**NEW YORK STATE BAR ASSOCIATION  
MEETING OF THE HOUSE OF DELEGATES  
NEW YORK HILTON MIDTOWN, NEW YORK CITY  
AND REMOTE MEETING  
SATURDAY, APRIL 2, 2022 – 9:00 A.M.**

**AGENDA**

1. Call to order, National Anthem, and welcome 9:00 a.m.
2. Approval of minutes of January 22, 2022, meeting 9:03 a.m.
3. Report of Treasurer – Mr. Domenick Napoletano 9:05 a.m.
4. Election of Nominating Committee and State Bar Delegates to ABA House of Delegates – Mr. Michael Miller 9:15 a.m.
5. Report of President – Mr. T. Andrew Brown 9:20 a.m.
6. Presentation of 2022 Ruth Bader Ginsburg Memorial Scholarship Award to Ms. Sierra Sanchez – Mr. T. Andrew Brown 9:45 a.m.
7. Address by Hon. Hector D. LaSalle – Presiding Justice, Appellate Division, Second Department 10:00 a.m.
8. Report of The New York Bar Foundation – Ms. Carla Palumbo 10:15 a.m.
9. Report of Task Force on Racism, Social Equity, and the Law - Ms. Taa R. Grays and Ms. Lillian M. Moy 10:25 a.m.
10. Report and recommendations of Committee on Families and the Law – Ms. Angela O. Burton, Ms. Linda Gehron, and Ms. Susan B. Lindenauer 10:50 a.m.
11. Report of Committee on Law, Youth, and Citizenship – Hon. Jonah I. Triebwasser 11:25 a.m.
12. Administrative Items – Ms. Sherry Levin Wallach 11:35 a.m.
13. New Business 11:45 a.m.
14. Date and place of next meeting:  
Saturday, June 18, 2022  
The Otesaga, Cooperstown, New York, and Remote Meeting

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
REMOTE MEETING  
JANUARY 22, 2022**

.....

**PRESENT**: Abneri; Ahn; Alcott; Alomar; Bahn; Barreiro; Bascoe; Battistoni; Baum; Beltran; Ben-Asher; Berlin; Berman; Bladykas; Bond; Boston; Braunstein; Braverman; Bray; Brown; Burke; Buzard; Carbajal-Evangelista; Carter; Chambers; Chandrasekhar; Chang; Christian; Clouthier; B. Cohen; D. Cohen; O. Cohen; Cohn; Coreno; D'Angelo; Dean; DeFio Kean; Degnan; Doerr; Effman; Eng; England; Feal; Fellows; Filemyr; Finerty; Fogel; Fox; Friedman; Gerstman; Getnick; Gilbert; Gilmartin; Gold; Good; Grady; Grays; Griffin; Gutekunst; Haig; Heath; Hecker; Hill; Himes; Holder; Holtzman; Islam; Jackson; Jaglom; James; Jamieson; Jimenez; Joseph; Kamins; Karson; Kaufman; Kehoe; Kelly; Kendall; Kenney; Kiernan; Kimura; Klugman; Kobak; Kretser; Kretzing; LaBarbera; Lara; Lau-Kee; Lawrence; Leo; Leventhal; Levin; Levin Wallach; Levy; Lewis; Lindenauer; Lisi; Loyola; Lugo; MacLean; Madigan; Marinaccio; Markowitz; Maroney; Marotta; Martin; Matthews; Mazur; McElwreath; McGinn; McGrath; McNamara; Meyer; Middleton; C. Miller; M. Miller; R. Miller; Milone; Minkoff; Minkowitz; Miranda; Montagnino; Morrissey; Mukerji; Muller; Mulry; Napoletano; Newman; Noble; Nowatarski; O'Connell; O'Connor; Pacheco; Palermo; Palumbo; Parker; Purcell; Quaye; Quinones; Radick; Reed; Richman; Richter; Rosenthal; Russ; Russell; Ryan; Safer; Santiago; Schofield; Schram; Schrauer; Schwartz-Wallace; Sciocchetti; Scott; Seiden; Sen; Shafiqullah; Shapiro; Sharkey; Shishov; Silkenat; Silverman; Sise; Skolnik; Slavit; Smith; Sonberg; Starkman; Stoeckmann; Stong; Swanson; Sweet; Tambasco; Tarson; Treff; Triebwasser; van der Meulen; Vaughn; Ward; Warner; Watanabe; Waterman-Marshall; Weis; Welden; Wesson; Westlake; Wolff; Woodley; Yeung-Ha; Younger

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

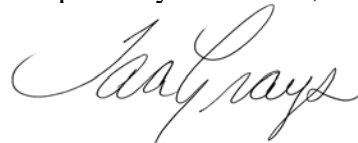
1. Approval of Minutes of October 30, 2021, meeting. The minutes were deemed accepted as distributed.
2. Report of the Nominating Committee and election of officers and members-at-large of the Executive Committee. Michael Miller, chair of the Nominating Committee, reported that the Committee had nominated 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; and Vice Presidents: First District – Diana S. Sen and Michael McNamara, 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 L. Cohen, Kew Gardens; Twelfth – Michael A. Marinaccio, White Plains; Thirteenth – Orin J. Cohen, Staten Island. Nominated as members-at-large of the Executive Committee were Sarah E. Gold, Albany; Ronald C. Minkoff and Kaylin L. Whittingham, New York City; Violet E. Samuels, Rosedale; Mirna M. Santiago, Pawling (Diversity Seat); and Gregory K. Arenson, New York City (Section Seat).

There being no further nominations, a motion was made and unanimously carried to elect the above-named individuals as officers and members-at-large of the Executive Committee.

3. Report of Task Force on the Post-Pandemic Future of the Profession. Task Force co-chairs Mark A. Berman and John H. Gross reported on the ongoing work of the Task Force, including findings from public forums held by each of the Task Force's four working groups and a review of the preliminary results of the member-wide survey conducted by the Task Force. Messrs. Berman and Gross advised that a statistician had been retained to analyze the survey results in detail. The report was received with thanks.
4. Report and recommendations of Committee on Diversity, Equity, and Inclusion. Committee co-chairs Mirna Santiago and Violet E. Samuels, together with Committee members Lillian M. Moy and Nihla F. Sikkander, presented the Diversity Report Card, Eighth Edition, and reported on the findings of the 2021 membership diversity survey and the status of implementation of the 2020 Diversity Plan. After discussion, a motion was adopted to approve the report and recommendations.
5. Report and recommendations of Local and State Government Law Section. Hon. James F. Horan, co-chair of the Local and State Government Law Section's Administrative Law Judges Committee, reviewed a proposal to amend the Model Code of Judicial Conduct for Administrative Law Judges, as adopted by the House of Delegates in April 2009. After discussion, a motion was adopted to approve the report and recommendations.
6. Report and recommendations of Working Group on New York Bar Application Question 26. David R. Marshall, chair of the Working Group, together with Eulas G. Boyd, Jr., member of the Committee on Legal Education and Admission to the Bar, presented a proposal to revise the New York State Bar Examination Admission Application to conform with the New York State Human Rights Law and the Family Court Act. Under this proposal, (1) Character and Fitness committee members and court staff would be trained to ensure that review of bar examination admission applications is in compliance with these requirements as well as the Corrections Act, and (2) the Admission Application would be revised to clearly state that applicants are not required to disclose (A) arrests not then pending that did not result in conviction; (B) sealed convictions; (C) adjournments in contemplation of dismissal; and (D) youthful offender adjudications. After discussion, a motion was made to approve the report and recommendations, after which a motion to table to have the Working Group reconsider the recommendations and bring back a more nuanced report failed. The main motion to adopt the report and recommendations was then approved.
7. Report and recommendations of New York City Bar Association. David G. Keyko, immediate past chair of the New York City Bar Association Legal Referral Service Committee, reviewed recommended amendments to Part 523 of the Rules of the Court of Appeals relating to temporary practice in New York by lawyers in other jurisdictions. After discussion, a motion was adopted to approve the report and recommendations.

8. Report and recommendations of Committee on Cannabis Law. Committee chair Lynelle K. Bosworth presented a proposal to create a Section on Cannabis Law. After discussion, a motion was adopted to approve the proposal.
9. Administrative items. Ms. Levin Wallach reported on the following:  
  
NYSBA delegates to ABA House of Delegates. At the April 2, 2022, meeting, the House would be requested to elect six of the Association's 11 delegates to the American Bar Association House of Delegates. The Nominating Committee had nominated the following individuals: T. Andrew Brown, Rochester; Sharon Stern Gerstman, Buffalo; Henry M. Greenberg, Albany; David P. Miranda, Albany; Richard C. Lewis, Binghamton; and Jacob W. Petterchak, New York City (Young Lawyers Delegate).
9. Date and place of next meeting. Ms. Levin Wallach announced that the next meeting of the House of Delegates would take place on Saturday, April 2, 2022, with options for participation in person at the New York City Hilton Midtown or remotely via Zoom.
10. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,



Taa R. Grays  
Secretary



**Report of President T. Andrew Brown to the  
Annual Meeting of the New York State Bar Association  
January 22, 2022**

Dear Colleagues:

It is a pleasure to be with you once again. Welcome to the one-hundred and forty-fifth Annual Meeting of the New York State Bar Association. It is my great pleasure to see that so many NYSBA members are here with us today in the virtual Zoom auditorium.

On behalf of the entire membership, I extend my profound thanks to Chief Judge Janet DiFiore for addressing us today, and for her remarks reflecting on the state of the judiciary. To the extent that we are able, the organized bar stands ready as a partner to confront the challenges facing our courts and our justice system. I also wish to thank Elizabeth Fine, counsel to the governor, for speaking to us today on behalf of Governor Kathy Hochul. For over one-hundred and forty years the New York State Bar Association has served as a resource to governors and the legislature. We are privileged to continue this important relationship on behalf of the legal profession in the years to come.

The Annual Governance Meeting – by law and by custom – is open to all members of the New York State Bar Association. Yet for a variety of reasons – first and foremost, I’m sure, being the early-morning Saturday meeting time, attendance is usually limited to delegates and few others. Technology has given us the opportunity to allow even broader member participation in the governance of our Association – indeed, participation from the comfort and safety of one’s own home. To those members participating today who are not delegates, I hope that you find this meeting to be a useful opportunity to learn more about the wide work of NYSBA, and perhaps even be encouraged to pursue further volunteer opportunities with our sections, committees, CLE programs, and publications.

The start of a new year is always a time of renewed optimism – and indeed, there is much to look forward to over the course of this year, both within and outside of the Association. The Association will tirelessly advocate to advance our 2022 legislative priorities, including the enactment of a right to counsel in housing and immigration matters, an increase to the assigned counsel rates, the repeal of outdated Judiciary Law 470, and the promulgation of modernized policing practices and policies. Many of you have worked on these efforts. Thank you. Our Sections continue to be engines of cutting-edge content, publications, and events for their members; and I expect that later today we will formally welcome a new group – the Section on Cannabis Law – to our ranks as the twenty-eighth section. And our members, as they always have, continue to work incessantly to promote equal access to justice for all and to strengthen the legal profession.

Yet I would be amiss to not acknowledge the disappointment that many of you are feeling. The simple fact that today’s meeting is being held virtually – almost two years into the pandemic – is

sobering. Certainly no one expected that the sudden shock of isolation and anxiety that we felt when the world shut down in March 2020 would remain a lingering – and recurring – reality.

Of course, the continued spread of COVID-19 and its variants are serious and must be considered in the planning of any in-person events. Health and safety will always come first. Prudence and public health considerations require us again to delay the scheduling of most in-person events. We have continued to find ways to support our members and remain relevant to all sectors of the profession.

The legal profession has profoundly changed over the last two years – some colleagues have stated that they feel the practice of law has changed more over the last two years than it had over the last two decades. Our personal lives and our livelihoods have been significantly altered. It is only a natural human reaction to approach such change – especially such forced change – reactively. We feel the urge to retreat, to return to the past. Indeed, I have felt this way myself many times over the last two years. For trial lawyers you think of such changes as “virtual court” – where there is no touching of exhibits, one can’t move freely around the courtroom. Client, judge, jury, and practitioner may be separated by many miles. Quite clearly, such an experience was not what we trained for in law school, nor even could have imagined over the course of our careers.

But for better or for worse, time does not march backwards, and if history teaches anything it is that what has already been put in place is hard to undo. Rather than resist, we must adapt, and work to diligently steer ourselves, our colleagues, and the profession into the future despite the challenges and uncertainties of what might lay ahead.

What then is the role of a bar association in confronting this unknown? How do we remain relevant for now and well into our future? To the extent that there are answers, our Task Force on Post-Pandemic Future of the Profession is also looking for solutions. . Over the course of last fall, the Task Force held four public forums and conducted a member-wide survey. This review focused on the role of technology, concerns with the remote practice of law, changes in client interaction, expectations for the education and training of law students and access to justice. The Task Force’s final report is still several months away. Thank you, John Gross and Mark Berman, for chairing the Task Force. I look forward to the report and I encourage everyone to remain engaged as we collectively continue to navigate out of the pandemic.

Two significant and pertinent reports were approved at the October meeting of the House of Delegates that will help in charting the way forward – the first being the report of the Emergency Task Force on Solo and Small Firm Practitioners, providing us with a blueprint to move forward, and the second being the report of the Task Force on Attorney Well-being. Over 50% of our members come from a solo or small firm practice setting – To the extent that our colleagues may be struggling to keep up with the rapidly changing practice of law, I pledge that NYSBA will continue to be your supporter through legal education programming, innovative member benefits, and advocacy on behalf of the profession with the judiciary, executive branch, and legislature. Thank you Domenick Napoletano and June Castellano for chairing the Emergency Task Force.

The toils of the last two years have taken a massive toll on the mental health and well-being of attorneys – a profession already plagued by high rates of depression, alcoholism, substance use, and anxiety. These pressures are even more acutely felt by women attorneys, younger attorneys,

and attorneys of color – many of whom have been impacted in myriad ways. If it was not clear before, it is clear now we all must take concrete action to improve our own well-being and that of our fellow practitioners. In that regard, I am very pleased to announce that yesterday the Executive Committee approved the creation of a standing Committee on Attorney Well-being, chaired by Hon. Karen Peters and Libby Coreno. The Committee will immediately begin work to expand attorney well-being resources within the Association.

I would like to turn to a report of tremendous importance which will be presented to the House of Delegates later this morning – the report of the Committee on Diversity, Equity, and Inclusion, which includes the 2021 Association Diversity Report Card. I would first like to thank the committee members, including chairs Mirna Santiago and Violet Samuels, and Lillian Moy and Nihla Sikkander, who will present the report later today, for their exhaustive work on this project. The full and equal participation of attorneys of color and other diverse attorneys in the New York State Bar Association, and truly at every level of the legal profession, is not just a loose aspiration but a realistic goal that is deeply held by me, by my colleagues on the Committee, and indeed by everyone who loves and recognizes the potential of our Association.

We will take action to address the concerns detailed in this report. Indeed, several recommendations have already been implemented. And Mirna Santiago serves as member liaison between the Executive Committee and Committee on Diversity, Equity, and Inclusion, ensuring a clear line of communication with NYSBA leadership and governance. We will also appoint a staff diversity coordinator to work directly with committees, sections, and other stakeholders both internal and external on matters related to diversity, equity, and inclusion. We must also review the number of diversity seats in the House of Delegates. The Bylaws provision that provides for diversity delegates and diversity members-at-large in general will sunset in 2024. At that time, it warrants strong consideration whether to increase the current twelve seats to a greater number to ensure more robust representation in the House.

I remain enthused by the significant work that the Task Force on Racism, Social Equity, and the Law has already undertaken, and I look forward to reviewing the recommendations and proposals being developed by the Task Force members. If you have not already done so, I encourage you to watch the recordings of the Task Force’s public forums that were held in the fall on the interplay of structural racism and barriers to housing, economic, health, education, and environmental justice. Thank you, Taa Grays and Lillian Moy, for chairing this important Task Force.

Similarly, I look forward to reviewing the forthcoming report of the Task Force on the Treatment of Transgender Youth in Sports, led by Jackie Drohan, which has also held several public forums, and to the efforts of the Task Force on Voting Rights and Democracy, led by Jerry Goldfeder. As many of you may know, there is much discussion in Washington about the advancement of voting rights legislation – critically-needed legislation that would increase voter participation and inclusion of all communities in our most important of democratic processes. Support of voting rights is nothing new for NYSBA – the House of Delegates approved the report of the Special Committee on Voter Participation in 2013, and our current Task Force is hard at work in drafting a new and comprehensive report. I am very pleased that the Executive Committee last Friday approved a resolution calling on NYSBA to support the goals of voting rights legislation and to protect access to the ballot and the sanctity of the vote and other key voting rights measures. I

speaking on behalf of the officers of the Association that we will do all that we can to ensure that full and fair enfranchisement is recognized for all New Yorkers.

Lawyers are guardians of justice, and we all must play our part in the struggle to achieve justice both within and outside the profession. We will collectively – continue to respond and adapt to rapidly changing times through innovative solutions, pragmatic problem-solving, and cautious optimism. Will there ever be a return to normalcy? What will normalcy be? Old fixes do not always mend current challenges. We must focus on setting new norms, establishing new expectations, and meeting new challenges head on. Despite it all, I remain hopeful for the future, and hopeful for the future of our profession and bar association. I hope that you join me in this sentiment and even more so that you will join me in navigating the challenges of the future.

Lastly, I want to briefly report on the status of the transfer of One Elk from The Foundation to the Association. As you know, this was approved by the House over the past year. We had hoped to have the transfer completed by now. We have made progress, but we are not there yet. We continue to negotiate over a few final details which I hope to have wrapped up very shortly. The Association and The Foundation sent a joint letter to the New York State Attorney General inquiring whether Attorney General review and approval of the transaction is required. It is our belief that it does not. This will allow for a speedier closing of the deal. We will keep you all apprised of the progress.

Our Association remains strong – financially and organizationally. I look forward to finishing out my term with enthusiasm, doing all that I can to proudly lead the most distinguished and well-respected bar association on the planet. I will be forever grateful for this opportunity. Thank you.





# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item # 3

REQUESTED ACTION: None, as the report is informational.

Attached are the Operating Budget, Statement of Financial Position, Statements of Activities, Statements of Activities (continued) and Capital Items Approved and Purchased for the period ending February 28, 2022.

The report will be presented by Association treasurer Domenick Napoletano.

**NEW YORK STATE BAR ASSOCIATION  
2022 OPERATING BUDGET  
TWO MONTHS OF CALENDAR YEAR 2022**

**REVENUE**

	<b>2022 BUDGET</b>	<b>UNAUDITED RECEIVED 2/28/2022</b>	<b>% RECEIVED 2/28/2022</b>	<b>2021 BUDGET</b>	<b>UNAUDITED RECEIVED 2/28/2021</b>	<b>% RECEIVED 2/28/2021</b>
<b>MEMBERSHIP DUES</b>	9,372,690	7,659,597	81.72%	8,764,295	8,230,064	93.90%
<b>SECTIONS:</b>						
Dues	1,219,400	950,150	77.92%	1,200,000	1,031,471	85.96%
Programs	2,841,555	114,032	4.01%	1,733,315	216,736	12.50%
<b>INVESTMENT INCOME</b>	486,225	(38,329)	-7.88%	494,420	(30,899)	-6.25%
<b>ADVERTISING</b>	218,000	62,604	28.72%	183,000	18,082	9.88%
<b>CONTINUING LEGAL EDUCATION</b>	2,950,000	243,312	8.25%	2,950,000	357,258	12.11%
<b>USI AFFINITY PAYMENT</b>	1,912,000	333,333	17.43%	2,154,000	357,274	16.59%
<b>ANNUAL MEETING</b>	400,000	439,062	109.77%	276,225	488,728	176.93%
<b>HOUSE OF DELEGATES &amp; COMMITTEES</b>	47,500	724	1.52%	27,000	1,312	4.86%
<b>PUBLICATIONS, ROYALTIES AND OTHER</b>	213,500	12,602	5.90%	210,700	32,031	15.20%
<b>REFERENCE MATERIALS</b>	1,247,000	87,900	7.05%	1,300,000	97,922	7.53%
<b>TOTAL REVENUE</b>	<b>20,907,870</b>	<b>9,864,987</b>	<b>47.18%</b>	<b>19,292,955</b>	<b>10,799,979</b>	<b>55.98%</b>

**EXPENSE**

	<b>2022 BUDGET</b>	<b>UNAUDITED EXPENDED 2/28/2022</b>	<b>% EXPENDED 2/28/2022</b>	<b>2021 BUDGET</b>	<b>UNAUDITED EXPENDED 2/28/2021</b>	<b>% EXPENDED 2/28/2021</b>
<b>SALARIES &amp; FRINGE</b>	8,588,946	1,403,791	16.34%	8,334,264	1,303,558	15.64%
<b>BAR CENTER:</b>						
Rent	-	-	0.00%	284,000	31,766	11.19%
Building Services	342,000	50,699	14.82%	365,000	51,449	14.10%
Insurance	190,000	36,100	19.00%	164,000	31,575	19.25%
Taxes	167,250	82,561	49.36%	180,250	83,417	46.28%
Plant and Equipment	862,000	140,754	16.33%	893,500	139,732	15.64%
Administration	610,750	150,358	24.62%	526,100	76,465	14.53%
<b>SECTIONS</b>	4,039,155	112,631	2.79%	2,920,715	87,286	2.99%
<b>PUBLICATIONS:</b>						
Reference Materials	121,500	15,447	12.71%	248,800	14,021	5.64%
Journal	265,000	44,488	16.79%	245,700	43,357	17.65%
Law Digest	47,000	11,047	23.50%	75,000	11,068	14.76%
State Bar News	100,300	35,547	35.44%	85,500	2,300	2.69%
<b>MEETINGS:</b>						
Annual Meeting	360,100	37,425	10.39%	24,250	38,806	160.02%
House of Delegates, Officers and Executive Committee	561,550	39,928	7.11%	309,000	39,759	12.87%
<b>COMMITTEES:</b>						
Continuing Legal Education	370,400	(15,028)	-4.06%	435,000	7,893	1.81%
LPM / Electronic Communication Committee	35,150	-	0.00%	1,400	-	0.00%
Marketing / Membership	909,450	135,413	14.89%	850,000	107,363	12.63%
Media Services	290,000	39,009	13.45%	269,450	51,056	18.95%
All Other Committees and Departments	2,925,875	552,144	18.87%	2,590,135	378,807	14.62%
<b>TOTAL EXPENSE</b>	<b>20,786,426</b>	<b>2,872,314</b>	<b>13.82%</b>	<b>18,802,064</b>	<b>2,499,678</b>	<b>13.29%</b>
<b>BUDGETED SURPLUS</b>	<b>121,444</b>	<b>6,992,673</b>		<b>490,891</b>	<b>8,300,301</b>	

**NEW YORK STATE BAR ASSOCIATION  
STATEMENTS OF FINANCIAL POSITION  
AS OF FEBRUARY 28, 2022**

<u>ASSETS</u>	<u>UNAUDITED 2/28/2022</u>	<u>UNAUDITED 2/28/2021</u>	<u>UNAUDITED 12/31/2021</u>
<b>Current Assets:</b>			
General Cash and Cash Equivalents	20,338,171	17,656,740	19,902,457
Accounts Receivable	74,554	79,936	39,878
Prepaid expenses	1,047,581	605,096	680,393
Royalties and Admin. Fees receivable	811,552	833,394	748,640
Total Current Assets	22,271,858	19,175,166	21,371,368
<b>Board Designated Accounts:</b>			
<u>Cromwell Fund:</u>			
Cash and Investments at Market Value	3,136,872	2,983,286	3,366,406
Accrued interest receivable	0	0	0
	3,136,872	2,983,286	3,366,406
<u>Replacement Reserve Account:</u>			
Equipment replacement reserve	1,117,956	1,117,844	1,117,938
Repairs replacement reserve	794,642	794,562	794,629
Furniture replacement reserve	220,026	220,004	220,022
	2,132,624	2,132,410	2,132,589
<u>Long-Term Reserve Account:</u>			
Cash and Investments at Market Value	32,168,084	30,648,202	34,513,008
Accrued interest receivable	0	0	124,042
	32,168,084	30,648,202	34,637,050
<u>Sections Accounts:</u>			
Section Cash and Investments at Market Value	3,973,038	4,033,402	4,022,992
Cash	951,551	1,160,921	1,172,408
	4,924,589	5,194,323	5,195,400
<b>Fixed Assets:</b>			
Furniture and fixtures	1,463,037	1,463,037	1,463,037
Leasehold Improvements	1,470,688	1,470,688	1,470,688
Equipment	4,089,634	3,988,520	4,053,020
	7,023,359	6,922,245	6,986,745
Less accumulated depreciation	4,804,827	4,117,789	4,680,627
Net fixed assets	2,218,532	2,804,456	2,306,118
Total Assets	66,852,559	62,937,843	69,008,931
<b><u>LIABILITIES AND FUND BALANCES</u></b>			
<b>Current liabilities:</b>			
Accounts Payable & other accrued expenses	591,730	501,952	861,398
Deferred dues	0	(22,429)	6,095,477
Deferred income special	0	192,307	0
Deferred grant revenue	29,906	29,906	29,906
Other deferred revenue	391,026	303,539	369,627
PPP Loan Payable	0	1,482,957	0
Payable To The New York Bar Foundation	(248)	11,205	480
Total current liabilities & Deferred Revenue	1,012,414	2,499,437	7,356,888
<b>Long Term Liabilities:</b>			
Accrued Other Postretirement Benefit Costs	8,216,910	8,766,735	8,156,910
Accrued Defined Contribution Plan Costs	518,670	73,377	398,670
Total Liabilities & Deferred Revenue	9,747,994	11,339,549	15,912,468
<b>Board designated for:</b>			
Cromwell Account	3,136,872	2,983,286	3,366,406
Replacement Reserve Account	2,132,624	2,132,410	2,132,589
Long-Term Reserve Account	23,432,504	21,808,090	25,957,428
Section Accounts	4,924,589	5,194,323	5,195,400
Invested in Fixed Assets (Less capital lease)	2,218,532	2,804,456	2,306,118
Undesignated	21,259,444	16,675,729	14,138,522
Total Net Assets	57,104,565	51,598,294	53,096,463
Total Liabilities and Net Assets	66,852,559	62,937,843	69,008,931

**New York State Bar Association**  
**Statement of Activities**  
**For the Two Months Ending February 28, 2022**

	<b>February 2022</b>	<b>February 2021</b>	<b>December 2021</b>
<b>REVENUES AND OTHER SUPPORT</b>			
Membership dues	7,659,597	8,230,064	9,335,487
Section revenues			
Dues	950,150	1,031,471	1,175,901
Programs	114,032	216,736	699,904
Continuing legal education program	243,312	357,258	2,715,526
Administrative fee and royalty revenue	343,303	373,339	2,408,451
Annual meeting	439,062	488,728	489,977
Investment income	(28,214)	(20,400)	1,386,890
Reference Books, Formbooks and Disk Products	87,900	97,922	1,262,049
Other revenue	93,386	59,739	314,123
	<hr/>	<hr/>	<hr/>
Total revenue and other support	9,902,528	10,834,857	19,788,308
<b>PROGRAM EXPENSES</b>			
Continuing legal education program	100,467	110,018	796,840
Graphics	270,180	198,537	1,172,896
Government relations program	52,705	49,741	324,497
Lawyer assistance program	21,705	21,319	52,865
Lawyer referral and information services	-	311	(63)
Law practice management services	-	8,370	36,455
Media / public relations services	87,232	115,649	577,256
Business Operations	415,266	281,649	2,231,386
Marketing and Membership services	255,690	210,476	1,538,319
Pro bono program	14,918	30,356	145,000
House of delegates	39,928	39,740	266,997
Executive committee	-	19	13,666
Other committees	6,262	15,012	76,452
Sections	112,631	87,286	703,398
Section newsletters	41,698	42,596	245,723
Reference Books, Formbooks and Disk Products	89,043	101,401	692,853
Publications	91,081	56,724	342,384
Annual meeting expenses	37,425	38,806	13,811
	<hr/>	<hr/>	<hr/>
Total program expenses	1,636,231	1,408,010	9,230,735
<b>MANAGEMENT AND GENERAL EXPENSES</b>			
Salaries and fringe benefits	579,704	547,341	2,871,832
Pension plans and other employee benefit plan costs	180,110	114,106	(181,808)
Rent and equipment costs	192,677	217,075	1,187,626
Consultant and other fees	154,547	84,694	680,709
Depreciation and amortization	124,200	124,200	687,038
Other expenses	4,843	3,830	52,308
	<hr/>	<hr/>	<hr/>
Total management and general expenses	1,236,081	1,091,246	5,297,705
<b>CHANGES IN NET ASSETS BEFORE INVESTMENT TRANSACTIONS AND OTHER ITEMS</b>			
Realized and unrealized gain (loss) on investments	7,030,216	8,335,601	5,259,868
Loan forgiveness	(3,022,114)	354,934	3,445,877
		-	1,482,957
	<hr/>	<hr/>	<hr/>
<b>CHANGES IN NET ASSETS</b>	<b>4,008,102</b>	<b>8,690,535</b>	<b>10,188,702</b>
Net assets, beginning of year	53,096,463	42,907,761	42,907,761
	<hr/>	<hr/>	<hr/>
Net assets, end of year	57,104,565	51,598,296	53,096,463



# Staff Memorandum

## **HOUSE OF DELEGATES Agenda Item #4**

REQUESTED ACTION: Election of members of the 2022-2023 Nominating Committee and State Bar Delegates to the ABA House of Delegates.

Attached is a listing of nominations for district representatives for the 2022-2023 Association year, plus alternate members, and a listing of nominations for delegates to the American Bar Association House of Delegates.

The report will be presented by Michael Miller, Chair of the Nominating Committee.

**HOUSE OF DELEGATES  
Agenda Item #4**

**ELECTION OF 2022-2023  
NOMINATING COMMITTEE**

**FIRST DISTRICT**

Bridgette Ahn  
Jai Chandrasekhar  
Vincent Chang  
Lisa Stenson Desamours  
Adrienne Koch  
Susan Lindenauer  
Seth Rosner  
Jay Safer  
Stephen P. Younger  
Richard Swanson, 1<sup>st</sup> alternate  
Margaret J. Finerty, 2<sup>nd</sup> alternate  
Mira Weiss, 3<sup>rd</sup> alternate

**SECOND DISTRICT**

Hon. Cheryl Chambers  
Aimee Richter  
Andrea Bonina, alternate

**THIRD DISTRICT**

Elena DeFio Kean  
Matthew Griesemer  
Matthew J. Kelly, alternate

**FOURTH DISTRICT**

Peter Coffey  
Margaret Gilmartin  
M. Elizabeth Coreno, alternate

**FIFTH DISTRICT**

Timothy Fennell  
Michael E. Getnick  
Donald Doerr, alternate

**SIXTH DISTRICT**

Alyssa M Barreiro  
Kathryn Grant Madigan  
Bruce McKeegan, alternate

**SEVENTH DISTRICT**

June Castellano  
Amy Schwartz Wallace  
Eileen Buholtz, alternate

**EIGHTH DISTRICT**

Norman P. Effman  
Leah R. Nowotarski  
Thomas M. O'Donnell, alternate

**NINTH DISTRICT**

Claire J. Degnan  
James L. Hyer  
John A. Pappalardo  
Hon. Jonah Triebwasser, alternate

**TENTH DISTRICT**

Justin Block  
Lynn Poster-Zimmerman  
TBA  
TBA  
TBA, 1<sup>st</sup> alternate  
Ilene Cooper, 2<sup>nd</sup> alternate

**ELEVENTH DISTRICT**

Richard Gutierrez  
Zenith Taylor  
Arthur Terranova, alternate

**TWELFTH DISTRICT**

Samuel M. Braverman  
Renee C. Hill  
Steven E. Millon, alternate

**THIRTEENTH DISTRICT**

Jonathan B. Behrins, Robert Mulhall  
Shelia T. McGinn, alternate

**NYSBA DELEGATES TO  
ABA HOUSE OF DELEGATES**

Jacob Petterchak, New York City – Young Lawyer Delegate  
T. Andrew Brown, Rochester  
Sharon Stern Gerstman, Buffalo  
Henry M. Greenberg, Albany  
David P. Miranda, Albany  
Richard Lewis, Binghamton



# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #5

REQUESTED ACTION: None, as the report is informational.

Association president T. Andrew Brown will address the House with respect to his presidential initiatives and other developments of interest to the delegates.





# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #6

REQUESTED ACTION: None, as the report is informational.

Sierra Sanchez, a second-year JD candidate at the Maurice A. Deane School of Law at Hofstra University, has been selected as the recipient of the inaugural Ruth Bader Ginsburg Memorial Scholarship Award.

In November 2020, the Association's Executive Committee approved the creation of the Scholarship Award, to be awarded annually to a law student who, through written submission, research project, or an exemplary internship, externship, or pro bono service, demonstrates character consistent with and honoring the legacy of the late Supreme Court associate justice and native New Yorker Ruth Bader Ginsburg.

Attached for reference is a memo dated October 26, 2020, from Immediate Past President Scott M. Karson to the then-members of the Executive Committee which outlines the purpose of the award and the intended selection criteria.

Association president T. Andrew Brown will present the Scholarship Award to Ms. Sanchez.



**SCOTT M. KARSON**

President

Lamb & Barnosky LLP  
534 Broadhollow Road  
Suite 210, P.O. Box 9034  
Melville, New York 11747  
smk@lambbarnosky.com  
631.694.2300

Date: October 26, 2020

To: Members of the NYSBA Executive Committee  
Bernice K. Leber, Chair, Committee on Annual Awards  
Matthew Wayne Alpern, Co-Chair, Committee on Civil Rights  
Hanna F. Madbak, Co-Chair, Committee on Civil Rights  
Terri A. Mazur, Esq., Chair, Women in Law Section

From: Scott M. Karson, President

Re: Ruth Bader Ginsburg Memorial Scholarship Award

With the passing of Ruth Bader Ginsburg, associate justice of the Supreme Court of the United States, the New York State Bar Association mourns a champion of the law and a proud native New Yorker. A past recipient of the Gold Medal, NYSBA's highest honor, Justice Ginsburg's career of service truly exemplified the very purposes of NYSBA – to cultivate the science of jurisprudence; to promote reform in the law; to facilitate the administration of justice; to elevate the standard of integrity, honor, professional skill and courtesy in the legal profession; to cherish and foster a spirit of collegiality among attorneys; and, perhaps most importantly, to apply her knowledge and experience in the field of the law to promote the public good.

I note that Justice Ginsburg was a distinguished law professor in the years before her appointment to the bench, and a zealous advocate for gender equality and the advancement of women's rights. It is only fitting that we properly honor the late justice into the years to come.

I therefore propose the creation of the New York State Bar Association Ruth Bader Ginsburg Memorial Scholarship Award in the amount of \$5,000.00.

The award would be selected and awarded annually to a law student who, through written submission, research project, or an exemplary internship, externship, or pro bono service, demonstrates character consistent with and honoring the legacy of Ruth Bader Ginsburg.

The award criteria should explicitly state that the nominee submissions contain information supporting the fact that the nominees not only have expressed an interest in advancing women's rights and gender equality, but that they have actually demonstrated such interest in their conduct and/or activities to date. This could take many forms, including, without limitation, participation in high school, college or law school activities relating to the advancement of women's rights and/or gender equality or advocacy regarding such issues; involvement with women's initiatives at college or law school, a women's rights organization, workplace, or another public interest

organization that works in the area of the advancement of women's rights and gender equality; course work, research and/or writing on issues relating to these topics; or an internship/summer associate position with an entity or law firm that focuses on these issues, etc.

The deans of each of the fifteen New York State law schools would be invited to nominate one student annually for consideration. The Women in Law Section, in conjunction with the chair/co-chairs of the Committee on Civil Rights and the Committee on Annual Awards, or their designees, collectively, the Ruth Bader Ginsburg Memorial Scholarship Award Committee, would review said submissions and select the honoree. The inaugural award, to be awarded in 2022, will be funded by the Association. The funding of subsequent awards will be revisited in 2022.

As the nominees will be law students, the timeline for submission, review, and selection should be tied to the academic calendar. The deadline and submission requirements would be announced in the late summer of the year prior to which the award will be given, and the announcement should be advertised and promoted concurrent with law school orientation and the beginning of the fall semester. The submission deadline for nominations would be set for early February, shortly after the end of the law school winter break and the beginning of the spring semester. The Ruth Bader Ginsburg Memorial Scholarship Award Committee would review the submissions during the month of February and would select the honoree no later than early March so that the award could be appropriately presented at the April meeting of the House of Delegates.

I convey this memo to you for your review and action to authorize the creation of the Ruth Bader Ginsburg Memorial Scholarship Award and thereby honor the legacy of our late justice.

Sierra Sánchez is a second-year student at the Maurice A. Deane School of Law at Hofstra University (Hofstra Law). She graduated *summa cum laude* from Wittenberg University with a major in English and a minor in Spanish. While attending Wittenberg University, she taught English as a second language to adult immigrants and asylum-seekers. This experience furthered her desire to be an advocate for immigrants and other groups that frequently lack access to representation.

As a first-year law student, Sierra was selected as a Social Justice Fellow for the Freedman Institute for the Study of Legal Ethics. She also co-founded the Women of Color Collective (WoCC) at Hofstra Law with another Social Justice Fellow during the spring of 2021. In addition to providing a support network for women and nonbinary students of color, WoCC has organized events for law students and the local community, including a mock trial with the Girl Scouts of Nassau County. This semester, Sierra is a Legal Intern with Hofstra Law's Asylum Clinic, representing clients who are seeking asylum in the United States.

Sierra spent last summer working as a Summer Associate at Ice Miller LLP in Indianapolis, and this summer, she will be joining Dechert LLP's Summer Associate class in their New York office. She hopes to pursue a career in litigation and to dedicate her pro bono work to immigration and human rights matters.



# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #7

REQUESTED ACTION: None, as the report is informational.

Hon. Hector D. LaSalle, presiding justice, Appellate Division, Second Department, will address the House on initiatives and updates of interest being undertaken in the courts of the Second Department.



# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #8

REQUESTED ACTION: None, as the report is informational.

Carla M. Palumbo, president of the New York Bar Foundation, will update the House on the ongoing work and mission of The Foundation.



# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #9

REQUESTED ACTION: None, as the report is informational.

Taa R. Grays and Lillian M. Moy, co-chairs of the Task Force on Racism, Social Equity, and the Law, will present on the ongoing work of the Task Force and update on the status of the Task Force's forthcoming report and recommendations.



# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #10

REQUESTED ACTION: Approval of the resolution offered by the Committee on Families and the Law.

Attached is resolution from the Committee on Families and the Law entitled “Resolution Addressing Systemic Racism in the Child Welfare System of the State of New York.”

The resolution calls on the New York State Bar Association to:

**Promote action by legislators, policymakers, judges and attorneys to:**  
Create, promulgate, maintain, implement and/or enforce laws, policies, rulings and practices that value and preserve Black families; and

Bring about the repeal of child welfare laws and policies enacted upon racist goals and assumptions that disproportionately impact Black families, or result in unequal consequences.

[Emphasis in original]

Also attached, and presented in support of the resolution, is an accompanying report on racial justice and child welfare. The report provides historical perspective on the intersection of systemic racism and child welfare, reviews the legal framework governing child welfare and the Family Court system in New York State, including the mandate of the New York State Office of Children and Family Services and the role of Family Court child protective proceedings, and reviews recent national and statewide efforts to promote racial justice in child welfare cases. The report also includes several policy and legislative proposals which, in the opinion of the Committee, if enacted into law, would assist in the elimination of structural racism and anti-Black discrimination in the child welfare system in New York State and the United States.

The report with resolution was posted to the Reports Group for initial comments in January 2022. The Committee then hosted an informational session in early February 2022 to preview the report and solicit feedback from stakeholders, including section chairs, committee chairs, and members of the House of Delegates. A revised report with resolution was then resubmitted on March 15, 2022, incorporating several changes suggested during the informational session and comment period.



An explanatory memo summarizing the revisions to the report as of March 15, 2022, is attached for your reference.

The Task Force on Racism, Social Equity, and the Law, and the Committee on Mandated Representation have submitted comments in support of the report.

The report will be presented to the House of Delegates by Committee co-chairs Linda Gehron and Susan B. Lindenauer and Committee member Angela O. Burton.

**New York State Bar Association  
House of Delegates  
April 2, 2022**

**Report and Recommendations of Committee on Families and the Law**

**RESOLUTION ADDRESSING SYSTEMIC RACISM IN THE CHILD WELFARE SYSTEM  
OF THE STATE OF NEW YORK**

The New York State Bar Association recognizes:

Systemic racism resulting from the history of slavery in the United States exists within the NYS child welfare system, impacting Black families disparately. Collective responsibility of legislators, policymakers, judges and attorneys for creating, promulgating, maintaining, implementing and/or enforcing laws, policies, rulings and practices that have not adequately valued Black families and have often resulted in their unnecessary investigation and separation of families.

Systemic racism and disparate treatment of Black families in the NYS child welfare system have often resulted in:

Undue investigation into and control over Black families in New York.

Unequal and inadequate distribution of necessary resources for the preservation of Black families;

Unnecessary harm to children of color and poor children due to trauma of separation from their caregivers; and

The economic and social toll on communities and society as a whole.

WHEREFORE, it is

RESOLVED, that the New York State Bar Association shall

**Promote action by legislators, policymakers, judges and attorneys to:**

Create, promulgate, maintain, implement and/or enforce laws, policies, rulings and practices that value and preserve Black families; and

Bring about the repeal of child welfare laws and policies enacted upon racist goals and assumptions that disproportionately impact Black Families; or result in unequal consequences.



NEW YORK STATE  
BAR ASSOCIATION

# Report and recommendations of the Committee on Families and the Law **Racial Justice and Child Welfare**

April 2022

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  
Committee on Families and the Law

Report and Recommendations on Racial Justice  
and Child Welfare

March 2022

# TABLE OF CONTENTS

Acknowledgments .....	3
Executive Summary .....	4
<b>I. Introduction.....</b>	<b>6</b>
<b>II. Historical Perspective: The Assault on the Integrity of Poor Families of Color.....</b>	<b>8</b>
<b>III. The New York State Legal Framework: Experiences of Black Families in the Child Welfare and Family Court Systems .....</b>	<b>12</b>
A. The New York State Office of Children and Family Services .....	13
1. Pre-Court Family Intervention by the New York State Office of Children and Family Services: Reporting to OCFS .....	14
2. Harms of Investigation by Local Child Protective Services Agencies .....	15
3. “Preventive Services” Provided by Local Child Protective Services Agencies ....	16
4. Host Homes and Other “Shadow Removals” .....	16
B. Family Court Child Protective Proceedings .....	16
1. Judicial Removals, Findings of Abuse or Neglect, and Placement into the Foster System.....	17
2. Termination of Parental Rights.....	18
<b>IV. Recent National and Statewide Efforts to Promote Racial Justice in Child Welfare Cases.....</b>	<b>19</b>
A. Federal Efforts to Improve Legal Representation for Parents and Children in Child Welfare Proceedings .....	19
B. Practice Standards for Parental Representation in New York .....	20
C. New York State Unified Court System – Chief Judge Janet DiFiore Initiatives.....	20
1. New York State Commission on Parental Legal Representation .....	20
2. Report from the Special Advisor on Equal Justice in the New York State Courts.....	21
D. Lawsuits .....	23
1. <i>B.B., et al. v. Hochul, et al.</i> .....	23
2. <i>New York County Lawyers Association, et al. v. State of New York, et al.</i> .....	23
<b>V. Proposals for NYSBA Action.....</b>	<b>24</b>
A. NYSBA Policy Proposals .....	24
1. Proposed NYSBA Resolution: RESOLUTION ADDRESSING SYSTEMIC RACISM IN THE CHILD WELFARE SYSTEM OF THE STATE OF NEW YORK .....	24
2. Proposed NYSBA Policies .....	25
B. Proposed Federal and State Budget Advocacy .....	25

C. Proposed State and Federal Legislative Action and Advocacy .....	26
1. Federal Legislation.....	26
2. State Regulations and Legislation.....	27
D. Proposed Continuation and Strengthening of Support for New York State Family Court Practice Standards .....	28
E. Proposed Support for Civil Rights Litigation .....	29
1. State Action to Increase Assigned Counsel Rates for Parental and Child Representation.....	29
2. U.S.C. sec. 1983 Action for Violations of Due Process and Equal Protection Under Color of Law .....	30

## **Acknowledgments**

The Committee on Families and the Law acknowledges with gratitude the substantial contributions to this report provided by the Committee on Children and the Law, the Committee on Legal Aid, and the Committee on Mandated Representation.

### **Report Drafting Subcommittee:**

Susan B. Lindenauer, Co-Chair, NYSBA Committee on Families and the Law

Linda Gehron, Co-Chair, NYSBA Committee on Families and the Law

Angela Burton

Cynthia Feathers

Janet Fink

## **Executive Summary**

There is a pressing need for an intense examination of the devastating impact of racism in our child welfare system. This Report by the Committee on Families and the Law of the New York State Bar Association is presented in support of a Resolution to adopt policies and engage in legislative advocacy aimed at ending structural racism in the child welfare systems in New York State and the United States. Since the murder of George Floyd, there has been a national reckoning regarding structural racism in law enforcement and throughout the criminal justice system. However, far less attention has been paid to the cases of two Black youths placed in the foster care system who were killed by state actors. Such tragedies are an emblem of a system purportedly designed to protect children that is permeated by bias and often destroys family integrity and autonomy and permanently harms children. Structural racism in child welfare is longstanding and well-documented. What is different today is a heightened awareness and concern about this problem and a great responsibility for leaders to seize the moment to bring about racial justice and widespread reform.

To be sure, the government may properly intervene to protect children from actual serious harm to their life or an imminent threat thereof due to a parent's behavior. Yet only a quarter of child protective cases involve intentional, harmful acts by parents. Most cases involve parents who cannot meet their children's basic needs due to poverty, and these families are disproportionately Black families. The roots of racism in child welfare can be found in our country's colonial past when slave owners often separated children from their parents. As detailed in this Report, state intervention in Black families evolved over time. Over the last half century, Congress passed many laws that have been destructive to Black families. Mandatory reporting laws, enacted by states as a prerequisite to receive certain federal funding, are pernicious. There has been an explosion in reports of suspected neglect that is often related to conditions of poverty endured by Black families who need economic support, not punitive child removal. Congress enacted another law requiring state agencies to make "reasonable efforts" to keep families intact but did not define the term, thus enabling states to make negligible efforts to prevent the placement of Black children. Another federal law has emphasized the termination of parental rights over reunification efforts and has resulted in the massive destruction of Black and brown families. Most recently, Congress passed an act that focuses on states providing preventive services but does not address the systemic biases that pathologize, surveil, and punish Black families.

New York has not escaped structural racism in child welfare. Black parents in our State have less access than other families to services needed to meet their children's basic needs. They are more often the subject of "hotline" reports and are more often investigated. Such probing examinations of families are often traumatic, intrusive, and disruptive. When an investigation results in the filing of an abuse or neglect petition by a local social services agency, Family Court must determine whether the child should be removed during the pendency of the proceeding or whether services can prevent removal. Black families are less likely than other families to receive services, and thus they are more likely to have children removed. Those Black children are more often placed in congregate care than other children and are more apt to have prolonged stays in foster care. Finally, Black parents are more likely than other parents to have their parental rights terminated. Children who "age out" of the system fare poorly compared to children not impacted by the system across a wide range of measures, including post-



secondary education, employment, housing stability, and involvement in the criminal justice system. Since Black children are disproportionately represented in the foster care system, they are subjected to these tragic, enduring outcomes more than other children. The policies and practices of our State's Office of Children and Families Services need to be overhauled so that the agency is part of the solution, not part of the problem.

Efforts have been made to improve parental representation and thereby better promote racial justice. These include attorney performance standards issued by the State Office of Indigent Legal Services and the State Bar Association and the creation of a Commission on Parental Legal Representation. The Commission's Interim Report declared in 2019 that crises in parental representation are particularly acute in child welfare proceedings and urged that robust State funding and oversight and effective legal representation are needed to transform the system. In 2020, an independent review commissioned by the Chief Judge resulted in a scathing indictment of a court system that delivers second-class justice for people of color, particularly in Family Courts, where there is an extreme lack of respect for Black families, and delays in abuse and neglect proceedings result in permanent damage to children. Reform efforts, including judicial bias trainings, are underway. Another avenue being pursued to achieve change is litigation, including a class action alleging that New York City officials unjustly prohibit certain relatives—disproportionately Black people—from becoming foster parents. An increase in the compensation paid to assigned counsel is the aim of another lawsuit.

As this Report details, the problems in the child welfare system are profound and require aggressive and comprehensive action at the state and federal level. The Committee therefore urges the New York State Bar Association to adopt a resolution acknowledging the system racism in our State's child welfare system; to advocate that legislators, policy makers, judges, and attorneys take action to value and preserve Black families; to consider the potential racial impact when reviewing proposed child welfare legislation; to support federal and state funding needed for effective parental representation and preventive services; and to seek the reform of federal and state laws that harm Black families, as set forth in detail in the proposed resolution; to continue to endorse an increase in assigned counsel rates; and to promote strengthened parental and child representation, beginning at the pre-petition stage in child welfare cases, and the effectuation of other recommendations of the Commission on Parental Legal Representation and other statewide advocates of family preservation.

## I. Introduction

The New York State Bar Association Committee on Families and the Law submits this statement in support of a Resolution to adopt policies and legislative advocacy aimed at eliminating structural racism and anti-Black discrimination in the child welfare system of New York State and the United States.<sup>1</sup>

The murder of George Floyd, a 46-year-old Black man, on May 25, 2020, by Derek Chauvin, a white police officer with the Minneapolis Police Department resulted in renewed scrutiny into the impact of racism upon our law enforcement systems and an outpouring of national and international outcry for long-overdue radical changes. On the other hand, the recent killing of a Black youth, 16-year-old Cornelius Frederick, by an employee of the foster care group home at which he was placed by the Michigan Department of Health and Human Services,<sup>2</sup> has not received the same kind of attention. Similarly, while the killing by police officer Nicholas Reardon of 16-year-old Ma’Khia Bryant at a foster care home in Columbus, Ohio has garnered some media attention, protests, and demonstrations in support of her and her family “have paled in comparison with those of George Floyd last summer.”<sup>3</sup>

Because Black children taken from their parents and placed in state “protective custody” (“foster care”) as a result of allegations of abuse or neglect are at particularly heightened risk of harm at the hands of state actors, greater attention must be paid to the impact of anti-Black discrimination and structural racism on child welfare decision making.<sup>4</sup> Moreover, foster care “raises the risk of long-term adverse effects on children compared to socioeconomically similar children who are not removed, including poor school performance, homelessness, arrest, chemical dependency, and mental and physical illness.”<sup>5</sup> Across a wide range of outcome measures such as postsecondary educational attainment, employment, housing stability, public assistance receipt, and criminal justice system involvement, children who “age out” of the system suffer worse life outcomes relative to children not impacted by the system.<sup>6</sup> Given their disproportionate representation in the foster care population, it is fair to say that Black children are

---

1 We acknowledge that structural racism significantly impacts families of many backgrounds, and action is also required on behalf of all such groups as well following additional research and writing.

2 Cornelius Frederick was a 16-year-old Black youth in state custody through the foster care system in Michigan. On April 29, 2022, Cornelius threw a sandwich. He was disciplined by a group home employee, and died after he was restrained by the employee who sat on him for 12 minutes. Tyler Kingkade and Hannah Rapple, *The Brief Life of Cornelius Frederick: Warning signs missed before teen’s fatal restraint*, NBC News, (July 23, 2020, updated Aug. 14, 2020), <https://www.nbcnews.com/news/us-news/brief-life-cornelius-frederick-warning-signs-missed-teen-s-fatal-n1234660>.

3 Audra Henrichs, *Months after Ma’Khia Bryant’s killing, Columbus police more emboldened than ever*, The Guardian, (Aug. 26, 2021), <https://www.theguardian.com/us-news/2021/aug/26/ma-khia-bryant-columbus-ohio-police>.

4 See, e.g., Mandi Eatough, *Foster Care Privatization: How an Increasingly Popular Public Policy Leads to Increased Levels of Abuse and Neglect*, 34 Sigma J. Pol. & Int’l Studies 51 (2017); Staff of S. Comm. on Fin., 115th Cong., *An Examination of Foster Care in the United States and the Use of Privatization 2* (Comm. Print 2017); Richard Wexler, *Foster Care vs. Family Preservation: The Track Record on Safety and Well-Being*, Nat’l Coal. for Child Prot. Reform Issue Paper 1 (2015). For more reporting and data on mistreatment, see Wexler at 2, nn.1–17.

5 Allon Yaroni et al., *Innovations in NYC Health and Human Services Policy: Child Welfare Policy*, Vera Institute of Justice (January 2014), <https://www1.nyc.gov/assets/opportunity/pdf/policybriefs/child-welfare-brief.pdf>.

6 Mark E. Courtney et al., *Midwest Evaluation of Adult Functioning of Former Foster Youth: Outcomes at Age 26*, at 6 (2011); see also Laura Gypen et al., *Outcomes of Children Who Grew Up in Foster Care: Systematic-Review*, 76 Child. & Youth Servs. Rev. 74 (2017).

subjected to these outcomes at higher rate than children of other races.<sup>7</sup> The New York State Bar Association’s Committee on Families and the Law (“the Committee”) stresses the need for intense examination of the devastating impact of racism in our child welfare system.

The Committee’s critique of the child welfare system’s racialized impact is not intended to deny there exists a proactive role for government in promoting children’s safety and well-being. In the United States, child rearing has largely been considered the right and province of parents. At least in theory, government agencies have authority to regulate parental conduct and monitor the parent-child relationship only when there is an actual or imminent threat of serious harm to a child’s life or health from a parent’s behavior.<sup>8</sup> While about a quarter of the situations currently brought to the attention of Child Protective Services (“CPS”) agencies nationwide involve intentional, harmful acts by parents such as sexual conduct with a child, severe physical injury, or substantial emotional abuse, the majority of cases (75% in the most recent national statistics) involve the inability of parents, for reasons of poverty, to meet the basic physical or health needs of their children or to provide minimally consistent and stable parenting.<sup>9</sup> Thus, while the Committee acknowledges the need for government intervention where a parent’s acts or omissions result in or threaten substantial harm to their child, we nevertheless assert the urgent imperative to end the unnecessary disruption and destruction of Black families caused by the child welfare system.<sup>10</sup>

The current impact of America’s history of racism and the ideology of white supremacy are not limited to the criminal legal system and to policing and mass incarceration. The dual cancers of white supremacy and racism exist in virtually all institutions of our society, including those which most directly impact the integrity and autonomy of the family and the health, well-being, and promise of children. Racism’s destructive impact on the lives of Black children, families, and communities is a longstanding and well-documented feature of the United States child welfare system that persists.<sup>11</sup>

The magnitude of the deleterious impact of racism on Black children taken from their families into state custody is clear and appalling: by the time they reach the age of 18 years old, an astounding 53% of Black children in the United States will have been subjected to at least one child protective services (CPS) investigation compared with 28% of white children and 37% of all children.<sup>12</sup> While Black children represent only 14% of the U.S. population, nationwide they make up 24% of the foster care population, despite Black families being no more likely than white families to meet the (highly

---

7 Dettlaff, A., & Weber, K. (June 22, 2020). Now Is the Time for Abolition [Editorial]. The Imprint. Retrieved August 16, 2020, from <https://imprintnews.org/child-welfare-2/now-isthe-time-for-abolition/44706> (“While the potential for these adverse outcomes exists for all children who enter foster care, the risk of experiencing these outcomes is heightened for Black children.”).

8 See, e.g., New York Family Court Act Article 10 – Child Protective Services; FCA 1012 (definitions of neglect and abuse); see also Definitions of Child Abuse and Neglect, Child Welfare Information Gateway (March 2019) (all United States jurisdictions), <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/define/>.

9 Children’s Bureau Press Release, <https://www.acf.hhs.gov/media/press/2021/child-abuse-neglect-data-released>.

10 See, e.g., Bryan Samuels, *Addressing Systemic Racism in our Child Welfare System*, The Imprint (Sept. 15, 2020), <https://imprintnews.org/opinion/addressing-systemic-racism-in-our-child-welfare-system/47430>.

11 Dorothy E. Roberts, *Shattered Bonds: The Color of Child Welfare* (2002); see also The Center for the Study of Social Policy, *Places to Watch: Promising Practices to Address Racial Disproportionality in Child Welfare*, Dec. 2006.

12 Hyunil Kim et al., *Lifetime Prevalence of Investigating Child Maltreatment Among US Children*, 107 Am. J. Pub. Health 274, 278 (2017).

subjective) criteria for child maltreatment.<sup>13</sup> Moreover, Black children remain in state custody longer than white children and are more likely to be placed in institutional settings.<sup>14</sup>

## II. Historical Perspective: The Assault on the Integrity of Poor Families and Families of Color

As outlined above, the impact of the child welfare system on the “lives of people living in poverty and Black, American Indian and Latinx communities rivals the much more widely discussed criminal legal system.”<sup>15</sup> With regard to Black families in particular, the roots of the child welfare system’s threat to family integrity in the American institution of chattel slavery from colonial times onward is well documented.<sup>16</sup> Enslavers did not respect or even acknowledge the family unit of the people they enslaved. They regularly and cruelly separated Black children from their families with no recognition of the family unit.

As outlined by the prominent child advocacy organization, Children’s Rights, in its May 2021 report, *Fighting Institutional Racism at the Front End of the Child Welfare Systems: A Call to Action to End the Unjust, Unnecessary, and Disproportionate Removal of Black Children from Their Families*,<sup>17</sup> organized state intervention into Black children’s family relationships has evolved over time. In the late 18th century and early 19th century, in states where slavery was not recognized, Black children who were alleged to be orphans were generally placed in a workhouse or bonded out as indentured servants.<sup>18</sup> By the middle of the 19th century in non-slavery states, some orphanages were established for Black children, but they were desperately overcrowded and under resourced.<sup>19</sup> With the establishment of the federal Children’s Bureau in 1912, the explicit exclusion of Black children and families from government child welfare efforts was replaced with less formal discrimination. In the 1920s, more than half of state child welfare agencies were reserved for white families, and while by the mid-twentieth

---

13 *Black Children Continue to Be Disproportionately Represented in Foster Care*, The Annie E. Casey Foundation Kids Count Data Center (Apr. 13, 2020), <https://datacenter.kidscount.org/updates/show/264-us-foster-care-population-by-race-and-ethnicity>.

14 U.S. Government Accountability Office. (2007a). *African American children in foster care: Additional HHS assistance needed to help states reduce the proportion in care* (GAO-07-816), <https://www.gao.gov/assets/gao-07-816.pdf>; see also The Annie E. Casey Foundation, *Keeping Kids in Families: Trends in U.S. Foster Care Placement* (2019) (“Systems were least likely to place African-American children in a family.”), <https://assets.aecf.org/m/resourcedoc/aecf-keepingkidsinfamilies-2019.pdf>.

15 Movement for Family Power, “*Whatever they do, I’m her comfort, I’m her protector.*” *How the foster system has become ground zero for the U.S. drug war*, p. 11 (June 2020), <https://static1.squarespace.com/static/5be5ed0fd274cb7c8a5d0cba/t/5eead939ca509d4e36a89277/1592449422870/MFP+Drug+War+Foster+System+Report.pdf>.

16 See, e.g., Andrea Elliot, *Invisible Child: Poverty, Survival & Hope in an American City* (2021); Laura Briggs, *Taking Children: A History of American Terror* (2020); Movement for Family Power, “*Whatever they do, I’m her comfort, I’m her protector.*” *How the foster system has become ground zero for the U.S. drug war*, 11 (June 2020); Emma Peyton Williams, *Dreaming of Abolitionist Futures, Reconceptualizing Child Welfare: Keeping Kids Safe in the Age of Abolition*, 22–44 (Apr. 27, 2020) (B.A. thesis, Oberlin College).

17 Shereen White, et al, *Fighting Institutional Racism at the Front End of the Child Welfare Systems: A Call to Action to End the Unjust, Unnecessary, and Disproportionate Removal of Black Children from Their Families*, 6-11 (Children’s Rights, May 2021), <https://www.childrensrights.org/fighting-institutional-racism-at-the-front-end-of-child-welfare-systems/> (hereinafter *Fighting Institutional Racism*).

18 *Id.* at 7.

19 *Id.* See also Rhonda Evans, *The Howard Colored Orphan Asylum: New York’s First Black-Run Orphanage*, New York Public Library (June 11, 2020), <https://www.nypl.org/blog/2020/06/11/howard-colored-orphan-asylum-new-york>.

century the child welfare agencies did include Black families in their mandate, in most instances no services were provided.<sup>20</sup> As “services shifted from the private to public sector” and state support began to be available to Black families, the child welfare system enhanced its surveillance and “increasingly subjected Black families to the unwarranted policing that had historically been used to separate marginalized families.”<sup>21</sup> Although federal legislation adopted over the past 50 years has ostensibly been supportive of the safety and wellbeing of children and families, inherent systemic and structural biases have meant that the legislation has often facilitated government disruption and destruction of Black families and children.<sup>22</sup>

For example, in 1963, the federal Children’s Bureau proposed model legislation to guide states in setting legal standards for reporting child abuse, and by 1967, all states had enacted mandatory child abuse reporting laws.<sup>23</sup> “Today, mandatory reporters are deeply involved in the disproportionate representation of Black families in the child welfare system.”<sup>24</sup> Further ensnaring Black families into the child welfare system, in 1974, Congress enacted the Child Abuse Prevention and Treatment Act (“CAPTA”), which required that states receiving certain federal funding institute reporting laws mandating certain professionals having contact with children to report suspected child abuse and neglect.<sup>25</sup> The inclusion of “neglect” in the reporting requirement, as well as the ever-expanding network of professionals mandated to initiate investigation of families by CPS “has strengthened the child welfare surveillance state.”<sup>26</sup> Reporters include not only doctors and teachers, but also police officers, social service providers, therapists, drug treatment counselors, domestic violence services providers and other professionals, as well as any other person who suspects child maltreatment.<sup>27</sup> Poverty amplifies a family’s exposure to social service systems, such as public health, public benefits or housing assistance, and education systems – which further increases their exposure to mandated reporters.<sup>28</sup> Since the enactment of CAPTA the number of reports to state child welfare agencies of suspected abuse and neglect have increased exponentially: in 1974, there were 60,000 reports; in 2018, 3,534,000 million children were the subject of a CPS investigation or alternative response.<sup>29</sup> Black families are represented disproportionately in the data reported.<sup>30</sup>

---

20 Children’s Rights, *Fighting Institutional Racism*, *supra* note 17, at 7.

21 *Id.* at 7.

22 *Fighting Institutional Racism*, *supra* note 17, at 7-11 (describing major federal legislation that has defined the experiences of Black families and “that have continued to perpetuate the system’s entrenched racism while strengthening its surveillance and regulatory capacities”).

23 *Id.* at 8.

24 *Id.*

25 For a discussion of the background of the enactment of CAPTA, see Angela Olivia Burton and Angeline Montauban, *Toward Community Control of Child Welfare Funding: Repeal the Child Abuse Prevention and Treatment Act and Delink Child Protection from Family Well-Being*, 11 *Columbia J. Race and Law* 639 (2021).

26 *Fighting Institutional Racism*, *supra* note 17, at 8.

27 Child Welfare Information Gateway, *Mandatory Reporters of Child Abuse and Neglect*, (April 2019), <https://www.childwelfare.gov/pubPDFs/manda.pdf>.

28 As just one example, as of October 2020, approximately 57% of heads of household in New York City’s homeless shelters were Black, and 32% were Latinx, 7% were white. See “New York City Homelessness: The Basic Facts” (October 2020), Coalition for the Homeless, [https://www.coalitionforthehomeless.org/wp-content/uploads/2020/10/NYCHomelessnessFactSheet8-2020\\_citations.pdf](https://www.coalitionforthehomeless.org/wp-content/uploads/2020/10/NYCHomelessnessFactSheet8-2020_citations.pdf). These shelters are staffed primarily with mandated reporters, who are obligated to call in cases against families they are ostensibly required to service.

29 *Child abuse, neglect data released*, Administration for Children & Families (Jan. 15, 2020), <https://www.acf.hhs.gov/media/press/2020/2020/child-abuse-neglect-data-released>.

30 *Id.*



CAPTA also increased disproportionate reporting of Black families by including “neglect” in the mandatory reporting requirement, which was defined to capture conditions most often related to poverty. Notably, almost 75% of child protective proceedings today are brought due to unmet basic needs for healthcare, food and other essentials.<sup>31</sup> Thus, since actionable “neglect” upon which the state can remove a child from his or her family is defined by parental inability to provide their children with the necessities of life, it should not come as a surprise that communities with high child welfare involvement are communities with high rates of poverty.

The expansion of mandatory reporting to include poverty framed as “neglect” has significantly facilitated intrusive surveillance of Black families and the separation of Black children from their families. Rather than providing economic support, supportive services, employment and housing assistance, and streamlined access to government benefits, government policies and laws have instead made poverty a premise for punitive child removal. Because Black Americans are subjected to poverty at higher rates than all other racial groups,<sup>32</sup> the inclusion of conditions such as food insecurity, actual or potential homelessness, and lack of accessible and culturally appropriate medical, mental health, and substance use treatment as grounds for reporting, investigation, and prosecution of families ensures that Black families will be disproportionately subject to mandated reporting. Since receipt by the states of federal funding is conditioned on compliance with mandated reporting laws, the consequences are devastating to poor and disproportionately Black families.

Passage of the Adoption Assistance and Child Welfare Act of 1980 (“AACWA”) did not alleviate the problems faced by poor Black families. AACWA requires state agencies to make “reasonable efforts” to prevent or eliminate the need to place or keep a child in foster care. However, Congress left undefined what activities constitute “reasonable efforts,” providing only that states must make reasonable efforts to preserve and reunify families “(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child’s home; and (ii) to make it possible for a child to safely return to the child’s home.”<sup>33</sup> Given the system’s well-documented racism and anti-Black discrimination, it is not surprising that state efforts to keep families together or to return children to their families when they remove them are typically *pro forma* when it comes to children of color and most particularly Black children.<sup>34</sup>

The 1997 enactment of the federal Adoption and Safe Families Act of 1997 (“ASFA”)<sup>35</sup> has had perhaps the most devastating impact on families of color, and particularly, Black families and children.<sup>36</sup> The Act

---

31 See Daan Braveman and Sarah H. Ramsey, *When Welfare Ends: Removing Children from the Home for Poverty Alone*, 70 Temp. L. Rev. 447, 452-61 (1997), <https://ocfs.ny.gov/programs/cwcs/assets/docs/Blue-Ribbon-Commission-Report-2022.pdf>.

32 John Creamer, *Inequalities Persist Despite Decline in Poverty for All Major Race and Hispanic Origin Groups*, (United States Census Bureau, Sept. 15, 2020), <https://www.census.gov/library/stories/2020/09/poverty-rates-for-blacks-and-hispanics-reached-historic-lows-in-2019.html>.

33 *Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children*, Children’s Bureau (Sept. 2019), <https://www.childwelfare.gov/pubPDFs/reunify.pdf>.

34 *Fighting Institutional Racism*, *supra* note 17, at 9 (observing that “widespread misuse of the “reasonable efforts” provision as a “mere *pro forma* exercise in paper shuffling to obtain Federal funding” became evident within a decade of passage of the AACWA “and has persisted to date.”).

35 PUBLIC LAW 105–89—NOV. 19, 1997.

36 See, e.g., Martin Guggenheim, *How Racial Politics Led Directly to the Enactment of the Adoption and Safe Families Act*

includes provisions to terminate parental rights if a child remains in foster care for 15 of the last 22 months. It prioritizes legal termination of a child’s family bonds over family relationships.<sup>37</sup> Moreover, the introduction of criminal background checks and mandatory disqualification of foster, adoptive, and kinship caretakers has further increased the severing of family relationships even when prior criminal records are years old and unrelated to any safety concern for a child.<sup>38</sup>

Most recently, in 2018, Congress enacted the Family First Prevention Services Act (“FFPSA” or “Family First”) with the stated goal of shifting “fiscal incentives and the focus of the child welfare system back to early prevention of maltreatment and removal.”<sup>39</sup> Although the FFPSA gives states the opportunity to use open-ended federal funds disbursed through Title IV-E of the Social Security Act for “preventive services” such as substance abuse and mental health treatment, “it will not lead to a radical shift in the existing structure that unnecessarily subjects Black families to surveillance and control through state-sponsored monitoring and inherently coercive services.”<sup>40</sup> As Miriam Mack, a prominent family defense attorney in New York City, argues:

The Act keeps intact, and indeed reifies, the fundamental pillars of the family regulation system: pathology, control, and punishment, all of which uphold and further white supremacy. It leaves unchallenged the underlying structure of the family regulation system which works to pathologize Black parents, mostly mothers, and which allows Black communities and homes to be controlled and occupied by family regulation system workers. Despite tinkering at the system’s edges, the Family First Act reinforces the notion that Black children remaining in their homes with their parents necessitates the watchful eye of family regulation system agents.<sup>41</sup>

The FFPSA is also an attempt by the federal government to reduce the institutionalization of children within the foster care system. Nationally, more than a third of young people who are 13 and older in child welfare systems lived in group placements in 2017, and “systems were least likely to place African-American children in a family.”<sup>42</sup> In New York City alone, over six hundred children spend their nights in congregate care settings, far away from their families and communities.<sup>43</sup> Children, some

---

of 1997 - *The Worst Law Affecting Families Ever Enacted by Congress*, 11 *Columbia J. of Race & Law* 711 (2021).

37 See, e.g., Cheri Williams & Kimberly Offutt, *Black Children Are Overrepresented in the Foster Care System: What Should We Do About It?*, *Children’s Bureau Express* (Aug./Sept. 2020) (“When ASFA weakened the ‘reasonable effort’ requirement and prioritized moving children from the taxpayer-funded foster care system into permanent adoptive homes, it failed to invest in family-strengthening, preservation, and reunification efforts. This has disproportionately hurt Black children and families.”),

<https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=218&sectionid=2&articleid=5625>.

38 Child Welfare Information Gateway, *Background Checks for Prospective Foster, Adoptive, and Kinship Caregivers*, (September 2018), <https://www.childwelfare.gov/pubPDFs/background.pdf>.

39 *Fighting Institutional Racism*, *supra* note 17, at 10.

40 *Fighting Institutional Racism*, *supra* note 17, at 10; see also Miriam Mack, *The White Supremacy Hydra: How the Family First Prevention Services Act Reifies Pathology, Control, and Punishment in the Family Regulation System*, 11 *Columbia J. Race and Law* 767 (2021), <https://journals.library.columbia.edu/index.php/cjrl/article/view/8751>.

41 Mack, *White Supremacy Hydra*, *supra* note 40, at 770.

42 The Annie E. Casey Foundation, *Keeping Kids in Families: Trends in U.S. Foster Care Placement*, at 2 (Mar. 2022), available at <https://www.aecf.org/m/resourcedoc/aecf-keepingkidsinfamilies-2019.pdf>.

43 ACS Flash Report Monthly Indicator, p. 17 (February 2022), available at <https://www1.nyc.gov/assets/acs/pdf/data->

as young as 7 years old, are placed in facilities where they are raised by rotating shifts of staff. Tragically, research shows that youth who spend most of their time in group placements are least likely to ever become part of a permanent family.<sup>44</sup> While the FFPSA provides some avenues to attempt to reduce the population of young children sent away for years into institutionalized care, there is significant room for improvement. The law is also inadequate to address the atmosphere of violence, despair, and isolation that children experience when they are placed in congregate care settings at great distance from their families.

While the legal child welfare framework today ostensibly acknowledges the integrity of all families, racial, cultural, and class biases are deeply embedded in the policies, structure, and practices of the child welfare system and predictably result in less respect and support for Black families. These deliberate, systemic biases are evidenced in the operations of institutions such as the child welfare system, the judicial system, the juvenile legal system, and the educational system. As discussed below, the consequences of these biases include the overrepresentation and disparate treatment of families of color subjected to child welfare intervention and oversight through the Family Court of the State of New York.

### III.

#### **The New York State Legal Framework: Experiences of Black Families in the Child Welfare and Family Court Systems**

To fully grapple with the issues involved and how they relate to the current examination of racism in the child welfare system one must look at the data. Over-representation of Black children in New York's foster system has been documented in 35 counties.<sup>45</sup> While the proportion of Black children in the foster system nationwide dropped from 26% to 21% between 2006 to 2016, wider gaps have persisted in cities like New York City. In New York City, the foster care population has shrunk dramatically since the late 1990s. However, according to the NYC Administration for Children's Services, in 2018 Black children constituted 23% of the child population but made up more than 53% of the children in foster care.<sup>46</sup> By contrast, the city's white, Latinx, and Asian children were all relatively underrepresented in foster care compared to their share of the total population. This disparity also exists for the rest of New York State.

For instance, while black children make up approximately 10% of the population in the rest of the state, they comprise over 33% of the total population of youth in foster care.<sup>47</sup> In Upstate New York, according to 2011 OCFS data, in Onondaga County a Black child was six times more likely to be removed from their parents and taken into state custody. As the result of targeted efforts, by 2012, the

---

[analysis/flashReports/2022/02.pdf](#).

44 *Id.*

45 Jessica A. Pryce at al., *Race Equity: Nassau and Onondaga County Report*, Social Work Education Consortium, Univ. of Albany (Dec. 2016), at 3, <https://www.nassaucountyny.gov/DocumentCenter/View/18095/FINAL-OCFS-Report-Race-Equity-2016>.

46 Foster Care Research & Analysis Findings, NYC Administration for Children's Services Presentation to Child Welfare 20/21 Advisory Board (July 11, 2018), at 5,

<https://www1.nyc.gov/assets/acs/pdf/about/2018/ProviderAdvisoryCommitteePowerPointKickOffmeeting2.pdf>.

47 OCFS Request for Proposal Part IV: Disproportionate Minority Representation (DMR) in Child Welfare and Juvenile Justice Systems (December 2015), available at <https://ocfs.ny.gov/main/contracts/docs/DMR-Section-Seven-of-Grant-RFP-2015.pdf>.



county had cut that percentage in half. Likewise, Black children in Monroe County were disproportionately taken into the foster system: in 2020, of the 547 children placed in foster care, 412 (75%) were children of color. Of the children involved in a protective case, 86% are children of color. A significant majority of these children and their families are poor.<sup>48</sup>

In addition to their disproportionate presence in the child welfare system, Black families face *significantly harsher outcomes* at the front-end of the system, leading to the initiation of child protective proceedings in the NYS Family Courts in situations that may have been avoided with the provision of concrete resources or appropriate services. These “front-end” disparities impact every stage of the process, from investigations of alleged child maltreatment to decisions about whether to offer “preventive services,” to the filing of a child abuse or neglect petition through removals of children from their families, fact findings of child neglect or abuse, dispositions of long-term placements of children in foster care and terminations of parental rights.<sup>49</sup>

### **A. The New York State Office of Children and Family Services**

The Office of Children and Family Services (OCFS) is the New York state agency responsible for overseeing and monitoring the child welfare system. Thus, OCFS is designated to receive federal subsidies for various child welfare activities, including social services to keep families together (such as food, housing, mental health and substance abuse treatment) and CPS investigation, case management, and initiation and prosecution of court proceedings.

OCFS has acknowledged the racial disproportionality that exists in child welfare and juvenile justice systems and since 2011 has engaged in some preliminary efforts to address these problems.<sup>50</sup> One such initiative is the adoption by OCFS of a “blind removal” policy, in an effort to address the acknowledged disproportionality of Black children in foster care and the disparity in services received.<sup>51</sup> The OCFS policy is an outgrowth of a strategy piloted in 2011 by the Nassau County Department of Social Services in response to disproportionate representation of children of color in that county’s foster system. With the stated goal of reducing bias at the point of the removal decision-making process, a committee of child welfare workers decide whether to remove children without knowing the family members' names, race, or any other identifying information, such as zip codes, education, and income level. Upon implementation of the pilot, the percentage of Black children removed from their homes was reduced from 57 percent to 21 percent. Despite this initial success, new data show that the decline in removals in Nassau County did not persist, with fluctuations in numbers of Black children entering care every year ranging from as low as 35.5 percent to as high as 61.9 percent. Furthermore, some child welfare workers expressed concerns that the process was potentially harmful and did not address some of the initial reasons Black families were being scrutinized by child welfare agencies, including conditions linked to

---

48 Report of the Commission on Racial and Structural Equity (RASE), Center for Governmental Research (2020), at 146–48.

49 Dorothy Roberts & Lisa Sangoi, *Black Families Matter: How the Child Welfare System Punishes Poor Families of Color*, The Appeal (Mar. 26, 2018), <https://theappeal.org/Black-families-matter-how-the-child-welfare-system-punishes-poor-families-of-color-33ad20e2882e/>.

50 *The OCFS Initiative to Address Racial Disproportionality in Child Welfare and Juvenile Child Welfare and Juvenile Justice*, N.Y. State Off. of Children & Family Servs. (Jan. 19, 2011), <http://ww2.nycourts.gov/sites/default/files/document/files/2018-09/ocfs-disproportionality.pdf>.

51 New York State Office of Children and Family Services, “The Blind Removal Process,” Administrative Directive 20-OCFS-ADM-19, (October 14, 2020), [20-OCFS-ADM-19.docx \(live.com\)](https://www.ocfs.ny.gov/ocfs-adm-19).

poverty and barriers to resources to support families.<sup>52</sup> Notably, the concept of “blind removals” fails to address poverty, which is the main driver of Black families coming into contact with the child welfare system. While the blind removal concept may be useful in highlighting bias in decision-making, if OCFS is to be part of the solution and not part of the problem, it must also take steps to prevent poverty-based conditions from serving as a basis for family disruption in cases of alleged neglect.

### **1. “Pre-Petition Family Intervention by NYS Office of Children and Family Services: Reporting to OCFS**

A families’ entanglement in the child welfare system leading to investigation and government oversight usually occurs upon a report of suspected maltreatment to the State “child abuse hotline.” It is relatively easy to initiate a CPS investigation: currently, an investigation may be initiated even upon an anonymous reporter’s statement indicating they “have reasonable cause to suspect” that a child is an abused or neglected child.<sup>53</sup> An investigation can be extremely intrusive and traumatic for the child and family and can quickly lead to unnecessary state intervention, family disruption, and child separation.<sup>54</sup> As family defense attorney Michelle Burrell observes:

Caseworkers enter homes, not necessarily showing official documentation or identification indicating who they are and why they are there. Once in the home, they ask a series of questions, some related to the investigation at hand and others not. Parents do not understand that the caseworkers are collecting information that may result in an eventual Family Court petition alleging abuse and neglect, and give them an abundance of information (not always connected to their actual parenting) in hopes that if they are honest, they will be left alone. As happened with stop-and-frisk, we need to get to the point where people are looking at the child welfare system – essentially the act of the government entering the home of private citizens to judge their parenting – as overly invasive.<sup>55</sup>

Following receipt of a hotline report, vast amounts of government resources are immediately poured into investigatory, monitoring, and prosecutorial activities that can result in a significant disruption of, but not necessarily of direct benefit to impacted children and families. In both NYC and the rest of the State, as measured by rate per 1,000 children in the population, Black children are more likely than Hispanic children, and Hispanic children are more likely than white children, to be reported to the child abuse hotline, indicated for abuse/neglect, taken into state custody. Black children also remain in the system longer than children of other races.<sup>56</sup> According to a study reported by the New England Review of

---

52 “*The Idea of Removing Race from Child Removal Decisions*,” Children’s Bureau Express (July/August 2021), <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=228&articleID=5847&keywords=blind%20removals>. See Loudenback, “*Color-Blind Ambition*,” The Imprint (April 1, 2021), <https://imprintnews.org/los-angeles/color-blind-ambition-removals/52958>

53 New York State Social Services Law § 413.

54 Children’s Bureau, Federal Legislation, *infra* note 100, at 3.

55 Michelle Burrell, “Child Welfare Needs to Have Its ‘Stop-and-Frisk’ Moment,” Urban Matters, New School Center for New York City Affairs (June 27, 2018), <http://www.centernyc.org/child-welfare-needs-to-have-its>. For a comprehensive analysis of the parallels between CPS investigations and the discredited “stop and frisk” policy of the New York City Police Department, see Michelle Burrell, *What Can the Child Welfare System Learn in the Wake of the Floyd Decision?: A Comparison of Stop-And-Frisk Policing and Child Welfare Investigations*, 22 CUNY L. Rev. 124 (2019), <https://academicworks.cuny.edu/clr/vol22/iss1/14>.

56 *The OCFS Initiative to Address Racial Disproportionality in Child Welfare and Juvenile Child Welfare and Juvenile*

Medicine, “Black families are more likely to be reported and investigated for child abuse and neglect, to have their cases substantiated, and to have their children removed from their custody or care. Moreover, many clinicians are disconnected from the consequences for families after referral to CPS.”<sup>57</sup>

## 2. Harms of Investigations by Local CPS Agencies

Once a report of suspected child maltreatment is made, Black and Hispanic/Latinx children are more likely to be subjected to a child protective investigation. For example, Black and Hispanic/Latinx children comprise only 61.3% of the total New York City population, but they constitute 87.8% of the children in investigations.<sup>58</sup> One example of undue investigation of Black families relates to drug testing. Racially discriminatory drug screening of pregnant people and newborns in hospitals without informed parental consent contributes substantially to disproportionate child welfare surveillance and of Black families and the separation of newborns from their parents during the most critical time for bonding.<sup>59</sup>

Additionally, the trauma to children during these investigations can be significant. During a CPS investigation, it is common for CPS investigators to strip search children, even when there has been no allegation of abuse.<sup>60</sup> CPS workers “can strip search children if CPS receives information about possible child abuse. CPS has much discretion on whether to conduct a strip search. . . CPS is able to conduct strip searches of a minor without the consent of a parent if CPS suspects an imminent threat to the child’s safety.”<sup>61</sup> “A strip search can be so traumatizing to youth that they feel it is unsafe to return to the setting where the strip search occurred. . . the psychological damage that would be risked on sensitive children by random search insufficiently justified by the necessities is not tolerable.”<sup>62</sup> Noting that “[s]trip searches can seriously traumatize children, leading them to experience negative consequences for years. including anxiety, depression, loss of concentration, sleep disturbances, difficulty performing in school, phobic reactions, and lasting emotional scars,” the American Bar

---

*Justice*, N.Y. State Off. of Children & Family Servs. (Jan. 19, 2011),

<http://ww2.nycourts.gov/sites/default/files/document/files/2018-09/ocfs-disproportionality.pdf>.

57 Jamila Perritt, “#WhiteCoatsForBlackLives-Addressing Physicians’ Complicity in Criminalizing Communities,” 383 *New England J. of Med.* 1804, 1805 (2020).

58 Local Law 174 Public Report, Administration for Children’s Services Equity Action Plan. July 1, 2019, at 9, [https://www1.nyc.gov/assets/operations/downloads/pdf/ll174\\_public\\_report\\_w\\_appendices\\_2019.pdf](https://www1.nyc.gov/assets/operations/downloads/pdf/ll174_public_report_w_appendices_2019.pdf).

59 *See* Movement for Family Power, “Whatever they do, I’m her comfort, I’m her protector.” How the foster system has become ground zero for the U.S. drug war, 11 (June 2020),

<https://static1.squarespace.com/static/5be5ed0fd274cb7c8a5d0cba/t/5eead939ca509d4e36a89277/1592449422870/MFP+Drug+War+Foster+System+Report.pdf>. According to Sapna V. Raj, Deputy Commissioner of the Law Enforcement Bureau of the NYC Commission on Human Rights, the manifestation of anti-Black racism in medical settings is a well-known and entrenched problem and rooting out this form of discrimination is a top priority of the NYCCHR. *See New York City Commission on Human Rights Launches Investigations Into Three Major Private Hospital Systems’ Practices of Drug Testing Newborns and Parents*, NYS Commission on Human Rights, Nov. 16, 2020

60 Lenore Skenazy and Diane Redleaf, *How dare she dash in for muffins? After a mom lets the kids wait in the car, a nightmare, including strip searches, followed*, *Washington Post*, May 22, 2019, <https://www.washingtonpost.com/outlook/2019/05/22/how-dare-she-dash-muffins/>.

61 American Bar Association, Section of Litigation, Children Rights Litigation Committee and New York Civil Liberties Union, *Preventing Strip Searches of Children and Youth: A Guide for Advocates- New York State Supplement* (March 2021), [https://www.americanbar.org/content/dam/aba/publications/litigation\\_committees/childrights/strip-search-tool-kit-nys-supplement.pdf](https://www.americanbar.org/content/dam/aba/publications/litigation_committees/childrights/strip-search-tool-kit-nys-supplement.pdf).

62 *Id.*

61 American Bar Association, Section of Litigation, Children Rights Litigation Committee and New York Civil Liberties Union, *Preventing Strip Searches of Children and Youth: A Guide for Advocates- New York State Supplement* (March 2021), [https://www.americanbar.org/content/dam/aba/publications/litigation\\_committees/childrights/strip-search-tool-kit-nys-supplement.pdf](https://www.americanbar.org/content/dam/aba/publications/litigation_committees/childrights/strip-search-tool-kit-nys-supplement.pdf).

62 *Id.*

Association has adopted a resolution “urging all federal, state, local, territorial, and tribal governments to adopt policies and contractual provisions that prohibit conducting strip searches of children and youth, except in exceptional circumstances.”<sup>63</sup>

### **3. Preventive Services Provided by Local Child Protective Services Agencies**

As a general matter, Black parents are less likely to have access to and receive the kinds of services that would help to address issues leading to investigations and family disruption.<sup>64</sup> During the child protective investigation, CPS is obligated to assist adults in the home with obtaining necessary prevention services<sup>65</sup> such as mental health, substance use and other treatment programs.<sup>66</sup> However, Black children are disproportionately less likely to be assisted with services to prevent families separation following a substantiated investigation. Despite comprising 44.3% of the children in substantiated investigations in 2017, only 37.8% of the children in prevention case openings that year were Black children.

### **4. Host Homes and Other “Shadow Placements”**

Rather than uniformly providing the necessary services that Black families need and are entitled to for the prevention of family separation, OCFS has sanctioned both informal and formal processes whereby some children are physically placed outside the home without parents or children receiving the advice of counsel; reunification services; or due process in Family Court.<sup>67</sup>

## **B. Family Court Child Protective Proceedings**

*Every day in family court buildings across the country, thousands of people, but disproportionately Black mothers, stand before child welfare officials and family court judges who subject their parenthood to extraordinary scrutiny and vilification. These judges and officials use consequences of poverty, such as several siblings sharing a single room or lack of adequate heat, as evidence of child neglect. Family members who have prior criminal or family court involvement are deemed risks to their children, without any consideration for the well documented overcriminalization of poor Black communities.*<sup>68</sup>

The Family Court of the State of New York is the primary interface for issues implicating legal aspects of family relationships. The New York family courts provide the forum for issues involving child protection (neglect and abuse and foster care), custody, visitation, support, guardianship, paternity, adoption, and family violence. To initiate a court proceeding alleging that a parent has abused or neglected a child and that preventive services will not protect the child from harm, the local CPS agency files a “child protective” petition in the Family Court under Article 10 of the New York Family Court Act. Once a petition is filed, judges exercise broad authority to oversee and regulate intimate aspects of

---

63 ABA Resolution Prohibiting Strip Searches of Children and Youth, Except in Exceptional Circumstances, (adopted 2020), <https://dev.americanbar.org/groups/litigation/committees/childrens-rights/preventing-strip-searches-of-children-and-youth/>.

64 Roberts and Sangoi, *supra* note 49.

65 *Supra* note 5.

66 *Id*

67 *See* 18 NYCRR § 441, *et seq.*

68. Roberts and Sangoi, *supra* note 49.

a family's life, and can order detailed investigations and reports by CPS, issue orders of protection and warrants, and take any other steps they decide is necessary to protect the child's interests. After a period of time, sometimes years, the judge determines whether the CPS agency has proven the allegations of abuse or neglect by a preponderance of the evidence.

A child may be forcibly removed from his or her family at any time throughout these family court proceedings, and even prior to the filing of the petition, as CPS agencies are authorized to remove a child on an "emergency basis," and without court approval, if they think there is imminent danger to the child's life or health.<sup>69</sup> Subsequent to the filing of the petition, the Court may order a child to be removed from their home at any point in the proceedings. Children often live for years not knowing whether they are going to stay with their families or be packed up and moved into a stranger's home or an institution. If a child is removed from their home before a judge rules on the agency's petition ("makes a finding"), the family is entitled to an expedited hearing to seek the return of their child. Because of court congestion, these hearings sometimes take weeks or even months to resolve, trapping the child in foster care for the duration. If a child is removed from his or her home after the Court finds the parent guilty of neglect, the family has no recourse to an expedited hearing and hearings can take up to half a year to resolve.<sup>70</sup>

### **1. Judicial Removals, Findings of Abuse or Neglect, and Placement into the Foster System**

At the preliminary stages of child protective proceedings, judges in a neighboring state are more likely to order Black children into the foster system than children of other races. Black mothers are deemed unfit at higher rates than their white counterparts, despite evidence that they are no more likely than white mothers to abuse or neglect their children.<sup>71</sup> Tragically, once placed into the foster system, Black children often receive services that are inferior to those of their white counterparts,<sup>72</sup> lessening their chances for family reunification. On average, they experience longer stays in foster care, leaving foster care at a slower rate than they are entering.<sup>73</sup>

While the number of children and youth in foster care in America has declined for a second straight year, the percentage of placements of children of color into the system appears to be growing.<sup>74</sup> Nationwide, 33 percent of children in the foster system are Black, but they make up just 15 percent of U.S. children.<sup>75</sup> In New York City, for example, while Black children make up 24.3% of the City's youth population, they comprise more than twice that amount - 53.8% - of the children placed in foster

---

69 Family Court Act § 1024. *See also* FCA § 1046(b), which provides that for cases of severe or repeated child abuse, findings may be made by clear and convincing and those heightened grounds may then form the basis for termination of parental rights proceedings under Social Services Law § 384-b(8).

70 *See In Re F.W.*, 122 N.Y.S.3d 620 (1st Dept. 2020).

71 Sarah Gonzalez & Jenny Ye, *Black Mothers Judged Unfit at Higher Rates Than White Mothers in New Jersey*, WNYC (May 2015), <https://www.wnyc.org/story/black-parents-nj-lose-custody-their-kids-more-anyone-else/>.

72 Roberts and Sangoi, *supra* note 49.

73 Administration for Children's Services, "Child Safety," <https://www1.nyc.gov/site/acs/child-20welfare/ChildAbuseNeglectKid.page>.

74 John Kelly, *Who Cares: A National Count of Foster Homes and Families—Executive Summary*, The Imprint (Nov. 2, 2020), <https://www.fostercarecapacity.com/stories/who-cares-2020-executive-summary>.

75 Tyler Kingkade and Hannah Rappleye, *The Brief Life of Cornelius Frederick: Warning Signs Missed Before Teen's Fatal Restraint*, NBC News (July 23, 2020, updated Aug. 14, 2020), <https://www.nbcnews.com/news/us-news/brief-life-cornelius-frederick-warning-signs-missed-teen-s-fatal-n1234660>.



care.<sup>76</sup> Hispanic/Latinx children are equally represented in foster care, 37.5%, compared to their total youth population size of 37.0%.<sup>77</sup>

Moreover, judges are more likely to order Black children “placed into congregate care rather than into a relative’s home for the sole reason that the system deems that home too small, as families of color and various cultures live in a wide variety of arrangements, as compared with the more typical white, suburban, American household.”<sup>78</sup> Black children are 35% more likely than white youths to be placed in group homes or residential treatment facilities. Black youth spend an average of 29 months in institutions, compared with white youth who spend an average of 18 months.<sup>79</sup> Black youth over age 10 who are institutionalized are significantly less likely to be reunited with family than their white counterparts.<sup>80</sup> Lengthy, traumatic, and unstable congregate care placements are costly, ineffective, and rob children of the opportunity to be raised within a family. Often, children are subjected to numerous moves from one institution to another. The Family First Prevention Services Act seeks to address these problems as congregate care should now be much harder to accomplish. Implementation of the FFPSA in New York began on 9/29/2021, so it remains to be seen whether it will have this impact.

## 2. Termination of Parental Rights

Judges are also more likely to terminate the parental rights of Black parents than white parents.<sup>81</sup> Professor Marty Guggenheim, a nationally recognized expert on the system observes that:

With certain exceptions that states too often ignore, ASFA [the federal Adoption and Safe Families Act] requires that child welfare agencies seek to terminate the parental rights of children whenever they have been in foster care for 15 of the most recent 22 months... The law has been responsible for the massive destruction of Black and brown families. More than two million children’s parents’ rights have been terminated by American courts since ASFA was enacted.<sup>82</sup>

In addition to the arbitrary termination time frame, ASFA currently restricts the placement of children with family members based on certain criminal history criteria, with no best interests or safety exceptions, creating additional obstacles to children living with a family member when a return to their parent is not possible.<sup>83</sup> The restrictions on placements, especially with relatives or kin who have *de minimis* contacts with the child welfare or criminal justice systems, can be disastrous. Since ASFA was passed, modifications to New York’s Social Services Law have resulted in almost 300 felonies in New

---

<sup>76</sup> *Id.* at 12.

<sup>77</sup> *Id.*

<sup>78</sup> Cathy Krebs, *It’s Not Enough to Mean Well*, The Imprint (Aug. 12, 2020), <https://imprintnews.org/race/child-welfare-racism-not-enough-to-mean-well/46360>.

<sup>79</sup> Think of Us, *Away from Home: Youth Experiences of Institutional Placements in Foster Care*, (July 21, 2021), [https://assets.website-files.com/60a6942819ce8053cefd0947/60f6b1eba474362514093f96\\_Away%20From%20Home%20-%20Report.pdf](https://assets.website-files.com/60a6942819ce8053cefd0947/60f6b1eba474362514093f96_Away%20From%20Home%20-%20Report.pdf).

<sup>80</sup> *Id.*

<sup>81</sup> Minkyong Song, *Termination of parental rights and adoption in foster care*, Univ. of Penn. Doctoral Dissertation (2006), <https://repository.upenn.edu/dissertations/AAI3225547>.

<sup>82</sup> Guggenheim, *supra* note 36.

<sup>83</sup> See SSL § 378-a.

York penal law that require mandatory foster/adoptive parent disqualification, a behemoth list which includes some “attempted” felonies.<sup>84</sup> There are 40 other felonies, including some drug possession offenses, that require a five-year mandatory disqualification. This creates significant and unnecessary barriers to families and kin who want to be supports for children in care, and deeply harms children who would be better served living with families, relatives, and friends instead of with strangers or in congregate care facilities.

#### IV.

### Recent National and Statewide Efforts to Promote Racial Justice in Child Welfare Cases

#### A. Federal Efforts to Improve Legal Representation for Parents and Children in Child Welfare Proceedings

Quality legal representation is essential to combatting the disproportionate and disparate impact of the child welfare system on Black families. Effective assistance of counsel for parents and children can be expected to have salutary effects on the experiences and outcomes of impacted families, including keeping children safely with their families; reducing the time children spend in foster care; and ensuring access to individualized, culturally appropriate, and supportive services and resources.

Recognizing the importance of legal representation, in January 2021, the federal Administration for Children and Families issued a memorandum urging all state and tribal title IV-E agencies, courts, administrative offices of the courts and Court Improvement Programs to work together to ensure that parents, children and youth and child welfare agencies receive high quality legal representation at all stages of child welfare proceedings.<sup>85</sup> The memorandum emphasized that “[p]roviding high quality legal representation to children and youth in foster care, candidates for foster care and their parents at all stages of dependency proceedings is crucial to improving the experiences children, youth and parents have with the child welfare system and in turn improving outcomes.”<sup>86</sup> It noted that legal advocacy in times of family vulnerability can help stabilize families and reduce the need for more formal child welfare system involvement, including foster care.<sup>87</sup> The memorandum pointed to research demonstrating that the early appointment of counsel in child welfare proceedings can improve case planning, expedite permanency and lead to cost savings. This was coupled with a revision of the Child Welfare Policy Manual to allow federal reimbursement under Title IV-E of the Social Security Act for enhancements to parent and child representation. This policy change is being implemented in NYS. According to the New York City Administration for Children’s Services (“ACS”), consistent quality of representation was a key factor leading to improved permanency outcomes for children in New York City.<sup>88</sup> However, it also acknowledged that two important elements to ensuring high quality representation are competitive compensation and reasonable caseloads that enable attorneys to meet their ethical obligations to clients.<sup>89</sup>

---

84 SSL 378-a(2)(e)(1).

85 <https://www.acf.hhs.gov/sites/default/files/documents/cb/im2106.pdf>.

86 *Id.* at 14.

87 *Id.* at 11.

88 *Id.* at 9.

89 *Id.*

## **B. Practice Standards for Parental Representation in New York**

On November 6, 2015, the ILS Board approved the “Standards for Parental Representation in State Intervention Matters” (the Standards).<sup>90</sup> The Standards seek to improve the quality of representation provided under Family Court Act § 262(i)–(iv) and (ix) (i.e., child protective, foster care, destitute child and termination of parental rights proceedings, given the fundamental liberty interests and due process rights involved pursuant to the Family Court Act § 261 and *In re Ella B.*, 30 N.Y.2d 352 (1972), when the State seeks family separation without providing adequate representation.<sup>91</sup> Additionally, the New York State Bar Association House of Delegates approved the 2021 Revised Standards for Providing Mandated Representation (Revised Standards) on January 30, 2021.<sup>92</sup> The Revised Standards note that “[h]istorically, the largest impediment to the provision of quality mandated representation is underfunding of the provider. It is vital that funding sources provide funding adequate to enable providers to meet or exceed the requirements of these standards.”<sup>93</sup>

## **C. Chief Judge DiFiore’s Initiatives**

### **1. The New York State Commission on Parental Legal Representation**

In her February 6, 2018, State of Our Judiciary address, Chief Judge Janet DiFiore announced the creation of the Unified Court System’s Commission on Parental Legal Representation to be chaired by Hon. Karen Peters, former Presiding Justice of the Appellate Division Third Department.<sup>94</sup> In creating this Commission, Chief Judge DiFiore emphasized that the court system is “focused on supporting the well-being of children by supporting the legal needs of their parents.”<sup>95</sup> The Commission’s mandate was “to examine the current state of representation for indigent parents in constitutionally and statutorily mandated family-related matters, and to develop a plan to ensure the future delivery of quality, cost-effective parental representation across the state.”<sup>96</sup> After a comprehensive fact-finding process, the Commission concluded that “a complete transformation is urgently needed in New York’s publicly funded system of parental representation in child welfare matters.”<sup>97</sup> With regard to child welfare matters, the Commission found that “[i]nstances of inadequate representation, delays in access to representation, and the outright denial of representation, are all too frequent. The crisis in parental legal representation goes to the core of the judicial function—to make “reasoned determinations of fact” and “proper orders of disposition.”<sup>98</sup> Emphasizing “the need for significant and swift State action to address systemic problems, thus enabling attorneys to provide effective representation and Family Courts to

---

90 <https://www.ils.ny.gov/files/Parental%20Representation%20Standards%20Final%20110615.pdf>.

91 *Id.* at 4.

92 [https://nysba.org/app/uploads/2020/02/Standards-for-Quality-Mandated-Rep\\_2021.pdf](https://nysba.org/app/uploads/2020/02/Standards-for-Quality-Mandated-Rep_2021.pdf).

93 *Id.* at 1.

94 Chief Judge Janet DiFiore, The State of Our Judiciary 2018, p. 14, New York State Unified Court System (Feb. 6, 2018), available at <https://www.ils.ny.gov/files/State%20of%20Our%20Judiciary%20Address%20020618.pdf>.

95 *Id.*

96 Commission on Parental Legal Representation, Interim Report to Chief Judge DiFiore (Feb. 2019), [http://w2.nycourts.gov/sites/default/files/document/files/2019-02/PLR\\_Commission-Report.pdf](http://w2.nycourts.gov/sites/default/files/document/files/2019-02/PLR_Commission-Report.pdf) (Interim Report).

97 In the Interim Report, the terms, “child welfare,” “child protective,” and “State intervention” are used interchangeably and refer generally to abuse and/or neglect proceedings pursuant to Article 10 of the Family Court Act, as well as foster care placement, termination of parental rights, surrender, destitute minor, and permanency planning proceedings. Child protective services agencies are referred to as “CPS” or “DSS” agencies.

98 Family Court Act § 261.



make sound decisions that will best meet the needs of families,” the Commission stressed that “[e]very parent and child in our Empire State must receive timely, quality legal counsel before a family unit is torn asunder.”<sup>99</sup>

## 2. Racial Injustice in the Courts: The Secretary Jeh Johnson Report

On June 9, 2020, Chief Judge Janet DiFiore appointed former U.S. Secretary of Homeland Security Jeh Johnson to conduct “an independent review of the New York State court system’s response to issues of institutional racism and to make recommendations that center on operational issues that lie within the power of the court system to implement administratively and unilaterally” necessary changes to such structure and operations.<sup>100</sup> Black families had long pointed out what they experience as discriminatory treatment in New York City’s family courts.<sup>101</sup> The report issued by Secretary Johnson confirmed many of their complaints. Secretary Johnson reported the following findings:

Most litigants appearing in the NYC Family Courts are parents and families of color.<sup>102</sup>

Underrepresentation within the judiciary has persisted across all non-white groups, though the representation of Black judges has steadily improved over the past 30 years. In the Latinx and Asian communities, the gaps between population and judges widened in the late 1990s before more recently narrowing, but they remain larger for both communities than they were in 1991.<sup>103</sup>

“[T]he #1 complaint ... heard from multiple interviewees from all perspectives was about an under-resourced, over-burdened court system, the dehumanizing effect it has on litigants and the disparate impact all this has on people of color,” with the Family Courts being among those in particular that continue with high volumes of cases but fewer resources to hear those cases. “Addressing the backlog of cases due to court closures during COVID-19 will no doubt make matters worse.”<sup>104</sup>

“The picture painted for us was that of a second-class system of justice for people of color in New York State.”<sup>105</sup>

Delays in processing a Family Court Article 10 case can result in permanent damage to children, particularly when those delays impact reunification. One judge remarked that “the systemic reluctance to devote resources to these high-volume courts in New York City, which primarily serve indigent people of color, is ‘the very definition of institutional bias.’” One Family Court judge noted, “in this context, ‘justice delayed is justice denied.’” The delays can “impart a sense of profound unfairness and have a

---

<sup>99</sup> Interim Report, *supra* note 96, at 4.

<sup>100</sup> Jeh Charles Johnson, Report from the Special Adviser on Equal Justice in the New York State Courts, N.Y. State Unified Court System (Oct. 1, 2020), <https://nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf>.

<sup>101</sup> Chris Gottlieb, *Black Families Are Outraged About Family Separation Within the U.S. It's Time to Listen to Them*, Time (Mar. 17, 2021), <https://time.com/5946929/child-welfare-black-families/>; Amber Wilkes-Smith, *I Was Denied the Right to Keep My Family Intact’ – Black families like mine have been separated for generations*, Rise Magazine (July 29, 2020), <https://www.risemagazine.org/2020/07/denied-the-right-to-keep-my-family-intact/>.

<sup>102</sup> Jeh Johnson Report, *supra* note 100, at 36.

<sup>103</sup> *Id.* at 33.

<sup>104</sup> *Id.* at 54.

<sup>105</sup> *Id.*

demoralizing effect on clients.... Ultimately, the message sent is that the loss of the litigants' time – particularly those who are indigent or people of color—is a casualty within the system's broader disorganization.... [L]itigants in Family Court feel so disheartened by persistent delays that they eventually fail to appear at all."<sup>106</sup>

Court officers, attorneys and judges sometimes exhibit a lack of understanding, empathy and compassion towards litigants of color, “a culture in the courts that discourages compassionate treatment.”<sup>107</sup> A Family Court judge in New York City reportedly yelled at a litigant reporting that she did not know who the father of her child was, and the judge then asked, “How is it that you people never know?”<sup>85108</sup> An attorney reported that he witnessed a court-appointed attorney “buying boots on her iPad while her client lost custody of her child in Family Court.”<sup>109</sup>

The devastating impacts of Family Court on Black families cannot be overstated or overlooked any longer.<sup>110</sup> These findings by Secretary Johnson illuminate the extreme lack of respect experienced by Black children, parents, and families and the urgent need for the New York State Family Court system to undertake a more searching and critical examination of its policies, practices, and procedures through a racial justice lens. As reported in Rise Magazine:

For parents simply walking into Family Court, it is obvious that this is a system that almost entirely impacts Black and brown families and communities. As Rise Parent Leader Imani Worthy has written: “Going to family court is like the feeling of marching to the guillotine. You're ashamed and your mistakes are put out to the public. “While in the courthouse, I couldn't help but notice a barrier when you enter. Lawyers, judges, clerks, ACS caseworkers, and staff walk in on one side. On the side where the employees were walking in, I noticed a lot of Caucasian people entering. “The other side is for the general public. The general public had so many black and brown faces.”<sup>111</sup>

Following the release of Jeh Johnson's devastating report, which contained numerous proposals for reform focused on the court system's authority to carry out administrative changes, Chief Judge DiFiore appointed Judge Edwina Richardson-Mendelson, Deputy Chief Administrative Judge for Justice Initiatives, to lead the effort to implement the Equal Justice recommendations contained in the report. Judge Mendelson headed an implementation committee of judicial leaders and managers that met with a variety of stakeholders to develop a strategic plan. The work of that group is described in a recently released report, *Equal Justice in the New York State Courts: 2020-2021 Year in Review*.<sup>112</sup> Among the steps taken are the amendment of Section 17.3 of the Rules of the Chief Judge to require that all state

---

<sup>106</sup> *Id.* at 57.

<sup>107</sup> *Id.* at 58.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> It should be noted that a significant number of people coming to Family Court in NYS appear at least initially without a lawyer. A very high percentage of the unrepresented are people of color with a history with the child welfare system attempting to address related issues such as child support, custody and visitation, parentage, guardianship and domestic violence. They are at a great disadvantage when not represented by counsel.

<sup>111</sup> *Parents to City Council: Fund Communities, Not ACS*, Rise Magazine (Nov. 3, 2020), <https://www.risemagazine.org/2020/11/fund-communities-not-acs/>.

<sup>112</sup> <https://www.nycourts.gov/LegacyPDFS/publications/2021-Equal-Justice-Review.pdf>.

paid judges receive regular anti-bias training, mandatory bias education and training for all UCS non-judicial personnel, appointment of an ombudsman for bias matters with widely publicized complaint procedure for bias matters, creation of Equal Justice Committees in the 13 Judicial Districts, and implementation of new policies and procedures for court officers with the requirement of a designated Community Affairs Officer in every county. It should be noted that the Report states that in New York City many of the Equal Justice subcommittees are city-wide, including one for the New York City Family Court. Consideration should be given to creating a statewide Family Court Equal Justice Committee to ensure that common issues are addressed appropriately.

#### **D. Federal and State Lawsuits**

State and federal courts play an integral and key role in overseeing decisions that affect Black families.

##### **1. *B.B., et al. v. Hochul, et al.***

The Legal Aid Society of New York City recently filed a lawsuit in federal court, alleging that city and state officials in New York “unjustly prohibit relatives from becoming foster parents due to prior criminal offenses and allegations of child abuse and neglect—even when they are decades old or never resulted in a conviction. “As Black and Latino children are vastly overrepresented in New York City’s foster care system, these practices perpetuate the racially discriminatory impact of the criminal legal system and the child welfare system, which disproportionately police and prosecute communities of color and disproportionately regulate families of color.”<sup>113</sup> The class-action suit, filed jointly with Dechert LLP in the U.S. District Court for the Eastern District of New York, argues that current practices deprive vulnerable children of the opportunity to live with family, widely considered the best placement for foster children’s well-being and long-term outcomes.”<sup>114</sup> The suit further argues that the resulting widespread disqualification of responsible foster or adoptive parents ends up having a “disproportionate impact on families of color” and thus it “reinforces other discriminatory government practices.”<sup>115</sup>

##### **2. *New York County Lawyers Association, et al. v. State of New York, et al.***<sup>116</sup>

New York bar associations representing court-appointed attorneys in the criminal and family court have filed a lawsuit<sup>117</sup> against the city and state to increase their pay and what they can provide clients,

---

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> Jason Grant, *Legal Aid Society, Dechert Sue State, NYC Over Rules That Often Prevent Kin From Fostering Children*, N.Y.L.J. (Nov. 11, 2021), <https://www.law.com/newyorklawjournal/2021/11/11/legal-aid-society-dechert-sue-state-nyc-over-rules-that-often-prevent-kin-from-fostering-children/>, <https://imprintnews.org/top-stories/new-york-class-action-lawsuit-alleges-kin-caregivers-are-denied-rights-by-foster-care-system/60366>, <https://imprintnews.org/top-stories/new-york-class-action-lawsuit-alleges-kin-caregivers-are-denied-rights-by-foster-care-system/60366>.

<sup>116</sup> Andrew Denney, *Bar Groups Sue Over Stagnant Pay for Assigned Counsel*, N.Y.L.J. (Jul. 26, 2021), <https://www.law.com/newyorklawjournal/2021/07/26/bar-groups-sue-over-stagnant-pay-for-assigned-counsel/>. See Amended Complaint, [https://drive.google.com/file/d/1B\\_Vo8S9CvsqxRLgFkrM2TKkJY2au6ryx/view](https://drive.google.com/file/d/1B_Vo8S9CvsqxRLgFkrM2TKkJY2au6ryx/view); see also Madison Hunt, *New York’s Family Court Attorneys File Lawsuit for Better Pay*, The Imprint (Nov. 1, 2021), <https://imprintnews.org/top-stories/new-yorks-family-court-attorneys-file-lawsuit-for-better-pay/59975>.

<sup>117</sup> [https://drive.google.com/file/d/1B\\_Vo8S9CvsqxRLgFkrM2TKkJY2au6ryx/view](https://drive.google.com/file/d/1B_Vo8S9CvsqxRLgFkrM2TKkJY2au6ryx/view).

asserting that they have worked for over 20 years without adequate compensation. Seeking an increase in assigned counsel rates, plaintiffs in this action have alleged that the State’s “failure to provide reasonable and sufficient compensation to assigned private trial and appellate counsel has caused and threatens to further cause substantial irreparable harm to indigent criminal defendants.”<sup>118</sup> Assigned counsel who represent parents and children in New York State family courts have also not received a raise in almost 20 years, and the family court system faces the same shortage of attorneys, resulting in unduly heavy caseloads and the inability to provide families and children with the effective assistance of counsel.

**V.  
Proposals for NYSBA Action**

**A. NYSBA Policy Proposals**

The Committee on Families and the Law seeks New York State Bar Association adoption of the following resolution and policies:

**1. Proposed NYSBA Resolution**

**RESOLUTION ADDRESSING SYSTEMIC RACISM IN THE CHILD WELFARE SYSTEM OF  
THE STATE OF NEW YORK**

The New York State Bar Association recognizes:

Systemic racism resulting from the history of slavery in the United States exists within the NYS child welfare system, impacting Black families disparately. Collective responsibility of legislators, policymakers, judges and attorneys for creating, promulgating, maintaining, implementing and/or enforcing laws, policies, rulings and practices that have not adequately valued Black families and have often resulted in their unnecessary investigation and separation of families.

Systemic racism and disparate treatment of Black families in the NYS child welfare system have often resulted in:

Undue investigation into and control over Black families in New York.

Unequal and inadequate distribution of necessary resources for the preservation of Black families;

Unnecessary harm to children of color and poor children due to trauma of separation from their caregivers; and

The economic and social toll on communities and society as a whole.<sup>119</sup>

---

<sup>118</sup> *Id.* at 49.

<sup>119</sup> Center for Disease Control and Prevention and Adverse Childhood Experiences, <https://www.cdc.gov/violenceprevention/aces/fastfact.html>.

WHEREFORE, it is

RESOLVED, that the New York State Bar Association shall

**Promote action by legislators, policymakers, judges and attorneys to:**

Create, promulgate, maintain, implement and/or enforce laws, policies, rulings and practices that value and preserve Black families; and

Bring about the repeal of child welfare laws and policies enacted upon racist goals and assumptions that disproportionately impact Black Families; or result in unequal consequences.

**2. Propose NYSBA Policies** committing to:

Conducting a race equity impact analysis for all policies and decision-making when deciding whether to promote or oppose child welfare related legislation. The Annie E. Casey Foundation provides one possible tool to guide such engagement.<sup>120</sup>

Challenging disparate treatment of Black Families in the child welfare system by:

Evaluating, assessing and addressing practices that violate equal treatment of families and children.

Addressing practices that infringe upon the equal treatment of all families and children.

Acknowledging and accounting for past and current inequities, and promoting laws and practices that provide families and children, particularly those most impacted by racial inequities, with the infrastructure needed to thrive.<sup>121</sup>

**B. Proposed Federal and State Budget Advocacy**

The NYSBA continues to:

Advocate for federal and NYS budgets that increase funding for programs to promote racial justice in child welfare systems.

Support increased funding for effective legal representation for parents and children to ensure appropriate caseloads and practice standards as recommended by the Commission on Parental Representation.<sup>122</sup>

---

120 The Annie E. Casey Foundation, *Race Equity Crosswalk Tool*, July 20, 2017, <https://www.aecf.org/m/blogdoc/aecf-raceequitycrosswalk-2018.pdf>.

121 *See, e.g.*, The Center for Advanced Studies, Univ. of Minn. School of Social Work, *Confronting Racism*, Summer 2021.

122 [http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR\\_Commission-Report.pdf](http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR_Commission-Report.pdf). *See* Martin Guggenheim, *How Family Defender Offices in New York City Are Able to Safely Reduce the Time Children Spend in Foster Care*, Family Law Quarterly, Volume 54, Numbers 1 & 2, 2020. (ABA 2021). *See also Effects of Funding Changes on Legal Representation Quality in California Dependency Cases*, ABA 2020, page 12.

Require that the State increase the availability of essential preventive community-based services to preserve families, increase economic opportunity and ameliorate poverty without the threat of unnecessary family separation through the child welfare system.<sup>123</sup>

### C. Proposed State and Federal Legislative Action & Advocacy

The Committee proposes that NYSBA advocate for legislation as described below.

#### 1. Federal Legislation

##### **The Child Abuse Prevention and Treatment Act:**

Study the history and impact of CAPTA as it pertains to Black families;<sup>124</sup>

Consider the growing consensus among influential and thoughtful observers that this legislation should be repealed or significantly modified;

Engage in discussion regarding to CAPTA's continuation and delinking of child protective services from family well-being;<sup>125</sup>

Make recommendations and take action to further these recommendations such as:

Include the right to counsel for children and parents in CAPTA or other federal legislation. (As of November 2021, 200 organizations, states and individuals have written in support of this guarantee.<sup>126</sup>)  
Revise definitions of abuse and neglect<sup>127</sup> to avoid conflating the consequences of poverty with child

---

123 Alan J. Dettlaff et al, *It is not a broken system, it is a system that needs to be broken: the upEND movement to abolish the child welfare system*, 14 J. of Public Child Welfare 500, 500-17 (Sept. 6, 2020).

124 42 U.S.C. §§ 5101–5116i. Originally enacted in P.L. 93-247, CAPTA has been amended numerous times, most recently on January 7, 2019, by the Victims of Child Abuse Act Reauthorization Act of 2018 (P.L.115-424). Children's Bureau, Admin. For Children & Families, U.S. Dep't Health & Human Servs., About CAPTA: A Legislative History (2019), <https://www.childwelfare.gov/pubPDFs/about.pdf> [<https://perma.cc/UNB8-L6V2>].

125 See Dorothy E. Roberts, *Shattered Bonds: The Color of Child Welfare* (2002); Abolition Is the Only Answer: A Conversation with Dorothy Roberts, *Rise Magazine* (Oct. 20, 2020) (hereinafter *Abolition Is the Only Answer*), <https://www.risemagazine.org/2020/10/conversation-with-dorothy-roberts/> [<https://perma.cc/J57Z-ZEX6>] (interview with Dorothy Roberts). Others have challenged the conventional terminology of the child welfare system as well. See, e.g., Emma Williams, 'Family Regulation' Not 'Child Welfare': Abolition Starts with Changing Our Language, *The Imprint* (July 28, 2020), <https://imprintnews.org/opinion/family-regulation-not-child-welfare-abolition-starts-changing-language/45586>; Molly Schwartz, *Do We Need To Abolish Child Protective Services? Inside One Parent's Five-Year Battle with the 'Family Destruction System'*, *Mother Jones* (Dec. 10, 2020), <https://www.motherjones.com/politics/2020/12/do-we-%20need-to-abolish-child-protective-services/> [<https://perma.cc/H7N2-7BJ4>]; Burton and Montauban, *Toward Community Control of Child Welfare Funding: Repeal the Child Abuse Prevention and Treatment Act and Delink Child Protection from Family Well-Being*, 11 *Colum. J. of Race & Law* 639 (June 2021); see, e.g., Chris Gottlieb, *Black Families Are Outraged About Family Separation Within the U.S. It's Time to Listen to Them*, *Time* (Mar. 17, 2021), <https://time.com/5946929/child-welfare-black-families/> [<https://perma.cc/5K6E-YS8A>].

126 *Campaign Pushes for Children and Parents' Right to Quality Legal Counsel*, *The Imprint* (Nov. 16, 2021), <https://imprintnews.org/news-briefs/campaign-pushes-for-children-and-parents-right-to-quality-legal-counsel/60354>.

127 CAPTA requires states to include "neglect" with "abuse" in their child protection reporting laws, defined broadly as "any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional



maltreatment.<sup>128</sup>

Revise mandated reporting requirements to ensure only child safety issues are addressed<sup>129</sup> and to eliminate anonymous reporting while maintaining the reporter’s confidentiality.<sup>130</sup>

Revise the “reasonable efforts” legal standard to specific steps that child welfare agencies must make to prevent separation of Black families.

### **The Adoption and Safe Families Act (ASFA)**

Revise standards that use arbitrary timelines for proceeding toward termination of parental rights to ensure that no petition is filed unless a determination has been made that termination would be in the best interest of the child;

Provide for individual assessments and best interest exceptions to the prohibition against placing children with family members who have criminal records that do not pose a safety risk.<sup>131</sup>

### **Family First Prevention and Services Act (FFPSA)**

Establish an independent panel to review the impact of FFPSA on children in congregate care settings.

## **2. State Regulations & Legislation**

Advocate for:

Legislation to enact recommendations of the Commission on Parental Legal Representation,<sup>132</sup> including:

Early representation to provide free parental and child legal services when a child protective investigation begins and ahead of hearings to determine imminent risk leading to family separation;

---

harm, sexual abuse or exploitation ... or [a]n act or failure to act which presents an imminent risk of serious harm.” Similar to “suitability provisions” that emerged during the Civil Rights era, such expansive definitions open the door to highly subjective assessments about parental fitness. State definitions of neglect include failures to provide adequate housing, clothing, or food but do not meaningfully address a parent’s ability to acquire necessities. Subjective determinations of “adequacy” have allowed poverty rather than actual neglect to serve as a basis for determinations of parental fitness and family separations. See Jerry Milner and David Kelly, *It’s Time to Stop confusing Poverty with Neglect*, The Imprint (Jan. 17, 2020), <https://imprintnews.org/child-welfare-2/time-for-child-welfare-system-to-stop-confusing-poverty-with-neglect/40222>.

128 Children’s Rights, “Ending the Unjust, Unnecessary Removal of Black Children From Their Families,” June 20, 2021.

129 Michael Fitzgerald, *New York City Child Welfare Chief Calls For Changes to Mandated Reporting System*, The Imprint (March 15, 2021), <https://imprintnews.org/child-welfare-2/child-welfare-chief-calls-for-changes-to-mandated-reporting-system/52710>.

130 Children’s Rights, “Ending the Unjust, Unnecessary Removal of Black Children From Their Families,” June 20, 2021.

131 See, e.g., Michael Fitzgerald, “Amid Pandemic, Congress Considers Giving Parents More Time to Reunify with Kids in Foster Care,” The Imprint (Aug. 11, 2020), <https://imprintnews.org/child-welfare-2/pandemic-congress-parents-reunify-kids-foster/46487>.

132 Commission on Parental Legal Representation, Interim Report to Chief Judge DiFiore (Feb. 2019), [http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR\\_Commission-Report.pdf](http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR_Commission-Report.pdf).

Presumed financial eligibility of parental respondents in Article 10 cases;

Increase in 18(b) rates for parental representation and rates for Attorneys for the Child (“AFC), including a provision for increased funding to institutional and private providers of parental and AFC legal and social work services; and including a provision to increase rates periodically without the need for new legislation;

Amend § 249 (a) of the Family Court Act to require the appointment of an Attorney for Child in child custody matters under Article 6 of the Act; and

State oversight of mandated parental representation;<sup>133</sup>

Increase the number of Family Court Judges so that New York is no longer supporting a second-class system of justice in its Family Courts and can offer meaningful access to justice to the families of color that make up the vast majority of Family Court litigants;

Require that CPS caseworkers immediately inform parents and children of their rights to remain silent, to speak to a lawyer, and to not permit entry into their home;<sup>134</sup>

Prohibit anonymous reports of child neglect to the NYS central registry by requiring callers to leave their names and contact information when making a report, while maintaining confidentiality;

Require written informed consent before pregnant or perinatal persons can be subjected to medically unnecessary drug testing in New York hospitals;<sup>135</sup>

Provide Family Court judges the discretion to order continued contact between children and their families of origin after a parent’s rights are terminated when in the child’s best interests;

Repeal the Host Homes regulations, which may be used to separate families without providing them with any services or supports, access to counsel, or other due process rights;

Eliminate the mandatory disqualification requirements in SSL 378 and require and individualized assessments of kin or relatives as foster/adoptive parents.

#### **D. Proposed Continuation and Strengthening of Support for NYS Family Court Practice Standards**

Support and further promote:

---

133 *Id.* at 24.

134 Similar to *Miranda* warnings given to people in criminal custody, this bill would allow parents to make informed, sound decisions at a particularly vulnerable moment in CPS investigations.

135 This legislation would help curb the practice of discriminatory drug testing of parents that can lead to the parents being separated from their newborn children.



Quality standards of practice in NYS Family Court child welfare cases as issued by the NYS Office of Indigent Legal Services<sup>136</sup> and the NYSBA Committee on Mandated Representation<sup>137</sup> and as supported by the NYS Commission on Parental Representation;<sup>138</sup>

Pre-petition assignment of counsel pursuant to FCA § 262 at all stages of the proceedings when separation is at issue and assignment of counsel to a child as soon as a voluntary petition is signed by their parent;

Parental and child representation that utilizes these family defense strategies including:

Expert services to provide testimony demonstrating how the trauma, loss and long-term developmental impacts the child's attachment to their family as the result of separation.<sup>139</sup>

Cross examination requiring child welfare agencies to clearly demonstrate in relevant detail that separation is necessary for the safety of the child and that they have made reasonable efforts to preserve and sustain families to avoid removal, including but not limited to the provision of food, safe and affordable housing, medical, substance abuse and mental health treatment.<sup>140</sup>

Opposition to family separation utilizing testimony and other proof demonstrating that the Article 10 allegations conflate the consequences of poverty with child maltreatment.<sup>141</sup>

Expert and other testimony to prove that termination of parental rights is not in the best interests of the child upon an evidentiary dispositional hearing.

## **E. Proposed Support for Civil Rights Litigation**

### **1. State Action to Increase Assigned Counsel Rates for Parental and Child Representation**

Continue monitoring progress and provide support for New York County Lawyers, et al. v. State of New

---

136 NYS Office of Legal Services, NYS ILS Indigent Legal Service Standards - Parental Representation in State Intervention Matters (2015).

137 NYSBA Committee on Mandated Representation, 2021 Revised Standards for Providing Mandated Representation, [https://nysba.org/app/uploads/2020/02/Standards-for-Quality-Mandated-Rep\\_2021.pdf](https://nysba.org/app/uploads/2020/02/Standards-for-Quality-Mandated-Rep_2021.pdf).

138 Commission of Parental Legal Representation, Interim Report to Chief Judge DiFiore, February 2019, [http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR\\_Commission-Report.pdf](http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR_Commission-Report.pdf).

139 Children's Rights, "Ending the Unjust, Unnecessary Removal of Black Children From Their Families," June 20, 2021; Alan J. Dettlaff et al., *It is not a broken system, it is a system that needs to be broken: the upEND movement to abolish the child welfare system*, 14 J. of Public Child Welfare 5, 500-17 (Sept. 6, 2020).

140 Effective October 27, 2019. *See* Soc. Serv. Law § 384-b(7)(f), defining "diligent efforts" as reasonable attempts by an agency to assist, develop, and encourage a meaningful relationship between the parent and child, including: 1) cooperating with the parents to develop a plan for appropriate services to the child and his or her family; 2) Making suitable arrangements for the parent to visit with the child; 3) Providing services and other assistance so that problems preventing the child's discharge from care can be resolved or ameliorated; 4) Informing the parents of the child's progress, development, and health; 5) Making suitable arrangements with a correctional facility for an incarcerated parent to visit with the child, if such visiting is in the best interests of the child; and 6) When the child is in the custody of authorized agency, providing information outlining the legal rights and obligations of a parent who is incarcerated or in a residential substance abuse treatment program and on social or rehabilitative services available in the community.

141 Children's Rights, "Ending the Unjust, Unnecessary Removal of Black Children From Their Families," June 20, 2021.

York, which seeks to increase the rate of pay for Section 18(b) attorneys who currently receive \$75 an hour for criminal and family court mandated legal services. Parent and AFC attorneys have not had a raise since 2005.<sup>142</sup>

**2. U.S.C. § 1983 Action for Violations of Due Process Equal Protection Under Color of Law<sup>143</sup>**

Support Section 1983 civil rights litigation under Title VI of the Civil Rights Act of 1964 (either as a state or federal court claim) which prohibits discrimination based on race, color, or national origin in programs and activities receiving federal financial assistance, such as state child welfare systems.<sup>144</sup>

---

142 See *New York County Lawyers Association, et al. v. State of New York, et al.*, Index No. 156916/2021, Amended Complaint, [https://drive.google.com/file/d/1B\\_Vo8S9CvsqxRLgFkrM2TKkJY2au6ryx/view](https://drive.google.com/file/d/1B_Vo8S9CvsqxRLgFkrM2TKkJY2au6ryx/view), <https://imprintnews.org/top-stories/new-yorks-family-court-attorneys-file-lawsuit-for-better-pay/59975>.

143 See Gilbert A. Holmes, *The Tie That Binds: The Constitutional Right of Children to Maintain Relationships With Parent-Like Individuals*, 53 Md. L. Rev. 2, 358-411, <https://core.ac.uk/download/pdf/56358191.pdf>.

144 Children's Rights, "Ending the Unjust, Unnecessary Removal of Black Children From Their Families," June 20, 2021.



To: Tom Richards

From: Kathryn Calista, Staff Liaison to the Committee on Families and the Law

Re: CORRECTED Summary of Revisions to Committee's Report and Recommendations on Racial Justice and Child Welfare

Date: 3/17/2022

---

Revisions were made to the Report following input from the Committee on Legal Aid, the Committee on Children and the Law, and the Committee on Mandated Representation. In general, revisions to the text of the Report expanded and refined the text but did not alter the overall premises and conclusions.

The following changes were made to the Recommendations:

Recommendations Under the "Federal Legislation" heading:

- The language in the recommendation regarding the Adoption and Safe Families Act (ASFA) was changed to call for a revision of standards that use arbitrary timelines, rather than elimination of the standards, and the language of that recommendation was refined.
- A recommendation was added concerning establishing an independent panel to review the impact of the Family First Prevention and Services Act on children in congregate care settings.

Recommendations Under the "State and Regulatory Legislation" heading:

- The following was added to the recommendation concerning an increase in 18(b) rates: "including a provision for increased funding to institutional and private providers of parental and AFC legal and social work services; and including a provision to increase rates periodically without the need for new legislation;"
- Added: "Amend § 249 (a) of the Family Court Act to require the appointment of an Attorney for Child in child custody matters under Article 6 of the Act;"
- Added: "Increase the number of Family Court Judges so that New York is no longer supporting a second-class system of justice in its Family Courts and can offer meaningful access to justice to the families of color that make up the vast majority of Family Court litigants;"
- Added "children" to the recommendation that CPS caseworkers immediately inform parents and children of their rights to remain silent, to speak to a lawyer, and to not permit entry into their home;
- Added: "Repeal the Host Homes regulations, which may be used to separate families without providing them with any services or supports, access to counsel, or other due process rights;"

- Added: “Eliminate the mandatory disqualification requirements in SSL 378 and require and individualized assessments of kin or relatives as foster/adoptive parents.”

Recommendations Under “Proposed Continuation and Strengthening of Support for NYS Family Court Practice Standards” heading:

- Added underlined language: Pre-petition assignment of counsel pursuant to FCA § 262 at all stages of the proceedings when separation is at issue and assignment of counsel to a child as soon as a voluntary petition is signed by their parent;  
Parental and child representation that utilizes these family defense....

Recommendations Under “Proposed Support for Civil Rights Litigation” heading:

- Revised to include assigned counsel rate for child representation as well as parental representation.



---

**TASK FORCE ON RACISM, SOCIAL EQUITY AND THE LAW**

**TAA R. GRAYS, ESQ.**

Co-Chair

One Elk Street

Albany, NY 12207

Phone: (212) 578-1143

[tgraysbarmail@gmail.com](mailto:tgraysbarmail@gmail.com)

**LILLIAN M. MOY, ESQ.**

Co-Chair

Legal Aid Society of Northeastern NY, Inc.

Albany, NY 12203-2036

Phone: (518) 689-6304

Email: [lmoy@lasnny.org](mailto:lmoy@lasnny.org)

March 17, 2022

The Task Force on Racism, Social Equity, and the Law is charged with examining how structural racism permeates and influences facets of daily life leading to injustice and inequality among New Yorkers, with the goal of recommending and supporting changes in law and public policy to attack structural racism and effectuate meaningful societal transformation.

The report of the Committee on Families and the Law on “Racial Justice and Child Welfare,” and the policies proposed therein, if enacted into law, will do much to end structural racism in the child welfare systems of New York State and the United States, and thereby advance the mission and ultimate goals of the Task Force, and indeed improve the wellbeing and experience of our fellow citizens who are forced to navigate and confront the current child welfare legal system.

The Task Force on Racism, Social Equity, and the Law stands in staunch support of the report and in support of the “Resolution Addressing Systemic Racism in the Child Welfare System of the State of New York” which the House of Delegates will consider at the April 2022 meeting.

We applaud the bold efforts of the Committee on Families and the Law and urge the House of Delegates to adopt this resolution in April 2022. 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



**COMMITTEE ON MANDATED REPRESENTATION**

**ROBERT S. DEAN, CHAIR**  
Center for Appellate Litigation  
120 Wall Street – 28th Floor  
New York, New York 10005  
212.577.2523, ext. 502  
rdean@cfal.org

March 17, 2022

**From:** Robert Dean, Chair, Committee on Mandated Representation

**To:** T. Andrew Brown and House of Delegates

**RE:** Report and Recommendations from the Committee on Families and the Law on Racial Injustice and Child Welfare

The Committee on Mandated Representation strongly supports the Report and Recommendations on Racial Justice and Child Welfare of the Committee on Families and the Law. One of our Committee's missions is to advance and support measures that will improve the standards of practice in cases for Family Court mandated representation, as in Family Court Article 10 Abuse and Neglect cases, where a substantial number of respondents are Black individuals who face the removal of their children, even when poverty is the only cause of their parenting issues. For that reason, we strongly support legislative recommendations for pre-petition Family Court representation, adequate state resources and enactments to back up New York State's obligation to preserve families and increases in Assigned Counsel and Attorney for the Child rates to maintain adequate numbers of quality attorneys to assert these rights.

Very truly yours,

Robert S. Dean  
Chair  
Committee on Mandated Representation

**To:** NYSBA Committee on Families and the Law and the NYSBA House of Delegates  
**From:** New York County Lawyers Association Family Court and Child Welfare Committee<sup>1</sup>  
**Date:** March 31, 2022  
**Re:** Statement in Support of NYSBA “Report and Recommendations on Racial Justice and Child Welfare”

---

The New York County Lawyers Association’s Committee on Family Court and Child Welfare strongly supports the NYS Bar Association Committee on Families and the Law’s “Report and Recommendations on Racial Justice and Child Welfare,” (“Report”) and urges the New York County Lawyers Association Executive Committee to support it as well. Those of us who practice in the areas of child welfare and in the Family Court know how prevalent racism is. For example, in New York City, the families charged with neglect or abuse are predominantly families of color, and the foster care population is almost entirely minority.

We also urge that the Report address the issue of the Office of Children and Family Services (OCFS) and the Administration for Children’s Services’ (ACS) practice of breaking up kinship foster families, almost all of which are minority, on flimsy grounds. ACS can only remove children from parents or relatives who are custodians or caring for children, even if the custodians only have informal custody, unless ACS obtains a court order and a showing of neglect or abuse and imminent danger. Foster care agencies can remove foster children in their discretion, without showing neglect or abuse. OCFS and ACS take the position that if the relatives become kinship parents, foster care agencies can remove the foster children on the same

---

<sup>1</sup> This statement of support was approved for dissemination by the NYCLA President as a Committee statement. This statement has not been approved by the NYCLA Board of Directors and does not necessarily represent the views of the Board.

basis as they remove foster children who are living with strangers. Foster parents can have an Administrative Hearing before OCFS to contest the removal, but OCFS uses the standard that it will overturn the removal only if the removal was arbitrary and capricious, an almost impossible standard for a relative to prove.

In addition, OCFS only allows evidence at the hearing regarding the facts that the agency knew at the time it made the removal. Evidence that the facts were later shown to be wrong, or that the children are suffering as a result of the removal, are not admissible. While foster children in New York City are almost all from families of color, the agencies are mostly run by white individuals (who incidentally are also very well paid, with salaries ranging up to \$600,000 per year). OCFS could, within the law, change its standards and keep more children of color with their relatives.





# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #11

REQUESTED ACTION: None, as the report is informational.

On Friday, April 1, 2022, the NYSBA Executive Committee will consider a report and recommendations from the Committee on Law, Youth, and Citizenship.

The report, entitled "Celebrating Constitution Day 2022," summarizes the history of Constitution Day, also known as Citizenship Day or "I Am an American Day," held on September 17 of each year, and provides several proposed actions to commemorate the holiday.

Although this item does not require formal action by the House of Delegates after approval by the Executive Committee, an informational report to the House was requested given the importance of civics education to the Association and the legal profession in general.

The report will be presented by Committee member Hon. Jonah I. Triebwasser.



New York State Bar Association  
Law, Youth and Citizenship Committee

Report and Recommendations

Celebrating Constitution Day 2022

Hon. Jonah Triebwasser,  
Constitution Day Subcommittee Chair

Gail Ehrlich, Esq.  
Yelena Nersesyan, Esq.  
Subcommittee members

January 31, 2022

## Background

Citizens of the United States have celebrated Independence Day and Presidents' Day since the 1870s, and in 2005, the nation began to celebrate Constitution Day. Also known as Citizenship Day, Constitution Day is an American holiday honoring the day 39 delegates to the Constitutional Convention signed the United States Constitution. This historic date was September 17, 1787.

### "I Am an American Day"<sup>1</sup>

In 1939, the newspaper publisher William Randolph Hearst suggested the creation of a holiday to celebrate American citizenship. Not only did Hearst have a wide readership of his many daily newspapers, but he had significant political connections, and in 1940, Congress designated the third Sunday in May as "I am an American Day." President Harry Truman signed the resolution, setting aside this date in honor of the American people, especially those who had recently become citizens of the United States.

The holiday quickly gained support and popularity through the efforts of the United States Immigration and Naturalization Service. Additionally, in 1944, Hearst sponsored a 16 minute film titled *I Am an American*, which was featured in movie theaters. Within five years, the governors of the existing forty-eight states had issued state proclamations in favor of I am an American Day.

In 1952, Louisville, Ohio resident Olga T. Weber petitioned the leaders of the municipality to change the date of the holiday to correspond with the anniversary of the signing of the United States Constitution. Once they agreed to it, she didn't stop there, and took her requests to the state legislature, which also approved. In 1953, Ms. Weber went to the United States Congress, both the Senate and the House of Representatives, and a new law was passed. After President Dwight D. Eisenhower signed it, the "I am an American Day" observation became "Citizenship Day" and moved to September 17. Louisville, Ohio was the first city in the United States to celebrate Citizenship Day on September 17, 1952.

### Louise Leigh and Constitution Day

Louise Leigh, after taking a course in constitutional history with the National Center for Constitutional Studies, was inspired to spread her newfound love of the Constitution throughout the country. In 1997, she founded a nonprofit organization called Constitution Day, Inc. to help encourage recognition of the importance of this national holiday.

Through her efforts, Constitution Day became an official holiday alongside Citizenship Day in 2004 when, with the help of support from Senator Robert Byrd, the "Constitution Day" amendment to the Omnibus Spending Bill passed. In May 2005, the United States Department of Education backed the law when it announced that it would apply to any school receiving federal funds of any kind, in that each educational institution which receives Federal funds should hold a program for students every

---

<sup>1</sup> The historical background material here is courtesy of Oak Hill Publishing  
<https://www.constitutionfacts.com/us-constitution-day/history-of-constitution-day/>

Constitution Day. This requirement is an excellent reason for NYSBA to speak out about ways to commemorate this day.

Constitution Day, along with Independence Day and Presidents' Day, is an important part of the cultural heritage of the United States of America, because it recognizes the value of the American experiment, and the success of a nation of free people whose rights and liberties are protected by a written Constitution.

### Proposed actions

Civic education has long been a core commitment of the Law, Youth and Citizenship committee. As part of that mission, we would like to enlighten the Bar and the public about Constitution Day. Toward that goal, we respectfully suggest the following:<sup>2</sup>

- Hosting a naturalization ceremony (on or about Constitution Day) in Poughkeepsie, home of New York's convention which ratified the U.S. Constitution.
- Publish an article, or a series of articles, in the *New York Bar Journal* about Constitution Day, the U.S. Constitution, constitutional jurisprudence and other related topics. We would invite noted jurists and academics to write the articles.
- In addition, we could publish an article, or a series of articles, featuring profiles of students in our Mock Trial program and/or members of the Association who are naturalized Americans describing their experiences as new citizens and what the Constitution means to them.
- Encourage members of the Association to speak at their local schools on or about Constitution Day (virtually or in person), as well as to become more involved with school programming generally, be it by coaching Mock Trial teams, offering Law Day programs, or other civics activities.
- Establish partnerships with public libraries and other education-focused charitable organizations to integrate the Constitution Day celebrations into their educational programs.
- Utilize NYSBA's social media accounts to promote the holiday and to educate the public.
- Expand the program of lawyer in the classroom and the distribution of our pocket constitution by those lawyers, or through direct distribution to teachers who request them.<sup>3</sup>

---

<sup>2</sup> We are also exploring additional possible programming as ideas come in.

<sup>3</sup> The number of pocket constitutions that we will be able to distribute will depend upon staffing and financial resources.