



**NEW YORK STATE BAR ASSOCIATION  
MEETING OF THE HOUSE OF DELEGATES  
THE OTESAGA, COOPERSTOWN, NEW YORK  
AND REMOTE MEETING  
SATURDAY, JUNE 18, 2022 – 8:30 A.M.**

**AGENDA**

1. Call to order, Pledge of Allegiance, and introduction of new members  
– M. Richard C. Lewis. 8:30 a.m.
2. Approval of minutes of April 2, 2022, meeting 8:35 a.m.
3. Installation and inauguration of Sherry Levin Wallach as President  
– Oath to be administered by Hon. Cheryl E. Chambers,  
Associate Justice, Appellate Division, Second Department 8:40 a.m.
4. Report of President – Ms. Sherry Levin Wallach 8:55 a.m.
5. Videoconference Address by Hon. Jenny Rivera  
– Associate Judge, New York State Court of Appeals 9:15 a.m.
6. Report of Treasurer – Mr. Domenick Napoletano 9:30 a.m.
7. Report of Task Force on Racism, Social Equity, and the Law  
– Ms. Taa R. Grays and Ms. Lillian M. Moy 9:40 a.m.
8. Report and recommendations of Task Force on Voting Rights and  
Democracy – Mr. Jerry H. Goldfeder 10:25 a.m.
9. Report and recommendations of Committee on Diversity, Equity,  
and Inclusion – Ms. Mirna Martinez Santiago 10:50 a.m.
10. Report and recommendations of Committee on Standards of Attorney  
Conduct – Messrs. James B. Kobak, Jr., Ronald C. Minkoff,  
and James Q. Walker 11:15 a.m.
11. Report of The New York Bar Foundation – Hon. Cheryl E. Chambers 11:40 a.m.
12. Administrative items – Mr. Richard C. Lewis  
A) Confirmation of Tenth District Representatives to the Nominating Committee  
B) Ratification of appointments to Audit Committee  
C) Ratification of appointments to Finance Committee 11:50 a.m.
13. New business 11:55 a.m.
14. Date and place of next meeting:  
Saturday, November 5, 2022  
Remote and Bar Center, Albany, New York

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
NEW YORK HILTON MIDTOWN, NEW YORK, AND REMOTE MEETING  
APRIL 2, 2022**

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**PRESENT**: Abneri; Adigwe; Alcott; Alomar; Arenson; Asher; Battistoni; Baum; Beltran; Berlin; Berman; Boston; Braunstein; Bray; Brown; Bunshaft; Burke; Buzard; Caceres; Chambers; Chang; Christian; B.Cohen; D.Cohen; O.Cohen; Cohn; Coreno; Crawford; D'Angelo; Dean; Degnan; Doerr; Effman; Engel; England; Evangelista; Fallek; Feal; Fellows; Filemyr; Finerty; Fogel; G.Fox; M.Fox; Franzella; Friedman; Gerbini; Gerstman; Getnick; Gilbert; Gilmartin; Gold; Good; Grays; Griesemer; Griffin; Gross; Gutekunst; Ha; Haig; Hartman; Heath; Hill; Himes; Hobika; Hoffman; Holder; Houth; Islam; Jackson; Jaglom; James; Jamieson; Jimenez; Kamins; Karson; Kaufman; Kelly; Kiernan; Kimura; Klass; Klugman; Kobak; Kretser; Kretzing; LaBarbera; LaRose; Lau-Kee; Leventhal; Levin; Levy; Lewis; Lindeauer; Lisi; Loyola; Lynn; Madigan; Marinaccio; Markowitz; Maroney; Martin; Matos; Mazur; McGinn; McNamara; Messina; Meulen; Meyer; Middleton; C.Miller; M.Miller; Minkoff; Minkowitz; Montagnino; Moretti; Mukerji; Napoletano; Nielson; Nowotarski; O'Connell; O'Connor; A.Palermo; C.Palermo; Pruzansky; Quaye; Quist; Radick; Ravala; Riano; Richman; Rosenthal; Russ; Russell; Ryan; Safer; Samuels; Sanchez; Santiago; Schram; Schrauer; Sciocchetti; Scott; Seiden; Sen; Shafiqullah; Sharkey; Silkenat; Silverman; Slavit; Smith; Sonberg; Starkman; Stephenson; Stong; Strenger; Suzanne; Swanson; Tambasco; Taylor; Telfeyan; Treff; Triebwasser; Velez; Wallace; Wallach; Wan; Ward; Weis; B.Wertz; D.Wertz; Wesson; Westlake; Wimpfheimer; Wolff; Woodley; Zweig.

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

1. The meeting was called to order and opened with the presentation of colors by the New York State Courts Ceremonial Unit and a rendition of the National Anthem.
2. Approval of Minutes of January 22, 2022, meeting. The minutes were deemed accepted as distributed.
3. Reports of Treasurer. Domenick Napoletano, Treasurer, reported that through February 28, 2022, the Association's total revenue was \$6,992,673, a decrease of approximately \$1.3 million from the previous year, and total expenses were \$2,872,314, an increase of approximately \$373,000 over 2021. Mr. Napoletano also reported on the termination of the lease to the Green Island print shop and relocation to another facility in the Albany area. The report was received with thanks.
4. Election of Nominating Committee and NYSBA Delegates to the ABA House of Delegates. Michael Miller, chair of the Nominating Committee, presented the report of the Nominating Committee.
  - a. Election of members of the Nominating Committee. The following were nominated for service on the 2022-2023 Nominating Committee:

District members and alternates of the Nominating Committee: First – Bridgette Ahn, Jai Chandrasekhar, Vincent Chang, Lisa Stenson Desamours, Adrienne Koch, Susan Lindenauer, Seth Rosner, Jay Safer, Stephen P. Younger, First Alternate Richard Swanson, Second Alternate Margaret J. Finerty, Third Alternate Mira Weiss; Second – Hon. Cheryl Chambers, Aimee Richter, and Alternate Andrea Bonina; Third – Elena DeFio Kean, Matthew Griesemer, Alternate Matthew J. Kelly; Fourth – Peter Coffey, Martin Gilmartin, Alternate M. Elizabeth Coreno; Fifth – Timothy J. Fennell, Michael E. Getnick, Alternate Donald C. Doerr; Sixth – Alyssa M. Barreiro, Kathryn Grant Madigan, Alternate Bruce McKeegan; Seventh – June Castellano, Amy Schwartz Wallace, Alternate Eileen Buholtz; Eighth – Norman P. Effman, Leah Nowotarski, Alternate Thomas O’Donnell; Ninth – Clare J. Degnan, James L. Hyer, John A. Pappalardo, Alternate Hon. Jonah I. Triebwasser; Tenth – Justin Block, Lynn Poster-Zimmerman, Second Alternate Ilene Cooper, two remaining members and alternate to be submitted; Eleventh – Richard Gutierrez, Zenith Taylor, Alternate Arthur Terranova; Twelfth – Samuel M. Braverman, Renee C. Hill, Alternate Steven E. Millon; Thirteenth – Jonathan B. Behrins, Robert Mulhall, Alternate Sheila T. McGinn.

A motion to elect the foregoing was adopted.

- b. Election of Delegates to ABA House. A motion was adopted to elect the following for a two-year term commencing in August 2022: T. Andrew Brown, Sharon Stern Gerstman, Henry M. Greenberg, Richard C. Lewis, and David P. Miranda.
- c. Election of Young Lawyer Delegate to ABA House: A motion was adopted to elect Jacob Petterchak as Young Lawyer Delegate to the ABA House of Delegates.
5. Report of President. President Brown highlighted the items contained in his written report, a copy of which is appended to these minutes. He thanked the officers, members of the House of Delegates, Executive Committee members, and staff for their support during his term, and thanked the members of the House for their service.
6. Presentation of 2022 Ruth Bader Ginsburg Memorial Scholarship Award. President Brown presented the inaugural Ruth Bader Ginsburg Memorial Scholarship Award to Sierra Sanchez, a second-year law student at the Maurice A. Deane School of Law at Hofstra University, in recognition of her academic achievements and commitment to advancing women of color in law.
7. Address by Hon. Hector D. LaSalle – Presiding Justice, Appellate Division, Second Department. Presiding Justice LaSalle provided an update on initiatives being undertaken in the Second Department with respect to post-COVID court operations, virtual and in-person proceedings, and the Special Masters’ program. He also spoke to the importance of cooperation between the bench and bar and support for the practitioner amidst change in the practice of law and changing client expectations. The Chair received the report with thanks.
8. Report of The New York Bar Foundation. Carla M. Palumbo, President of The Foundation, updated the House members on Foundation activities, including the awarding of grants,

fellowships, and scholarships, and a review of The Foundation's 2022 Annual Meeting and Assembly of The Fellows. The report was received with thanks.

9. Report of Task Force on Racism, Social Equity, and the Law. Task Force co-chairs Taa R. Grays and Lillian M. Moy presented on the Task Force's ongoing work and its planned recommendations. The report was received with thanks.
10. Report and recommendations of Committee on Families and the Law. Committee co-chairs Linda Gehron and Susan B. Lindenauer, and committee members Angela O. Burton and Janet Fink, presented a "Resolution Addressing Systemic Racism in the Child Welfare System of the State of New York" and reviewed the proposals contained in the accompanying report. After discussion, a motion was made and the following resolution was adopted:

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:**

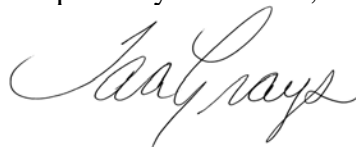
Create, promulgate, maintain, implement and/or enforce laws, policies, rulings and practices that value and preserve Black families; and

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.

[Emphasis in original]

11. Report of Committee on Law, Youth, and Citizenship. Committee member Hon. Jonah I. Triebwasser reviewed recommendations on how the Association can commemorate Constitution Day through relevant programming, articles, publicity, and other public engagements. The report was received with thanks.
12. Administrative items. Ms. Levin Wallach reported on the following:
  - a. Motions to approve the designation of delegates filed by the county and local bar associations for the 2022-2023 Association year and to approve the filed roster of the members of the House for the 2022-2023 year were requested and approved.
  - b. She reminded delegates to renew their Association membership dues if they had not already done so and to encourage colleagues to renew or join the Association.
  - c. She noted that this meeting represents her last as Chair of the House and thanked the House for the opportunity to serve. She thanked the departing members of the Executive Committee and the House for their service and thanked the staff for their support. She introduced Richard C. Lewis as the next Chair of the House and presented him with the House's gavel.
13. New Business. Mark A. Berman and John H. Gross, co-chairs of the Task Force on the Post-Pandemic Future of the Profession, called for delegates to participate in upcoming two-hour focus group meetings to discuss the subject matter and ongoing work of the Task Force.
14. Date and place of next meeting. Ms. Levin Wallach announced that the next meeting of the House of Delegates would take place on Saturday, June 18, 2022, with options for participation in person at The Otesaga in Cooperstown or remotely via Zoom.
15. 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  
House of Delegates of the New York State Bar Association  
April 2, 2022**

A Vision for the Future – Forward into the Future

Dear Colleagues:

As with all previous times that I have had the honor to address the House of Delegates, it is once again my pleasure to thank you for taking time out of your busy lives to join us today. Whether you are here in person or have signed in virtually, your presence and participation is critically important to ensuring the vitality and longevity of our Association and determining its path forward. I greatly appreciate the investment you are making in the future of our organization, our industry, and your own professional development.

While we come together to conduct the business of our Association, we cannot ignore that we also come together at a time of great upheaval. I know we are all watching in horror at the war taking place in Ukraine and the significant humanitarian crisis this senseless violence has created. While it is easy to feel overwhelmed and powerless in times of international crisis, I am deeply proud of the efforts this Association is making to assist both our fellow attorneys in Ukraine and the refugees who have been displaced by the unwarranted attacks on their homeland.

Members of the International Section’s Ukrainian Task Force have worked around the clock over the last month to support our Ukrainian colleagues and have been in near-constant contact with the members of our Ukraine Chapter. I applaud the International Section’s Ukrainian Task Force and chair Edward Lenci for their dedicated efforts here – and I encourage all our members to assist in whatever way they can.

As an organization with members in over 100 countries, the New York State Bar Association has a special duty to promote, support, and protect international law and the rule of law. We stand with Ukraine, the Ukrainian Bar Association, and our Ukrainian members and will continue to identify ways for the Association and attorneys to help throughout this crisis.

Just last week, close to 750 attorneys participated in a special pro bono CLE webinar on how to help Ukrainian refugees apply for Temporary Protected Status or TPS. The designation allows those fleeing wars and natural disasters to seek protection here in the U.S.

Every lawyer has the opportunity to change someone’s life – if you have not already done so, I encourage you to reach out to our colleagues with the International Section and find a way to help in this time of extraordinary humanitarian need.

We will continue to build chapters around the globe and support our members wherever they reside – including by calling out and confronting egregious affronts to the rule of law and international peace such as the illegal invasion of Ukraine by the Russian Federation.

We are lucky here in the U.S. to be living in a relatively peaceful society and also to have the freedom to gather in person for a House of Delegates meeting in New York City for the first time in over two years.

It was wonderful to break bread with you last night at our House reception and dinner and at the diversity reception. And I am thrilled to be here today among the leaders of the Empire State’s bench and bar – as we gather again here in Manhattan to conduct important business on behalf of our organization.

Being here is also bittersweet. It was not all that long ago that New York City was the epicenter of the COVID-19 crisis and was all but shuttered in an effort to prevent the virus from spreading. Hundreds of our members, friends, and colleagues lost their lives in this pandemic. Meeting here makes this moment even more poignant. I am keeping all those who were impacted by the pandemic in my thoughts and prayers, and I ask that you do the same.

The pandemic was a pivotal moment in history that resulted in tremendous loss but also opportunities for transformation. From the outset, NYSBA led. We developed new ways to meet the needs of our members. We reimagined the delivery of member services. And in so many ways, we realized the purpose and potential of the Association “to apply its knowledge and experience in the field of the law to promote the public good.”

The NYSBA COVID-19 Pro Bono Network, which launched two years ago, has now helped over 3,200 New Yorkers with unemployment insurance matters. Our members help on many other fronts as well – supporting Afghan refugees, aiding New Yorkers displaced by Hurricane Ida, assisting our neighbors confronting the challenges of the ongoing housing crisis. We are grateful for all the service offered – indeed, only a few hours of legal help can make a difference in the lives of our fellow citizens. I must also note– as the managing partner of a small law firm myself – that so many of our most dedicated volunteers come from solo and small firm practice settings.

The ongoing work of the Task Force on the Post-Pandemic Future of the Profession reminds us that we cannot take the significant changes we have collectively experienced over the past two years for granted – including the role and use of technology, the future of legal education, and evolving workplace dynamics in the profession. I thank the Task Force members for their diligent work and look forward to supporting the report when presented to the House later this year.

All of our sections, committees, and task forces are hard at work, addressing issues critical to the state and country. That includes but is not limited to efforts undertaken by members of the Task Force on Racism, Social Equity, and the Law; Voting Rights and Democracy; and the Treatment of Transgender Youth in Sports. Support for disenfranchised communities has been a hallmark of my professional career and at the heart of my initiatives as your president. I continue to be moved and impressed by NYSBA’s willingness to confront societal challenges, address access to justice head on, and develop recommendations for changes in law and policy that will provide equal rights to all and truly help us form “a more perfect union.”

I am particularly proud to have chaired the Task Force on Racial Injustice and Police Reform which presented a report to the House that was adopted in June of 2021. And the work of making the sensible recommendations in that report a reality is ongoing.

Tackling racial justice advocacy must be more than just platitudes – it must be concentrated action to help “reclaim our brothers and sisters back into society.” With that in mind, I am thrilled to announce that last week the Executive Committee approved support of the Clean Slate Act, which, if enacted into law, would provide for the automatic sealing of certain conviction records. This is one simple step we can take to help confront the pervasive problem of racial injustice in the criminal justice system.

Other Association entities – including the Criminal Justice Section, the Task Force on the Parole System, and the Committee on Mandated Representation – continue to review the criminal justice system through the lens of both access to justice and racial justice.

And later today, the House of Delegates will vote on a resolution offered by the Committee on Families and the Law addressing systemic racism in New York State’s child welfare system. I commend the Committee for their thoughtful report and can tell you that I will be supporting this resolution. I also note that the Task Force on Racism, Social Equity, and the Law will give an informational update to the House this morning – I thank the members of this Task Force as they continue to draft the report and recommendations and look forward to the final report that will be presented before the House in Cooperstown this June.

In both Albany and Washington, the Association is lobbying vigorously for our legislative priorities including the long overdue increase to 18b rates, repeal of Judiciary Law 470, development of sensible gun control legislation, enactment of a right to counsel in immigration proceedings, and the implementation of the Chief Judge’s court simplification plan.

I have already said much, both today and in other addresses over the course of my term as president, on the importance of relevance. There is an old truism that “words without action are meaningless” – and indeed, continued relevance can only be ensured by deliberate and concerted action. I am announcing today that I have formed a new Strategic Planning Committee that is charged with developing actionable goals that will enable NYSBA to grow, retain, and better serve our members.

Taa R. Grays, NYSBA secretary and co-chair of the Task Force on Racism, Social Equity, and the Law, and Christopher R. Riano, Executive Committee member and chair of the LGBTQ Section, will chair the committee. The members have been strategically selected from across NYSBA – including members who have “been in the trenches” the last few years – bold leaders who are committed to driving our Association forward.

It has been over a decade since our Association last developed a comprehensive Strategic Plan to guide our operations, and truly, much has changed both within the practice of law and NYSBA itself over this period. We have had many organizational successes in recent years – such projects as the launch of the Virtual Bar Center, the successful pivot to webinars and hybrid programming during the COVID-19 crisis, a revamped multi-prong communications strategy, and focused



advocacy on innovative public policy initiatives – but there is much left to be done to guide our organization forward. We must ensure the full participation of our members in the activities, benefits, interests, and successes of the Association – this is the key to our future.

Simply put, it is my charge that the Strategic Planning Committee will secure NYSBA’s continued preeminent position in influencing and driving change in the law and the legal profession. As we approach our 150<sup>th</sup> anniversary in 2026, we must ensure that our Association remains relevant, nimble, adaptive, and strong, not just for the next decade, but for years beyond.

To help move forward, we have recommitted to the importance of diversity at all levels and activities within the Association – indeed, diversity is a foundational element to the continued success and livelihood of NYSBA, and I thank the Committee on Diversity, Equity, and Inclusion for their outstanding and constant work helping us improve. Equally, we have been reminded of the importance of focusing on generational changes in the practice of law, the legal profession, and certainly the role of the bar association.

We have also realized that there are new and exciting ways to engage with our members – including through remote events, virtual public forums, CLE webinars, and hybrid meetings like today’s meeting of the House of Delegates. As we gradually return to in-person events, we cannot forget the ease by which technology allows us to connect with so many more attorneys than before – and we have an obligation to our members and the public to ensure that our Association remains as accessible as possible.

Colleagues, it has been the privilege and pleasure of my professional career to serve as the one-hundred and twenty-fourth president of the New York State Bar Association. I wish to thank my fellow officers and friends President-Elect Sherry Levin Wallach, Immediate Past President Scott M. Karson, Treasurer Domenick Napoletano, Secretary Taa R. Grays, and President-Elect-Designee Richard C. Lewis, for their strong support over the course of my presidency. I also wish to thank the members of the Executive Committee, our section and committee chairs, and you, the members of the House of Delegates, for your exemplary leadership and service to our Association. And I would especially like to thank our staff for their diligent efforts to ensure that NYSBA is – and will continue to be – the greatest and most impactful bar association in the country.

We must not overlook the importance of this moment. We will not wait to seize this opportunity. I challenge you, the leaders of our Association and the profession, to commit to building a better NYSBA for the good of our Association, for the good of our members, and for the good of our state as a whole.



# Staff Memorandum

**HOUSE OF DELEGATES  
Agenda Item #3**

REQUESTED ACTION: None, as the report is informational.

Sherry Levin Wallach will be formally inaugurated as the 125<sup>th</sup> President of the New York State Bar Association. The oath of office will be administered by Hon. Cheryl E. Chambers, associate justice, Appellate Division, Second Department.



# Staff Memorandum

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

REQUESTED ACTION: None, as the report is informational.

Association president Sherry Levin Wallach will advise the House of Delegates with respect to her presidential initiatives, goals for her presidency, and other developments pertaining to the governance of the Association.



# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #5

REQUESTED ACTION: None, as the report is informational.

Hon. Jenny Rivera, associate judge of the New York Court of Appeals, will address the members of the House of Delegates via videoconference.



# Staff Memorandum

**HOUSE OF DELEGATES  
Agenda Item # 6**

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 May 31, 2022.

The report will be presented by Association treasurer Domenick Napoletano.

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

**REVENUE**

	<b>2022 BUDGET</b>	<b>UNAUDITED RECEIVED 4/30/2022</b>	<b>% RECEIVED 4/30/2022</b>	<b>2021 BUDGET</b>	<b>UNAUDITED RECEIVED 4/30/2021</b>	<b>% RECEIVED 4/30/2021</b>
<b>MEMBERSHIP DUES</b>	9,372,690	8,533,354	91.04%	8,764,295	8,995,561	102.64%
<b>SECTIONS:</b>						
Dues	1,219,400	1,044,355	85.64%	1,200,000	1,127,424	93.95%
Programs	2,841,555	200,254	7.05%	1,733,315	231,290	13.34%
<b>INVESTMENT INCOME</b>	486,225	55,689	11.45%	494,420	60,318	12.20%
<b>ADVERTISING</b>	218,000	108,467	49.76%	183,000	69,520	37.99%
<b>CONTINUING LEGAL EDUCATION</b>	2,950,000	664,636	22.53%	2,950,000	948,680	32.16%
<b>USI AFFINITY PAYMENT</b>	1,912,000	666,667	34.87%	2,154,000	714,548	33.17%
<b>ANNUAL MEETING</b>	400,000	444,011	111.00%	276,225	490,200	177.46%
<b>HOUSE OF DELEGATES &amp; COMMITTEES</b>	47,500	14,980	31.54%	27,000	2,598	9.62%
<b>PUBLICATIONS, ROYALTIES AND OTHER</b>	213,500	90,767	42.51%	210,700	54,369	25.80%
<b>REFERENCE MATERIALS</b>	1,247,000	150,749	12.09%	1,300,000	167,883	12.91%
<b>TOTAL REVENUE</b>	<b>20,907,870</b>	<b>11,973,929</b>	<b>57.27%</b>	<b>19,292,955</b>	<b>12,862,391</b>	<b>66.67%</b>

**EXPENSE**

	<b>2022 BUDGET</b>	<b>UNAUDITED EXPENDED 4/30/2022</b>	<b>% EXPENDED 4/30/2022</b>	<b>2021 BUDGET</b>	<b>UNAUDITED EXPENDED 4/30/2021</b>	<b>% EXPENDED 4/30/2021</b>
<b>SALARIES &amp; FRINGE</b>	8,588,946	2,828,775	32.94%	8,334,264	2,487,393	29.85%
<b>BAR CENTER:</b>						
Rent	-	-	0.00%	284,000	82,137	28.92%
Building Services	342,000	112,496	32.89%	365,000	95,589	26.19%
Insurance	190,000	72,759	38.29%	164,000	63,721	38.85%
Taxes	167,250	100,967	60.37%	180,250	100,201	55.59%
Plant and Equipment	862,000	279,106	32.38%	893,500	280,285	31.37%
Administration	610,750	304,204	49.81%	526,100	144,550	27.48%
<b>SECTIONS</b>	4,039,155	377,690	9.35%	2,920,715	185,948	6.37%
<b>PUBLICATIONS:</b>						
Reference Materials	121,500	29,810	24.53%	248,800	30,730	12.35%
Journal	265,000	83,693	31.58%	245,700	85,966	34.99%
Law Digest	47,000	21,589	45.93%	75,000	18,126	24.17%
State Bar News	100,300	53,437	53.28%	85,500	37,569	43.94%
<b>MEETINGS:</b>						
Annual Meeting	360,100	37,425	10.39%	24,250	38,811	160.05%
House of Delegates, Officers and Executive Committee	561,550	327,803	58.37%	309,000	80,336	26.00%
<b>COMMITTEES:</b>						
Continuing Legal Education	370,400	6,599	1.78%	435,000	37,367	8.59%
LPM / Electronic Communication Committee	35,150	-	0.00%	1,400	-	0.00%
Marketing / Membership	909,450	269,460	29.63%	850,000	183,651	21.61%
Media Services	290,000	102,361	35.30%	269,450	85,533	31.74%
All Other Committees and Departments	2,925,875	1,041,293	35.59%	2,590,135	772,511	29.83%
<b>TOTAL EXPENSE</b>	<b>20,786,426</b>	<b>6,049,467</b>	<b>29.10%</b>	<b>18,802,064</b>	<b>4,810,424</b>	<b>25.58%</b>
<b>BUDGETED SURPLUS</b>	<b>121,444</b>	<b>5,924,462</b>		<b>490,891</b>	<b>8,051,967</b>	

**NEW YORK STATE BAR ASSOCIATION  
STATEMENTS OF FINANCIAL POSITION  
AS OF APRIL 30, 2022**

<u>ASSETS</u>	UNAUDITED <u>4/30/2022</u>	UNAUDITED <u>4/30/2021</u>	UNAUDITED <u>12/31/2021</u>
<b>Current Assets:</b>			
General Cash and Cash Equivalents	18,949,612	17,537,214	19,902,457
Accounts Receivable	60,982	89,635	39,878
Prepaid expenses	1,108,807	642,521	680,393
Royalties and Admin. Fees receivable	666,667	637,625	748,640
Total Current Assets	20,786,068	18,906,995	21,371,368
<b>Board Designated Accounts:</b>			
<u>Cromwell Fund:</u>			
Cash and Investments at Market Value	2,965,288	3,157,994	3,366,406
Accrued interest receivable	0	0	0
	2,965,288	3,157,994	3,366,406
<u>Replacement Reserve Account:</u>			
Equipment replacement reserve	1,117,974	1,117,863	1,117,938
Repairs replacement reserve	794,655	794,576	794,629
Furniture replacement reserve	220,030	220,008	220,022
	2,132,659	2,132,447	2,132,589
<u>Long-Term Reserve Account:</u>			
Cash and Investments at Market Value	30,312,662	32,304,925	34,513,008
Accrued interest receivable	0	0	124,042
	30,312,662	32,304,925	34,637,050
<u>Sections Accounts:</u>			
Section Cash and Investments at Market Value	3,869,201	4,037,480	4,022,992
Cash	873,989	1,172,766	1,172,408
	4,743,190	5,210,246	5,195,400
<b>Fixed Assets:</b>			
Furniture and fixtures	1,465,027	1,463,037	1,463,037
Leasehold Improvements	1,470,688	1,470,688	1,470,688
Equipment	3,182,187	3,995,201	4,053,020
	6,117,902	6,928,926	6,986,745
Less accumulated depreciation	4,166,199	4,241,989	4,680,627
Net fixed assets	1,951,703	2,686,937	2,306,118
Total Assets	62,891,570	64,399,544	69,008,931
<b><u>LIABILITIES AND FUND BALANCES</u></b>			
<b>Current liabilities:</b>			
Accounts Payable & other accrued expenses	708,862	463,986	861,398
Deferred dues	0	0	6,095,477
Deferred income special	(1)	153,845	0
Deferred grant revenue	29,906	29,906	29,906
Other deferred revenue	309,006	214,606	369,627
PPP Loan Payable	0	1,482,957	0
Payable To The New York Bar Foundation	0	1,585	480
Total current liabilities & Deferred Revenue	1,047,773	2,346,885	7,356,888
<b>Long Term Liabilities:</b>			
Accrued Other Postretirement Benefit Costs	8,276,910	8,826,735	8,156,910
Accrued Defined Contribution Plan Costs	247,484	127,377	398,670
Total Liabilities & Deferred Revenue	9,572,167	11,300,997	15,912,468
<b>Board designated for:</b>			
Cromwell Account	2,965,288	3,157,994	3,366,406
Replacement Reserve Account	2,132,659	2,132,447	2,132,589
Long-Term Reserve Account	21,788,268	23,350,813	25,957,428
Section Accounts	4,743,190	5,210,246	5,195,400
Invested in Fixed Assets (Less capital lease)	1,951,703	2,686,937	2,306,118
Undesignated	19,738,295	16,560,110	14,138,522
Total Net Assets	53,319,403	53,098,547	53,096,463
Total Liabilities and Net Assets	62,891,570	64,399,544	69,008,931

**New York State Bar Association  
Statement of Activities  
For the Four Months Ending April 30, 2022**

	<b>April 2022</b>	<b>April 2021</b>	<b>December 2021</b>
<b>REVENUES AND OTHER SUPPORT</b>			
Membership dues	8,533,354	8,995,561	9,335,487
Section revenues			
Dues	1,051,425	1,127,424	1,175,901
Programs	200,254	231,290	699,904
Continuing legal education program	664,636	948,680	2,715,526
Administrative fee and royalty revenue	770,183	776,203	2,408,451
Annual meeting	444,011	490,200	489,977
Investment income	179,364	141,580	1,386,890
Reference Books, Formbooks and Disk Products	150,749	167,883	1,262,049
Other revenue	279,182	64,831	314,123
	<hr/>	<hr/>	<hr/>
Total revenue and other support	12,273,158	12,943,652	19,788,308
<b>PROGRAM EXPENSES</b>			
Continuing legal education program	248,489	239,413	796,840
Graphics	446,972	384,721	1,172,896
Government relations program	105,965	92,543	324,497
Lawyer assistance program	41,931	11,581	52,865
Lawyer referral and information services	-	-	(63)
Law practice management services	-	17,221	36,455
Media / public relations services	214,290	211,983	577,256
Business Operations	778,639	577,993	2,231,386
Marketing and Membership services	530,956	441,755	1,538,319
Pro bono program	27,584	60,732	145,000
House of delegates	278,932	80,317	266,997
Executive committee	48,871	19	13,666
Other committees	74,307	34,979	76,452
Sections	377,690	185,948	703,398
Section newsletters	82,674	80,855	245,723
Reference Books, Formbooks and Disk Products	181,093	209,107	692,853
Publications	158,719	141,661	342,384
Annual meeting expenses	37,425	38,811	13,811
	<hr/>	<hr/>	<hr/>
Total program expenses	3,634,537	2,809,639	9,230,735
<b>MANAGEMENT AND GENERAL EXPENSES</b>			
Salaries and fringe benefits	1,141,731	963,184	2,871,832
Pension plans and other employee benefit plan costs	360,276	228,212	(181,808)
Rent and equipment costs	325,807	379,815	1,187,626
Consultant and other fees	310,599	188,655	680,709
Depreciation and amortization	248,400	248,400	687,038
Other expenses	28,116	(7,903)	52,308
	<hr/>	<hr/>	<hr/>
Total management and general expenses	2,414,929	2,000,363	5,297,705
<b>CHANGES IN NET ASSETS BEFORE INVESTMENT TRANSACTIONS AND OTHER ITEMS</b>			
Realized and unrealized gain (loss) on investments	6,223,692	8,133,650	5,259,868
Realized gain (loss) on sale of equipment	(5,947,434)	2,057,138	3,445,877
	(53,319)	-	1,482,957
	<hr/>	<hr/>	<hr/>
<b>CHANGES IN NET ASSETS</b>	<b>222,939</b>	<b>10,190,788</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	53,319,402	53,098,549	53,096,463





# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #7

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, a draft of which was circulated to the Reports Group in April 2022.

Although this item is not scheduled for a formal vote at this meeting, comments concerning the forthcoming report have been submitted by the President's Committee on Access to Justice, Committee on Mandated Representation, Criminal Justice Section, and member Gail Ehrlich in her personal capacity, and are available for review on the Reports Group webpage together with the first draft of the report. Link to Reports Group webpage: <https://nysba.org/reportsgroup/>



# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #8

**REQUESTED ACTION:** Approval of the report and recommendations of the Task Force on Voting Rights and Democracy.

The Task Force on Voting Rights and Democracy was formed in July 2021 by immediate past president T. Andrew Brown and charged to “make recommendations to ensure that constitutional and statutory rights to full and fair elections are upheld.”<sup>1</sup>

This report contains five recommendations, which, in the opinion of the Task Force, would improve election administration in New York State.

1. Professionalize the hiring of senior election board staff.
2. Professionalize the training process for election board members, senior staff, and polling place workers.
3. Adopt ethics rules for election officials and staff.
4. Make it easier to access public information about election boards’ procedures and operations. The State Board of Elections should establish for each of the county boards one standard website which is easy to navigate and includes plain-language guidelines in multiple languages.
5. Appoint an Inspector General for the State and county boards, appointed by and under the auspices of the New York State Office of the Inspector General, to monitor board personnel and the implementation of the election law.

The report was submitted to the Reports Group in May 2022. Comments from the Committee on Legal Aid are appended here.

The report will be presented by Task Force chair Jerry H. Goldfeder.

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<sup>1</sup> Mission Statement, <https://nysba.org/committees/task-force-on-voting-rights-and-democracy/>.



NEW YORK STATE  
BAR ASSOCIATION

# Report and Recommendations of the New York State Bar Association **Task Force on Voting Rights and Democracy**

June 2022

**New York State Bar Association**  
**Voting Rights and Democracy Task Force**  
May 2022

**T. Andrew Brown, President**

**Jerry H. Goldfeder, Chair**  
Ava Ayers  
**Wilfred Codrington III**  
Sean Cooney  
Christina Das  
James A. Gardner  
Steven Leventhal  
Deborah Pearlstein  
Brittanylee Penberthy  
Saniya Suri  
Wendy Weiser

[THE TASK FORCE'S REPORT AND RECOMMENDATIONS WILL BE ISSUED IN TWO PARTS. PART I, WHICH FOLLOWS, FOCUSES UPON ELECTION ADMINISTRATION IN NEW YORK. PART II, WHICH WILL BE PUBLISHED IN THE FALL OF 2022, WILL FOCUS UPON VOTING REFORMS]

***Executive Summary***

The Task Force recommends five reforms to improve election administration in New York State:

- (1) Professionalize Hiring**
- (2) Professionalize the Training Process**
- (3) Adopt Ethics Rules**
- (4) Make Access to Information Easier**
- (5) Appoint an Elections Inspector General**

***Preface***

In a republican form of government, election administration lies at the heart of the rule of law. Its purpose is to regulate the laws enacted for electing state and local public officials, and the hallmarks of successful election administration are independence, fairness, transparency, and efficiency. Unfortunately, the United States is undergoing a period of democratic backsliding, where many states are passing laws that restrict voting rights, facilitate partisan influence over election results, and disincentivize civic participation in election administration.<sup>1</sup> Although Supreme Court Associate Justice Louis Brandeis famously opined that states are laboratories of democracy<sup>2</sup> today we are

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<sup>1</sup> Charles Homans, *Where Does American Democracy Go From Here?* N.Y. Times (March 20,2022), Magazine Section, p. 28.

<sup>2</sup> *New State Ice Co. v. Liebman*, 285 U.S. 262, 311 (1932)(Brandeis, J., dissenting).

living through an era of states acting as showcases for anti-democratic impulses. At least two dozen states have enacted laws that weaken independent election administration by empowering partisan poll watchers and sanctioning partisan purges of local election boards.<sup>3</sup> And in the face of serious threats of violence, many longtime election administrators across the country have left election work altogether.<sup>4</sup> Indeed, as a bipartisan group of one hundred and fifty of the nation’s leading democracy scholars recently warned in a public letter urging federal action to protect elections, the “politicization of what has long been trustworthy, non-partisan administration of elections represents a clear and present threat to the future of electoral democracy in the United States.”<sup>5</sup>

These new laws, and the two big lies of 2020 -- that widespread voting fraud exists and the presidential election was somehow stolen from the former president -- are also having an impact on Americans’ confidence in election administration. A whopping 40% of Americans now doubt that their votes will be cast and counted accurately, a precipitous deterioration in voter confidence compared to the same poll just two years earlier.<sup>6</sup>

### ***What is at Stake for New Yorkers***

Like all Americans, New Yorkers have a stake in national elections and a particular interest in how elections are run in our own state – and New York lawyers, of course, have a specialized focus on the rule of law, as well as on the fair and accurate implementation of our election laws. Despite recent legislative progress, however, our state has become somewhat of a poster child invoked by other states to justify some of their restrictive laws.<sup>7</sup>

Recent New York elections have been marred by problematic administration,<sup>8</sup> confusion at the polls,<sup>9</sup> and lengthy delays in vote counting<sup>10</sup> – issues that have undermined voter confidence and exacerbated longstanding complaints by New Yorkers. While New York State has made some important progress recently, such as in the access

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<sup>3</sup> <https://www.nytimes.com/2021/06/19/us/politics/republican-states.html>

<sup>4</sup> See Rachel Kleinfeld, *The Rise of Political Violence in the United States*, 32 J. Democracy 161 (2021); see also <https://www.justice.gov/dag/page/file/1406286/download>; <https://www.cbsnews.com/news/election-officials-threats-2020-election/>

<sup>5</sup> <https://newamerica.org/political-reform/statements/statement-in-support-of-the-freedom-to-vote-act/>

<sup>6</sup> <https://news.gallup.com/poll/196976/update-americans-confidence-voting-election.aspx>

<https://news.gallup.com/poll/321665/confidence-accuracy-election-matches-record-low.aspx>

<sup>7</sup> See, e.g., <https://www.nbcnews.com/politics/elections/republicans-defending-voting-restrictions-point-finger-blue-states-laws-they-n1263205>

<sup>8</sup> <https://www.nytimes.com/2020/10/26/nyregion/nyc-voting-election-board.html>; Edward-Isaac Dove, *The Chaos in New York Is a Warning*, ATLANTIC (July 24, 2020),

<https://www.theatlantic.com/politics/archive/2020/07/new-york-election-failure-mail-in-voting/614446/>

<sup>9</sup> <https://www.commoncause.org/new-york/wp-content/uploads/sites/20/2021/02/Reforming-New-Yorks-Elections.pdf>

<sup>10</sup> <https://www.brennancenter.org/our-work/policy-solutions/how-fix-new-york-city-board-elections>

to and counting of absentee ballots,<sup>11</sup> it is time for Albany to conduct a comprehensive review of New York election administration – both to protect the interests of New York voters, and to establish itself as a model for ensuring the fair and accurate election administration nationwide.<sup>12</sup>

Many commission studies, elections research, and reform efforts in the United States and in democracies worldwide in recent years point to a set of best practices from which New York can benefit. Embracing a commitment to principles of professionalism, impartiality and transparency, New York can adopt essential reforms without the need to amend the State Constitution, or abandon New York’s long tradition of bipartisan supervision of election administration.

### ***Election Administration in New York***

While the great majority of democracies in the world rely on some form of politically independent election authority to manage and administer elections, the United States is among the minority that continues to rely on partisan election administration – different models of which today operate in most of our states.<sup>13</sup> In New York, authority for administering elections is shared among a State Board of Elections and various local boards.<sup>14</sup> Under Article II, Section 8 of the New York State Constitution, the officers of all such boards must be nominated by representatives of the two political parties who receive the highest number of votes for governor in the previous election, and “shall secure equal representation” of both parties. New York State Election Law has, in turn, given local boards discretion to appoint, remove, and otherwise fix the duties and terms of employment of their staffs – which must also reflect equal representation of the two major political parties.<sup>15</sup>

Although New York was the first state in the nation to enact its own civil service system in 1883, replacing the spoils system for public workers with the requirement that hires be based on merit and workers insulated from political influence,<sup>16</sup> the New York Civil Service Code was amended in 1958 to make clear that “all members, officers and employees of boards of election” were to be excluded from its coverage.<sup>17</sup> As it stands,

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<sup>11</sup> N.Y. Elec. Law § 9-209 (McKinney).

<sup>12</sup> See, e.g., <https://www.scientificamerican.com/article/what-will-2022-bring-in-the-way-of-misinformation-on-social-media-3-experts-weigh-in/>; see also <https://www.propublica.org/article/facebook-hosted-surge-of-misinformation-and-insurrection-threats-in-months-leading-up-to-jan-6-attack-records-show>; <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/09/21/disinformation-may-be-the-new-normal-election-officials-fear>

<sup>13</sup> Daniel P. Tokaji, *Comparative Election Administration: A Legal Perspective on Electoral Institutions* (Edward Elgar Publishing, 2022).

<sup>14</sup> In addition to the State Board of Elections, each county has its own board, consisting of either two or four commissioners, depending upon the population, divided equally by members of the two major parties. New York City is a special case – the Board of Elections in the City of New York consists of two commissioners from each of the five boroughs (counties), one from each of the two major parties.

<sup>15</sup> N.Y. Elec. Law § 3-300 (McKinney).

<sup>16</sup> Bennett Liebman, *Protecting the Deep State: Making Sense of Section 107 of New York’s Civil Service Law*, Albany Law School Government Law Center (2018).

<sup>17</sup> N.Y. Civ. Serv. § 35 (f) (McKinney).

although state law now includes training and examination requirements for on-the-ground election inspectors, poll clerks, and election coordinators,<sup>18</sup> it contains no uniform requirement that election board members or senior staff demonstrate any specific qualifications or receive any specialized training. And while board members are prohibited by state law from holding or running for public office while serving as commissioners,<sup>19</sup> neither board members nor their staffs at any level are subject to any uniform code of ethics, and only commissioners have the authority to discipline or remove staff.<sup>20</sup>

State law also imposes a set of operational requirements on the boards of elections. Canvassers have defined duties.<sup>21</sup> Boards must remain open after polls close to “make such unofficial results available to the media and the state board of elections, and shall post running totals in a public place and on the internet as the results become known to it.”<sup>22</sup> In addition, state law requires the boards to maintain an electronic absentee ballot tracking system to allow a voter who has submitted an application for an absentee ballot to track the status of an application and any ballot filed on the state or local board website.<sup>23</sup>

The law also provides that board proceedings are public, requiring all election boards to prepare an annual report of the board’s “affairs and proceedings.”<sup>24</sup>

### ***A History of Problems***

Despite these and other laws, and a set of regulations governing the boards, there have been a series of problems with election administration. These have led to critical stories over the years,<sup>25</sup> as well multiple critical reports by government and non-

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<sup>18</sup> N.Y. Elec. Law § 3-412 (McKinney).

<sup>19</sup> N.Y. Elec. Law § 3-200 (McKinney).

<sup>20</sup> N.Y. Elec. Law § 3-300 (McKinney).

<sup>21</sup> N.Y. Elec. Law § 9-209 (McKinney).

<sup>22</sup> N.Y. Elec. Law § 9-126 (McKinney).

<sup>23</sup> N.Y. Elec. Law § 8-414 (McKinney).

<sup>24</sup> N.Y. Elec Law § 3-212 (McKinney).

<sup>25</sup> See, e.g., Editorial, *Reform New York City’s Board of Elections Now*, N.Y. Times (Oct. 30, 2021)(describing city investigations have consistently found the agency “rife with waste, neglect and incompetence”), <https://www.nytimes.com/2021/10/30/opinion/nyc-elections-board-reform.html?referringSource=articleShare>; Sean Morales-Doyle and Chisun Lee, *New York’s Worst-in-the-Country Voting System*, ATLANTIC (Sept. 13, 2018), <https://www.theatlantic.com/ideas/archive/2018/09/new-yorks-worst-in-the-country-voting-system/570223/>; [https://timesmachine.nytimes.com/timesmachine/1940/12/05/91589775.pdf?pdf\\_redirect=true&ip=0](https://timesmachine.nytimes.com/timesmachine/1940/12/05/91589775.pdf?pdf_redirect=true&ip=0) (1940); <https://www.nytimes.com/1985/03/14/nyregion/inquiry-faults-election-board-in-ballot-snags.html> (1985). See also Brian M. Rosenthal and Michael Rothfeld, *Inside Decades of Nepotism and Bungling at the N.Y.C Elections Board*, N.Y. Times (Nov. 2, 2021),

governmental organizations.<sup>26</sup> In the 2018 elections, for example, jammed machine scanners led thousands of voters to wait in line for hours because, among other reasons, “no election worker told them that the two perforated pages needed to be separated and fed into the machine one at a time.”<sup>27</sup> New Yorkers experienced long lines again in 2020, with some voters describing the scene as “mass confusion,” with “no signs that said end of line, start of the line,” and a lack of clarity to many voters as to what the procedure at the polling place was for voters to cast their already-completed absentee ballots.<sup>28</sup> Moreover, too many voting sites had chronic problems complying with baseline federal standards ensuring access for people with disabilities.<sup>29</sup> And procedures for counting a burgeoning number of absentee ballots have caused results to be delayed.<sup>30</sup>

The legislature deserves great credit for addressing some of these issues. It has enacted laws that require signs to be placed on polling places that have been moved, and has established an expedited canvassing process of absentee ballots to permit speedy

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<https://www.nytimes.com/2020/10/26/nyregion/nyc-voting-election-board.html>, in which the following was reported:

As the June primary approached [in 2020], the NYCBOE — despite assuring the state it could handle a surge in residents seeking to vote by mail — grew so overwhelmed that it called two upstate companies for help printing absentee ballots on the weekend before the election, officials acknowledged. It did not send the companies the names of voters who still needed ballots until late afternoon that Sunday, less than two days before the vote. The companies worked through the night. But in all, 34,000 ballot packages were not mailed to voters until the day before the primary, and many likely did not arrive in time to be returned and counted. Ultimately, about one-fifth of primary ballots were thrown out for arriving late or other defects; in other states, the rate was 5 percent or less.

One should not think all or most of the problems occur in the New York City area, however. After the 2020 election in what had been the 22<sup>nd</sup> congressional district, the United States Department of Justice commenced an action against one New York county for large scale errors in the counting of paper ballots. The board’s commissioners were replaced and new procedures were put into place to prevent a recurrence. See <https://www.justice.gov/opa/pr/justice-department-and-board-elections-oneida-county-new-york-reach-agreement-under-national>

<sup>26</sup> See, e.g., Rose Gill Hearn, *Report on the New York City Board of Elections’ Employment Practices, Operations, and Election Administration*, New York City Department of Investigation (Dec. 2013), [https://www1.nyc.gov/assets/doi/reports/pdf/2013/2013-12-30-BOE\\_Unit\\_Report.pdf](https://www1.nyc.gov/assets/doi/reports/pdf/2013/2013-12-30-BOE_Unit_Report.pdf); [https://www.brennancenter.org/sites/default/files/2021-09/2021\\_08\\_NYC\\_BOE\\_Reform\\_Final.pdf](https://www.brennancenter.org/sites/default/files/2021-09/2021_08_NYC_BOE_Reform_Final.pdf); Common Cause Report; Black Institute Report, [https://d3n8a8pro7vnm.cloudfront.net/theblackinstitute/pages/1449/attachments/original/1516904743/Mississippi\\_on\\_the\\_Hudson\\_\(TBI\\_Report\).pdf?1516904743](https://d3n8a8pro7vnm.cloudfront.net/theblackinstitute/pages/1449/attachments/original/1516904743/Mississippi_on_the_Hudson_(TBI_Report).pdf?1516904743).

<sup>27</sup> <https://www.nytimes.com/2018/11/06/nyregion/nyc-voting-machines.html>

<sup>28</sup> [https://www.washingtonpost.com/national-security/early-voting-lines-new-york/2020/10/30/0e3a212c-1ad1-11eb-82db-60b15c874105\\_story.html](https://www.washingtonpost.com/national-security/early-voting-lines-new-york/2020/10/30/0e3a212c-1ad1-11eb-82db-60b15c874105_story.html)

<sup>29</sup> According to the Black Institute, between 2012 to 2017, many polling places closed in neighborhoods with a higher rate of Black and Latino residents, while nearby white wealthy neighborhood polling places were left. See The Bronx Chronicle, January 30, 2018, <https://thebronxchronicle.com/2018/01/30/the-black-institute-releases-new-york-city-voter-suppression-report-mississippi-on-the-hudson-exposes-suppression-tactics/>

<sup>30</sup> See Gregory Krieg and Evan Simko-Bednarski, ‘It’s embarrassing’: Why New York is still waiting for full election results, CNN Politics (Nov. 18, 2020), <https://www.cnn.com/2020/11/18/politics/new-york-california-election-delay/index.html>



results of elections.<sup>31</sup> Yet the chronic recurrence of problems points to a deeper underlying issue of deficient training and preparedness. At recent hearings by the New York State Senate, poll workers and trainers on the front lines reported that training was too limited to prepare them for the reality of election day operations.<sup>32</sup> They noted that there was insufficient opportunity for hands-on practice with voting machines and canvassing procedures, and that qualifying exams they are currently required to take have little to do with the skills and information essential to fulfilling their duties.<sup>33</sup> They further testified that trainings and printed manuals do not always reflect the most recent changes in the law.<sup>34</sup>

These accounts make clear that additional corrective measures are required.

### ***Best Practices and Recommendations***

Beyond the risk that such election administration problems undermine the fairness and legitimacy of election administration in the eyes of New Yorkers, civic tensions might be heightened in an already polarized time. As political scientists have long reported, countries whose governments who have difficulty running professional, impartial, and transparent elections face an increased risk of political violence, a trend already becoming visible in other parts of the United States.<sup>35</sup> That has not occurred in New York, but it is prudent to be forewarned, especially after the violent attacks on the United States and Michigan Capitols during the 2020 election cycle.

After the 2000 presidential election, the study of election administration has grown dramatically in the United States, along with an understanding of best practices for election administration in the United States and democracies around the world.<sup>36</sup> While these studies differ in some recommendations, there is strong consensus around the importance of professionalism, impartiality, and transparency. Drawing upon their consensus guidance and proffered best practices, as well as our observations of New

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<sup>31</sup> N.Y. Elec. Law § 9-209 (McKinney).

<sup>32</sup> *Public Hearing: To Solicit Testimony on Voting Experiences and Issues from Voters in New York City*, New York State Senate (July 28, 2021), <https://www.nysenate.gov/calendar/public-hearings/july-28-2021/public-hearing-solicit-testimony-voting-experiences-and-issues> (link to archived video of the senate hearing and links to copies of all written testimony at the bottom of the page); *see also id.*, *Public Hearing Before the Senate Standing Committee on Elections*, New York State Senate (July 28, 2021) (written testimony of Marianne Barcellona, poll worker), [https://www.nysenate.gov/sites/default/files/marianne\\_barcellona\\_testimony.pdf](https://www.nysenate.gov/sites/default/files/marianne_barcellona_testimony.pdf).

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

<sup>34</sup> *Id.*

<sup>35</sup> *See, e.g.*, Rachel Kleinfeld, *The Rise of Political Violence in the United States*, 32 J. Democracy 161 (2021); *see also* Barbara F. Walter, *HOW CIVIL WARS START AND HOW TO STOP THEM* (2022).

<sup>36</sup> *See, e.g.*, Carter-Baker Commission Report 2005, [https://assets-global.website-files.com/603d9c89eaaf7b52bb36352d/6047fae77590e5af63d357f0\\_2005-Report-Carter-Baker-Commission-on-Election-Reform.pdf](https://assets-global.website-files.com/603d9c89eaaf7b52bb36352d/6047fae77590e5af63d357f0_2005-Report-Carter-Baker-Commission-on-Election-Reform.pdf) (“Carter-Baker Commission Report”); International IDEA Election Management Design, <https://www.idea.int/sites/default/files/publications/electoral-management-design-2014.pdf>; *see also* Daniel P. Tokaji, *Comparative Election Administration: A Legal Perspective on Electoral Institutions* (Edward Elgar Publishing, 2022) (summarizing literature), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3500868](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3500868)

York elections, we offer the following general recommendations for improving election administration in New York.

**1. Professionalize Hiring.** New York’s constitutional requirement that election board officers be nominated by representatives of the two political parties does not and should not be understood to preclude the state Legislature from requiring that nominated candidates satisfy a certain baseline set of qualifications, nor does it preclude appointing authorities from conducting a rigorous evaluation process before selecting from among recommended candidates who best satisfy these requirements.

Senior election board staff should, therefore, be hired in a way consistent with best professional practice: advertise widely for available positions and hire personnel made based on a competitive, merit-based search.<sup>37</sup>

**2. Professionalize the Training Process.** Further, state law should mandate appropriate training for board members, senior staff, and polling place workers. Responsibility for maintaining up-to-date training programs and materials should be managed by specific, identified, and sufficiently senior officials to ensure these remain an organizational and budgetary priority. Such training is consistent with internationally recognized best practices,<sup>38</sup> and is already reflected in the laws of other states including Ohio, North Carolina, and Virginia.<sup>39</sup> For administrative staff, the training already provided for specific tasks such as voter registration, poll working, and canvassing would be more effective if supplemented with simulation exercises and required self-evaluation of the training sessions. We believe this would lead to improved training and better performance.

**3. Adopt Ethics Rules.** Although current New York law appropriately prohibits board members from holding or running for public office while serving as commissioners,<sup>40</sup> this restriction does not go far enough to mitigate the influence of politics in election administration. Election officials and their staffs should be bound by an ethics code of conduct. Multiple election reform initiatives in recent years have recommended a range of proscriptions to guard against untoward political influence in election operations. The United States’ Carter-Baker Commission and the International Institute for Democracy and Electoral Assistance, for instance, embraced codes of conduct that would require election administrators to restrict participation in partisan political activity. Voting rights bills currently pending in the United States Congress also contain several ethics provisions that New York should adopt whether or not the federal legislation passes, including a provision barring election officials from sharing any information concerning an official count, recount, or audit with one candidate or campaign without also disclosing the same information to other candidates or

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<sup>37</sup> <https://www.idea.int/sites/default/files/publications/electoral-management-design-2014.pdf> at 199; *see also* Brennan Center Report, at 10.

<sup>38</sup> <https://www.idea.int/sites/default/files/publications/electoral-management-design-2014.pdf>.

<sup>39</sup> Brennan Center Report, at 13 (citing examples).

<sup>40</sup> N.Y. Elec. Law § 3-200 (McKinney).

campaigns.<sup>41</sup> Maryland law also provides a useful model, including a provision that election officials are prohibited from using their “official authority for the purpose of influencing or affecting the result of an election.”<sup>42</sup> These or similar restrictions would significantly bolster voter confidence in the fairness and impartiality of election administration.

**4. Make Access to Information Easier.** To facilitate transparent election administration, public information about the boards’ procedures and operations must not only be available to voters, but easy to navigate.<sup>43</sup> Currently, the State Board of Elections and the various county boards maintain separate websites, some of which are less intelligible than they should be, inconsistent with each other, or out-of-date. Voters should have current and accurate information, and be able to easily find the information they need.

Toward this end, there should be established by the State Board for each of the county boards one standard site which is easy to navigate following plain-language guidelines in multiple languages. This would make it significantly easier for voters to understand and participate in the electoral process in a meaningful way.<sup>44</sup>

**5. Appoint an Elections Inspector General.** As with many state and municipal agencies, there should be an Inspector General for the State and county Boards to monitor personnel and how the law is being implemented. An Inspector General, appointed by and under the auspices of the New York State Office of the Inspector General, would have the capacity to ascertain how inevitable problems arise and the independence to make recommendations to cure such instances of deficient election administration.

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<sup>41</sup> See, e.g., H.R. 1, For the People Act of 2021, § 1821 (prohibiting state election officials from the “sharing of information concerning an official count, recount, or audit with respect to any primary, special, or general election for Federal office with a candidate for such office or with an authorized committee of such a candidate, unless the same information is provided to all other candidates for such office in such election”).

<sup>42</sup> MD Code, Elec. Law § 2-301.

<sup>43</sup> See generally Wendy Wagner with Will Walker, INCOMPREHENSIBLE!: A STUDY OF HOW OUR LEGAL SYSTEM ENCOURAGES INCOMPREHENSIBILITY, WHY IT MATTERS, AND WHAT WE CAN DO ABOUT IT (2019).

<sup>44</sup> See, e.g., <https://www.plainlanguage.gov/guidelines>.



COMMITTEE ON LEGAL AID

June 6, 2022

TO: Task Force on Voting Rights and Democracy

FROM: Committee on Legal Aid

RE: Support of the Report and Recommendations of the task Force on Voting Rights and Democracy

The Committee on Legal Aid has voted in support of the Report of the Task Force on Voting Rights and Democracy as long as the extent of the report has a positive impact on the communities that the Committee on Legal Aid represent.



# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #9

REQUESTED ACTION: Approval of the resolution and recommendations of the Committee on Diversity, Equity, and Inclusion.

The provisions of the Association Bylaws providing for diversity delegates and diversity members-at-large for the Executive Committee will expire on January 31, 2024, without further action.

This resolution recommends removal of the sunset clauses from Bylaws provisions V.3.H. and VII.1.F.1., thereby permanently providing for the diversity delegates and diversity members-at-large positions.

If this resolution is approved, the Bylaws Committee will be requested to prepare Bylaws amendments for subscription at the November 2022 meeting and approval at the 2023 Annual Meeting. A memo and proposed amendment offered by A. Thomas Levin is also appended to the report.

Comments from the Women in Law Section in support of the recommendations are



COMMITTEE ON DIVERSITY, EQUITY & INCLUSION

**Mirna M. Santiago**

Co-Chair, Committee on Diversity, Equity & Inclusion

**Violet E. Samuels**

Co-Chair, Committee on Diversity, Equity & Inclusion

May 19, 2022

T. Andrew Brown, Esq., President  
New York State Bar Association  
1 Elk Street  
Albany, NY 12207

Dear President Brown and members of the Executive Committee:

**Committee on Diversity, Equity and Inclusion**

**Bylaws Resolution and Report**

*Bylaws V. House of Delegates. Section 3. Composition. H. Twelve delegates to be appointed by the President then in office from a range of racial and ethnic minority groups identified by the National Association for Law Placement. At least two and no more than four of such delegates shall be appointed from each Judicial Department, and all appointments shall be subject to confirmation by the Executive Committee. This subsection shall expire ten years from the date of amendment (January 31, 2014) and shall be removed from these Bylaws without further action of the Association. Notwithstanding such expiration, the final term authorized under this provision shall be for a full year, concluding May 31, 2025.*

*Bylaws VII. Executive Committee. Section 1. Composition. F. 1. Eight members-at-large who shall be Active members of the Association. Not less than two of the members-at-large shall be selected from the First Judicial District. Two of the members-at-large shall be selected to further ethnic and racial diversity and may not be drawn from the same Judicial District. Ten years from the date of amendment (January 31, 2014), the provision for the two members-at-large selected to further ethnic and racial diversity shall expire and be removed from these Bylaws without further action of the Association, and the number of these members-at-large on the Executive Committee shall revert to six. Notwithstanding such expiration, the final term authorized under this provision shall be for a full two-year term, concluding May 31, 2025.*

NOW THEREFORE, IT IS

RESOLVED, that the New York State Bar Association reaffirms its unwavering and longstanding commitment to increase racial and ethnic diversity within its leadership ranks based upon its firm belief that diversity, equity, and inclusion must be fostered within the legal community and in society at large.

FURTHER RESOLVED, that the mission of the New York State Bar Association's Committee on Diversity, Equity and Inclusion is to promote the full and equal participation of attorneys of color and other diverse attorneys in the Association and in all sectors and at every level of the legal profession.

FURTHER RESOLVED, that the Association is made stronger and more capable of implementing change through the law when its membership reflects the diversity of the individuals and communities served by the legal profession.

FURTHER RESOLVED, that the subject bylaws provisions institutes a deliberate and thoughtful process to identify and recruit diverse members whose perspectives help inform and strengthen the Association's decisions and policies.

FURTHER RESOLVED, that the increased participation of attorneys of color in leadership positions also helps foster a welcoming environment for and serves as an incentive to diverse lawyers considering membership within the Association.

FURTHER RESOLVED, that the subject bylaws provisions promote the objectives approved by the Association in its adoption of the 2020 Diversity Plan which commits the Association to require diversity as an emphasis in all leadership nomination processes, including diversity among the decision-makers on the Nominating Committee.

RESOLVED, that consistent with these stated principles and commitments, the Association hereby approves the continuation of the bylaws provisions, without any sunset clause, to ensure that at least 12 members of the Association will be appointed by the President from underrepresented racial and ethnic groups to serve in the House of Delegates and that two

members-at-large of the Executive Committee of the Association shall be selected to further ethnic and racial diversity.

The mission of the New York State Bar Association's Committee on Diversity, Equity and Inclusion is to promote the full and equal participation of attorneys of color and other diverse attorneys in the Association and in all sectors and at every level of the legal profession. This resolution presented is consistent with the New York State Bar Association's unwavering and longstanding commitment to increase diversity within its membership and leadership ranks. Specifically, as stated in this Association's [Diversity Plan](#) adopted by the House of Delegates in January 2020, the NYSBA aims to "promote and advance the full and equal participation of attorneys of color and other diverse attorneys (including diversity based on gender, race, color, ethnic origin, national origin, religion, sexual orientation, gender identity and expression, age, and disability) in NYSBA."

The Diversity Plan specifically commits this Association to promote diversity within its leadership positions and its leadership development processes. Our Association made the commitment to require diversity as an emphasis in all leadership nomination processes, including diversity among the decision-makers on the Nominating Committee. The Association also committed to following the Mansfield Rule to ensure that at least 50% of leadership roles be filled by women and people of color.

The Association is made stronger and more capable of implementing change through law when its membership reflects the diversity of the individuals and communities served by the legal profession. The subject bylaws provisions have enabled the Association to successfully create pathways to increase the number of members from underrepresented racial and ethnic groups serving in leadership positions, which is consistent with this Association's firm belief that diversity, equity, and inclusion must be fostered within the legal community and in society at large.

The bylaws provisions promote a deliberate and thoughtful process to identify and recruit diverse members whose perspectives help inform and strengthen the Association's decisions and policies. Permanently ensuring the increased participation of attorneys of color in leadership positions also helps foster a welcoming environment for and serves as an incentive to diverse lawyers considering membership within the Association.



The New York State Bar Association's commitment and hard work in the area of increasing diversity within its leadership ranks has strengthened our Association's decision-making processes and is responsive to the needs of our membership and the clients we serve. We have miles to go to truly embody the diversity principles that the Association stands for and to honor our commitment to ensure an equitable legal system. The continuation and permanency of these bylaws provisions is a necessary step to meet these objectives and to promote the future viability of our Association.

Respectfully Submitted,

*Mirna M. Santiago & Violet E. Samuels*

Mirna M. Santiago and Violet E. Samuels  
Co-Chairs, Committee on Diversity, Equity,  
and Inclusion

On behalf of the Committee

cc: Lillian M. Moy, Committee on Diversity, Equity and Inclusion  
Hon. Helena Heath, Committee on Diversity, Equity and Inclusion  
Duane G. Frankson, Committee on Diversity, Equity and Inclusion  
Richard J. Washington, Committee on Diversity, Equity and Inclusion  
Randy Bernfeld, Committee on Diversity, Equity and Inclusion  
Peter John Herne, Committee on Diversity, Equity and Inclusion  
Ernesto Guerrero, NYSBA Staff Liaison

**From:** [Sheryl Galler](#)  
**To:** [reportsgroup](#)  
**Subject:** Re: NYSBA Reports Group: Resolution and Report of the Committee on Diversity, Equity, and Inclusion  
**Date:** Wednesday, June 1, 2022 4:14:49 PM

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Good afternoon.

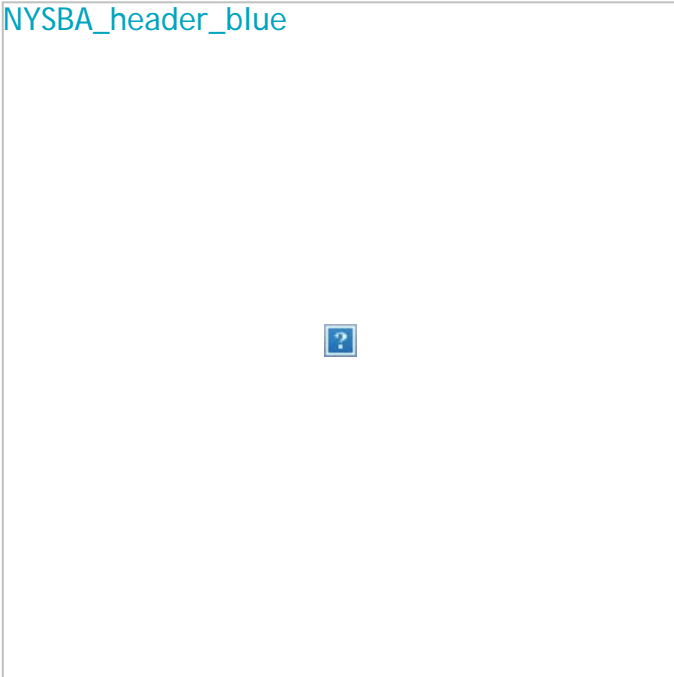
We don't have formal comments, but the Women in Law Section supports the resolution and report of the Committee on Diversity, Equity and Inclusion.

Thank you.

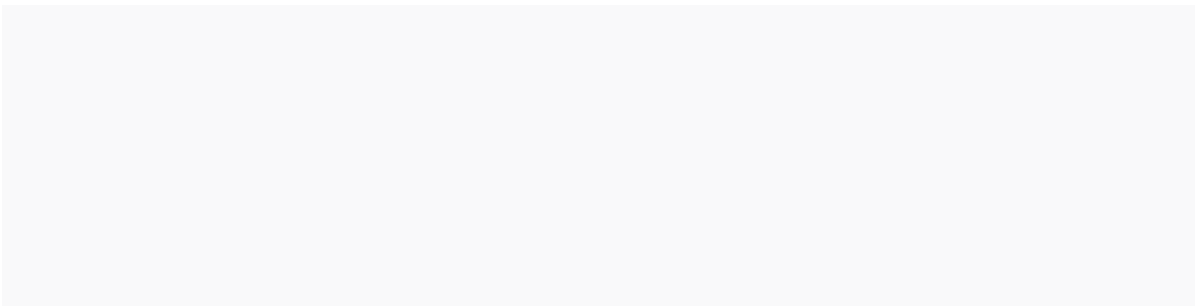
Sheryl Galler  
Chair, WILS

On Monday, May 23, 2022, 03:31:53 PM EDT, NYSBA Reports Group <[reportsgroup@nysba.org](mailto:reportsgroup@nysba.org)> wrote:

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Join/Renew



## House of Delegates Reports Group



Dear Members of the NYSBA Reports Group:

The Committee on Diversity, Equity, and Inclusion has submitted a resolution and report for consideration at the June meetings of the Executive Committee and House of Delegates.

[View Reports](#)

The provisions of the Association Bylaws providing for diversity delegates and diversity members-at-large for the Executive Committee will expire on January 31, 2024, without further action. This resolution recommends removal of the sunset clauses from Bylaws provisions V.3.H. and VII.1.F.1.,

thereby permanently providing for said positions.

Formal comments on this report may be sent to [reportsgroup@nysba.org](mailto:reportsgroup@nysba.org) by Wednesday, June 1, 2022.

To access this report, and other reports submitted to the Reports Group for consideration at the June 2022 meetings of the Executive Committee and House of Delegates, please click on the button below.

[View Bylaws](#)



New York State Bar Association, One Elk Street, Albany, NY 12207, PH: 800-582-2452

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**For Public Officials:** The New York State Bar Association is registered with the New York State Joint Commission on Public Ethics pursuant to the Lobbying Act to engage in lobbying activities. Consequently, public officials cannot accept certain benefits from the Association. Further information can be obtained by contacting an official's agency ethics officer or the Association at (518) 463-3200.

**Accommodations for Persons with Disabilities:** NYSBA welcomes participation by individuals with disabilities. NYSBA is committed to complying with all applicable laws that prohibit discrimination against individuals on the basis of disability in the full and equal enjoyment of its goods, services, programs, activities, facilities, privileges, advantages, or accommodations. To request auxiliary aids or services or if you have any questions regarding accessibility, contact the Member Resource Center at 800-582-2452 or [mrc@nysba.org](mailto:mrc@nysba.org).

Comments and Proposed Amendment to the  
Report of the Committee on Diversity, Equity and Inclusion

A. Thomas Levin  
NYSBA President (2003-2004)

Nineteen years ago, at the House of Delegates meeting in Cooperstown, it was my honor to take office as NYSBA President. In my installation remarks on that day, I addressed the House with respect to my program plans for my term of office.

Primary among my goals was to jump start what I considered to be NYSBA's moribund, and until then ineffective efforts, to increase diversity in its leadership and membership. Accordingly, at that time I created a Committee on Diversity and Leadership Development, which has since evolved into the separate committees on Diversity, Equity and Inclusion, and Leadership Development.

More important, because the overwhelming composition of the House and Executive Committee was male and white, I proposed in June 2003 that the Bylaws be amended to provide that for a period of ten years the House of Delegates and the Executive Committee would be expanded by adding At Large seats specifically designated for diversity purposes.

In recognition that this set aside would be, to some extent, a "quota", my proposal was that these special seats would exist for a specific period of time, in the expectation that NYSBA would within that period of time do the right thing and foster more diverse representation across the Board in the House and on the Executive Committee. These particular seats would be a starting point, and would be an impetus for diverse candidates to come forth for all of the other House and Executive Committee positions. Because most seats on the Executive Committee are filled without the input of the President or the Nominating Committee, this proposal would also provide a means to assure increasing diversity without regard to the selections made other than through the Nominating Committee.

Through expedited procedures initiated by me with the cooperation of then House of Delegates Chair Ken Standard, the Bylaw amendments to create those positions were reviewed, proposed and adopted, and the positions filled, at the January 2004 Annual Meeting.

Over the ensuing ten year period, my expectations were only partially fulfilled. The diversity At Large seats were filled as proposed. The House membership became more diverse as the various organizations and bodies charged with nominating House members proposed a greater number of diverse members. However, at the Nominating Committee, diversity candidates came forward for the designated diversity seats, but generally did not seek the other At Large seats.

To give the program more time to achieve the desired goals, when the first ten year period was coming to an end, I proposed that the initial ten year period be continued for another ten years so that NYSBA could make a greater effort to increase leadership diversity. I am pleased that this proposal was approved, and in 2004 we continued those temporary set aside seats for another decade.

That second ten year period is now coming to an end. While we have made much progress during that time, our concept of diversity also has expanded, and we have much left to do.

It is clear to me that we need to continue the provisions for designated diversity seats. However, it also remains clear to me that reliance upon quotas is wrong, and should be resorted to only as a temporary measure until the overall composition of our leadership is more diverse.

Our goal should not be to provide for a permanent quota system, but should instead be to achieve a state of equity in which we perpetuate a diverse leadership without having to designate specific positions for specific categories of members. We should also consider measures to increase representation in presently under-represented categories in addition to ethnicity and race, such as persons with disabilities, and LGBTQ persons.

Accordingly, while I support continued measures to enhance and accomplish diversity in our leadership, including continuation of these designated seats, I believe the current proposal to remove the “sunset” provision entirely, and make the designated diversity seat permanent set asides, is wrong, and is counterproductive.

I also know, as a member of the Bylaws Committee for many years, that the Bylaws Committee has been studying this very provision in the existing

Bylaws, and is formulating a proposal to be put before the House in the usual course for subscription at the November meeting, and approval at the January Annual Meeting. The appropriate language for such an amendment should be left to that Committee to draft, to the House to review when determining whether to subscribe to the amendment, and to the Association membership to decide whether to adopt it. For the House to adopt the Committee resolution as proposed, dictating to the Bylaws Committee to draft specific language for a Bylaws amendment, is a departure from precedent and a usurpation of the role of the Bylaws Committee.

For all of the foregoing reasons, I will move at the June meeting that before the House approves the Report of the Committee on Diversity, Equity and Inclusion, the last "Resolved" paragraph of that Report be amended to read:

"RESOLVED, that the House of Delegates hereby commends this Report to the Bylaws Committee, and directs the Bylaws Committee to prepare Bylaw amendments for submission to the Association at the January 2023 Annual Meeting to provide for selection of persons to serve as members of the House of Delegates and the Executive Committee to further ethnic, racial and other diversity consistent with the principles and commitments stated in this Report."



# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #10

**REQUESTED ACTION:** Approval of the report and recommendations of the Committee on Standards of Attorney Conduct.

Attached is a report from the Committee on Standards of Attorney Conduct (“COSAC”) recommending proposed new comments to the New York Rules of Professional Conduct Rules 1.4 and 5.6. These comments concern the obligations of departing lawyers and law firms to notify clients when a lawyer with primary or substantial responsibility for specific matters or clients intends to leave a law firm to join a different firm.

By way of background, COSAC presented a proposed new Rule 5.9 on this topic to the House of Delegates in October 2021. That presentation was for informational purposes only and the House took no position on the former proposal.

After further review, including consultation with the Committee on Professional Ethics, COSAC has now submitted a revised proposal which would add new Comments to Rule 1.4 as well as to Rule 5.6, rather than a proposed new black letter Rule 5.9.

The revised report was submitted to the Reports Group in April 2022.

Comments from the Committee on Professional Ethics concerning the revised report (i.e., this current proposal concerning new Comments to Rule 1.4 and 5.6, rather than the former proposal concerning a new black letter Rule 5.9) are appended to the report. Comments concerning earlier versions of this proposal are available on the Reports Group webpage: [www.nysba.org/reportsgroup](http://www.nysba.org/reportsgroup).

The report will be presented to the House of Delegates by James B. Kobak, Jr., Ronald C. Minkoff, and James Q. Walker.



# MEMORANDUM

April 27, 2022

**TO:** Executive Committee and House of Delegates

**FROM:** Committee on Standards of Attorney Conduct (“COSAC”)

**SUBJECT:** Proposed New Comments to Rules 1.4 and 5.6 Regarding Departing Lawyers

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As part of COSAC’s comprehensive review of the New York Rules of Professional Conduct, COSAC is proposing new Comments to Rules 1.4 and 5.6 (set out below). These new Comments provide guidance to departing lawyers and law firms regarding their obligations to notify clients when a lawyer with primary or substantial responsibility for specific matters or clients intends to leave a law firm to join a different firm.

By way of background, in July 2021 COSAC proposed a new Rule 5.9 (entitled “Procedures for Lawyers Leaving Law Firms and Procedures for Dissolving Law Firms”). That proposal generally would have prohibited both the departing lawyer and the law firm from unilaterally notifying the firm’s clients until the departing lawyer and the firm had engaged in bona fide negotiations to craft a joint notice regarding the departing lawyer’s anticipated departure. Public comments on proposed Rule 5.9, especially the requirement to try to negotiate a joint notice by the departing lawyer and the law firm, were mixed. For example, a comment from the NYSBA Committee on Legal Aid (“COLA”) urged COSAC to exempt not-for-profit, institutional provider, and pro bono programs.

In October 2021, COSAC presented a revised version of proposed Rule 5.9 to the House of Delegates for informational purposes only. (Among other things, the revised proposal added an exemption for qualified legal assistance organizations, government law offices, and in-house legal departments.) The House of Delegates did not debate or vote on COSAC’s revised proposal for a new Rule 5.9, thus allowing more time for public reaction and internal COSAC debate.

On February 7, 2022, COSAC sent a further revised proposal for new Rule 5.9 to the Executive Committee and House of Delegates. This proposal also met with mixed reviews.

On the one hand, in March 2022 the NYSBA Committee on Professional Ethics submitted a lengthy memorandum opposing proposed Rule 5.9 or any further guidance in the black letter ethics rules (the disciplinary rules). The Ethics Committee summarized its views as follows (p. 1):

[W]e ... oppose adoption of the proposed Rule 5.9 because the proposal restricts the right of a “departing lawyer” ... in an ongoing or dissolving law firm to communicate unilaterally with the departing lawyer’s current and former clients consistent with his or her existing ethical, fiduciary, and contractual duties.

The Ethics Committee also said (p. 2) that if any further guidance was needed:

Our preference is to incorporate elements of COSAC’s proposal in Comments accompanying existing Rules, thereby giving hortatory effect to principles COSAC advances without the unnecessary impact of a disciplinary rule ....

The Ethics Committee then set out several proposed paragraphs of suggested Comments to existing Rule 1.4, which obligates lawyers and law firms to notify clients of “material developments” in a matter.

On the other hand, noted New York Law Journal columnist and professional responsibility lawyer Anthony Davis wrote a column taking issue with the Ethics Committee’s position and generally praising COSAC’s proposed new Rule 5.9. Mr. Davis said:

[T]he adoption of a rule ... as proposed by COSAC would be worthwhile and beneficial for clients as well as individual lawyers, law firms and the profession as a whole. Importantly, ... the proposed rule would protect clients’ interests by avoiding the all too frequent situation where they become “piggies in the middle” in the kinds of dispute which all too frequently arise between departing lawyers and their law firms, and which the proposed rule is intended and designed to eliminate.

Anthony E. Davis, *Proposed New Procedures for Lawyers Leaving Law Firms* (N.Y.L.J. April 5, 2022).

After considering the substance and proposed language in the Ethics Committee’s memorandum, as well as the views of others, COSAC is proposing new Comments to Rule 1.4 as well as amendments to the Comments to Rule 5.6 (which governs agreements that restrict a lawyer’s right to practice law after leaving a firm). Unlike COSAC’s proposed black letter Rule 5.9, COSAC’s proposed Comments do not require the departing lawyer and the law firm attempt to negotiate a joint notice—but the proposed Comments expressly note that joint notice is “preferable.”

To gain a wider perspective, COSAC solicited reactions from a number of people who had commented on COSAC’s earlier proposals for a new black letter Rule 5.9. These reactions are mostly favorable, endorsing both the concept of putting the guidance in Comments (rather than a black letter Rule) and approving much of the language. Here are some sample reactions from prominent lawyers who write about or represent departing lawyers or their firms:

***Bob Hillman (author of HILLMAN ON LAWYER MOBILITY)***

The proposal is excellent and offers important guidance and clarity. I have only one very minor suggestion. “Notice” is used to describe both notice to clients and notice to firms. You may want to describe the notice to firms as “departure notice,” although I doubt that anyone who gives this a careful read would be confused.

\* \* \*

Thanks for including me in this process. Law reform in the right direction is a pleasure to watch.

*Art Ciampi (co-author of LAW FIRM PARTNERSHIP AGREEMENTS) and Maria Ciampi*

We've had a chance to review the Proposed New Comments to Rule 1.4. We feel that they are very well balanced, clear, concise and comprehensive.

*Les Corwin (co-author of LAW FIRM PARTNERSHIP AGREEMENTS)*

Hi Roy, I have reviewed the proposed Comments to Rule 1.4. You and your Committee have done an excellent job and I fully endorse it. ...

(Mr. Corwin also suggested three minor edits to COSAC's proposals.)

Attached to this report is a compendium of the reactions to COSAC's earlier drafts of proposed Comments to Rule 1.4.

At COSAC's plenary meeting on April 13, 2022, which was attended by more than twenty COSAC members, COSAC discussed all of the reactions in the compendium and implemented many of the suggested changes. COSAC's final proposals, for action at the Association's June 2022 quarterly meeting, are below.

## **Proposed New Comments to Rule 1.4**

*Note from COSAC: All of the proposed Comments below are new. To make them easier to read, COSAC has not underscored them.*

### **Departing Lawyers**

[8] The duty to keep a client informed about "material developments" in a matter under paragraph (a)(1)(iii), and about the "status of the matter" under paragraph (a)(3), applies when a lawyer with primary or substantial responsibility for one or more particular matters or clients is leaving a law firm to join another law firm (a "departing lawyer"). Thus, after a departing lawyer has informed a responsible member or members of the current firm of the decision to move to another firm, the departing lawyer must give prompt notice of that decision to any potentially affected clients of the current firm. A law firm has a corresponding duty, upon receiving the departing lawyer's notice of intended departure, to notify clients of the firm about the departing lawyer's decision to

join another law firm. Neither the departing lawyer nor the law firm has a duty to notify clients of the impending departure, however, if they know that the other (or another departing lawyer) has already provided such notice and the lawyer or law firm reasonably believes that the notice meets the criteria in Comment [10] to this Rule.

[9] The duties that Rule 1.4 imposes on lawyers and law firms to notify clients when a lawyer has notified a law firm of a decision to leave the firm (as described in Comment [8]) also apply when a law firm has decided to cease operations as a going concern. When a law firm has decided to cease operations as a going concern, the firm or the lawyers with primary or substantial responsibility for one or more particular matters or clients must give prompt notice to all potentially affected clients of the firm (in accordance with Comment [10]) of the decision to cease operations.

[10] Any unilateral or joint notice pursuant to Comments [8] or [9] should be in writing, must not be false, deceptive, or misleading, and should include the following information:

- (i) the departing lawyer's intention to leave the current law firm and the anticipated date of departure;
- (ii) the departing lawyer's future contact information;
- (iii) with respect to each relevant matter, the fact that the client has the right to choose counsel, and thus has the option to be represented by the departing lawyer after departure, or to remain a client of the current firm, or to be represented by other lawyers or law firms; and
- (iv) the fact that the current firm will need the client to inform the firm of its choice of counsel and, if the client wishes to transfer the client's files to the departing lawyer or to another lawyer or law firm, the firm will need the client to authorize the firm (preferably in writing) to transfer the client's files or other property accordingly (unless the client has

already notified the firm or the departing lawyer of its choice or has already provided such authorization to transfer the client's files).

[11] To avoid prejudicing or confusing clients, it is preferable (but not required) that the departing lawyer and law firm jointly notify all potentially affected clients. Accordingly, as soon as a firm knows that the departing lawyer has made a decision to leave the firm, the departing lawyer and the firm should make a bona fide effort to craft a joint notice. Whether the notice is unilateral or joint, notice must be given to the potentially affected clients promptly.

[12] Notification to clients may initially be given orally, but if notice is given orally, it should be followed promptly by a writing containing the information set forth in Comment [10]. The content of the oral and written notice may be altered, however, to reflect special circumstances that make it highly unlikely or impossible for the affected clients to move their matters with the departing lawyer.

[13] The time frame for "promptly" communicating with a client may depend on the circumstances, but neither the departing lawyer nor the firm may delay the process longer than is necessary to ensure that accurate and meaningful notice is provided to clients in accordance with Comment [10] to this Rule.

[14] Because Rule 1.4 mandates prompt notice of a departing lawyer's decision to change firms, a law firm may not include provisions in its partnership, shareholder, operating, employment or other similar type of agreement, or engage in other conduct, that prohibits, unduly delays, or discourages the departing lawyer (through financial disincentives or otherwise) from providing the requisite notice to potentially affected clients. *See* Rule 5.6(a)(1).

[15] These Comments are intended to address the obligations of lawyers and law firms solely under Rule 1.4. They are not intended to address the rights or obligations of a law firm or a departed lawyer under the law of fiduciary duties, partnership law, contract law, tort law, or other law.

[16] A lawyer or law firm representing a client in a matter pending before a tribunal may also have duties to notify the tribunal and to seek permission to withdraw if a lawyer leaves the firm or if a law firm has dissolved or is in the process of dissolution. *See* Rule 1.16(d).

[17] Notwithstanding the definition of “law firm” in Rule 1.0(h), the foregoing Comments regarding departing lawyers do not apply to a qualified legal assistance organization, a government law office, the legal department of an organization, or lawyers working at those organizations.

## **Proposed Amendments to Comments to Rule 5.6**

*Note from COSAC: COSAC proposes to add new Comments [1F] and [1G] to Rule 5.6 and to amend existing Comments [1A], [1F] and [1G] as indicated below, and to renumber existing Comment [1I], and to change the reference to “Comment [1F]” in Comment [1D] to “Comments [1F] and [1G].” New language is underscored in blue and deleted language is ~~stricken through in red~~. All other language remains unchanged from the current version of the Comment to Rule 5.6.*

### **Comment**

[1] An agreement restricting the right of a lawyer who has left a firm (a “departed lawyer”) to practice after leaving a firm limits the freedom of clients to choose a lawyer and limits the professional autonomy of lawyers. Paragraph (a) prohibits such agreements, except (i) restrictions incident to provisions concerning retirement benefits for service with the firm or (ii) restrictions justified by special circumstances described in this Comment. Throughout this Comment, the phrase “law firm” shall have the meaning given in the definition in Rule 1.0(h).

[1A] This Rule and this Comment are intended to address the obligations ~~duties~~ of lawyers and law firms solely under Rule 5.6 ~~the Rules of Professional Conduct~~. They are not intended to

address the [rights or](#) obligations of a law firm or a departed lawyer under the law of fiduciary duties, partnership law, contract law, tort law, or other **substantive** law.

[1B] Paragraph (a)(1) applies to any written or oral agreement governing or intended to govern:

- (i) the operation of a law firm;
- (ii) the terms of partnership, shareholding, or of counsel status at a law firm; and
- (iii) the terms of an individual lawyer’s full-time or part-time employment at a law firm or other entity.

[1C] Paragraph (a)(1) applies whether the agreement is embodied in a written or oral contract, a firm or employee handbook, a memorandum, or any other kind of document. Paragraph (a)(1) prohibits any agreement (other than a provision relating to retirement benefits) that prohibits or limits a departed lawyer from contacting or serving the firm’s current, former, or prospective clients, except that:

- (i) an agreement may include provisions to protect confidential or proprietary information belonging to the law firm or to the law firm’s current, former, or prospective clients; and
- (ii) an agreement may include provisions that impose reasonable restrictions or remedies on a departed lawyer in the circumstances described in Comment [\[1H\]](#) ~~[1F]~~.

[1D] Paragraph (a)(1) applies not only to agreements regarding lawyers in private practice but also to agreements between employed (“in-house”) attorneys and the clients or entities that employ them, whether in a legal or non-legal capacity. However, paragraph (a)(1) does not prevent an entity and its employed lawyers from agreeing to restrictions on post-departure non-legal functions. In every type of law firm, the departed lawyer and the law firm must balance their rights

and obligations to each other in a manner consistent with the Rules of Professional Conduct and the law governing contracts, partnerships, and fiduciary obligations, all while recognizing the primacy of client interests and client autonomy. With this in mind, Comment [1E] addresses restrictions that ordinarily violate the Rule, and Comments [1F] [and \[1G\]](#) addresses restrictions that ordinarily do not violate the Rule.

### **Prohibited Agreements**

[1E] Agreements that ordinarily violate paragraph (a)(1) (unless they fit within the exception for retirement benefits) include, but are not limited to, agreements that purport to do any of the following:

- (i) prohibit or limit a departed lawyer from contacting or representing some or all current, former, or prospective clients of the firm;
- (ii) prohibit or limit a departed lawyer from practicing law for any period of time following his or her withdrawal (e.g., imposing a mandatory “garden leave”);
- (iii) prohibit or limit a departed lawyer from contacting or soliciting law firm employees after the lawyer has departed from the firm; or
- (iv) impose more severe financial penalties on departed lawyers who intend to compete, actually compete, are suspected of competing, or are presumed to be competing with the firm than are imposed on departed lawyers who do not compete.

### **Permissible Agreements**

[1F] Agreements that ordinarily do not violate paragraph (a)(1) include, but are not limited to, [agreements prescribing a minimum period between a departing lawyer’s notice to the firm and](#)



the lawyer's departure, as long as the notice period is reasonable. Notice periods should be applied flexibly and should not unduly restrict lawyer mobility, because a notice period that is unreasonably long or inflexibly applied impairs client choice and lawyer autonomy. Whether the minimum period after notice is reasonable in this context will depend on the facts and circumstances, but the length of the notice period should balance three broad factors:

- (i) the firm's need for the departing lawyer to complete administrative tasks connected to departure, such as notifying clients, sending invoices, and transitioning files;
- (ii) the client's right to the lawyer of the client's choice; and
- (iii) the lawyer's right to autonomy and mobility.

[1G] Likewise, because the purpose of Rule 5.6 is to facilitate each client's choice of counsel, after a departing lawyer has announced a decision to leave, a law firm may not suspend, prohibit, or limit the departing lawyer from continuing to practice at the firm unless the firm has good cause, such as:

- (i) a reasonable, good faith belief that the lawyer may be accessing or planning to access the firm's confidential or proprietary information or the firm's property or personnel for improper or illegal reasons, or
- (ii) a reasonable, good faith belief that the lawyer, due to diminished capacity, is harming the client or is incapable of continuing to serve the client.

[1H] [1F] Other Agreements that ordinarily do not violate paragraph (a)(1) include, ~~but~~ are not limited to, agreements permitting a firm to impose reasonable restrictions or remedies if:

- (i) a departed lawyer has approved, within a reasonable time before departing from the firm, a specific, significant financial undertaking with respect to the firm that

remains outstanding where the lawyer's departure will have a material effect on the firm's ability to satisfy that undertaking; or

- (ii) a departed lawyer has, before leaving the firm, breached material employment or partnership responsibilities to the firm in a manner that has caused or is likely to cause material financial or reputational harm to the firm.

**Reasonable Management Discretion**

[\[11\]](#) ~~HG~~ Paragraph (a)(1) is not intended to prohibit a law firm in the ordinary course of its operations from exercising reasonable management discretion regarding case assignments, case staffing, promotions, demotions, compensation, or other aspects of a law firm's operations, finances, and management. The Rule is intended to prevent overly restrictive practices with respect to lawyers who have provided notice of an intention to leave a firm, or who have taken affirmative steps toward planning to leave the firm (with or without notice to the firm).

[End of Memo]



**COMMITTEE ON PROFESSIONAL ETHICS**

RICHARD HAMBURGER, ESQ.

Chair

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May 25, 2022

To: NYSBA Executive Committee and House of Delegates

Re: Proposed New Comments to Rules 1.4 and 5.6 Regarding Departing Lawyers

At its May 18, 2022 meeting, the Committee on Professional Ethics (“CPE”) referred COSAC’s proposed new comments to Rules 1.4 and 5.6 Regarding Departing Lawyers (“Proposed New Comments”) to a subcommittee for review. CPE has asked me to request the House of Delegates to defer its final decision with regard to the Proposed New Comments, now scheduled for June 18, 2022, until CPE has the opportunity to review the subcommittee report and communicate CPE’s comments to the Executive Committee and House of Delegates after its next meeting on June 15, 2022.

This CPE subcommittee is the same subcommittee that reviewed and commented upon COSAC’s previously proposed new Rule 5.9 (“Proposed New Rule”). The subcommittee’s report regarding the Proposed New Rule was adopted by CPE and apparently resulted in COSAC’s withdrawal of the Proposed New Rule in favor of the Proposed New Comments.

CPE makes this request because it has already invested considerable time and effort in addressing the complex and often competing interests affecting departing lawyers and their law firms that were reflected in the Proposed New Rule, and is committed, in follow up, to review and comment upon the Proposed New Comments that have replaced the Proposed New Rule.

It is my understanding that COSAC plans to address the CPE’s June 15 response to the Proposed New Comments in advance of the June 18 meeting of the House of Delegates. Accordingly, notwithstanding CPE’s deferral request, we acknowledge that the House of Delegates may appropriately choose to proceed on June 18 in the likely event that there is substantial harmony between CPE and COSAC with regard to the Proposed New Comments.

Richard Hamburger, Esq.

*Richard Hamburger, Esq.*

Chair



# Staff Memorandum

**HOUSE OF DELEGATES  
Agenda Item #11**

REQUESTED ACTION: None, as the report is informational.

Hon. Cheryl E. Chambers, vice 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 #12

REQUESTED ACTION: Three items of administrative business.

A). At the April meeting, when the 2022-2023 Nominating Committee was elected, the Tenth District was not included on the list. The district representatives are Justin Block, Dorian Ronald Glover, Lynn Poster-Zimmerman, Sanford Strenger, Steven Leventhal (1<sup>st</sup> alternate), and Ilene Cooper (2<sup>nd</sup> alternate).

B) The Bylaws (IX.2.B.) require the House to ratify appointments to the Audit Committee. President Levin Wallach has reappointed Elizabeth J. Champnoi as chair and Michael L. Costello, Hermes Fernandez, Bryan Hetherington, Naomi K. Hills, Hon. Edwina F. Martin, and Robert T. Schofield, IV, as members, each to serve a two-year term. The Executive Committee confirmed these appointments at its meeting on June 1, 2022.

C) The Bylaws (IX.1.B) require the House to ratify appointments to the Finance Committee. President Sherry Levin Wallach has reappointed Michael J. McNamara as chair, reappointed Taa R. Grays as a member, and appointed Hon. Cheryl E. Chambers as a member, each to serve a two-year term. The Executive Committee confirmed these appointments at its meeting on June 1, 2022.

The report will be presented by President-Elect Richard C. Lewis, chair of the House of Delegates.

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF EXECUTIVE COMMITTEE MEETING  
NEW YORK HILTON MIDTOWN, NEW YORK, AND REMOTE MEETING  
APRIL 1, 2022**

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Present: Simeon H. Baum, Mark A. Berman, T. Andrew Brown, David Louis Cohen, Orin J. Cohen, Donna England, Jean F. Gerbini, Sarah E. Gold, Taa R. Grays, LaMarr J. Jackson, Scott M. Karson, Sherry Levin Wallach, Richard C. Lewis, Michael A. Marinaccio, Thomas J. Maroney, Michael J. McNamara, Ronald C. Minkoff, Mark J. Moretti, Domenick Napoletano, Christopher R. Riano, Mirna M. Santiago, Nancy Sciocchetti, Robert T. Schofield, IV, Hon. Adam Seiden, Diana S. Sen, Lauren E. Sharkey, Tucker C. Stanclift, Kathleen M. Sweet, Jean Marie Westlake.

Guests: Gregory K. Arenson, Katherine L. Bajuk, Jeffrey Berman, Angela O. Burton, Elena DeFio Kean, Linda Gehron, Evan M. Goldberg, Shawndra G. Jones, Betsy Kramer, Susan B. Lindenauer, Hon. James P. Murphy, Michael R. May, Michael A. Markowitz, Lillian M. Moy, Daniel R. Novack, Mickey H. Osterreicher, Violet E. Samuels, Jacqueline N. Schell, Lorraine R. Silverman, Hon. Jonah I. Triebwasser, Kaylin L. Whittingham

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

1. Approval of minutes of February 1, 2022, meeting. The minutes were accepted as distributed.
2. Consent Calendar
  - a) Approval of presidential appointments to the House of Delegates.
  - b) Approval of Bylaws of Antitrust Law Section.
  - c) Approval of Bylaws of Commercial and Federal Litigation Section.
  - d) Approval of Mission Statement of Committee on Profession Discipline.

The consent calendar, consisting of the items listed above, was approved.

3. Report of Executive Director. Executive Director Pamela McDevitt updated the Executive Committee with respect to dues revenue, the Association budget, membership and retention initiatives, considerations in scheduling live and hybrid events, the Association's partnership with USI Affinity, and the formation of the Strategic Planning Committee. The report was received with thanks.
4. Report of Treasurer. In his capacity as Treasurer, Mr. Napoletano reported that through February 28, 2022, the Association's total revenue was \$6,992,673, a decrease of approximately \$1.3 million from the previous year, and total expenses were \$2,872,314, an increase of approximately \$373,000 over 2021. Mr. Napoletano also reported on the termination of the lease to the Green Island print shop and relocation to another facility, and on planning for increased member outreach to law students and new lawyers. The report was received with thanks.

5. Report of President. President Brown highlighted the items contained in his written report, a copy of which is appended to these minutes. He also thanked the departing members of the Executive Committee for their service and greeted the incoming members of the Executive Committee who attended the meeting. The report was received with thanks.
6. Report of Committee on Continuing Legal Education. Committee chair Shawndra G. Jones and Senior Director of CLE Katherine Suchocki updated the Executive Committee on CLE programming and revenue, upcoming Section meetings, and considerations in scheduling live and hybrid events. Ms. Jones and Ms. Suchocki also reported on the status of the Continuing Legal Education Board of the Unified Court System's consideration of a proposed amendment to the mandatory continuing legal education rules that would require newly admitted and experienced attorneys to complete one CLE credit in a new category of Cybersecurity, Privacy, and Data Protection. The report was received with thanks.
7. Report of Committee on Legislative Policy. Committee chair Evan M. Goldberg, together with Director of Policy Hilary F. Jochmans and Associate Director of Government Relations Cheyenne Burke, provided a review of the Association's 2022 legislative agenda and advocacy activity, including the launch of a monthly Government Relations e-newsletter, and an update on the status of the ongoing state budget negotiations. The report was received with thanks.
8. Application for Amicus Participation of LGBTQ Law Section. In his capacity as chair of the LGBTQ Law Section, Christopher R. Riano reviewed an application for the approval of Association participation as an *amicus curiae* before the U.S. Supreme Court in *303 Creative LLC v. Elenis*. After discussion, a motion was adopted to approve *amicus* participation. President Brown then appointed Simeon H. Baum, Sarah E. Gold, and Lauren E. Sharkey as the members of the subcommittee to review and give final approval to the filing of the *amicus curiae* brief.
9. Report and recommendations of Committee on Children and the Law. Committee chair Lorraine R. Silverman and committee member Betsy Kramer outlined an affirmative legislative proposal in support of modification of the Family Court Act so that petitions to have a child declared destitute could be filed by either the Commissioner of Social Services; the child, if over the age of fourteen; or a person on the court's direction. After discussion, a motion was adopted to approve the proposal. Mr. Riano abstained from the vote.
10. Report and recommendations of Committee on Families and the Law. Committee co-chairs Linda Gehron and Susan B. Lindenauer, and committee members Angela O. Burton and Janet Fink, presented a "Resolution Addressing Systemic Racism in the Child Welfare System of the State of New York" and reviewed the proposals contained in the accompanying report. After discussion, a motion was made to endorse the following resolution for favorable action by the House:

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.

[Emphasis in original]

11. Report of Committee on Media Law. Committee co-chairs Daniel R. Novack and Jacquelyn N. Schell and member Mickey H. Osterreicher reported on Senate Bill S792A, which if enacted into law would amend the Judiciary Law to provide for audio-visual coverage of judicial proceedings. The report was received with thanks.
12. Report and recommendations of Committee on Mandated Representation. Committee members Katherine L. Bajuk and Jeffrey Berman reviewed an affirmative legislative proposal in support of the “Treatment, Not Jail” Act, which would expand judicial diversion, as codified in Criminal Procedure Law Article 26, beyond the current eligibility for substance abuse disorders and limited specified crimes to also be available to people accused of any charge under the penal law and to those who have mental health diagnoses



or other “functional impairments.” After discussion, a motion was adopted to approve the proposal. Mr. Riano abstained from the vote.

13. Report and recommendations of Committee on Law, Youth, and Citizenship. Committee member Hon. Jonah I. Triebwasser presented a proposal on how the Association can commemorate Constitution Day through relevant programming, articles, publicity, and other public engagements. After discussion, a motion was adopted to approve the report and recommendations.
14. Report of Task Force on Racism, Social Equity, and the Law. Task Force co-chairs Taa R. Grays and Lillian M. Moy updated the Executive Committee on the Task Force’s ongoing work and its planned recommendations. The report was received with thanks.
15. Date and place of next meeting. The next meeting of the Executive Committee will take place on Thursday, June 16, and Friday, June 17, with options for participation in person at The Otesaga in Cooperstown or remotely via Zoom.
16. Adjournment. There being no further business, the meeting of the Executive Committee was adjourned.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Taa R. Grays".

Taa R. Grays  
Secretary

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF EXECUTIVE COMMITTEE  
REMOTE MEETING  
JUNE 1, 2022**

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**Members Participating:** Gregory K. Arenson, David Louis Cohen, Sarah E. Gold, LaMarr J. Jackson, Elena DeFio Kean, Sherry Levin Wallach, Richard C. Lewis, Michael A. Marinaccio, Michael A. Markowitz, Thomas J. Maroney, Michael R. May, Michael J. McNamara, Ronald C. Minkoff, James P. Murphy, Domenick Napoletano, Christopher R. Riano, Mirna M. Santiago, Nancy Sciocchetti, Kathleen M. Sweet, Kaylin Whittingham, Pauline Yeung-Ha.

Ms. Levin Wallach presided as President of the Association.

1. Consent Calendar

- a. Confirmation of appointments to Audit Committee.
- b. Confirmation of appointments to Finance Committee.
- c. Approval of presidential appointment to House of Delegates.

The consent calendar, consisting of the items listed above, was approved. Mr. McNamara abstained with respect to Item 2(b).

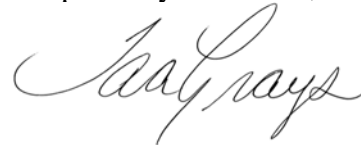
2. Review and Approval of Task Forces.

- a. Task Force on the Modernization of Criminal Practice.
- b. Task Force on Emerging Digital Finance and Currency.
- c. Task Force on Mental Health and Trauma Impacted Representation.
- d. Task Force on the U.S. Territories.

The Mission Statement of Item 2(d) was amended to add the word “briefing” in order to allow the Task Force to consider potential amicus participation by the Association in appropriate cases. As amended, the creation of the Task Forces and their respective Mission Statements were approved.

3. Adjournment. There being no further business to come before the Executive Committee, the meeting was adjourned.

Respectfully submitted,



Taa R. Grays  
Secretary