

NEW YORK STATE BAR ASSOCIATION



NYSBA

Legal Briefs 2012

A handy guide to NYSBA's current legal issues, including legislative priorities and major initiatives.

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NYSBA Legal Briefs 2012

Reader's Note

NYSBA Legal Briefs 2012 contains concise summaries of twenty-one subjects of concern to the New York State Bar Association (“NYSBA” or “Association”), the legal profession, and the public. This annual publication – previously entitled Current Legal Issues Affecting the Profession – is in its 31st year.

The information contained in this issue is current through publication on January 1, 2012. Subsequent events – such as changes in NYSBA position, the introduction of legislation, and initiatives proposed by government agencies – may affect the information contained in this publication. Questions regarding the current status of any particular issue and requests for additional information should be directed to the NYSBA staff member who authored the summary. NYSBA’s main number is 518-463-3200.

The full text of NYSBA Legal Briefs 2012 also is available on NYSBA’s website (www.nysba.org).

To request additional hard copies of this publication, please contact Lauren VanCleeef at NYSBA at 518-487-5531.

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Legislative Priorities

Civic Education Funding

NYSBA Position

In 2011, the Executive Committee approved as a legislative priority for 2012 the support of federal programs developed to promote civic education and responsibility among the nation's elementary and secondary school students.

Background

In recent years, federal legislation and funding programs have de-emphasized civic education. For example, the No Child Left Behind Act of 2001 ("NCLB") focused on the standardized testing of math and reading, which led to a decrease in civic education. In addition, an effort of more than two decades to support civic education through the Education for Democracy Act ("EDA") – which funded the Center for Civic Education ("CCE") – recently was defunded. This defunding resulted in a sizeable loss to New York State teachers, students, and educational institutions (e.g., \$221,000 in CCE grants during 2010-2011). Additionally, no money for civic education was provided in an omnibus spending bill for Fiscal Year 2012. Congress is considering revamping the NCLB, and a related U.S. Senate committee proposal includes support for civic education. The Sandra Day O'Connor Civic Learning Act of 2011, which would allow for competitive grant funding, recently was introduced in the U.S. House of Representatives. It is anticipated, however, that a more comprehensive bill supporting a national program for civic education and a competitive program of smaller grants will be introduced early next year in the House of Representatives.

To qualify for federal funding, the New York State Education Department ("NYSED") is in the process of adopting a "common core" of standards, which lack an emphasis on civic and social studies education. NYSED already has dropped social-studies testing for fifth graders and eighth graders, and it is considering a reduction in the number of social studies credits needed to graduate.

NYSBA Activity

President Vincent Doyle and the Law, Youth & Citizenship Committee have led NYSBA's efforts to promote civic education. For example, President Doyle issued a press release and a public service radio announcement. He was quoted in a related cover story in the September/October 2011 issue of State Bar News. The committee has advocated for increased funding appropriations, and it issued a resolution in 2011 urging NYSED to continue to make civic education mandatory.

Eileen Gerrish

Civil Legal Services Funding

NYSBA Position

NYSBA supports adequate funding for civil legal services provided by a dedicated revenue stream. This funding is essential to ensure equal access to justice for all New Yorkers, regardless of income. This issue is a legislative priority of the Association for 2012.

Background

In 2011, Chief Judge Jonathan Lippman's Task Force to Expand Access to Civil Legal in New York commissioned two independent studies from leading financial analysis firms which found that civil legal services can generate approximately \$200 million in annual savings: \$85 million can be saved by providing legal assistance to avert the immediate expenses resulting from domestic violence; and \$116.1 million can be saved by preventing evictions and resulting shelter costs.

Besides the significant economic savings, task force hearing witnesses described substantial intangible benefits that flow from funding civil legal services, such as reducing the cost of litigation by resolving disputes before lawsuits are filed and improving the overall quality of justice by ensuring that both sides are represented by counsel.

The New York State Judiciary's proposed 2012-2013 budget recognizes the substantial unmet need for civil legal services throughout the state. It includes \$25 million to address the legal needs of the poor with respect to housing, family matters, access to health care and education, and subsistence income. Similarly, the budget includes \$15 million for the New York State Interest on Lawyer Account Fund (IOLA), which has seen decreases in revenues due to the economic downturn. IOLA provides funding to civil legal services programs that serve low-income individuals and families.

NYSBA Activity

NYSBA strongly supports the inclusion of \$25 million in the 2012-2013 budget, as well as the \$15 million for IOLA. The evidence adduced by Chief Judge Lippman's task force demonstrates that the investment of resources to protect individual rights relating to basic human needs ultimately will save substantial governmental expenditures.

Gloria Herron Arthur

Court Reorganization and Simplification

NYSBA Position

In 1998, the Association adopted a report of the Task Force on Court Reorganization, calling for the state's major trial courts (Supreme Court, Court of Claims, County Court, Family Court, Surrogate's Court, NYC Civil Court, NYC Criminal Court, District Court, and City Court outside of New York City) to be consolidated into two courts – Supreme Court and District Court. In 2011, the Executive Committee reaffirmed the Association's commitment to promoting re-organization and simplification of New York State's court system. This issue has been designated as one of the Association's legislative priorities for 2012.

Background

The existence of nine major trial courts, plus town and village courts, has caused New York's court structure to be one of the most complex and cumbersome court systems in the United States. A core problem is the existence of many courts with limited jurisdiction. The current system – with each court operating with its own unique procedures and rules – is difficult to understand and costly to navigate. Attorneys and their clients spend too much time and resources to obtain justice. Furthermore, it is difficult for judges and administrators to manage and dispose of cases efficiently. With more than four million new cases filed each year, the caseload of New York's courts has grown, and problems and inefficiencies have increased.

Adoption of a simplified two-tier trial structure would enhance the public's understanding of the system and result in cost savings to litigants and to the state. For example, a report by the Special Commission on the Future of the New York State Courts estimated that annual savings would be approximately \$500 million.

To accomplish the goal of replacing New York's court system with a streamlined structure geared to the delivery of justice in the twenty-first century, it is necessary to amend New York's constitution. Such a constitutional amendment would need to be passed by two consecutive legislatures and then approved by the electorate at the next general election.

NYSBA Activity

The Association has long supported a constitutional amendment to implement court reorganization.

Ronald F. Kennedy

Court System Funding

NYSBA Position

In 2011, the Executive Committee approved adequate funding of the New York State court system as a legislative priority for 2012.

Background

NYSBA traditionally has advocated that state policymakers appropriate adequate funding for the state's unified court system. The unprecedented elimination of \$170 million from the court system's 2011-2012 budget resulted in layoffs of hundreds of court employees. Because of this funding crisis, there is serious concern over the ability of the courts to perform their constitutional function and provide access to justice. To provide true access, the courts must have well-trained personnel, operate on a full-time basis, and maintain all necessary facilities. Due to continuing projections of a budget deficit that must be confronted during the next budget cycle, funding for the court system will continue to be a very high priority.

NYSBA Activity

NYSBA conducted a study of how the courts in each area of the state are coping with the \$170 million in decreased funding. NYSBA vice presidents reached out for information to administrative judges, bar associations, and practitioners in their judicial districts, and they drafted summary reports. The information was compiled into a statewide report which has several uses: (1) a panel presentation at the annual Presidential Summit in January 2012; (2) testimony at a New York State budget hearing in February 2012; and (3) a response to a request by the American Bar Association, which launched an initiative asking state bar associations to look into the impact of cutbacks on state court funding.

Teresa Schiller

Defense of Marriage Act Repeal

NYSBA Position

The Association supports legislation that would repeal the Defense of Marriage Act (DOMA), thereby extending federal recognition to same-sex marriages. This issue is one of NYSBA's federal legislative priorities for 2012. In addition, the Association generally supports equity for same-sex couples and objects to discrimination against individuals on the basis of their sexual orientation.

Background

In 1996, the U.S. Congress enacted DOMA, which defines marriage as a union of one man and one woman for the purpose of federal recognition. Although same-sex marriages are legal in some states (including New York, as of June 2011) and legally recognized by other states, DOMA relieves states of the obligation to recognize same-sex couples' marriages that are validly performed in another state.

The first substantive provision of DOMA (Section Two) specifically defines marriage as a "legal union between one man and one woman" and limits the availability of federal benefits (and responsibilities) to heterosexual married couples. Whether Congress has the authority to define marriage in this way, or to actively discriminate against a class of individuals, ultimately will be challenged in the courts. For now, however, enforcement of DOMA's section two means that federal benefits are not available to same-sex couples who marry.

NYSBA Activity

The Association has contacted federal officials to voice its views on particular legislation to repeal DOMA. For example, NYSBA has advocated for the law to grant federal recognition to same-sex marriages entered into in any state that allows them, regardless of the couple's state of residence. Such recognition would include any federal law involving a question of marital status, such as the tax code and social security law.

Kevin M. Kerwin

Judicial Compensation

NYSBA Position

NYSBA supports the creation of a permanent mechanism for the regular salary review of the state's judges, as embodied in Chapter 567 of the Laws of 2010. This issue has been among the Association's top legislative priorities since 2006.

Background

Judges are society's essential component for delivery of justice in our system of government. Judicial salaries reflect the value that society places on the important work judges perform. The current judicial salary structure needs reform so as not to impose financial limits upon the field of prospective judges. Such limitations may deter high-quality individuals from seeking judicial office. New York State judicial salaries were last adjusted in 1999, when they were brought into parity with federal district court judicial salaries. Since then, New York's judicial salaries have fallen far behind those of federal judges and other public servants.

In 2010, the governor and the legislature created a judicial compensation commission. Specifically, Chapter 567 of the Laws of 2010 created a Quadrennial Commission on Judicial Compensation to examine, evaluate, and make recommendations with respect to adequate levels of compensation and non-salary benefits for judges and justices of the state-paid courts of the New York State Unified Court System. The inaugural commission was empanelled in 2011, and it ultimately voted to increase the annual salaries of state Supreme Court justices as follows: \$136,700 to \$160,000 in 2012, \$167,000 in 2013 and \$174,000 in 2014. These recommendations will take effect unless modified or abrogated by statute.

NYSBA Activity

The resources of the Association—including the advocacy of leaders, members, staff, and consultants—repeatedly have been utilized to promote judicial salary reform. For example, NYSBA has mobilized its members to contact their state legislators and the governor about the need for judicial salary reform legislation. In addition, recent Association presidents issued letters to state policymakers and newspaper editors, presented testimony before legislative committees, and participated in countless meetings and phone calls with legislative and executive leaders. Moreover, in a 2011 report, NYSBA called for salaries of state Supreme Court justices to be raised from \$136,700 to \$192,000, to reflect an increase in the cost of living since 1999.

Ronald F. Kennedy

Juvenile Delinquency Age

NYSBA Position

In 2011, the Executive Committee approved a resolution of the Committee on Children and the Law calling for legislation that would raise the age of criminal responsibility and general juvenile delinquency jurisdictional age to eighteen.

Background

Juvenile justice reform has become a priority in recent years, and New York is now one of only two states in which children who are aged sixteen and over are criminally prosecuted as adults.

Nationally, there is an overwhelming consensus that children should not be charged criminally as adults until they attain the age of eighteen. Research has shown that the adolescent brain is not as fully developed as the adult brain. Adolescents' skills are limited as to critical decision-making, reasoning, impulse control, ability to resist peer pressure, and understanding of risk. Based in part on this research, the U.S. Supreme Court determined that the penalties accorded juveniles who commit serious crimes should take into account their youth and ability to be rehabilitated.

Children in New York aged sixteen years and over could benefit greatly from the specialized treatment of young offenders upon which the Family Court is premised, and from the programs and services that are available only to Family Court offenders. However, the administrative and financial impact of raising the age of juvenile court jurisdiction should be studied. It potentially affects entities that include the following: (1) the court system; (2) state and local law enforcement; (3) probation, parole, and social services agencies; (4) detention and placement facilities; and (5) prosecution and defense services providers.

NYSBA Activity

In 2008, the Executive Committee approved a resolution proposed by the Committee on Children and the Law calling for the legislature and governor to establish a commission or task force to study the desirability and impact of raising the juvenile delinquency age to eighteen. More recently, President Vincent Doyle asked the Committee on Children and the Law to prepare a revised resolution calling for the juvenile delinquency age to be raised. The new resolution was approved by the Executive Committee in November 2011.

Kathy Suchocki

Legal Services Corporation Funding

NYSBA Position

The Association supports adequate funding of the Legal Services Corporation (“LSC”) by the U.S. Congress. NYSBA also supports the elimination of uneconomical restrictions that have been imposed by the federal government on the use of private, state, and local funds for this entity. Funding for LSC is one of NYSBA’s legislative priorities for 2012.

Background

LSC was created in 1974 to ensure that all Americans have access to a lawyer and the justice system for civil legal services, regardless of their ability to pay. LSC provides grants to independent local legal services programs to ensure that these goals are met. LSC grants help address the civil legal needs of the elderly, veterans, victims of domestic violence, disabled individuals, and others with pressing civil problems.

In 2011, Congress voted to provide LSC with \$348 million in funding for Fiscal Year 2012, a reduction of \$56 million – or 14.8% -- from current funding levels. The drastic cut in LSC funding comes at a time when 60 million Americans have incomes at or below 125% of federal poverty guidelines and qualify for civil legal assistance. Our nation’s poverty population has never been this large, and as a result, requests for civil legal assistance are increasing.

In addition to reducing LSC’s funding, Congressional members also have refused to eliminate a restriction placed on LSC-funded providers that prohibits how they can spend the funds received from non-LSC sources. The result of this unreasonable and uneconomical restriction is that millions of dollars from state and local governments, private donors, and other non-LSC sources are restricted as if they were LSC funds. This prevents legal service providers’ clients from having access to the full range of legal tools that are available to clients of private attorneys.

NYSBA Activity

NYSBA is advocating in support of appropriate funding for LSC and the elimination of restrictions on the use of funds that LSC receives from other sources.

Gloria Herron Arthur

Medical Malpractice/Tort System

NYSBA Position

NYSBA supports appropriate and reasonable legislative initiatives that are aimed at making the medical malpractice and tort systems more workable and aimed at striking a balance that will ensure the needs and protections of all parties. Recently, the Association has opposed capping non-economic damages in medical malpractice cases, and it has opposed a proposal to create a New York State Medical Indemnity Fund for Neurologically Impaired Infants (“Indemnity Fund”).

Background

State

In 2011, the Governor issued a set of budget proposals that would have a profound impact on the civil justice system. The Association’s Committee on the Tort System analyzed the proposals in a report, which the House of Delegates approved. In doing so, the House of Delegates made the following significant decisions: (1) affirmed NYSBA’s long-held opposition to capping non-economic damages in medical malpractice cases; (2) opposed a proposal to create the Indemnity Fund; and (3) supported policies that increased patient safety mechanisms as a way of decreasing medical malpractice costs.

Consistent with the Association’s position, the final budget agreement did not include the proposal to cap non-economic damages in medical malpractice cases at \$250,000. However, it included the creation of the Indemnity Fund.

Federal

In the past, the House of Delegates overwhelmingly rejected federal intervention on medical malpractice and tort system issues. It believed that such federal activity would erode common-law doctrine that has evolved at the state level for more than two centuries, and that systemic problems can be dealt with most effectively at the state level.

NYSBA Activity

The Association has contacted federal and state officials to voice its views on particular legislation and the broader issue of tort and medical malpractice reform.

Kevin M. Kerwin

Not-For-Profit Corporation Law

NYSBA Position

The Association supports a revision of the state's Not-For-Profit Corporation Law as one of its legislative priorities for 2012.

Background

The non-profit sector in New York is enormous and wide-ranging, including such entities as foundations, charities, health care organizations, service agencies, cultural institutions, religious organizations, and research and educational centers. The sector has a vital impact on the people and economy of the state.

NYSBA Activity

The Association has developed legislation (A.5727/S.4611) to improve the Not-for-Profit Corporation Law. Specifically, the Association supports revision of the law to remove the incentives for organizations to incorporate or move investment assets out of state, reduce government burdens, and streamline non-profit governance without compromising oversight. Moreover, the Association supports making the statutory framework for non-profit corporations and business corporations more consistent.

Ronald F. Kennedy

Office of Indigent Legal Services Funding

NYSBA Position

NYSBA supports the proper funding of the Office of Indigent Legal Services so that it can carry out its mission. Amid concerns that constitutional standards are not being met in all circumstances, this issue is one of NYSBA's legislative priorities for 2012.

Background

In too many areas of the state, the current public defense system has not served the criminal justice system well. The right to the effective assistance of counsel is guaranteed by both the federal and state constitutions.

The New York State Commission on the Future of Indigent Defense Services, which was established by former Chief Judge Judith Kaye, examined New York's county-based indigent criminal defense system and concluded in 2006 that there is "a crisis in the delivery of defense services to the indigent throughout New York State and that the right to the effective assistance of counsel, guaranteed by both the federal and state constitutions, is not being provided to a large portion of those who are entitled to it."

The creation of the Office of Indigent Legal Services in 2009 was a step in the right direction toward establishment of an independent indigent defense commission with broad powers to adopt standards, evaluate existing programs and service providers, and generally supervise the operation of New York's public defense system.

NYSBA Activity

The Association strongly supported the establishment of the Office of Indigent Legal Services in 2009. NYSBA leaders now are advocating for the New York State Legislature to properly fund this entity so that it may carry out its important mission.

Gloria Herron Arthur

Wrongful Convictions

NYSBA Position

NYSBA believes that any wrongful conviction undermines the public's trust and confidence in the criminal justice system. Consequently, the subject is one of NYSBA's legislative priorities for 2012.

Background

While notions of fairness and due process have underpinned our criminal justice system from the earliest days of our nation and state, there always have been individuals who were convicted of crimes they did not commit. In recent years, this reality has become the focus of public attention due to the development of DNA testing and its use as evidence.

NYSBA Activity

In 2008, then President Bernice Leber established the Task Force on Wrongful Convictions and charged it with "identifying the causes for wrongful convictions, and to attempt to eliminate them." Based on its research, the task force issued a comprehensive report in 2009. Later that year, the House of Delegates adopted the report, which proposed various actions to reduce the risk of wrongful convictions. Proposals included actions with respect to custodial interrogations, witness identification, DNA testing, informants' testimony, and Brady material. Following the report's approval, the task force drafted six bills to implement its legislative recommendations. After approval by the Executive Committee, the bills were submitted by the Association to the New York State Legislature for its consideration during the 2010 and 2011 sessions. It is anticipated that the bills will be resubmitted in 2012. On another front, the Association is actively participating in the work of the New York State Justice Task Force, which Chief Judge Jonathan Lippman established to address the problem of wrongful convictions.

Richard Rifkin

Youth Courts

NYSBA Position

There is no formal position on youth courts at this time. In 2010, then President Stephen Younger created a Special Committee on Youth Courts to examine potential roles for NYSBA in strengthening and expanding youth courts.

Background

Youth courts are a vehicle for authorities to address real-life problems faced by young people (such as truancy, school fighting, graffiti, vandalism, and shoplifting) by intervening early to avoid more serious problems later on. Second, they educate participating teens – trained to serve as jurors, judges, attorneys, and court personnel -- about our justice system. They also harness positive peer pressure to encourage offenders to give back to the community and to avoid further entanglement with the justice system.

NYSBA Activity

In 2010, the committee hosted an informational forum for local stakeholders at NYSBA's headquarters in Albany. The goal of the forum was to encourage local agencies to move forward in establishing a local youth court. As a direct result of this successful event, committee members have been working closely with the Albany City School District to establish a youth court for handling school-based offenses. The Albany High School Youth Court will begin hearing cases in early 2012. Work also continues with the Albany County Family Court and the Albany Police Department to create a youth court that will serve the City of Albany.

In January 2011, the committee arranged for a youth court demonstration by Greenpoint Youth Court representatives during the quarterly House of Delegates meeting. The committee also arranged for a special issue of the NYSBA Journal dedicated to youth courts to be published that same month.

The committee has drafted proposed legislation about youth courts and their role in juvenile justice. The legislation will be presented to legislators in 2012.

The committee also is working with the Association of New York State Youth Courts and the Justice Resource Center to develop a data collection program. The program will help youth courts in New York and also be accessible to others seeking information and statistics about the state's youth courts.

Stacey Whiteley

Major Initiatives

ABA Ethics 20/20

NYSBA Position

The American Bar Association (“ABA”) Commission on Ethics 20/20 (“Ethics 20/20”) has issued several papers and proposals about the ABA Model Rules of Professional Conduct and related commentary. NYSBA has submitted responsive comments, although it has not taken any specific positions.

Background

Ethics 20/20 was created in 2009 by then ABA President Carolyn Lamm as a three-year initiative to examine the ABA Model Rules and the U.S. system of lawyer regulation. The commission has issued discussion papers and proposals on topics including the following: (1) outsourcing; (2) technology and confidentiality; (3) use of technology for client development; (4) pro hac vice admission; (5) registration of in-house counsel; (6) multijurisdictional practice; (7) choice of law; and (8) ranking of law firms. Recently, Ethics 20/20 issued its most controversial paper on alternative business structures, which proposed permitting non-lawyers to have limited ownership interests in law firms.

NYSBA Activity

On the issue of ranking law firms, NYSBA submitted a resolution to the ABA House of Delegates in 2010 seeking a study of the subject, spurred by an announcement that U.S. News & World Report would begin to rank firms. After amendments, the resolution was adopted with NYSBA’s leadership, and Ethics 20/20 was assigned to study the subject. In 2011, Ethics 20/20 issued a report recommending no changes, although it identified certain items for monitoring.

Regarding Ethics 20/20’s other papers and proposals, NYSBA has submitted comments, based largely on the work of the Committee on Standards of Attorney Conduct. As to non-lawyer ownership, President Vincent Doyle has created a task force to consider whether NYSBA should alter its prior position in opposition.

Ethics 20/20 will brief NYSBA at the Annual Meeting in January 2012, and it will submit an informational report to the ABA House of Delegates in February 2012. A final vote on many of the commission’s proposals is expected at the ABA House of Delegates meeting in August 2012, although some of the proposals – including the non-lawyer-ownership proposal – will not be considered earlier than the February 2013 meeting.

Richard Rifkin

Code of Judicial Conduct

NYSBA Position

In 2011, the Association approved the report and recommendations of the Special Committee to Review the Code of Judicial Conduct to adopt new Rules of Judicial Conduct based upon the 2007 American Bar Association (“ABA”) Model Rules of Judicial Conduct.

Background

The ABA initially adopted a Code of Judicial Conduct in 1972 and thereafter adopted a substantially amended code in 1990. New York versions of both codes were adopted by NYSBA shortly thereafter; the rules governing judicial conduct are codified in 22 NYCRR part 100.

In 2007, the ABA adopted a new set of Model Rules of Judicial Conduct. The new rules have a format mirroring that of the Model Rules of Professional Conduct, which include black-letter rules and accompanying commentary. The 2007 Model Rules of Judicial Conduct (or a modified version) have been adopted in a number of states and are under study in other jurisdictions.

NYSBA Activity

The Special Committee to Review the Code of Judicial Conduct reviewed the 2007 ABA Model Rules of Judicial Conduct. In 2009, the committee issued an initial report recommending the adoption of a modified version in New York. A revised report was issued in October 2010, in response to comments received from interested groups. The report was approved with some amendments at the April 2011 House of Delegates meeting and submitted to New York State Chief Administrative Judge Ann Pfau for review and adoption.

Kathleen R. Mulligan Baxter

E-Discovery Best Practices

NYSBA Position

In 2011, the Executive Committee approved a report of the E-Discovery Committee of the Commercial and Federal Litigation Section entitled, “Best Practices in E-Discovery in New York State and Federal Courts.” The report provides practical, concise advice about managing electronic discovery (“e-discovery”) and best practices based on the current state of the law. The report is available at www.nysba.org/e-discovery.

Background

Computers are not new to the legal process, and astonishment at the constant and continuous proliferation of electronically stored information (“ESI”), networks, systems, and devices has become a cliché. However, new developments relating to ESI are potentially significant to attorneys because any information relevant to a legal proceeding brings with it concomitant legal obligations. Attorneys need to understand new legal developments relating to the preservation, collection, and production of ESI so that they can represent clients competently and efficiently during the discovery process.

NYSBA Activity

The E-Discovery Committee issued a report containing fourteen guidelines for counsel to use in managing e-discovery on the state and federal levels. The guidelines cover topics that include the following: (1) when the legal duty to preserve arises; (2) a determination of the scope of preservation; (3) elements of successful legal hold notices; (4) identifying relevant ESI; (5) articulating requests for ESI; (6) production of ESI; (7) non-waiver of privileges agreements; (8) costs and burdens of e-discovery; and (9) sanctions for spoliation. The report also contains a helpful glossary and bibliography of additional resources.

Patricia Johnson

Future of the Legal Profession

NYSBA Position

In 2011, the House of Delegates approved the report of the Task Force on the Future of the Legal Profession, which was created to examine and project what the legal profession will look like in the next decade and what NYSBA can do to shape positive developments in the profession. The task force's report is available at www.nysba.org/futurereport.

Background

Due to the economic downturn, many bar leaders across New York and globally have become increasingly aware of the need to revise the way we do business. The Task Force on the Future of the Legal Profession took advantage of this historic opportunity to recommend lasting, positive changes that will chart a bold new course for our profession.

NYSBA Activity

The task force issued its report following nine months of intensive study and a series of meetings that included the following: (1) the annual Presidential Summit; (2) three law firm managing partners' forums; (3) a meeting of NYSBA past presidents; and (4) a law school deans' forum.

The report contains approximately eighty recommendations about the following: (1) creating a roadmap for the future use of technology in the profession; (2) improving legal education and training; (3) establishing a proper work/life balance for attorneys; and (4) delivering legal services in new and different ways.

Most recently, the Resolutions Committee has been working with other committees and sections to implement the task force's recommendations.

Teresa Schiller

Immigration Representation

NYSBA Position

There is no formal position at this time. In 2011, President Vincent Doyle created a Special Committee on Immigration Representation to recommend ways of improving the quality and availability of legal representation in immigration matters. The committee expects to submit a report and recommendations to the House of Delegates for approval at its June 2012 meeting.

Background

Respondents in immigration proceedings face detention, deportation, and often permanent expulsion from the United States -- with no constitutional right to government-funded legal representation. Many of these immigrants have limited resources and cannot afford attorneys, leaving them unrepresented or vulnerable to unscrupulous and unauthorized individuals who exploit language barriers and exact exorbitant fees in exchange for providing incompetent and insufficient assistance. With the dramatic and rapid escalation of immigration enforcement policies and resources, efforts to provide effective and readily-available quality representation and assistance are necessary to promote a fair and just immigration court system. The dearth of adequate legal representation in immigration cases impedes an already overburdened court system, where judges are often left to fill in the gaps as they do their best to ensure that respondents receive fair treatment.

NYSBA Activity

The Special Committee on Immigration Representation is studying the challenges faced by respondents and the courts in these matters. The committee formed the following subcommittees: (1) Subcommittee on Standards and Quality of Representation; and (2) Subcommittee on Improving Immigration Representation in Underserved Areas Within Upstate New York. The first subcommittee is developing written standards for immigration representation, studying the enforcement of current laws against fraud, and examining the Board of Immigration Appeals' process of accrediting non-lawyer representatives to appear in immigration proceedings. The second subcommittee is collaborating with immigration judges and relevant government officials to identify unmet areas of need and to improve the availability of pro bono representation. It also is developing strategies regarding "Know Your Rights" materials and presentations.

Andria Bentley

New York Law in International Matters

NYSBA Position

In 2011, the House of Delegates approved the report of the Task Force on New York Law in International Matters, which was created to educate lawyers, business leaders, and investors about the benefits of selecting New York law and a New York forum for international dispute resolution. The task force's report is available at www.nysba.org/InternationalReport.

Background

New York domestic law is applied to a wide variety of cross-border business and international commercial transactions. In addition, New York is an international center for dispute resolution. It is imperative that attorneys who are working to resolve problems under New York law or who are coming up with new solutions under New York law be aware that any resolution or solution has potentially significant impacts on the reputation of New York law around the globe as well as within the borders of New York.

NYSBA Activity

The Task Force on New York Law in International Matters was created in 2010 to achieve the following goals: (1) to educate the legal community and the business world about the benefits of using New York law; (2) to ensure that New York law retains its position as an international legal standard for commercial transactions in the global marketplace; and (3) to magnify the important role that New York courts and arbitral forums play in resolving international business disputes. As a result, the task force engaged in months of intensive study to prepare a comprehensive report.

The report contains recommendations that include the following: (1) establish a permanent center in New York for hearings in international arbitration; (2) develop state court specialized chambers to assist with appropriate international arbitration matters; and (3) promote domestic and overseas continuing legal education programs on drafting international agreements.

Following the report's approval, the task force has collaborated with the Resolutions Committee, other NYSBA leaders, and New York community leaders to pursue many of its recommendations. The task force also publicized the report to approximately 10,000 targeted recipients.

Teresa Schiller

President's Section Diversity Challenge

NYSBA Position

President Vincent Doyle issued a Section Diversity Challenge for 2011-2012. No formal position with respect to the challenge has been taken. The challenge's results will be announced to the House of Delegates at its March 2012 meeting.

Background

NYSBA has been a strong advocate for greater diversity within the organization. Unfortunately, the legal profession historically has included relatively few attorneys from diverse backgrounds (estimated at ten percent in New York). In recognition of this situation and with the goal of improving the representation of minority attorneys in the Association, NYSBA adopted a diversity policy in 2003. In 2004, NYSBA began hosting an annual "Celebrating Diversity" reception at the Annual Meeting to encourage more involvement in sections and committees. NYSBA sections regularly host a variety of diversity initiatives, including funded fellowships and internships for attorneys of color. NYSBA also established dedicated seats for minority attorneys in the House of Delegates and on the Executive Committee, upon the recommendation of the Governance Committee.

NYSBA Activity

President Doyle instituted the Section Diversity Challenge as one of his top leadership priorities. He challenged each of NYSBA's twenty-five sections to develop and implement diversity initiatives (with both short-term and long-term goals). With support from the Membership Committee and the Committee on Diversity and Inclusion, section leaders submitted their diversity plans in September 2011 and then began the implementation phase. President Doyle and the sponsoring committees have hosted meetings and issued video messages and other communications to spur involvement. In January 2012, the sections will provide status reports on their progress, and they will share the results of their efforts with NYSBA leaders in time for announcement in March 2012.

Patricia Wood

Veterans' Legal Services Needs

NYSBA Position

No formal position has been taken at this time. In 2011, President Vincent Doyle created a Special Committee on Veterans' Affairs to identify the specific legal services needs of New York's military community and to create a framework for meeting those needs. The committee expects to submit a report and recommendations to the House of Delegates for approval at its June 2012 meeting.

Background

More than one million veterans currently call New York State home, and that number likely will increase as the wars in Iraq and Afghanistan have officially ended. Far too many of them are confronted upon their return to New York with an array of legal challenges involving employment, child custody, homelessness, and other civil matters.

NYSBA Activity

The goal of the Special Committee on Veterans' Affairs is to ensure that quality legal services are available to veterans (both past and present members of the military) and the families that support them. The committee has created three subcommittees to focus its work: (1) Veterans' Court Subcommittee; (2) Legal Services Subcommittee; and (3) Legal Education Subcommittee. The first subcommittee is working with communities in New York State to establish veterans' treatment courts that are modeled on the groundbreaking Buffalo Veterans' Treatment Court. The second subcommittee is engaging in activities that include developing a resource guide about available legal services and instituting a referral mechanism to connect attorneys and those in need. The third subcommittee is creating and executing legal education programs for attorneys and the general public about legal services for veterans and their families. The third subcommittee also is endeavoring to deliver templates for ready-to-go programs to local legal organizations that also wish to make such presentations.

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