

New York State Bar Association
2014 Bar Leaders Innovation Awards for Bar Associations Application
Narrative
NYCLA State Central Registry Pro Bono Project

In 2012, the New York County Lawyers' Association (NYCLA), based in Manhattan with approximately 9,000 members, established its State Central Registry (SCR) pro bono project and, in 2014, NYCLA expanded the project. This program provides pro bono representation to individuals wrongly placed on the New York State Central Register of Child Abuse and Maltreatment. Volunteer attorneys advocate for the amendment, sealing, or expungement of indicated reports of abuse and review documents, develop the case, and represent individuals at their fair hearings before an administrative law judge.

The program was developed because people sometimes end up on the SCR, which is maintained by the New York State Office of Children & Family Services, due to false allegations made by an abusive partner. Amendment, expungement, and sealing of SCR records benefits low-income New Yorkers in profound ways by opening up entry-level employment and licensure in care-giving fields and by ensuring that an indicated report does not become an obstacle to employment.

If individuals listed on the SCR wish to remove their name from the list, they have an initial opportunity to request that the report be labeled "unfounded" within 90 days of being notified of the report. If the SCR refuses to remove the name, they have a right to administrative review and a fair hearing. The hearing is conducted before an administrative law judge (ALJ) who decides whether the agency has met its burden of proving that a preponderance of the evidence supports the allegation.

If the ALJ finds there is not enough evidence to support the allegation, the report is marked as "unfounded," the record is sealed, and the case is over. If the ALJ determines that a report is properly "indicated," the report is marked as affirmed by the ALJ. If an individual wishes to contest the finding of the ALJ, the next step is to seek judicial review in an Article 78 proceeding.

Despite the low threshold for inclusion on the Central Register, a listing may prevent a person from seeking employment in a wide range of fields for decades—names remain on the SCR for 28 years, or until 10 years after the youngest child living in the household reaches 18 years of age. Employers are often required to check the list to determine if job applicants' or volunteers' names are listed. Although they are not prohibited by law from hiring individuals who have indicated reports, many employers have a policy of refusing to do so.

Without the assistance of an attorney or advocate, individuals have fared poorly in attempting to challenge a listing in the SCR. Legal services advocates working on these cases note that the success rate for challenging a listing increases dramatically when people are represented by counsel.

A group of 12 attorneys from Patterson Belknap Webb & Tyler were the first to represent clients in this project. They were trained and supervised by experienced attorneys through Legal Service NYC – Bronx and NYU's Family Defense Clinic. During representation, Fordham Law School's Feerick Center for Social Justice and Public Interest Resource Center provided additional assistance and support. The participating attorneys received referrals from Legal Services NYC – Bronx, NYU's Family Defense Clinic, NYCLA members David Lansner and Carolyn Kubitschek of Lansner & Kubitschek, and Sanctuary for Families.

Attorneys met with clients, gathered documents and evidence, interviewed witnesses, drafted affidavits, subpoenaed records, wrote to the New York State Office of Children & Family Services (OCFS) to ask

for a written review of the clients' records, negotiating with opposing counsel from the Administration for Children's Services (ACS), and in three cases, represented clients at fair hearings in front of administrative law judges.

Following Patterson Belknap's success, White & Case adopted NYCLA's SCR program. White & Case has followed the model used at Patterson Belknap, with LSNY-Bronx serving as the initial source for referrals. White & Case has been successful in amending and sealing the files of two clients—one after a full fair hearing that was handled by a White & Case associate and the other as part of a settlement prior to a hearing. White & Case is in the process of working with one additional client, and is hopeful that her case will be resolved in a positive manner.

The pilot has been a great success at Patterson Belknap and at White & Case, and attorneys have been able to assist seventeen clients over the course of the first two years. Without the Pilot Project, these clients would have been unrepresented during the review of their case, and their chances for successfully removing their names from the SCR would have been greatly diminished.

Because of the need and success of this project, in the summer of 2014, NYCLA expanded the program to provide opportunities for individual NYCLA members who are not affiliated with a member law firm to represent clients. A seasoned family law practitioner will work with NYCLA members to provide guidance and support. Thirty attorneys have currently undergone training and are waiting to be assigned to clients.

NYCLA is greatly expanding services for a client population in desperate need of legal assistance. There are very few legal services organizations that represent clients who wish to remove their names from the SCR, and they cannot handle the large demand for these cases. Partnering law firms with legal services organizations and providing support to individual volunteer attorneys who are not affiliated with a law firm is maximizing the benefit that this program has for low income New Yorkers and for the NYCLA community as a whole.