

JUDICIAL DISPATCH



A publication of the Judicial Section of the New York State Bar Association

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PRESIDING MEMBER'S MESSAGE



Hon. Ellen Spodek

I am very excited and honored to be the Presiding Member of the Judicial Section of the New York State Bar Association. This section is unique in that it represents the judiciary throughout the State of New York, whether elected or appointed.

As Presiding Chair, I have set several goals for our Section. First, I seek to address issues that concern all judges, and to foster support among our members about issues that may be unique to a specific geographic area or court domain. In furtherance of this goal, I will dialog with OCA to address issues as they arise.

My second goal is to increase Judicial Section membership, especially among our colleagues who are NYSBA members, but are not members of our Section.

My third goal is to continue the admirable work of our Section's Diversity Committee and Judge Rachel Kretser, the immediate past Presiding Member of our Section, concerning judicial diversity. Our Section's Diversity Committee prepared a comprehensive statistical analysis of the racial and gender composition of the judiciary, broken down by judicial district. The initial statistics show a lack of judicial diversity, particularly in upstate districts. In June 2014, our analysis was embodied in a report entitled "Judicial Diversity in New York State: A Work in Progress." A copy of this report can be viewed at http://www.nysba.org/Sections/Judicial/2014_Judicial_Diversity_Report.html. This ambitious and exciting report was adopted by the NYSBA Executive Committee on September 17, 2014. It is our hope that the Report will raise public awareness and encourage a greater commitment to diversity and inclusiveness in the court system.

At our annual luncheon on Friday, January 30, 2015 we will present the Second Annual Distinguished Jurist Award to the most distinguished Honorable Betty Weinberg Ellerin. We also will present the inaugural Award for the Advancement of Judicial Diversity to the Honorable Karen Peters, Presiding Justice of the Third Department, who has been a strong, persistent proponent of a diverse bench. My sincere thanks to Rachel for all her work in establishing these two awards.

I am confident that, along with my fellow officers, we will continue to be a voice for the judiciary in New York State. I encourage any of you who have ideas or suggestions to contact me. By working together we can continue to grow this section and continue our tradition of giving voice to New York State judges on issues of importance to the judiciary and the people we serve.

I hope to see all of you at our Section's Annual Meeting luncheon on Friday, January 30, 2015 at the New York Hilton Midtown. Thank you!

"No higher duty, or more solemn responsibility rests upon this Court than that of translating into living law and maintaining this constitutional shield . . . for the benefit of every human being subject to our Constitution – of whatever race, creed, or persuasion."

Hugo Lafayette Black

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Editor, Judicial Dispatch

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The Judicial Dispatch is your newsletter. This is the last edition that will be distributed without charge to the New York State judiciary. To receive future complimentary editions, you must be a member of NYSBA's Judicial Section.

I welcome submissions on topics of interest to the members of our Section. If you have an article, picture or announcement you would like considered for publication, please send it to me in electronic format. The views expressed in articles in this newsletter are not necessarily the views of NYSBA, the Judicial Section, or its Officers.

JUDICIAL NEWS AND UPDATES

a. Update on Judicial Pay and Benefits Litigation

Pines v State, 23 NY3d 982 (2014)

As reported in the last issue of the Judicial Dispatch, the plaintiffs in this action sought a declaratory judgment that the compensation of judges and justices of the Unified Court System was duly increased pursuant to the Laws of 2009, Chapter 51, section 3 ("Chapter 51") and that the judges and justices were entitled to a pay increase retroactive to April 1, 2009. At issue was whether Chapter 51 was self-executing or a 'dry appropriation.' The Supreme Court, Nassau County (Karen V. Murphy, J.) ruled in plaintiffs' favor in a decision dated January 9, 2011. The State appealed and, the Second Department unanimously reversed the motion court's decision in an opinion authored by Justice Robert J. Miller, and joined by Justices Mark C. Dillon, Plummer E. Lott, and Jeffrey A. Cohen. Plaintiff's attempt to obtain leave to appeal was denied, rendering the death knell to *Pines*.

Larabee v Governor of State, 989 NYS2d 840 (1st Dep't 2014)

This case raises the issue of whether the failure of the salary commission and legislature to award a retroactive pay adjustment adequately complied with the Court of Appeals' earlier directive to remedy the State's separation of powers' violation because the salary commission ignored the damage that occurred during the 13 years judges went without raises, and because the salary commission wholly overlooked judges who served – and also retired – during that 13-year period. On July 10, 2014, in a split decision, the First Department affirmed the motion court's decision granting summary judgment against plaintiffs. Because there were two dissents, the Court of Appeals will hear the case.

Bransten v State, 2014 N.Y. App. Div. LEXIS 3140 (1st Dep't 2014)

The issue in this case is whether the increase in required judicial healthcare contributions is a decrease in compensation in violation of the Compensation Clause of the New York Constitution. On May 4, 2014 the First Department unanimously affirmed the motion court's denial of the State's motion to dismiss. The State seeks to reargue and/or leave to appeal and now argues that health benefits are not compensation. Unlike unionized state employees whose contributions

were increased as part of collective bargaining agreement negotiations, judges received nothing in exchange for the required increased in healthcare contributions. If the First Department denies leave/reargument to the State, plaintiff likely will move for summary judgment because the First Department effectively ruled in plaintiff's favor.

b. Legislative Update

By: Marc Bloustein, OCA First Deputy and Legislative Counsel

The following is a summary of recent legislative and rule changes pertinent to the judiciary.

Courts and Court Administration, Generally

- **L. 2014, c. 29:** Extends expiration of provisions of Civil Practice Law and Rules requiring settlement conferences in residential foreclosure actions. Effective 6/19/2014.
- **L. 2014, c. 44:** Amends the Family Court Act to add 20 new Family Court judgeships, effective January 1, 2015, and another five new judgeships, effective January 1, 2016. The 20 include nine for New York City and one each for the following counties: Albany, Broome, Chautauqua, Franklin, Nassau, Oneida, Oswego, Schenectady, Suffolk, Ulster and Westchester. The five include one each for the following counties: Delaware, Dutchess, Erie, Monroe and Warren. The new judgeships outside New York City are first to be filled at the November election preceding their effective date. The legislation also establishes a special petitioning period for electoral campaigns for the judgeships that become effective January 1, 2015, and reduces the number of signatures required. Effective June 26, 2014, provided that the judges created by section 2 will first take office on January 1, 2015 and the judges created by section 3 will first take office on January 1, 2016.
- **L. 2014, c. 51:** Enacts the 2014-15 judiciary budget. Effective 4/1/2014.
- **L. 2014, c. 400:** Implements a collective bargaining agreement between the judiciary and nonjudicial employees in the State judiciary negotiating unit. Effective 4/1/2014.

MEMBERSHIP IN THE JUDICIAL SECTION

We invite you to join NYSBA and OUR Judicial Section. United as one body, we strive to promote, insure and deliver justice. We have worked hard to make membership in the Section valuable and rewarding. So please join the more than 360 judges at all levels of the state judiciary who already enjoy the many privileges afforded by their affiliation with NYSBA and the Judicial Section.

NYSBA provides a wide array of programs and services to help keep attorneys and judges well informed and connected. The Judicial Section addresses issues unique to the duties, responsibilities and welfare of the judiciary. Our Section also provides a forum for representatives of the Council of Judicial Associations to address issues relating to legislation and court procedure. Among the other benefits of membership in our Section are:

- **three free online CLE educational programs**
- **free access to CasePrepPlus's entire library of advance sheets and research services, as well as unlimited access to all archives (an annual value of \$160)**
- **a discount to attend the Judicial Section Annual Meeting luncheon**
- **a complimentary copy of the "Judicial Dispatch," the only newsletter in New York State written by judges for judges**
- **unparalleled camaraderie among our State's guardians of the law**

If you have any questions, please contact our State Bar Service Center at 800-582-2452.

Membership in the Judicial Section is only \$25.00. Section membership dues can be paid online at nysba.org or by mail to NYSBA, Attention State Bar Service Center, One Elk Street, Albany, NY 12207. Join now!

NEWS AND UPDATES FROM PAGE 3

Civil Practice & Procedure

- **L. 2014, c. 93:** Amends the Public Health Law in relation to the appointment of a health care agent or surrogate who is the subject of an order of protection protecting the principal. Effective 7/22/2014.
- **L. 2014, c. 109:** Amends the Civil Practice Law and Rules in relation to furnishing motion papers to the court that were previously electronically filed. Effective 7/22/2014.
- **L. 2014, c. 314:** Amends the Civil Practice Law and Rules in relation to business records of non-parties. Effective 8/11/2014.
- **L. 2014, c. 371:** Amends the Civil Practice Law and Rules in relation to dismissal of actions for want of prosecution. Effective 9/23/2014.
- **L. 2014, c. 379:** Amends the Civil Practice Law and Rules in relation to conduct of an examination before trial. Effective 9/23/2014.
- **L. 2014, c. 380:** Amends the Civil Practice Law and Rules in relation to an affirmation by any person in a civil action. Effective 9/23/2014.

Criminal Law & Procedure

- **L. 2014, c. 17:** Amends the Penal Law and the Criminal Procedure Law, and amends chapter 556 of the Laws of 2013, in relation to probation sentences and the revocation thereof. Effective 2/9/2014.
- **L. 2014, c. 31:** Amends the Penal Law in relation to criminalizing the sale of a controlled substance by a medical practitioner or pharmacist. Effective 6/23/2014.
- **L. 2014, c. 36:** Amends the Penal Law to create the class A misdemeanor offense of Fraud and Deceit Related to Controlled Substances. Effective 6/23/2014.
- **L. 2014, c. 37:** Amends the Criminal Procedure Law and the Penal Law in relation to the designation of criminal sale of a prescription for a controlled substance by a medical practitioner or pharmacist. Effective 6/23/2014.
- **L. 2014, c. 90:** Amends the Public Health Law, the Tax Law, the State Finance Law, the General Business Law, the Penal Law and the Criminal Pro-

cedure Law in relation to the medical use of marijuana. Effective 7/5/2014 (with some provisions effective on other dates).

- **L. 2014, c. 184:** Amends the Penal Law in relation to Stalking in the Fourth Degree. Effective 10/21/2014.
- **L. 2014, c. 186:** Amends the Penal Law in relation to Public Lewdness in the First Degree. Effective 11/1/2014.
- **L. 2014, c. 188:** Amends the Penal Law and the Executive Law in relation to the crime of Aggravated Harassment in the Second Degree. Effective 7/23/2014.
- **L. 2014, c. 192:** Amends the Penal Law to exclude any time during which a person was incarcerated from the ten-year period relevant to the definition of the crime of Persistent Sexual Abuse. Effective 11/1/2014.
- **L. 2014, c. 193:** Amends the Penal Law in relation to Unlawful Surveillance. Effective 11/1/2014.
- **L. 2014, c. 196:** Amends the Penal Law to elevate an intentional assault upon a school crossing guard to the class D felony of Assault in the Second Degree. Effective 11/1/2014.
- **L. 2014, c. 197:** Amends the Penal Law to impose increased penalties on assaults upon certain New York City Housing Authority employees. Effective 9/3/2014.
- **L. 2014, c. 206:** Amends the General Business Law, the Executive Law and the Penal Law in relation to implementing the Immigrant Assistance Service Enforcement Act, to create the Office of New Americans and to establish the crime of Immigrant Assistance Fraud. Effective 2/2/2015 (with some provisions effective on other dates).
- **L. 2014, c. 347:** Amends the Criminal Procedure Law in relation to grand jury proceedings. Effective 9/4/2014.
- **L. 2014, c. 347:** Amends the Criminal Procedure Law to require the court to waive any mandatory surcharge and crime victim assistance fee when it is found that the defendant is a victim of sex trafficking. Effective 9/23/2014 (with some provisions effective on other dates).

Family Law

- **L. 2014, c. 38:** Amends the Family Court Act in relation to assessment services for youth alleged to be suffering from sub-

stance use disorder. Effective 12/20/2014.

- **L. 2014, c. 94:** Amends the Public Health Law and the Social Services Law to require the review of the criminal history of prospective employees of adult homes, enriched housing programs or residences for adults. Effective 7/22/2014.
- **L. 2014, c. 205:** Amends the Social Services Law and the Education Law to expand the list of persons responsible for reporting cases of suspected child abuse. Effective 8/6/2014 (with some provisions effective on other dates).
- **L. 2014, c. 256:** Amends the Social Services Law in relation to the Statewide Central Register of Child Abuse and Maltreatment. Effective 8/11/2014.
- **L. 2014, c. 373:** Amends the Family Court Act in relation to applications to modify orders of child support in the Family Court. Effective 9/23/2014.

Vehicle and Traffic Law

- **L. 2014, c. 134:** Amends the Vehicle and Traffic Law to extend the effectiveness of provisions relating to civil liability of vehicle owners for traffic control signal violations. Effective 7/22/2014.
- **L. 2014, c. 191:** Amends the Vehicle and Traffic Law in relation to enacting "Vince's Law" to extend the period of time in which multiple driving while intoxicated convictions can occur in order to be a felony. Effective 11/1/2014.

Estate Law and Procedure

- **L. 2014, c. 315:** Amends the Estates, Powers and Trusts Law in relation to renunciation of property interests. Effective 8/11/2014.
- **L. 2014, c. 391:** Amends the Estates, Powers and Trusts Law in relation to powers of attorney in relation to decedents' estates required to be in writing and recorded. Effective 9/23/2014.
- **L. 2014, c. 404:** Amends the Estates, Powers and Trusts Law and the Surrogate's Court Procedure Act to establish the formula for determining the interest payable on a delayed legacy. Effective 12/20/2014.

JUDICIAL ETHICS: REPORTING CRIMES UNCOVERED DURING CIVIL TRIALS

By: **Hon. Richard A. Dollinger**
and **Jason Zirbel ***



Dollinger

During the course of discovery or a trial, a judge learns that a witness or a party has unreported "under the table" income. Instinctively, the judge may recoil: a crime has been committed; the federal and state taxing authorities should be informed. But the judicial decision to report illegal conduct to "appropriate authorities" is complicated by ethical rules and practical considerations that caution judicial restraint.

While New York judges have a clear duty to "take appropriate action" if there is "a substantial likelihood" that an attorney has violated the Rules of Professional Conduct (NYCRR 100.3(D)(2); Advisory Committee on Judicial Ethics, Opinion 10-85 ("10-85")), a judge's duty to report the illegal conduct of non-attorney witnesses and parties is not mandatory, unless otherwise commanded by statute, and rests within the judge's discretion (03-110).

A chorus of opinions from New York's Advisory Committee on Judicial Ethics ("New York's Advisory Committee") provides some guidance for the exercise of judicial discretion. For example, New York's Advisory Committee has opined that it is within a judge's discretion to report a litigant's alien status (05-30), a lawyer-husband's alleged misuse of his IOLA account (13-127), a doctor's positive drug test (06-13), receipt of unreported income by a party receiving social security disability benefits (08-155), the filing of a false instrument (9-71), statutory rape (05-84), or an open bench warrant (03-25).

Notwithstanding these opinions, some trial judges erroneously have assumed an

obligation to report "admissions" of tax evasion surfacing in a divorce proceeding. See e.g., *Hashimoto v. LaRosa*, 4 Misc. 3d 1037(A)(New York Co. 2004); *Beth M. v. Joseph M.*, 12 Misc. 3d 1188(A)(Nassau Co. 2006). Instead, before reporting instances of "under the table" employment or "under reported income," New York's judges should carefully evaluate a variety of compelling and competing public policy and practical considerations.

On the one hand, a blanket judicial attitude of "hear no evil, see no evil, report no evil" does not inspire public confidence in the judicial system, and a courtroom is not a "duty free zone" where a crime may be admitted with impunity (Arizona Judicial Ethics Advisory Committee Opinion 92-15). Conversely, reporting of criminal conduct by parties has been described by New York's Advisory Committee as "undesirable" because it could dissuade witnesses from truth-telling and encourage the use of a threat of criminal prosecution in settlement discussions (88-110; 03-110).

There also are many practical considerations. First, the Court seemingly would need to be satisfied that the claims, as a threshold matter, are worthy of belief and sufficiently proven – even at a preliminary stage.

Second, when unreported income or tax evasion surfaces in pre-trial conferences, well before any witness testifies, judges must face the difficult choice – whether to disclose an intention to report tax evasion before completion of the matter or at its conclusion. Neither case law nor advisory opinions provide much guidance on these questions. But the dangers posed by advising litigants about reporting illegal activity was manifest in a New Jersey case, *All Modes Transport v. Hecksteden*, 389 N.J. Super. 462 (Super. Ct. App. Div. 2006). In that case, the trial judge interrupted cross-examination of a litigant regarding potential tax evasion, recessed the trial, and warned the attorneys at an in-chambers conference that while the current testimony was not sufficient to justify reporting the witness to a prosecuting authority, if continued examination showed additional unwarranted deductions, then the court would report the litigant. In the alternative, the judge suggested that the litigant settle. After the litigant settled, he challenged the settlement as coerced, claiming that his right to proceed was compromised by the judge's statement that further testimony would trigger his obligation to report. The appellate court vacated the settlement, holding that the judge's suggestion that no report would be filed if

settlement occurred gave the witness's opponent an "improper advantage" because such "a threat may be even more coercive when the court is the source." *Id.* As this case highlights, if a trial judge warns any party about exercising discretion to report, and a settlement advantageous to the non-threatened party emerges, if the settlement is later attacked, then it may be difficult to filter out the coercive impact of the judge's warning.

Third, if a judge decides to report tax wrong-doings, then the court can end up engulfed in deciding, at least on a threshold basis, questions such as reporting bartering transactions or use of child care deductions, even though these may be complex federal tax questions outside the usual ken of a state trial judge.

Fourth, the court must also consider whether to place its exercise of discretion on the record and whether to advise the litigant before a report is filed. There is, however, no ethical guidance that requires disclosure of an intention to report on the record or any requirement that a litigant be heard before the report is filed. There also is no guidance in the manner of how and to whom to make such a report. The Court might also face another difficult ethical choice if a litigant seeks to condition any settlement on the Court's agreement to withhold any report to the state or federal taxing authorities.

Finally, in the Family Court or matrimonial context, a court should consider the impact of reporting on any children and the scoff-law's counsel. Will a tax penalty impair a parent's ability to support a child? Is reporting in the best interest of the child? Likewise, because matrimonial attorneys certify their client's financial representations, when under-reported income is uncovered, will the Court be obligated to investigate whether and when counsel knew of it?

In short, New York's trial judges face a complicated balance in exercising discretion to report a non-attorney witness or litigant's "wrong-doing" to authorities. Trial judges, often greeted at pre-trial conferences with allegations of under-reported income, will face difficult choices in exercising their discretion while seeking to equitably resolve disputed matters.

Richard A. Dollinger is a member of the New York Court of Claims and an Acting Supreme Court Justice in Rochester. Jason Zirbel graduates in May from the State University of New York Buffalo School of Law.

* Note: A version of this article appeared in the *New York Law Journal* and is reprinted with permission.

OFFICER PROFILE

Hon. Marsha L. Steinhardt – Secretary

A graduate of Erasmus Hall High School, Brooklyn College and Brooklyn Law School, the Hon. Marsha Steinhardt has lived her entire life in Brooklyn. Her first full time employment was a thirteen-year position in the Torts Division of the New York City Transit Authority. In 1986 Justice Steinhardt became a Law Secretary in the Civil Court, Kings County, to the Hon. John R. Cannizzaro. Approximately three years thereafter, Justice Steinhardt took the position of Principal Law Clerk to Supreme Court Justice Vincent Pizzuto in a Medical Malpractice Part. Candidacy for nomination as Judge of the Civil Court came soon after. Justice Steinhardt's first three years of her term in the Civil Court were spent, by designation, in the Criminal Court, where she excelled at disposing of cases. Elected as a Justice of the Supreme Court in 1994, Justice Steinhardt is currently serving her second term. She served in the Appellate Term, 2nd, 11th, and 13th Judicial Districts from 2008 until 2011 while continuing her duties in a Trial Part. She currently is in charge of the Medical Malpractice Trial Readiness Part in Kings County.

Justice Steinhardt has served as President of the Board of Trustees of the Brooklyn Public Library (1997-2000) and President of the Association of Supreme Court Judges of the State of New York (2007). She presently is the Secretary of the Judicial Section of the New York State Bar Association. Justice Steinhardt also serves as a Trustee of the Kings County Supreme Court Library and is a member of the Statewide Judges' Bench Book Committee. In June 2014 she began her term as President of the Brooklyn Women's Bar Association. Justice Steinhardt is pleased to be a Founding Master of the Nathan R. Sobel – Kings County American Inn of Court, and to have served as the organization's third president.

Justice Steinhardt is an author of several articles published in the New York Law Journal, and is a recipient of awards from the Jewish Lawyers Guild, Catholic Lawyer's Guild, Brooklyn Bar Association, Association of Law Secretaries and the Brooklyn Women's Bar Association.

Marsha Steinhardt is married to Jeffrey Feldman, a well-known man about town in downtown Brooklyn. Mr. Feldman can frequently be seen walking the couple's little dog, Goldie.



HON. MARSHA L. STEINHARDT

Hon. Conrad D. Singer – Treasurer

Judge Singer spent years in private practice representing clients on a broad range of matters including matrimonial and family law, commercial litigation, criminal, real estate, personal injury, education and general business issues. In 2000, Judge Singer was elected as Village Justice in the Village of Great Neck Plaza. He also worked as a Judicial Hearing Officer at the Nassau County Traffic Violations Bureau, and as an Impartial Hearing Officer for the New York State Department of Education conducting hearings on various educational issues. Judge Singer has been a member of his local fire department, Great Neck Vigilant Engine, Hook and Ladder Company for over thirty years. He served as Chief of the Department for several years, and was the recipient of the Nassau County Medal of Valor and also the recipient of the Great Neck Vigilant Engine, Hook and Ladder Company Medal of Valor.

In November 2006, Judge Singer was elected to the New York State Family Court bench in Nassau County. Since taking the bench, Judge Singer has presided over custody, family offense, juvenile delinquency, PINS and guardianship proceedings, and the juvenile drug treatment court. Judge Singer served two terms as President of the New York State Family Court Judges Association, and currently serves as its Vice-President and Immediate Past-President. He was appointed by the Chief Administrative Judge to the New York State Family Court Advisory and Rules Committee and to the New York State Matrimonial Advisory Committee. In February 2014, Judge Singer was appointed by the Chief Administrative Judge and OCA as Co-Chairperson of the Family Court Curriculum Committee. Judge Singer is Co-Chairperson of the New York State Bar Association Judicial Council's Diversity Committee. Judge Singer was the recipient of the New York State Family Court Judges Association's Family Court Judge of the Year Award in 2013. In 2014 he lectured Family Court and Supreme Court judges at new judges school at the Judicial Training Institute.



HON. CONRAD D. SINGER

NEWS AND UPDATES FROM PAGE 4

Amendments of Court Rules (22 NYCRR) Approved by the Administrative Board of the Courts Effective January - October 2014

- **22 NYCRR Part 137, Appendix A, sections 5 and 8(B)**, amends the rules governing the Fee Dispute Resolution Program in relation to the value of disputes that may be submitted to a single attorney arbitrator and to the responsibilities of local programs.
- **22 NYCRR § 150.2**, amends the rule relating to membership of the Independent Judicial Election Qualification Commissions.
- **22 NYCRR § 202.9(a)**, adds a new rule to implement chapter 490 of the Laws of 2013 – legislation which authorized special proceedings for the expungement of falsely-filed financing statements.
- **22 NYCRR § 207.64**, adds a new rule regarding the secure filing of certain documents in Surrogate's Court.
- **22 NYCRR § 202.27-a, 202.27-b, 208.14-a, 208.14-b, 210.14-a, 210.14-b, 212.14-a, 212.14-b 202.6(b) and 208.6(h)**, adopts new rules applicable to default judgment applications in consumer credit collection cases in Supreme Court, the New York City Civil Court, the District Courts and the City Courts outside New York City.
- **22 NYCRR § 202.70**, amends several provisions of the rules applicable to the Commercial Divisions of Supreme Court in relation to the imposition of sanctions for dilatory litigation conduct and failure to appear for scheduled matters; deposition and discovery practice; case assignment; privilege log practice; use of accelerated adjudication procedures; creation of a special masters pilot program; and changing the monetary thresholds for the Commercial Division courts.

IN MEMORIAM**Hon. John F. Lawton**

(June 25, 1929 - April 9, 2014)
Associate Justice, Fourth Department. Justice Lawton also served as a Supreme Court Justice in the Fifth Judicial District

Hon. Peter J. Notaro

(February 21, 1935 - June 17, 2014) Supreme Court Justice, Eighth Judicial District. Justice Notaro also served as a Family Court Judge in Erie County

Hon. Mario J. Rossetti

(October 23, 1935 - July 8, 2014)
Court of Claims and Acting Supreme Court Justice, Eighth Judicial District

SAVE the DATE!**2015 NYSBA Judicial Section Luncheon
Friday, January 30th 2015****New York Hilton Midtown**

1335 Avenue of the Americas, New York, NY 10019

The ticket prices are:

\$60.00 NYSBA Judicial Section Members

\$70.00 NYSBA Members, Not in Judicial Section

\$110.00 Non-NYSBA Members



2015 JUDICIAL SECTION ANNUAL MEETING HONOREES

DISTINGUISHED JURIST AWARD



Hon. Betty Weinberg Ellerin

The Distinguished Jurist Award was created to honor a jurist who embodies the highest ideals of the Judicial Section and to recognize judicial excellence and extraordinary commitment to the rule of law. The recipient of the inaugural award in 2014 was the Honorable Judith Kaye.

This year's recipient of the Distinguished Jurist Award is the most distinguished Honorable Betty Weinberg Ellerin, former Presiding Justice of the First Department. Please join us at the Annual Luncheon, January 30, 2015, where we will honor Justice Ellerin.

AWARD FOR ADVANCEMENT OF JUDICIAL DIVERSITY



Hon. Karen Peters

The Award for Advancement of Judicial Diversity was created to recognize a jurist who has strived to achieve a diverse bench. The inaugural recipient of the Award for Advancement of Judicial Diversity is the Honorable Karen Peters, Presiding Justice of the Third Department. Please join us at the Annual Luncheon, January 30, 2015, where we will honor Justice Peters.

THE JUDICIAL DIVERSITY REPORT



Hon. Rachel Kretser

By: Hon. Rachel Kretser

I am pleased to report that the Section's groundbreaking study on judicial diversity in New York State was unanimously approved by NYSBA's Executive Committee on September 17, 2014 and released to the media, receiving print and television coverage across the state. The report, which is posted on the NYSBA website, is the first study comparing the percentage of women and minorities, African Americans, Hispanics/Latinos and Asian Pacific Americans on the bench to the percentage of women in the bar and in the population as a whole. The data is broken down by judicial district to illustrate regional differences and to manage targeted areas where improvement is most needed.

The report's findings reveal a significant divide between upstate and downstate judicial districts, which is only partially explained by geographic differences in minority populations. For example, while there are 27 women and 28 minority Supreme Court justices in the First Department (Manhattan), the Third Department (which encompasses 28 counties in and around the Capital District) has never elected a minority to the Supreme Court and has only three women on that bench.

These differences are particularly troubling given the fact that the percentage of women in the bar is very similar upstate and downstate and, in the Third Department, the percentage of minority attorneys is almost double the percentage of minority judges. Like the First Department, the Second Department has made significant progress in the appointment and election of women and minorities to the bench. While the Fourth Department also has made progress, particularly when compared with the Third, it still has significant room for improvement.

Judicial diversity is essential because it provides equal opportunity to under-represented groups, produces role models to encourage our youth, inspires confidence in our justice system, and most importantly, promotes justice. The report concludes that "New York's demographics are changing and the judiciary must keep pace or risk undermining the public's confidence in our justice system and respect for the rule of law." The Judicial Section will continue to monitor progress in the area of judicial diversity and will take a more active role to transform New York's judicial system into a place where the voices of our diverse population resonate at every judicial level and in every corner of the state.

Thanks and congratulations go to the Section's Judicial Diversity Committee co-chaired by Justice Antonio Brandveen, Judge Conrad Singer and myself. Justices Doris Gonzalez, Lizbeth Gonzalez, Doris Ling-Cohan, Michael Sonberg, Marsha Steinhardt and Deborah Karalunas also contributed to the report.

GREETINGS FROM NYSBA PRESIDENT



Glenn Lau-Kee

This fall, the New York State Bar Association's Executive Committee approved and published on the Association's website the Judicial Section's September, 2014 report, "Judicial Diversity: A Work in Progress." This report - reflecting more than a year of Section member work - adds research and a spotlight on the need to cultivate greater diversity on the bench, particularly in some judicial departments.

Diversity long has been a goal of the New York State Bar Association, whether it be in law schools, law firms, our Association or the courts. This report highlights that achieving judiciary diversity indeed is a work in progress. The Association looks forward

to working with the Judicial Section towards the goal of a judiciary that better reflects the diversity of society.

The Association has a long-standing commitment to the state and federal judiciary. This year was marked by a significant victory for the judiciary and the people of our state with the creation of 25 new Family Court judges. Passage of the law creating nine new judges in New York City and 16 up-state was the Association's top legislative priority in 2014. As your members know, Family Court handles cases of critical importance to individuals and their families, including matters of custody, foster care, and even domestic violence. The Association's Task Force on Family Court held hearings in each of the state's four Judicial Departments, taking testimony from more than 60 witnesses, including judges, practitioners, state officials, litigants and case-workers. Building on the Task Force's recommendations, the Association's leadership worked closely with the Association's Governmental Relations staff to advocate for the creation of new judgeships for the under-funded Family Courts of our state.

In the previous 20 years not a single new Family Court judgeship was created in New York City, despite a 23 percent increase in filings. And, in the previous decade, only four Family Court judgeships were created outside of New York City.

This legislative victory for the Association will positively affect Family Court judges' ability to give the cases before them the attention they need. And New York State families and individuals should experience greater access to the wisdom and help of the Family Court, as individual judges' caseloads decrease to a more manageable level.

We will continue to advocate for adequate funding for our state court system. The proposed judiciary budget will be submitted on Dec. 1, 2014, and considered by the Legislature prior to the beginning of the state's fiscal year on April 1, 2015. The Association also is closely monitoring the funding of the federal judiciary as the sequester of 2013 is slated to resurface in fiscal year 2016, should federal policymakers not come to an agreement about the budget. When the sequester - mandatory across-the-board cuts in the federal budget dictated by the 2011 Budget Control Act - was first raised, the Association's leadership was out front advocating against the nearly \$350 million cuts caused by sequestration to the federal judiciary's 2013 budget. Then NYSBA President Seymour James wrote in an op-ed to the New York Law Journal how these cuts would have devastating long-term impact on the federal courts, undermining access to justice, public safety and the confidence of individuals and businesses in our federal courts.

Thank you for your support of the New York State Bar Association. We look forward to continued work with the Judicial Section on our shared priorities.



Hon. George Silver, Hon. Judith Gische and Hon. Saliann Scarpulla at the Fall Meeting of the Association of Justices of the Supreme Court of the State of New York



Hon. Ralph Boniello, III and Hon. Laura Douglas at the Annual Breakfast Meeting of the Association of Justices of the Supreme Court of the State of New York



Hon. Gail Prudenti addressing the Association of Justices of the Supreme Court of the State of New York



Hon. Richard Price, Hon. Dana Winslow and Hon. Phillip Rumsey at the Annual Breakfast Meeting of the Association of Justices of the Supreme Court of the State of New York



Hon. Seymour Boyers, Hon. Thomas Raffaele, Hon. Terry Jane Ruderman at NYSBA's Judicial Section Annual Luncheon



Burt Lipshie and Hon. Eileen Bransten at the Fall Meeting of the Association of Justices of the Supreme Court of the State of New York



Hon. Deborah Karalunas, Tracee E. Davis, Doug Tabachnik, Hon. Helen Freeman, Hon. Karen Peters, Tony Harwood, Henry Freedman, and Hon. Ira Warshasky at the Fall Meeting of NYSBA's Commercial & Federal Litigation Section

MESSAGE FROM THE CHIEF JUDGE



HON. JONATHAN LIPPMAN

I am so pleased to send my greetings to the Judicial Section of the New York State Bar Association. The Section continues to be a wonderful resource for New York's judiciary, providing support, programs and events, education, and opportunities for interaction. I commend you for the recent report from the Judicial Diversity Committee, "Judicial Diversity in New York State: A Work in Progress." Our judiciary is far more reflective of the diversity of our communities than it was a hundred, fifty, or even fifteen years ago. But we are not yet where we should be. The report is a thorough and illuminating examination of diversity on the New York State bench, and it is a powerful reminder of how far we have come and what progress is still required.

As we move through autumn and look towards the new year, we can reflect on what lies ahead and what this past year brought us. First, looking forward to 2015, we will have a new commission on judicial compensation by the spring. It was three years ago that the inaugural special commission on judicial compensation ushered in the first salary increase for judges in New York State in well over a decade. Those raises were long overdue for New York's hard-working judiciary who so richly deserve to be compensated for the important work that they do. The creation of the salary commission and the implementation of raises are critically significant events during my tenure as Chief Judge. We now have a structure in place that I believe will ensure we never again face the long period of inaction on judicial salaries from which we recently emerged.

The new commission will be established as of April 1, 2015. As you may remember, Chapter 567 of the Laws of New York, 2010, pro-

vides that a new commission be created on April 1 every four years. The commission has 150 days to do its work; it is charged with examining the adequacy of judicial compensation, determining what adjustments to pay levels are warranted over the next four years, and making recommendations. Those recommendations have the force of law unless modified by statute. The statute directs the commission to take into account factors including the overall economic climate; rates of inflation; changes in public-sector spending; levels of compensation and benefits for judges, executive branch officials and legislators of other states and the federal government, academia, and private and nonprofit enterprise; and the state's ability to fund increases in judicial compensation and benefits. The Unified Court System will be submitting our own recommendations to assist the commission in its analysis.

Before April, I will be selecting two members for appointment to the commission. I welcome any suggestions you have for members who would be good representatives of the judiciary in this process. Please be sure to send me or Chief Administrative Judge A. Gail Prudenti your recommendations by February if possible.

Looking back to the past year, we can celebrate the addition of 25 Family Court judges around the state. For many years, the Family Court in New York State has been desperate for more judicial resources as case filings have grown exponentially. Children and families depend on our Family Courts to provide justice in the most difficult of circumstances. With the addition of 25 new judges, we can finally alleviate some of the delay that have resulted in uncertainty, instability, and distress. With each new election and appointment, we can better serve the many New Yorkers who turn to our Family Courts for help.

Another exciting recent development is the Human Trafficking Intervention Court initiative. A little over a year ago, I announced that Human Trafficking Intervention Courts would be established across New York State, creating the nation's first statewide system of dedicated court parts designed to intervene in the lives of trafficked human beings. Human trafficking, where one person profits from the exploitation of another, is a crime that inflicts terrible harm on its victims. Many of these victims are poor, children, runaways, or immigrants, and are especially vulnerable to exploitation. The statistics are horrifying: 27 million victims

of human trafficking world-wide, 17,500 people brought into the United State by traffickers annually, and many thousands more trafficked within the United States. The federal government places the average age of entry into the commercial sex trade between 12 and 14 for girls and 11 and 13 for boys. These same victims of trafficking often find themselves in our courts as criminal defendants.

New York's Human Trafficking Intervention Courts recognize that most people charged with prostitution-related offenses are forced into the activities that resulted in their arrest. The judges presiding in these courts are educated in the dynamics of sex trafficking and knowledgeable about the support services available to victims. They work with prosecutors and defense attorneys to evaluate each eligible case, determine what services are needed, and give victims who comply with court-mandated services the opportunity to receive a non-criminal disposition or dismissal of their case. By providing education, drug treatment, job training, shelter, counseling and other vital services, organizations working with the courts can help victims of human trafficking to pursue productive lives rather than sending them right back into the grip of their abusers.

Human Trafficking Intervention Courts began with pilot programs in Queens, Midtown Manhattan, and Nassau County. Now, they exist in all five boroughs of New York City, Nassau and Suffolk Counties, Buffalo, Rochester, Syracuse, and Yonkers, covering 95% of those charged with prostitution-related offenses in New York State. These courts have handled more than 4,750 cases to date.

The Human Trafficking Courts in New York are part of a sea change in thinking about prostitution in the criminal justice community. Where we used to regard defendants in prostitution cases as morally degenerate, incorrigible, and profit-driven, we have begun to understand that the reality is exploitation, violence, and abuse. These new courts are making a difference for so many individuals, helping them to change their lives, overcome addictions, attain college and graduate degrees, have their criminal convictions vacated, mentor other victims, and live law-abiding, successful lives.

As we reflect on these recent past accomplishments, I look forward to working with all of you in the coming year as we take on new challenges. I send you all my best wishes for a happy Thanksgiving and a joyous holiday season!

"EVERYTHING YOU NEED TO KNOW ABOUT BECOMING A JUDGE"

By: Hon. Rachel Krester

On September 12, 2014, the Judicial Section co-sponsored a CLE entitled, "Everything You Need to Know About Becoming a Judge." The event was held at Albany Law School, and was co-chaired by Hon. Karen K. Peters, Presiding Justice of the Third Department, and Hon. Rose H. Sconiers, Appellate Division, Fourth Department and Chair of the Franklin H. Williams Judicial Commission.

The program was divided into five separate panels. The first panel, moderated by Justice Peters, was an overview of election law and related ethical requirements. April M. Dalbec, President of the Capital District Women's Bar Association, moderated the second panel, a discussion of the judicial evaluation process and how to navigate judicial screening of panels. The Hon. Doris M. Gonzalez, Acting Supreme Court Justice of the Supreme Court in Bronx County, President of the Latino Judge's Association, and a member of the Judicial Council, moderated the third panel that reviewed the process of securing a nomination in Supreme Court. Judicial

members on that panel included Hon. Karen K. Peters and Hon. Leslie E. Stein, Appellate Division, Third Department.

Peter G. Crummey, President of the Albany County Bar Association and Justice of the Colonie Town Court, moderated the fourth panel entitled, "Making the Ballot in Town, City, County, and Family Court." The Hon. Debra J. Young, Rensselaer County Court Judge, Hon. Susan M. Kushner, Albany County Family Court Judge, and Hon. William A. Carter, my colleague on the Albany City Criminal Court, joined me as panelists.

The CLE ended with a panel discussion concerning the appointment process for the Court of Claims. William T. Little, Esq., President of the Capital District Black and Hispanic Bar Association, moderated this panel. Court of Claims Judge Michael H. Melkonian was a panel member.

The presentations were informative, interesting, and extremely well received. Justices Peters, Sconiers and Gonzalez quoted liberally from the Judicial Section's recently

released Judicial Diversity Report, noting that the Third Judicial Department lags far behind the rest of the state in the appointment and election of women and minorities to the bench. The atmosphere was electric, with the approximately 80-100 audience members actively engaged, asking pointed questions.

Participants were asked to raise their hands if they were interested in pursuing a judicial career. It was wonderful to see so many women and minorities respond affirmatively. I am hopeful that in the not-too-distant future they will be given the opportunity to do so, and that the complexion of the bench in the Third Department will more closely reflect the population it serves. I am pleased that the Judicial Section's co-sponsorship of this event, which included such a spirited discussion, valuable insights and well-written materials, will help to ensure that outcome!

If you would like to duplicate this program in another part of New York State, please let me know. I am delighted to help!

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The legal profession does so much to help so many.

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Your Gift Matters

Thank you to the Intellectual Property Section for sponsoring the Miriam Maccoby Netter Intellectual Property Fellowship. The Fellowship, administered by The Foundation and supported by The Intellectual Property Section, provides invaluable experience to law students interested in the Intellectual Property Law field as well as assistance to non-profit organizations with Intellectual Property needs.

Thank You

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INFORMATION FROM YOUR ASSOCIATIONS

Association of Justices of the Supreme Court of the State of New York

The Association of Justices of the Supreme Court of the State of New York held its Annual Meeting at the Sheraton at the Falls, Niagara Falls, New York from September 7 - September 10, 2014. The Fall conference was well attended and included a variety of informative and entertaining continuing legal education programs, morning walks around the Falls, dancing, shopping and great conversation. In addition, Michael Coccoma, Deputy Chief Administrative Judge (Outside NYC) outlined to our members OCA's position on issues of importance to the judiciary, including the 2014-15 budget, staffing and the salary commission. The Association's slate of officers for 2015 include: President - Paul G. Feinman; President Elect - William Condon; 1st Vice-President - Deborah A. Dowling; 2d Vice-President - Deborah H. Karalunas; Treasurer - Francesca E. Connolly; and Secretary - Debra James. The 2015 Fall conference will be at the Gideon Putnam, October 18 - 21, 2015. Save the date!

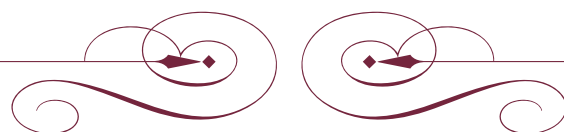
New York State Association of City Court Judges

The New York State Association of City Court Judges held its Annual Meeting at the Doral Arrowwood Hotel and Conference Center from September 28 - 30, 2014. Chief Judge Jonathan Lippman and his wife, Amy Lippman, Esq. were NYSACCJ's special guests at the Sunday evening dinner. Chief Judge Lippman spoke about his life and career in the court system and his hope for the future, urging judges to be fair and mindful of the needs and concerns of indigent litigants. With good humor, Judge Lippman was introduced by NYSACCJ's President, Jo Ann Friia, to the theme of "Fiddler on the Roof," and a chorus of "If I Was a Rich Man." On Monday evening, Michael Coccoma, Deputy Chief Administrative Judge (Outside NYC) administered the oath of office to the new slate of officers for 2014-2015. Judge Friia will serve a second term as President of NYSACCJ.

New York State Family Court Judge's Association

Effective November 1, 2014, the president of the New York State Family Court Judge's Association is Sidney Gribetz, Bronx Family Court.

MEMBER HIGHLIGHTS



**Congratulations and
Best Wishes to
the Following Jurists
who Recently Retired:**

Hon. Rosalie M. S. Bailey, Hon. David M. Brockway,
Hon. Robert Buck, Jr., Hon. Joseph C. Calabrese,
Hon. Mark H. Dadd, Hon. Kevin M. Dillon,
Hon. Patricia M. DiMango, Hon. Stephen A. Ferradino,
Hon. Helen Freedman, Hon. David B. Kahl, Hon. Jeffrey Lebowitz,
Hon. Mary Anne Lehmann, Hon. Plummer E. Lott,
Hon. Thomas A. Meldrim, Hon. Thomas E. Mercure,
Hon. Jeffrey R. Merrill, Hon. George J. Pulver, Jr., Hon. BJ Ramsey,
Hon. Kathleen Martin Rogers, Hon. Judith A. Rossiter,
Hon. Valentino T. Sammarco, Hon. John R. Schwartz,
Hon. Thomas J. Shamon, Hon. M. John Sherman,
Hon. David A. Shults, Hon. Edward O. Spain,
Hon. Joseph C. Teresi, and Hon. Daniel C. Wilson.

Congratulations and best wishes to all!



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