

JUDICIAL DISPATCH



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

Spring 2014 | Vol. 2 No. 1

PRESIDING MEMBER'S MESSAGE



Hon. Rachel Kretser

The relentless cold and snow have taken their toll this winter, but by the time this issue reaches you we will be enjoying a sunny spring. Weather notwithstanding, this has been one of the brightest years ever for our Section.

Annual Luncheon Meeting

The Annual Luncheon Meeting at the New York Hilton was a resounding success. One hundred and eighteen judges, representing a cross-section of the state and federal judiciary, were in attendance. While this was not an all-time record, the numbers exceeded expectations and were among the highest in recent memory.

Former Chief Judge Judith Kaye was gracious and eloquent in accepting the Section's inaugural Distinguished Jurist Award which I had the honor of presenting to her.

Hon. James Yates, Counsel to Assembly Speaker Sheldon Silver, delivered the keynote address which cleverly wove in Judge Kaye's enlightened dissent in *Silver v. Pataki* to the immense enjoyment of everyone present (except perhaps the author of the majority opinion, who nonetheless took it all in good humor).

Chief Judge Jonathan Lippman, ABA President James Silkenat, and NYSBA President David Schraver were also kind enough to address our members. We especially appreciated hearing from President Silkenat as he is the first ABA President from New York State in more than 30 years, and the first ABA President ever to address our Section.

Judicial Diversity

As I write this column our Judicial Diversity Committee is wrapping up its important work on the first report issued by our Section, entitled "Judicial Diversity in New York State: A Work in Progress." The report compares the percentage of women, African Americans, Hispanics/Latinos and Asian Pacific Americans on the bench to the percentage in the bar and in the population as a whole. The statistics are broken down by judicial district to showcase districts that promote diversity and to bring attention to areas where diversity is lacking and increased effort is required.

I want to extend heartfelt thanks to the entire Committee for its considerable efforts. I am particularly grateful to Judges Conrad Singer and Antonio Brandveen who joined me as Co-Chairs of the Committee, and to Justices Doris Gonzalez, Lizbeth Gonzalez, Doris Ling-Cohan, Michael Sonberg, Marsha Steinhardt and Deborah Karalunas who also contributed to the report.

The report's statistical findings show a sharp divide between the upstate and downstate judicial districts, which only is partially explained by geographic differences in minority pop-

"Discrimination is the act of treating differently two persons or things, under like circumstances."

Louis D. Brandeis

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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 entire 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 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.

PRESIDING MEMBER'S MESSAGE,

CONTINUED FROM PAGE 1

ulations. The Asian Pacific American population is under-represented throughout the state in comparison to their numbers in the population and in the bar. African Americans and People of Hispanic heritage are under-represented in all but the First Judicial Department. The Third Department, which encompasses 28 counties in and around the Capitol District, has never elected a person of color to the State Supreme Court bench.

The gender disparity between upstate and downstate is inexplicable given the fact that women constitute more than half the overall population and more than a third of the attorney population statewide. The differences among the judicial districts are striking. In the First Judicial District (NYC), for example, women constitute 60 percent of the State Supreme Court Justices. Whereas, in the Third Judicial District (Albany, Rensselaer, Ulster, Columbia, Green, Sullivan and Schoharie counties) there is not a single woman on the trial level Supreme Court bench. How can such a vast gender gap, 60 percent in one district and zero percent in another, be accounted for when the pool of available female attorneys is the same? Since there are just as many qualified women upstate, the disparity can only be attributed to a lack of access and opportunity.

In short, the Judicial Diversity Report Card is mixed. It is my hope that the Report's findings will raise public awareness and serve as a call to action by the decision-makers in both the elective and appointive judicial selection systems.

We also are working with the Williams Commission, National Association of Women Judges, and the Capital District Women's Bar Association, among others, on a CLE seminar, entitled "How to Become a Judge." Patterned on similar programs in Rochester and Buffalo, this seminar, to be held at Albany Law School on September 12, 2014, will include panel discussions on election law and related ethical requirements, securing nominations for Supreme Court, making the ballot in City, County and Family Court, and the appointment process for NYS Court of Claims Judges and Federal Magistrate and District Court Judges.

Legislative Advocacy

This is shaping up to be a very successful year for our Section's legislative agenda. The New York State Bar Association took a forceful position on behalf of this year's restorative judicial budget, which was adopt-

ed by the legislature and signed by the Governor without amendment. After five years of flat budgets, this budget, which includes a much needed increase, should provide at least a measure of welcome relief for our financially strapped courts.

The legislature also approved a \$5 million appropriation for 20 new Family Court Judges, another top priority for our Section and the State Bar. While specific implementing legislation has not yet been adopted, this appropriation signals overall legislative approval for these much needed judgeships.

We also achieved passage of legislation, which was signed by the Governor last November, increasing the number of city court judges throughout the state. The legislation took effect April 1st as to part time judges who attained full time status. The seven new full time judges authorized by the bill will be elected this coming November for ten year terms beginning January, 2015.

Membership

I am pleased to report that Section membership increased this year to 327, considerably ahead of previous numbers, which averaged 300 or less over the past ten years. Former Presiding Member and Membership Committee Chair, Judge Joseph Cassata, has ambitious plans to expand upon this progress through outreach efforts in each Judicial District. We are grateful to Joe for his continuing efforts and are encouraged by our early successes.

Newsletter

Thanks to the extraordinary efforts of Former Presiding Member and Newsletter Editor, State Supreme Court Justice Deborah Karalunas, the Judicial Dispatch launched last Fall to rave reviews. Kudos to Deb and to all who contributed articles for both the Fall and Spring editions. The growth in membership this year is attributable in part to the success of our newsletter, which provides yet another valuable member incentive.

Thank You

My term ends in June, and this will be my last message to you as Presiding Member. What an extraordinary honor it has been for me to lead such a vibrant and prestigious section, and to represent all of you, our loyal membership. Thank you to our Executive Committee, Justices Paul Feinman, Ellen Spodek, John O'Donnell and Marsha

2014 Judicial Section Membership

\$25.00. Membership in the Judicial Section is a tremendous value at only \$25.00. New York State Bar Association Judicial Section membership offers a variety of excellent and practical benefits. Enjoy THREE free online CLE educational programs each year; FREE access to Case Prep Plus's entire library of advance sheets and research services, as well as UNLIMITED access to all archives (an annual value of \$160); finally – section members enjoy discounts on the Judicial Section Annual Meeting luncheon (the savings typically covers the cost of annual section dues).

*To join the section, please visit www.nysba.org or call the State Bar Service Center at 800-582-2452. **Join today!***

Steinhardt, to our indispensable staff liaison, Patricia Wood, and to the Council of Judicial Associations for making this such an enjoyable and successful year. How gratifying it is to look back at my first message to you and see that the goals I set have been realized. I could not have asked for a better year, one filled with accomplishments, celebrations, and alliances that have produced results for our members and treasured friendships.

While my term has come to a close, my commitment to improving the administration of justice and strengthening our court system will remain. I look forward to continuing to work with my successors and with all of you in the years ahead to ensure that our dedicated judges have the resources we need to fulfill our mission to provide justice to all. I leave you in the capable hands of incoming Presiding Member, Ellen Spodek, who will continue our Section's century-long tradition of giving voice to our state judges. Thank you all!

JUDICIAL NEWS AND UPDATES

a. Update on Judicial Pay and Benefits Litigation

Pines v State, 115 A.D.3d 80 (2d Dept. 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.

The Second Department wrote,

"Here, the language upon which the plaintiffs rely states that \$51,006,759 was to be appropriated '[f]or expenses necessary to fund adjustments in the compensation of state-paid judges and justices of the unified court system and of housing judges of the New York city civil court' (L. 2009, ch. 51, §3). Contrary to the Supreme Court's conclusion, there is no language in the statute that adjusts the salary schedules of the various judges and justices of this state. As in prior years, the plain language of the statute merely directs that a certain sum necessary for adjusting judicial compensation be set aside - what has previously been recognized as a 'dry appropriation' (Matter of Maron v. Silver, 14 N.Y.3d at 245, 899 N.Y.S.2d 97, 925 N.E.2d 899)."

"In sum, we conclude that the Legislature did not adjust judicial compensation through the enactment of the Laws of 2009, chapter 51, §3. In so doing, we make no comment on the wisdom of the Legislature's decision or the manner in which it was carried out. Accordingly, the judgment is reversed, on the law . . . and the matter is remitted to the Supreme Court, Nassau County, for the entry of an appropriate judgment declaring that the compensation of judges and justices of the Unified Court System of the State of New York was not increased by the enactment of the Laws of 2009, chapter 51, § 3."

Applications for leave to appeal to the Court of Appeals are pending.

Larabee v Governor of State, 37 Misc. 3d 748 (New York Co. 2012)

This case raises the issue of whether the failure of the newly enacted salary commission and then the legislature to award a retroactive pay adjustment adequately complied with the Court of Appeals' earlier directives. As explained in the last issue of the Judicial Dispatch, the Supreme Court, New York (Richard Braun, J.) held that enactment of the salary commission meant that the defendants had adequately abided by the Court of Appeals' declaration that the Legislature provide an adequate remedy. Plaintiffs appealed. The Appellate Division, First Department heard oral argument on December 10, 2013, and the matter remains sub judice.

Bransten v State, 2014 N.Y. App. Div. LEXIS 3140 (1st Dep't, May 6, 2014)

In this action for declaratory and injunctive relief, plaintiffs challenge as unconstitutional an amendment to Section 167.8 of the Civil Service Law that reduced the compensation of judges by permitting an increase in their health care insurance premium contributions. As explained in the last issue of the Judicial Dispatch, the Supreme Court, New York County (Carol Robinson Edmead, J.) denied the State's motion to dismiss. On May 6, 2014, the Appellate Division, First Department unanimously affirmed Justice Edmead's denial of the State's dismissal motion.

By way of background, in 2011 the State threatened to lay off thousands of workers unless unionized employees made wage and benefit concessions that included bearing more of the cost of their health care insurance premiums. While negotiations were underway, the Legislature amended Civil Service Law § 167.8 to authorize the Civil Service Department to reduce the State's contribution to health care insurance premiums both for unionized employees who had agreed to the reductions through collective bargaining in exchange for immunity from layoffs and for nonunionized employees. State premium contributions remained unchanged for unionized employees who had rejected the reductions, but those employees remained vulnerable to layoffs. Although the statute

was silent as to whether the reductions applied to judges, pursuant to the statute the Civil Service Department promulgated rules reducing State contributions for individuals designated as managerial or confidential, including the judiciary.

In affirming denial of defendant's motion to dismiss, the First Department rejected the State's argument that health insurance premiums are not compensation within the meaning of the New York State Constitution's Compensation Clause (an argument the State did not raise before Justice Edmead). The First Department also rejected the State's argument that the amended statute was not discriminatory as applied to judges. The Court stated: "In its implementation, the amended statute affects judges differently from virtually all other State employees, who either consented to the State's reduced contribution in exchange for immunity from layoffs or were otherwise compensated by the State's promise of job security. Unlike other State employees, judges were forced to make increased contributions to their health care insurance premiums, without receiving any benefits in exchange. The judiciary had no power to negotiate with the State with respect to the decrease in compensation, and received no benefit from the no-layoffs promise, because their terms of office were either statutorily or constitutionally mandated." The reduced contribution "increased the amounts withheld from judicial salaries [and] constitutes an unconstitutional diminution of judicial compensation" and subjected judges to discriminatory treatment.

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. 2013, c. 427:** Amends the Mental Hygiene Law and the Surrogate's Court Procedure Act, establishing the Uniform Guardianship and Protective Proceedings Jurisdiction Act, in relation to jurisdiction over adult guardianships and other protective proceedings and providing a mechanism for resolving multi-state jurisdictional disputes. Effective 4/21/2014.
- **L. 2013, c. 490:** Amend the Judiciary Law, Penal Law and the Uniform Commercial Code to redress "paper terrorism" against judges and other public servants committed to harass them or to retaliate against them for discharge of their official duties by making it a class E felony offense to commit the existing class A misdemeanor offense of Offering a False Instrument for Filing in the Second Degree through the knowing filing of a fraudulent UCC financing statement that identifies the debtor as a State or local officer under section two of the Public Officers Law, or a judge or justice of the Unified Court System, where that fraudulent filing is "in retaliation for the performance of official duties" by the affected public servant; and to create a court procedure to summarily invalidate fraudulent liens filed against a State or local public employee or criminal defense lawyer who has represented the filer in criminal court. Effective 11/13/2013 [invalidation of fraudulent liens] and 11/1/2014 [new class E felony].
- **L. 2013, c. 548:** Amends the Uniform City Court Act and the Judiciary Law to effectuate modifications in many City Court judgeships outside New York City, including, in some instances, conversion of part-time positions to full-time status; and to establish new City Court judgeships in Buffalo, Rochester, Syracuse, Schenectady, Newburgh, Troy and Yonkers. Effective 4/1/2014 [with new judgeships first to be filled by election for terms commencing 1/1/2015].

Civil Practice & Procedure

- **L. 2013, c. 516:** Amends the General Obligations Law, in relation to protecting parties to the settlement of a tort claim from certain unwarranted lien, reimbursement and subrogation claims by: (1) conclusively presuming that, except with respect to Medicare, Medicaid, automobile no-fault or Workers' Compensation payments for which there is a statutory right of reimbursement, the money paid in settlement of any personal injury or wrongful death action did not include compensation for the losses or expenses that were or will be paid by an insurer; and (2) providing that, except for those payments made by Medicare, Medicaid or an insurer providing Workers' Compensation benefits for which there is a statutory right of reimbursement, no defendant entering into a settlement with a personal injury or wrongful death plaintiff shall thereafter be subject to any insurers' claim for subrogation or reimbursement. Effective 11/13/2013 [and applicable to any settlement entered into on or after 11/12/2009].

Criminal Law & Procedure

- **L. 2013, c. 341:** Amends the Public Health Law to classify substituted cathinones (these products, often referred to as "bath salts," are chemically related to amphetamines and ecstasy – both classified as stimulants) as Schedule I controlled substances. Effective 12/11/2013.
- **L. 2013, c. 555:** Amends the Criminal Procedure Law to provide that local criminal courts shall treat and retain persons aged 16 and 17 who commit certain prostitution offenses as PINS proceedings. Effective 1/10/2014.
- **L. 2013, c. 556 and L. 2014, c. 17:** Amend the Penal Law and the Criminal Procedure Law in relation to imposing sentences of probation and to waiving pre-sentence investigations and written reports thereon in any city having a population of one million or more for certain offenses. Effective 1/10/2014.

Family Law

- **L. 2013, c. 87:** Amends the Vehicle and Traffic Law to extend the driver's license suspension process, an enforcement tool for child support collection, for two years. Effective 6/30/2013.
- **L. 2013, c. 335:** Extends the provisions of the Interstate Compact for Juveniles (L. 2011, c. 29) from September 1, 2013 to September 1, 2015. Effective 8/31/2013.
- **L. 2013, c. 371:** Amends the Domestic Relations Law and the Social Services Law in relation to orders of visitation or custody to a person who has been convicted of sexual assault when the child was conceived as a result of such sexual offense. Effective 9/27/2013.
- **L. 2013, c. 402:** Amends the Family Court Act and the Public Health Law to establish a procedure for the signatory to an acknowledgment of paternity to rescind the acknowledgment by filing a petition with the court to vacate the acknowledgment, when made by a minor. Effective 1/19/2014.
- **L. 2013, c. 430:** Amends the Family Court Act and the Social Services Law in relation to severe or repeatedly abused children in child protective and parental termination proceedings. Effective 10/23/2013.
- **L. 2013, c. 480:** Amends the Domestic Relations Law, the Family Court Act and the Criminal Procedure Law to provide that communication or contact between protected parties with a party against whom an order of protection or temporary order of protection is issued shall not affect the validity of such order; require notice thereof to be included in such orders; and prohibit protected parties from being held to have violated an order of protection or a temporary order of protection. Effective 11/13/2013 [but notice requirement effective on 1/12/2014].
- **L. 2013, c. 526:** Amends the Family Court Act, the Domestic Relations Law and the Criminal Procedure Law to add identity theft, larceny and coercion to Family Court's family offense jurisdiction, and to authorize courts to direct return of certain identification and financial documents when issuing orders (or temporary orders) of protection. Effective 12/18/2013.

THE REAL PEOPLES COURT - HELP STILL NEEDED



Hon. Conrad D. Singer

"Our children are our future." We hear this belief echoed by the media, and in literature, everyday conversation, and song. Family Court's mission is to protect and service the individuals who are our future. Family Court provides for the health and safety of our children through various services offered to children and their families. Most New Yorkers who have had contact with the court system have appeared in Family Court. Then, why are the Family Courts throughout this state severely strained, drastically understaffed and largely underserved?

As economic stresses grow, so do family stresses and the initial filings in our Family Courts.

Likewise, as legislation expands the jurisdiction of Family Court, whether by creation of special immigrant juvenile status, increasing the class of those protected, or increasing the enumerated offenses under Article 8, the filings in Family Court increase. In addition, as the costs associated with divorce and maintaining two households becomes ever more burdensome, the filings in Family Court increase. Maybe it's because petitions of many kinds can be filed by almost anyone in Family Court without a filing fee. Perhaps it's because Family Court is layperson-friendly, thereby obviating or minimizing the need to hire counsel. Or maybe it's because a person can easily obtain assigned counsel in Family Court. Could the increase in filings also be due to the expeditious resolution of cases in Family Court? Is it the dwindling of the upper-middle and middle classes? While these all may be reasons why Family Court filings continue to grow, I would like to believe the increase in filings also stems from the personal, thoughtful attention given to litigants during their face-to-face contacts with Family Court Judges and non-judicial employees.

Family Court caseloads have grown to 700,000 annually statewide, yet only four new Family Court judgeships have been created since 1998. But now, thanks to the tireless efforts of many, and the activism of the New York State Family Court Judges' Association and others, funds have been earmarked in this year's judiciary budget to create 20 new Family Court judgeships as of January 1, 2015. The judiciary budget allows the legislature and the governor to decide where to place these new judges. What will that depend on? Will it be the number of filings per court, the number of cases per judge, the geography of the state, the voices of local legislators or the needs of our children and families?

Are 20 new judges enough? Our elected representatives have publicly acknowledged that our Family Courts are in crisis and that it is time to bring some measure of relief to our Family Courts and the litigants who appear in that court. In the past, OCA has requested more than double this number of new Family Court judges, but their requests were denied.

We only can imagine what effects the proper staffing of judges, clerks and services could have on our children and the families of New York State. Well, let me imagine. I would envision a drastic decrease in the number of criminal cases throughout the state as proper, appropriate and efficient services would be in place for our children at a time in their lives when they and their families can take advantage of those services. I would imagine less abuse and neglect of children in our state as Family Courts would be able to monitor more closely the acceptance of services, the adherence to Family Court orders and the adequacy of services received by families. I would envision stronger family accountability for our children, as more judges would allow for more time allocated to each family and each case. An increase in services means an increased likelihood of successful and healthy children and families.

At one time, I presided over a juvenile treatment court. We were a "Reclaiming Futures" site, the first and only in New York. Children who committed juvenile delinquency acts and who also had a substance abuse issue were diverted out of the juvenile justice system and kept in their homes with their families and in their community. Incarceration and detention were replaced with frequent and regular court appearances, adherence to conditions set by the court and judicial oversight. I believe the program worked. I believe the program prevented many of the participants from ending up in our adult criminal courts. I believe the program made children and their families healthier. This program, and others like it, showed the true promise of Family Court: healthier children, healthier families, reduced societal costs and reduced recidivism. Yet, the

program was cut and services diverted to other adult, individual, court programs leaving our children, the most vulnerable people to enter the court system, and their families with less effective services and programs.

We owe Chief Administrative Judge A. Gail Prudenti, Chief Judge Jonathan Lippman and

Deputy Chief Administrative Judge Michael V. Coccama our thanks for making it their priority to attain an appropriate number of Family Court judges. We also owe Family Court judges and their associations a "thank-you." We owe thanks to various private groups for lobbying for more Family Court judges. Yes, we are thankful, but we should not stop here. Twenty is a great start, but it will probably not be enough. All judges, from all courts, should support our leaders as they lobby for more Family Court judges. Children should not spend more time in the court system because judge, clerk, support staff, and court officer shortages prolong their cases. If New York State is going to cut back resources and services, let it not be from the support and services we afford our children in Family Court. Our children are our future. We need to make our children healthier, happier and better equipped to succeed in adulthood, parenthood and society. If we don't, we are cheating them and ourselves. I urge judges from all courts to advocate for the creation of more Family Court judges, more Family Court staff and more Family Court services, so Family Court can do the job it was meant to do, the job Family Court judges do so well and, with adequate staffing, would be able to do so much better.

By: Hon. Conrad D. Singer

IN MEMORIAM

The Hon. Stewart F. Hancock Jr. died February 11, 2014 at the age of 91. Judge Hancock served for 15 years on the state Supreme Court and its Appellate Division before Gov. Mario Cuomo in 1986 appointed him to the New York Court of Appeals. Judge Hancock served on New York's highest court for eight years.



Judge Ellen Spodek presents Presiding Member Judge Rachel Krester with her plaque for Judicial Section Leadership.

JUDICIAL NEWS AND UPDATES, CONT FROM PAGE 5

- **L. 2013, c. 555:** Amends the Criminal Procedure Law to provide that local criminal courts shall treat and retain persons aged 16 and 17 who commit certain prostitution offenses as PINS proceedings. Effective 1/10/2014.

Amendments of Court Rules (22 NYCRR) Approved by the Administrative Board of the Courts August 21, 2013 to the Present

- **22 NYCRR 202.12-a(b)(i):** in relation to the content of an RJL in a residential mortgage foreclosure action.
- **22 NYCRR 202.70(a):** increases, from \$150,000 to \$500,000, the monetary threshold for actions brought in the Commercial Division of Supreme Court in New York County.
- **22 NYCRR Part 137 [section 8(B) of App A (Standards and Guidelines)]:** increases, from \$6,000 to \$10,000, the maximum size of a sum in dispute that may be submitted to a single arbitrator in the Fee Dispute Resolution Program.
- **22 NYCRR 150.2:** in relation to appointees to the Independent Judicial Election Qualification Commissions.
- **22 NYCRR 207.64:** limits public access to certain documents in estate proceedings.

In addition to the foregoing, the Rules of the Court of Appeals (22 NYCRR Parts 500 et seq have been amended as follows:

- **22 NYCRR Part 522:** in relation to permitting pro bono legal service by in-house counsel.

WE ARE HERE FOR YOU – YOUR JUDICIAL WELLNESS COMMITTEE

Isolation and stress are frequent visitors in the life of a judge. The mission of the Judicial Wellness Committee ("JWC") is to provide mutual support and assistance to judges in distress. Members of the JWC include justices and judges of the various state courts, including the Appellate Divisions, Supreme, County, Family, City, Town and Village. Judges who feel connected to their colleagues have lower levels of stress, feel less isolated and have a higher sense of job satisfaction. Sponsored by the New York State Bar Association, the JWC is "judges helping judges" foster connections among judges and enhancing their sense of community.

The Judicial Wellness Committee, with support from OCA, is working to help judges help each other by encouraging community building at every opportunity. Among the JWC's activities throughout the State are:

- Roundtables where judges gather for lunch and discuss topics unique to their lives as judges
- Wellness and community building exercises at judicial association meetings
- Facilitating community building as a form of stress reduction among judges in family and specialty courts
- Bringing together judges in recovery who belong to Twelve Step fellowships
- Sharing ideas with Administrative and Supervisory Judges for activities that include developing connections among judges

The work of the JWC includes educating judges about the importance of judicial health and wellness, developing ways to address stress and burnout, and promoting mutual support among judges. By responding to the acknowledged needs of all judges, the JWC's work will make it easier to identify, reach out, and be of service to judges in distress who may need additional help.

If you or your judicial association would like to have a Judicial Wellness Committee presentation in your district, please contact Hon. John Rowley (607) 266-6634 or Paul Curtin (315) 278-0028.

If you are experiencing personal problems that require confidential assistance call Pat Spataro (518) 487-5658. Ms. Spataro is the Director of the NYSBA Lawyer/Judicial Assistance Program.

By: Hon. John Rowley and Paul Curtin

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



DISTINGUISHED JURIST AWARD



Hon. Judith Kaye

Excerpts from Judge Kretser's Remarks during Presentation of the Distinguished Jurist Award to Judge Kaye

The Distinguished Jurist Award was created by the Judicial Section to honor a jurist who embodies the highest ideals of our Section, and exemplifies judicial excellence and an extraordinary commitment to the rule of law.

When I met Former Chief Judge Judith Kaye in 1983, I was a baby lawyer and she had just been appointed to the Court of Appeals. I was in awe of her then, and my admiration has increased with each passing year. A self-made woman, Judge Kaye came from modest means. The daughter of immigrant parents living in upstate New York, she excelled as a student. Judge Kaye entered Barnard College at the age of 15 and graduated with honors, still a teenager. After a short stint as a journalist, Judge Kaye entered New York University Law School, and graduated with high honors, one of only 10 women in a class of over 300.

At a time when opportunities for women attorneys were few and far between, Judge Kaye landed a job at one of the top law firms in the country, earning a salary equal to the male associates (something that was virtually unheard of in the 1960s). Judge Kaye was an accomplished commercial litigator who became the first female partner in her firm.

In 1983, Judge Kaye was appointed to the Court of Appeals, the first woman to serve on our highest court. Judge Kaye brought to the bench the perfect recipe for well-written and well-reasoned decisions. She started with two basic ingredients: a set of facts and an extensive knowledge of the law. To those ingredients she added a measure of compassion, a healthy pinch of common sense and a dash of judicial restraint. Blended together with eloquent prose, the result was a series of thoughtful, well-balanced opinions with distinctly human dimensions.

Judge Kaye was the longest serving Chief Judge in New York State history. During her 15-year tenure at the helm of our courts, Judge Kaye overhauled New York's antiquated jury system, pioneered a number of problem-solving courts including the Integrated Domestic Violence Court, Drug Court and Commercial Division, and renovated court facilities across the state.

As a woman, I marvel at the fact that Judge Kaye's remarkable achievements and historic firsts were attained while staying happily married to her lifelong partner and raising three wonderful children. Who says women cannot have it all!

Judge Judith S. Kaye stands in a league of her own as a jurist and as a human being. Judge Kaye, I could not be more thrilled and honored to present to you, on behalf of the NYSBA's Judicial Section, the inaugural Distinguished Jurist Award.

2014 SECTION MEMBERSHIP



Hon. Joseph J. Cassata

Daniel Webster defined "Loyalty" as the quality or state of being loyal. In other words, loyalty is the act of being allegiant or faithful. As members of the judiciary, loyalty binds us together as judicial brothers and sisters. United as one body, we strive to promote, insure and deliver justice. Loyalty to each other and our goals kindles success. Importantly, the New York State Bar Association has been loyal to the judiciary for over a century.

NYSBA consistently raises its voice to support the judiciary on important issues including access to the courts, legal services and standards, the judicial budget, and fair pay and benefits for judges. Year after year NYSBA demonstrates its indefatigable support of the judiciary. It is time for us to show our gratitude to NYSBA. It is our time to show our loyalty. Loyalty works!

On behalf of OUR Judicial Section, I invite you to join NYSBA and the Judicial Section. We have worked hard to make membership in the Judicial Section valuable and rewarding. So please join the more than 300 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:

- up to three free online CLE educational programs (a value of \$450)
- 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 value of \$30)
- a complimentary copy of the "Judicial Dispatch," the only newsletter in New York State written by judges for judges.

As a member of NYSBA I enjoy not only its helpful resources, but also great camaraderie from NYSBA members across New York State and beyond. By joining NYSBA and the Judicial Section, you too will enjoy these many benefits and advantages.

If you have any questions, please contact our Membership Services Office at (518) 487-5578. I hope to welcome you as a new NYSBA and Judicial Section member in the coming weeks.

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!

By: Hon. Joseph J. Cassata

GREETINGS FROM NYSBA PRESIDENT



David M. Schraver

On March 11, 2014, President-elect Glenn Lau-Kee and I and our staff Government Relations Counsel were at the Capitol meeting with key members and staff of both the Senate and the Assembly in support of the 2014-15 Judiciary Budget request. One of our core values is access to justice and the importance of an adequately funded judiciary. We expressed the Association's concerns that budget cuts in recent years have caused courtrooms to close at 4:30 resulting in delayed resolution of cases, interruptions in trials, increased backlogs and increased costs to litigants.

We also spoke to them about other impacts of budget cuts: staff reductions and the need to rebuild the workforce; longer periods of pretrial incarcerations; and the need for adequate courthouse security. We urged their support for additional Family Court Judges and additional money for the third year of judicial pay raises, civil legal services, the IOLA Fund, and the Office of Indigent Legal Services. We were very pleased that the Legislature passed the Judiciary Budget as submitted and that the Governor signed it into law.

In early April, we were in Washington for ABA Day (actually three days). Among the issues we advocated were support for adequate funding of the federal courts and the Legal Services Corporation and amendments to the Voting Rights Act to insure unfettered access to registration and voting for all Americans. Approximately a dozen members participated in meetings with members of the New York Congressional Delegation.

This year's Law Day theme was "American Democracy and the Rule of Law: Why Every Vote Matters." Last year, our House of Delegates approved the report and recommendations of our Special Committee on Voter Participation which recommended a number of reforms to remove barriers to registration and voting while maintaining the integrity of the process. I participated in Law Day celebrations in Buffalo (April 29), Albany (April 30), and Rochester (May 1).

On a somewhat related note, The State Bar House of Delegates met in Rochester on Saturday, April 5. "Susan B. Anthony" welcomed us and shared her voting experience with us, including her arrest (1872), trial and conviction (1873) for the crime of voting. She thanked the Association for its support of voting rights but cautioned that we still have work to do. We will continue to advocate at the state and federal levels for reforms to increase voter participation.

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

David M. Schraver

NYSBA JUDICIAL SECTION 2014 ANNUAL MEETING LUNCHEON



Hon. James Yates



Hon. Rachel Kretser



NYSBA President David Schraver



Former Chief Judge(s) Sol Wachtler and Judith Kaye



Hon. Judith Kaye and Hon. Rachel Kretser



Judicial Section Officers Hon. Ellen Spodek, Hon. John O'Donnell,
Hon. Marsha Steinhardt, Hon. Conrad Singer



Hon. Paul Feinman and Hon. Rachel Kretser



Hon. Jonathan Lippman



Hon. A. Gail Prudenti



ABA President James Silkenat



Hon. Judith Kaye



Hon. John O'Donnell



Hon. Ellen Spodek and Hon. Marsha Steinhardt



YOUR BAR ASSOCIATION AT WORK

In January of this year, President David M. Schraver announced that NYSBA's public policy priorities "focus on helping New Yorkers to achieve justice throughout the legal system and exercise their rights and responsibilities as citizens." To that end, NYSBA's Policy Priorities for 2014 include adequate funding for the courts, creating more Family Court judgeships, expanding the number of veterans' treatment courts, reducing wrongful convictions, restricting the use of solitary confinement and providing more civics education for New York school children. Additional NYSBA priorities include repeal of section 2 of the Defense of Marriage Act, increasing voter participation and opposing measures that restrict the ability of states to determine how injured individuals can pursue legal remedies in the courts.

ADVISORY COMMITTEE ON JUDICIAL ETHICS

In this edition of the Judicial Dispatch, we highlight recent opinions of the Advisory Committee on Judicial Ethics concerning a judge's obligation to address misconduct by attorneys. Pertinent opinions include: 13-61, 12-180, 12-131, 10-122 and 10-85.

In Opinion 12-180, the Advisory Committee summarized the obligation: "A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Professional Conduct Rules must take appropriate action (22 NYCRR 100.3[D][2]). The Committee has advised that a judge who learns of an attorney's possible misconduct must him/herself determine based on the information received whether there is a substantial likelihood that the attorney engaged in the alleged misconduct, and if so, whether that conduct constitutes a substantial violation of the Rules Governing Judicial Conduct (see Opinion 10-122). However, a judge is not required to investigate whether an attorney has engaged in misconduct (see Opinion 10-36). If you conclude you have substantial knowledge that the attorney who represented the litigant in your court did engage in misconduct, you must determine the appropriate action to take. In Opinion 10-85, the Committee advised that a judge must report an attorney's conduct to a disciplinary authority only if the alleged misconduct rises to such an egregious level that it implicates the attorney's honesty, trustworthiness or fitness as a lawyer (see e.g. Opinion 07-129 [judge should report attorney to appropriate attorney disciplinary committee where attorney admitted under oath that he/she committed perjury]). However, if the alleged misconduct is not so egregious as to implicate the lawyer's honesty, trustworthiness or fitness to practice law, the judge need not necessarily report the lawyer to the appropriate disciplinary authority, but may take less severe appropriate measures (see Opinion 10-85). While the Rules Governing Judicial Conduct address a judge's obligations with respect to misconduct by an attorney or a judge, there is no ethical requirement that a judge report criminal activity or other misconduct by litigants or witnesses disclosed in cases before the judge (see Opinion 08-155). "

In Opinion 10-85, the Advisory Committee wrote: "[o]nly in relatively few instances has the Committee advised that a judge must report a lawyer's alleged misconduct to a disciplinary authority." The example used by the Advisory Committee in that opinion was when the attorney admitted under oath to the judge that he/she committed perjury.

"Appropriate action" depends on all the surrounding circumstances known to the judge, "including an assessment of whether the lawyer, if confronted by the judge, shows genuine remorse, contrition, or ignorance of a rule; whether the lawyer has any history of unprofessional or other conduct in violation of the Rules; or any other relevant conduct or factor known to the judge (cf. Opinion 08-08 [within judge's discretion to report attorney for non-substantial violation to appropriate disciplinary committee or take other less severe action such as counseling, reprimanding, admonishing or sanctioning attorney]). However, a judge is under no ethical obligation to conduct an investigation to determine how serious or minor any misconduct may be (see Opinion 07-82)." Opinion 10-122.

Importantly, if a judge reports an attorney's conduct as a violation of the Rules, the judge is disqualified from presiding in any case in which the attorney appears during the pendency of the disciplinary matter and for a period of two years after the disciplinary matter is fully resolved. *Id.*

OFFICER PROFILE

Ellen M. Spodek

Ellen M. Spodek is the incoming Presiding Member of the Judicial Section. Justice Spodek takes office as of June 1st. She was elected as a Justice of the Supreme Court in 2008. She currently sits in the default motion part, a guardianship part and general trial backup. She was elected to the Civil Court of Kings County in January 2003, where she served until May of 2005, when she was appointed to Family Court. She served in Family Court through December 2006. Thereafter Justice Spodek was appointed as the Supervising Judge of Civil Court in January 2007, a position she held until December 2008.

Born and raised in Brooklyn, New York, Justice Spodek attended New York City public schools before going on to graduate from SUNY Albany. In 1988 she graduated from Fordham Law School, then went on to work for the New York City Corporation Counsel's Office in the Torts Division. She left the Corporation Counsel's office to join Jackson & Consumano, LLP as a trial attorney. In 1995 she formed her own firm, Spodek & Barrett, LLP, where she represented both plaintiffs and defendants in personal injury cases. She also served as a small claims arbitrator from 2000 until her election to the bench.

Justice Spodek is a member of multiple bar associations, including the Brooklyn Bar Association where she has been a member since 1996 and the New York State Bar Association, where she serves as Presiding Member of the Judicial Section.

Justice Spodek's dedication to the Brooklyn community is illustrated by her ongoing commitment to pro bono work. As a practitioner she was co-chair of the Advisory Board to Brooklyn Legal Services Corporation A. She was instrumental in starting the Claro Clinic in the Kings County Civil Court, in connection with Brooklyn Law School, and the Brooklyn Bar Association Volunteer Lawyers Project, which provides the public with free legal counsel on civil debt-related matters. Justice Spodek is the co-president of Judges and Lawyers Breast Cancer Alert (JALBCA), a legal organization dedicated to promoting awareness of breast cancer and education regarding issues relevant to the diagnosis, treatment and cure of the disease.



ELLEN M. SPODEK

Hon. John F. O'Donnell

On June 1, 2014 John F. O'Donnell will transition from Secretary to Assistant Presiding Member of NYSBA's Judicial Section.

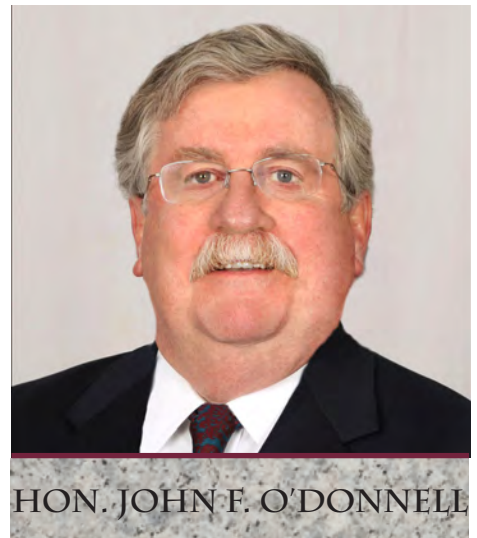
Justice O'Donnell was elected as a Family Court Judge in Erie County in 1987. He became the Supervising Judge of that court and was named Acting Supreme Court Justice in 1991. He was elected to the Supreme Court in the Eighth Judicial District in 1995 and re-elected in 2004.

Justice O'Donnell presided over the first Erie County Integrated Domestic Violence Part. He is a member of the Family Violence Task Force and both the Statewide and Fourth Department Advisory Committee for Attorneys for Children.

Justice O'Donnell received his J.D. degree from St. John's University School of Law and B.S. in Political Science from Canisius College. Justice O'Donnell is past president of the Charles S. Desmond Inn of Court, and a former adjunct faculty at Buffalo Law School.

Justice O'Donnell is also a past president of the Eighth District Supreme Court Justices Association, a former director of WBASNY Western New York Chapter, and past chair of the Fourth Department Attorneys for Children Advisory Committee. He is a recipient of the President's Award from WBASNY-WNY, the Sandy Kulick Award from Lawyers Helping Lawyers, and Jurist of the Year award from the Matrimonial and Family Law Committee of the Erie County Bar Association.

Justice O'Donnell resides in Buffalo.



HON. JOHN F. O'DONNELL

INFORMATION FROM YOUR ASSOCIATIONS

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

Annual Fall Meeting: September 7-10, 2014, The Sheraton At the Falls,
Niagara Falls, NY. Hotel reservation cut-off date - August 7, 2014.

Civil Court Board of Judges

Annual Dinner: Wednesday, June 25, 2014 from 6:00 p.m. to 9:00 p.m. at Frankie and Johnny's,
1913 Bronxdale Avenue, Bronx, NY. The cost is \$75.00 and checks should be sent to Hon. Jodi Orlow,
89-17 Sutphin Blvd., Jamaica, NY 11435.

Annual Seminar: Sunday, October 19, 2014 at Montauk Yacht Club.
Reservations must be made by September 30, 2014.

National Association of Women Judges

Annual Dinner: Monday, June 16, 2014 at Battery Gardens, 1 Battery Place, New York, NY.

New York State Association of City Court Judges

Annual Meeting: September 28-30, 2014, Arrowood Resort, Rye Brook, NY

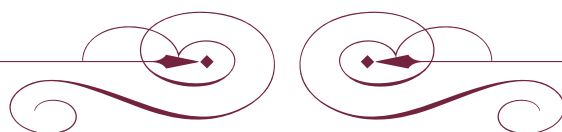
New York State Family Court Judge's Association

Fall Conference: October 22-24, 2014, Cooperstown, New York.

NYSBA Judicial Section

"How to Become a Judge," Friday, September 12, 2014 at Albany Law School. Co-sponsored by the
Williams Commission, Capital District Women's Bar Association, NYS Hispanic Judges, Capitol District
Black Bar, Albany County Bar, 3d JD Gender Fairness Committee and Albany Law School.

MEMBER HIGHLIGHTS



The following individuals were appointed in 2014 to serve on Supreme Court, Appellate Division:

First Department:

Hon. Barbara R. Kapnick

Second Department:

Hon. Colleen Duffy

Hon. Hector D. LaSalle

Hon. Joseph J. Maltese

Hon. Betsy Barros

Third Department:

Hon. Christine M. Clark

Hon. Eugene P. Devine

Hon. Michael C. Lynch

Fourth Department:

Hon. Brian F. DeJoseph

Hon. Deborah H. Karalunas was elected Secretary of the Association of Justices of the Supreme Court

Hon. Rachel Kretser was appointed to head the 3rd Judicial District Gender Fairness Committee

Hon. Conrad D. Singer, Family Court, Nassau County, was recently elected to serve as Treasurer of the New York State Bar Association's Judicial Section. He takes office on Just 1st

Hon. Marsha Steinhardt will be installed as president of the Brooklyn Women's Bar Association

Congratulations to all!



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