



MEMORANDUM REPORT TO NYSBA EXECUTIVE COMMITTEE

From: The Committee on Membership

Re: Recommendations Regarding Revised NYSBA Membership Classifications

Date: June 15, 2012

Last year, the Committee on Membership (COM) established a Subcommittee on Membership Classifications and Dues (Subcommittee). The Subcommittee was tasked with studying the current categories of membership under the existing NYSBA Bylaws (Bylaws) and advising the COM as to recommended clarifications and modifications, given certain ambiguities and issues regarding the Bylaws definition of active and non-resident membership and the importance of positioning NYSBA to meet the challenges of membership in the 21st century. This Memorandum Report is the consequence of the review and approval by the COM of the Subcommittee's final report and recommendations. It also follows up on the COM's preliminary report on this matter to the NYSBA Executive Committee at its meeting in January, 2012.

There are currently five categories of members of NYSBA: Active members, Non-Resident members, Honorary members, Law Student members and Sustaining members. In the past (until 1994), there had been a membership category known as "Associate" members which encompassed "member[s] of the legal profession in good standing in any other state or country". Associate members were not entitled to vote or hold office in NYSBA.

In 1994, at the request of then President Robert Witmer, the Bylaws Committee, chaired by Joshua Pruzansky, considered two rulings by the Internal Revenue Service regarding the determination of whether certain dues paid to a non-profit membership association would be considered business income unrelated to an organization's tax-exempt purpose. The IRS had taken the position in these rulings that where a class of members had no voice in the governance of the association, there was a presumption that those members had joined the organization

primarily to receive benefits unrelated to the organization's tax-exempt purpose (for example, to purchase insurance).

In response to these IRS rulings, the category of "Associate" members was changed to "Non-Resident" members, and the restrictions against voting and holding office in NYSBA were removed from the Bylaws. At that time, there were a total of approximately 61,200 members in NYSBA, of which approximately 9,400 (about 15%) were Associate members. In 2012, there are approximately 77,000 members in NYSBA, of which approximately 20,000 (about 25%) are Non-Resident members. Currently, of the Non-Resident members, fewer than 400 are not admitted to practice in the State of New York. NYSBA has members in 118 countries.

The 2011-12 Subcommittee was comprised of Michael Getnick, Patricia Rodriguez, Claudia Torrey, Michael Galligan, Glenn Lau-Kee, Robert Taisey and Dennis Baldwin, as chair, with Patricia Wood and Richard Martin as primary consultants. During the course of its work, the Subcommittee had numerous telephone conference meetings, many associated telephone conversations and an abundant exchange of emails. The Subcommittee's assignment stemmed primarily from questions raised as to the interpretation of the current Bylaws membership definitions including active member (any member of the legal profession in good standing admitted to practice in the State of New York) and non-resident member (any non-resident of New York who is a member of the legal profession in good standing in any other state or country).

For example, should an attorney admitted in the United Kingdom and residing in New York City be approved for active membership even though he is not admitted to practice in New York? Such an individual is not presently clearly covered by either definition, although NYSBA treats him as an active member since he resides in New York. Further, should an attorney who does not reside in New York but is admitted to practice in New York and has a law office in New York be considered an active or non-resident member? The Bylaws are ambiguous on this point, although for practical purposes NYSBA treats such an individual as an active member since she has a foot print in New York. Additionally, from a governance point of view, should an attorney not residing in New York and not admitted to practice in New York be entitled to membership in NYSBA which entitles him to hold office and vote? Currently NYSBA's non-resident member definition allows that.

In the course of its deliberations, the Subcommittee reviewed the Bylaws and their history, the pertinent membership provisions of several of NYSBA's sister voluntary bar states including Ohio and Maryland and the membership provisions of the American Bar Association. The Subcommittee and the COM also had the benefit of the advice of NYSBA General Counsel, Kathy Baxter, regarding the unrelated business income tax ramifications under the pertinent IRS regulations of denying the vote and ability to hold office to associate members. Furthermore, in the course of its study, the Subcommittee and the COM enjoyed wide ranging discussions on these issues, giving attention to both appropriate policy and the practical impacts of one resolution over another.

In dealing with the issues, the Subcommittee and COM agreed to separate governance from dues considerations, but recognized that ultimately the two would have to be reconciled in a fair and just manner. In rendering these recommendations, COM (as well as the Subcommittee) was guided by two overriding propositions – that the governance of NYSBA should largely remain the province of lawyers admitted in New York and that the non-resident membership category, with one notable exception, is no longer useful in that it does not give sufficient recognition to the fact that non-resident members – of whom less than 500 are not admitted to practice in New York – now account for one quarter of NYSBA's membership and that many non-resident members are very active, indeed, in NYSBA.

The COM is aware that some of the traditional boundaries of practice are becoming blurred in the current discussions, rule changes and court challenges concerning who is authorized to practice law in the State of New York. Finally, although not a primary focus of our study, COM observed during the course of its deliberations that the Bylaws and NYSBA would benefit from an expanded definition of Law Student members to cover any law student in good standing in any law school, not just those located in New York, provided that the law school is an approved law school under the pertinent Rules of the Court of Appeals. Accordingly, we have included a recommendation to this effect in our report. For the purposes of its discussions, the Subcommittee has assumed that being “admitted to practice law and in good standing” in New York means being on the rolls of the Office of Court Administration as an attorney admitted to practice. It may be, however, that the evolving standards governing the authorization to practice law in the State will have to be taken into account.

With that as background, the COM offers the following recommendations for your consideration and approval:

- (1) Amend the Bylaws to eliminate the current non-resident member category (with one notable exception mentioned in recommendation 4 below) and provide for one active membership category for lawyers admitted to practice law and in good standing in New York, without regard to residency (active member). Such active member should have the right to vote and hold office in NYSBA.
- (2) Amend the Bylaws to provide for an associate member category for lawyers admitted to practice and in good standing solely in one or more jurisdictions other than New York (associate member). Given the current state of the law under pertinent IRS regulations, an associate member should also have the right to vote and hold any office in NYSBA with the exception of the House of Delegates, NYSBA Executive Committee and Section Chair.
- (3) Amend the Bylaws to provide for an affiliate member category for certain non-admitted professionals holding a law degree and working in a field related to the law (affiliate member). Initially, we recommend that such affiliate membership be offered to: a) law school faculty and/or administrators not admitted to practice law and affiliated with a duly-accredited law school and b) bar association professionals. Since an affiliated member, by definition, is not admitted to practice anywhere, he or she should not be accorded the vote or the ability to hold office in NYSBA, a position which we believe can be successfully defended against any IRS claim that the resulting dues should be treated as unrelated business income. Upon authorization of NYSBA's Executive Committee and the House of Delegates, the affiliate member category could potentially be expanded to provide membership opportunities for other non- admitted professionals working in a field related to the law.
- (4) Amend the Bylaws, as necessary and appropriate, to: a) maintain the existing two seats in the House of Delegates for active members not residents of New York, essentially preserving the non-resident category for such seats; and b) make such technical

corrections as may be necessary and appropriate to reflect the elimination of the non-resident category except as provided herein.

- (5) Amend the Bylaws, as necessary and appropriate, to allow any law student in good standing, in any law school approved by the Rules of the Court of Appeals (22 NCR 520), to be eligible for membership.
- (6) Reformulate the conceptual framework for the establishment of dues (which is not set forth in the Bylaws), within the provisions of the existing Bylaws, to provide for distinct dues categories substantially as follows:
 - (i) Active Members: (a) New York residents and those maintaining law offices in New York; (b) non- New York residents residing in the US and not maintaining a law office in New York; and (c) foreign residents;
 - (ii) Associate Members: (a) New York residents; (b) non- New York residents residing in the US and not maintaining a law office in New York; and (c) foreign residents; and
 - (iii) Affiliate Members: Separate dues categories for each authorized membership classification.

At the request of the COM, Patricia Wood and Richard Martin evaluated the impact of the proposed reformulated conceptual framework for dues on NYSBA's current graduated dues schedule and have concluded that it will have no notable impact on the level of dues paid for existing NYSBA members or on NYSBA's overall dues revenue. For example, among the active members, New York residents and those maintaining law offices in New York will continue to pay the highest level of dues as is currently the case, while non- New York residents will, as they do now, pay dues at a reduced level. The COM will report at a later date its recommendations regarding specific dues levels for the above categories.

This Memorandum Report was adopted by the COM at its meeting held on June 14, 2012.

Respectfully submitted, on behalf of the Committee on Membership

Glenn Lau-Kee and Sherry Levin Wallach, Co-Chairs; Dennis R. Baldwin; Earamichia Brown; William J. Delaney; Anne E. Dello-Iacono; Donald C. Doerr; Lawrence S. Elbaum; Richard B. Friedman; Michael W. Galligan; Michael E. Getnick; Claire P. Gutekunst; David J. Hernandez; Jonathan Honig; Seymour W. James, Jr.; Michael A. Kurs; Bernice K. Leber; Peter S. Loomis; Kathryn Grant Madigan; Ellen G. Makofsky; Thomas J. Maroney; Edwina Frances Martin; David P. Miranda; Guy Hamilton Mitchell; Lillian M. Moy; Martin Petroff; George E. Riedel, Jr.; Patricia L. R. Rodriguez; Lisa R. Schoenfeld; Kimberly Ayers Shariff; John B. Sheehan; Robert D. Taisey; Jessica Thaler; Howard M. Tollin; Claudia O. Torrey; Rosemarie Tully; Merrie Jean Webel; Patricia K. Wood, staff liaison