

Staff Memorandum

EXECUTIVE COMMITTEE Agenda Item # 9

REQUESTED ACTION: Approval of an affirmative legislative proposal from the Judicial Wellness Committee to amend Judiciary Law section 499.

Attached are a cover letter, memorandum in support, and proposed language for a bill relating to the confidentiality of communications with members of the Judicial Wellness Committee. As noted in the cover letter, Section 499 of the Judiciary Law currently provides as follows: (1) that confidential communications with members of lawyer assistance committees are privileged; and (2) that members of lawyer assistance committees are immune from civil liability when acting in good faith in related matters.

The Committee believes that the current law does not cover members of the Committee. Accordingly, the proposed amendment would extend the protection of Section 499 to the Committee and other judicial assistance committees.

As part of its mission, the Committee accepts confidential communications regarding judges who are in trouble with substance abuse and other mental health challenges, and it arranges for effective responses to them.

The report will be presented at the January 26, 2012 meeting by Hon. John C. Rowley, Chair of the Committee.

JUDICIAL WELLNESS COMMITTEE

Hon. John Rowley Chair Tompkins County Court PO Box 70 320 North Tioga Street Ithaca, NY 14851-0070 (607) 277-4957 irowley@nycourts.gov

November 21, 2011

President Vincent E. Doyle III, Esq. New York State Bar Association One Elk Street Albany, New York 12207

Re: Amendment to Judiciary Law §499

Dear President Doyle:

I am pleased to be writing to you as the acting chair of the newly formed Judicial Wellness Committee of the New York State Bar Association. Throughout the formation of this committee, we have received tremendous support from the entire NYSBA organization, specifically including LAP Director Patricia Spataro, Executive Director Patricia Bucklin and yourself. Thank you!

Today, I am writing to seek the support of the Executive Committee for a simple but essential amendment to the Judiciary Law in relation to the work of our committee. As you know, in 1993, section 499 was enacted providing: 1) that the confidential communications with members of lawyer assistance committees was privileged; and 2) that the members of the committee were immune from liability when acting in good faith in related matters. No single provision has been more important to the success of the LAP and the Lawyer Assistance Committee (LAC).

Although the LAP has always provided support to judges, we have concluded after lengthy study that a separate committee would better serve the needs of judges. The Judicial Wellness Committee is a judicial assistance program that has among its primary missions the commitment to receive confidential communications regarding judges in trouble with substance abuse and other mental health challenges, and to arrange for effective responses to them. After consultation with NYSBA Special Counsel, Richard Rifkin, we believe that the members of the Judicial Wellness Committee are not covered by section 499 as written. However, by simply amending the act to name judicial assistance committees, it appears that the same protection now enjoyed by lawyers within the LAP and LAC would apply to judges serving on the Judicial Wellness Committee.

I have attached proposed language for the bill and a memorandum in support. Please let me know if there is anything further I need to do to seek the support of the Executive Committee.

Sincerely,

MEMORANDUM IN SUPPORT

BILL NUMBER:

SPONSOR:

TITLE OF BILL: An act to amend the Judiciary Law, in relation to judicial assistance committees.

PURPOSE:

<u>SUMMARY OF PROVISIONS</u>: This bill amends Judiciary Law §499 to include judicial assistance committees within the coverage of such section.

JUSTIFICATION: For more than 20 years, the New York State Bar Association (NYSBA) has successfully operated a Lawyer Assistance Program under its Lawyer Assistance Committee to aid attorneys who are impaired and help them recover. Section 499 makes communications with a member of any bar association lawyer assistance committee confidential and offers immunity to those providing information in good faith. In June 2011, the NYSBA created a Judicial Assistance Program under a new Judicial Assistance Committee to offer the identical help to judges. This bill would amend section 499 so that its provisions would be applicable with respect to this new committee.

LEGISLATIVE HISTORY: New bill.

FISCAL IMPACT: None.

EFFECTIVE DATE: Immediately.

- §499. Lawyer and judicial assistance committees. 1. Confidential information privileged. The confidential relations and communications between a member or authorized agent of a lawyer assistance committee or judicial assistance committee sponsored by a state or local bar association and any person, firm or corporation communicating with such committee, its members or authorized agents shall be deemed to be privileged on the same basis as those provided by law between attorney and client. Such privilege may be waived only by the person, firm or corporation which has furnished information to the committee.
- 2. Immunity from liability. Any person, firm or corporation in good faith providing information to, or in any other way participating in the affairs of, any of the committees referred to in subdivision one of this section shall be immune from civil liability that might otherwise result by reason of such conduct. For the purpose of any proceeding, the good faith of any such person, firm or corporation shall be presumed.

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