

**NYSBA Committee on Diversity and Inclusion  
Special Subcommittee to Review NYSBA Bylaw Articles V., Section 3G,  
VII., Section 1F**

**V. HOUSE OF DELEGATES**

**Section 3. Composition.** The House of Delegates shall be composed of:

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G. Twelve delegates to be appointed by the President then in office from a range of racial and ethnic minority groups identified by the National Association for Law Placement. At least two and no more than four of such delegates shall be appointed from each Judicial Department, and all appointments shall be subject to confirmation by the Executive Committee. Delegates appointed in 2004 may serve for the balance of the Association year concluding May 31, 2005, and for the ensuing Association year concluding May 31, 2006, with such service to constitute a single year for purposes of calculating consecutive terms of service under Section 4(C) of this article. This subsection shall take effect immediately upon adoption by the Association and shall expire ten years from the date of adoption [insert date] and shall be removed from these Bylaws without further action of the Association. **Notwithstanding such expiration, the final term authorized under this provision shall be for a full year, concluding May 31, 2015.**

**ARTICLE VII. EXECUTIVE COMMITTEE**

**Section 1. Composition.** The Executive Committee shall consist of:

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F. [Six] Eight members-at-large who shall be members of the House of Delegates or section chairpersons at the time of selection, or who have served as members of the House of Delegates or section chairpersons within three years preceding the time of selection. Not less than two of the members-at-large shall be selected from the First Judicial District. Two of the members-at-large shall be selected to further ethnic and racial diversity and may not be drawn from the same Judicial District. The Nominating Committee is authorized to make nominations for these two positions at any time up to December 31, 2004, for election at the January 2005 House of Delegates meeting. The initial term of service for the individuals selected to fill the latter two member-at-large seats shall commence on February 1, 2005, and conclude May 31, 2006, with such service to constitute a single year for purposes of calculating consecutive terms of service under Section 2 of this article. This subsection shall take effect upon adoption by the Association. Ten years from the date of adoption [insert date], the provision for the two members-at-large selected to further ethnic and racial diversity shall expire and be removed from these Bylaws without further action of

the Association, and the number of members-at-large on the Executive Committee shall revert to six. **Notwithstanding such expiration, the final term authorized under this provision shall be for a full year, concluding May 31, 2015.**

### **Brief History Regarding Diversity Seats**

The proposal to add these diversity seats derived from a report and recommendations of the Special Committee on Association Governance that addressed a number of House and Executive Committee issues, including the composition of the Nominating Committee and term limits. As originally proposed, there was no sunset provision. During the discussion of the report at the January 29, 2004 House meeting, the proposal was amended on motion to include the sunset provision, predicated on the possibility that in the ensuing ten years, diversity in the House and on the Executive Committee might increase to the point where designated seats were no longer necessary. The recommendation was then forwarded to the Bylaws Committee, which developed the existing language set forth above.

Absent further action, the sunset provision will take effect on November 6, 2014. If, on the other hand, there is interest in extending the sunset provision for additional years, it and possible amendments to the Bylaws must be addressed at the January 2014 Annual Meeting.

### **Questions being Addressed by the Subcommittee**

Among the questions being considered by members of the Subcommittee are the following:

1. The nature and scope of the Subcommittee's mandate.
2. The timetable to provide a recommendation, taking into account the expectation the U.S. Supreme Court will be ruling sometime this Term (*e.g.*, *Fisher v. University of Texas*) on issues that directly or indirectly may well impact on one or more of the questions before the Association, and the timetable alternatives this expectation offers / requires.
3. Analysis of the demographic changes in the House of Delegates and the Executive Committee since the implementation of the amendments in 2005, and the implications, if any, of these changes.
4. The duration, nature and scope of the diversity *groupings* as defined in the Bylaws ("a range of racial and ethnic minority groups identified by the National Association for Law Placements") – how interpreted and implemented by the NYSBA since 2005; any need or reason to expand the groupings; whether extension of the sunset provision legally and / or factually is justified or is otherwise warranted and, if so, for what duration.

5. Whether legal or other analysis was submitted to support the adoption in 2004 and what further legal or other analysis should now be considered to assist in the House's determination as to what action to take in January 2014, including as to whether the Association in any way is subject to legal restrictions constitutionally or under any of the laws (including as to public accommodation) that otherwise are applicable to affirmative action plans or discrimination law where the context arises in other than an employment situation; what legal authority exists to support the imposition of additional seats on the ground they do not constitute impermissible "quotas" or "quota-like" impositions in that they do not take away from the opportunities of others.
6. What other bar associations or analogous groups are doing; what we can learn from the educational institution cases.

The Subcommittee is reviewing materials and information in preparation of a final report and recommendation for review by the Executive Committee and House of Delegates at the House's June 2013 meeting. The hope is the U.S. Supreme Court will have provided additional guidance in the interim. It can be said, however, that at this point the Subcommittee is in favor of a continuation of diversity seats on *some* basis.

Respectfully submitted,  
Michael Bernstein, Chair  
Hon. Cheryl Chambers  
Will Edwards  
Joyce Hartsfield  
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