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Walsh



Cometa

## MOURNING OUR LOSS

Two giants of the profession passed away recently, Lawrence Walsh and Angelo Cometa, as well as an Executive Committee designee Richard S. Weisman.

PAGE 3



## CRIMINAL JUSTICE SECTION PROFILE

Section Chair Hon. Mark Dwyer discusses the many ways section members contribute to the future of their area of practice.

PAGE 28

NEW YORK STATE BAR ASSOCIATION

# State Bar News

## New president a change agent on a mission Glenn Lau-Kee first Asian-American to lead Association

By Patricia Sears Doherty

Glenn Lau-Kee enters a room seemingly in perpetual motion. Papers fly over desks. Staff jump around him. The air itself seems to move.

Yet, there is a stillness about him. He shakes your hand. He smiles. "How are you?" he asks.

And he really does want to hear the answer.

That combination of energy and calm demeanor, joined with a natural sincerity, will stand Lau-Kee in good stead as he takes the reins of the State Bar presidency on June 1.

Lau-Kee's ability to get things done while seeming to be in constant motion is best illustrated in the way the interview for this article was conducted. That is, over the course of a week, in a few brief sit-down meetings, by email, but mostly in moments stolen in corners of rooms where other events and meetings were happening.

As president-elect, Lau-Kee's chairmanship of the House of Delegates during the past year's debates about legal education, the next generation of lawyers, the future of the profession and the highly-charged issue of mandatory pro bono reporting has been interesting, and challenging.

He has worked side-by-side with President David Schraver on all of those issues. Lau-Kee has traveled



**Perpetual motion**—Incoming President Glenn Lau-Kee strikes a rare still pose while attending the Executive Committee meeting in Rochester in April. [Photo by Greg Francis]

upstate and down, attending hearings, meetings and programs, sometimes participating, always listening. He has made those discussions an integral part of his own presidential priorities for the next year. "Connecting the Generations" will be his presidential theme, with adjacent themes being

"Law Schools—Pathways to the Profession," and "Changing Demographics."

"I see my year as president as a natural continuation of what we have been doing with Dave (Schraver)," said Lau-Kee. "We should be bringing law

*Continued on page 4*

## President-elect Miranda looks to the future

By Mark Mahoney



David P. Miranda

David P. Miranda still has more than a year before he begins his term as State Bar president, but he is already looking beyond it.

The potential for a state constitutional convention looms in 2017

— the year after his one-year term as president ends — and Miranda said he wants the State Bar to be ready to contribute to the dialogue.

Miranda, an intellectual property lawyer and partner in the Albany

office of Heslin Rothenberg Farley & Mesiti P.C., was elected president-elect at the House of Delegates meeting on January 31. He will assume the presidency from Glenn Lau-Kee on June 1, 2015.

In a recent interview, Miranda acknowledged that it is still early for him to lay out his presidential agenda. But, he said, making sure the State Bar plays a prominent role in any tinkering with the state Constitution will be one of his priorities.

"I think the 2015-2016 time period is going to be a perfect time to have a non-partisan, multi-faceted committee of the Association looking at our state Constitution, thinking about the areas that might be ripe for some change and then providing some guidance to the

people of the state of New York as to what we maybe should or shouldn't do," he said.

The Association's input, he said, could be valuable to the discussion, regardless of whether a constitutional convention comes to fruition.

"If it ends up that we do have a constitutional convention, I would think that the New York State Bar Association's position on that would carry great weight," he said. "If we don't have a New York state constitutional convention, if we come up with some good ideas, those things could later be pursued in the state Legislature."

*Continued on page 8*

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## OBITUARIES

### Lawrence Walsh



Walsh

Lawrence E. Walsh, an influential attorney, judge and adviser died March 19 at the age of 102.

Mr. Walsh – perhaps best recognized as independent counsel to the Iran-Contra investigation from 1986-1993 – was a leader in the legal community for many decades, serving as president of the New York State Bar Association from 1966-67 and president of the American Bar Association from 1975-76.

“Lawrence Walsh left a deep and lasting impact on the legal community and the citizens of the United States through his vigorous advocacy for the rule of law and fairness in the judicial process,” said State Bar President David M. Schraver of Rochester (Nixon Peabody LLP). “He will be missed not only for tireless advocacy for the profession, but for his wisdom and counsel.

While president of the State Bar, Mr. Walsh vowed to make the rule of law a reality for the oppressed, sought to

eliminate political partisanship in the re-election of sitting judges and urged planning major new courthouses as a reminder of the importance of liberty and justice.

In his most public role as the lead investigator in the Iran-Contra scandal, Mr. Walsh spent more than six years examining the Reagan Administration’s clandestine sale of arms to Iran and using the profits to allegedly fund contra rebels in Nicaragua who were attempting to overthrow the Sandinista government.

During a 2012 interview with the State Bar News to mark his 100th birthday, Mr. Walsh credited his success as a lawyer to his lower-income upbringing and overcoming the challenges of being an underachieving college student. The article, which appeared in the March/April 2012 edition, can be viewed by visiting [www.nysba.org/walsharticle](http://www.nysba.org/walsharticle).

In the same interview, Mr. Walsh reflected on the challenges of leading the Iran-Contra investigation, including maintaining the integrity of the investigation under pressure from Congress and in the face of illegal acts committed by individuals on behalf of a popular president.

“In the process of conducting a criminal investigation of the most complex and difficult sort, I found myself at the center of a constitutional maelstrom: the conflict between the rule of law ... and the system of political checks and balances,” he said.

Walsh said in the interview that over the years, his position on President Reagan had softened, describing the nation’s 40th president at the heart of the scandal as “very sincere” and “well-intentioned” and having “the country’s best interests in mind.”

A graduate of Columbia University and Columbia Law School, Mr. Walsh had a long and distinguished career as a prosecutor, judge and adviser to presidents and governors.

His many positions in the legal community included deputy assistant district attorney of New York County, assistant counsel to New York Governor Thomas E. Dewey, judge of the U.S. District Court for the Southern District of New York, U.S. Deputy Attorney General and ambassador in the U.S. Delegation to the Paris Peace Talks in 1969. He also spent many years in private practice.

He retired to Oklahoma City. ♦

### Angelo T. Cometa



Cometa

A proud coal miner’s son. A well-respected litigator. A State Bar president.

Those were the many hats Angelo T. Cometa wore during his lifetime.

Mr. Cometa, president of the State Bar from 1990-91, passed away on April 16, near Baltimore, after a long illness. He was 82.

“Angelo Cometa made an indelible impact on the legal profession and public during his years of bar leadership. He helped the State Bar navigate issues of great concern to the profession and helped thousands of New Yorkers obtain access to justice through the Lawyer Referral and Information Service,” said State Bar President David M. Schraver.

“He was likeable, effusive, friendly and enjoyed people,” remembers Robert L. Ostertag, who succeeded him as president. “He was very bright. He had an opinion about virtually everything, because he was widely read.”

Those who knew him spoke of his love of the law, something that he made clear to the woman he would marry.

As Betty Jane (“B.J.”) Cometa recalls, he presented her with “two conditions” for marriage. “The first was that he be allowed to continue his Bar Association activities. The second was that we name our son Thomas More Cometa, after his father and the patron saint of lawyers.”

While she says “he would have married me anyway,” she honored his wishes. They were married nearly 53 years.

Thomas Cometa left his native Sicily, traveling alone to America at age 17. He found work as a miner in Pittston, Pennsylvania, where he married another Sicilian immigrant. Their four children—Angelo was the third—grew up speaking Sicilian as their first language.

The elder Cometa, who became fluent in English, later turned to union organizing. In the 1930s, he was tapped by John L. Lewis to be an organizer for the Congress of Industrial Organizations (CIO).

Angelo Cometa, who inherited his father’s public spirit, left Pittston to attend Fordham University, where he earned undergraduate and law degrees, the latter in 1956.

Years later, he became the first of four consecutive State Bar presidents with Fordham degrees: Ostertag (president, 1991-92) earned his B.A. there and later taught at the law school; and John P. Bracken (1992-93) and

Archibald R. Murray (1993-94), both graduated from the law school.

Mr. Cometa was in basic training in the U.S. Army when learned that he had passed the New York bar exam. He spent most of his military service in the Pentagon.

In 1959, Mr. Cometa became an assistant district attorney in Manhattan. He later served as an assistant counsel at the State Commission on Investigation and chief counsel of the Coordinating Committee on Discipline, Appellate Division, First Department.

He was a partner at Philips Nizer from 1969 to 1994. He concentrated his practice in matrimonial law, white collar crime and attorney misconduct.

Meanwhile, he became increasingly involved in the State Bar as well as the New York City Bar. He was the first chair of the State Bar’s Committee on Professional Discipline.

On the eve of becoming State Bar President in June 1990, he told the New York Law Journal that he received a “fiery education” the previous year when he chaired a contentious House of Delegates as its members sparred over mandatory continuing legal education and mandatory pro bono.

During his presidency, Mr. Cometa advocated for increased compensation for judges and adequate funding for

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## INSIDE

House of Delegates .....	6
Commentary: Robert Ostertag .....	8
Legal Education .....	10
Executive Committee members .....	12
New Section Chairs .....	14
ABA Day in D.C. ....	17
State Bar in Rochester .....	18
Delegates at Work .....	19
Law Day .....	20
Kay Murray Pioneer Award Winner .....	21
President’s Pro Bono Awards .....	27
Letter to the Editor .....	29
CLE Seminars .....	31
Classified .....	33
Lawyers Resource Directory .....	33
Lawyer-to-Lawyer .....	34

Continued on page 22

## New president will energetically advocate mentoring, professionalism by/for members

*Continued from page 1*

schools and bar associations to the same table."

"Current lawyers are going to have to change," he said. "The point is, we are going to have to address the demographic shift we are seeing in the profession and understand it."

Lau-Kee is uniquely positioned to lead those discussions, partially because of his experience overseas and as an Asian-American.

After receiving his undergraduate degree from Yale University and earning his J.D. from Boston University School of Law, Lau-Kee's first job as an associate was in the Hong Kong office of Coudert Brothers. He worked on bank financings for the construction of oil tankers and bulk carrier vessels and project loan financings in various Asian countries.

His world view is still influenced by the isolation that American lawyers overseas experienced back then. "Now, law firms are much more in touch" with their foreign offices through technology and social media.

### Coming home

Lau-Kee does not remember making a "conscious decision" to return to the New York legal community and his father's law firms: first, Koo Larrabee

Lau-Kee & Lane LLP in White Plains and now, Kee & Lau-Kee in Chinatown, where the family lived until Lau-Kee was 10 years old.

His father, Norman L. Kee, 86, is still practicing. "But, not on Fridays," said the son, laughing.

"I came back more because of circumstances and always that unspoken question," he said. "You know: 'When are you going to join me?'" More laughter. Father and son are well respected and active in New York's Asian-American and legal communities. In 2010, they shared the Hon. George Bundy Smith Pioneer Award, sponsored by the State Bar's Commercial and Federal Litigation Section.

While each is his own man—or lawyer—the mentoring the son has received from the father has been a lesson well learned. He said one of his presidential "sub-goals" is to foster more mentoring among the State Bar's established lawyers and the young members just beginning to make their marks.

"Mentoring is a very personal thing. Technology may be a time saver, but you really need that one-to-one, that personal contact, particularly when guidance is needed," he said.



**Chief advocate**—President-elect Glenn Lau-Kee discusses why it is so important that experienced lawyers mentor younger colleagues and how belonging to the State Bar enhances that best practice. [Photo by Brandon Vogel]

Younger lawyers do not necessarily need guidance on lawyerly mechanisms, he said. "The lawyer's most important asset is his or her sense of judgment. You are constantly improving and refining it," Lau-Kee said.

"That broad view, that's why participating in bar associations is good. That's where lawyers learn how the world works and how to work with people," said the former co-chair of the Membership Committee, the first diversity member-at-large on the Executive Committee and member of the Diversity and Leadership Development Committee.

"That's why your work in bar associations is so important. The possibilities are there."

An important fact that State Bar members understand, he said, is that "not all lawyers are just lawyers. Each segment of the profession has separate and concrete needs." It will take "a lot of work and focus" by the State Bar on the needs and wants of the various segments of members and potential members for membership to remain a viable choice for lawyers.

Lau-Kee has great appreciation for lawyers, especially the younger generation of lawyers, who work in small and solo firms. By their size, they must

operate in much the same way as general practice firms—without the collegiality found in larger firms.

"That sense of judgment, then, is not an easy thing to have when you are on your own," said Lau-Kee. The fact that so many young lawyers are forced to build solo practices is "another reason why mentoring is so important."

"It is a long process, and a process that keeps changing," said Lau-Kee. "It is my job to meet people and to listen; to look at where the Bar Association can be improved in how we do things."

### Family man

Lau-Kee and his wife, Rita Eng, an architect, have been married for 23 years. They have two daughters, Kelly and Kenzie. Kelly graduated from Carnegie Mellon University last year with degrees in industrial design and human computer interaction. She works for YouTube in San Francisco. Kenzie is a sophomore at the S.I. Newhouse School of Public Communications and the Whitman School of Management at Syracuse University. ♦

*Sears Doherty is State Bar News editor.*

## NEW YORK STATE BAR ASSOCIATION



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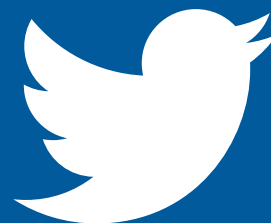
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# House of Delegates

## Resolution to schedule a vote prompts debate at House meeting in Rochester

By Patricia Sears Doherty

Mandatory reporting of pro bono remains a hot button issue at the House of Delegates, as demonstrated at its April meeting, where the delegates spent 51 minutes debating the details of a scheduling resolution for the June meeting.

President-elect Glenn Lau-Kee, chairing his final House meeting, set the ground rules for the April 5 scheduling resolution discussion right away.

"This is a scheduling resolution. There will be no discussion of anything but the scheduling resolution today," Lau-Kee said before asking for comments on the proposed scheduling resolution.

The delegates obeyed—debating nothing else but the fine points of each section of the scheduling resolution.

Delegates who oppose the new rule instituted by Chief Judge Jonathan Lippman in May 2013 have been vigorously debating the rule at House meetings for the past year. The most strongly worded comments have come from those delegates opposing the rule, demanding that the State Bar reiterate the official position taken by the House in April 2004 opposing mandatory reporting of pro bono activities. Lippman's rule requires reporting voluntary pro bono hours and contributions to legal services organizations on

the biennial attorney registration forms.

As with past House items expected to generate significant discussion and amendments, President-elect designee David P. Miranda presented a scheduling resolution that set deadlines and rules that would govern debate on a resolution adopted by the Executive Committee in January but postponed by the House until the June House meeting.

Miranda, who will become president-elect on June 1, will chair the June House meeting during which delegates will debate the proposed resolution to oppose the mandatory pro bono reporting rule.

After the scheduling resolution passed by a vigorously shouted "Aye" by the House, Lau-Kee quipped: "That's what we call 'a warm up.'"

*Read the entire scheduling resolution below.*

### Rules of debate

According to the resolution, as amended, members should submit comments or proposed amendments to the proposed mandatory pro bono reporting resolution in writing to the State Bar's Secretary by June 9.

*Read the entire proposed resolution on mandatory pro bono reporting on page 7.*

Members who intend to speak to the merits of the proposed resolution



**Standing count**—The State Bar's general counsel, Kathleen R. Mulligan Baxter, center, heads up the House floor to the dais to report a standing vote count to House Chair Glenn Lau-Kee during the April House of Delegates meeting in Rochester.

[Photo by Greg Francis]

also are asked to notify the secretary of their intentions by June 9. All those wishing to speak in June may do so, but only once for no more than three minutes.

Miranda, as House chair, will be allowed discretion to grant those who have not previously registered to speak from the floor. He also will be

permitted to grant longer presentations in the interest of equally airing all points of view.

To watch the debate on the scheduling resolution at the April 5 House meeting, go to [www.nysba.org/Housewebcastarchive](http://www.nysba.org/Housewebcastarchive). ♦

*Sears Doherty is State Bar News editor.*

## Guidelines for presenting and speaking

### RESOLUTION TO GOVERN CONSIDERATION OF THE EXECUTIVE COMMITTEE RESOLUTION ON MANDATORY PRO BONO REPORTING

**RESOLVED**, that the House of Delegates hereby adopts the following procedures to govern consideration at the June 21, 2014 meeting of the House of the Executive Committee Resolution on Mandatory Pro Bono Reporting:

1. The resolution will be circulated with other materials for the meeting to members of the House, sections and committees, county and local bar associations, and other interested parties, as well as online and in the *State Bar News*.
2. **Comments on or amendments to resolution:** Any comments on the resolution, or any proposed amendments to the resolution, should be submitted in writing to the Secretary of the Association at the Bar Center by June 9, 2014. All comments and proposed amendments complying with this procedure shall be distributed to the members of the House in advance of the June 21, 2014 meeting.
3. **Speaking on the resolution:** Those members of the House intending to speak on the resolution are requested to provide notice to the Secretary and whether they intend to speak for, or against, the resolution by June 9, 2014. This notice is a courtesy for scheduling purposes and will not prevent the chair from recognizing speakers on the issue who fail to provide such notice.
4. **Consideration of the resolution at the June 21, 2014 meeting and any subsequent meetings:** The resolution will be scheduled for formal debate and vote at the June 21, 2014 meeting and considered in the following manner:
  - a. A representative of the Executive Committee shall be given an opportunity to present the resolution.
  - b. All those wishing to speak with regard to the resolution may do so only once for no more than three minutes.
  - c. The Executive Committee representative may respond to questions and comments as appropriate.
  - d. Procedural motions shall be considered out of order until debate on substantive issues is concluded.

## Be it resolved: Opposing Mandatory Pro Bono Reporting

### NEW YORK STATE BAR ASSOCIATION RESOLUTION OF EXECUTIVE COMMITTEE AS AMENDED JANUARY 31, 2014

WHEREAS, the New York State Bar Association strongly supports and encourages voluntary pro bono services by its members to poor and underserved clients, and for adequate public funding of organizations engaged in providing legal services to poor and underserved clients; and

WHEREAS, the Appellate Divisions of the Supreme Court amended Rule 6.1(a)(1) of the New York Rules of Professional Conduct by increasing the aspirational number of pro bono hours to be provided annually by all lawyers from 20 to 50, effective May 1, 2013; and

WHEREAS, the Appellate Divisions of the Supreme Court amended Rule 6.1(a)(2) of the New York Rules of Professional Conduct by providing that lawyers should aspire to make annual financial contributions to organizations that provide legal services to poor persons in an amount at least equivalent to: (i) the amount typically billed by the lawyer (or the firm with which the lawyer is associated) for one hour of time, effective May 1, 2013; and

WHEREAS, concurrent with the amendments to Rule 6.1 as set forth above, section

118.1(e)(14) of the Rules of the Chief Administrator was enacted, effective May 1, 2013, requiring lawyers to report the following information on their biennial registration forms: (a) the number of hours that the lawyer voluntarily spent providing unpaid legal services to poor and underserved clients during the previous biennial registration period; and (b) the amount of voluntary financial contributions the lawyer made to organizations primarily or substantially engaged in providing legal services to the poor and underserved during the previous biennial registration period; and

WHEREAS, the Committee on Standards of Attorney Conduct ("COSAC") of the New York State Bar Association (the "Association") has proposed an amendment to the Comment to Rule 6.1 which would make the Comment consistent with the black letter text of Rule 6.1 as amended by the Appellate Divisions, to reflect the increase from 20 hours to 50 hours; and

WHEREAS, this amendment to the Comment to Rule 6.1 is ministerial only, and does not in any way constitute or reflect support, endorsement or approval by the Association of the amendments to Rule 6.1 of the New York Rules of Professional Conduct, nor of section 118.1 of the Rules of the Chief Administrator, which were promulgated without consultation with the Association and, to the extent they require mandatory reporting of pro bono services and mandatory reporting of financial contributions to organizations engaged in providing legal services to the poor and underserved, are contrary to established policy of the Association; it is therefore

RESOLVED, that the amendment to the Comment to Rule 6.1 proposed by COSAC be and hereby is adopted: and it is further

RESOLVED, that the Association reiterates and reaffirms its opposition to mandatory reporting of pro bono services and mandatory reporting of financial contributions to organizations engaged in providing legal services to the poor and underserved; and it is further

RESOLVED, that the Association shall continue to express its opposition to such mandatory reporting to the Chief Judge of the State of New York and the Presiding Justices of the Appellate Divisions of the Supreme Court of the State of New York, and shall pursue such other and further actions as may be appropriate, for the purpose of achieving the repeal of Rule 118.1(e)(14) of the Rules of the Chief Administrator.

## House calls for passage of amendment to Voting Rights Act

At the April House of Delegates meeting in Rochester, delegates endorsed a report from the State Bar's Committee on Federal Legislative Priorities supporting passage of an amendment to the Voting Rights Act of 1965.

No one can be sure that a special guest had any influence over the vote, but delegates did approve the amendment after hearing from one of the nation's premier advocates of equal rights, Susan B. Anthony, who illegally voted in 1872 in a presidential election.

The House, by voice vote, approved the committee's report recommending the passage of the Voting Rights Amendment Act of 2014, which addresses constitutional flaws identified by the U.S. Supreme Court in *Shelby County v. Holder*.

"If this gets to the floor (of Congress), it will pass," John M. Nonna, committee chair, assured the delegates. "This is one of the most important pieces of legislation passed by Congress."

In *Shelby County v. Holder*, the court held that Section 4 of the Voting Rights Act, which lists criteria by which jurisdictions are subject to preclearance, was unconstitutional because it relied on historic voting patterns dating from the 1960s. The committee noted its uncertainty over whether the Voting Rights Act could continue to protect minority voter participation, if the amendment does not pass.

The law requires certain jurisdictions to submit any changes in their election laws or procedures to the U.S. Department of Justice or a federal district court for approval—preclearance.

The 2014 amendment, introduced by a bipartisan coalition in Congress, uses a more up-to-date formula for preclearance of voting changes by states and political subdivisions, such as cities, towns and school districts.

Prior to considering the voting rights amendment, delegates heard a timely speech by a Susan B. Anthony impersonator, Barbara Blaisdell of the

National Susan B. Anthony Museum & House in Rochester. Dressed in period garb, she encouraged the State Bar's members to "get on with the job" of ensuring that every American citizen has the right to vote in political elections. She commended the State Bar for the work of its Special Committee on Voter Participation. "That is a subject dear to my heart," she said.

### Informational reporting

The House also heard informational reports on the work of the Task Force on Gun Violence and the Committee on Legal Education and Admission to the Bar.

Co-chairs Ian Weinstein of New York City (Fordham University School of Law) and Eileen D. Millett of New York City (Epstein Becker & Green, P.C.) of the legal education committee discussed a proposal to allow law students to have the option of taking the



**Amendment vote**—John Nonna, chair of the Committee on Federal Legislative Priorities, presents its report to the House. [Photo by Greg Francis]

Continued on page 15



## Commentary: Mandatory pro bono reporting wrong rule for New York's 'SoSmall' lawyers

By Robert Ostertag

I have been actively involved for some 39 years at three different levels of the organized bar and at their variously higher or highest positions. My niche has always been on behalf of solo and small firm practitioners, of which I am one. I call them SOSmalls; 1 to 5 attorneys, 1 to 10, whatever, always the un- or under-represented segment of the privately practicing bar, though we comprise about two-thirds of all private practitioners in New York.

We do not practice on Park Avenue or its environs, but elsewhere in the five boroughs, Long Island, or upstate in smaller cities, towns or villages – places that seem to have been forgotten or are non-existent to those who control our professional lives.

According to OCA's own records, there are more than 61,000 attorneys in New York state outside New York City, probably far more than two-thirds of them SOSmalls.

I was told recently by an academic paralegal administrator that a competent paralegal can sometimes earn as much as \$80,000 in Manhattan. I can't vouch for that. It's what I've been told. But that is about half again what I've also been told some SOSmalls bring home in some or many upstate communities and, perhaps, even in some off-Park Avenue environs of NYC itself.

Whatever the exact figures, the point is that one pro bono brush that fits one segment of our profession is not the brush that fits the rest. It is not the off Park Avenue environs that are the anomaly here; rather, it is the Park Avenue environment, simply by virtue of firm size and revenue. And, assur-



**Speaking up**—Past President Robert Ostertag speaks against mandatory reporting of pro bono hours and contributions during the House of Delegates meeting in January.

edly, those Park Avenue mega-firms do much heavy and sometimes awe-inspiring pro bono, totally voluntarily.

We SOSmalls, however, many or most of us, represent people generally, many of whom can't or won't pay their non-budgeted legal bills. If we dare to sue, we frequently find ourselves defending unmeritorious malpractice counter-claims that we must defend and fund.

We, too, have mortgages to pay and college educations to support. Too many of us find ourselves strapped with accumulated and long standing uncollectable receivables exceeding our net annual revenues. Our incomes are limited and our expenses ever increasing. Our judicial leadership, living much or most of their careers on substantial fixed incomes that we of the organized bar, at their request have always actively and even recently supported to increase, seem to know nothing of that.

We SOSmalls are primarily general practitioners, the hardest way I know to practice law. We work exceptionally long and hard to pay those mortgages and college expenses. We don't have assisting minions to do our spadework and our pro bono, as well. We must do it all ourselves, frequently un- or under-remunerated.

We draft our own briefs and other legal papers. We don't spend much time on the golf courses or traveling. Probably most of us do our own book- and recordkeeping. Many of us customarily bag our own lunches or run home or to the nearest deli to purchase sandwiches to bring back to the office. We don't drive very many Mercedes and BMWs. We think nothing of working nights and weekends, some of it pro bono in whole or in part.

### Aspiring to pro bono

Ethics Rule 6.1 is plainly by its own

terms aspirational. Its non-observance is supposedly not subject to punishment through disciplinary proceedings. What is now coercively sought to be imposed upon us by the threatened misuse of our local media, however, is an effectively mandatory Rule 6.1.

Indeed, it is already effectively mandatory through the existing pro bono reporting requirement of Administrator's Rule 118.1 (e)(14). Many or most SOSmalls can't afford the *minimum* 50 hours of pro bono now already in Rule 6.1 and certainly can't afford the potential public ridicule and resulting monetary impact of the threatened public media notice of reporting non-compliance. What is more coercive than that? I know of no other profession that imposes this kind of financial pressure upon its already most financially burdened membership. Unhappily, I've heard numerous responsive references among us to widespread civil disobedience.

Worse yet is that a minimum 50 hour pro bono rule does not mean 50 hours, and no one among us is deceived. One cannot simply discharge a client at the 50-hour mark. That is not who we are or what we do. Actual hours could extend indefinitely.

Who among our SOSmalls can deal with that? Every minute of every day for most of us is a valuable commodity that cannot and should not be lost merely to satisfy an arbitrary bureaucratic mandate imposed by a well-paid few who themselves are shielded from compliance and are seemingly

*Continued on page 21*

## Miranda wants State Bar to be prepared for possible state constitutional convention

*Continued from page 1*

### Get them involved

As president-elect, Miranda wants to continue building a closer relationship with the state's 15 law schools and its students. Since serving as chair of the Young Lawyers Section in 2002, he has focused on the interests of young lawyers. He said he hopes to enhance the State Bar's efforts in attracting and serving young lawyers.

"Get the law students into the fold early, and find a place for them to be productive and find a place for them so they understand the benefits of being involved in the bar association," he said.

Miranda is well known in the State Bar for his humorous tweets on the State Bar's Twitter page. So it stands to reason that the former chair of the Electronic Communications Committee wants to promote better use of technol-

ogy in the profession.

He cited the State Bar's website, [www.nysba.org](http://www.nysba.org), as well as the increased use of Facebook and Twitter during Annual Meeting, as examples of how the State Bar can use social media to promote and inform. "We need to continue to find new ways to connect with our members."

Among the current issues facing the profession, and one that has been hotly debated at recent House of Delegates meetings, is mandatory reporting of pro bono hours and charitable contributions to legal service organizations. Miranda said pro bono should remain voluntary and private.

"We (the State Bar) should be vigorous advocates to protect the core principles of our profession, and one of those principles is the commitment to voluntary pro bono and to private,

charitable contributions to pro bono organizations," he said. "I don't think that's something that should be taken away. If you change the voluntary and private nature of it, then you're changing one of the core principles of the profession."

### Geographically placed

Miranda brings to his new position a personal connection with large areas of the state. He was born in Queens, grew up in Bethpage (Nassau County), received his bachelor's degree at the State University of New York at Buffalo and earned his law degree from Albany Law School.

He's been in Albany since 1985. "So, I'm officially an upstater," he said.

He chose law as his career because of his love of public policy and the challenges that a legal profession pro-

vides. "I thought a legal career would provide me with a lot of opportunities," he said.

Miranda said he particularly enjoys intellectual property law because of its ever-changing horizon.

"In many respects, you're forging new territory, applying laws to issues that couldn't possibly have been contemplated when the laws were created," he said, referring to copyright law and the Internet as an example. "From a legal perspective, that's very exciting and requires you to think outside the box."

In his spare time, the father of three likes to run, play guitar and play golf, "none of which I'm particularly good at," he said. "But I enjoy them all." ♦

*Mahoney is the State Bar's former associate director of Media Services.*





**Student champions**—Congratulations to Forest Hills High School, 2014 New York State We the People champions. These students worked hard for months to learn, examine and appreciate the U.S. Constitution. They represented New York at the We the People National Hearings at the end of April at George Mason University, VA. Their teacher is Tara Kelly. *[Photo by Colleen Brescia]*

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# LEGAL EDUCATION AND THE FUTURE OF THE LEGAL PROFESSION

## Seeking quality, employers target skilled law grads

When it comes right down to it, all the hand-wringing over the quality of legal education – practical lessons vs. theoretical, two years of study vs. three, the bar exam vs. reality – all boils down to one simple question.

### Can graduates do the job?

The answer often depends on what employers need. And what employers

need depends on the size of the firm, the type of law they practice and whether they have the resources to invest in training lawyers in the specialty work their firms provide.

The State Bar's Task Force on the Future of the Legal Profession, in its 2011 report, struggled with the question in making recommendations for changes to law school curriculum.

"What is practice ready," the report asked, "in a profession where there is a myriad of practice types in the law firm setting and an apparent preference in the legal marketplace for specialist practitioners?"

And, what do non-firm employers look for in their first-year hires? What about those seeking quality employees within the judiciary, district attorney

offices or nonprofit or legal aid practices?

Writers Mark Mahoney and Brandon Vogel took the challenge. Below, their reports from the employment front lines of private and public practice. ♦

## Law firms differ over skills needed by grads

### By Mark Mahoney

Apparently, there are as many different answers to the question – what is practice ready? – as there are types of law firms.

John P. Amershadian, president of Hodgson Russ LLP, said his firm is not looking for law schools to produce specialists, but rather to graduate lawyers who are willing to work hard and are trained to learn.

"I think there's too much recent focus on this idea that they ought to know particular things about a substantive area of law. I don't expect them to," said Amershadian, whose 197-year-old firm employs more than 200 lawyers in six Northeastern cities. "I'd much rather they spend their time learning how to learn, learning how to research, learning how to analyze, than I want them to know particular substantive rules. They'll learn that here, or in any law firm."

He said he wants graduates to come out of law school with the ability to take on a project and figure out how to approach it.

He admitted that because of the size of his firm, he has the luxury of time in bringing new associates up to speed on specific areas of law. He said if he were a solo practitioner, he would "probably take a different attitude toward this."

### On the front lines

Tucker Stanclift, founding partner at Stanclift, Ludemann and McMorris PC in Glens Falls, has that different attitude, in large part out of necessity.

Stanclift said his small-town firm of eight attorneys is seeking graduates who understand the fundamentals of the frontline practice of law. He suggested law schools focus less on theory and more on practical skills.

"I'm an in-the-trenches practitioner. The fundamentals of the frontline prac-

tice of law aren't always about the theoretical," he said. "I think most people can learn what they need to learn in law school in about a year-and-a-half. As practitioners, we spend as much time, if not more, trying to unteach them some of the things they learned in law school."

Among the other qualities sought by law firms in new hires were a track record of performance, people skills, a personality that fits the culture of the firm they're joining, and energy and ambition, according to a 2013 article by Sumita Dalal, CEO and founder of the legal education website, FindMyLawTutor.

Other sources suggested that law schools should focus on transnational studies to serve the growing global market, management skills, good writing and more clinical work.

New attorneys are still struggling to find work, as demand for new associates remained stagnant in the fall of 2013, following a five-year trend, according to a survey conducted by the National Association for Law Placement (NALP).

"We have seen some bobbling in recruiting volumes this past fall, with some numbers that point to increased recruiting volumes and some that suggest decreased volume," NALP Executive Director James Leipold said in a prepared statement. "In any event, most of the markers that we track have more or less flat-lined for the last several years."

That puts added pressure on law schools to graduate attorneys who fit in with what law firms need.

Stanclift – a former chair of the State Bar's Young Lawyers Section and a member of the Future of the Legal Profession task force – suggested that law schools teach and train graduates in much the same way medical schools

## What district attorneys, judges prize in lawyers

### By Brandon Vogel

If Justice Deborah H. Karalunas were ever a law school dean, she would require students to take a writing-intensive course each semester.

"You can never do enough to improve your writing skills," said Karalunas, presiding justice of the Onondaga County Supreme Court, Commercial Division, and past chair of the Judicial Section. "That is key to being a good clerk and lawyer."

*"I think law students should be instructed on the differences between computer research and book research."*

*— Justice Deborah H. Karalunas*

As a former partner at Bond Schoeneck & King and as a judge for the last 12 years, Karalunas knows exactly what it takes to succeed as a clerk and what she wants in a law clerk.

"Strong analytical and research skills are the most important skills for a clerk," said Karalunas. "I also want someone who is a clear and concise writer. A law clerk must be reliable and cooperative, efficient, flexible and responsive to critique. A law clerk must understand the importance of keeping confidences."

Karalunas works closely with law students. "I think law students should be instructed on the differences between computer research and book research. Each has distinct advantages," said Karalunas. "Sometimes young lawyers do not appreciate the benefits of book research."

For example, Karalunas said, "When researching a statutory provision, sometimes it is easier to find 'the answer' in the McKinney's headnotes than on the computer."

Hon. Victoria A. Graffeo, senior associate judge of the Court of Appeals, noted that the Court of Appeals attracts "very highly qualified applicants" for clerkships. She hires clerks who have had prior legal experience.

She considers three characteristics the most important for judicial clerkships. "First is the analytical acumen to properly identify issues and conduct thorough research. Second are excellent writing skills and clarity of expression, as well as the ability to concisely present the issues," said Graffeo. "Lastly, it is good judgment, which comes with time and experience."

### DAs as employers

The right fit is the most important consideration for John M. George, first deputy district attorney of the Westchester County District Attorney's Office, when he hires a new assistant district attorney.

With the economic decline, there are a greater number of applicants for available assistant district attorney positions. George acknowledged that law graduates now compete with admitted attorneys who have lost their jobs or are looking to make a lateral move.

"In the past, we liked to have a freshman class and bring them up together as a class," said George. "We have been somewhat forced to hire admitted attorneys" because DA offices need people with some practical experience.

George said his office is "looking for people with academic proficiency, legal intelligence, and who are well-

*Continued on page 11*

*Continued on page 11*



## Large, small firms need different skill sets

*Continued from page 10*

prepare doctors, with residency requirements before being licensed to practice.

"There's very little comprehension of first-year associates about the practical application of the things you teach in law school," he said. "Where I think prospective new associates are lacking is in knowledge about the practice of law, about the fundamentals of the business of the law, and not the theoretical that is being taught in the classroom."

Stanclift also said law schools should spend more time teaching students the business end of lawyering.

"The fundamentals of basic business are not being taught in law school. They don't teach it to you," he said. "I think we are doing a disservice to our future profession by not explaining to them that this is a business as well as a profession. 'Sale' is not a four-letter word."

Amershadian agreed that law schools could do a better job teaching about the business of law.

"Everybody in law school ought to take an accounting class," he said.

Business acumen among new grads was listed as a top need by administrators of law firms in recent articles on the subject. Some law professionals quoted said that while new lawyers do not need to know profit-and-loss or get involved in billing, they do need to understand the business side of legal work.

Stanclift said law school debt has forced graduates to look for high-paying jobs in order to pay off their loans, which can average \$125,000 or more.

"There are only a few of those jobs compared to the population," he said.

"If you want to work in Glens Falls, you're not going to make \$150,000 your first year out of law school. You'd be lucky to make that 10 years out of law school."

*"I think we are doing a disservice to our future profession by not explaining to them that this is a business as well as a profession."*

— Tucker Stanclift

Amershadian said he didn't see new associates focusing on getting jobs to repay their loans. But he is losing new attorneys to the in-house legal teams of corporations, including some of his own clients.

He said he hoped the specialized training his firm provided would come back to help his firm in referrals and business from those former associates.

Amershadian also complimented the latest crop of law school grads for their willingness to buck a common view of today's young people in terms of their questionable work ethic and unwillingness to put in long hours.

He said the youngest lawyers are eager to work and often put in the longest hours, well aware of their good fortune in finding full-time employment in a difficult economy. ♦

*Mahoney is NYSBA's former associate director of Media Services.*

## Integrity prime quality for new lawyers

*Continued from page 10*

rounded. Really, we need someone who is going to fit in with the team and see public service as a noble cause."

Law schools are still fulfilling their mission of teaching "how to think like lawyers, read a case and interpret what they see," he said.

"Law schools have come forward with more practical experiences for law students," said George. "That's important. The real world is sometimes at odds with the academic world."

In Warren County, District Attorney

Kathleen B. Hogan said she hires a number of summer interns, a few of whom have gone on to serve as assistant district attorneys in Warren County. Hogan has successfully referred interns to other district attorneys' offices because she can vouch for their good work and skills.

"The most important thing we look for is unwavering integrity," said Hogan. "We look for people with integrity, and who are bright." ♦

*Vogel is NYSBA's media writer.*

### Letters to the Editor

The *State Bar News* welcomes letters to the editor written by members of the legal profession and which would be of interest to New York state lawyers.

Send to: *State Bar News* 1 Elk St., Albany, NY, 12207.



**Civics award to LYC**—The State Bar's Law, Youth & Citizenship (LYC) program was one of five winners of the inaugural Partners in Excellence Award from the New York State Council for the Social Studies and the New York State Social Studies Supervisory Association at their annual convention in March. Congratulating Program Director Eileen Gerrish are, Jay Worona, left, Richard Bader, members of the Law, Youth & Citizenship Committee, and State Bar President David Schraver. The LYC was cited for its "outstanding professional development programs and resources to social studies teachers. So many classrooms and students throughout the state have benefited in such tangible ways from the steady and inspired efforts of LYC," said Alred Sive, convention chair. [Photo by Patricia Sears Doherty]



## Torts, Insurance & Compensation Law Section

Summer Meeting | August 10–12, 2014

Conrad Chicago

Look for further details to follow from Lori Nicoll, Meetings Representative, [lnicoll@nysba.org](mailto:lnicoll@nysba.org)





# New Executive Committee members, effective June 1

## Secretary



**Makofsky**

**Ellen G. Makofsky** of Garden City was elected secretary.

Makofsky is a founding partner of Raskin & Makofsky. She concentrates her practice in elder law and trusts and estates.

A 26-year member of the State Bar, Makofsky is an officer of the House of Delegates. She was a member-at-large on the Executive Committee for four years. She chaired the Elder Law Section and is a member of the Senior Lawyers and the Trusts and Estates Law sections. She is a member of the Committee on Continuing Legal Education and the Membership Committee. She also is president of the National Academy of Elder Law Attorneys, New York Chapter.

A resident of Sands Point, Makofsky graduated from Boston University and earned her law degree *cum laude* from Brooklyn Law School.

## Vice-President, 2nd Judicial District



**Napoletano**

**Domenick Napoletano** of Brooklyn was elected vice-president of the 2nd Judicial District.

Napoletano is a general law practitioner with a concentration in commercial litigation.

A 33-year member of the State Bar, Napoletano is the Brooklyn Bar Association's delegate to the House of Delegates and a member of the Task Force on Gun Violence. He is the immediate past president of the Brooklyn Bar Association and Brooklyn Bar Foundation.

Napoletano graduated from Brooklyn College and earned his law degree from Hofstra University Law School. He is a resident of Brooklyn.

## Vice-President, 3rd Judicial District



**Fernandez**

**Hermes Fernandez** of Albany was elected vice-president of the 3rd Judicial District.

Fernandez is a member of Bond, Schoeneck & King, PLLC. He is co-chair of the

firm's Health Practice Group. He concentrates his practice in health law, administrative and regulatory law, related litigation and governmental representation.

A 23-year member of the State Bar, Fernandez previously served as a member-at-large on the Executive Committee and was a member of the House of Delegates for eight years. He is chair of the Committee on Legislative Policy. He is a member of the Health Law Section and the Committee on Court Structure and Operations.

Fernandez graduated with honors from LeMoyne College and earned his law degree *magna cum laude* from Syracuse University College of Law.

## Vice-President, 5th Judicial District



**LaRose**

**Stuart J. LaRose** of Syracuse was elected vice-president of the 5th Judicial District.

LaRose, a solo practitioner, concentrates his practice in family law and criminal law.

A 21-year member of the State Bar, LaRose is an elected delegate from the 5th Judicial District to the House of Delegates and a member of Family Law Section. He is a past president of the Onondaga County Bar Association.

LaRose graduated from LeMoyne College and earned his law degree from Western New England University School of Law.

## Vice-President, 6th Judicial District



**Barreiro**

**Alyssa M. Barreiro** of Binghamton was elected vice-president of the 6th Judicial District.

Barreiro is a partner of Levene Gouldin & Thompson, LLP. She is the founder and chair of the Health Law Practice Group.

A 21-year member of the State Bar, Barreiro was a member of the House of Delegates from 2007 to 2013. She is a member of the Elder Law and Special Needs, Health Law, and Trusts and Estates Law sections.

Barreiro graduated from Binghamton University and earned her law degree from Syracuse University College of Law. She also has a master's degree from Binghamton University.

## Vice-President, 7th Judicial District



**Brown**

**T. Andrew Brown** of Rochester was elected vice-president of the 7th Judicial District.

Brown is the corporation counsel for the City of Rochester and managing partner of Brown & Hutchinson LLP.

A 28-year member of the State Bar, Brown most recently served as a member-at-large on the Executive Committee. He co-chaired the Task Force on the Future of the Legal Profession from 2010 to 2011. He is vice-chair of the Trial Lawyers Section. He is a past president of the Monroe County Bar Association and the Rochester Black Bar Association, and past general counsel for the National Bar Association.

Brown graduated from Syracuse University and earned his law degree from the University of Michigan Law School.

## Vice-President, 12th Judicial District



**Calderón**

**Carlos M. Calderón** was elected vice-president of the 12th Judicial District.

Calderón is a partner at Weisman & Calderon LLP. He concentrates his practice in civil

litigation. A 23-year member of the State Bar, Calderón is an elected delegate from the 12th Judicial District to the House of Delegates. He also is a member of the Torts, Insurance and Compensation Law Section's Executive Committee. He is a past president of the Bronx County Bar Association.

Calderón graduated from the University of Puerto Rico and The University of Connecticut Law School. He resides in Scarsdale.

## Member-at-Large



**Kean**

**Elena DeFio Kean** of Albany was elected member-at-large.

Kean is a principal of Towne, Ryan & Partners, P.C. She concentrates her practice on labor and employment and

municipal law matters.

A 20-year member of the State Bar, Kean was a member of the House of Delegates for eight years. She is a member of the Commercial and Federal Litigation, Labor and Employment Law and Municipal Law sections, as well as the Committee on Leadership Development and the Task Force on Gun Violence. She is a past president of the Albany County Bar Association.

Kean graduated *cum laude* from the College of Saint Rose and earned her law degree from Albany Law School.

## Member-at-Large



**Galligan**

**Michael W. Galligan** of New York City was elected member-at-large.

Galligan is a partner at Phillips Nizer LLP. He concentrates his practice in

domestic and international estates and trusts, U.S. and cross-border estate and income tax planning, private international law and immigration.

A 28-year member of the State Bar, Galligan is a delegate from the International Section to the House of Delegates and a past chair of the International Section. He is a member of the General Practice, Tax and Trusts and Estates Law sections and the Membership Committee. He was a member of the Task Force on New York Law in International Matters.

Galligan graduated from the University of San Francisco and earned his law degree from Columbia Law School. He also earned a Ph.D. from Yale University.

## Member-at-Large



**Hetherington**

**Bryan D. Hetherington** of Rochester was elected member-at-large.

Hetherington has been the chief counsel of the Empire Justice Center in

Rochester since January 2004. He previously was chief counsel of the Public Interest Law Office of Rochester, a nonprofit he founded in 1996.

A 26-year member of the State Bar, Hetherington was a member of the House of Delegates from 2010 to 2013. He is a member of the Commercial and

*Continued on page 15*





# Meet the new section chairs for '14-'15, effective June 1

## Business Law



Everett

**James William Everett, Jr.** of Albany is the new chair of the Business Law Section.

Everett is the capital markets counsel to the New York State Insurance Department.

A 28-year member of the State Bar, Everett most recently served as first vice-chair of the Business Law Section. He is a former member of the Corporate Counsel Section.

Everett graduated with honors from the College of Wooster, Wooster, Ohio and earned his law degree with honors from University at Buffalo Law School.

## Commercial and Federal Litigation Section



Sarkozi

**Paul D. Sarkozi** of Manhattan is the new chair of the Commercial and Federal Litigation Section.

Sarkozi is a partner at Tannenbaum Helpern Syracuse & Hirschtritt LLP. He concentrates his practice in business litigation and dispute resolution.

A 21-year member of the State Bar, Sarkozi most recently served as chair-elect of the section. He is a member of the section's Committee on the Commercial Division.

Sarkozi graduated *summa cum laude* from Yale University and earned his law degree *cum laude* from Harvard Law School.

## Dispute Resolution



Kahn

**Sherman W. Kahn** of Manhattan is the new chair of the Dispute Resolution Section.

Kahn is an arbitrator and mediator with Mauriel Kapouytian Woods LLP. He represents clients in international arbitration proceedings with complex technical and commercial issues.

A nine-year member of the State Bar, Kahn most recently was chair-elect of the section. He also is a member of the Intellectual Property and International sections.

Kahn earned his undergraduate and law degrees from the University of California, Berkeley.

## Elder Law and Special Needs



Weinblatt

**Richard A. Weinblatt** of Islandia is the new chair of the Elder Law and Special Needs Section.

Weinblatt is a partner of Haley Weinblatt & Calcagni. He practices elder law and trusts and estates.

A 25-year member of the State Bar, Weinblatt most recently was chair-elect of the Elder Law Section. He is the section delegate to the House of Delegates and also a member of the Trusts and Estates Law Section.

Weinblatt graduated from New York Institute of Technology and earned his law degree *magna cum laude* from St. John's University School of Law.

## Environmental



Bakner

**Teresa M. Bakner** of Albany is the new chair of the Environmental Law Section.

Bakner is a partner at Whiteman Osterman & Hanna LLP. She is chair of the firm's CleanTech Practice, which supports the business sector, and is focused on cleaner energy technologies.

A 26-year member of the State Bar, Bakner most recently was vice-chair of the section. She has served on the section's Executive Committee since 1994. She co-chaired the section's Committees on Coastal and Wetland Resources, Legislation, and Mining and Oil & Gas Exploration.

Bakner graduated from Penn State University and earned her law degree from Albany Law School.

## Family Law



Abramowitz

**Alton L. Abramowitz** of New York City is the new chair of the Family Law Section.

Abramowitz is a partner at Mayerson Abramowitz & Kahn, LLP. He

concentrates his practice in family law.

A 37-year member of the State Bar, Abramowitz is a former member of the House of Delegates. He most recently served as vice-chair of the Family Law Section. He has been the section's secretary, financial officer and co-chair of its Committees on Legislation and Pensions & Retirement Benefits. He is a past president of the American Academy of Matrimonial Lawyers.

Abramowitz graduated from American University and earned his law degree from Rutgers University School of Law. He also has a master of laws degree in trade regulation from the New York University School of Law.

## Food, Drug & Cosmetic Law



Malkin

**Brian J. Malkin** of Washington, D.C. is the new chair of the Food, Drug and Cosmetic Law Section.

Malkin is senior counsel to McGuireWoods LLP. He leads the firm's FDA regulatory teams, principally the life sciences and healthcare industry teams. His regulatory experience includes all types of FDA-regulated products: drugs, biologics, medical devices, foods and dietary supplements, tobacco products and cosmetics.

A nine-year member of the State Bar, Malkin also is a member of the Intellectual Property Law Section.

Malkin earned undergraduate and law degrees from George Washington University. He also has a Bachelor of Science degree in biochemistry from the University of Maryland.

## General Practice



Klass

**Richard A. Klass** of Brooklyn is the new chair of the General Practice Section.

Klass is the principal of the Law Office of Richard Klass. His areas of practice include bankruptcy law, family law, real estate, and trusts and estates.

A 19-year member of the State Bar, Klass most recently was chair-elect of the section. He is a section delegate to the House of Delegates.

Klass graduated from Hofstra University and earned his law degree from New York Law School.

## Health Law



Davino

**Margaret J. Davino** of New York City is the new chair of the Health Law Section.

Davino is a partner at Kaufman Borgeest & Ryan LLP. She concentrates her practice in health care law, including transactional, compliance, contractual, corporate, regulatory and risk management legal issues.

A 28-year member of the State Bar, Davino most recently served as chair-elect of the section. She is the section's delegate to the House of Delegates and also a member of the Business Law and Senior Lawyers sections.

Davino graduated from the University of Michigan and earned her law degree from Vanderbilt University School of Law. She also has an MBA degree from Seton Hall University, South Orange, New Jersey.

## Intellectual Property



Weigell

**Charles T.J. Weigell** of New York City is the new chair of the Intellectual Property Law Section.

Weigell is a partner at Fross Zelnick Lehrman & Zissu, P.C. He concentrates his practice in intellectual property law, specifically, the clearance, prosecution and protection of trademark registrations and design patents.

A 10-year member of the State Bar, Weigell most recently served as vice-chair of the section.

Weigell graduated *cum laude* from the University of Southern California and earned his law degree from George Washington University.

## International



Pieper

**Thomas N. Pieper** of Manhattan is the new chair of the International Section.

Pieper is counsel at Hogan Lovells US LLP. He concentrates his practice on complex international dispute resolution, with a particular emphasis on



## New section chairs assume responsibility, effective June 1

Continued from page 14

European and Latin American parties.

A 13-year member of the State Bar, Pieper most recently served as chair-elect. He also is a member of the Dispute Resolution Section.

Pieper earned his master's and law degrees from Ludwig Maximilian University of Munich. He also has a master of laws degree from New York University School of Law.

### Judicial



Spodek

Supreme Court Justice **Ellen M. Spodek** of Brooklyn is the new chair of the Judicial Section.

Spodek was elected a justice of the Supreme Court in 2008. She sits in a guardianship part and a general trial part. She was named coordinator for Guardianship Matters in Kings County in January 2013.

A 25-year member of the State Bar, Spodek most recently was assistant presiding member of the section. She also is a member of the Senior Lawyers Section.

Spodek graduated from the State University of New York at Albany and earned her law degree from Fordham University School of Law.

### Labor and Employment



Dunn

**Ronald G. Dunn** of Albany is the new chair of the Labor and Employment Law Section.

Dunn is a founding partner of Gleason, Dunn Walsh & O'Shea. He concentrates his practice on representing unions and their members in public and private sector labor matters, as well as counseling individuals in all matters relating to labor and employment disputes.

A 33-year member of the State Bar, Dunn most recently was chair-elect of the section. He co-chaired the section's Committee on Continuing Legal Education.

Dunn graduated from the State University of New York at Albany and earned his law degree from Albany Law School.

### Real Property Law



Berkey

**David L. Berkey** of Manhattan is the new chair of the Real Property Law Section.

Berkey is a managing partner of Gallet Dreyer & Berkey, LLP. He

supervises the cooperative and condominium law practice and the litigation practice.

A 31-year member of the State Bar, Berkey most recently was first vice-chair of the section. He also is a member of the Commercial and Federal Litigation Section.

Berkey graduated *cum laude* from New York University and earned his law degree *cum laude* from Cornell Law School.

### Young Lawyers



Gold

**Sarah E. Gold** of Albany is the new chair of the Young Lawyers Section.

Gold is the owner of the Gold Law Firm. She concentrates her practice in business and consumer law.

A six-year member of the State Bar, Gold most recently was chair-elect of the section. She has been a member of the House of Delegates since 2012. She also is a member of the Business Law and General Practice sections and the Committees on Electronic Communications; Law, Youth and Citizenship; and Women in the Law.

Gold graduated from the University at Albany and earned her law degree from Albany Law School. ♦

—Compiled by Brandon Vogel.

## HOD hears informational reports

Continued from page 7

bar exam after their second year of law school.

"This proposal is a small step to addressing a complex, very layered problem," Millett said. "We may come back to you with other proposals. But, we look at this as one step in the solution. We are asking you to come back with constructive discussion of this moment in history."

Weinstein said the early exam option is one idea out of many that could better prepare law students to be practicing attorneys.

"We don't anticipate that every student would do this. They would be required to finish all of the required number of credits" even if they did pass the exam before their third year of school, he said. "But, it would greatly speed the time to their admission (to the bar)."

The House will be asked to vote on the early bar exam proposal at its June meeting in Cooperstown.

David Tennant of Rochester (Nixon Peabody LLP) and Earamichia Brown of New York City (NYS Office of the State Inspector General), co-chairs of the Task Force on Gun Violence, detailed the draft report they intend to submit for approval.

Tennant explained that the task force had been created after the gun tragedies in Newtown, Connecticut and Aurora, Colorado. However, he said, such events "are a rarity, despite being awful." He said that less than 4 percent of gun violence happens because of mental health issues.

The task force is focusing on possible public education efforts and determining the kinds of data missing because of cuts in funding for data sharing to the Centers for Disease Control and Prevention and the Bureau of Alcohol, Tobacco, Firearms and Explosives. It also will make recommendations for possible legislation, said Brown.

Tennant said the task force will recommend further study on smart gun laws, monthly and annual limits on gun purchases, waiting periods, mandatory liability insurance for gun owners, products liability reforms and restoring liability for gun manufacturers.

The gun violence report should be released in time for a possible vote at the November House meeting.

To view the entire House of Delegates meeting in Rochester, go to: [www.nysba.org/webcastarchive](http://www.nysba.org/webcastarchive). ♦

—Patricia Sears Doherty

## New executive committee members, effective June 1

Continued from page 12

Federal Litigation Section, President's Committee on Access to Justice and Steven C. Krane Special Committee on Student Loan Assistance for the Public Interest. He received the State Bar's Haywood Burns Award in 2012. He is a past president of the Monroe County Bar Association.

Hetherington graduated from LaSalle College and earned his law degree from Cornell Law School. He is a resident of Rochester.

### Member-at-Large



Marwell

**John S. Marwell** was elected member-at-large.

Marwell is a partner at Shamburg Marwell Hollis Andreyak & Laidlaw, P.C. His practice includes land use litigation, zoning, environ-

mental law and real estate law.

An 11-year member of the State Bar, Marwell was a member of the House of Delegates and a vice president of the 9th Judicial District from 2007 to 2011. He is chair of the Finance Committee.

He previously chaired the Working Group on Judicial Compensation Commission and was vice-chair of the Senior Lawyers Section. He is a past president of the Westchester County Bar Association and Westchester County Bar Foundation. He received the Attorney Professionalism Award in 2014.

Marwell received his undergraduate degree from Columbia College and earned his law degree from Columbia Law School. He is a resident of Greenwich, Conn.

### Member-at-Large



Prager

**Bruce J. Prager** of Manhattan was elected member-at-large.

Prager is a retired partner and of counsel to Latham & Watkins LLP. His practice encompasses broad international anti-trust counseling and litigation with a concentration on mergers and acquisitions and joint venture antitrust issues.

A 31-year member of the State Bar, Prager is the Antitrust Law Section's delegate to the House of Delegates and chair of the Section Delegates Caucus. He is a past chair of the Antitrust Law Section.

Prager graduated from Boston University and earned his law degree from Georgetown University Law Center. He is a resident of Mount Kisco. ♦

—Compiled by Brandon Vogel

## Governmental Relations: Tax bill in Congress would hurt law firms

By Ronald F. Kennedy, Director

### "Accrual Accounting" on agenda in Washington



Kennedy

The State Bar's leadership annually engages in legislative advocacy on a variety of issues involving both the public interest and the interests of the legal profession. Throughout

this winter and spring, President David M. Schraver and President-Elect Glenn Lau-Kee led a number of advocacy activities focused on policymakers in Albany and Washington, D.C.

Soon after completion of activity during the state budget process, the State Bar's leadership turned its attention to issues under consideration by Congress. This year, advocating for adequate funding of the Legal Services Corporation was again a core issue of ABA Day lobbying led by New York lawyer and American Bar Association President James Silkenat in Washington April 8-10.

As part of this event, the State Bar team also focused on another core issue that would have a direct impact on the legal profession—legislation that would fundamentally change how many law firms report and pay taxes.

Schraver and the State Bar team asked New York's members of Congress to oppose a tax proposal that would impose the accrual method of accounting on many law firms and other types of personal service businesses. The proposal is in Section 3301 of the draft "Tax Reform Act of 2014," which was recently released by House Ways and Means Committee Chair

Dave Camp (R-MI). A similar draft bill was introduced in the Senate.

"A core mission of the State Bar Association is to represent the interests of the legal profession," said Schraver. "In that regard, we will oppose proposals that would burden the profession, and this tax proposal certainly fits into that category," he said.

Among the many problems with this legislation are the following points that were expressed during the April meetings:

- Instead of simplifying the tax law, the provisions would create unnecessary new complexity in the tax law and increase compliance costs.

Law firms and many other types of personal service businesses favor the cash method of accounting—in which income is not recognized until cash or other payment is actually received—because it is simple and generally correlates with the manner in which these business owners operate their businesses, i.e., on a cash basis. The increased complexity associated with the accrual method of accounting—where income is recognized when the right to receive it arises—will raise compliance costs for businesses while greatly increasing the risk of noncompliance with the tax law.

- The provisions would impose new financial burdens on many law firms and other personal service businesses by requiring them to pay taxes on income they have not yet received and may never receive.

The traditional cash method of accounting produces a sound and fair result because it properly recognizes that the cash a business actually

receives in return for the services it provides is the proper reflection of its true income and ability to pay taxes on that income. Requiring law firms and other personal service businesses to pay taxes on income long before it is actually received would impose a serious financial burden and hardship on many of these firms.

- The legal profession would suffer even greater financial hardships than other professions because many lawyers and law firms are not paid by their clients until long after the work is performed.

Many types of lawyers, such as business lawyers working on complex transactions and litigators involved in lengthy trials or appeals, often are not paid until the end of the case or project, which can be years after the work is performed. This sets lawyers and law firms apart from other types of professionals who typically work on a pay-as-you-go basis. Thus, requiring payment of taxes on income that has accrued but not yet been received would create special hardships for many in the legal profession.

- The provisions would lead to economic distortions that would adversely affect all law firms and other personal service businesses that currently use the cash method of accounting.

Most law firms are organized as partnerships owned by lawyers who practice together. In many firms, the partners change from year to year as older lawyers retire, younger lawyers are promoted and other lawyers switch firms.

Firms operating on the cash method can ensure that the partners working at

the firm are taxed on the income actually received that year. But if they are forced to use the accrual method, partners will be taxed on income their firms accrue on paper in the current year even though the partners may not be around when the clients actually pay their bills (if they ever do).

Under the proposal, firms with gross receipts of greater than \$10 million could no longer use the cash method of determining taxable income. Instead they would use the much more complex accrual method. The change would increase government revenues by \$23.6 billion over the next 10 years, according to one estimate.

Given the amount of revenue that would be generated, there also is concern that the proposal might remain attractive to some federal policymakers regardless of the fate of the Tax Reform Act of 2014. Furthermore, such a proposal could prove to be a "slippery slope" that impacts smaller law firms.

It is important to give adequate attention to issues that have a direct impact on the legal profession, along with the many other public-interest issues that comprise the lobbying agenda.

The ABA deserves credit for making the opposition to this accrual-accounting proposal one of its core activities for ABA Day 2014.

By all accounts, our message on this topic was well received by policymakers in Washington.

Nevertheless, the State Bar will continue to work with the ABA and ensure that the New York Congressional Delegation hears our view on this and other issues that would have an impact on lawyers and law firms. ♦

### NYSBA sets its 2014 state legislative/budget priorities

During the state budget process in Albany, President David Schraver and President-Elect Glenn Lau-Kee led lobbying efforts in support of the State Bar's 2014 legislative/budget priorities.

Below is a summary of some of those issues.

#### Proposed Judiciary budget

The Judiciary's 2014-15 budget of \$1.81 billion to support court operations was passed as submitted and signed into law on April 11. The State Bar strongly supported the Judiciary's budget request, in large part because it would end the 4:30 p.m. closing time for courtrooms,

enhance courtroom security, partially restore the functioning of clerk offices, and, in general, rebuild necessary components of the court system's workforce.

#### Increasing the number of Family Court judges

The Judiciary's budget included funding for the creation of 20 new Family Court judges, which was a 2014 NYSBA legislative priority.

#### Other budget issues supported by the State Bar:

- The Judiciary budget included a \$15-million allocation for the Interest on Lawyer Account (IOLA) Fund;

- The Judiciary budget included \$55 million for civil legal services, an increase of \$15 million over last year's appropriation;
- The Judiciary budget included \$8.5 million to complete the multi-year increase of judicial salaries;
- The final Executive budget included \$2.2 million for Prisoners Legal Services, a program that was instituted at the recommendation of the State Bar following the Attica Prison riot.
- The final Executive budget included \$1.8 million in funding for the operation of the Office of Indigent Legal Services and \$81 million in local aid for indigent defense programs.

#### Other NYSBA legislative activity

A new law requiring the licensing of land title insurance agents was enacted as part of the final Executive budget. This law includes language to clarify the long-standing practice of lawyers acting as title insurance agents in matters where they also are rendering legal services and advice to their clients.

The State Bar's Real Property Law Section opposed all proposals that did not include clarifying language. An agreement was reached late in the budget process, ensuring that lawyers can perform title insurance functions consistent with the ethical considerations applicable to the profession. ♦



## STATE BAR BRINGS NEW YORK TO ABA DAY IN D.C.



**New York concerns**—U.S. Rep. Nydia Velazquez meets with State Bar leaders on ABA Day. L to R: Maria Cilenti, New York City Bar; NYSBA past president and ABA Delegation Leader Mark Alcott, and President-elect Glenn Lau-Kee.



**Justice Rewarded**—The American Bar Association's Congressional Justice Award is presented to Sen. Kirsten Gillibrand by ABA President James Silkenat, left, and State Bar President David Schraver during ABA Day 2014.



**Got a minute?**—President-elect Designee David Miranda speaks with Rep. Peter King during ABA Day 2014.



**Corridor confab**—State Bar President David Schraver, left, discusses strategy in the hall with President-elect Designee David Miranda, Sandra Rivera and ABA President James Silkenat. They had met earlier with Rep. Nita Lowey.



**Important questions**—Maria Cilenti, New York City Bar, left, State Bar President-elect Glenn Lau-Kee and past president and ABA Delegation Leader Mark Alcott meet with Rep. Grace Meng.



**NY national**—Cilenti, left, Alcott and Lau-Kee meet with Rep. Eliot Engel, second from left, to discuss issues related to ABA Day 2014.



## STATE BAR IN ROCHESTER



**Foosball fanatics**—Sareer A. Fazili has a strong reaction to a play by Janet Horn, left, in a game with David Tennant (hidden) and Sharon Stern Gerstman as T. Andrew Brown and State Bar President David Schraver look on during the NYSBA Foosball and Pinball Section Cup Tournament and Reception for lawyers in the Rochester area. *[Photo by Megan O'Toole]*



**Pinball panache**—T. Andrew Brown takes a turn at mastering the pinball machine during the NYSBA Foosball and Pinball Section Cup Tournament and Reception in Rochester in April. Robert G. Lamb, Jr. of Buffalo, left, and Sareer Fazili observe his technique. *[Photo by Megan O'Toole]*



**"All the news that fits"**—President David Schraver, left, President-elect Designee David Miranda and Treasurer Sharon "Pinball Wizard" Stern Gerstman enjoy an advance copy of Rochester's Daily Record report on the Young Lawyers Foosball Tournament. Stern Gerstman triumphed in the pinball competition. *[Photo by Greg Francis]*



**Stuck like glue**—President-elect Glenn Lau-Kee, left, house chair, laughs after presenting the official gavel to the next chair, President-elect Designee David Miranda, after the conclusion of the April House of Delegates meeting in Rochester. *[Photo by Greg Francis]*



**Voting pioneer**—Equal Rights advocate Susan B. Anthony (in the 21st Century form of Barbara Blaisdell) reminds delegates of her struggle to bring voting rights to women in 1872 and commended the State Bar for the work of its Special Committee on Voter Participation. *[Photo by Greg Francis]*



**Powerpoint prep**—President-elect Glenn Lau-Kee, left, and President David Schraver take a final look at agenda issue slides before the April House of Delegates meeting in Rochester. *[Photo by Greg Francis]*



DELEGATES AT WORK



**Making a point**—Hon. Margaret J. Finerty makes a point to fellow delegate Thomas E. Myers of Syracuse during the House of Delegates meeting in Rochester.



**A question of rights**—Diana Sen asks a question during a report on amending the Voting Rights Act of 1965 by John Nonna, chair of the Committee on Federal Legislative Priorities.



**Colleagues and friends**—Past president A. Thomas Levin, right, shares a laugh with fellow delegates before the House of Delegates meeting.



**Answer me this**—Richard B. Friedman, delegate from the New York City Bar, asks a question during the discussion on a scheduling resolution.

All photos by Greg Francis



**'Look here....'**—Sarah Gold and Michael Fox examine a document during the House of Delegates meeting in Rochester.



**Rochester rises**—Elizabeth J. McDonald and Diane Cecero of Rochester talk before the delegates meeting begins.



## LAW DAY 2014: Voting does count



**A cherished right**—President David Schraver, left, and other speakers at Law Day ceremonies at the New York State Court of Appeals emphasized the importance of bringing citizens back to the ballot box in remarks in keeping with the American Bar Association's theme: "American Democracy and the Rule of Law: Why Every Vote Matters." The last general election brought fewer voters to the polls than ever before in New York state, said Mylan L. Denerstein, right, counsel to Gov. Andrew Cuomo, in her remarks. In his speech, Schraver outlined recommendations made by the State Bar's Special Committee on Voter Participation that have become integral parts of its federal and state legislative priorities. *[Photo by Brandon Vogel]*



**Stellar singer**—Senior Court Attendant Michelle Perry-Belches sings the National Anthem during the Law Day ceremony at the New York State Court of Appeals. To her right are Hon. Jenny Rivera, Court of Appeals judge; Chief Administrative Judge A. Gail Prudenti; and Hon. Lawrence K. Marks, first deputy chief administrative judge. They presented the judicial excellence and merit performance awards of the court and the 2014 David A. Garfinkel Essay Prizes, sponsored by the Historical Society of the Courts of the State of New York. *[Photo by Brandon Vogel]*

## FAIR TRIAL/FREE PRESS: From Both Sides of The Bench

"Fostering discussion on the interplay between Sixth and First Amendment rights"



**Of gag orders and cameras**—The Committee on Media Law presented its second program in the Ceremonial Courtroom of the Daniel Patrick Moynihan U.S. Courthouse on April 28.

Panelists used a hypothetical case to discuss the interplay of criminal defendants' Sixth Amendment rights, the First Amendment rights of the public and press to attend and report on criminal proceedings, and the view from the bench. The program was co-sponsored by the Criminal Justice Section.

Top photo: Panelists, L-R, Joe Tacopina, Richard Zabel, Daniel Alonso, Hon. Shira Scheindlin, Hon. Penny Wolfgang, Jacob P. Goldstein, Ben Smith, Andrew Siff and Zachary Carter engaged in lively debate in answering a question from co-moderators Daniel N. Arshack and George Freeman.

Bottom photo: President-elect Glenn Lau-Kee and Committee Chair Lynn Oberlander welcomed about 150 attendees. Hon. Loretta Preska also extended greetings. *[Photos by Victor Chu]*

NEW YORK STATE BAR ASSOCIATION

# SAVE *the* DATE

## Moving Towards Civil Gideon

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For more information visit [www.nysba.org/partnership](http://www.nysba.org/partnership)





# Kay Crawford Murray receives Pioneer Award

By Brandon Vogel

When Kay Crawford Murray applied to Columbia Law School in 1972, she did not tell anyone, not even her husband, Arch Murray, until after she had been accepted.

She knew he would be happy for her, but also surprised. She wanted it to be her decision alone.

That trailblazing attitude set the stage for her groundbreaking legal career.

In recognition of her many accomplishments to further diversity, the Commercial and Federal Litigation Section presented Murray with the George Bundy Smith Pioneer Award. Murray received the award on April 1 at the section's program, "Smooth Moves 2014: Social Media Strategies for Attorneys: Marketing Techniques, Practice Tips, and Ethical Quandaries."

"Kay Crawford Murray exemplifies all of the qualities and attributes that characterize the Honorable George Bundy Smith Pioneer Award, namely, her lifelong commitment to public service, dedication to civil rights, women's rights and children's rights, leadership in the bar and the profession, as well as her appreciation for scholarship and mentoring," said Hon. Barry A. Cozier of New York City (LeClairRyan), program chair.

Section Chair Gregory K. Arenson of New York City (Kaplan Fox & Kilsheimer, LLP), said, "She is a pillar of the legal profession. It is an honor to recognize a trailblazer and role model."

## The perfect position

Murray had aspirations to work in education after graduating from Bennington College in Vermont. She continued her studies at Teachers College, Columbia University and earned a master's degree in psychology. She became a research associate at

the New York City Board of Education and the Board of Higher Education in the late 1960s and early 1970s.

"I didn't want a doctorate in education, but I felt that my education was incomplete," said Murray. "I looked at other degrees and types of study" before deciding to study law at Columbia Law School.

"When I got to law school and realized how much work it was, I decided to practice law," said Murray.

Murray said the expectation for Columbia Law graduates at that time was to work at a Wall Street firm. She began as an associate at Shearman & Sterling, but quickly determined that working in a law firm would not be her career.

During the late 70s, New York City created a Department of Juvenile Justice and sought a general counsel. Murray and the commissioner, Paul Strasburg, met and clicked immediately. "I thought this was a nice way to use my law degree," said Murray.

Murray spent the next 23 years as the department's general counsel and served five commissioners in the process. "I knew I would stay during my first year," said Murray. "It really was the perfect position for me." She retired in 2002.

## Work to do

She recalls few other women of color during her law school days and first years as an associate, but realized that progress was being made.

"Women became more noticeable in law school student bodies. There were considerably fewer African-Americans in the big law firms," said Murray. She added that firms were "on their way" to hire and advance women. There were only eight women in the litigation department at her firm.

Still, "women have done far better than African-Americans," she said.

agencies that provide legal services to the poor. That is distinctly our own business and that of our families or, in the case of firm contributions, our partners, not OCA's. What could be clearer?

And now, I understand, the Chief Judge has even expressed support for a bill recently introduced to the Legislature that, if enacted, would provide litigants with counsel in foreclosure, health care and employment disputes, among others, to be funded exclusively by assessments levied against – oh, you know – *lawyers*, of course.

Lack of space denies me the opportunity to discuss fully the disrespectful manner by which all this has been



**Pioneers and role models**—Kay Crawford Murray stands with Hon. George Bundy Smith, retired New York State Court of Appeals judge, as she receives the Hon. George Bundy Smith Pioneer Award at the April 1 "Smooth Moves 2014" program. [Photo by Beth Gould]

"There is still a lot of work to be done, but it can be done."

She is encouraged by the increase in attendance at various State Bar events, such as Smooth Moves and the Celebrating Diversity reception. "The State Bar has done a very good of promoting diversity," said Murray. "Getting the word out is the responsibility of the organized bar."

"By showcasing attorneys of color, male and female, you send a message that the State Bar is a diverse organization and practices what it preaches," said Murray. "I feel strongly that many beginning attorneys need to be mentored. Diverse students and recently admitted attorneys, particularly, need mentors."

She noted that, "people should see people who look like themselves and come from diverse backgrounds."

Hon. George Bundy Smith said that she and her husband, Arch Murray, mentored law students or law student

prospects. "I think that was very inspirational," said Smith. "She is an excellent attorney."

Within the State Bar, Murray chaired the Committee on Women in the Law and was the inaugural recipient of its Kay Crawford Murray Award. She also received the Committee on Children and the Law's Howard A. Levine Award for Excellence in Juvenile Justice and Welfare. She received the Columbia Alumni Medal in 2012 and its Lawrence A. Wien Prize for Social Responsibility in 1997.

Her husband, Arch, was the first black president of the State Bar and the executive director of the Legal Aid Society in New York City. "He was one of the most influential people in my life," said Murray. The two "bar junkies" traveled every August to the American Bar Association's Annual Meeting and planned their vacations accordingly. ♦

*Vogel is NYSBA's media writer.*

## Commentary

*Continued from page 8*

unaware of the professional burdens and business aspects of practicing law that already are ours.

Moreover, the new mandate bears potentially devastating consequences to us in terms of possible malpractice, increased insurance premiums and grievance proceedings, among others, all related to the likelihood of attorneys practicing in areas totally unfamiliar to them just to get in their involuntary hours. The competent representation requirement of Rule 1.1 seems to have been forgotten here.

The new rule also requires the reporting of our monetary donations to

summarily imposed upon us. For as long as I can remember over almost four decades, we in the organized bar have been supportive of the judiciary, always. We have stood behind virtually every appeal for judicial raises, every judicial branch funding effort, every courthouse facilities improvement request and whatever else the judicial leadership has deemed appropriate for which to seek our active support. We never say no.

But now this. Not nice. Not at all. And it makes a total coercive mockery of the concept of our voluntary pro bono service to the poor for which our Chief Judge publicly commended us not long ago, and of the biennial registration form itself which

now deceptively bears the word "voluntary." It is time we stood up for our members.

Bottom line: this profession of ours, large and small, is, always and still, willing to provide the almost endless amount of true voluntary service to the poor that we consistently have, and for which the Chief Judge himself commends us all. We respectfully ask him to be once and for all respectful and understanding of us and to just leave us alone to continue. ♦

*Ostertag, of Poughkeepsie, is a partner in Ostertag O'Leary Barrett & Faulkner. He was president of the State Bar from 1991-92.*

## OBITUARIES (continued)

### Angelo T. Cometa, cont.

*Continued from page 3*

the Interest on Lawyer Account (IOLA) Fund. He also led the State Bar's successful effort to oppose a proposed sales tax on legal services.

Under his leadership, the State Bar created its Lawyer Assistance Program, Pro Bono Department and what is now known as the Department of Law Practice Management, all in 1990.

In 2007, he was honored with the inaugural Angelo T. Cometa Award, named to recognize his leadership of the Committee on Lawyer Referral Service. Cometa was chair of the committee when the Lawyer Referral and Information Service (LRIS) launched in 1981. LRIS helps members of the public find attorneys for their legal matters. Cometa was a "proud papa" and considered "the heart and soul of the LRIS" by his colleagues.

Mr. Cometa also chaired the State Bar's Nominating Committee, as well as the Committees on Election Law,

Grievances and Professional Discipline, and Group and Prepaid Legal Services. He was a member of the House of Delegates for 49 years.

As well as his legal legacy, Mr. Cometa is admired for his personal legacy—a ready smile, a ready laugh and a ready hand to those in need.

"He was eager to help people. He hardly ever said no to anybody," says Ostertag. "He seemed to know everybody in a room."

Kathryn Grant Madigan says the man she called "Ange" was both a mentor and family friend.

"As a very young lawyer and member of the HOD in the 1980s, I had been privileged to see him 'in action' as one of our most beloved bar leaders," she said. "We did not become truly great friends until his year as NYSBA president in 1990, when I joined the Executive Committee as the new vice-president for the 6th Judicial District. As the youngest member of the Executive Committee, I had a lot to learn and

Angelo was always available to help me along the way.

"He relished his role as NYSBA president and the many opportunities to do the public good, and in his kind, yet seriously probing way: 'And how, my dear Kate, can YOU make a difference?'"

Rising to his challenge, Madigan would become State Bar president in 2007-08.

"Ange was so passionate about everything in his life—he loved his family, he loved the law and he loved humanity," she said.

In addition to his wife, Betty Jane Cometa of Beach Haven, N.J., Mr. Cometa leaves four children, Ariane K. Cometa of the Baltimore area, Allison Cometa Schnalzer of La Mesa, Calif., Thomas More Cometa of northern New Jersey and Victoria White of Phoenix, Ariz.; five grandchildren and two great-grandchildren; and his brother, Thomas of Scranton, Pa. ♦

### Richard S. Weisman



**Weisman**

Richard S. Weisman, 57, of Larchmont died on February 9 after a brief illness. Mr. Weisman was to begin serving a term as vice-president of the 12<sup>th</sup> Judicial District on the Executive Committee in June.

He was the managing partner of Weisman & Calderon LLP in Mount Vernon and concentrated his practice in elder law and guardianships. He also was a court examiner in the First Department.

Within the State Bar, Mr. Weisman was a member of the Dispute Resolution, Elder Law, Health Law, and Trusts and Estates Law sections. He was a director-elect of the Bronx County Bar Association and the co-chairperson of its Elder Law Committee.

Mr. Weisman graduated *magna cum laude* from Harvard University and earned his law degree from Harvard Law School. He is survived by his wife, Kathleen; son, Thomas (Jenn) and daughter, Hope. ♦

## TECHLEX

**By Barbara Beauchamp**

## Understanding Internet security threats and what they mean to you



**Beauchamp**

The Internet is a scary place. If you are not being bombarded with tawdry offers, you are likely dodging attempts to compromise your security, your identity and your credit card

numbers.

The Internet also is an amazing resource. Longtime users will remember when we used a tool called a gopher to ferret out information as we attempted to be thorough in our research. Newer users have the benefit of finely tuned search engines that use natural language to hunt down and return all that the Internet has to offer on any given topic.

As wonderful and useful as the Internet is, it also has its dark moments. The recent Heartbleed threat is a perfect example of the kind of troubling, confusing and intimidating type of information we are forced to deal with.

### Bleeding heart

In simple terms, the Heartbleed threat means that certain types of secure pages on the Internet, where millions of users conduct financial transactions, enter passwords and so

on, *may* have been compromised. These secure pages are indicated in the browser address bar (URL) with the prefix, https. The "s" on the end is the key here – it stands for secure. What Heartbleed taught us is that secure is a term that means different things to different organizations.

In order to have pages that use the https designation, an organization has to apply for, and receive, a secure certificate or an SSL (secure sockets layer). About two-thirds of all Internet sites use OpenSSL – a piece of software that is readily available to all. That type of software is called open source and is often free or available at a very low cost.

The State Bar's website and other online assets were not affected by the Heartbleed crisis because the State Bar's secure certificates do not use the Open SSL Protocol. If members still want to change their Association usernames and passwords, they may do that on the MyNYSBA page or by calling the State Bar Service Center at 800-582-2452.

Heartbleed happened because one of the programmers using the open source Open SSL made a fairly simple mistake in the code – and everyone else using that code missed it and kept using and sharing it across the Internet.

And no one noticed. Google didn't notice. Yahoo didn't notice. Facebook didn't notice. Even the National Security Agency (NSA) didn't notice.

This one tiny line of faulty code has caused fear and anguish in every corner of the world. I received piles of email from vendors and potential vendors reassuring me that my accounts, passwords, etc. have not been compromised.

When it comes to Internet safety, the belt-and-suspenders approach is best. If you have any concerns at all, change your passwords. You should change them regularly anyway. We all know that is an aspirational goal and may not always occur in a timely manner. Use this as an opportunity to update your passwords and online accounts.

Are you interested in staying on top of new information about how technology affects you? Is it difficult to parse the tidal wave of news coming at you from many sources? If you are a member, we invite you to the NYSBA Technology Community. It is a place to get technology news and information, ask questions, contribute to technology discussions and get help with technology issues. All members are welcome to join the Technology Community at [www.nysba.org/techcommunity](http://www.nysba.org/techcommunity). ♦

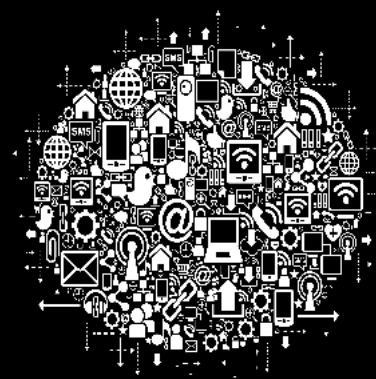
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## Pro Bono: No matter your interests, pro bono opportunities abound

By Gloria Herron Arthur, Director



Herron Arthur

Finding a pro bono project that suits your interests, needs and skill may be easier than you think.

Not every pro bono matter requires a long-term time commitment. There are plenty of short-term projects available assisting unrepresented litigants, such as an attorney-for-the day program or an evening brief advice and referral clinic.

Not a litigator? You don't have to be. Volunteer to explain court forms or assist a self-help litigant fill out a petition. On the other hand, if you desire a more intense pro bono opportunity, perhaps an appeal is just right for you, or handling a class action lawsuit. But whatever your preference, first, you have to get started.

### Where to start?

- Bar associations

The New York State Bar Association, the New York City Bar Association, Volunteers of Legal Services and Pro Bono.net jointly sponsor the online Pro

Bono Opportunities Guide for Lawyers in New York State. Go to [www.nysba.org/PBNET](http://www.nysba.org/PBNET). This easy-to-use guide can be searched by county or by the substantive law area in which the volunteer wishes to serve.

The State Bar has several committees and sections that sponsor pro bono opportunities. For example, the Committee on Courts of Appellate Jurisdiction, in collaboration with The Legal Project and the Rural Law Center of New York, operates a pro bono appeals program in the Third and Fourth Departments.

The appeals program is designed to assist persons of modest means who do not qualify for assigned appellate counsel, whether they are taking or responding to an appeal. Preference is given to cases that may have a broad impact and involve the essentials of life, such as Family Court matters, education cases, family stability, health, housing, personal safety, public benefits, and subsistence income. For more information on the Appellate Pro Bono Project, go to [www.nysba.org/probonoappeals](http://www.nysba.org/probonoappeals).

Some of the larger county bar associations, such as the New York City, Nassau/Suffolk, Westchester, Albany,

Onondaga, Monroe and Erie county bars, also offer a diverse range of pro bono opportunities. There are needs in veterans benefits, eviction defense, debtor/creditor projects, and mortgage foreclosure advise clinics. Don't be discouraged if these are not your usual areas of practice because training is available.

Another added benefit is that your pro bono work may qualify you to earn continuing legal education (CLE) credit. For more information, go to [www.nycourts.gov](http://www.nycourts.gov) and click on the link for Pro Bono.

- Legal services programs that serve low-income persons

Civil legal services programs across the state not only welcome volunteers but frequently offer free CLE training programs in core poverty law topics to attorneys who promise to accept a pre-screened case referral.

The State Bar regularly co-sponsors CLE pro bono recruitment programs in the Capital District with local legal services providers in domestic violence, landlord tenant cases, bankruptcy, Lesbian, Gay, Bisexual, Transgendered and Questioning issues and a host of other topics. The Capital District encompasses the Third and Fourth

Judicial Districts.

To identify legal services providers in your area, visit [www.LawHelpNY.org](http://www.LawHelpNY.org). This site can be searched by county and/or subject matter and briefly describes the legal services provided by the program.

- Volunteer attorney court programs

Under the supervision of court staff, volunteer attorneys can spend just a few hours, a full day or part of a day in a courthouse providing brief legal advice and assistance to self-represented litigants in consumer debt cases, family matters (e.g., custody, visitation and child support), landlord-tenant cases, matrimonials and uncontested divorce. The court system will provide free training with CLE credits. For more information on court sponsored volunteer attorney programs, go to [www.nycourts.gov](http://www.nycourts.gov) and click on Pro Bono.

This brief listing of potential opportunities is not exclusive. For further help in locating a pro bono opportunity in your area, perhaps we can be of assistance. Contact the Department of Pro Bono Affairs at [www.nysba.org/probono](http://www.nysba.org/probono). ♦

## Lawyer Assistance Program: Sniff and Smoke and Shoot – Watch out for the new drug bully

By Patricia Spataro, Director



Spataro

Addiction is progressive, predictable, persistent and powerful. Not only does an addiction to a particular substance progress in amount, frequency and damage, it sometimes progresses to other substances.

This is exactly what is happening with the heroin epidemic. At first glance, this national health crisis does not appear to be a problem for lawyers; it is more the 15- to 24-year-olds who are falling victim to heroin. But the heroin epidemic is fueled by prescription drug abuse and this is a serious concern for lawyers.

Those who misuse and become addicted to prescribed controlled substances, such as OxyContin, may switch to snorting, smoking and shooting heroin because it is easier to get and it is cheaper. Lawyers who struggle with addiction are no different than anyone else when it comes to doing whatever it takes to satisfy a craving. But prescription drug abuse, even when it doesn't lead to heroin,

can't be minimized, especially for lawyers.

### Drugs, defined

According to a nationwide ABA survey of lawyer assistance programs, addiction is the number one reason legal professionals get involved with the lawyer assistance program. Alcohol-related concerns rank first in this category and prescription drug abuse comes in second.

Opiates, amphetamines and benzodiazepine, contained in familiar drugs such as Vicodin, Adderall and Xanax, respectively, are highly addictive drugs.

Opiates are used to manage pain. Amphetamines are most often used for attention deficit disorders with or without hyperactivity. Benzodiazepines are well known for treating anxiety. These are all serious issues that often need medication to manage so the person can function as normally as possible.

### Prescription drug bully

The line between taking and abusing medication is very thin. The minute you take medication for reasons or in a way or amounts other than prescribed, or you use someone else's medication, you are abusing the medication.

Since the legal profession has high standards for the conduct of its members, what is risky for the general population can be a greater risk for attorneys. Women attorneys, especially, need to heed the following warning for both life and law. The Centers for Disease Control and Prevention reports that between 2000 and 2010 there was a 400 percent increase in women's deaths by overdose of pain medication.

In addition, women between ages 25 and 54 are more likely than other age groups to visit the emergency room (ER) for painkiller misuse. Shockingly, for every woman who died by painkiller overdose, there were 30 who went to the ER for misuse or abuse. During this time, the rate for men increased by 265 percent.

It appears that women are prescribed pain meds more frequently and for longer periods of time than men. Women also die more often than men from an overdose of medication used to treat depression and anxiety.

Prescription drug misuse and abuse will impair your ability to meet the high demands of the legal profession. A frank conversation with your doctor and pharmacist about any medication, especially controlled substances, is essential.

Consider stepping back a bit or entirely from daily practice to protect your clients during the time it takes for you to get stable on a drug that can alter your behavior and your ability to think clearly. Misusing or abusing legal drugs can lead to serious consequences that can place your life and your law license in jeopardy.

It is important to remember that no one sets out to become an abuser or addict, especially when the addiction begins with following a doctor's medical advice. I believe that lawyers are well-informed about the dangers of drinking too much and too often, and to a greater extent, the risks involved in swallowing, snorting, shooting illegal drugs.

But, there is a new kid in town—prescription drugs—and he's a bully. The worst kind of bully... the one you think is nice, but then turns on you. There is a statute of limitations on not knowing the risks and it has officially expired. Be aware and be informed and watch out. ♦

You can reach Patricia Spataro at 800-255-0569 or [nysbalap@hushmail.com](mailto:nysbalap@hushmail.com).

## The New York Bar Foundation

By The New York Bar Foundation President Cristine Cioffi

### We invite you to help us fill the gap



Cioffi

The New York Bar Foundation is in the final stages of distributing funds for this year's grant cycle. We received 87 grant applications from law-related, nonprofit organizations across

New York totaling more than \$1,156,965.00 in grant requests.

Applicant needs were diverse in geographic scope and need, touching on "front page issues" that impact communities across New York: poverty, housing, abuse, elder care, immigration. The stories are compelling and, while we are able to make a difference, the gap in need is there.

#### How do you assist?

Your gifts have enabled us to make an impact across the state by allocating more than \$390,000 in grants this year. Following are some project highlights from grants awarded in 2014. These grantee organizations are committed to assisting our communities with such issues as legal representation for victimized immigrant workers, creating a business as a means out of poverty, assisting veterans in obtaining further resources, combatting human trafficking and domestic abuse and offering first-time youthful offenders an opportunity for a clean slate.

#### Bethlehem Youth Court, Inc., Third Judicial District, Delmar

The Bethlehem Youth Court Supplemental Fund supports the town's Youth Court. That court provides an alternative to criminal and family court for first-time juvenile offenders who live in Bethlehem. The primary goal is to divert low-level cases from the traditional court system and to provide first-time offenders aged 10-19 who have committed a

crime in Bethlehem a second chance at a clean record.

#### Latino Immigrant Workplace Justice Project, First Judicial District, New York

This initiative provides legal advocacy to low-wage Latino immigrant workers who are victims of wage theft, discrimination, and employer abuse.

In the heated talk of immigration reform, rarely does the conversation focus on the businesses that exploit low-wage immigrant labor for a profit. Unscrupulous employers benefit tremendously from the resource of low-wage Latino immigrant workers by depriving them of their rightful earnings, paying less than minimum wage and disregarding workplace laws.

Employers are keenly aware that immigrants are often ill-equipped to stand up for their rights. Legal resources for low-wage workers are scarce, especially for the undocumented who are not eligible for assistance from federally funded legal services.

#### Legal Aid Society of Rochester, Inc., Seventh Judicial District, Rochester

The Entrepreneur Legal Services Project provides legal support to small business entrepreneurs, micro-entrepreneurs and start-up companies to help owners improve their economic situation and grow their businesses.

The focus of this program is to provide legal support to entrepreneurs who have created a business as a means out of poverty. The project's goals are to provide direct assistance in legal matters to 25 businesses annually and to provide a minimum of five community presentations/clinics/workshops with 50 attendees who will be educated on their legal rights and will learn how to address common obstacles experienced by entrepreneurs.



**Welcome help**—Cristine Cioffi, president of the New York Bar Foundation a grant check to Hebrew Immigrant Aid Society (HIAS) during the State Bar's House of Delegates meeting in Rochester on April 5. The organization will use the grant for funding for their Legal Interns for Asylum Seekers Project (LIASE). Left to right are Simon Wettenhall, lead advocate, HIAS; Amanda Wald, Policy & Programs Coordinator, HIAS; Cioffi; and Aleksander Milch, staff attorney, HIAS. HIAS is one of the numerous organizations that The Foundation will present grant checks to throughout New York State in 2014. [Photo by Greg Francis]

#### Legal Assistance of Western New York, Seventh Judicial District, Geneva

Foundation funds are helping to expand its Veterans' Legal Hotline, which offers veterans and their families a place to call for free information about civil legal problems and for referrals to other community resources.

#### My Sisters' Place, Inc., Ninth Judicial District, White Plains

A Foundation grant supports an Immigration and Human Trafficking Project. My Sisters' Place's Center for Legal Services (CLS) provides free, holistic services to immigrant victims of domestic violence and/or human trafficking in a linguistically and culturally appropriate manner.

Support from the Foundation will partially fund one CLS attorney who will conduct legal consultations with immigrant victims of domestic violence, human trafficking, and sexual assault in a linguistically and culturally appropriate manner; provide them with direct legal representation with appropriate forms of immigration relief; and work with clients to create legal strategies that will address their safety and legal immigration concerns (such as VAWA self-petitions, U and T Nonimmigrant Status, Battered Spouse Waivers, green cards, etc.).

#### The need is there

I recently visited some of the organizations we assist with Foundation Director Deborah Auspelmeyer. The stories we heard were moving; the impact of our grants is significant; the gratitude of staff and clients is humbling.

Grants made by TNYBF to organizations such as these can truly change generations of lives. When someone is given the opportunity to access justice, they have a better chance at succeeding in life. Access to legal services makes a difference to them, their children, and generations of family members for many years. When a child is offered the hope of a better future, that child becomes part of the cycle that facilitates positive change.

#### We must fill the gap

There is far more need than TNYBF has the capacity to fill. For each dollar requested by grantees in 2014, we offered approximately three cents. We need to close the gap between the needs of these organizations and the amount of assistance we can provide.

The Foundation is developing the next phase of our strategic plan which will focus on growing our giving capabilities by 30 percent. We will need your help to do this, and you will hear more from us on the expansion of our capacity to grant.

In the meantime, I invite each of you to give, and give again.... and join us in continuing to make a difference. ♦



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# Nominating Committee seeks candidates for NYSBA offices

The Nominating Committee invites members of the Association to submit recommendations of themselves or others for consideration in developing its slate of nominees for Association offices beginning in 2015.

It is suggested that anyone wishing to become an officer or member of the NYSBA Executive Committee review Article VIII of the Association's Bylaws describing the Nominating Committee and nominations for office ([www.nysba.org/bylaws](http://www.nysba.org/bylaws)).

As part of the selection process, candidates for the offices of president-elect, secretary and treasurer may be required to appear in person before the Nominating Committee at its meeting on September 23 in New York City and at its meeting on October 31 in Albany.

Candidates for the office of member-at-large of the Executive Committee may be required to appear in person before the Nominating Committee at one of the two meetings. No appearance before the Nominating Committee is required for the positions of vice president, elected delegate (three for each judicial district), member-at-large recommended by the Section Delegates Caucus, and member-at-large recommended by the Young Lawyers Section.

## Offices for nomination

The Nominating Committee is accepting and will be interviewing candidates for the following:

- President-Elect
- Secretary
- Treasurer
- Members-at-Large of the Executive Committee – Four (please indicate if you are seeking a regular seat or diversity seat). At least one of these members-at-large is selected to further ethnic and racial diversity in the Association and must come from a judicial district other than the Thirteenth Judicial District, since there currently is a member-at-large selected to further diversity from that district;
- at least one of these members-at-large is selected from the First Judicial District, since there must be at least two members-at-large from the First Judicial District and currently there is one member-at-large from that district.

## Other offices

The Nominating Committee does not decide on the names of the vice-presidents and the elected delegates that are presented to the House of Delegates for election at the Annual Meeting. (See NYSBA Bylaws, Article VIII § 1(A)(3).)

Similarly, the Nominating Committee does not decide on the names of the member chosen by the Section Delegates Caucus and the member chosen by the Young Lawyers Section to fill the positions of Executive Committee member-at-large. Therefore, candidates for these positions are not required to appear before the Nominating Committee. (See NYSBA Bylaws, Article VIII §§ 1(A)(4) & 1(A)(5).)

However, the Nominating Committee does encourage anyone interested in these positions to contact the vice presidents of their respective judicial districts and/or the chairs of the Section Delegates Caucus and Young Lawyers Section to determine deadlines and such criteria as may be established for consideration to fill the positions of vice-president, elected delegate, and Executive Committee member-at-large from the Section Delegates Caucus and Young Lawyers Section. For relevant contact information, please email your request to [NominatingChair@nysba.org](mailto:NominatingChair@nysba.org).

## Special eligibility criteria for candidates

A candidate for president-elect or vice-president must have served as a member of the House of Delegates, but does not need to be a member of the House at the time of nomination for office.

Candidates for the four member-at-large positions of the Executive Committee referenced above must be current members of the House or section chairs, or have served in either capacity within three years of the time of selection.

## Nature of service

The nature of service for Association offices is described in the Association's Bylaws ([www.nysba.org/bylaws](http://www.nysba.org/bylaws)).

The president-elect, secretary, treasurer, 14 vice presidents, and 11 members-at-large serve on the Executive Committee and in the House of Delegates, which manage the business and activities of the Association and generally meet quarterly. They also serve as liaisons to Association committees and sections.

The president-elect chairs the House, assists the president, and becomes president on June 1 of the following year. Persons serving as president and president-elect receive a stipend of \$75,000 and \$37,500, respectively.

The secretary keeps a record of House of Delegates and Executive Committee meetings. The secretary also chairs the Resolutions Committee

and serves as a liaison to the Section Delegates Caucus.

The treasurer serves as an *ex officio* member (as does the president-elect) of the Finance Committee, which oversees the financial affairs of the Association and meets approximately four times per year. The treasurer presents the Association's financial report at each House meeting.

## Timetable for submitting recommendations

Members who are seeking office may place their names before the Nominating Committee by self-declaration or nomination.

Candidates for president-elect must submit their declarations of candidacy to the secretary by **no later than September 1, 2014**.

Candidates seeking all other offices are strongly encouraged to file a declaration of candidacy and submit all background materials by September 1, 2014, to ensure adequate time for review by the Nominating Committee.

In making nominations, members are encouraged to keep in mind the Association's diversity policy, which was adopted by the House of Delegates in November 2003. The policy emphasizes the commitment to

achieving diversity in the "membership, officers, staff, House of Delegates, Executive Committee, sections and committees and their respective leaders. Diversity is an inclusive concept, encompassing gender, race, color, ethnic origin, national origin, religion, sexual orientation, age and disability."

Submissions must include a curriculum vitae or resume and a maximum of five letters of recommendation. Letters of recommendation should be received prior to the deadlines stated previously. Please direct this information to the following: Vincent E. Doyle, III, Chair, Nominating Committee, New York State Bar Association, One Elk Street, Albany, NY 12207 or by email to [NominatingChair@nysba.org](mailto:NominatingChair@nysba.org) or by fax to 518-487-5564.

## Timetable for president-elect candidates' statements for publication

Each candidate for president-elect is invited to submit a 400-word statement for publication in State Bar News by **September 1, 2014**. For more information, please contact Patricia Sears Doherty at [psearsdoherty@nysba.org](mailto:psearsdoherty@nysba.org) or 518-487-5536. ♦



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 **THE NEW YORK  
BAR FOUNDATION**

## The Bar Around The Corner

### NYSCBL celebrates 35 years of service to bar groups statewide

The New York State Conference of Bar Leaders celebrated 35 years of action and advocacy on behalf of bar associations throughout New York state in April with a special event at its annual spring workshop in New York City.

To mark the occasion, Hon. P. Kevin Castel of New York (U.S. District Court, Southern District of New York) was co-host on behalf of Chief Judge Robert A. Katzmann of New York (U.S. Court of Appeals for the 2<sup>nd</sup> Circuit) with the Conference of a reception at the Thurgood Marshall U.S. Courthouse in lower Manhattan on April 10.

Courthouse staff provided tours of the facility, which underwent extensive repairs during the last six years. More than 60 people representing more than 12 bar associations attended the event.

Conference Chair Karla Wilsey of Rochester (Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara & Wolf, LLP) honored past chairs of the Conference.

"It is leadership we honor tonight by recognizing past chairs of the Conference," Wilsey said. "It was the dedication and perseverance of these men and women to take on the challenges of the day and assist bars statewide. They stepped up and made the Conference what it is today, and I am privileged to be a part of that heritage."

#### Successful transitions

On the next day, the Conference held its annual spring workshop at the

New York City Bar Association. The topic was "Creating a Successful Blueprint for Leadership in Transition."

The focal point of the workshop was a panel of six bar leaders and experts who provided insight on how they handled the challenges of recruiting and orienting leaders into their associations.

Panelists Yomi Ajaiyeoba (past president, Nigerian Lawyers Association), Margo Ferrandino (president, Association of Black Women Attorneys), Donna Frosco (president, Women's Bar Association of the State of New York), Michael Huang of New York City (Boies, Schiller & Flexner, LLP), immediate past president of the Asian American Bar Association of New York, Karyn Linn (American Bar Association Division of Bar Services) and Mary Loewenguth (executive director, Monroe County Bar Association) provided intense and productive discussion on the practices and pitfalls of seamless leader succession within their associations.

"This session highlighted the need for bars to share their policies and procedures. Often, many of the smaller bar associations have a difficult time identifying qualified and capable leaders to serve their organizations, and communication is the key within and beyond bars," said Deborah Martin, a member of the Conference's Executive Council and host of the workshop. "I'm glad the Conference was able to feature this topic at the workshop."

Michael Davidson, founder of The



**Reunion of past Conference chairs**—NYSBA President-Elect Glenn Lau-Kee joins current and past chairs of the Conference of Bar Leaders during a reception at the Thurgood Marshall U.S. Courthouse in New York to celebrate the Conference's 35-year anniversary uniting bar associations statewide, and to recognize past chairs of the Conference. From left, past chair Michael Miller (2004–05), current Chair Karla Wilsey, and past chairs Taa Grays (2006–07), Linda Clark (2008–10) and Earamichia Brown (2010–12) flank Lau-Kee. [Photo by Mark Wilson]

Board Coach, and a consultant on non-profit board management, moderated the panel. He made a separate presentation on effective use of associations' board of directors.

Martin emphasized again the significance of the Conference and its programs. "Since its creation 35 years ago, the Conference of Bar Leaders has recognized the important role bar leadership plays within the more than 180 local, specialty, minority, women and special-purpose associations operating today throughout New York state. Workshops such as these provide a forum for the exchange of information

among bar leaders statewide," she said.

Additional speakers included Susan B. Lindenauer, co-chair of the State Bar's Task Force on Family Court, who spoke about the need for additional judges in Family Courts due to the backlog and increasing number of cases throughout the system. ♦

—Bridget Donlon  
Media Services assistant

*The Bar Around The Corner is a project of the New York State Conference of Bar Leaders, [www.nyscbl.org](http://www.nyscbl.org).*

## Law Practice Management

By Katherine Suchocki, Director

### Starting your own practice in New York made easier with quality programming



Suchocki

The State Bar's law practice management programs focus on the business side of running your practice. We are here to help you operate your firm efficiently, effectively and ethically by offering programs on attorney escrow accounts, hiring staff, technology developments and risk management.

One good example of the kind of quality programming we create for our

members is "Starting Your Own Practice in New York," which was held on May 16 at the Affinia Manhattan hotel in New York City and created by the Law Practice Management Committee and the Committee on Continuing Legal Education in conjunction with several local, ethnic and minority bar associations. This program provided an overview of what it takes to own your own practice—from choosing a business entity to choosing office space and attracting new clients.

Panelists focused on solo practice. Topics covered included working from home, office equipment, choosing a practice area, work-life issues, finding clients, time management, managing

and organizing your practice, and marketing your solo practice ethically and effectively.

Program chair Clifford R. Ennico and Carol Schiro Greenwald delivered the luncheon keynote on "Maximizing Your Marketing | Turning Basic Business Cards, Letterhead and Websites into Marketing Statements." They focused on "Marketing Alchemy: Setting New Entities on the Path to Prosperity."

If you missed the program, the archive is available at [www.nysba.org/StartingaPractice](http://www.nysba.org/StartingaPractice).

If you are a solo practitioner or running a small firm, we want to hear from you. We realize that you did not

go to law school to be a human resources director, bookkeeper or marketing executive. But for solo practitioners and small firm lawyers, having an understanding of these basic business skills is key. If you would like to see a program offered on a specific topic in 2014, let us know.

For more information, visit [www.nysba.org/LPM](http://www.nysba.org/LPM). The Law Practice Management Department is always looking for members willing to share their advice and best practices. If you would like to get involved, please reach out to me at [ksuchocki@nysba.org](mailto:ksuchocki@nysba.org). ♦



# 2014 President's Pro Bono Service Award winners honored

By Brandon Vogel

Because of one Albany Law School student, 167 veterans received free help with their legal matters this year.

Joshua Bennett, now a third-year law student, served six years of active duty in the U.S. Air Force and is a member of the New York Army National Guard. He understands the unique legal needs of this special group and has devoted 321 hours of pro bono services to it since he entered law school.

As director of the Pro Bono Society's Veterans' Rights Project, Bennett led 34 of his fellow students to do the public good. He also donated 840 hours to the Schenectady County District Attorney's Office as lead intern.

President David Schraver and President-elect Glenn Lau-Kee, co-chair of the President's Committee on Access to Justice, honored Bennett and 17 other winners of the 2014 President's Pro Bono Service Awards on April 30 at the State Bar Center.

One of those winners is the large law firm of Dechert LLP.

Ninety-nine percent of Dechert LLP's New York office participated in pro bono work. The office legal staff collectively donated 21,464 hours of pro bono, with an average of 105 hours per lawyer. The office's pro bono involvement has grown 50 percent since 2010.

The firm's attorneys helped immigrant victims of human trafficking obtain citizenship, low-income New Yorkers with disabilities receive basic subsidies for food and shelter, and more than 24 women obtain U-Visas under the Violence against Women Act.

Others winners include:

**1st Judicial District** (Manhattan)

**David Sausen** of New York City (Kaye Scholer) has helped nonprofit organizations register for and maintain tax-exempt status. In 2013, he advised 20 nonprofit organizations on matters including private inurement, unrelated business taxable income and excess benefit transactions.

**2nd Judicial District** (Kings County)

**Christopher Strong** (Hoffmann Marshall Strong LLP) and **Sarah Levin** (Patterson Belknap Webb & Tyler LLP) volunteer with the New York County Lawyers' Association's "SCR Pro Bono Pilot Project." It was designed to provide counsel to low-income New Yorkers seeking to amend, seal or expunge reports from the State Central Register of Child Abuse and Mistreatment.

**3rd Judicial District** (Albany, Columbia, Greene, Rensselaer,

Schoharie, Sullivan, Ulster counties)

**Robert Mascali** of Menands (Pierro Law Group) developed a volunteer pro bono program that offered workshops on guardianship and special needs trusts, as well as employment and job training opportunities for those who assist people with special needs.

**4th Judicial District** (Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, St. Lawrence, Saratoga, Schenectady, Warren, Washington counties)

**Joel Peller** of Clifton Park (Block, Colucci, Spellman & Peller, LLP) has volunteered with the Legal Aid Society of Northeastern New York since 2008. He has assisted 18 clients and helped with the *pro se* divorce clinics, which assist low-income individuals with uncontested divorces in Franklin, Essex, Clinton and Hamilton counties. He also prepared an "Inquest Lifeline" brochure, which informs clients about what to expect and how to prepare for an inquest during a divorce case.

**5th Judicial District** (Herkimer, Jefferson, Lewis, Oneida, Onondaga, Oswego counties)

**Thomas E. Myers** of Syracuse (Bond, Schoeneck & King, PLLC) coordinates his firm's pro bono activities in the Volunteer Lawyers Project of Onondaga County's Eviction Defense Clinic. He also trains attorneys for a weekly walk-in clinic at McKinley-Brighton Elementary School.

**6th Judicial District** (Broome, Chemung, Chenango, Cortland, Delaware, Madison, Otsego, Schuyler, Tioga, Tompkins counties)

A solo practitioner, **Kevin Yeagher** of Binghamton has represented 67 tenants in eviction cases since 2011. He has helped them avoid or delay evictions, reduce money judgments or obtain needed home repairs.

**7th Judicial District** (Cayuga, Livingston, Monroe, Ontario, Seneca, Steuben, Wayne, Yates counties)

**Kevin Saunders** of Rochester, a lieutenant colonel in the U.S. Marine Corps Reserves and an associate at Nixon Peabody, donated 136 hours of pro bono services in 2013. He and four veterans created the One Team, One Fight website, which addresses veterans' employment, psychological and legal needs.

**8th Judicial District** (Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming counties)

Even with a busy solo practice, **Joshua Dubs** of Buffalo donated 60 hours of pro bono work on 46 eviction defense cases, eight name changes, three wills and two tort defense cases through the Erie County Bar Association Volunteer Lawyers Project.



**Pro Bono Service Awards**—Winners of the President's Pro Bono Service Awards pose with President David Schraver (back row, at right) and President-elect Glenn Lau-Kee (back row, at left) after receiving their awards at a luncheon at the State Bar Center in Albany on Law Day. [Photo by Harvey Vlahos]

In the first quarter of 2014, he accepted an additional 20 eviction defense cases and a transgender name change case.

**9th Judicial District** (Dutchess, Orange, Putnam, Rockland, Westchester counties)

**Robert Hermann** of White Plains (DelBello Donnellan Weingarten Wise & Wiederkehr, LLP) is pro bono co-counsel in the matter of *Thompson v. Donovan*, a case pending in the U.S. District for the Southern District of New York. The complaint alleges that government agencies failed to act when low-income and disabled Yonkers residents were threatened with eviction after their landlord charged high electrical rates.

**10th Judicial District** (Nassau, Suffolk counties)

**Evelyn Kalenschner** of Hempstead, a retired attorney, volunteers twice a week with the Landlord Tenant Attorney of the Day of the Nassau Suffolk Law Services' Volunteer Lawyers Project. She represents indigent tenants facing eviction.

**11th Judicial District** (Queens County)

Handling 10 foreclosures for the Queens Foreclosure Conference Project, **Bernadette M. Crowley** of Douglaston donated more than 125 hours of pro bono services. She successfully attained loan modifications to allow families to retain their homes.

**12th Judicial District** (Bronx)

**Eric C. Woglom**, retired for six years, has volunteered with the Bronx Civil Legal Advice and Resource Office (CLARO) since 2011. He helps unrepresented litigants with consumer debt collection issues.

**Young Lawyer**

**Tracy Lynn Sullivan** of Syracuse has a solo practice representing indigent defendants in local criminal courts in Onondaga County. She has volunteered more than 40 hours annually to the Volunteer Lawyers Project of Onondaga County since 2011, while also voluntarily assisting Legal Services of Central New York for 25 hours per week.

**Senior Lawyer**

**Frank J. Longo** of Kenmore has volunteered with the Erie County Bar Association Volunteer Lawyers Project since 2012. He donated more than 60 hours of services for five cases in 2013, mostly handling non-parent petitioners for custody or visitation in Family Court.

**Law School Group**

The **Veterans Legal Assistance Project** at the Maurice A. Deane School of Law at Hofstra University served more than 150 clients through 20 volunteer attorneys and 20 law students. They held two clinics in 2013.

**Small Law Firm**

The Rochester law firm of **Ashcraft, Franklin, Young & Peters, LLP** has volunteered with the Volunteer Legal Services Project of Monroe County since 2004. Attorney **Sarah Ashcraft** has assisted indigent clients in abusive relationships. **Gregory Franklin** represents indigent clients needing legal assistance with adoptions.

To read more about the President's Pro Bono Service Awards, go to [www.nysba.org/PBawards](http://www.nysba.org/PBawards). ♦

Vogel is NYSBA's media writer.

## Criminal Justice Section Profile

By Hon. Mark R. Dwyer

### Section strives to make criminal law better for members and clients

Criminal law is different – and so the State Bar’s Criminal Justice Section is different, too.

Criminal law touches on money, on drugs, on violence, on sex, on trust and betrayals of trust, on family relations, and so many other “personal” aspects of life.

Our ambition in the Criminal Justice Section is to make criminal law better in how it affects our lives. Our members are very familiar with the ways that the criminal law protects, and fails to protect, society. We are very familiar with the ways that the criminal law protects, and fails to protect, individuals – victims, witnesses and defendants. We ask courts, the Legislature, judges and the public to understand where the law is flawed, and to fix it.

Our members include judges, prosecutors, defense attorneys and the stray academic. Many of our members now

in one of those categories have previously been in a different category. For example, it is the rare criminal law judge who has not been a prosecutor or a defense attorney, if not both. Unsurprisingly, we often fail to reach a consensus on issues we consider. But we consider them with all relevant perspectives represented.

#### Section reports

To make the criminal law better, the section studies particular problems and makes recommendations. Rick Collins’ article is illustrative. Rick and Jay Shapiro of New York City (White and Williams LLP), among others, worked for years to persuade the State Bar to endorse the idea that relatively minor offenders will more likely become good citizens if, after a period of time, the records of their convictions are sealed.

Not all of our section members are enthusiastic; but all views were taken into consideration in the formation of our section position. We have long focused, and will continue to focus, attention on areas like this where reforms are appropriate.

#### Quality learning

But the Criminal Justice Section is not just about lofty ideals and reforms. We know that there are other reasons to join a bar association and a section like ours.

In particular, we afford our members high quality continuing legal education (CLE) and, as long as my voice is heard, we will do it at rates as low as you are likely to find.

It is my view that it is far more sensible for us to put 100 attorneys in CLE chairs at \$50 per attorney, than 50

attorneys in CLE chairs at \$100 per attorney, or 25 attorneys in CLE chairs at \$200 per attorney. We aren’t looking to make a profit on CLE programs.

We also will give discounts when permissible to new practitioners and to public law practitioners. We understand that “public law” practitioners often can get free CLE from their employers. The section will compete for your CLE dollar by giving you different perspectives from very high quality presenters, more cheaply than any other bar association.

We offer substance on critical social issues, and cheap CLE. What a combination! ♦

*Dwyer is a justice on the New York State Supreme Court, Kings County. He is co-chair of the State Bar’s Task Force on Criminal Discovery.*

## Criminal Justice Section committed to a legislative sealing statute

By Richard D. Collins



Collins

Unlike most states, New York has no expungement or sealing law applicable to adults who are convicted of misdemeanors or felonies (other than in the limited instance of defendants convicted of a drug offense or certain specified offenses who complete a judicial diversion program, Drug Treatment Alternative to Prison program, or other judicially sanctioned drug treatment program [CPL 160.58]).

Even if it was merely a single nonviolent transgression in an otherwise law-abiding life, a conviction typically follows an ex-offender to the grave.

#### Collateral consequences

In 2006, the State Bar approved a report and recommendations from its Special Committee on Collateral Consequences of Criminal Proceedings entitled, “Re-entry and Reintegration: The Road to Public Safety.”

The committee noted that without employment, persons with a past criminal conviction cannot meet their own or their families’ basic needs, and that a criminal conviction can be an insurmountable hurdle to employment. A conviction can be a bar to more than 100 occupations in New York state that require some type of license, registration, or certification by a state agency, and impact numerous other opportunities.

Significantly, unemployment is closely correlated with criminal recidivism. Those who are unable to find work are more likely to re-offend. So, getting nonviolent ex-offenders back to work not only helps them and their families, but also enhances safety for the rest of us. It also makes economic sense by removing them from public assistance programs funded by taxpayers.

Our section has been at the forefront of efforts to create a mechanism to afford nonviolent ex-offenders a second chance. The section formed a Sealing Committee in 2011, co-chaired by Jay Shapiro of New York City (White and Williams LLP) and myself.

The committee issued “Sealing Records of Conviction Regarding Certain Crimes” and recommendations, which were adopted by the section and approved by the House of Delegates in January 2012. The report and recommendations set forth numerous eligibility requirements, including:

Limited Crimes. No violent felonies and no high-level felonies would be eligible for sealing. Also, no records involving sex crimes or crimes involving victims who were children or elderly would be eligible. Drunk driving convictions would not be eligible. Nor would the convictions of public officials who abused their positions.

No Career Criminals or Habitual Offenders. The record would have to be the applicant’s only felony criminal conviction, or, in the case of misdemeanors, no more than three misdemeanor convictions would be subject to sealing.

Waiting Period. After a conviction, an applicant would have to wait for a

period of time before seeking to seal a record. During this “waiting period,” the applicant could not commit any crimes.

Judicial Discretion. The prosecuting agency could oppose sealing and the judge would have discretion to grant or deny the application in the interests of justice based on a host of relevant factors.

Spring-back Provision. If the person is arrested for a crime subsequent to the sealing of the records, the record “springs back” and is immediately unsealed and can qualify as a conviction for sentencing purposes on the new crime. The net effect of this provision is “lifetime probation” – the person receives the benefits of a sealed record only as long as he or she maintains a law-abiding lifestyle.

The State Bar overwhelmingly adopted our report and the sealing issue was elevated to the list of NYSBA legislative priorities.

#### Following our lead

Since our report, several bills have been introduced in Albany addressing the initiative, most recently one from Chief Judge Jonathan Lippmann. This bill, OCA 2014-98R, incorporates many of the key points of our report and echoes the rationale behind our efforts.

The chief judge recognized that the lack of a mechanism to seal convictions from the distant past has “real world consequences in the form of hiring and other economic, housing, social and civil prejudice” on an individual.

“Is it really in the community’s best interests to keep him or her on the margin, to make it difficult for him or her

to get a good job so that he or she can achieve personal stability, stay clean, support a family and contribute to community welfare?” he asked in his supporting memorandum for the bill.

In conformity with our recommendations, the Office of Court Administration bill gives specific guidance for judicial discretion, excludes violent crimes and many other serious offenses and excludes career criminals or habitual offenders.

The waiting period for a felony conviction is 10 years from the date of the conviction, and seven years in the case of one or two misdemeanor convictions (periods tolled by incarceration time served).

A sealed conviction can be unsealed (spring back) upon the arraignment for a new felony or a conviction for a new misdemeanor (but resealed upon a termination favoring the accused). The proposed legislation would make it an unlawful discriminatory practice to inquire about past criminal convictions which have been sealed.

While there are those who may not believe in second chances after criminal transgressions, we prefer to believe that change is possible and that at some point, years after society’s debt has been paid, a person must be restored the opportunity to fully reintegrate into the community. Our section intends to continue pushing for the creation of a sealing statute in New York. ♦

*Collins, of Mineola, is a partner at Collins, McDonald & Gann, P.C. He serves on the Executive Committee of the Criminal Justice Section.*



## Letter to the Editor

# Schenectady Bar speaks out against real estate 'gross ups'

Dear Editor:

We, the Real Estate Practice Committee of the Schenectady County Bar Association, write in regard to an article in the January/February 2014 edition of the State Bar News – particularly, Richard Rifkin's exposition of the various opinions of the State Bar Committee on Professional Ethics on "gross ups," a technical, but highly controversial topic in the world of real estate transactions.

Rifkin's exposition is, as one would expect, well done and quite explanatory. However, we write to indicate our total opposition to these ethics opinions. The Ethics Committee does not like the practice of seller concessions and corresponding gross-ups. Who does? To most of us in the real estate practice, it is incredible – after what happened in the mortgage industry – that this practice is still authorized by the regulatory authority.

However, it does continue to be authorized, continues to be utilized and is part of the everyday practice of real estate attorneys. But what is the practicing attorney to do in the face of these ethics opinions as outlined by Rifkin? As Rifkin says at the end of his article, "The lawyer who participates in the transaction is required to insure that the grossing up of the price is disclosed."

Specifically, Ethics Opinion 882 states as follows: "Digest. If the sales

price in a residential real estate transaction has been 'grossed up' in exchange for a 'seller's concession,' *ALL TRANSACTION DOCUMENTS* containing the gross up sales price must disclose that the sales price has been increased by a sum equal to the seller's concession." Ethics Opinion 882 specifically quotes previous New York State Bar Ethics Opinion 817 and reaffirms the language, which is as follows:

"A lawyer may not ethically participate in such 'gross up' of the actual purchase price and concomitant seller's concessions unless there is neither deception nor misrepresentation at work in a transaction and its predictable consequences. At a minimum, this means that the gross up (and not merely the grossed up purchase price) *must be disclosed* in the transaction documents."

[Emphasis supplied]

In other words, the whole situation must be disclosed in all transactional documents.

One of the documents that is enormously critical in purchase and sale of real estate is the RP-5217, for it discloses the financial aspects of the transaction in a specific way that few other instruments do *and it is impossible to record a deed without the completion and filing of this instrument.*

But there is a new RP-5217 that came along as of January 1. That form specifically asks for the "full sales price."

One would think the instructions mean the grossed up sales price. They do not. The full sales price as defined in paragraph 13 of the RP-5217 Real Property Transfer Report Instructions states: "Enter the amount paid for the property. Do NOT include seller's concessions in the full sales price (i.e., the buyer and seller have agreed on a price of \$100,000 for the purchase of the property. As a part of the agreement, the seller will pay \$4,000 of the buyer's closing costs. Therefore, the actual sales price paid by the buyer (or received by the seller) is \$96,000 (\$100,000-\$4,000))." These instructions specifically prohibit disclosing the "gross up" which, as Opinion 882 states quoting 817, "must be disclosed in the transaction documents."

The instructions do not leave the situation alone. They go further. *They prohibit* disclosure of the situation. Paragraph (i) of Section 15 has a box to be checked which states: "Other unusual factors affecting sales (specifically below)." The Ethics Opinions dictate that here is where the attorney must disclose the entire gross up situation.

But the instructions prohibit this. The instructions specifically state: "Do not include seller's concession in this category." So by these instructions, the State Bar of New York is prohibiting a lawyer from complying with the Ethics Opinion of the New York State Bar Association.

So this is the situation. A lawyer represents clients, a husband and wife and their four children who have just spent \$500,000 purchasing a home and made an enormous financial commitment to pay a mortgage.

The lawyer wants to record the deed because he/she believes it is his/her ethical obligation to fulfill the lawyer's responsibility to the client—to see that the client is protected by the recording acts—specifically, Real Property Law §291.

But the lawyer cannot record the deed because the deed is not recordable unless the RP-5217 is filled out correctly, and as we have seen, this prohibits compliance with the Ethics Opinions. So the lawyer has a problem. He or she must comply with the lawyer's ethical obligations and properly represent the client or, instead, comply with the ill-founded opinions of the New York State Bar Ethics Committee.

The Real Estate Practice Committee of the Schenectady County Bar Association believes a resolution is clear—the real estate lawyer has an obligation to properly represent the client. ♦

Lawrence A. DeAngelus, Chair  
Real Estate Practice Committee  
Schenectady County Bar Association

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# RECENT DECISIONS & CASE LAW DEVELOPMENTS

The State Bar is pleased to provide you with case summaries and legislation alerts prepared by **CasePrepPlus™**, the Association's affinity partner. **CasePrepPlus™** is an online service highlighting and summarizing the most recent and significant New York appellate cases (with links to the full opinions), and Second Circuit and U.S. Supreme Court cases having significance for New York practitioners—plus alerts and reminders about recent legislation and uniform rules changes.

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## Court of Appeals

**CRIMINAL LAW. PINS. JUVENILE DELINQUENCY. DISTINCTION. RESISTING ARREST. OBSTRUCTING GOVERNMENTAL ADMINISTRATION.** In this PINS proceeding, the Family Court ordered the placement of the PINS in a secure facility after she absconded from a non-secure facility and resisted being taken back by probation officers. In ordering the PINS into a secure facility, the Family Court found that the PINS committed acts which, if committed by an adult, would have constituted resisting arrest and obstruction of justice. The Appellate Division reversed and remanded the matter to the Family Court for a new disposition, holding that the behavior of the PINS was consistent with what was expected of her, in contrast to what is expected from a juvenile delinquent. The Court of Appeals affirms. "A PINS is a person less than eighteen years of age who ... is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of a parent or other person legally responsible for such child's care, or other lawful authority." In contrast, a "juvenile delinquent is a person between eight and 15 years old who having committed an act that would constitute a crime if committed by an adult ... is not criminally responsible for such conduct by reason of infancy." Here, under the facts developed at the Family Court hearing, the conduct of the PINS was such that it did not constitute resisting arrest or the obstruction of justice, but rather behavior that was consistent with that of a PINS. Accordingly, the Family Court lacked authority to transfer the PINS to a secure facility [FCA §§720] Gabriela A. v. Presentment Agency.

**CRIMINAL PROCEDURE. SPEEDY TRIAL. MISDEMEANOR INFORMATION. OFF-CALENDAR DECLARATION OF READINESS. UNREADINESS AT NEXT COURT APPEARANCE DATE. EXCLUDABLE TIME. FACTORS.** Defendant, who was charged by misdemeanor information, moved to dismiss on speedy trial grounds [CPL 30.30] based upon a 34-day delay between the People's off-calendar declaration of readiness and their

statement of unreadiness at a following court appearance. In opposition, the People contended that the time was excludable because they needed it to strengthen their case. The Supreme Court denied the defendant's motion. The Appellate Division affirmed. The Court of Appeals reverses and dismisses the information, holding that the People's statement of unreadiness, although made in good faith, was not based upon an "exceptional fact or circumstance," such as the sudden unavailability of a material witness or evidence [CPL 30.30(3)(b)]. *People v. Sibblies*.

## First Department

**COMMERCIAL LAW. BAILMENTS. STATUTE OF LIMITATIONS. ACCRUAL. 10-YEAR DELAY IN MAKING DEMAND FOR GOODS.** Plaintiff brought an action for breach of his bailment relationship with the defendant, a wine warehouse. Plaintiff alleged that a condition of the bailment was that his wine would be stored until he could take delivery after returning from many years of working abroad. Undisputed is that 10 years elapsed between the time the agreement was made and the date the plaintiff demanded delivery, which the defendant could not fulfill. In moving for summary judgment, the defendant contended that the delay of more than 10 years was unreasonable as a matter of law, that the delay prejudiced its ability to defend the action, and that the action was time-barred on the ground of laches. In opposition and in support of his cross motion for summary judgment, plaintiff submitted his proof of purchase and contended that laches did not apply because his cause of action did not accrue until the defendant refused his demand for the goods upon his return from abroad. Order granting defendant's motion for summary judgment and denying plaintiff's cross motion is modified by denying the defendant's motion as well. Plaintiff's action was timely commenced under any applicable statute of limitations because it did not accrue until the defendant refused plaintiff's demand for his goods [CPLR 213(2); 214(3) and (4)]. Further, plaintiff raised a triable issue of fact as to whether his 10-year delay

was reasonable given his version of the bailment agreement. *Mueller v. Morrell & Co., Inc.*

**PERSONAL INJURY. SLIP AND FALL. TWO-FOOT HIGH SNOW MOUND. CURB. ALTERNATIVE. NEARBY CLEARED PATH.** Plaintiff, after checking on his relative's parked car, slipped and fell on a two-foot high mound of snow that was on the curb between the street and sidewalk when he was making his way back to the adjacent NYCHA project. In moving for summary judgment, the NYCHA conceded that its employees created the condition when they cleared the sidewalk of snow, but contended that it satisfied its duty to the public because a clear path was left at the corner sidewalk curb cut that was only five-car lengths away from where the plaintiff fell. Order denying the NYCHA's motion is reversed, and motion granted. "A property owner will have discharged its duty if a snow-free path is cleared between the street and the sidewalk within a reasonable walking distance of the property." Here, it was unforeseeable that the plaintiff would decide to climb over a two-foot mound of snow instead of using the nearby cleared crosswalk path and corner curb cut to reach the sidewalk. *McKenzie v. City of New York*.

**PERSONAL INJURY. LABOR LAW. VENTILATION. AERATION TANK. MUNICIPAL SEWAGE TREATMENT PLANT. UPGRADE.** Plaintiff suffered hypoxicischemic encephalopathy as a result of working in an emptied aeration tank as part of the upgrade of a sewage treatment plant owned by the City of New York. Plaintiff alleged that the GC and the City failed to monitor the air quality and oxygen levels in the tank adequately pursuant to 12 NYCRR 23-1.7(g) [aircontaminated or oxygen deficient work areas] and failed to provide him with a respirator pursuant to 12 NYCRR 23-1.8(b) [personal protective equipment]. In moving for summary judgment to dismiss plaintiff's §241(6), §200 and common law negligence claims, the defendants contended that the "open air" emptied tank was not an "unventilated confined space" within the meaning of the cited regulations. Order deny-

ing defendants' motion for summary judgment is modified by granting it with respect to plaintiff's §241(6) claim predicated upon a violation of 12 NYCRR 1.8(b). Contrary to the defendants' contention that the empty open air aeration tank was not a confined space because the means of ingress and egress was not through a trap door or manhole, these methods of entry and exit are not conclusive. Rather, a space may still be "confined" within the meaning of the regulation if it has a "restricted means of egress" [12 NYCRR 12-1.3(f)]. Here, although the top of the tank was open, access was still restricted because the plaintiff needed a 20-foot ladder to enter and exit the tank. *Cerverizzo v. City of New York*.

## Second Department

**PERSONAL INJURY. EMT EMERGENCY CALL. GOVERNMENTAL IMMUNITY. FAILURE TO RESTRAIN PLAINTIFF.** Plaintiff, who had a history of schizophrenia, was injured when he broke away from NYC EMT personnel who had responded to his sister's 911 call and were preparing to transport him to a hospital. In the event, the plaintiff ran away from his residence, jumped over a nearby overpass, and fell to the highway below. In moving for summary judgment, the City contended that it was immune from suit because both the police who had already left the scene and the EMTs were performing governmental functions, and that no special relationship existed between the EMTs and the plaintiff. Order denying the City's motion is reversed, and motion granted. Plaintiff failed to raise a triable issue of fact as to whether a special relationship existed. *Torres v. City of New York*.

**PERSONAL INJURY. AUTO/MOTORCYCLE COLLISION. EXIT FROM PRIVATE PROPERTY. OBSTRUCTION OF VIEW BY OVERGROWN VEGETATION. NO COMMON LAW DUTY.** In this wrongful death action, plaintiff's decedent, a motorcyclist, crashed into the defendant's vehicle while it was exiting the codefendants' private property. Plaintiff alleged that the

*Continued on page 32*



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(W)	May 21	New York City	Wyndham New Yorker Hotel
(W)	May 28	Albany	Albany Marriott (Webcast)

### P/S DEBT COLLECTION & ENFORCEMENT OF JUDGMENTS

(T)	June 24	Westchester	Holiday Inn Mt. Kisco
(W)	June 25	Long Island	Melville Marriott
(Th)	June 26	New York City	New York's Hotel Pennsylvania
		Syracuse	Sheraton Syracuse University Hotel
(M)	June 30	Albany	New York State Bar Association

### P/S THE NUTS & BOLTS OF CONTRACT DRAFTING: FROM BASIC TO ADVANCED TOPICS – Live & Webcast

(M)	July 21	New York City	New York's Hotel Pennsylvania
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## ETHICS 2014 (9:00 a.m. – 12:35 p.m.)

(F) June 6	Buffalo	Holiday Inn Amherst
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(M) June 9	Rochester	Holiday Inn Rochester Airport
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(T) June 10	Long Island	Melville Marriott
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(T) June 10	New York City	New York's Hotel Pennsylvania
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(F) June 13	Syracuse	Genesee Grande Hotel
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(M) June 16	Westchester	Holiday Inn Mt. Kisco
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(F) June 27	Albany	New York State Bar Association
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(M) June 30	Ithaca	Hilton Garden Inn - Ithaca
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## BRIDGING THE GAP

(M-T) July 14-15	Albany (VC)	New York State Bar Association
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(M-T) July 14-15	Buffalo (VC)	The Conference Center Niagara Falls
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(M-T) July 14-15	New York City	New York's Hotel Pennsylvania
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## TRIAL OF A CUSTODY CASE

(F) June 6	Albany	Holiday Inn Albany Wolf Road
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Long Island	Melville Marriott
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(F) June 13	New York City	New York's Hotel Pennsylvania
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## EFFECTIVE TRUST PLANNING & DRAFTING: DOING THE BEST FOR YOUR CLIENT – PART 2

(W) May 21 (12:00-1:15) Webcast

(M) June 2 (12:00-1:15) Webcast

(F) July 18 (11:00-12:15)	Albany	New York State Bar Association (Webcast)
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## PERSUASIVE LEGAL WRITING: WINNING WITH WORDS

(W) May 28	Albany	New York State Bar Association
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(F) May 30	New York City	Wyndham New Yorker Hotel (Webcast)
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## 11 STEPS TO SUPERIOR LEGAL WRITING – Live & Webcast

(Th) May 29	New York City	Wyndham New Yorker Hotel
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## DISCOVERY PROCEEDINGS FOR TRUSTS & ESTATES PRACTITIONERS (9:00 a.m. – 1:00 p.m.)

(Th) May 29	Albany	New York State Bar Association
	Syracuse	Sheraton Syracuse University Hotel

(F) May 30	Buffalo	Holiday Inn Amherst
	Long Island	Melville Marriott

(Th) June 5	Rochester	Holiday Inn Rochester Airport
	Westchester	Holiday Inn Mt. Kisco

(W) June 11	New York City	New York's Hotel Pennsylvania
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## PUBLIC SECTOR LABOR RELATIONS

(T) June 3	New York City	New York's Hotel Pennsylvania (Webcast)
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(Th) June 12	Syracuse	Sheraton Syracuse University Hotel
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## PRACTICING ENTERTAINMENT LAW IN NEW YORK: WHAT YOU NEED TO KNOW – Live & Webcast

(Th) June 5	New York City	Wyndham New Yorker Hotel
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## Recent Decisions & Case Law Developments

*Continued from page 30*

defendant property owners negligently permitted the overgrowth of vegetation, which obstructed the sight-lines of motorists both on the adjacent road and those who were exiting its property in violation of local ordinances. Order granting the defendant property owners' motions for summary judgment is affirmed. The alleged local ordinances were not intended to protect motorists from the hazards of vegetation that obstructed views at intersections and driveways. Further, a property owner has no common law duty to prevent vegetation growing on its property from creating a visual obstruction to users of a public highway. *Preux v. Dennis*.

**PERSONAL INJURY. MEDICAL MALPRACTICE. MOTIONS. SUMMARY JUDGMENT. SUFFICIENCY OF EXPERT AFFIRMATIONS.** In this wrongful death action, a 62-year old vascular surgeon (patient), who had high blood pressure, diabetes and renal insufficiency, allegedly died as a result of complications caused by undergoing a contraindicated second contrast renal angiogram two days after the first one was performed. In

opposition to the motions for summary judgment by the defendants (nephrologist, interventionist and hospital), plaintiff submitted the affirmations of two experts who opined that the second angiogram was contraindicated because it was done too soon after the first one and caused the decedent to develop acute renal failure. Order denying defendants' respective motions is reversed (3-1), and motions granted. The affirmations of plaintiff's experts in opposition were insufficient because they failed: (1) to raise an issue of fact as to whether the decedent's condition was, in fact, caused by the actions of the defendants in performing the second angiogram; and (2) to differentiate between the acts and omissions of the various defendants. *Ahmed v. Pannone*.

### Third Department

**INSURANCE LAW. COVERAGE. GENERAL LIABILITY. COMMERCIAL UMBRELLA. RIGHT OF PRIVACY CLAIMS.** Plaintiff (insured) brought an action against its primary and umbrella commercial insurance carriers to recover for breach of contract with respect to their failure to defend and indemnify

it in an underlying commercial dispute which resulted in a judgment against it in the sum of \$3.2 million. Undisputed is that the underlying action, which was tried to verdict in North Carolina, arose out of claims that the plaintiff (insured) interfered with the conduct of the underlying plaintiff's business by misappropriating trade secrets from one of the underlying plaintiff's former employees, who was subject to noncompete and electronic rights agreements. Plaintiff (insured) moved for summary judgment on the ground that the policies provided coverage for "oral or written publication of material that violates a person's right of privacy." In opposition and in support of their cross motions for summary judgment, the carriers contended that their policies did not afford coverage, primarily because the right of privacy provision extended only to a person, not a corporation. Order denying plaintiff's motion and granting the defendants' cross motions is affirmed. In the context of the policies' provisions, the underlying complaint for tortious interference with contract and business relations, unfair and deceptive trade practices and misappropriation of trade secrets, did not

constitute a claim that the plaintiff violated "a person's right of privacy." *Sportsfield Specialties, Inc. v. Twin City Fire Insurance*.

**CRIMINAL PROCEDURE. PLEAS. PROBATION. COMPLETION OF DRUG PROGRAM. VIOLATION. INCARCERATION.** Defendant, who pleaded guilty to a drug charge and was placed on probation, subsequently admitted in 2010 that he violated his probation after being promised that he would be restored to probation status if he completed a long-term drug treatment program. Although the defendant successfully completed the program, he subsequently was sentenced to two years of prison and PRS for his 2010 probation violation when he was arrested on an unrelated charge. The matter is remitted to the County Court to afford the defendant an opportunity either to withdraw his 2010 admission that he violated probation or to have his probation restored pursuant to his plea bargain. "Where a guilty plea has been induced by an unfulfilled promise, the plea must be vacated or the promise must be honored." *People v. Hall*. ♦



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May/June 2014

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