



Staff Memorandum

HOUSE OF DELEGATES Agenda Item #11

REQUESTED ACTION: Approval of the report and recommendations of the Queens County Bar Association to expand County Law Article 18-B to include civil cases.

Attached is a letter from the Queens County Bar Association proposing that the Article 18-B program, which provides criminal defense lawyers to indigent defendants, be expanded to provide civil legal services. The letter notes that the establishment of such a program could assist indigent clients to find new jobs, thus saving state and local governments funds that otherwise would be spent on public assistance, housing and Medicaid. Lawyers, in turn, would have the satisfaction of helping a poor person to an improved life.

A representative of the Queens County Bar Association will present the report at the June 21 meeting.



Organized 1876

QUEENS COUNTY BAR ASSOCIATION

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April 2, 2014

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Malvina Nathanson, Delegate
New York State Bar Association
One Elk Street
Albany, NY 12207

Dear Sirs and Madams:

Attached is a letter from our Vice President, Paul E. Kerson, with proposals to the New York State Bar Association regarding Civil 18-B attorneys.

This is the opinion of the Queens County Bar Association Board of Managers and we urge the State Bar to consider these proposals.

Yours truly,

Joseph F. DeFelice
President



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Re: Balancing the Legal Services Needs of the Poor
with the Financial Uncertainty of the Law Practice
in New York in 2014

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Executive Director

Dear David, Glenn, David, Bob, Lillian, Bob, and Malvina:

I wanted to give you my thoughts and experience on how the Bar can best serve the poor. I am motivated to write based on the January 31st spirited debate at the House of Delegates.

Poverty is not a permanent condition; neither is wealth. The Organized Bar is the Government behind the Government. We are where private enterprise and government are integrated on behalf of the general public. We organize state-chartered corporations and try to keep them out of trouble. We do the same for families and individuals.

To truly fulfill our jobs as lawyers, each of us MUST represent all economic classes of people. On a County Law Article 18-B assignment, you get the young man out of the felony drug sale charge by carefully negotiating a no-jail time misdemeanor plea with the Assistant District Attorney and State Supreme Court Justice or County Court Judge presiding.

Then you call the Small Business Owner whose business you saved by beating his national real estate company landlord at trial in the Commercial Landlord-Tenant Part of the Civil Court. You prevail upon him to hire this young

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man, despite the misdemeanor drug conviction, because the Small Business Owner himself is not poor because of you.

You have THEN made a poor person into a Working Stiff just like yourself. The 18-B poor person is no longer poor. He no longer needs 18-B. And he is unlikely to be arrested again for selling drugs, because now he is a Clerk in a retail store, selling legal items - hardware, socks, groceries, or dry cleaning, and getting a decent salary to do it. Furthermore, you have instructed the Small Business Owner whose business you saved to call you the minute your former 18-B poor person steps out of line.

Lawyers who only represent corporations cannot do this.

Lawyers who only represent poor people cannot do this.

Neither one has the contacts among both the poor and the wealthy.

What the Organized Bar Should Do. Legal Aid Society lawyers and other full time Public Defenders should be permitted to have private civil clients on their own time. In Queens County, we have a second private Public Defender's office, Queens Law Associates. Their contract with the City of New York permits them to practice privately as well.

County Law Article 18-B should be expanded to include civil cases, and every lawyer in the State should be encouraged to participate. Corporate Law Firms should be encouraged to start Low Bono Departments. By Low Bono, I mean reduced fees. The Article 18-B program provides \$75 per hour for felonies and \$60 per hour for misdemeanors, a nearly pro bono wage in light of \$150 to \$300 per hour legal fees Upstate and in much of NYC and Long Island, and \$500 to \$1000 per hour in certain Manhattan firms. The Article 18-B rates should be raised.

Remember that overhead uses up 50% of every legal fee, and that is with careful law office management. Overhead uses a larger portion of fees if one is not constantly watching expenditures.

For more than 30 years, I have served as a Member, Co-Chair or Chair of the Bar Panels Committee of the Queens County Bar Association. We interview, select and recommend lawyers for service as part-time Public Defenders for the State and local Courts of Queens County. We insist on applicants with a sincere desire to help the poor and to make the Bill of Rights a living, breathing reality for the people who need it most. We meet every six weeks for this purpose, summers excluded.

We do not take anyone who is looking to "build their practice" or "gain experience". Our Panelists are former Assistant District Attorneys, former Legal Aid Society staff attorneys, former Law Secretaries or lawyers with similar prior experience.

Our Queens County Article 18-B panelists provide superior representation to indigent defendants charged with serious crimes. Our Judges and Justices appoint our panelists again and again to defend people facing A-1 and lesser felony indictments.

Because of the sheer size of the Queens County population, over the decades we have selected a large percentage of the Public Defenders in the State.

Think of how much money cities, counties and the State will save by expanding the Article 18-B private Public Defender program to civil cases. If participating lawyers are appropriately screened for motivation, the savings will be enormous.

If the Article 18-B program is expanded to civil cases, our dedicated panelists may be able to find some of our poor clients new jobs with our private business-owner clients, thus saving State and local governments millions of dollars in public assistance, public housing and Medicaid funding. Because of the trust we have with our private business-owner clients, they often listen to us in a way that the State Labor Department can never duplicate.

I understand that the State is planning to spend taxpayer dollars on non-lawyer "navigators" for the poor in civil cases. These funds are much better spent on experienced, well-motivated, licensed attorneys under the Article 18-B program. Legal problems of poor people are just as difficult as those of anyone else, and are further complicated by poverty itself. Assigning non-lawyers to the poor is not fair to the poor, and will make their legal problems even more difficult to solve after they are bungled by non-lawyer "navigators".

It is not that difficult for a lawyer with a healthy private practice to assist a grateful indigent client in rebuilding his or her life. Once the necessary lawyer-client relationship of trust is established, an indigent client can be placed on the road to financial recovery.

Lack of a job leads to despair and depression, which can lead to personal inaction. Lack of a job can also lead to more crime, more arrests, and more costs to the State and local governments. With a trustful lawyer pushing the client, amazing improvements can be achieved. This is not always possible. Often the client is too uncooperative. But it is always worth exploring and accomplishing if it can be done.

For their own good, corporate law firms should always have some Low Bono clients in their offices.

From practicing law in this manner for 36 years, I can tell you that there is job satisfaction in this that cannot be duplicated in any other profession.

Lawyers who only represent the poor or only represent the wealthy have no idea what they are missing -the chance to match them up so as to eliminate poverty one person at a time.

Forcing lawyers to represent the poor for free will only cause resentment, and hurt the poor in the process. There can be no worse idea than giving a poor person a lawyer who resents that person. Such a lawyer would never be approved by our Bar Panels Committee.

The financial pressures on the private lawyer in New York are enormous -the legal secretaries and office staff; office landlord; computer consultant; Westlaw; cell phone and land line provider; health, life and professional liability insurance carriers; Federal, State and Local taxes. All of these must be paid before Nickel #1 can be taken home to family members who expect to be supported. Often the whole thing just doesn't add up, and money must be borrowed just to keep going.

But from time to time, it does all add up, and that is when Article 18-B Public Defender assignments can be accepted. But to expect our lawyers to work 50 hours a year for free, well that is just a bit too much. There are very few cases out there that take only 50 hours. A needy client is a major project all by himself or herself.

Remember that clients – from the poorest to the richest – today wish to contact the lawyer by e-mail and cell phone just about every day. If the lawyer gives in to this communications abuse, there will be no motions, no court appearances, no trials, no Examinations Before Trial, no pre-trial Hearings, no Mediations, no Arbitrations, no briefs and no law practice as we know it.

However, if the lawyer does not attend to this communications abuse, there will be grievances for "failure to communicate". The solution — more staff, just to deal with additional e-mails and cell phone calls. More staff means more costs, means less time for pro bono. Thus, expansion of the Article 18-B program is essential to serving the poor. The meager Article 18-B payments can at least cover the cost of extra staff necessary to cope with the communications abuse. Special Note — it is the poor who call and e-mail most of all, because it is they who are the most needy.

But our problems pale in comparison to those of an unemployed person facing arrest, eviction or a default money judgment aimed at their very limited resources.

We must all rededicate ourselves to the type of law practice I described above – one where all economic classes of people are welcome all the time. This is what I was taught by my Elders at the Queens County Bar Association in the beginning, 36 years ago. This is the type of practice they all had, and all believed in.

Some of us still live this way. It is time that every lawyer in the State aspires to it. It is up to the Organized Bar to encourage every lawyer to participate because they want to and because they believe in the General Practice of Law, not because they are forced to.

It was once a Noble Profession, as described above. It is high time we encouraged every Member of the Bar to return to our roots — serving everyone in the community, regardless of economic status. It is only the lawyer who knows everyone's private economic circumstances. No one else in our society is in a position to economically integrate the community.

Specialization has its place. But Specialization is NO EXCUSE to abandon all the basic topics we mastered in order to graduate from Law School and pass the Bar Exam. Specialists should remain Generalists for at least a few cases per year.

If they do not, they will never know the Job Satisfaction of trying to help a poor person improve his or her lot in life. If you can solve the legal problems of a poor person, and find that person a job, you are creating Justice Itself. And isn't the Creation of Justice Itself what we are all supposed to be doing?

But the State cannot expect our dedicated lawyers to sacrifice 50 or more hours per year and thus shoulder this responsibility alone. All of the citizens - the State, County or City - must pay part of the cost.

Sincerely,

Paul E. Kerson

Paul E. Kerson
Vice President, Queens County Bar Association and
A Member of the NYSBA House of Delegates

cc: Arthur Terranova, Executive Director
Joseph F. DeFelice, President
Joseph Risi, Past President
Richard M. Gutierrez, Past President
David L. Cohen, Past President
Zenith T. Taylor, Elected Delegate, NYSBA
Steven Wimpfheimer, Elected Delegate, NYSBA
Joseph Carola, III, President-Elect
Jennifer M. Gilroy-Ruiz, Treasurer
Gregory J. Brown, Secretary
Queens County Bar Association

NOTE – I hope you will publish this letter in the next issue of the NYSBA *Journal*. That would be a good star on our collective Road to Recovery.