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ANNUAL MEETING 2015



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House of Delegates backs compromise on mandatory pro bono reporting rule

By Patricia Sears Doherty

The proposed compromise reached by President Glenn Lau-Kee on controversial portions of a 2013 rule that mandates attorneys report their pro bono hours and charitable contributions on their biennial registration forms was approved by the House of Delegates at its November 1 meeting in Albany.

The approval on the proposed changes to the pro bono reporting rule, reached by voice vote, came after delegates agreed to substitute two new resolutions for one proposed by the Executive Committee that was amended and postponed at the delegate meeting on January 31, and then further postponed at the delegates meeting on June 21.

The resolution requests that the Administrative Board of the Courts amend section 118.1 of the Rules of the Chief Administrator so that attorneys would report their pro bono hours and financial contributions on an anonymous basis only and that such data would be made public on an aggregate basis only. The resolution also calls on Chief Judge Jonathan Lippman to expand the classifications of pro bono and other public service.



Proposed solution—President Glenn Lau-Kee, right, answers questions during a presentation on proposed changes to the mandatory pro bono reporting rule at the House of Delegates meeting on November 1. [Photo by Marty Kerins, Jr.]

The State Bar resolution has been sent to the Office of Court Administration for consideration by the Administrative Board.

The House also approved a resolution that amended the State Bar's comment on Rule 6.1 of the New York Rules of Professional Conduct.

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State Bar wins delay on change to UBE

By Patricia Sears Doherty

Less than two weeks after the House of Delegates requested that the State Board of Law Examiners extend the comment period and delay implementation of a Uniform Bar Examination, Chief Judge Jonathan has agreed to both actions.

The Chief Judge previously set a November 7 deadline for comments on a proposal to implement the Uniform Bar Exam (UBE) in July 2015. It would replace the current New York exam, which includes New York-centric essays and multiple choice questions, as well as multi-state portions.

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More study needed—Eileen Millett, left, and Dean Patricia Salkin, co-chairs of the Committee on Legal Education and Admission to the Bar, outline their reasons for proposing a delay in the comment period on the state bar exam changes. [Photo by Marty Kerins, Jr.]

Non-member visit rules change fails

The rules of the House of Delegates stand as they are after an attempt to amend them to require the Chief Judge to answer questions after his annual Judiciary report failed at the November 1 House of Delegates meeting.

Delegate Steven H. Richman of New York City (Board of Elections, City of New York) proposed the amendment.

The proposed amendment would have prohibited a non-House member employed by the Unified Court System from addressing the House or the Association unless he or she consents to respond to questions from members for a time at least equal to the amount of time of his or her remarks.

In a letter to President-elect David P. Miranda, who chairs the House, Richman said the resolution was "designed to ensure that the House's long tradition of vigorous debate and open dialogue is encouraged. It also serves to prevent the meetings being used for the delivery of propaganda that cannot be challenged."

The strongly worded resolution said the leadership of the court system—in a veiled reference to Chief Judge Jonathan Lippman—"has not engaged in meaningful consultation with the State Bar on matters of great importance, urgency and concern to its Members."

The resolution was a reaction to the year-long dispute between the State Bar and the Chief Judge concerning the mandatory pro bono reporting rule set in 2013 without prior input from the practicing bar.

On November 1, Richman said the push by Lippman to institute the Unified Bar Examination in place of the current bar exam with only a 30-day comment period, underscored the need for such a rule.

"I am tired of being forced to sit and listen to propaganda" without the opportunity to ask questions of the Chief Judge. "This is a matter of simple fairness," Richman said at the meeting.

Hon. Rachel Kretser of Albany (Albany City Court - Criminal Division) was the sole delegate to address the resolution.

"I have always liked the collegiality....and elevated level of the discussions of this body," Kretser said. "I totally understand the frustrations that many members of this House feel. But this is not the answer. We are better than this."

The resolution failed by voice vote.

—Patricia Sears Doherty

House backs compromise on mandatory pro bono reporting rule

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The resolution, amending comment 2 of Rule 6.1 proposed by the State Bar's Committee on Standards of Attorney Conduct, states that the State Bar acknowledges that the board has changed the aspirational number of hours of pro bono service from 20 to 50, allowing the language of the "comment" to conform to that of the rule.

Mandatory compromise

"In doing this, I recognize that this, to some people, will not be totally satisfactory," said Lau-Kee in introducing the reporting resolution, "but this is a very reasonable, workable compromise that has benefits to all parties."

The compromise was reached by Lau-Kee and President-elect David P. Miranda during a series of summer and fall meetings with Chief Administrative Judge A. Gail Prudenti and Helaine Barnett, chair of the courts' Task Force to Expand Access to Civil Legal Services.

Lau-Kee also met privately with Chief Judge Jonathan Lippman before and during the meetings.

During those discussions, Lau-Kee said the Chief Judge highlighted areas in which the court system would be making proposals in the near future. Lau-Kee discussed with Lippman the importance of regular communications between the courts and the State Bar, and the benefits of meaningful input by the State Bar toward the advancement of future initiatives.

During his President's Report earlier in the meeting, Lau-Kee said the State Bar and the courts "are just starting the conversation of how we work together to leverage the resources that all of us have (to provide legal services). We intend to keep on being part of them."

Going forward

The compromise on the reporting rule came after more than a year of heated discussions at House of Delegates meetings, during which delegates called the mandatory rule coercive and an invasion of attorneys' privacy. Many attorneys also objected to the rule in strongly worded letters to the Chief Judge.

Since the rule's introduction in 2013, some attorneys have registered passive objections to the existing rule when filing their biennial registrations. Several delegates expressed concern about how to answer the existing reporting rule question and whether there could be disciplinary action for refusing to divulge their pro bono hours or charitable donations.



A question—Delegate Betty Lugo raises questions about potential disciplinary action for not reporting pro bono hours. [Photo by Marty Kerins, Jr.]



'Well done'—Michael Miller commends President Glenn Lau-Kee for working toward compromise on the mandatory pro bono reporting rule dispute. [Photo by Marty Kerins, Jr.]

Lau-Kee and Miranda obtained clarification on the potential of a Freedom of Information Law request for the registration forms. They were told that, under a broad interpretation, the forms would be subject to the law.

Lau-Kee added that both Prudenti and Barnett "accepted that collection of the information will be completely confidential." Discussions continue on the mechanisms necessary to ensure that confidentiality.

A small committee to monitor the court's actions concerning the State Bar's requested changes will be formed. Miranda, William T. Russell, Jr. of New York (Simpson Thacher & Bartlett LLP), and Barbara Moses, immediate past president of the New York County Lawyers' Association, have accepted seats on the new committee. An additional three committee members will be appointed by the courts.

Praise and caution

Before the vote approving Lau-Kee's resolution, several delegates praised the actions of Lau-Kee and Miranda in crafting the compromise.

"I thank Glenn for all of the effort. While I am not elated, I am grateful," said Past President Robert Ostertag of Poughkeepsie (Ostertag O'Leary Barrett & Faulkner), a leader of the rule's opposition.

Past President Mark Alcott of New York (Paul, Weiss, Rifkind, Wharton & Garrison LLP) commended Lau-Kee for his "statesmanlike conduct" and called the compromise "an excellent result given what we had to contend with."

"I also commend Glenn Lau-Kee. He did a terrific job" with an issue that was debated statewide," said delegate Michael Miller of New York City (Law Office of Michael Miller). "It is time to move on."

However, some delegates expressed concern over the reality of confidentiality of attorney's reporting statistics.

"This is letting a camel into the tent," said Steven H. Richman of New York City (Board of Elections, City of New York). Delegate Joseph Ranni of Florida (Ranni Law Firm) called the failure to address the problem of unmet pro bono needs "the elephant in the room."

To view the full webcast of the November 1 House of Delegates meeting, go to www.nysba.org/HODwebcast. ♦

Sears Doherty is State Bar News editor.

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.

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