



DAVID P. MIRANDA

President, New York State Bar Association

Heslin Rothenberg Farley & Mesiti P.C.
5 Columbia Circle
Albany, NY 12203
518/452-5600
FAX 518/452-5579
dpm@hrfmlaw.com

January 28, 2016

**January 2016
President's Report to the
House of Delegates**

1. PRESIDENT'S INITIATIVES

Pro Bono

In partnership with The New York Bar Foundation and its President, John H. Gross, we have created a joint committee to raise funds to support legal services initiatives, co-chaired by Hon. Barry Kamins and Marion Hancock Fish. In addition, in conjunction with the American Bar Association we are finalizing plans to offer an e-mail based pro bono service, by which volunteers can review questions from clients sorted by practice area and respond via e-mail with answers and solutions. We are also advocating for a Statewide Justice Center to promote pro bono opportunities in areas where there are unmet legal needs.

I am also pleased to announce the hiring of our new Director of Pro Bono Services, Kristen Wagner. Kristen will be instrumental in our new pro bono initiatives, and I look forward to working with her to help our progress in these important efforts.

New York State Constitution

At the November 2015 meeting, the House of Delegates approved a report from our Committee to Study the New York State Constitution recommending that our state government create a state-funded, non-partisan preparatory commission to provide research and analysis in advance of the 2017 referendum on whether to authorize a convention to amend, revise or rewrite the state Constitution. We are gratified that in his 2016 State of the State/budget address, Governor Cuomo proposed investing \$1 million in creating a preparatory commission. The Association has recommended that the commission educate the public about the state Constitution; review proposals for change and simplification; research past conventions; and prepare impartial background materials for 2017 voters—and for delegates—if a convention is held. If voters approve a convention, constitutional convention delegates would be elected in 2018 and meet in Albany in 2019.

On December 7 2015, our Association held a “boot camp” for reporters to help them prepare for covering the potential Constitutional Convention. Topics covered included the differences between the U.S. and State Constitutions and the process by which New York decides whether to hold a convention.

Judicial Salaries

Every four years, New York State officials are required to appoint a commission to review judicial salaries for judges in courts ranging from New York City civil and criminal courts to the State Court of Appeals and determine whether salaries should be increased. Judicial compensation is a high priority for our Association; the justice system's ability to function properly depends on retaining qualified and experienced judges and attracting the best and brightest attorneys to judicial service. In November 2015 I testified at a hearing of the Commission on Legislative, Judicial and Executive Compensation in support of an increase in salaries for all of our judges.

Third-Party Legal Services

In August 2014, the American Bar Association created a Commission on the Future of Legal Services to examine the delivery of legal services in the United States and other countries and make recommendations to improve the delivery of, and public access to, legal services. The Commission has released a resolution it plans to bring to the ABA House of Delegates at its February 2016 Midyear Meeting, proposing the adoption of Model Regulatory Objectives for the Provision of Legal Services. Our Association's Working Group on Third-Party Legal Services has reviewed this proposal and has serious concerns as to whether these model objectives ensure adherence to the core value of our profession, and the Executive Committee will consider what steps our Association should take with respect to this resolution.

Power of Attorney

A number of our sections have expressed dissatisfaction with the current statutory provisions governing power of attorney, noting that they contain many pitfalls that work to the detriment of a vulnerable population. In 2015 I appointed a Working Group, chaired by Ellen G. Makofsky and consisting of members of affected sections, to review the problems with current power of attorney provisions and recommend statutory amendments to address these issues. I am pleased that at this meeting the Working Group will be presenting its proposals to improve these provisions for our state's citizens.

2. LEGISLATIVE ACTIVITIES

State Advocacy

As the State of New York kicked off its budget process with the Governor's State of the State/Budget Address on January 13, several issues on the Association's advocacy agenda were highlighted:

Funding for a preparatory commission in advance of the 2017 referendum on whether to hold a Constitutional Convention. The report approved by the House of Delegates in November played a significant role in raising this issue for state policy makers. I have written to the Governor and the Legislature urging approval of the state budget with sufficient funding for such a commission in order to quickly begin this important work. The Governor included a \$1 million appropriation in his budget proposal;

Legislation to prevent wrongful convictions, by requiring the recording of custodial interrogations for certain crimes and reforming laws on eyewitness identification. Our advocacy efforts will continue to support legislation on which the NYSBA, the State

District Attorneys Association, and the Innocence Project agreed last June. The Governor's materials, released in connection with his address, cited the agreement and the legislation that is one of the Association's state legislative priorities; and,

Legislation to establish a state program for paid family and medical leave. The Governor highlighted this topic in his address, and we will support state proposals that are consistent with the policy established by the House of Delegates in November 2015.

In addition, I will lead lobbying efforts in support of legislation introduced by Assembly Member Patricia Fahy and Senator John DeFrancisco that would provide state funding and ensure rules and standards for the provision of indigent defense service, one of the Association's legislative priorities.

Federal Advocacy

On January 12, Claire Gutekunst and I led a series of meetings with members of the New York Congressional Delegation in Washington, D.C. to support the Association's positions on a number of priority issues. First, we expressed the Association's appreciation for the enactment of the 2016 budget that funded the federal Judiciary's budget request and that added \$10 million to the budget of the Legal Services Corporation. In 2015 the Association was joined by bar presidents from across New York State, urging Congress to address Sequestration and its impact on access to justice. Late last year Congress acted to relieve the devastating budget caps that had been imposed by Budget Control Act of 2011.

In addition, we discussed the Association's following positions:

Support for the Sentencing Reform and Corrections Act of 2015, a bi-partisan agreement by leaders of the U.S. Senate, which would reform laws regarding mandatory-minimum sentences for certain crimes, limit solitary confinement for juveniles, and provide for expungement of criminal records for juveniles;

Support the Family and Medical Insurance Leave Act, S.786 (Gillibrand) and H.R.1439 (DeLauro), in order to modernize outdated laws on family leave and to promote a uniform, strategic approach to leave policies, thereby minimizing business disruption and employee attrition, and enhancing productivity for businesses over the long term.

Support for repeal of the "Dickey Amendment", which now restricts funding for Centers for Disease Control and other federal agencies from collecting data and undertaking research relating to firearm violence. This proposal was recommended by the report of the Association's Task force on Gun Violence, approved by the House of Delegates in March 2015; and,

Opposition to the Lawsuit Abuse Reduction Act ("LARA"), which would amend Rule 11 of the Federal Rules of Civil Procedure to reinstate mandatory sanctions provision that was deleted from the FRCP in 1993 and a eliminate a provision that allows parties and their attorneys to avoid sanctions by withdrawing particular claims, and thereby resolving issues before the matter goes before the court.

3. ACTIVITIES AND EVENTS

Court of Appeals Vacancies

In October 2015, the State Commission on Judicial Nomination released a list of seven candidates to fill the vacancy in the office of Chief Judge of the State of New York created by the retirement of Chief Judge Jonathan Lippman on December 31, 2015. Our Committee to Review Judicial Nominations conducted reviews of these candidates and on November 10 2015 I communicated our Association's ratings of the candidates to Governor Cuomo. On November , 2015 the Governor announced his selection of Janet DiFiore, District Attorney of Westchester County, as Chief Judge. Last week I testified before the Senate Judiciary Committee in support of District Attorney DiFiore's confirmation.

In December 2015 the Commission on Judicial Nomination released a list of seven candidates to fill the vacancy in the position of Associate Judge of the Court of Appeals created by the resignation of Hon. Susan P. Read in August 2015. Our Committee to Review Judicial Nominations conducted reviews of these candidates and on January 6, 2016 I sent our ratings of these candidates to the Governor. On January 20, 2016, Governor Cuomo announced the nomination of Michael J. Garcia to fill the vacancy.

In the weeks ahead we will work to continue the regular dialogue and communication on issues of importance with the new Chief Judge and the Office of Court Administration.

Uniform Rules on Attorney Discipline

In 2015 then-Chief Judge Jonathan Lippman's Commission on Statewide Attorney Discipline ("Commission") initiated a review of the State's attorney-disciplinary system and recommended promulgation of rules to enhance the system's efficiency and effectiveness. In July 2015 I presented testimony before the Commission on the issue of discovery in the disciplinary process. As a result of this study, the Appellate Division has announced uniform rules for attorney discipline that will become effective on July 1, 2016. Our Association submitted comments to the Office of Court Administration regarding these rules in late December 2015.

Temporary Practice Rules

On December 15 2015 the Office of Court Administration announced the adoption of rules that will authorize attorneys not admitted in New York to perform limited legal services in the state as long as the jurisdiction in which the attorney is admitted allows New York lawyers to perform similar services in that jurisdiction. The rules are an outgrowth of efforts by our Association, the New York City Bar Association and the New York County Lawyers Association to develop rules that permit lawyers to work briefly outside the states or countries in which they have been admitted when the work relates to matters they are handling within those states or countries.

January 21, 2016 Third Department Admission Ceremony

Last week, more than 700 attorneys were sworn in as New York lawyers by the Appellate Division Third Department. These lawyers hailed from not only New York, but also a number of other United States jurisdictions and foreign countries. To help many of these non-resident lawyers get a head start in their New York legal careers, we hosted a "New York Practice Boot Camp for Non-Resident Lawyers" the day before the admission ceremony, as well as a reception for new attorneys.

January 22, 2016 District Attorneys Winter Conference

Also last week, the District Attorneys Association of the State of New York held its Winter Conference in New York City, with Preet Bharara, U.S. Attorney for the Southern District of New York, giving the keynote address. We have worked cooperatively with the District Attorneys Association, particularly on the subject of wrongful convictions, and I look forward to continued cooperative efforts to improve New York's criminal justice system.

A handwritten signature in black ink, appearing to read "David Minola". The signature is written in a cursive style with a large, stylized initial "D".