



Staff Memorandum

HOUSE OF DELEGATES Agenda Item #8

To supplement the other materials concerning this agenda item, attached are comments submitted from the Local and State Government Law Section expressing concerns with respect to the President's Committee on Access to Justice's proposed model pro bono policy.



NEW YORK STATE BAR ASSOCIATION

One Elk Street, Albany, New York 12207 • PH 518.463.3200 • www.nysba.org

LOCAL AND STATE GOVERNMENT LAW SECTION

2015-2017 Executive Committee

CAROL L. VAN SCOYOC

Chair
White Plains Corp. Counsel's Office
Municipal Office Building
255 Main Street
White Plains, NY 10601
914/422-1541
cvanscoyoc@whiteplainsny.gov

RICHARD K. ZUCKERMAN

Vice-Chair
Lamb & Barnosky LLP
534 Broadhollow Road, Suite 210
PO Box 9034
Melville, NY 11747
631/414-5808
rkz@lambarnosky.com

SHARON N. BERLIN

Secretary
Lamb & Barnosky LLP
534 Broadhollow Road, Suite 210
PO Box 9034
Melville, NY 11747
631/694-2300
snb@lambarnosky.com

MICHAEL E. KENNEALLY

Delegate to House of Delegates
New York State Municipal Workers'
Compensation Alliance
150 State Street, Suite 203
Albany, NY 12207
518/465-0128

MEMBERS:

Kenneth W. Bond, New York City
Lisa M. Cobb, Newburgh
Darrin B. Derosia, Albany
Michael E. Kenneally, Jr., Waterford
Jeannette A. Koster, Yorktown
Steven G. Leventhal, Roslyn
A. Thomas Levin, Garden City
Bernis E. Nelson, Peekskill
Natasha E. Phillip, Ballston Lake
A. Joseph Scott, III, Albany
Hina Sherwani, Mount Vernon
Daniel A. Spitzer, Buffalo
Hon. Robert A. Spolizino, White Plains
Alyse D. Terhune, Saddle River, NJ
Thomas B. Wassel, Garden City
Adam L. Wekstein, White Plains

FORMER CHAIRS and

EX OFFICIO MEMBERS

Kenneth W. Brett, 1957-1958
George W. Cregg, Jr., 1985-1987
Mark Davies, 2013-2015
Hon. John D. Doyle, 1987-1989
Gerard Fishberg, 1991-1993
Alexander T. Galloway, II, 1989-1991
Gerald N. Jacobowitz, 1993-1995
Murray M. Jaros, 1976-1977
Linda S. Kingsley, 2001-2003
Herbert A. Kiine, 1969-1970
Robert B. Koegeel, 2007-2009
Raymond G. Kuntz, 1977-1979
Hon. Renee Forgens Minarik, 2003-2005
Jack I. Morris, 1961-1962
Thomas Myers, 2005-2007
Hon. George C. Pratt, 1974-1976
Howard Protter, 2011-2013
Patricia E. Salkin, 2009-2011
Richard L. Sigal, 1979-1981
Lester D. Steinman, 1997-1999
Helen D. Volk, 1983-1985
Owen B. Walsh, 1995-1997

To the Members of the Executive Committee of the New York State Bar Association:

On behalf of the Local and State Government Law Section, I wish to laud the tremendous efforts of the President's Committee on Access to Justice in proposing a model *pro bono* policy for attorneys in state and federal government which was adopted by that Committee on April 4, 2016. Our Section also wishes to express its appreciation to the Executive Committee of the State Bar for the opportunity to review and comment on the report.

Our Section's Executive Committee has devoted a number of hours to reviewing the proposed policy, and has discussed the matter in monthly conference calls and at our Executive Committee meeting on May 20, 2016 in White Plains. I must report, however, that while we support, in concept, encouraging government attorneys to provide *pro bono* services, given the complex and unique nature of government service and employment, we must be mindful that the implementation of a model *pro bono* policy presents a myriad of issues not encountered by private law firms and corporate law departments, and subjects the government to a higher level of scrutiny and responsibility to the public at large, particularly where government decision making is necessarily involved and taxpayer resources are at stake.

As you know, our Section, formerly the Municipal Law Section, had been primarily focused upon local government practice and has only recently embraced the addition of state attorneys to our ranks. Our Executive Committee believes that it is premature at this juncture to be able to fully analyze the impact of the proposed model *pro bono* policy without the benefit of having a number of state government attorneys to offer their valuable input. Preliminarily, however, our Executive Committee has expressed its concern that a number of the recommendations in the proposed model policy may potentially allow, require and/or encourage activity by a state agency and/or its attorneys that may be either prohibited by State law or otherwise unauthorized absent a specific legislative grant of authority. Furthermore, it is a consensus of our Executive Committee that our Section, with the anticipated addition of new state attorney members, would be better suited and possess the expertise to devise a pragmatic and workable model *pro bono* policy that may be used by local and state governments.

As such, our Section and its Executive Committee will continue to strive toward developing such an approach in the hope of providing a realistic and workable proposal to meet the intended goal of the Golden Gavel model in a manner that is consistent with the constitutional and statutory restraints on the use of state and local government personnel, time and resources.

Respectfully submitted,



Carol L. Van Scoyoc

Chair

Local and State Government Law Section

Dated: June 2, 2016