

# JUDICIAL DISPATCH



A publication of the Judicial Section of the New York State Bar Association

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## PRESIDING MEMBER'S MESSAGE



Hon. Rachel Kretser

Welcome to the inaugural issue of the Judicial Section's first newsletter. Thank you former Presiding Member Deborah Karalunas for agreeing to undertake the formidable job of Editor! Thanks, also, to all of you for your commitment to strengthen the judiciary through your membership in the oldest and most prestigious section of the New York State Bar Association ("NYSBA"). I am deeply honored and truly humbled by the trust you have placed in me to lead the Section that is the voice of the judiciary within the Bar.

I have set several goals for our Section:

My first goal, to create the Section's premier newsletter, has been realized. The Judicial Dispatch has launched and it promises to be the independent voice of the judiciary in New York State — the only newsletter written by judges for judges, and encompass-

ing all courts of record in the State.

My second goal also has been realized. This summer, NYSBA's Executive Committee voted unanimously to approve establishment of the Distinguished Jurist Award, NYSBA's first award dedicated to judges. The award was created by the Judicial Section to honor a jurist who embodies the highest ideals of our Section and exemplifies judicial excellence and an extraordinary commitment to the rule of law. The award will be presented each year at the Section's Annual Luncheon meeting in January.

My third goal is to increase our Section's presence at the national level by participating in the Judicial Division of the American Bar Association ("ABA"). Our work has begun; our voice is being heard. This summer, our Section drafted a position paper on ABA Resolutions 108 and 18-B relating to judicial disqualifications arising from campaign contributions. The issue was scheduled for debate at the ABA House of Delegates in August of this year but was tabled in part due to opposition from our Section. Proponents of these competing disqualification resolutions have promised to work with the judiciary to fashion a more realistic and workable mechanism to deal with disqualifications involving campaign contributions. I want to thank members of the Council of Judicial Associations who weighed in on this issue and helped me formulate our position. I also want to thank NYSBA President David Schraver, the NYSBA Executive Committee and the New York delegation to the ABA for soliciting the views of our Section before any action was taken. I am pleased also to report that Judge Prudenti recently appointed me to serve as a New York Delegate to the ABA's National Conference of State Trial Judges. This will give us a continued national voice on issues of concern to the judiciary.

My fourth goal is to complete a comprehensive statistical analysis of the racial and gender composition of the judiciary, broken down by judicial district. This ambitious and exciting project, which is undertaken with the help of our Diversity Committee, will culminate in a Report to the House of Delegates for approval this coming year. The initial statistics show a lack of judicial diversity, particularly in upstate districts. It is our hope that the Report will raise public

*"Many ideas grow better when transplanted into another mind than in the one where they sprung up."*

Oliver Wendell Holmes, Jr.

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The Judicial Dispatch is your newsletter. In our first year, we plan to publish two editions: Fall 2013 and Spring 2014. In subsequent years, we hope to publish The Judicial Dispatch on a quarterly basis. I welcome submissions on topics of interest to the members of our Section. If you have an article or announcement you would like considered for publication, please send it to me in electronic format.

The Judicial Dispatch is distributed to members of the New York State Bar Association's Judicial Section without charge. The views expressed in articles in this newsletter are not necessarily the views of NYSBA, the Judicial Section, or its Officers.

## JUDICIAL NEWS AND UPDATES

### The Retirement Bill

New York State voters will have an opportunity this November to vote on a proposed constitutional amendment to permit Court of Appeals judges and Supreme Court justices to remain on the bench to the age of 80. The current rules require a judge to retire on the last day of December in the year in which he or she reaches the age of 70. Judges of the Court of Appeals and justices of the Supreme Court, however, may seek and obtain permission to serve up to three two-year extensions (to age 76) as Supreme Court justices, provided they are found to be mentally and physically able and competent to perform the full duties of such office.

The proposed constitutional amendment permits Supreme Court justices who retire at the end of the year in which they turn 70 to remain on the bench for five, two-year terms under the recertification process. The amendment allows Court of Appeals judges to serve on the state's highest court until the end of the calendar year in which they turn 80. The proposed amendment does not impose the competency recertification process on Court of Appeals judges.

Proponents of the amendment claim that the age limitation imposed in 1869 was created at a time when life expectancy was much lower than today and is now outdated. Additionally, the amendment allows experienced judges to remain on the bench longer, benefitting both the courts and litigants.

Supporters of the amendment are working to raise public awareness about the amendment. Two Supreme Court justice associations hired the MirRam Group of Manhattan, a political consultant firm, to educate voters about the proposal. Although ethical restrictions prevent judicial associations from publicly supporting the amendment, the associations hope to educate the public about the benefits of the constitutional amendment. In addition, a group of 30 attorneys and several former judges calling itself "Justice for All 2013" is raising funds and spending money on advertising to promote passage of the amendment.

Critics of the amendment counter that it is discriminatory because it excludes those presiding in County Court, Surrogate Court, Family Court, City Court, and the Court of Claims. Others contend that increasing the retirement age to 80 blocks new blood, including women and minorities, from taking the bench. Finally, some are concerned by the absence of a certification process for the judges who sit on the state's highest court.

Ultimately voters will have a chance in November to decide whether to extend the retirement age.

### Update on Judicial Pay and Benefits Litigation

***Pines v State***, NYLJ 1202481510251 (Nassau Sup. 2011)

The plaintiffs in this action, four Supreme Court Justices, a Court of Claims Judge and a County Court Judge, sought a declaratory judgment that the compensation of judges and justices of the Unified Court System ("UCS") was duly increased pursuant to the Laws of 2009, Chapter 51, section 3 ("Chapter 51") and that defendant State of New York was obligated to pay the judges and justices in accordance therewith, retroactive to April 1, 2009. The State argued that Chapter 51 was not self-executing, but was merely an appropriations provision without required itemization for expenditures. The case was assigned to the Hon. Karen V. Murphy, Supreme Court, Nassau County. The State moved to dismiss the complaint pursuant to CPLR §3211(a)(7). Plaintiffs' cross-moved for summary judgment. In a decision, dated February 9, 2011, Justice Murphy denied defendant's motion and granted plaintiffs' cross-motion finding that the "constitutional requirement that judicial compensation be 'established by law' is met by Chapter 51, as enacted. . . . To hold otherwise would render Chapter 51 meaningless." Distinguishing *Maron v. Silver*, 14 NY3d 230 (2010), Justice Murphy concluded that Chapter 51 was not a "'dry appropriation' requiring further legislation before the salaries can be paid." "Language requiring additional enabling legislation was removed from Chapter 51 [and] constitutes overwhelming and irrefutable evidence that such additional legislation is not required to effect the salary increase." The State appealed. The Appellate Division, Second Department, heard oral argument on June 5, 2013. The matter remains sub judice.

***Bransten v. State***, 40 Misc.3d 512 (New York Co. 2013)

In this declaratory judgment action filed on behalf of numerous current and retired members of the New York State judiciary, The Association of Justices of the Supreme Court of

### PRESIDING MEMBER'S MESSAGE,

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awareness and serve as a call to corrective action by party leaders and appointing officials.

My fifth goal is to increase our presence and our voice in the halls of the legislature. We will advocate for increased funding for the courts and we will promote legislation to improve the justice system and the lives of our judges. Initial success in this endeavor already has been realized through the passage this past June of legislation (A. 8013) to redress "paper terrorism" against judges and other public officials. Among other things, this legislation establishes an expedited process by which false UCC financing statements filed against judges and other public officials can be expunged.

Our next big push is the judiciary's budget. The judicial branch can no longer sustain the flat budget called for by the Governor. Reliance on the state's court system continues to expand, and caseloads are increasing. The judiciary is a co-equal branch of government, yet the judiciary's budget is only 1.5% of the state's overall budget. The Judicial Section and NYSBA must do everything in our power to ensure that our courts are properly funded. In the words of Justice Learned Hand, "if we are to keep our democracy, there must be one commandment: thou shall not ration justice."

My final, overarching goal is to make the Judicial Section more useful and meaningful to you, its members. Membership in the Section will help you stay abreast of emerging issues of interest to the judiciary, shape policy and improve the justice system. Membership allows you to collaborate with colleagues beyond your local courthouse, and it provides intangible benefits such as lasting friendships with your fellow judges. My participation in this Section and in NYSBA has been enormously rewarding, both personally and professionally, and I hope it will be equally rewarding for all of you. With the help of the Section's Membership Chair, former Presiding Member Joseph Cassata, we will be reaching out to members and non-members to determine how we can enhance our Section's service to its members.

Once again, I extend my profound thanks to you for giving me the opportunity to lead such a vibrant and important Section. I look forward to working with our terrific Executive Committee and with all of you in the year ahead to realize the goals I have outlined and to assist with other projects you want us to undertake. Together we will make this a successful year for New York's dedicated and hard working judiciary.

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## DISTINGUISHED JURIST AWARD

We are pleased to announce that the Hon. Judith S. Kaye will receive the Judicial Section's first Distinguished Jurist Award. The award will be presented on **Friday, January 31, 2014** at our Annual Luncheon meeting.



HON. JUDITH S. KAYE

## SAVE THE DATE

The Judicial Section luncheon will be held during the Annual Meeting on **Friday, January 31, 2014**. Once again, NYSBA's Executive and Finance Committees have graciously agreed to subsidize the cost of our luncheon. With their support, the ticket price for members of the Judicial Section will be **\$55.00**. NYSBA members who are not section members will pay \$85.00. All others will pay full price. (Note: section dues are only \$25 so it's cheaper to join the section than pay the luncheon price differential!).

### JUDICIAL NEWS AND UPDATES, CONTINUED FROM PAGE 3

the State of New York and The Supreme Court Justices Association of the City of New York, plaintiffs challenge as violative of the New York State Constitution's Compensation Clause a Civil Service Law amendment authorizing the State of New York to reduce its contribution to judiciary members' health insurance benefits. The net effect of the reduction is to increase the contribution toward health insurance of active judges by approximately eight percent and that of retirees by about two percent. The State moved to dismiss the complaint for failure to state a cause of action or, alternatively, for defense founded upon documentary evidence. The Supreme Court, the Hon. Carol Robinson Edmead presiding, denied defendant's motion holding that the complaint sufficiently stated a claim that the amendment was unconstitutional. The State appealed. Argument in the Appellate Division has been adjourned to the December 2013 term.

**Larabee v. Governor of State**, 37 Misc.3d 748 (New York Co. 2012).

This action was brought by various members of the judiciary against the State, the Governor and the Legislature. The action initially sought declaratory and injunctive relief with respect to defendants' failure to provide judges with a salary increase or even cost of living adjustments. The Court of Appeals, modified the lower court's order and granted judgment declaring, as matter of law, that defendants violated the doctrine of Separation of Powers by tying judicial salary increases to unrelated legislative objectives and policy initiatives. In alleged response, the legislature created a commission to review judicial salaries. The commission increased prospective salaries but declined to award any retroactive salary adjustment. In what has now become a damages case, the plaintiffs then moved to renew their motion for summary judgment. In the decision cited above, the Supreme Court, the Hon. Richard F. Braun presiding, granted renewal but denied plaintiffs' motion for summary judgment. Justice Braun held that by creating the salary commission defendants abided the Court of Appeals' declaration and provided a sufficient remedy. Plaintiffs perfected an appeal to the Appellate Division, First Department, and it is currently calendared for the November 2013 term.

### Use of Judicial License Plates

In the summer of 2012, the New York State Commission on Judicial Conduct solicited comments on the subject of "automobile license plates that identify the vehicle as belonging to a judge." The Commission sought to "examine and compare practices and policies in New York and other states" to determine whether a judge's use of judicial license plates violated the Rules Governing Judicial Conduct. On behalf of our members, the Judicial Section's Executive Committee wrote to the Commission objecting to its issuance of a report on the use of judicial license plates. We maintained that the decision to display identifying plates is a personal one and facilitates the prompt, efficient and cost-effective administration of justice in such matters as nighttime or hospital arraignments, Article 81 proceedings outside the courthouse, property inspections and election matters. Judicial license plates also facilitate the identity of authorized vehicles and individuals for courthouse access and parking. In addition, citing to the constitutionally limited authority of the Commission, we maintained that the Commission had no authority to seek public opinion on judicial ethics, issue advisory reports, or set public policy. We also noted that the Advisory Committee on Judicial Ethics had twice confirmed that there was no ethical prohibition against use of judicial license plates.

In May 2013, the Commission issued a report. Fortunately, the Commission did not attempt to preclude the use of judicial license plates or opine that use of judicial license plates was unethical. Instead, the report addressed the various pros and cons of judicial license plates and reached the following obvious conclusions:

- Displaying a judicial license plate on a personal vehicle does not per se violate New York ethics rules or create an appearance of impropriety.
- Asserting one's judicial status in order to avoid the consequences of a lawful traffic stop subjects the judge to discipline.
- A judge should advise family and friends who may use the vehicle not to assert the owner's judicial office if stopped for a traffic violation.
- For security or courthouse parking, alternatives such as dashboard placards should be made available for those judges who prefer them. However, abuse of such a placard, such as displaying it when not on official business but to park illegally, may subject the judge to a confidential caution or public discipline.

## Legislative Update

The following is a summary of some of the legislative changes in 2013 that are particularly relevant to the Judiciary.

### Retirement and Certification

Proposition Six, a proposed constitutional amendment, was given second legislative passage and now goes to registered voters on November 5, 2013. Proposition Six amends provisions of sections two and 25 of Article VI of the State Constitution to: (1) permit Judges of the Court of Appeals to serve out any term to which they are appointed before the end of the year in which they turn 70 provided they may not serve beyond the end of the year in which they turn 80; and (2) permit Supreme Court Justices who retire at the end of the year in which they turn 70 to seek up to five two-year certifications for continued service as retired justices (in other words, to serve until the end of the year in which they turn 80). The amendment will be effective January 1, 2014, provided the State's voters ratify the amendment at the general election.

### Budget

L. 2013, c. 51: Enacts the 2013-14 Judiciary Budget. Effective April 1, 2013.

### Civil Practice & Procedure

- L. 2013, c. 204. Amends the Civil Practice Law and Rules in relation to discretionary retention of one or more alternate jurors after final submission of a case to ensure availability, if needed, during jury deliberations. Effective July 31, 2013 (and applicable to all actions commenced on or after such date and to all pending actions in which a jury has not yet been selected).
- L. 2013, c. 205. Amends the Civil Practice Law and Rules to expand the list of persons who may seek the remedy of a protective order in regard to the use of discovery devices such as a subpoena for records. Effective July 31, 2013 (and applicable to all actions pending on such date or commenced on or after such date).
- L. 2013, c. 306. Amends the Civil Practice Law and Rules to provide for the filing of a certificate of merit in certain residential foreclosure actions. Effective August 30, 2013.

### Criminal Law & Procedure

- L. 2013, c. 1: Enacts the NY Secure Ammunition and Firearms Enforcement (SAFE) Act of 2013. Effective January 15, 2013.
- L. 2013, c. 55: Amends various sunset provisions affecting statutes applicable to criminal cases (part E), extending their authority until September 1, 2015 and including, among others, provisions relating to electronic court appearances (CPL Art. 182), mandatory arrest in domestic violence cases (section 140.10(4) of the CPL) and use of closed circuit television for certain child witnesses (CPL Art. 65). Effective on various dates.
- L. 2013, c. 287: Amends section 360.20 of the Criminal Procedure Law to conform the jury selection procedure used in a local criminal court to the jury selection procedure used in superior court. Effective July 31, 2013.

### Vehicle and Traffic Law

- L. 2013, c. 55: Amends the Vehicle and Traffic Law to fix new surcharge amounts for various offenses under such law (part C); and to extend the life of statutes authorizing certain mandatory surcharges (part E). Effective July 26, 2013.
- L. 2013, c. 87: Amends the Vehicle and Traffic Law to extend the driver's license suspension process as an enforcement tool for child support collection for two years. Effective June 30, 2013.
- L. 2013, c. 91: Amends the Vehicle and Traffic Law to add convictions for texting-while-driving and using a hand-held cell phone to the list of violations for which probationary and junior license holders would have their permits or licenses suspended for sixty days upon a first conviction; and provides that, for subsequent conviction of either of these offenses within six months of license restoration, probationary drivers would have their licenses revoked for six months and junior license holders would have their permits or licenses revoked for an additional sixty days. Effective July 1, 2013.
- L. 2013, c. 169: Amends the Vehicle and Traffic Law in relation to driving while intoxicated and the installation of an ignition interlock device, to ensure that Leandra's Law is given proper effect.

## 2014 Judicial Section Membership

\$25.00. Membership in the Judicial Section is a tremendous value at only \$25.00. New York State Bar Association Judicial Section membership offers a variety of excellent and practical benefits. Enjoy THREE free online CLE educational programs each year; FREE access to Case Prep Plus's entire library of advance sheets and research services, as well as UNLIMITED access to all archives (an annual value of \$160); finally – section members enjoy discounts on the Judicial Section Annual Meeting luncheon (the savings which typically cover the annual section dues cost).

*To join the section, please visit [www.nysba.org](http://www.nysba.org) or call the State Bar Service Center at 800-582-2452. Join today!*

In addition to these legislative changes, during 2013 the Administrative Board of the Courts adopted a number of amendments to the Court Rules (22 NYCRR) particularly pertinent to the judiciary:

- 22 NYCRR Part 150 (Independent Judicial Election Qualification Commissions), permitting use of the rating "highly qualified" by IJEQCs in evaluating candidates for elected judicial office, and requiring a supermajority for issuance of such a rating; providing that IJEQC members who had served two terms might be reappointed by a different appointing authority; and amending quorum requirements for Commission action.
- 22 NYCRR §202.10, encouraging telephonic court conferences.
- 22 NYCRR §202.12(b) and (c)(3) and the Rules of the Commercial Division (22 NYCRR §202.70(g)) (Rule 8), requiring counsel to confer prior to the preliminary conference in cases reasonably likely to involve e-discovery.
- 22 NYCRR § 202.28, requiring notice to the court of settlement, mootness, or bankruptcy of a party.
- 22 NYCRR § 202.70(a) (Rules of the Commercial Division), raising the monetary threshold for matters before the Commercial Division in the Seventh Judicial District from \$25,000 to \$50,000.
- 22 NYCRR § 202.70(g), Rule 8 and Rule 13, relating to enhanced expert disclosure in the Commercial Division.

## OFFICER PROFILE

### Hon. Paul Feinman

Paul G. Feinman is the immediate Past-Presiding Member of NYSBA's Judicial Section. He currently serves as one of our Section's two members of NYSBA's House of Delegates.

Justice Feinman was elected to the Civil Court of the City of New York in November 1996, and was re-elected in November 2006. He sat in both the Criminal Court and the Civil Court in New York County. In January 2004, Paul was designated Acting Justice of the Supreme Court of the State of New York, Civil Term in New York County. He was elected a Justice of the Supreme Court from the 1st Judicial District in November 2007. In October 2012, Governor Andrew M. Cuomo appointed Justice Feinman an Associate Justice of the Supreme Court, Appellate Division, First Department.

Justice Feinman received his J.D. degree from the University of Minnesota Law School in 1985 and his A.B. in French Literature and Language from Columbia College, Columbia University in 1981. He also studied at the Université de Paris VII (Jussieu), the Université de Paris II (Assas) and the Université de Lyon III in conjunction with his undergraduate and law school studies.

Justice Feinman has had many leadership roles and is active in many judicial and bar associations including the American Judges Association, Association of Supreme Court Justices of the State of New York, Inc., Citywide Association of Supreme Court Justices, International Association of Lesbian and Gay Judges, New York State and City Association of Lesbian and Gay Judges, American Bar Association, American Constitution Society, Jewish Lawyers' Guild, Lesbian, Gay, Bisexual and Transgender Bar Association of Greater New York ["LeGal"], New York City Bar Association, New York County Lawyers' Association, New York State Bar Association and Women's Bar Association of the State of New York.

Paul enjoys travel, Netflix and playing Words with Friends in his spare time. Among his favorite travel destinations are France, Italy and Cape Cod, or any place with a large, fine sand oceanfront beach. On Netflix he currently is re-watching the entire series of West Wing Series, and is in the middle of season four.



HON. PAUL FEINMAN

### Hon. Rachel Kretser

Rachel Kretser is the Presiding Member of NYSBA's Judicial Section. She also serves as one of our section's two members in NYSBA's House of Delegates.

Judge Kretser was appointed to the Albany City Criminal Court in December 2005, and was elected to that position in November 2006, becoming the first woman ever to serve full time on a criminal court bench in the Third Judicial District. Before her ascension to the bench, Judge Kretser was an Assistant Attorney General for more than twenty-five years, serving in the Litigation Bureau and as head of the Consumer Frauds Bureau. Prior to joining the Attorney General's Office, Rachel was associated with the Manhattan law firm of Weil, Gotshal & Manges.

Judge Kretser is active in numerous professional and community organizations. She is Vice President of the National Association of Women Judges, N.Y. Chapter and Immediate-Past President of the New York State Association of City Court Judges. She was President of the Women's Bar Association of the State of New York (WBASNY) from 1995-1996 and President of the Capital District Women's Bar Association ("CDWBA") from 1991-1992. Judge Kretser is a founding member of the CDWBA Legal Project and the Women's Bar Foundation, and is a Fellow of the New York State Bar Association. A former Director of the Fund for Modern Courts, she also serves on the Board of the Center for Women in Government and the Honorary Board of the Judges and Lawyers Breast Cancer Association. Rachel is a member of the American Bar Association, the Albany County Bar Association, the Lawyer-Pilots Bar Association and the Women Pilots Association. She serves on the steering committee of the Brandeis Baruch Society and is a member of United Jewish Federation.

In recognition of her dedication to the profession and to the community, Rachel has received a number of prestigious awards including the Ruth Shapiro Memorial Award from the NYSBA, the Marilyn Menge Award from the WBASNY, the Women of Excellence Award from the Albany-Colonie Chamber of Commerce, the Kate Stoneman Award from Albany Law School, the Distinguished Member Award from the CDWBA, and the Distinguished Service



HON. RACHEL KRETZER

Award from the New York State Attorney General. Through her public service and volunteer activities, Judge Kretser has worked to provide increased access to legal services for victims of domestic abuse and to expand education and services for breast cancer victims.

Judge Kretser is a licensed private pilot.



## INFORMATION FROM YOUR ASSOCIATIONS

### Judicial Section

**SAVE THE DATE:** The Annual Luncheon Meeting of the Judicial Section is scheduled for Friday, January 31, 2014, New York Hilton Midtown. Please note the day of the luncheon has been changed in an effort to accommodate all of our members.

### Association of Justices of the Supreme Court of the State of New York

**SAVE THE DATE:** The Annual Breakfast Meeting of the Association of Justices of the Supreme Court of the State of New York is scheduled for Friday, January 31, 2014, from 7:30 to 9:30 a.m. Please note the day and time of the breakfast has been changed in an effort to accommodate all of our members.

**PROPOSITION SIX:** The website regarding proposition six is up and running. Members can check for updates and information at [www.nyjusticeforall2013.com](http://www.nyjusticeforall2013.com)

### Supreme Court Justices Association of the City of New York

**SAVE THE DATE:** The next meeting of the Supreme Court Justices Association of the City of New York is November 12, 2013 at 6:00 p.m. at Bocelli Ristorante, Staten Island. All Supreme Court Justices in the City of New York, including those newly elected, are welcome to attend.

### National Association of Women Judges, New York Chapter

**SAVE THE DATE:** The National Association of Women Judges, New York Chapter, will meet on January 31, 2014, New York Hilton Midtown, immediately following the Judicial Section's Luncheon Meeting.

### New York State Association of Family Court Judges

**SAVE THE DATE:** The Association's spring meeting will be held April 24-25, 2014 in New York City. The business meeting of the Association will take place on Friday, April 25, 2014 at the New York City Bar Association, 42 West 44th Street, NY, NY and will begin at 9:00 am.

The **Honorable Conrad D. Singer**, NYS Family Court, Nassau County, was recently honored with the New York State Association of Family Court Judges by being named Family Court Judge of the year.

## IN MEMORIAM

*Hon. Peter Buckley*  
(January 30, 1947 - July 8, 2013)  
Chemung County Multi-Bench Judge

*Hon. John T. Buckley*  
(February 8, 1936 - September 24, 2013)  
Presiding Justice, First Department. Justice Buckley also served as a Supreme Court Justice in the Fifth Judicial District

## JUDICIAL SECTION BENEFITS

The Judicial Section addresses unique issues facing the duties, responsibilities and welfare of the judiciary. Our Section also provides a forum for representatives of the various judicial associations to address issues relating to legislation impacting the judiciary and court procedures. Among the other benefits of membership in our section are:

- Reduced cost to attend the ANNUAL LUNCHEON in January. For members of our Section, the reduced ticket price is \$55.00. For non-members, the reduced ticket price is \$85.00.
- Free access to CASEPREPLUS.COM'S entire library of case summary advance sheets and research services, highlighting and summarizing the most recent and significant New York appellate cases (with links to the full opinions) and reminders about recent legislation and uniform rule changes.
- Three FREE NYSBA online CLE classes per year.

## NYSBA JUDICIAL SECTION 2013 ANNUAL MEETING LUNCHEON



2013-2014 Judicial Section officers being sworn in: Hon. Marsha Steinhardt, Treasurer; Hon. John O'Donnell, Secretary; Hon. Ellen Spodek, Assistant Presiding Member; Hon. Rachel Kretser, Presiding Member



Hon. Rachel Kretser, being sworn in as 2013-2014 Presiding Member



Hon. Paul Feinman, 2012-2012 Presiding Member, as Emcee, with dais guests: Hon. Carmen B. Ciparick, Hon. Judith S. Kaye, Seymour W. James, Jr., Hon. Jonathan Lippman



A. Hon. Gail Prudenti



Hon. Jonathan Lippman



NYSBA President Seymour W. James, Jr.



Mylan Dennerstein, Counsel to Governor Andrew Cuomo, Keynote Speaker



## COURT STRUCTURE

This past year there was a lot of activity concerning issues of court structure.

### Consolidation

NYSBA's Executive Committee designated as a legislative priority the consolidation of all lower courts into one Supreme Court. While the Judicial Section believes that it always is prudent to explore, examine and promote measures to alleviate inefficiencies, reduce expenses, and minimize delays, our section (with the Association of Judges of the Family Court of the State of New York dissenting) opposed NYSBA's legislative priority designation for a number of reasons. First, we were troubled by the lack of specificity: no one had drafted an explicit amendment or provided a fact-based analysis of the claimed savings or implementation costs or specifics as to how the proposed model would operate. Second, we believed that a constitutional amendment morphing the Supreme Court, Family Court, County Court, Surrogates Court and Court of Claims into a unified Supreme Court was unnecessary and ignored the organizational and administrative changes that had occurred over the past decade including the creation of IDV courts, discovery and trial stays when related cases are pending in both Supreme Court and the Court of Claims, expansion of the Commercial Division, e-filing, and temporary reassignment of judges. Third, we urged that merging five courts into a single court with seven divisions (Commercial, Criminal, Family, Public Claims, Probate, Tort and Civil) was not consolidation. At best it was a name change; more likely, it was a recipe for administrative expansion. Fourth, we noted that consolidation ignores the real problem, which is the legislature's failure to authorize additional Family Court judgeships and the inefficiencies in Family Court resulting from dramatic increases in the number of broken families and the number of Family Court cases. Of course we also noted that the problems in Family Court and all other courts were complicated and compounded by the vast budget cuts and court layoffs, including the elimination of many judicial hearing officers. Fifth, we pointed out that the proposed consolidation diminished the likelihood that the most qualified judges with the greatest relevant experience would be elected and/or positioned to serve on the various court divisions to be created by OCA. Finally, we opined that the recommended changes weakened the electoral rights of the public to select the judges who would serve in their local communities.

Fortunately, the Governor was not interested in doing something that did not save real tax dollars and the issue once again appears to be dormant.

### Commercial Division

A Task Force on Commercial Litigation convened by Chief Judge Jonathan Lippman explored ways to better serve the needs of the business community and our state's economy. The Chief Judge charged the Task Force "to explore, without limitation," the path to a world-class Commercial Division. Among the recommendations of the Task Force are: (1) establishing a new class of Court of Claims judges to be appointed by the Governor for designation to the Commercial Division; (2) increasing the monetary threshold for actions to be heard in the Commercial Division; (3) providing Commercial Division Justices with additional law clerks; (4) rehiring JHOs; (5) recruiting seasoned commercial litigation practitioners as Special Masters; (6) implementing various procedural changes designed to invoke earlier, more regular judicial involvement; and (7) establishing a Pilot Mandatory Mediation Program.

### City Courts

The New York State City Court Judges Association secured two-house passage of a bill to increase the number of City Court Judges throughout upstate New York. Despite widespread support for the endeavor, as of publication, the bill has not yet been delivered to the Governor.

### Acting Supreme Court Justices

In May of this year, Chief Administrative Judge A. Gail Prudenti advised that, as part of OCA's continuing effort to control costs and properly allocate court resources, she was appointing a committee to review practices of appointment and assignment of Acting Justices of the Supreme Court ("AJSC"). Judge Prudenti solicited comments and assistance in developing appropriate policies. Among the recommendations proposed were: annual qualification and performance reviews of AJSCs; compensating AJSC proportionate to the amount of Supreme Court work each actually performs; assignment of judges to "ride circuit;" and imposing a more restrictive appointment process. As of publication, no final action on this issue has been taken.

## GREETINGS FROM NYSBA PRESIDENT



David M. Schraver

I am pleased to congratulate the Judicial Section on the introduction of this excellent newsletter and for its many contributions to the organized bar. Access to justice and the preservation of an independent and adequately

funded judiciary are core values of the New York State Bar Association and we will continue to advocate for these values.

The Judicial Section has taken a very active and constructive role within the American Bar Association. For example, the Judicial Section has been a key player in developing a position on judicial disqualification and has done an outstanding job articulating its concerns about certain ABA resolutions, resulting in a fuller and better-informed dialogue at the national level. In addition to her outstanding work as Presiding Member, Judge Rachel Kretser has been appointed New York Judicial Delegate to the American Bar Association Judicial Division. I look forward to her participation, and I am confident that she will make many valuable contributions to the work of the ABA on behalf of this section.

We also greatly appreciate that the Judicial Section is working to analyze and encourage greater diversity on the bench. Diversity in the legal profession is absolutely essential to maintaining respect for our justice system and for the rule of law. Nowhere is diversity more important than among the judges who preside in our courts every day. We look forward to reviewing the results of the Judicial Section's analysis and working together toward a judiciary that reflects the diversity of our society and those who appear before the courts.

Thank you for your membership in the New York State Bar Association and the Judicial Section and for your commitment to our shared values and goals.

David M. Schraver

## YOUR BAR ASSOCIATION AT WORK



Summarized below are recent NYSBA reports that are of particular interest to our Section. Copies of the full reports can be accessed by NYSBA members on NYSBA's website.

### Court Funding

NYSBA's 2012 Court Funding Report concludes that the impact of reductions in funding for New York State courts has been substantially harmful and far-reaching. While recognizing that state fiscal constraints are very real in this economy, the report finds that additional and imminent investment in the state court system is necessary to restore a sense of confidence in the judicial system.

### Family Court

In 2010, NYSBA created the Task Force on Family Court to examine the challenges that Family Court faces and to recommend solutions that better enable the Court to meet the demands placed upon it. The Task Force report, approved by the House of Delegates in January 2013, contains 26 recommendations that address resources for Family Court, resources for litigants, technology needs and court operations. Chief among the recommendations is the need for additional Family Court judges.

### Civil Rights

The Committee on Civil Rights prepared a report that addresses the increasing use (and overuse) of solitary confinement within New York prisons. According to the report, in 2012 alone, one out of every four people incarcerated were subjected to extreme isolation - the vast majority for non-violent offenses. The report examines the history of solitary confinement, its detrimental results on inmates and provides recommendations that it be profoundly restricted.

### Voter Participation

A Special Committee on Voter Participation was appointed to consider possible reforms to remove obstacles to registration and voting and to encourage participation while maintaining the integrity of the voting process. The report recommends a broad spectrum of changes that, if implemented, could have a significant impact on voter participation.

### Mandated Representation

In April 2013, the House of Delegates approved the report and recommendations of the Committee to Ensure Quality of Mandated Representation, revising the Association's Standards for Providing Mandated Representation.



## MESSAGE FROM THE CHIEF JUDGE



Hon. Jonathan Lippman

I am delighted to be a part of the inaugural issue of the newsletter of the Judicial Section of the New York State Bar Association. The Judicial Section is a wonderful vehicle for communication and collaboration between the bench and the bar. The State Bar and the Judiciary have a long history of mutual support, and the Judicial Section epitomizes that interconnectedness. There are so many areas where the interests of the legal profession and the Judiciary converge, and groups like the Judicial Section help us to share ideas and address issues as they arise. Congratulations to Judge Rachel Kretser, Presiding Member of the Judicial Section, for her leadership in creating this newsletter and to Judge Deborah Karalunas, its founding editor and someone who has been so instrumental in making the newsletter a reality.

The judges of our trial and appellate courts have made herculean efforts to keep our court system modern, efficient, and current despite the challenges posed by ever-increasing case-loads. The support and cooperation of the Bar have been critical to our success in meeting our constitutional mission. We are particularly grateful to the State Bar for its unstinting advocacy on behalf of the judges of the Unified Court System.

The Judiciary and the Bar share a deep concern for the crisis in access to civil legal services in New York. We have taken a multi-pronged approach to filling the justice gap between the need for civil legal services by the poor and the resources available to fill it - including state-wide hearings on the problem and the invaluable work of the Task Force to Expand Access to Civil Legal Services in New York. I believe we have made significant progress. For the last three years, the Judiciary's budget has included substantial funding for civil legal services, and we have instituted numerous systemic changes to assist the poor and people of limited means with their legal problems. The organized bar has vocally supported the need for funding and has contributed hundreds of thousands of hours of voluntary pro bono work each year to assist those in need.

The Bar has also been a strong voice for protecting the judiciary's budget from debilitating cuts. Lawyers in New York State know well that our legal system cannot function, and disputes cannot be adjudicated efficiently and justly, if the courts do not have the resources we need. Further, so many of New York's lawyers, recognizing its benefit to the legal system in our state, spoke out strongly in favor of the amendment of the state constitution that would extend the retirement age for judges of the Supreme Court and the Court of Appeals.

The Judiciary and the bar have enjoyed a wonderful partnership in many other areas as well. Not long ago, an advisory group on the Commercial Division, made up primarily of lawyers and judges, took a fresh look at our Commercial Division after more than 15 years since they were established to assess what was working well and where we could change laws or practice to improve these courts' operations. Many of the recommendations of that group, the Task Force on Commercial Litigation in the 21st Century, are now being implemented, and we have established a permanent advisory council to advise us on an ongoing basis about all matters involving and surrounding the Commercial Division of the Supreme Court of the State of New York.

On the criminal side, in September, we announced a state-wide network of Human Trafficking Courts, which has widespread support in the legal community. These courts are designed to identify defendants in prostitution-related cases who are victims of sex trafficking and provide them with the opportunity for services to escape their abusers and turn their lives around. The district attorneys and defense lawyers involved in the new Human Trafficking Courts have worked closely with us to develop protocols for identifying participants and responding to these cases in a way that recognizes the true circumstances of the defendants. We must all work together to combat the scourge of human trafficking in New York.

In these and so many other areas, the mutually supportive relationship between the bench and the bar has had such a positive effect on our system of justice. I look forward to continued collaboration and to the wonderful work that the Judicial Section is doing to improve the lives of judges and lawyers in New York.

Hon. Jonathan Lippman

## JUDICIAL BENEFIT UPDATE

### Opting Out of Health Insurance - Incentive Payment

NYSHIP offers a program allowing eligible employees who have other employer sponsored group health insurance to opt-out of the NYSHIP coverage in exchange for an incentive payment. The incentive payment is \$1,000 for waiving individual coverage or \$3,000 for waiving family coverage. OCA has confirmed that the Opt Out Program will be continued in 2014. For additional information, including eligibility and enrollment requirements, look for the regular Option Transfer material that will be sent to you soon by the Department of Civil Service, or contact your local Health Benefits Administrator. **Note:** to enroll, you must elect to opt-out during the annual Option Transfer Period, and you must re-enroll annually. **Also note:** when you opt-out of NYSHIP, your vision and dental benefits continue; they are not part of NYSHIP benefits.

### Vision Benefits

OCA has renewed its contract with Davis Vision and changed dependent eligibility to mirror the Affordable Care Act. Now, adult children will be eligible for vision benefits up to age 26 regardless of student status.

### Flex Spending

The enrollment period for Flex Spending is currently open. It closes on November 8, 2013. Do not miss this important deadline.





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**JUDICIAL SECTION**

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