

NEW YORK STATE BAR ASSOCIATION



NYSBA

Legal Briefs 2014

A handy guide to NYSBA's current legal issues, including legislative priorities and major initiatives.

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NYSBA Legal Briefs 2014

Reader's Note

NYSBA Legal Briefs 2014 contains concise summaries of subjects of concern to the New York State Bar Association, the legal profession, and the public. This annual publication, previously entitled *Current Legal Issues Affecting the Profession*, is in its thirty-third year. The information in this issue is current through publication on January 1, 2014. Subsequent events, such as changes in Association position, the introduction of legislation, and initiatives proposed by government agencies, may affect the information contained in this publication. Questions regarding the current status of any particular issue and requests for additional information should be directed to the Association staff member who authored the summary. The Association's main telephone number is 518-463-3200.

The full text of NYSBA Legal Briefs 2014 also is available on the Association's website (www.nysba.org).

To request hard copies of this publication, please contact the Association's Department of Media Services and Public Affairs at 518-487-5535.

Table of Contents

Legislative Priorities

Civic Education	6
Civil Legal Services Funding.....	8
State and Federal Court System Funding.....	9
Franchise Act	11
Office of Indigent Legal Services Funding	12
Repeal of Defense of Marriage Act.....	14
Sealing Records of Conviction	15
Voter Participation	16
Wrongful Convictions	17

Major Initiatives

Corporate Counsel Pro Bono Service.....	18
Criminal Discovery	20
Family Court.....	21
Gun Violence.....	22
Human Trafficking.....	23
Immigration Representation.....	24
Legal Education and Admission to the Bar and the Future of the Legal Profession.....	25
Mandatory Pro Bono Reporting.....	27
Prisoner Re-Entry	28
Solitary Confinement.....	29
Veterans' Legal Services Needs.....	30
Youth Courts	31

Legislative Priorities

Civic Education

NYSBA Position

In 2011, the Executive Committee approved as a legislative priority, the support of federal programs developed to promote civic education and responsibility among the nation's elementary and secondary students. In 2013, NYSBA adopted civics education as one of the Association's state legislative priorities for 2014: "Civics Education – Democracy depends upon an educated citizenry. A core mission of the Association is to foster an understanding and respect for democracy and the rule of law. The Association supports the enactment of public policy to require the incorporation of civics education in all grades, and the appropriate funding to implement this policy, to ensure an understanding of our system of government."

Background

The No Child Left Behind Act and New York State's adoption of the national Common Core State Standards has continued to promote the focus of curriculum in the subject areas of math and English, leading to a subsequent decrease in civics education emphasis in the classrooms.

Backed by Congress and federal stimulus money, the US Department of Education created the Race to the Top grant program. As a condition of receiving the federal funds, states were required to use a set of K-12 standards in mathematics and English. The New York State Education Department (NYSED) adopted the standards and received funding. NYSED has recently issued a draft framework for K-12 Social Studies based on the Common Core, with adoption by the Board of Regents expected in April 2014.

In November 2013, the Law, Youth and Citizenship Committee issued its *Report and Recommendations on Civic Education* for consideration by the House of Delegates. The committee asks the State Bar to adopt a policy on civics education that would "encourage policymakers at all levels of government," including, but not limited to the governor, state Legislature, Board of Regents and state Department of Education, to ensure that all students experience high quality civic learning and that it is given an "educational priority on a par with reading and mathematics."

NYSBA Activity

NYSBA leadership has supported civic education in New York State through its continued funding of the Law, Youth and Citizenship Program. The LYC Committee has been working to urge appropriators to provide funding for national programs, while at the same time using support from NYSBA and the Bar Foundation to continue its civic education outreach to the school districts across the state. Additionally, in September 2013, a Bar Foundation LYC Restricted Fund was established to aid in that mission.

Eileen Devine Gerrish

Civil Legal Services Funding

NYSBA Position

The Association continues its long tradition of advocating for adequate state and federal funding for civil legal services. Funding for legal services remains a key legislative priority for NYSBA. Government funding is necessary to ensure equal access to the justice system for the poor and vulnerable.

Background

Since 2010, the Association has participated in hearings conducted by Chief Judge Jonathan Lippman's Task Force to Expand Access to Civil Legal Services in New York. Hearing evidence has consistently shown that for every dollar spent funding civil legal services New York recovers more than six dollars in savings.

Based on the Task Force's 2013 recommendations, the Chief Judge increased the Judiciary's 2014-2015 budget request for civil legal aid by \$15 million dollars for a total of \$55 million, to be awarded via a competitive bidding process to civil legal services providers serving low-income families and individuals in every county in New York State. The 2014-2015 Judiciary budget again seeks \$15 million in funding to shore up the Interest on Lawyer Account Fund ("IOLA") of New York State in an attempt to make up for the fund's significant drop in interest revenue from \$37 million annually in 2008 to only \$7 million in 2013.

Legal services providers also rely heavily on federal funding provided by the Legal Services Corporation ("LSC"), the single largest funder of civil legal programs nationwide. LSC's funding, however, has steadily declined over the years and presently is 17% less than it was in 2010 when it received its largest appropriation of \$420 million. During 2013-2014, LSC's initial allocation of \$365 million was reduced by two across-the-board recessions (1.877 % and 0.2%) and sequestration (5%) for a total of \$340.8 million. For 2014-2015, LSC requested an appropriation of \$486 million in an effort to address low-income people's ever-growing need for civil legal assistance to preserve the essentials of life.

NYSBA Activity

Adequate funding via a dedicated state and federal revenue stream is necessary and prudent. The Association continues to make government funding on both the state and federal level a legislative priority and strongly endorses the proposed budgets submitted by Chief Judge Jonathan Lippman and LSC.

Gloria Herron Arthur

State and Federal Court System Funding

NYSBA Position

Our courts serve as the cornerstone for our democratic society, and the integrity of our justice system is an ongoing top priority in our Association's state and federal legislative advocacy efforts. Accordingly, the Association's 2014 legislative priorities emphasize the critical importance of adequate funding for both New York State's court system and the federal courts.

Background

Although the 2012-13 state judiciary budget was approved by the Legislature without change in the submission, issues and concerns have persisted pursuant to previous cuts in the amount of \$170 million. NYSBA conducted a study of the impact of budget cuts across the state and issued a report to state policy makers. One example of the impact: The closing of courthouses at 4:30 PM and the disruptive impact on trials.

The proposed Judiciary budget for 2014-15 was submitted to the Legislature on December 1.

With regard to the federal courts, Sequestration -- across-the-board, automatic cuts mandated by the Budget Control Act of 2011 -- has had a devastating impact on the operation of the federal courts. While funding has been reduced overall by nearly \$350 million, the workload facing our federal courts has not decreased.

To mitigate the impact, the federal courts have slashed non-salary budgets, but that cannot be sustained into future years, and even using those mitigation strategies, the courts have had to reduce staff by 14% since July 2011.

The federal Judiciary will have difficulty operating in Fiscal Year 2014 at sequestration funding levels without suffering an adverse impact on its constitutional and statutory responsibilities.

In addition to fundamental concerns related to the ability of our Judiciary to fulfill its crucial constitutional role, New York has a unique interest in supporting the integrity of our justice system given our state's role in international matters.

Inadequate court funding resulting from sequestration poses a threat to New York's status as a top choice for businesses engaged in international transactions by threatening the efficiency and predictability of our Judiciary. Additional costs for litigants due to funding-related delays, along with the concerns that accompany the downward budget spiral, serve as remarkable disincentives for the international community to choose New York as the forum for dispute resolution.

NYSBA Activity

In keeping with our focus on adequate funding for our Judiciary and civil legal services, NYSBA has been very vocal about the impact of court funding cuts at the state and federal levels and particularly about the negative consequences of sequestration.

During the regular 2013 state legislative session, NYSBA actively lobbied the Legislature and the Governor's office for passage of the Judiciary budget.

With regard to the federal courts, NYSBA joined with 15 local bar associations across the state to express our concerns about looming cuts to the federal courts and the Legal Services Corporation and we urged our Congressional Delegation to avoid sequestration.

On October 1, 2013, NYSBA joined with six bar associations from other states to ask our respective Members of Congress to address the negative impact of sequestration on the federal judiciary and to seek a resolution to the federal budget stalemate.

On October 16, Congress passed, and the President signed, a Continuing Resolution providing funding at Fiscal Year 2013 sequestration levels for the entire federal government, including the Judiciary, until January 15, 2014. The Judiciary's most serious shortfall during the CR period is in the Defender Services program, although other judiciary programs have significant shortfalls that must also be addressed in any full-year spending measure.

On December 4, 2013, President David M. Schraver led a team of NYSBA members to Washington, DC to meet with key Members of Congress from New York to promote the Association's position.

In light of these and other important issues, NYSBA will continue to strongly advocate for appropriate levels of funding for our state and federal justice system to maintain the high quality of our courts, ensure fair treatment of parties in civil and criminal proceedings, and ensure that our judiciary is able to fulfill its constitutional mandate.

Ronald F. Kennedy

Franchise Act

NYSBA Position

NYSBA supports amending the franchise law to conform to the Federal Trade Commission's (FTC) franchise rules.

Background

The FTC rules have preempted much of current New York law, and this proposal would conform New York law to the FTC rules. However, current New York law not preempted by FTC rules discourages franchisers from locating headquarter operations in New York, thus driving jobs and economic benefit to other states.

NYSBA Activity

NYSBA has proposed amendments to improve the state's franchise law. The proposal would amend provisions of current New York law and help develop a positive environment in New York for the franchise sector.

Ronald F. Kennedy

Office of Indigent Legal Services Funding

NYSBA Position

The Association strongly supports adequate funding for the New York State Office of Indigent Legal Services (“ILS”), which is charged with the responsibility to bring New York State’s indigent defense representation system into compliance with federal and state legal mandates to provide effective representation and assistance of counsel to those who cannot afford to pay for a lawyer.

Background

A 2013-2014 funding appropriation of \$82.8 million allowed ILS to hire its full complement of staff. In addition, in order to correct some of the well documented deficiencies in training and supervision of conflict defenders and the excessive caseloads they carry in upstate counties, ILS promulgated *Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest*, effective January 1, 2013 and subsequently made applicable to all mandated provider systems on July 1, 2013.

The ILS Standards are modeled in substantial part upon the Standards for Mandated Representation first promulgated by the Association in 2006 and subsequently revised in 2010. Indeed, each conflict standard cites to a specific NYSBA Standard as the authoritative principle upon which it is based. On April 6, 2013, the House of Delegates approved the incorporation of the ILS Standards into the NYSBA 2010 revised standards to create the 2013 Revised Standards for Providing Mandated Representation. These Standards are intended to improve and standardize the quality of indigent defense representation throughout New York State.

Implementation and enforcement of these standards requires adequate funding. For Fiscal Year 2014-2015 ILS is seeking an appropriation of \$99.5 million, consisting of \$3.5 million for State Operations and \$96 million for Aid to Localities. Only by providing consistent and adequate funding for ILS will New York State be able to ensure that its mandated defense provider system meets constitutional standards for the effective assistance of counsel.

NYSBA Activity

NYSBA strongly supports adequate funding for ILS and was gratified that Chief Judge Jonathan Lippman included in the 2014-2015 Judiciary budget \$17 million in additional funding for statutorily mandated indigent criminal defense standards. However, in the event that appropriations are insufficient, the Association has developed a report identifying ways mandated providers could share resources which would improve the delivery and quality of mandated representation while simultaneously reducing the overall cost to be borne by any provider system. The resources report also addressed legal impediments that might hinder resource sharing, proposed model agreements and programs, as well as, identified efforts that successfully promote the sharing of resources.

Gloria Herron Arthur

Defense of Marriage Act Repeal

NYSBA Position

The Association supports legislation that would repeal the Defense of Marriage Act (DOMA). This issue is one of the Association's federal legislative priorities for 2014.

Background

In 1996, the U.S. Congress enacted DOMA, which defined marriage as a union of one man and one woman for the purpose of federal recognition. Although same-sex marriages are legal in some states, including New York, and legally recognized by other states, DOMA relieves states of the obligation to recognize same-sex couples' marriages that are validly performed in another state.

On June 26, 2013, in *Windsor v. United States*, the Supreme Court of the United States struck down Section 3 of DOMA, which excluded married same-sex couples from federal protections, responsibilities, and programs. Section 2 of DOMA, which purports to excuse the states from honoring the marriage of same-sex couples performed by a sister state, still stands.

NYSBA Activity

The Association has advocated for repeal of DOMA and passage of the Respect for Marriage Act, which would repeal Section 2 of DOMA, and would also provide a uniform rule for recognizing couples under federal law, ensuring that all lawfully married couples will be recognized under federal law, no matter where they live. The Association supports equity for same-sex couples and objects to discrimination against individuals on the basis of their sexual orientation.

Kevin M. Kerwin

Sealing Records of Conviction

NYSBA Position

The Association supports legislation that would allow for the sealing of records of certain convictions. This issue is one of the Association's legislative priorities for 2014.

Background

In most cases, a conviction in New York State follows an ex-offender for the rest of his or her life. With few exceptions for drug-related offenses, the state has no law that seals the records of adults who have been convicted of felonies, or even misdemeanors.

NYSBA Activity

In January 2012, the House of Delegates approved a report from the Criminal Justice Section on the sealing of criminal convictions. The Association has had legislation introduced and is advocating for its passage and enactment in to law.

Kevin M. Kerwin

Voter Participation

NYSBA Position

In 2013, the NYSBA House of Delegates adopted the report and recommendations of the Special Committee on Voter Participation. The report is available at: <http://www.nysba.org/substantivereports/>

Background

For over a decade, New York State's voter participation has ranked amongst the lowest in the nation. In the last three federal elections, New York State ranked 47th in average voter turnout, with only 59% of eligible voters casting ballots in the 2008 Presidential Election. Only 35.5% of the voting eligible population cast votes for the highest office on the ballot in the 2010 general election, leaving New York well below the national average. Not surprisingly, New York also compares poorly to the national average in voter registration. In 2010, New York had the third-worst registration rate of all states, with less than 64% of eligible citizens registered to vote. While in many other states substantial changes to modernize their registration and voting processes have yielded significant increases in voter participation, New York has fallen behind.

NYSBA Activity

The Special Committee on Voter Participation was created in 2012 to consider possible reforms to remove obstacles to registration and voting while maintaining the integrity of the process. The committee submitted its report following months of exhaustive study, which included numerous meetings with interested organizations and individuals representing a wide-range of political and social perspectives. The report contemplates recommendations that address: modernization of the voter registration system; pre-registration of 16 and 17 year-olds; Election Day and Same Day registration; the adoption of Early In-Person Voting; improved ballot design; No-Excuse Absentee Ballots; the recruitment and training of poll workers; and the provision of more severe and comprehensive penalties for deceptive practices.

Since its approval, the Special Committee's Report and its Recommendations have been provided to and discussed with the Legislature and other governmental entities. Voter participation is a 2014 NYSBA legislative priority.

Kevin Barrett Getnick

Wrongful Convictions

NYSBA Position

NYSBA believes that any wrongful conviction undermines the public's trust and confidence in the criminal justice system. Consequently, the subject is one of NYSBA's legislative priorities for 2014.

Background

While notions of fairness and due process have underpinned our criminal justice system from the earliest days of our nation and state, there always have been individuals who were convicted of crimes they did not commit. In recent years, this reality has become the focus of public attention, due to the development of DNA testing and its use as evidence.

NYSBA Activity

In 2008, then-NYSBA President Bernice K. Leber established the NYSBA Task Force on Wrongful Convictions and charged it to "identify[] the causes for wrongful convictions, and to attempt to eliminate them." Based on its research, the task force issued a comprehensive report in 2009. The report is available at www.nysba.org.

Later that year, the NYSBA House of Delegates adopted the report, which proposed various actions to reduce the risk of wrongful convictions. Proposals included actions with respect to custodial interrogations, witness identification, DNA testing, informants' testimony, and *Brady* material.

Following the report's approval, the task force drafted six bills to implement its legislative recommendations. After approval by the NYSBA Executive Committee, the bills were submitted by NYSBA to the New York State Legislature for its consideration during subsequent sessions. It is anticipated that the bills will be resubmitted in 2014. There will be a focus on the bill regarding custodial interrogations because there is significant interest in this topic.

In addition, NYSBA is actively participating in the work of the New York State Justice Task Force, which Chief Judge Jonathan Lippman established to address the problem of wrongful convictions.

Richard Rifkin

Major Initiatives

Corporate Counsel Pro Bono Service

NYSBA Position

NYSBA has long been committed to expanding access to justice for low-income and vulnerable persons through voluntary pro bono service by members of the legal profession. The Association applauds the recent revision to the rule governing in-house counsel employed by New York corporations, but not licensed to practice law in the state, to now perform pro bono legal services on behalf of New York's underserved communities.

Background

Civil legal services providers are able to meet the legal needs of less than 80% of eligible low-income and vulnerable individuals and families. Evidence gathered by Chief Judge Jonathan Lippman's Task Force to Expand Access to Civil Legal Services in New York further shows that when individuals appear in civil matters in court without representation, litigation and other costs are higher and the opportunity to resolve disputes without litigation or settle cases expeditiously is lost. Similarly, trial judges have observed that when large numbers of unrepresented persons appear in court, the overall quality of justice for all litigants suffers because resources must be diverted to try to assist unrepresented parties.

To address this crisis of unrepresented litigants the Unified Court System, under the leadership of Chief Judge Lippman, has implemented a series of innovative measures to help bridge the state's civil legal services gap through expanded pro bono opportunities. A recent rule change authorizing out-of-state attorneys employed as in-house counsel in New York to provide pro bono legal services on behalf of New York's underserved communities is one such measure.

The new in-house counsel pro bono rule (22 NYCRR §522.8) allows in-house attorneys admitted to practice and in good standing in another state or territory of the United States or the District of Columbia to perform voluntary pro bono work on behalf of poor and underserved clients – including being able to appear before courts and other tribunals upon filing a notice of pro bono representation – provided such attorneys are properly registered with the New York Courts. Registered in-house counsel are subject to the rules of the jurisdiction in which they are admitted as well as to the New York Rules of Professional Conduct and attorney disciplinary oversight applicable to all lawyers licensed in the state.

NYSBA Activity

In 2010, NYSBA submitted proposed rules governing the registration of in-house counsel that included a provision by which in-house counsel could provide pro bono services, and in 2012 NYSBA approved a proposal from the Corporate Counsel Section to permit pro bono service by in-house counsel. In 2013, NYSBA submitted comments to the Office of Court Administration in support of the in-house counsel pro bono rule ultimately adopted by the Court of Appeals.

Gloria Herron Arthur

Criminal Discovery

NYSBA Position

No position has been taken to date.

Background

Litigants in civil lawsuits in New York State have the opportunity to learn about facts and evidence that form the basis for the other side's case by way of the process referred to as "discovery and inspection" or "disclosure." This process allows litigants to narrow issues and work toward the prompt resolution of disputes. Under New York's criminal discovery statute, however, defendants are often denied access to comparable information. Furthermore, important materials that are disclosed are often turned over at a very late state of the case.

NYSBA Activity

In 2012, then-NYSBA President Seymour W. James, Jr. established the NYSBA Task Force on Criminal Discovery to review and report on appropriate amendments to New York's Criminal Procedure Law. The task force roster is comprised of accomplished lawyers from throughout the state who have spent decades practicing as defense lawyers, prosecutors, and judges.

The task force plans to identify and address issues necessary to enhance the fair and effective operation of the criminal justice system in New York State. It plans to examine issues that include the following: (1) "open-file discovery"; (2) disclosure of witness information; and (3) reciprocal disclosure by defense attorneys. Any report and recommendations from the task force will be considered in accordance with the Association's policy-development process.

Ronald F. Kennedy

Family Court

NYSBA Position

The Association supports measures that would enable the Family Court to meet the challenges it currently faces and better enable the Court to meet the demands placed upon it.

Background

In 2010, The Task Force on Family Court of the New York State Bar Association was appointed to examine the operations of Family Court and assess the needs of the Court, litigants, and the legal community. After more than two years of work the Task Force prepared a report with 26 recommendations for improving the operations of New York's Family Court. These recommendations deal with court operations, case management and staffing; court resources; resources for individual litigants; and technology.

Chief among these recommendations is the authorization of additional judges for the Family Court.

NYSBA Activity

The Association has included increasing the number of Family Court judges as a legislative priority in 2014.

Kevin M. Kerwin

Gun Violence

NYSBA Position

No position has been taken to date.

Background

The issue of the regulation of guns by the government has been debated from the earliest days of our nation, starting with the adoption of the Second Amendment to the United States Constitution. Within the last 50 years, ever since the assassination of President Kennedy, the debate has become more prominent in our national dialogue and far more heated. President Reagan was shot by a would-be assassin, the use of guns has plagued the urban neighborhoods of our cities, suicides have become more common, and there have been a number of random mass shootings. The calls for strict gun regulation have been met with opposition based on the rights of gun owners under the Second Amendment. The mass killing of school children in Newtown, Connecticut last December served to make the call for action far more immediate.

This debate has, unfortunately, taken place within the context of a great deal of uncertainty as to the right of governments to impose regulations and restrictions on guns and gun owners. The United States Supreme Court decision in *District of Columbia v. Heller*, 54 U.S. 570 (2008) made clear that the Second Amendment protects the rights of individual gun owners, but it left open many questions as to the extent of these protections. This has resulted in what can best be described as a quite uninformed public debate.

NYSBA Activity

In light of the ongoing debate and legal uncertainties, then-NYSBA President Seymour W. James, Jr. appointed a Task Force on Gun Violence to study both the policy and legal issues that have caused so much difficulty and to make recommendations. The Association's Task Force on Gun Violence first met in late May, and has held several additional meetings. It has also conducted a good deal of research, examining both the difficult legal questions that arise and the policy issues. It intends to issue an informational report at the meeting of House of Delegates in January and to then send a draft report out for comment in anticipation of a vote at a future House meeting. It anticipates that its report will include a detailed history of the Second Amendment and a full discussion of the law as it has developed since the *Heller* decision in the hope that it can contribute to a better understanding of the legal issues. It also anticipates making policy recommendations.

Richard Rifkin

Human Trafficking

NYSBA Position

In 2013, the NYSBA House of Delegates approved a report of the Association's Special Committee on Human Trafficking. The Special Committee on Human Trafficking was formed to consider initiatives that go beyond New York's 2007 Human Trafficking Law and address education, training, provision of legal services and coordination of resources for victims, as well as the effective prosecution of traffickers in New York State. The committee's report is available at <http://www.nysba.org/humantrafficking>.

Background

Human trafficking is a contemporary form of slavery that is prevalent in many countries around the world. Domestically, cases of human trafficking have been reported in all 50 states. This crime permeates an astounding breadth of legitimate and illegitimate industries alike, with thousands of people forced into hard labor or prostitution every year. These victims, many of them women and children, often suffer physical and psychological abuse at the hands of traffickers, leaving them scarred with health problems, mental illness, and, frequently, addiction. Moreover, they are often especially vulnerable to intimidation because of their immigration status or for fear of reprisal against their families. As a result, victims may be reluctant to report their victimization to law enforcement agencies, making it difficult to define the magnitude of the problem.

In 2007, New York passed its first law against human trafficking. New York's Human Trafficking Law criminalized sex and labor trafficking, toughened penalties, and established services for victims.

NYSBA Activity

The Special Committee on Human Trafficking created a comprehensive report calling on state legislators, the courts and advocacy groups to undertake specific measures to enhance the prosecution of human traffickers and focus more attention on the care and treatment for victims. In drafting its report, the Special Committee adopted a holistic approach, aimed at targeting specific issues and problems from the moment the victim seeks aid or is arrested, through the conviction of traffickers, family law issues, as well as post-conviction questions such as vacatur including considerations as to immigrant status, which often prevents victims from overcoming the trauma they experienced. Their report addresses sex and labor trafficking as well as pervasive child trafficking issues. Recommendations include establishing a civil private right of action victims, eliminating the criminal prosecution of minor victims of sex trafficking by raising the age of criminal responsibility to age 18, and amending the child protective provisions of the Family Court Act and New York Social Services Law to explicitly include child victims of human trafficking.

Kevin Barrett Getnick

Immigration Representation

NYSBA Position

In 2012, the NYSBA House of Delegates approved a report of the NYSBA Special Committee on Immigration Representation, which was created to recommend ways to improve the quality and availability of representation in immigration matters. Its report is available at www.nysba.org/ImmigrationReport. In 2013, the NYSBA designated “legislative reform to address the state of crisis in immigration representation” as a legislative priority.

Background

Asylum seekers and longtime non-citizen residents in removal proceedings face detention, deportation, and often permanent expulsion from the U.S. with no constitutional or statutory right to government-funded legal representation. Many of these immigrants have limited resources and cannot afford attorneys. With the dramatic and rapid escalation in immigration enforcement policies and resources, efforts to provide effective and readily available quality representation and assistance are necessary to promote a fair and just immigration court system.

NYSBA Activity

The NYSBA Special Committee on Immigration Representation prepared a comprehensive report. The report featured detailed “Standards of Representation in Immigration Cases,” which the Special Committee is now distributing to attorneys, legal service providers, and law school clinics. The report also described the process by which non-attorneys can be designated as “accredited representatives” who are authorized to represent respondents in immigration proceedings. In connection with issuing the report, the committee submitted letters to the Executive Office of Immigration Review expressing its concerns about the oversight of accredited organizations and standards for adequate training and supervision of individual accredited representatives. The report addressed the need for additional pro bono representation and pro se assistance in many parts of New York State, and it proposed several strategies to improve the quality and availability of representation in underserved areas. Consistent with its recommendations, the committee has been working with the New York State Department of Corrections and Community Supervision to distribute “Know Your Rights” materials and other legal resources throughout state facilities where immigrants are detained.

The committee has developed continuing legal education programs in its efforts to improve the quality of legal representation in immigration cases.

Andria Bentley

Legal Education and Admission to the Bar and the Future of the Legal Profession

NYSBA Position

In April 2011, the NYSBA House of Delegates approved the report and recommendations of the Task Force on the Future of the Legal Profession.

In January 2013, the Executive Committee accepted the final report of the Committee on Legal Education & Admission to the Bar, which addressed implementation of certain recommendations made in the September 2010 report of the Special Committee to Study the Bar Exam and Other Means of Measuring Lawyer Competence.

In April 2013, then President-Elect David Schraver reported to the Executive Committee the progress of the Committee on Legal Education & Admission to the Bar on the follow-up recommendations to implement the recommendations of the report of the Task Force on the Bar Exam and the Task Force on the Future of the Legal Profession.

Background

Due to the economic downturn and changes in the delivery of legal services, today's lawyers face a number of challenges, including developments in the provision of law-related services, new technology, increased globalization, a changing economic climate and new client demands. In addition, many bar leaders have become increasingly aware of the need to revise the way new lawyers are trained in order to provide newly admitted attorneys the skills necessary to assist clients right out of law school.

NYSBA Activity

In September 2013, the Committee on Legal Education & Admission to the Bar edited a special edition of the *New York State Bar Journal* on legal education, with articles written on such topics as "Making Law Students Client-Ready," "Should Skills Training be Required for Licensing?," "The Mismatched Economics of Legal Education."

As part of the Presidential Summit program during the Association's 2014 Annual Meeting, the Committee on Legal Education & Admission to the bar will sponsor a panel on "Educating Tomorrow's Lawyers: Can Lawyers, Employers, Regulators and Educators Come Together to Address Our Challenges?" A panel of representatives from the judiciary, the practicing bar, regulators and legal educators will discuss the dramatic changes that are taking place in legal education and the legal job market and possible strategies to address these changes. The panel will discuss

topics including the cost of legal education, the extent to which the curriculum prepares students for practice, the need for greater diversity in the profession, the relevance of the bar exam to the practice of law, the job market facing law school graduates, and other important issues related to legal education and the future of the profession. A second panel, entitled “Supporting Today’s Lawyers: the Rapidly Changing Legal Profession,” will address how changes in the provision of legal services are impacting the practice of law and how lawyers and law firms are responding to the challenge.

In May, 2014 the Committee on Legal Education and Admission to the Bar is planning a Spring Convocation with the Institute on Judicial Professionalism and the Law, featuring panels speaking on: “Restructuring Law School,” “The Inculcation of Professional Values, (Examination of model “professional values” programs.)”

Lisa J. Bataille
Kathleen R. Mulligan Baxter

Mandatory Pro Bono Reporting

NYSBA Position

NYSBA opposes the requirement imposed on attorneys that they report on their biennial registration statements the number of pro bono hours they have provided to serve poor and underserved clients and the amount of contributions they have made to organizations that provide legal services to such clients.

Background

On May 1 2013, Chief Judge Jonathan Lippman announced that the Rules of the Chief Administrator dealing with attorney registration statements were amended, effective as of that date, to require each attorney to report “the number of hours that the registrant voluntarily spent providing unpaid legal services to poor and underserved clients...” and “the amount of voluntary financial contributions the registrant made to organizations primarily or substantially engaged in providing legal services to the poor and underserved....”

NYSBA Activity

At its meeting on June 21, 2013, the Executive Committee asked President Schraver to take action to express the Association’s opposition to the newly imposed requirements. The next day, President Schraver announced to the House of Delegates that he would write a “respectful but direct” letter to Judge Lippman. He sent the promised letter on June 26, which resulted in a meeting between President Schraver and Judge Lippman on July 23. On September 12, Judge Lippman announced that there will be no public disclosure of the newly required information prior to April 2015.

At the House of Delegates meeting on November 2, a resolution was presented by the Committee on Standards of Attorney Conduct amending the Comments related to the Professional Conduct Rule dealing with pro bono hours. This resulted in an extensive and lengthy debate on the mandatory disclosure rule, even though that rule was not part of the Resolution. During the debate, many delegates expressed their displeasure with the new disclosure requirements. The entire matter was tabled. Following the meeting, President Schraver appointed a subcommittee of the Executive Committee to consider what further action the Association might take. That subcommittee will report in January.

Richard Rifkin

Prisoner Re-Entry

NYSBA Position

No position has been taken to date.

Background

In New York State, approximately 25,000 inmates are released into their communities each year. Nearly 40% of those prisoners lack a high school diploma or equivalent degree. Three quarters of those returning from prison have a history of substance abuse. More than 10% of those entering incarceration are homeless in the months directly preceding their imprisonment. Serious mental illness is between two and four times higher among prisoners than it is in the general population. Chronic illness and communicable disease are far more prevalent in prisons and jails than the community at large.

Stable employment, education, entrance into appropriate substance abuse treatment programs, access to public assistance benefits, and proper mental and physical healthcare are among the elements critical to a successful transition into the community, yet former prisoners often encounter significant barriers in finding and accessing these resources.

As a result, former inmates are often unable to successfully reintegrate into their communities leading to high levels of recidivism throughout New York State and the nation.

NYSBA Activity

In 2012, then-NYSBA President Seymour W. James, Jr. created a Special Committee on Prisoner Re-Entry. The committee has been tasked with studying the issues facing former inmates and recommending steps that can be taken during incarceration and the re-entry process to help bridge the gap between prison and participation in free society, including educational programs during and after incarceration and other initiatives aimed at curbing recidivism. The committee has formed six subcommittees to examine the unique issues surrounding job training and employment; benefits and family rights; education; housing; medical access and mental health; and juveniles. It expects to issue a report in 2014.

Kevin Barrett Getnick

Solitary Confinement

NYSBA Position

In January 2013, the NYSBA House of Delegates approved the report and recommendations of the Committee on Civil Rights in support of limiting the use of solitary confinement in New York correctional facilities.

Background

Currently, there are approximately 4,500 prisoners being held in solitary confinement in New York correctional facilities. According to a report issued by the New York Civil Liberties Union, in 2011 New York issued more than 13,500 extreme isolation sentences. Concerns have been expressed as to the psychological and physical consequences of lengthy solitary confinement; in 2011, noting these concerns, the United National Special Rapporteur on torture called on nations to ban the use of solitary confinement except in very exceptional circumstances and for as short a period as possible.

NYSBA Activity

In 2012, the NYSBA Committee on Civil Rights studied the use of solitary confinement in New York and issued a report recommending that the New York State Department of Corrections and Community Service and the New York City Department of Corrections examine, reform and, to the extent possible, eliminate the use of long-term solitary confinement. In addition to the psychological and physical consequences noted above, the committee concluded that solitary confinement is counterproductive to the goals of prisoner protection, discipline, rehabilitation and reintegration, instead aggravating the conditions it seeks to address.

Limiting the use of solitary confinement is a 2014 NYSBA legislative priority. It is anticipated that legislation will be introduced this year to address the topic. In addition, NYSBA will write to the Governor and the Commissioner of the Department of Corrections and Community Service urging limited solitary confinement.

Mark Wilson

Veterans' Legal Services Needs

NYSBA Position

The Association is committed to ensuring that a variety of civil legal services are available to meet the needs of New York State's active duty military service members, veterans, and their families. In November 2012, the House of Delegates approved the report and recommendations of the Special Committee on Veterans (now a NYSBA standing committee). The report is available at www.nysba.org/VeteransReport.

Background

The Committee on Veterans found that veterans face many of the same legal needs that confront their civilian counterparts, e.g., problems with consumer debt and credit issues, family law issues, foreclosure, homelessness, evictions, arrest and prosecution. Unlike civilians, however, veterans' legal problems may be complicated by their military experience, physical and psychological issues, such as post-traumatic stress disorder and traumatic brain injury, and substance abuse.

NYSBA Activity

In recognition of their service and sacrifices for our county, the Association established a special panel of attorneys to provide free telephone consultations and discounted legal services to veterans statewide, not just those services related to obtaining veterans benefits, but in a variety of civil legal matters. More than 155 attorneys from around the state, including representatives from two local bar associations, have agreed to participate in the New Veteran Referral Panel, which was launched on Veterans Day 2013 and will continue through Memorial Day 2014. Recruitment for panel attorneys is ongoing.

A number of Veterans Treatment Courts, like the very successful court in Buffalo, have been established across the state. NYSBA has been at the forefront of supporting the broader establishment of Veterans Treatment Courts, as an effective means to balance the needs of our communities and those who have served our country. In furtherance of this goal, the Association has made the expansion of access to Veterans Treatment Courts across the state one of its top legislative priorities for 2014-2015.

In addition, NYSBA continues to provide Continuing Legal Education courses targeted at recruiting and training attorneys to represent veterans in a variety of civil legal matters as well as in proceedings before the Veterans Administration.

Gloria Herron Arthur

Youth Courts

NYSBA Position

In 2010, the Committee on Youth Courts was created to examine the role that NYSBA can play in strengthening Youth Courts, defining best practices, identifying locations where new Youth Courts can be established, and developing strategies for raising funds to enlarge the initiative.

Background

Youth Courts have a dual purpose: to address real-life problems faced by young people (such as truancy, school fighting, graffiti, vandalism and shoplifting), intervening early to avoid more serious encounters that trigger a downward life spiral; and to offer participating teens, who are trained to serve as jurors, judges, attorneys and court personnel, education about our justice system, too often lacking today. The courts use positive peer pressure to ensure that young people who commit even minor offenses give back to the community and avoid further entanglement with the justice system. NYSBA recognizes the importance of Youth Courts as a unique and powerful juvenile diversion program and supports it through the function of this committee.

NYSBA Activity

Seeking to build on the success of youth courts established in recent years throughout the Capital Region, members of the Committee held an information forum for local stakeholders in October 2010. The goal was to encourage local agencies to take the lead in the establishment of a Youth Court in Albany that would serve the youth of the capital city. More than 100 local law enforcement, judiciary, social services, and educational professionals attended this event.

As a direct result of this event, members of the Committee worked closely with the Albany City School District in the establishment of a school-based Youth Court that was created to handle school-based offenses. The Albany High Youth Court is well underway and began hearing cases in early 2012. A grant through the Project Safe Neighborhoods and the Department of Justice was secured by the Albany High School Youth Court to provide startup funding for this project. Work continues with representatives from agencies from communities around the state in the development of Youth Courts.

In September 2013, a Youth Court event was held. Co-sponsors of the event were the Association of New York State Youth Courts and the US Attorney's Office of the Northern District of New York. The day included morning workshops at the Bar Center and a celebratory awards ceremony and youth court demonstration at the James T. Foley Courthouse in Albany. A promotional video funded by the Committee was also debuted at this event.

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