## NEW YORK STATE BAR ASSOCIATION



# NYSBA

## **Legal Briefs**

2013

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

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#### NYSBA Legal Briefs 2013

#### Reader's Note

NYSBA Legal Briefs 2013 contains concise summaries of twenty-six subjects of concern to the New York State Bar Association ("NYSBA" or "Association"), the legal profession, and the public. This annual publication – previously entitled Current Legal Issues Affecting the Profession – is in its thirty-second year. The information contained in this issue is current through publication on January 1, 2013. Subsequent events – such as changes in NYSBA 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 NYSBA staff member who authored the summary. NYSBA's main number is 518-463-3200.

The full text of NYSBA Legal Briefs 2013 also is available on NYSBA's website (www.nysba.org).

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

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## **Legislative Priorities**

#### Civic Education

#### NYSBA Position

In 2011, the NYSBA Executive Committee approved as a legislative priority the support of federal programs that are designed to promote civic education and responsibility among the nation's elementary and secondary school students.

## **Background**

In recent years, several legislative and executive changes primarily have had the effect of de-emphasizing civics education in New York State. For example, the No Child Left Behind Act and the national Common Core State Standards - which were adopted by New York State -- have left less classroom time for civics education, due to the imposition of additional requirements regarding mathematics and reading. In addition, the U.S. Department of Education's Race to the Top grant program has created incentives for states to raise their K-12 standards with respect to mathematics, science, and English. The New York State Education Department has received funding through the program, and it is consequently consider reducing social studies requirements to make way for Common Core subjects. Unfortunately, Congress also defunded the Center for Civic Education ("CCE"), which it previously supported through the Education for Democracy Act. The impact of this decision on New York - and on NYSBA's Law, Youth, and Citizenship ("LYC") Program – has been sizeable. The LYC Program was able to provide CCE resources and services totalling \$221,000 in 2010-2011. Since CCE was defunded, however, the LYC Program has not been able to identify alternate funding.

On a more positive note, a bill is pending in the U.S. Congress that would create new incentives for civic education. The bill, known as the "Sandra Day O'Connor Civic Learning Act of 2011" (H.R. 3464), would provide a competitive grant program for civic education programs. In November 2011, the bill was assigned to a legislative committee for consideration and possible referral to either the U.S. House of Representatives or the U.S. Senate.

## NYSBA Activity

In conjunction with NYSBA leaders, the NYSBA LYC Program and the NYSBA LYC Committee are advocating for increased funding and support for civics education programs. In October 2012, the LYC Committee formed a Civics Advocacy Subcommittee to assist in this effort. In addition, the LYC Program and the LYC Committee – with support from the New York Bar Foundation – continue to provide civic education resources to school districts throughout the state.

Eileen Devine Gerrish

## Civil Legal Services Funding

#### **NYSBA** Position

NYSBA has long advocated for adequate government funding for civil legal services. In fact, it has made this issue a legislative priority for many years. The Association recognizes that access to justice can be illusory when low-income and disadvantaged persons go to court seeking help on basic matters -- shelter, safety, subsistence benefits, access to health care, and education - without the benefit of legal representation.

## Background

For the past three years, the Association has actively participated in hearings conducted by Chief Judge Jonathan Lippman's Task Force to Expand Access to Civil Legal Services in New York. Evidence gathered in these hearings amply demonstrates that funding civil legal services is not only right, just, and equitable -- but it also makes good business sense, as evidenced by the substantial monetary benefits New York reaps from every dollar it spends. For example, outside experts commissioned by the task force found that investing in civil legal services provides substantial economic benefits to New York State. Specifically, it was found that, for every dollar spent funding civil legal services, the State received approximately six dollars in savings. The positive financial effects could be as much as \$1.06 billion over the long term.

The Judiciary budget for 2012-13 included \$25 million for civil legal services. The budget also included \$15 million for the Interest on Lawyer Account Fund ("IOLA") -- which uses interest collected on attorney escrow accounts to finance grants to civil legal services providers. The Judiciary budget included an additional \$12.5 million for distribution via a competitive bidding process to civil legal services providers.

## NYSBA Activity

The Association supports Chief Judge Lippman's commitment to fund civil legal services. The topic was a legislative priority for NYSBA in 2012. The Association's leaders advocated for adoption of the Judiciary budget in meetings with state policymakers, through testimony to the New York State Legislature's budget committees, and in statements to the press. Because funding has been – and continues to be – inadequate, NYSBA also took steps to obtain funding from other sources.

Gloria Herron Arthur

## **Court System Funding**

#### **NYSBA Position**

In 2012, the NYSBA Executive Committee approved "integrity of the justice system" – which includes adequate funding of the New York State court system – as a legislative priority for 2013. A report prepared by the NYSBA Executive Committee on court funding is available at www.nysba.org/courtfundingreport.

## **Background**

NYSBA traditionally has advocated that state policy makers appropriate adequate funding for the state's unified court system. The unprecedented elimination of \$170 million from the court system's 2011-2012 budget resulted in layoffs of hundreds of court employees. Because of this funding crisis, there was serious concern over the ability of the courts to perform their constitutional function and provide access to justice. To provide true access, the courts must have well-trained personnel, operate on a full-time basis, and maintain all necessary facilities. Due to more recent budget proposals that essentially are "flat," funding for the New York State Judiciary will continue to be a very high priority for the Association.

## NYSBA Activity

The Association conducted a study of how the courts in each area of the state were coping with the \$170 million in decreased funding. NYSBA vice presidents reached out to administrative judges, bar associations, and practitioners in their judicial districts, and they drafted summary reports. The information was compiled into a statewide report, issued in January 2012. The report identified problems with the court system that included long delays and postponements in civil and criminal cases, overcrowded court calendars, problems with jury selection and jury service, limited citizen access to legal services, and overworked court employees.

The report was discussed at NYSBA's Presidential Summit later in January. In February, then-NYSBA President Vincent E. Doyle III provided related testimony to the legislature in connection with a state budget hearing, urging lawmakers to approve the New York State Unified Court System's proposed budget for 2012-2013 and to monitor the long-term impact of past budget cuts. President Doyle also marked Law Day in May by stressing the vital importance of a fully funded and operational court system. In addition, NYSBA participated in a 2012 initiative by the American Bar Association that examined the impact of cutbacks on state courts nationwide.

NYSBA leaders are currently advocating that the legislature ensure the integrity of the justice system and provide adequate funding for the New York State Unified Court System's proposed 2013-2014 budget.

Teresa Schiller

## **Defense of Marriage Act Repeal**

## **NYSBA** Position

The Association supports legislation that would repeal the Defense of Marriage Act ("DOMA"), thereby extending federal recognition to same-sex marriages. This issue is one of the Association's legislative priorities for 2013. In addition, the Association generally supports equity for same-sex couples and objects to discrimination against individuals on the basis of their sexual orientation.

## Background

In 1996, the U.S. Congress enacted DOMA, which defines marriage as a union of one man and one woman for the purpose of federal recognition.

Same-sex marriages are legal in some states -- including New York, as of July 2011 -- and they are legally recognized by other states. However, DOMA relieves states of the obligation to recognize same-sex couples' marriages that are validly performed in another state.

DOMA limits the availability of federal benefits (and responsibilities) to heterosexual married couples. Whether Congress has the authority to define marriage in this way, or to actively discriminate against a class of individuals, has been challenged in the courts. For now, however, enforcement of DOMA means that federal benefits are not available to same-sex couples who marry.

At the time of this writing, the U.S. Supreme Court had granted certiorari in Windsor v. United States, a case in which the U.S. Court of Appeals for the Second Circuit ruled DOMA unconstitutional. The Supreme Court has scheduled oral arguments for March 27, 2013.

## NYSBA Activity

The Association has contacted federal officials to voice its views on particular legislation to repeal DOMA. For example, NYSBA has advocated for the law to grant federal recognition to same-sex marriages entered into in any state that allows them -- regardless of the couple's state of residence. Such recognition would include any federal law involving a question of marital status, such as the tax code and social security law.

Kevin M. Kerwin

## **Juvenile Justice**

## **NYSBA Position**

In 2011, the NYSBA Executive Committee approved a resolution from the NYSBA Committee on Children and the Law that called for the enactment of legislation to raise the age of criminal responsibility and general juvenile delinquency jurisdictional age to eighteen. This issue is one of the Association's legislative priorities for 2013.

## **Background**

There is an overwhelming national consensus that children should not be charged criminally as adults until they reach the age of eighteen. New York is one of only two states in which children who are aged sixteen and over are criminally prosecuted as adults. Research has shown that the adolescent brain is not as fully developed as the adult brain, limiting youths' critical decision-making ability, reasoning, impulse control, ability to resist peer pressure, and understanding of risk. The U.S. Supreme Court, based in part on the foregoing adolescent brain research, has determined that penalties accorded juveniles who commit serious crimes should take into account their youth and ability to be rehabilitated.

Children in New York aged sixteen years and over could benefit greatly from the Family Court's different treatment of young offenders. They also could benefit from the programs and services that are available exclusively for children who are found to be delinquent in Family Court, but who have not been convicted in a criminal court.

Statewide task forces have been created in recent years to study related issues. For example, former Governor David Paterson created a Task Force on Transforming Juvenile Justice, which recommended that the topic be included in the state's juvenile justice agenda. Former Chief Judge Judith Kaye created a Task Force on the Future of Probation in New York State, which advocated for the creation of a commission on the topic.

## **NYSBA Activity**

In 2008, the NYSBA Executive Committee approved a resolution and report submitted by the NYSBA Committee on Children and the Law. The resolution called for the governor and state legislature to establish a task force to examine raising the relevant age to eighteen. In 2011, the committee revisited this issue to make clear that it supported raising the age of criminal responsibility to eighteen. The NYSBA Executive Committee approved that clarification. NYSBA leaders have advocated for legislative change since that time

Katherine Suchocki

## **Legal Services Corporation Funding**

#### **NYSBA Position**

NYSBA continues to be a strong supporter of adequate federal funding for the Legal Services Corporation ("LSC").

## Background

LSC is the single largest funder of the nation's providers of legal assistance to the poor. U.S. Census Bureau data on poverty shows that nearly one in five people -- or nearly 60 million -- qualify financially for legal assistance programs funded by LSC.

Nevertheless, LSC grants to support legal aid programs around the country have been reduced significantly since 2010. LSC's funding shrank from \$420 million in Fiscal Year 2010, to \$404 million in Fiscal Year 2011, to \$348 million in Fiscal Year 2012. This represents a reduction of \$72 million, or 17 percent.

Automatic budget cuts that are scheduled to take effect in January 2013 could be devastating to LSC and the clients it serves. Due to sequestration, LSC could see its budget drop \$29 million beyond the significant cuts it has already suffered in recent years.

Based on data from the Brookings Institution and the Congressional Budget Office, LSC projects that from 2010 to 2013 an additional six million Americans will become eligible. This projection does not take into account the hundreds of thousands of low-income people who were recently impacted by Superstorm Sandy and who may consequently need the free legal services provided by LSC-funded legal services organizations.

## **NYSBA Activity**

Because adequate funding for LSC is one of NYSBA's legislative priorities, NYSBA leaders frequently advocate with government officials for change. For example, NYSBA President Seymour W. James, Jr. recently joined with 15 local bar associations to urge the state's congressional delegation in Washington to protect and enhance this crucial source of funding for the poor.

Gloria Herron Arthur

## Not-For-Profit Corporation Law

#### **NYSBA Position**

The Association supports the revision of the state's Not-for-Profit Corporation Law as one of its legislative priorities for 2013.

## **Background**

The nonprofit sector in New York is enormous and wide ranging, and it has a vital impact on the people and economy of the state. The nonprofit sector includes entities such as foundations, charities, health care organizations, service agencies, cultural institutions, religious organizations, and research and educational centers.

## **NYSBA Activity**

The Association has developed legislation to improve the Notfor-Profit Corporation Law. Specifically, the Association supports revision of the law to accomplish the following: (1) remove the incentives for organizations to incorporate, or move investment assets out of state; (2) reduce government burdens; and (3) streamline nonprofit governance without compromising oversight. Moreover, the Association supports making the statutory framework for nonprofit corporations and business corporations more consistent.

Ronald F. Kennedy

## Office of Indigent Legal Services Funding

#### **NYSBA** Position

NYSBA supports adequate funding for the state Office of Indigent Legal Services ("ILS"). ILS's mission is to monitor, study, and improve the quality of indigent legal defense services that are provided under Article 18-B of the New York County Law. Pursuant to Article 18-B, an Assigned Counsel Plan provides compensation to private attorneys for representing indigent clients charged with criminal offenses.

## Background

ILS was established partially in response to a report issued by the New York State Commission on the Future of Indigent Defense Services in 2006. The commission, which was created by then-Chief Judge Judith Kaye, found glaring deficiencies in the quality of indigent legal services provided by counties. These deficiencies included the following: (1) excessive caseloads; (2) severe staffing shortages; (3) lack of adequate training; (4) lack of adequate support services; and (5) oftentimes minimal client contact.

ILS reports to an Indigent Legal Services Board that was created in 2011. The board grants funding to New York City and counties to improve the quality of legal services. In 2011, the board distributed \$70.2 million, including funding provided pursuant to Article 18-B. During that year, the board also distributed an additional \$8.1 million, which was sufficient to restore New York City and counties to a 2010 level.

More recently, the board authorized the distribution of \$20.4 million over three years through a competitive grant process. The board had two important goals in mind: (1) to ensure that every criminal defendant would be represented by counsel at his or her first court appearance; and (2) to ensure that indigent defense providers are in compliance with the U.S. Supreme Court's requirements in Padilla v. Kentucky. Pursuant to Padilla, assigned counsel must provide each client with accurate information about the potential immigration consequences of a criminal conviction.

## **NYSBA Activity**

The Association continues to support adequate and stable funding for ILS. The topic was a legislative priority for NYSBA in 2012. The Association's leadership advocated for adequate funding in meetings with state policymakers, through testimony to the New York State Legislature's budget committees, and in statements to the press.

Gloria Herron Arthur

## **Sealing Records of Convictions**

## **NYSBA Position**

NYSBA supports state legislation that would allow for the sealing of records of certain convictions. This issue is one of the Association's legislative priorities for 2013.

## **Background**

In most cases, a conviction in New York State follows an exoffender for the rest of his or her life. With a 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, at some time in the past.

## **NYSBA Activity**

In January 2012, the NYSBA House of Delegates approved a report from the NYSBA Criminal Justice Section on the sealing of criminal convictions. The report is available at www.nysba.org. The Association has successfully advocated for state legislation to be introduced that would effectuate the goals of the sealing report, and it will continue to advocate strongly on this issue in 2013.

Kevin M. Kerwin

## 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 2013.

## **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 the Association to the New York State Legislature for its consideration during the 2010, 2011, and 2012 sessions. It is anticipated that the bills will be resubmitted in 2013. There will be a focus on the bill requiring custodial interrogations because there is significant interest in this topic.

In addition, the Association 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**

## ABA Ethics 20/20

#### **NYSBA Position**

The American Bar Association ("ABA") Commission on Ethics 20/20 ("Ethics 20/20") has for the past three years issued papers and proposals concerning the ABA Model Rules of Professional Conduct and related commentary. NYSBA has submitted responsive comments to many. It co-sponsored six of the Commission's proposals when they were submitted to the ABA House of Delegates in August 2012.

## **Background**

Ethics 20/20 was created in 2009 by then-ABA President Carolyn Lamm as a three-year initiative to examine the ABA Model Rules. The Commission has issued discussion papers and proposals on topics including the following: (1) outsourcing; (2) technology and confidentiality; (3) use of technology for client development; (4) pro hac vice admissions; (5) registration of in-house counsel; (6) multijurisdictional practice; (7) choice of law; and (8) ranking of law firms. Its most controversial papers were on alternative business structures. In these papers, Ethics 20/20 suggested permitting non-lawyers to have a limited ownership interest in law firms. However, Ethics 20/20 will not be making any proposal on this topic.

## NYSBA Activity

On the issue of ranking law firms, NYSBA submitted a resolution to the ABA House of Delegates in 2010 seeking a study of the subject -- spurred by an announcement that *U.S. News & World Report* would begin to rank law firms. After amendments, the resolution was adopted by the ABA House, and Ethics 20/20 was assigned to study the subject. In 2011, Ethics 20/20 issued a report recommending no changes, although it identified certain items for monitoring.

Regarding Ethics 20/20's other papers and proposals, NYSBA has submitted comments based largely on the work of the NYSBA Committee on Standards of Attorney Conduct. As to nonlawyer ownership, former NYSBA President Vincent E. Doyle III created a task force to consider whether NYSBA should alter its prior position in opposition. (See separate section on nonlawyer ownership.)

Ethics 20/20 submitted six proposals for consideration at the ABA House of Delegates meeting in August 2012, and all of them were co-sponsored by NYSBA and adopted by the House. The final four Commission proposals will be presented to the ABA House of Delegates in February 2013.

Richard Rifkin

## Chief Judge's Pro Bono Bar Admissions Requirement

#### NYSBA Position

The Association has not taken a formal position regarding a new 50-hour pro bono requirement for admission to practice in New York. However, NYSBA opposes mandatory pro bono service for all lawyers.

## **Background**

In May 2012, Chief Judge Jonathan Lippman announced a new pro bono service requirement for admission to practice. This 50hour requirement was designed to be a one-time requirement for applicants who seek admission to practice law in New York. Chief Judge Lippman also announced the appointment of an Advisory Committee on New York State Pro Bono Bar Admission Requirements. The committee was assigned to provide recommendations on the scope and nature of the new initiative to the chief judge and the presiding justices of the four Appellate Departments.

## NYSBA Activity

In general, NYSBA promotes and encourages pro bono involvement by members of the legal profession and law students. Each year, NYSBA members perform hundreds of thousand hours of pro bono service.

In 2012, then-NYSBA President Vincent E. Doyle III created a NYSBA working group in response to Chief Judge Lippman's initiative. The working group gathered information from a diverse cross-section of members and prepared a report, which was presented to the NYSBA Executive Committee in June 2012. The report identified open issues -- such as the applicable definition of "pro bono" -- and provided relevant recommendations. The NYSBA Executive Committee approved the working group's report. The working group's comments were forwarded to the advisory committee, and NYSBA President Seymour W. James, Jr. then met with advisory committee representatives to discuss the new requirement.

Gloria Herron Arthur

## Corporate Counsel Pro Bono Service

## **NYSBA** Position

NYSBA supports the authorization of in-house counsel who are registered in New York State to provide pro bono assistance in New York as long as they are admitted in at least one U.S. jurisdiction.

## **Background**

In 2010, Chief Judge Jonathan Lippman created a Task Force to Expand Access to Civil Legal Service in New York. The task force determined that legal services for low-income people are in crisis. For example, 99 percent of tenants are unrepresented in eviction cases in New York City, and 98 percent are unrepresented outside of the city.

The unmet legal needs of the unrepresented adversely impact every New Yorker. For example, these deficiencies increase the cost of litigation for everyone by impeding the efficiency of court staff, mediation efforts, and settlement discussions. In addition, New York's economy has lost hundreds of millions of dollars because many unrepresented New Yorkers have lost their right to obtain federal funds, from disability payments to veterans' benefits. State and local governments -- and, ultimately, taxpayers -- must step into the breach, by spending more funds to combat homelessness, domestic violence, and poverty.

In 2011, New York implemented "Rules of the Court of Appeals for the Registration of In-house

Counsel." These rules permit in-house counsel who are admitted to practice in another jurisdiction but not in New York to work for New York employers. However, the rules do not include language permitting those lawyers to engage in pro bono work.

## NYSBA Activity

In June 2012, the NYSBA Corporate Counsel Section issued a report recommending amendments to state court rules that would allow in-house counsel, registered in New York, who are admitted elsewhere in the U.S. to perform pro bono services in New York. Specifically, the report urges amendments to New York's Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law, 22 NYCRR Part 522.

The NYSBA Executive Committee and NYSBA House of Delegates approved the Section's report. The proposed amendments were submitted to the New York Court of Appeals and the Office of Court Administration for consideration in July 2012.

Patricia Johnson

## **Criminal Discovery**

#### **NYSBA** Position

There is no formal position on criminal discovery at this time.

## **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 stage of the case.

## **NYSBA Activity**

In 2012, 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 policydevelopment process.

Ronald F. Kennedy

## Discovery and Case Management in Federal Litigation

## **NYSBA** Position

The Association supports proposals to reduce perceived delays and high costs associated with litigation in federal courts.

## **NYSBA Activity**

NYSBA's Special Committee on Discovery and Case Management in Federal Litigation was created in 2011 by then-NYSBA President Stephen P. Younger. The committee reviewed scholarly and practical literature on the causes of delays and expense in federal litigation. Relevant literature included materials assembled for a conference at Duke University School of Law in May 2010. The conference was sponsored by a committee of the Judicial Conference of the United States - the Civil Rules Advisory Committee of the Standing Committee on Rules of Practice and Procedure ("Advisory Committee").

Based on its review of the literature, the NYSBA committee identified two reformative themes: (1) the need for active and early judicial management by the courts of cases on their calendars; and (2) the need for cooperation among litigants' attorneys. The NYSBA committee also identified a need to embrace the concept of "proportionality" - the notion that the burdens imposed by discovery should bear a reasonable relationship to the importance of the issues and stakes in the case.

The NYSBA committee determined that an important step in achieving these goals is early interaction between the court and the attorneys in a litigation. Early interaction would accomplish the following: (1) focus the parties and the court on the important issues in the case; (2) result in a more efficient and less expensive discovery process; (3) minimize time-consuming and often unnecessary discovery and related motion practice; and (4) help achieve the aspirations of Rule 1 of the Federal Rules of Civil Procedure. This rule requires the courts to provide "just, speedy, and inexpensive determination of every action."

The NYSBA committee issued a report and recommendations aimed at reducing delays and expenses involved in federal court litigation. The report focused on four aspects of the litigation process: (1) preservation of documents and spoliation; (2) early judicial case management; (3) initial mandatory disclosure; and (4) preparation of privilege logs and waiver. The report and recommendations were approved by the NYSBA House of Delegates in June 2012. Thereafter, the Association made relevant recommendations to the Advisory Committee.

Ronald F. Kennedy

## **Family Court**

## **NYSBA** Position

The Association supports measures that would enable New York Family Court to improve its operations.

## Background

In New York Family Court, decisions are made every day about children and families, often on an emergency basis.

## **NYSBA Activity**

In 2010, the NYSBA Task Force on Family Court was created to examine the operations of Family Court and to assess the needs of the court, litigants, and the legal community.

In the words of former President Stephen P. Younger, "To thousands of New Yorkers, family courts are the face of our legal system but, unfortunately, with overcrowded dockets, too few judges and far too many delays, these courts resemble hospital emergency rooms, and our family law attorneys are forced to perform triage."

After more than two years of work, the NYSBA task force prepared a report with 26 recommendations. Chief among these recommendations is the authorization of additional Family Court judges. Additional recommendations relate to the following: (1) court operations case management and staffing; (2) court resources; (3) resources for individual litigants; and (4) technology.

The report and recommendations will be considered by the NYSBA House of Delegates in January 2013.

Kevin M. Kerwin

## **Future of the Legal Profession**

## **NYSBA** Position

In 2011, the NYSBA House of Delegates approved the report of the NYSBA Task Force on the Future of the Legal Profession, which was created to examine and project what the legal profession will look like in the next decade and what NYSBA can do to shape positive developments in the profession. The task force's report can be found at www.nysba.org/FutureReport.

## **Background**

Due to the economic downturn, many bar leaders – both across New York and globally -- have become increasingly aware of the need to revise the way we do business. The NYSBA Task Force on the Future of the Legal Profession took advantage of this historic opportunity to recommend lasting, positive changes that will chart a bold new course for our profession.

## **NYSBA Activity**

The task force issued its report following nine months of intensive study and a series of meetings that included the following: (1) NYSBA's annual Presidential Summit; (2) three law firm managing partners' forums; (3) a meeting of NYSBA past presidents; and (4) a law school deans' forum.

The report contains approximately 80 recommendations about the following: (1) creating a roadmap for the future use of technology in the profession; (2) improving legal education and training; (3) establishing a proper work/life balance for attorneys; and (4) delivering legal services in new and different ways.

The NYSBA Resolutions Committee has been working with committees, sections, and other entities to implement the task force's recommendations. Notably, as recommended by the task force, the New York Court of Appeals approved new rules in January 2012 that relax restrictions on the number of clinical education hours that can count toward law students' eligibility for the bar exam. Efforts toward the implementation of other task force recommendations are continuing. For example, in September 2012, NYSBA President Seymour W. James, Jr. and the NYSBA Resolutions Committee reached out to the deans of New York State law schools to encourage the implementation of several task force recommendations. President James plans to meet with the law school deans in January 2013 to discuss the recommendations and other shared goals.

Teresa Schiller

## **Human Trafficking**

#### **NYSBA** Position

No position on human trafficking has been taken to date.

## **Background**

Human trafficking, which has been referred to as a contemporary form of "slavery," is prevalent in many countries around the world. On the domestic front, human trafficking cases have been reported in all 50 states. This crime permeates legitimate and illegitimate industries alike, with thousands of people forced into hard labor and prostitution every year. These victims -- many of them women and children -- may suffer physical and psychological abuse at the hands of traffickers, leaving them scarred with health problems, mental illness, and addiction. Some may be especially vulnerable to intimidation because of their immigration status and because of the fear of reprisals against their families. As a result, some victims may be reluctant to report their victimization to law enforcement agencies, which makes it difficult for authorities to define the magnitude of the problem.

In 2007, New York State 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**

In 2012, NYSBA President Seymour W. James, Jr. created a Special Committee on Human Trafficking. The committee has been tasked with considering initiatives that go beyond New York's Human Trafficking Law. It is studying the following topics: (1) education; (2) training; (3) provision of legal services; (4) coordination of resources for victims; and (5) the effective prosecution of traffickers in New York State. The committee has formed three subcommittees on sex trafficking, labor trafficking, and child trafficking. The subcommittees are examining state and federal issues, and they plan to recommend initiatives to protect and support victims, prosecute traffickers, and coordinate efforts to fight trafficking. The committee expects to submit a report and recommendations to the NYSBA House of Delegates in 2013.

Kevin Getnick

## **Immigration Representation**

#### **NYSBA** Position

In 2012, the NYSBA House of Delegates approved a report of the NYSBA Special Committee on Immigration Representation. The committee was created to examine the dearth of competent representation in immigration cases and to recommend ways to improve the quality and availability of representation in immigration matters. Its report is available at www.nysba.org/ImmigrationReport.

## **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 also is developing a continuing legal education program in its efforts to improve the quality of legal representation in immigration cases.

Andria Bentley

## New York Law in International Matters

#### **NYSBA** Position

In 2011, the NYSBA House of Delegates approved the report of the NYSBA Task Force on New York Law in International Matters, which was created to educate lawyers, business leaders, and investors about the benefits of selecting New York law and a New York forum for international dispute resolution. The task force's report is available at www.nysba.org/InternationalReport.

## **Background**

New York domestic law is applied to a wide variety of cross-border business and international commercial transactions. In addition, New York is an international center for dispute resolution. It is imperative that attorneys who are working to resolve problems under New York law or who are coming up with new solutions under New York law be aware that any resolution or solution has potentially significant impacts on the reputation of New York law around the globe as well as within the borders of New York.

## **NYSBA Activity**

The NYSBA Task Force on New York Law in International Matters engaged in months of intensive study to prepare a comprehensive report. The report's recommendations include the following: (1) establish a permanent center in New York for hearings in international arbitration; (2) develop state court specialized chambers to assist with appropriate international arbitration matters; and (3) promote domestic and overseas continuing legal education programs on drafting international agreements.

The task force sent the report to approximately 10,000 targeted recipients. Task force members, NYSBA Resolutions Committee members, other NYSBA leaders, and New York community leaders have collaborated to pursue many of the recommendations. One product of the task force's recommendations is a New York International Arbitration Center, which will open in 2013. Collaborations on other recommendations are continuing. For example, in March 2012, an informal working group began meeting regularly to coordinate the joint implementation of recommendations. The informal working group includes representatives from the following groups: (1) NYSBA Resolutions Committee; (2) NYSBA Business Law Section; (3) NYSBA Commercial and Federal Litigation Section; (4) NYSBA Dispute Resolution Section; (5) NYSBA International Section; (6) New York City Bar Association; (7) New York County Lawyers' Association; and (8) St. John's University School of Law.

Teresa Schiller

## Nonlawyer Ownership

## **NYSBA** Position

NYSBA opposes at this time any form of nonlawyer ownership of law firms, although it recognizes that the issue should be the subject of further study and analysis. NYSBA supports permitting a law firm to share fees with another firm located in a jurisdiction that permits nonlawyer ownership and which, in fact, has nonlawyer owners.

## **Background**

In 2011, the ABA Commission on Ethics 20/20 issued a paper on alternate business structures. The paper proposed permitting nonlawyers to have limited ownership interests in law firms. Former NYSBA President Vincent E. Dovle III then created a task force to consider whether NYSBA should alter its prior position in opposition to nonlawyer ownership. Ethics 20/20 later issued another paper dealing with fee sharing between firms, one of which had nonlawyer owners, as permitted by the jurisdiction in which it was located. Although Ethics 20/20 withdrew all of its initial proposals on these topics, the NYSBA task force proceeded to study the issues and complete a report.

## NYSBA Activity

The report of the NYSBA task force was approved by the NYSBA House of Delegates in November 2012. A resolution approving the report called for further study and analysis of the issues by appropriate entities of the Association, and it called upon the NYSBA Committee on Standards of Attorney Conduct to work on the implementation of an inter-firm fee-sharing proposal that was approved in concept.

Richard Rifkin

## President's Section Diversity Challenge

#### **NYSBA** Position

In 2011, then-President Vincent E. Doyle III challenged all 25 NYSBA Sections to a "Diversity Challenge," with the theme of "Working Together, Everything Fits." In 2012, NYSBA President Seymour W. James, Jr. continued the Diversity Challenge with the theme of "Reaching for the Next Level."

The goal of these projects has been for each Section to promote greater representation, active participation, and leadership opportunities for diverse and under-represented attorney groups.

## **NYSBA Activity**

For the first Diversity Challenge, each Section began with an analysis of data regarding the ethnic, gender, and demographic characteristics of its membership. The Sections were asked to develop action plans, involving both short- and long-term goals to increase the number and participation levels of under-represented attorneys and law students. A Diversity Challenge Planning Committee encouraged each of the Sections to develop its own individual goals that were attainable and that would be supported by Section members.

The first Diversity Challenge concluded at the 2012 Section Leaders Conference, where highlights of the project were reported to NYSBA leaders. Successful initiatives included the following: (1) "Strength by Association," a series of educational, mentoring, and leadership development programs featuring prominent judges and attorneys; (2) "Diversity Vision Statements" that created additional diversity seats on Section executive committees; (3) internship and fellowship programs involving local law offices; and (4) support for the LGBT community with the establishment and expansion of LGBT committees within the Sections.

The first Diversity Challenge was recognized with two prestigious awards: (1) the ABA Partnership Award; and (2) the Franklin H. Williams Judicial Commission 2012 Diversity Award, sponsored by the New York State Office of Court Administration.

The second Diversity Challenge is now underway. The Sections have been challenged to demonstrate success in diversity through active participation and representation of diverse members, and to document this success with real numbers. Sections will be rated on numeric achievements for diversity, as evidenced by statistical reports on diversity and increases in participation. Ratings will be based on data such as the percentage of diverse Section members in committee and/or leadership roles. The 2013 Diversity Challenge will conclude in April 2013. Outstanding Section achievements will be recognized at a Section Leaders Conference in May 2013.

Patricia K. Wood

## **Prisoner Re-entry**

## **NYSBA** Position

No position on prisoner re-entry has been taken to date.

## **Background**

In New York State, thousands of inmates are released into their communities each year. Nearly 40 percent of 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 percent 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 is far more prevalent in prisons and jails than in the community at large.

Resources that are critical for a successful transition into the community include the following: (1) stable employment; (2) education; (3) entrance into appropriate substance abuse treatment programs; (4) access to public assistance benefits; and (5) proper mental and physical health care. Yet former prisoners often encounter significant barriers to 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**

NYSBA President Seymour W. James, Jr. is appointing a committee to study these issues and recommend steps that can be taken during incarceration and the re-entry process to help bridge the gap between prison and participation in free society.

Kevin Getnick

## Veterans' Legal Services Needs

## **NYSBA** Position

The NYSBA House of Delegates approved a report and recommendations of the NYSBA Special Committee on Veterans in 2012. The committee was established to identify the specific needs of New York's military community for quality legal services and to create a framework for successfully meeting those needs. The committee's report is available at www.nysba.org/VeteransReport.

## **Background**

Veterans who served in the armed forces often have the need for specialized legal services that are tailored to military service and culture.

## **NYSBA Activity**

The NYSBA Special Committee on Veterans studied the following issues in the course of preparing its report: (1) the nature and extent of legal services available to veterans; (2) Veterans Treatment Courts; and (3) the specialized legal education needs of attorneys who are interested in representing veterans. The committee found that veterans have many of the same civil legal needs that any other client might face - including family law issues, consumer debt and credit issues, foreclosures, evictions, and divorce. However, veterans' legal problems may be complicated by their military experience and by physical and psychological issues, such as posttraumatic stress disorder.

The committee has undertaken a variety of initiatives to support veterans. For example, it sponsored a day-long continuing legal education program for attorneys interested in representing veterans in civil legal matters. It plans to continue providing such training opportunities. The committee also examined methods for expanding the number of Veterans Treatment Courts and/or treatment tracks so that a veteran living in a jurisdiction without a treatment court can have his or her criminal case referred to a county where those services exist. One such effort to expand veterans' access to Veterans Treatment Courts involved drafting a proposed amendment to the Judiciary Law. The committee helped to develop a model Veterans Court Mentor Handbook in conjunction with the Office of Policy and Planning of the New York State Unified Court System. Finally, the committee determined that several local bar associations, law schools, and legal services providers have developed outreach programs and other initiatives to assist veterans and their families. It is actively encouraging those that do not have veterans' initiatives to consider implementing them.

Gloria Herron Arthur

## **Voter Participation**

## **NYSBA** Position

No position on voter participation has been taken to date.

## **Background**

For more than a decade, New York State's voter participation has ranked among the lowest in the nation. For example, in the last three federal elections, New York State ranked 47th in average voter turnout. Only 59 percent of eligible voters cast ballots in the 2008 presidential election. Only 35.5 percent of the eligible voting population cast votes for the highest office on the ballot in the 2010 general election. This left 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 fewer than 64 percent of eligible citizens registered to vote.

#### NYSBA Activity

In 2012, NYSBA President Seymour W. James, Jr. created a Special Committee on Voter Participation to consider possible reforms that would help remove obstacles to registration and voting, while maintaining the integrity of the process.

The committee completed its report in December. The report includes recommendations that address the following: (1) modernization of the voter registration system; (2) pre-registration of sixteen- and seventeen-year-olds; (3) Election Day and same-day registration; (4) the adoption of early in-person voting; (5) improved ballot design; (6) no-excuse absentee ballots; (7) the recruitment and training of poll workers; and (8) the provision of more severe and comprehensive penalties for deceptive practices.

The committee will present its report and recommendations to the NYSBA House of Delegates for approval in January 2013.

Kevin Getnick

#### Youth Courts

## **NYSBA** Position

NYSBA recognizes the importance of Youth Court as a unique and powerful juvenile diversion program. In 2011, the NYSBA Executive Committee approved an affirmative legislative proposal from the NYSBA Special Committee on Youth Courts. The committee proposed the addition of a new chapter to the Unconsolidated Laws of New York that would provide a framework for the establishment of Youth Courts in New York State. The committee also proposed amendments to the Criminal Procedure Law and the Family Court Act that would authorize Criminal and Family Courts to refer proceedings to Youth Courts.

## **Background**

Youth Courts have a dual purpose. First, they are a vehicle for addressing the real-life problems of young people – including truancy, school fighting, graffiti, vandalism and shoplifting - in a way that avoids more serious encounters with the law. Second, they educate participating teens - who serve in Youth Courts as jurors, judges, attorneys and court personnel – about our justice system.

Youth courts use positive peer pressure to enable young offenders to avoid further entanglement with the justice system. They also provide opportunities for offenders to "give back" to the community through community service.

## **NYSBA Activity**

In 2010, the Special Committee on Youth Courts - chaired by former Chief Judge Judith Kaye and Patricia L. R. Rodriguez was created. The committee was tasked with the following: (1) examining what roles NYSBA could play in strengthening Youth Courts; (2) defining best practices; (3) identifying locations where new Youth Courts can be established; and (4) developing strategies for raising funds to enlarge the initiative.

The committee has worked with the Albany City School District to establish a school-based Youth Court. It is using this model - as well as one from the Syracuse City School District - to implement school-based Youth Courts in other areas of the state.

The committee is working with the Association of New York State Youth Courts and the Justice Resource Center to develop a data collection program that will serve the needs of individual Youth Courts and be accessible to others who are seeking information and statistics about Youth Courts in our state.

In addition, the committee is sponsoring the creation of a promotional video to be used by Youth Courts for informational and fundraising purposes.

Stacey Whiteley



## NEW YORK STATE BAR ASSOCIATION One Elk Street, Albany, NY 12207 Phone 518.463.3200 www.nysba.org