



September/October 2013

Volume 55, No. 5

www.nysba.org



Thomas F.  
Liotti



David  
Miranda

### PRESIDENT-ELECT CANDIDATES SPEAK

The candidates for president-elect present their action plans to the membership.

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Committees are key to the success of this active section.

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NEW YORK STATE BAR ASSOCIATION

# State Bar News

## President, committee redefining future

Legal education seen as key to profession's direction in modern world



**Future of Law**—Judge Randolph F. Treece, U.S. Magistrate Judge for the Northern District of New York, conducts a swearing-in ceremony for the 187 new students who comprise the Albany Law School Class of 2016. The ceremony, which concluded three days of orientation, was held on August 16. *[Photo by Melissa Batalin/Albany Law School]*

By Patricia Sears Doherty

President David M. Schraver has taken meeting the crisis in legal education and creating a practical vision for the future of the profession as the lynchpin of his tenure—and he is moving fast to put his plan into action.

For instance, Schraver has breathed new vigor into the mission of the State Bar's Committee on Legal Education and Admission to the Bar (LEAB), which was formed in 1952. Today, "this little committee that never received much attention," as one of its co-chairs charac-

terized it recently, is front and center on the State Bar's priority programming.

"Our mission is to understand the changes happening all around us in the profession and help today's lawyers—our members—deal with that changing profession," said Schraver of Rochester (Nixon Peabody LLP). That mission has to begin with the education of law students—who will be the State Bar's future members and who will carry the profession's principles and practices into the future.

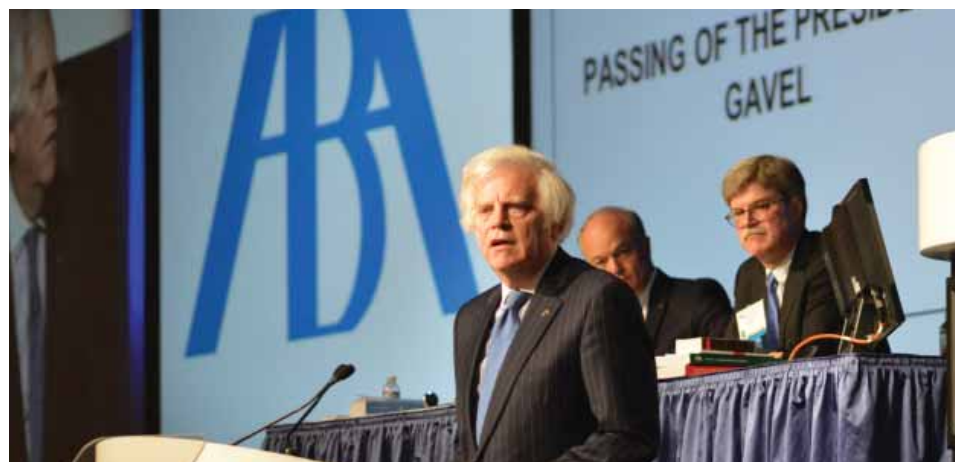
In May, when he made the committee appointments that fall to each

incoming president, Schraver added members to the LEAB, including a vice-chair, and gave it a new emphasis. He asked co-chairs Eileen D. Millett of New York City (Epstein Becker & Green, P.C.) and Eileen R. Kaufman of Central Islip (Touro College School of Law) and Vice-chair Ian Weinstein of New York City (Fordham University School of Law) to focus the committee's work on finding concrete proposals for changing how law students are educated and admitted to the bar. They

*Continued on page 6*

## NY's Silkenat ABA's new leader

State Bar proudly supports new president and his agenda



**National leader**—James R. Silkenat, newly inaugurated president of the American Bar Association, makes his inaugural speech at the Annual Meeting on August 13. He reminded the audience that they are all members of "One Profession." *[Photo courtesy of American Bar Association]*

By Patricia Sears Doherty

In this imperfect world, New Yorker James R. Silkenat, the new president of the American Bar Association, used his inauguration speech to remind the legal community of its responsibility to "make things a little better than we found them."

"As lawyers, and judges, and teachers, and corporate counsel, we are all One Profession," said Silkenat. "This unity of a single profession is a great strength for American lawyers" and a distinct contrast to legal communities in other parts of the world.

Silkenat, a partner at Sullivan & Worcester in New York City, is the 21st

*Continued on page 8*





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# Candidates for president-elect present their platforms and views to members

Thomas F. Liotti



Liotti

I am seeking a leadership position because our profession is taking too many wrong turns. We are in need of strong, courageous and independent leadership.

I have practiced high profile civil and criminal law in the state and federal courts for 36 years and been a village justice for more than 22 years. I have published over 200 legal articles and book reviews, six books and 36 reported judicial decisions.

I have been a member of this Association's House of Delegates, chair of the Criminal Justice Section and editor of its journal. Then-President Steven C. Krane appointed me to chair the Anti-Terrorism Task Force after 9/11. I am a member of the Commercial and Federal Litigation Section. I know how to run an organization, democratically and inclusively.

I am a past president of the New York State Association of Criminal Defense Lawyers, Nassau Criminal Courts Bar Association, Columbian

Lawyers' Association of Nassau County (I also received their distinguished service award) and was chairman of the Board of the Nassau Lawyers' Association. I have been chair of the Nassau County Bar Association's Civil Rights Law Committee and a member of its Professional Ethics Committee.

I have been general counsel to a poor, all minority school district and special counsel to a town; chair of my Village Code Review Commission; a member of the Town of North Hempstead Councilmanic Commission which established, on my initiative, a minority Council District. Hon. Charles P. Sifton, chief judge of the U.S. District Court for the Eastern District of New York, appointed me to the panel of attorneys who advise and assist the Committee on Grievances of the Board of Judges in the discipline of attorneys. In 1997, I received the Martin Luther King, Jr. Award from Nassau County and its Human Rights Commission.

The Association needs better vehicles for communication. We need to improve on our website and journal. We should sell more advertising. We should have a TV show and help law-

yers to develop websites. We need to use the Internet more to help lawyers market their practices and more easily do legal research.

I will support civil *Gideon*, more funding for legal services, the courts and judicial salaries. I will review all CLE programs to determine what is working. I will push each section to do more and I will tour the state to recruit new members.

I will establish a Strategic Litigation Committee to initiate *pro bono publico* litigation involving policy issues, such as the state's compliance with the mandate of *Gideon*. I would establish a Strike Force that will help lawyers who are unfairly under attack and a hotline for ethical questions. I will establish an *Amicus* Committee. I would support establishing September 17 as Constitution Day throughout the state and federal courts.

I will review the disciplinary process of lawyers and judges to insure that our Rules of Conduct are being fairly and objectively implemented. I support the merit selection of judges and objective standards to determine qualifications. I would promote a role

*Continued on page 11*

David Miranda



Miranda

NEW YORK STATE BAR ASSOCIATION  
**State Bar News**



September/October 2013

Volume 55, No. 5

[www.nysba.org](http://www.nysba.org)

**Editor:** Patricia Sears Doherty

The *State Bar News* (ISSN 0363-0331) is published six times annually by the New York State Bar Association, 1 Elk St., Albany, NY, 12207, to inform its members of Association activities and other matters of interest to the legal profession.

Address all communications to the editor at 1 Elk St., Albany, NY, 12207.

Periodical postage paid at Albany, NY, and other mailing stations. Postmaster: Send form 3579 to: *State Bar News*, 1 Elk St., Albany, NY, 12207.

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The *State Bar News* welcomes articles that are written by members of the legal profession and which would be of interest to New York state lawyers.

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## Clarification

The July/August issue included a photograph taken during the annual summer reception of the Asian American Law Fund of New York (AALFNY). NYSBA President-Elect Glenn Lau-Kee was identified in the photo as a past president of the AALFNY. He is a past president of the Asian-American Bar Association of New York (AABANY), not the AALFNY.



# NYSBA leaders meet with chief judge over pro bono reporting

By Mark Mahoney

A delegation from the State Bar led by President David M. Schraver met July 23 with Chief Judge Jonathan Lippman to discuss their differences over the chief judge's controversial initiative requiring attorneys to report their pro bono activity as a condition of registration.

The meeting, held in Lippman's office in New York City, was prompted by a letter sent by Schraver to the chief judge in June. The letter reiterated the State Bar's nearly 10-year opposition to mandatory reporting of pro bono hours and donations to legal service organizations. The new requirement took effect May 1. Go to [www.nysba.org/schraver-letter](http://www.nysba.org/schraver-letter) to read Schraver's letter to Lippman.

"Our association has taken the posi-

tion that reporting of pro bono service should be done on a purely voluntary basis," Schraver wrote in the letter dated June 26. "We believe the goal of measuring pro bono service could be accomplished without the coercive effective of mandatory reporting."

Following the meeting with the chief judge, both sides were noncommittal about what steps they would take next, other than to agree to another meeting in the future.

"We had a frank exchange of views and concerns," Schraver said after the meeting, which also was attended by President-elect Glenn Lau-Kee, Executive Director Patricia K. Bucklin and State Bar General Counsel Kathleen R. Baxter. "We agreed to meet again and continue the discussion."

Lippman, who attended the hour-long meeting with his counsel, John

McConnell, said through a court spokesman afterward that he would bring the association's concerns to the administrative board, continue to examine the issues, and maintain an open dialogue with State Bar leadership.

## The new rule

The mandate, found under Section 118.1(e)14 of the Rules of the Chief Administrator (22 NYCRR Part 118), requires that attorneys registering or reregistering in New York report the number of hours they voluntarily spent providing legal services to poor and underserved clients during the previous two years. The new rule, publicly proposed by the chief judge in February, also requires that attorneys report the amount of voluntary financial contributions they made to organizations serving the poor and

underserved.

The meeting with the chief judge came about after what Schraver called a "spirited discussion" during the June 21 meeting of the State Bar's Executive Committee in Cooperstown. During that meeting, several members expressed concern over the mandate and sought action from the bar leadership.

The Executive Committee authorized Schraver to craft a "respectful, but direct" letter to the chief judge expressing opposition to the new rule, which led to the July 23 meeting.

Baxter said as of mid-August another meeting had not been scheduled. She said she anticipated the two sides would meet again sometime in the fall. ♦

*Mahoney is NYSBA's associate director of Media Services.*

## Registration forms now include pro bono reporting box

By Mark Mahoney

Lawyers filling out their New York State Attorney Registration forms now have a few more boxes to check.

The latest forms, which must be completed by attorneys registering for the first time and every two years thereafter, include a new section for reporting pro bono activity and contributions to organizations that serve the poor.

Section D of the form, entitled "Report of Voluntary Pro Bono Services and Contributions," includes statements certifying that the attorney has completed x-amount of hours of "unpaid pro bono legal services to the underserved and to the poor."

Attorneys also must declare how much money they contributed during the previous two years to organizations that provide such legal services. Attorneys can check off one of six boxes denoting a range of contributions: \$0; \$1-\$250; \$251-\$750; \$751-\$2,000; \$2,001-\$5,000; and \$5,001 or more.

Attorneys who are exempt from filling out the section, such as retired attorneys, may choose not to report any pro bono hours or monetary contributions.

Chief Judge Jonathan Lippman announced the new requirement during his State of the Judiciary address on February 5. The rule went into effect May 1, and coincides with an increase in the aspirational goal for pro bono services from 20 hours per year to 50 hours for all attorneys.

**D: REPORT OF VOLUNTARY PRO BONO SERVICES AND CONTRIBUTIONS - Part 1200 (Rule 6.1)**  
 You **MUST FULLY COMPLETE** SECTION 1. (a), (b), and (c) or, if eligible, SECTION 2 of the following:  
 Additional information on Voluntary Pro Bono Services and Contributions may be found at: [www.nycourts.gov/attorneys/probono](http://www.nycourts.gov/attorneys/probono).

☐ 1. IN THE LAST BIENNIAL REPORTING PERIOD:

(a) I personally provided  hours of unpaid pro bono legal services to the underserved and to the poor, and

(b) I contributed the following amount to organizations that provide such legal services: (see, Rule 6.1)  
 Check amount: ☐ \$0 ☐ \$1-250 ☐ \$251-750 ☐ \$751-2000 ☐ \$2001-5000 ☐ \$5001 or more.

(c) I am employed in the (check one): ☐ PRIVATE/FOR-PROFIT SECTOR ☐ NOT-FOR-PROFIT SECTOR ☐ GOVERNMENT ☐ OTHER.

☐ 2. EXEMPT: I am retired from the practice of law as defined in 22 NYCRR §118.1(g) or otherwise exempt from mandatory reporting, and choose not to report pro bono contributions and services (see instructions).

## Of concern

Following the State Bar's House of Delegates meeting in Cooperstown on June 22, President David M. Schraver of Rochester (Nixon Peabody LLP) sent a letter to Lippman expressing the association's concerns over the reporting requirement, including the fact that the information would be made available to the public and media.

Schraver called the requirement "coercive," noting that "lawyers are being placed in the position of facing potential disciplinary charges for failure to report voluntary service and contributions."

Representatives of the State Bar later met with Lippman in Manhattan to further discuss the new mandatory reporting rule. Afterward, they agreed to continue meeting on the issue. (See related article, above.)

The State Bar's House of Delegates in 2004 voted to oppose mandatory reporting of pro bono hours as well as mandatory pro bono.

In June, the chief judge told the New York Law Journal that the pro bono information would be available to the public. "It is our responsibility to give

it out," he said. "If someone asks for the information, they can have it."

However, a spokesman for the Office of Court Administration (OCA) said in late August that exactly how and where the information would be made available was still "a matter of ongoing discussion."

## Applying the rule

The new registration forms state in a number of places that pro bono service remains voluntary. However, the reporting of hours and contributions is mandatory.

The reporting requirement applies to attorneys employed by the government sector, those that are registered but who do not generally perform legal services professionally, and those who are registered in New York but who work outside the state or the country.

The reporting does not apply to attorneys officially listed as "retired" under Part 118 of New York Codes Rules and Regulations (NYCRR) and attorneys employed by an organization that "primarily or substantially" provides pro bono legal services to the poor.

As to what constitutes pro bono work for reporting purposes, details can be found in 22NYCRR Part 1200, Rule 6.1(b). In part, the list includes professional services in civil and criminal matters for those unable to afford counsel, activities related to improving the administration of justice as it relates to legal services for the poor, and professional services for charitable, religious, civic or educational organizations in matters that predominantly address the needs of poor people.

At the end of the registration form, attorneys must sign a statement that all information on the document is true to the best of their knowledge and belief. Attorneys who fail to comply with the registration requirements are subject to disciplinary action.

For more information on the new requirement, visit the OCA website at [www.nycourts.gov/attorneys/probono](http://www.nycourts.gov/attorneys/probono). ♦

*Mahoney is NYSBA's associate director of Media Services.*

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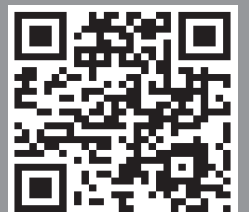
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## LEGAL EDUCATION

## President, committee, members working to redefine profession's modern direction

*Continued from page 1*

have moved rapidly to help Schraver shape an active agenda.

"We all understand the crisis," said Kaufman. "Our goal is to see if our committee can recommend some constructive, concrete proposals for change that the bar leadership will endorse." She acknowledged that the shrinking job market, coupled with law students crippled with huge debt require "solutions that are multi-faceted."

Millett noted that "the State Bar is uniquely suited to educating practitioners about their profession, bringing together all of the stakeholders—academia, the bench, the bar and the board of law examiners to recommend effective policy change."

The crisis in legal education is on the minds of lawyers and leaders around the country. During his education bus tour of upstate New York last month, President Barack Obama suggested that the law school model be changed from three years of study before being eligible for the bar exam to two years.

The State Bar's committee is studying alternatives to the current legal education model and to licensing, but has

not weighed in on a two-year curricula.

Among the issues the committee has been exploring are whether skills training should be required for licensing, whether early administration of the bar exam makes sense, and to what extent licensing can and should be linked to a performance-based curriculum.

Schraver's agenda for moving the legal education discussion forward is ambitious. He is planning events that will provide a year-long conversation among several constituencies within the State Bar that will shape a new vision for the future of the profession.

### Action items

**1. Read all about it:** The September issue of the State Bar Journal is devoted to legal education, with articles written by national figures, academics and leading statewide legal thought leaders. [See "A bold new world for educating lawyers" elsewhere on this page.]

**2. Talk through the suggestions.** Although the State Bar's Annual Meeting is still four months away, Schraver and the LEAB already are working on one of two panel discussions at the Presidential Summit, tentatively titled, "A Watershed Moment for the

American Bar: Can Lawyers, Employers, Regulators and Educators Come Together to Address Our Challenges?"

William M. Sullivan, founding director of Educating Tomorrow's Lawyers at the Institute for the Advancement of the American Legal System at the University of Denver, will deliver the keynote address. American Bar Association President James R. Silkenat will be the discussion moderator. Phoebe Haddon, dean of the University of Maryland School of Law, New York State Court of Appeals Associate Justice Jenny Rivera and Kent Syverud, dean of the Washington University School of Law, have signed on as panelists.

**3. Identify what is needed.** Schraver is working closely with Millett and Kaufman and the committee, as well as members of the New York State Judicial Institute on Professionalism in the Law and others to develop a conclave on the topic in the spring of 2014.

"Different constituencies may have very different views of the state of legal education," Schraver said. "I want us to bring out those different views, because we need to understand them and then figure out how to move forward and address a plan for the future."

He expects that a report will be the end result of the discussions held during the conclave.

"I hope to educate our members and to lay a foundation for the New York State Bar Association to be meaningfully involved in the discussion," said Schraver. "I want NYSBA to be a leader not only in New York, but also nationally."

### Then what happens?

In the spirit of collaboration between several past presidents, Schraver and President-elect Glenn Lau-Kee, the State Bar will continue the discussion, implementing any recommendations identified during Schraver's presidential term and building on that research for Lau-Kee's presidency that begins June 1, 2014.

The action list is ambitious, but still only a piece of the agenda that is being introduced on a national stage. Schraver and other State Bar leaders have been deep in discussion for some time with the American Bar Association (ABA) on the education crisis, especially with Silkenat.

Silkenat is the first New Yorker to lead that organization since Robert MacCrate, who is credited with calling the profession to arms on education with the 1992 ABA report, commonly referred to as the "MacCrate Report."

The ABA's Task Force on the Future of Legal Education plans to release its report soon. A working paper from the committee recently cited several potential recommendations.

Key themes identified by the ABA task force include: the need for a systematic (rather than a tactical) approach to the deficiencies of law school financing and pricing; greater heterogeneity in law schools and legal education programs; focusing on the delivery of value by law schools and on the development of competence in law school graduates.

The working paper also noted "the profound importance of cultural change, particularly on the part of law faculty." Other themes noted are the need for changes in regulation of legal services and institutionalizing the process for assessment and how well their legal education prepares students for practice.

Schraver said the State Bar will take those recommendations seriously and work to modify some of them to fit New York's unique professional landscape.

He also is working with the State Bar's CLE Department to create programming that will help members understand and deal with changes in the legal profession and the increasing complexities in the practice of law. Schraver said the State Bar will also be studying factors that are impacting the practice of law, such as changes in technology, new vendors of law-related services and the increasing use by the public of law-related services on the Internet. ♦

*Sears Doherty is State Bar News editor.*

## A bold new world for educating lawyers

Months before he became the State Bar's new president on June 1, David M. Schraver enthusiastically discussed the signature initiative of his platform with everyone who would listen: the future of the legal profession and the readiness of law school graduates to pass the bar exam and hit the ground running as newly minted lawyers entering the challenging New York legal world.

That is, how good is a legal education in New York, and how could it better?

So, Schraver was happy to support devoting the entire September issue of the State Bar Journal to the topic. Several influential leaders were enlisted by the Committee on Legal Education and Admission to the Bar to write thought-provoking articles for the issue.

### Topics and contributors

Contributors to the issue include the new president of the American Bar Association, James R. Silkenat, who addresses the employment shortage for young lawyers and his idea for a Legal Access Job Corps to address unmet legal needs.

John Burwell Garvey examines New Hampshire's innovative Daniel

Webster Scholar Honors Program, which he directs at the University of New Hampshire School of Law. Brian Z. Tamanaha, author of "Failing Law Schools," [See July/August 2013 *State Bar News*: "Recommended Reading"] discusses the broken economics of legal education. Dean Michael M. Martin and Associate Dean Ian Weinstein of Fordham University School of Law tackle ways to harmonize the forces buffeting the legal profession.

Other contributors to the Journal education-themed issue explore the concerns many in the profession have with the New York bar examination.

Looking at the current version of the New York bar exam are: Diane F. Bosse, chair of the New York State Board of Law Examiners, Mary A. Lynch, director of the Center for Excellence in Law Teaching at Albany Law School, and Kim Diana Connolly, director of Clinical Legal Education at SUNY Buffalo School of Law. Edna Wells Handy, author of "You Can Pass Any Bar Exam," discusses the persistent racial gap in passage rates of the bar exam.

Other writers suggest alternatives that warrant discussion: Adele Bernhard from Pace Law School, Mary Campbell Gallagher, president of BarWrite and BarWrite Press, Professor

Carol A. Buckler, director of the Center for Professional Values and Practice at New York Law School, and William M. Sullivan, founding director of Educating Tomorrow's Lawyers at the Institute for the Advancement of the Legal Profession at the University of Denver.

Contributors Jack Graves of Touro College's Jacob D. Fuchsberg Law Center and Peter A. Joy, director of the Criminal Justice Clinic at Washington University School of Law in St. Louis, look at more cost effective models for legal education, including the costs of a clinical education model.

Hon. Victoria A. Graffeo, senior associate judge on the New York State Court of Appeals, writes about New York's new 50-hour pro bono service rule for bar admission.

### Watch this space

The discussion on issues concerning legal education is a natural extension of Schraver's focus on the future of the legal profession. Watch the pages of both the Journal and this publication, *State Bar News*, throughout the year to see how both conversations are shaping the State Bar's agenda.

—Patricia Sears Doherty

## LEGAL EDUCATION

# MacCrate Report continues to have impact on profession

By Mark Mahoney

"The skills and values of the competent lawyer are developed along a continuum that starts before law school, reaches its most formative and intensive stage during the law school experience, and continues throughout a lawyer's professional career."

More than two decades after that statement helped frame the thesis for the MacCrate Report, the message is still resonating throughout the legal community as it continues its quest to find balance between traditional law school lessons and the pressing need to ensure graduates are adequately prepared for the 21<sup>st</sup> Century workplace.

"Whenever we discuss the best way to prepare law students for practice or examine ways to improve the delivery of service by practicing attorneys, it comes back to the essential values and skills reflected in the MacCrate Report," said State Bar President David M. Schraver of Rochester (Nixon Peabody LLP), who has made legal education and improving the delivery of legal services the centerpiece of his presidency.

The namesake of the report is New York attorney Robert MacCrate, who served as both State Bar president (1972-73) and American Bar Association (ABA) president (1987-88) during his distinguished career. MacCrate chaired the ABA's Task Force on Law Schools and the Profession, which in July 1992 issued a 414-page report that looked at ways to improve how students are prepared to practice law and issued recommendations, some aimed at law schools and focused on clinical legal education. It also included recommendations for lawyers transitioning into practice.

The key component of the report was the statement of 10 fundamental lawyering skills and four professional values essential for competent representation.

Among the essential skills it lists are problem solving, legal analysis and reasoning, communication and negotiation. The fundamental values include providing competent representation and striving to promote justice, fairness and morality.

While the issuance of the MacCrate Report was not the first time the legal community had questioned the balance between Socrates and skills, it did provide a basis for launching new programs, deeper studies and fresh discussions.

Building upon MacCrate, the Carnegie Foundation for the Advancement of Teaching in 2007 issued a landmark two-year study of legal education, which examined preparation for the effective practice of law

by emphasizing doctrine, skills and professional identity.

The Daniel Webster Scholar Honors Program, established in 2005 at the University of New Hampshire School of Law, employs key elements of the MacCrate Report by teaching students to use their legal knowledge in simulated and clinical settings.

And in November, the ABA is expected to issue a report of its Task Force on the Future of Legal Education that will address funding of law schools, law school accreditation, admission to the bar and legal education. A working paper issued by the task force in early August gave a hint at how MacCrate's influences are still playing into today's discussions.

"Balance between doctrinal instruction and hands-on training needs to shift still further toward the core competencies needed by people who will deliver legal services to clients," the working paper states.

## A practical debate

"In my view, the current debate regarding legal education is a continuation of the debate over the gap between legal education and practice that began with MacCrate," said Nancy M. Maurer, co-director of the Albany Law Clinic & Justice Center at Albany Law School. "More recently, after the Carnegie report and best practices in 2007, there was renewed emphasis on graduating practice-ready new lawyers and teaching professional values along with doctrine and practice skills."

Gerard J. Clark, a law professor at the Suffolk University Law School in Boston, has written extensively about the impact of the MacCrate Report over the past 21 years. Calling the report "a moment in history," he said MacCrate prompted law schools to move in the direction of skills training, with clinics, internships, simulations and courses in which a professor, for example, supervises a student's drafting of contracts.

"(Legal education) was all kind of a one-note symphony from the 1880s until really almost up until 1990 or so," he said of the Langdellian case method, which has dominated legal education since it was introduced at Harvard University in the late 19<sup>th</sup> Century.

He said the MacCrate report synthesized many years of discussion and debate on how to improve legal education beyond that traditional approach.

"It wasn't like no one was aware of what the MacCrate Report said. It was just that it was finally a coming togeth-



MacCrate

er of a prestigious group with ABA sponsorship. ... The law schools are going to listen more (to the ABA) than random voices in the wilderness which say this education we're giving students has value, but it's narrow and it needs to be opened up a little bit."

The 2007 Carnegie report, he said, reiterated the MacCrate conclusions and "kept the ball rolling."

## Practical uses

At the University of New Hampshire, legal educators have taken the MacCrate Report and its conclusions to a higher level through the Daniel Webster Scholar Honors Program.

The program—offered in the second and third years of law school to select students—is unique in that it allows students to forego the bar exam in exchange for portfolios of written work and video performances from clinical settings. The portfolios are reviewed by bar examiners each semester, and students who successfully complete the program are certified in having passed the New Hampshire bar exam.

Writing for the New York State Bar Journal's September issue on legal education, John Burwell Garvey, a University of New Hampshire law professor and director of the Daniel Webster program, said the MacCrate Report's list of 10 fundamental skills and four fundamental values plays heavily into the innovative program's course work and student evaluation process.

In an interview, Garvey said that the doctrinal education students receive in the first year of law school is a necessary part of any legal education. Without a basic understanding of the law, he said, no student could be successful as an attorney.

"It would be like saying, 'Let's go play baseball,' without knowing any of the rules," he said.

Where the Webster scholar program departs from traditional legal education, he said, is in its approach to the second and third years of law school. There, students are placed in situations they would encounter in actual practice, such as counseling clients, taking depositions, creating documents, and working with practicing lawyers and judges in learning how to negotiate settlements and mediate disputes.

"Clients don't call lawyers, for the most part, for situations that are either black or white," he said, "They call us within a big gray band."

To navigate that "gray band," Garvey said students need to learn to communicate orally with clients and other people; they have to know how to write in styles that suit a particular situation; and they have to be able to succinctly analyze a problem or situation.

"I think it's more complicated than ever before, as there are so many different things that are happening," he said. "And I think that you cannot train a person in law school to be proficient at all of those things. But you can expose students to things in such a way that they learn how to become proficient at them."

While the Webster program has proven successful with law firms and courts in New Hampshire, Garvey said the model is just one approach out of many that could help resolve the legal education problem.

"I think it's *an* answer. It don't think it's the only answer. But, I think that any answer requires a truly thoughtful, intentional, experiential education," he said.

The MacCrate Report, at its core, promoted a more thoughtful education. And now, many years after it was issued, it continues to serve as a benchmark toward that end. ♦

*Mahoney is NYSBA's associate director of Media Services.*



## NY's Silkenat ABA's new leader—State Bar proudly supports new president and his agenda

*Continued from page 1*

New Yorker to serve as ABA president and the first in 26 years. He is the first ABA president to take a formal oath of office for the top position.

The relationship between the new ABA president and the State Bar is close. Both organizations have substantive agendas for the next year. Both seek to address a shrinking job market and unemployed young lawyers, as well as other issues facing the legal community.

"The legal community faces many challenges in the next year, including budget cuts in our courts, a re-examination of our legal education system, and an increasing demand for legal services for the poor. As it has in the past, the American Bar Association will be called upon to play an active role in addressing these and other challenges," said State Bar President David M. Schrauer.

"I am privileged to serve as president of the New York State Bar Association at the same time that Jim Silkenat serves as president of the American Bar Association," he added.

"Already, Jim has begun working with the State Bar leadership and our ABA delegation to address such pressing issues as gun violence, human trafficking and the future of the legal profession. I look forward to continuing this collaboration in the coming year."

### Access to justice: a paradox

Silkenat's first order of business was to establish a Legal Access Job Corps Task Force. Its mission is to find "ways to match young lawyers who need practical job experience with disadvantaged clients who need legal assistance," he said.

"Among its first activities was to

explore the innovative programs that have been started by law schools, state and local bar associations and courts in response to today's challenges," he said.

The new president called the \$350 million reduction in the federal Judiciary's budget that resulted in significant cuts to the network of federal defender offices around the country "a deep embarrassment for a nation grounded on the Rule of Law."

He also said that "America's legal response to gun violence so far is unacceptable."

As the national voice of the legal profession, Silkenat said the ABA "has a unique interest in ensuring fairness and due process in the immigration enforcement and adjudication system."

### Election reform

The 2014 Law Day theme will emphasize the importance of American democracy to the Rule of Law because of the ABA's longstanding interest in election reform.

Silkenat said that any lawyers who wonder about the kinds of issues that can arise during an election need look no further than the 2012 Presidential election. Citing long lines at polling places, insufficient voting machines, "onerous" voter ID requirements and other problems, Silkenat reminded the audience that the ABA does not play partisan politics, but "we do support fair and open elections."

"The common thread of a legal degree gives us (lawyers) special skills and a special responsibility to protect those who most need protection and to insist on a fair and impartial justice system that is responsive to all of the members of our society," he said. ♦



**Well spoken**—Members of the New York delegation applaud and congratulate James R. Silkenat after listening to his inaugural presidential speech to the American Bar Association's House of Delegates. *[Photo courtesy of the American Bar Association]*



**Proud New Yorkers**—The New York delegation to the American Bar Association's House of Delegates surround James R. Silkenat, second from right, as he prepares to take the organization's presidential oath of office. *[Photo courtesy of American Bar Association.]*



**Summer fun, future lawyers?**—Campers and counselors show their enthusiasm for the 2013 Mock Trial Summer Institute at Silver Bay, sponsored by the State Bar's Law, Youth and Citizenship Program. High school students spend a week each summer learning how to hone their mock trial skills from distinguished lawyers and judges, who volunteer their time. *[Photo by Stacey Whiteley]*



**Doing her "cross"**—Josephine Tanuzzo delivers her cross examination during the final mock trials at the LYC Mock Trial Summer Institute at Silver Bay. She and her fellow campers will use their summer experience to enhance their high school team's efforts in local and state competitions. *[Photo by Stacey Whiteley]*

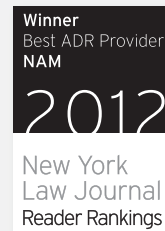
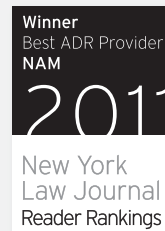




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# Silkenat names 54 New Yorkers to ABA committees

American Bar Association President James R. Silkenat, the first New Yorker to serve as the national organization's president in 26 years, has appointed 54 attorneys and judges from New York to its committees.

Among the appointments:

Past State Bar President **Seymour W. James Jr.** (The Legal Aid Society in New York City) was appointed to the Standing Committee on Legal Aid and Indigent Defendants. Past President **A. Thomas Levin** was named to the Standing Committee on Public Education. Past President **Bernice K. Leber** of New York (Arent Fox LLP) will serve as a representative to the United Nations Department of Public Information.

Treasurer **Sharon Stern Gerstman** of Buffalo (Magavern Magavern Grimm LLP) was appointed woman member-at-large to the House of Delegates Nominating Committee. Executive Committee member **Margaret Finerty** of New York City (Getnick & Getnick LLP) will serve on the Commission on Sexual Orientation and Gender Identity. Executive Committee member **Lillian Moy** of Albany (Legal Aid Society of Northeastern New York) will serve on the Legal Access Job Corps Task Force and the Standing Committee on Pro Bono and Public Service.

Chief Judge **Jonathan Lippman** will chair the Board of Elections and **Bettina B. Plevan** of New York City (Proskauer Rose LLP) will chair the Standing Committee on the Federal Judiciary.

Other committee members are:

**Eleanor Acer** of New York City (Human Rights First) – Commission on Immigration Advisory Committee.

**Afia K. Asamoah** of New York City (Covington & Burling LLP) – Special Committee on Bioethics and the Law.

**Jonathan L. Bing** of New York City (Wilson Elser Moskowitz Edelman & Dicker LLP) – Standing Committee on Governmental Affairs.

**Anne Pauline Bodley** of New York City – Central European and Eurasian Law Initiative Council.

**Gloria J. Browne-Marshall** of New York City (The Law and Policy Group Inc.) – Legal Opportunity Scholarship Fund Committee.

**Walter T. Burke** of Albany (Burke & Casserly, P.C.) – Corporate Counsel/Government Lawyer Working Group.

**Michael H. Byowitz** of New York City (Wachtell Lipton Rosen & Katz) – Standing Committee on Membership.

Hon. **Cheryl E. Chambers** of Brooklyn (Appellate Division Second Department, State Supreme Court) – Ethics and Professional Responsibility Judges Advisory Committee.

**Vincent Ted Chang** of New York City (Wollmuth Maher & Deutsch LLP) – Standing Committee on Judicial Independence.

Hon. **Pamela Chen** of Brooklyn (U.S. District Court for the Eastern District of New York) – Asia Law Initiative Council.

**Joseph R. Costello** of Brooklyn (Costello & Costello PC) – Standing Committee on Lawyer Referral and Information Service.

**Janet R. Fink** of New York City (New York State Unified Court System) – Commission on Domestic and Sexual Violence.

**Barbara S. Gillers** of New York City (New York University School of Law) – Standing Committee on Ethics and Professional Responsibility.

Hon. **Kristin Booth Glen** of New York City – Center for Human Rights.

**Jennifer Michelle Gomez** of Albany (New York State Office of Temporary & Disability Assistance) – Commission on Homelessness and Poverty.

**Daniel L. Greenberg** of New York City (Schulte Roth & Zabel LLP) – Standing Committee on Legal Aid and Indigent Defendants.

**Norman L. Greene** of New York City (Schoeman Updike & Kaufman LLP) – ABA Rule of Law Initiative.

**Cynthia Kalathas** of New York City (AMMC Law) – ABA Rule of Law Initiative.

Hon. **Judith S. Kaye** of New York City (Skadden, Arps, Slate, Meagher & Flom LLP) – Legal Access Job Corps Task Force.

**James B. Kobak, Jr.** of New York City (Hughes Hubbard & Reed LLP) – Task Force on the Future of Legal Education.

**Gilda I. Mariani** of New York City (New York County District Attorney's Office) – Special Committee on Disaster Response and Preparedness.

**Cyrus D. Mehta** of New York City (Cyrus D. Mehta & Associates PLLC) – Commission on Immigration Advisory Committee.

**Robert H. Mundheim** of New York City (Shearman and Sterling LLP) – Legal Access Job Corps Task Force.

**Domenick Napoletano** of Brooklyn (Napoletano Law) – Gun Violence Advisory Committee.

**Ann Powers** of White Plains (Pace University School of Law) – Task Force on Sustainable Development.

Chief Administrative Judge **A. Gail Prudenti** of New York City – Legal Access Job Corps Task Force.

Hon. **Ramon E. Reyes Jr.** of Brooklyn (U.S. District Court for the Eastern District of New York) – Coalition on Racial and Ethnic Justice.

Hon. **Delissa A. Ridgway** of New York City (U.S. Court of International

Trade) – Task Force on International Trade in Legal Services.

Hon. **Jenny Rivera** of New York City (New York State Court of Appeals) – Ethics and Professional Responsibility Judges Advisory Committee.

**Seth Rosner** of Saratoga Springs (Seth Rosner Law Office) – Editorial Board of the ABA/BNA Lawyers' Manual on Professional Conduct.

**Deborah Enix Ross** of New York City (Debevoise & Plimpton LLP) – House of Delegates Nominating Committee Minority Member-at-Large.

**Maritza S. Ryan** of West Point (Department of Law – U.S. Military Academy) – Commission on Women in the Profession.

**Eric A. Savage** of New York City (Littler Mendelson PC) – Middle East and North Africa Law Initiative Council.

**Lynn Hecht Schafran** of New York City (Legal Momentum) – Standing Committee on Armed Forces Law.

**Andrew Ike Schepard** of Hempstead (Hofstra University School of Law) – Special Adviser to the Commission on Youth at Risk.

**Dora Schriro** of Queens (City of New York Department of Correction) – Commission on Immigration.

**Lisa C. Smith** of Brooklyn (Brooklyn Law School) – Commission on Domestic and Sexual Violence.

**Beverly McQueary Smith** of Central Islip (Touro College Fuchsberg Law Center) – Council for Racial & Ethnic Diversity in the Educational Pipeline.

Hon. **Elizabeth Snow Stong** of Brooklyn (U.S. Bankruptcy Court for the Eastern District of New York) – Legal Access Job Corps Task Force.

**Larry D. Thompson** of Purchase (PepsiCo Inc.) – Standing Committee on Governmental Affairs.

**Robert F. Van Lierop** of New York City – Task Force on Sustainable Development.

**Roland Leslie Trope** of New York City (Trope & Schramm LLP) – Cybersecurity Legal Task Force.

**Griselda Vega** of Brooklyn (Global Workers Justice Alliance) – Center for Human Rights Advisory Committee.

**Patricia J. Williams** of New York City (Columbia University School of Law) – Center for Human Rights.

**Michael D. Yim** of New York City (Leen Anav Chung LLP) – Standing Committee on Lawyer Referral and Information Service.

**Lai Sun Yee** of Brooklyn – Cybersecurity Legal Task Force. ♦

—Brandon Vogel



## Liotti present his platforms and views to members

*Continued from page 3*

for NYSBA in the nomination of federal judges.

I would propose that all town and village judges be attorneys. I would review our costs and sanctions statutes and rules to provide for uniform standards. I also would strive to provide affordable legal malpractice insurance and paid mentoring programs for new attorneys.

Overall, I believe in the preservation of the adversary system and jury trials as the core of our democratic form of government. I am opposed to so-called tort reform. Instead, there should be greater access to the courts for consumers, for example, by expansion of the statute of limitations for Notices of Claim and all other actions.

The glut of cases in our courts can be alleviated if we curtail pre-trial conferences and defer to the Internet for case management.

Judges need not be involved in the plea bargaining process. Allocutions should be cut to a minimum. Global sentencing reform is needed to provide more alternative sentencing that allows those accused to earn their way back into society through rehabilitation, res-

titution and community service.

We need to reduce crime, our prison population and jails by providing educational programs and jobs to those most in need. I am opposed to capital punishment and "stop and frisk." We also must implement immigration reform by giving people a meaningful path to citizenship.

If elected, I would immediately develop a plan to implement these reforms. I believe in promoting my fellow attorneys by bringing those interested in public service and reform into the fold. Let's make for a better world together! ♦

*Liotti is principal of the Law Offices of Thomas F. Liotti, LLC. He is the Westbury Village Justice and an adjunct professor of litigation at Nassau Community College.*

## Miranda present his platforms and views to members

*Continued from page 11*

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## Business Law Section Profile

By Jay L. Hack

### Active committees bring education and valuable insight to section's members



Hack

The Business Law Section is home to a wide range of attorneys focusing on core commercial law fields.

We have active committees on banking, bankruptcy, corporations, derivatives and structured products, franchise, insurance, public utility, securities and technology and venture law. Our section and these committees provide platforms to develop relationships with others with similar interests and help our members enhance or expand their professional expertise.

We offer many outstanding educational programs presented by leaders in their fields, high-level government officials and members of the judiciary. Our committees sponsor regular continuing legal education (CLE) programs. Our section organizes a full day

of programs at the State Bar's Annual Meeting and also holds a two-day fall meeting, which includes plenary educational sessions and committee meetings.

Program speakers have included the trustee of the Madoff bankruptcy explaining the intricacies of that case; three former commissioners of the Securities and Exchange Commission (SEC) discussing their experiences at the SEC; the general counsel of the New York State Interest on Lawyer Account Fund (IOLA) speaking at our Annual Meeting ethics seminar; and a senior vice president of the Federal Reserve Bank of New York talking about bank risk management issues.

#### Committees work on important legislation

Our committees also work on legislative initiatives and often comment on statutory or regulatory proposals. Members of our Corporations Law Committee were instrumental in developing and shepherding through the

legislative process a proposal to upgrade New York's Not-For-Profit Corporation Law, which passed both houses of the Legislature unanimously and is awaiting action by Gov. Andrew Cuomo.

Our Franchise Distribution and Licensing Law Committee has been working on legislative changes to conform New York franchise laws to federal disclosure rules, thereby easing the ability to offer franchises in New York.

Our Securities Regulation Committee submits or adds its support to comment letters on many securities regulation proposals.

The Business Law Section is involved in other important outreach initiatives. We are working with Albany Law School to organize a symposium next Spring on "The Life Cycle of a High-Tech Company."

We have undertaken diversity initiatives to bring people of color and other under-represented groups into our membership circle.

Recently, we organized joint recep-

tions with the Westchester Black Bar Association and the Metropolitan Black Bar Association, with keynote speeches by leading state Supreme Court justices.

The Business Law Section publishes the New York Business Law Journal, which features peer-written substantive articles. It provides practice-oriented insight and guidance relevant to the business law practitioner. All section members receive the Journal twice a year as a benefit of section membership.

We welcome all of you to join us and, if you choose, to advance to leadership positions in our committees or with our section.

For more information, write to [BLChair@gmail.com](mailto:BLChair@gmail.com). ♦

*Hack, of New York City, is a partner at Gallet Dreyer & Berkey LLP. His practice provides a full-range of legal services to banks and other financial institutions. He is chair of the Business Law Section.*

## Business Law Section

By Carol Spawn Desmond

### SEC gets on the JOBS: New Rule 506(c)

In law school, we learned the general rule that "public offerings" of securities require registration with the Securities and Exchange Commission. There were exceptions, many blessed by the safe harbors of Regulation D, but the lynchpin was always "private"—not "public"—offerings.

That all changed with the SEC's amendment of Regulation D to permit "general solicitations" of private offerings, through adoption of new Rule 506(c). Anyone can be solicited, so long as each ultimate purchaser is an "accredited investor."

The "effective date" of Rule 506(c) is Sept. 23, 2013. Here are some high points:

**1. Not everything changes.** Section 4(a)(2) of the Securities Act is unchanged and the rest of Regulation D remains a safe harbor. Current Rule 506 (unlimited offerings to accredited investors) is now Rule 506(b).

A failed Rule 506(b) issuer still might be able to rely on Section 4(a)(2) for exemption from registration.

However, the same is not true for issuers under Rule 506(c): they are not afforded that alternative protection from any violation.

**2. Big changes to general solicita-**

**tion.** So long as: (a) all other terms of Rule 501 and Rule 502(a) and (b) are satisfied, (b) all purchasers are accredited investors, and (c) the issuer takes "reasonable steps to verify" that all purchasers are accredited investors, new Rule 506(c) permits issuers to engage in general solicitation in offerings. Private fund issuers under Sections 3(c)(1) and (7) of the Investment Company Act can also rely on Rule 506(c).

If an ongoing offering uses Rule 506(c) after the effective date, the earlier exempt portion will not be compromised by using general solicitation.

**3. What are "reasonable steps to verify"?** These can be:

(a) "Principles-based:" based on facts and circumstances, such as (i) nature of purchaser, (ii) amount and type of information available about the purchaser, and (iii) type and nature of the offering; or

(b) From a non-exclusive "safe harbor" list: (i) IRS forms; (ii) current documents showing assets (bank and brokerage statements, etc.) and liabilities (credit reports); (iii) third-party confirmation from a registered broker-dealer, an SEC-registered investment adviser, a licensed attorney, or a CPA

that the third party has taken reasonable steps to verify that the purchaser is an accredited investor; and (iv) certification from a current investor of its qualification.

If the issuer took reasonable steps to verify accredited investor status and had a "reasonable belief" in the purchaser's status at the time of sale—and does not actually know the purchaser does not qualify—the issuer can rely on that, even if the investor does not qualify as an accredited investor.

**4. Who can't make general solicitations?** Issuers controlled by "felons and other 'bad actors'" have limited reliance on either Rule 506(b) ("old" Rule 506) and Rule 506 (c) ("new" Rule 506).

If the disqualifying events occurred before September 23, an issuer need only disclose them those occurring afterward prohibit an issuer from relying on Rule 506. Disqualification can be "cured" by the levying authority.

The prohibition applies if the issuer, any of its predecessors or affiliates, or any of its directors, executive officers and officers who participate in the offering, general partners or managing members; anyone owning 20 percent or more of outstanding voting equity

securities; and for pooled investment funds, the funds' investment managers and their principals have had a disqualifying event.

Disqualifying events are: (a) certain criminal convictions, (b) certain court injunctions, (c) final orders of certain regulators, (d) commission disciplinary orders, (e) certain SEC cease-and-desist orders, (f) suspension or expulsion from self-regulatory organization membership or association with an SRO member, (g) stop orders and orders suspending exemptions under Reg A; and (h) certain U.S. Postal Service orders.

**5. How "general" is solicitation?** Rule 506(c) permits public broadcast to anyone—and broker-dealer registration is not required if a Rule 506 platform is used.

For issuers using registered broker-dealers for Rule 506(c) sales, Financial Industry Regulatory Authority, Inc. (FINRA) rules will govern such broker-dealers' communications. ♦

*Desmond, of New York City, is counsel at Satterlee Stephens Burke & Burke LLP. She practices in corporate law, labor and employment and public finance.*



## Letter to the Editor

### It's the law: In-house counsel must register in New York

#### To the Editor:

Almost all states require that in-house counsel who are not licensed to practice law in the jurisdiction where they are working must register to avoid being engaged in the unauthorized practice of law. New York state is no exception.

It is estimated that there may be thousands of in-house counsel working in New York state, many of whom may be admitted to practice in our state. Under Part 522 of the

Rules of the New York Court of Appeals, in-house counsel who are not admitted to practice in New York and are employed on a full-time basis by a corporation, partnership, association or other legal entity, may apply to register as in-house counsel in New York, allowing the attorney to provide legal services in New York to a single employer or its affiliates and to its officers, directors and employees on matters related to the attorney's work for that employer.

In order to register, in-house counsel must be admitted to practice in a "reciprocal" state, and in good standing in such jurisdiction. A reciprocal jurisdiction is one that would similarly permit an attorney admitted to practice in New York to register as in-house counsel in that state—New York has reciprocity with 44 states.

Under section 522.7 of the rule, the failure to register constitutes professional misconduct. Although in-house counsel registration is not the equivalent of attaining a license to practice law in New York, registration will pro-

tect you from professional misconduct charges related to your admission status while performing in-house counsel work.

There is no registration fee currently required in New York. The application and instructions are available on the Office of Court Administration's website at: [www.nycourts.gov/in-housecounselregistration](http://www.nycourts.gov/in-housecounselregistration).

*Victoria Graffeo*  
Associate Judge  
New York State Court of Appeals



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# New pilot mentoring program has multiple benefits

By Mark Mahoney

Veronica Escobar of Queens admits that she is like many attorneys who start their own law firms at a young age. Her personality demands: “I’m going to do this myself.”

But Escobar also is wise enough to know that she cannot always do everything herself, and that sometimes, it’s OK to ask for guidance.

The State Bar’s new pilot mentoring program, which kicked off in July with a training webinar for potential mentors and mentees, is designed to provide an opportunity for attorneys who wish to share their own experiences and learn from the experiences of others.

Fourteen State Bar sections are participating, and if the pilot is successful, it could be expanded in 2014.

## Helping each other

Sherry Levin Wallach of Mount Kisco (Wallach & Rendo LLP), chair of the State Bar’s Membership Committee, said mentorship programs help the participants by providing professional and personal development. But they also help the State Bar by encouraging attorneys to maintain long-term memberships and, potential-

ly, to grow into future bar leaders. “Not only will they (mentees) be able to grow professionally through these mentorships, but they will become more involved and, hopefully, seek leadership roles within the organization,” said Wallach. “Development of mentorships really, in any professional organization, is not only extremely valuable to members, both mentors and mentees, but also something an organization can offer members.”

President-elect Glenn Lau-Kee of New York City (Kee & Lau-Kee PLLC), a strong supporter of mentoring programs, said the new pilot mentoring program is an outgrowth of the recently concluded Section Diversity Challenge program. During the two-year program, sections were asked to create ways to encourage active, meaningful participation among diverse populations within the association.

“At the same time, our recent NYSBA member research revealed strong interest among members, particularly new attorneys, for mentoring programs,” Lau-Kee said during the mentoring webinar. “As we concluded our diversity challenges, the Membership Committee felt that the time was right to launch a pilot men-

toring program sponsored by all the sections.”

Edwina Frances Martin of Staten Island, who chairs the mentoring pilot project working group and who has been a key organizer of program events, said the pilot will be studied extensively and a full evaluation will be presented to both the Membership Committee and the Executive Committee.

“We hope it will provide a blueprint to move forward in helping sections, and later on committees, develop their own mentoring pilot projects,” she said.

Joan L. Robert of Rockville Centre (Kassoff, Robert & Lerner Law LLP), former chair of the Elder Law Section and a longtime mentor, said she has seen firsthand how valuable mentorships can be for all involved.

“As a professional, we like to see people develop, and I think it does assist, or can assist, in the personal development of the mentees,” said Robert .

She said the relationship can be beneficial not only to the young mentees, but to experienced attorneys as well.

“We can learn from them. They have perhaps different skills in technology, so it’s not only a one-way street. I think it’s important for our sections and for the bar to have a firm foundation for newer practitioners in our area.

She and Escobar (The Law Offices of Veronica Escobar ) have had a mentoring relationship for years.

“She was very much a sounding board for me about my frustrations

(starting a practice and changing practice areas),” Escobar said during the webinar. “What I liked about our conversations was the fact that she was able to take from what I was telling her, all the positive things about me, and she gave me encouragement and she gave me food for thought.”

## Work at it

Robert said people get out of mentoring relationships what they put into them.

Successful relationships, she said, require proper pairing of mentors and mentees, defining early the parameters and expectations for the relationship, a clear picture of how much time will be devoted to it, and agreement on when and how mentors and mentees will meet.

She said some attorneys find the relationships can be underused. Others find their personalities don’t jibe. She also recommended mentors and mentees be paired geographically.

In addition to the webinar, available at [www.nysba.org/mentoringwebinar](http://www.nysba.org/mentoringwebinar), the Membership Committee also published a program development and best-practices manual for the program.

Six weeks into the program, the Membership Committee had arranged about four dozen mentors and mentees.

“It’s still always a learning process for me,” Escobar said. “It never, never ever stops.” ♦

*Mahoney is NYSBA’s associate director of Media Services.*

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**NYSBA at the ABA**



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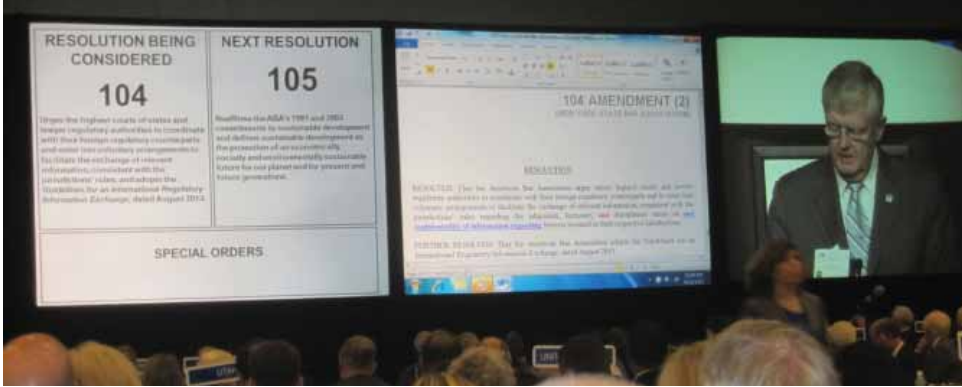


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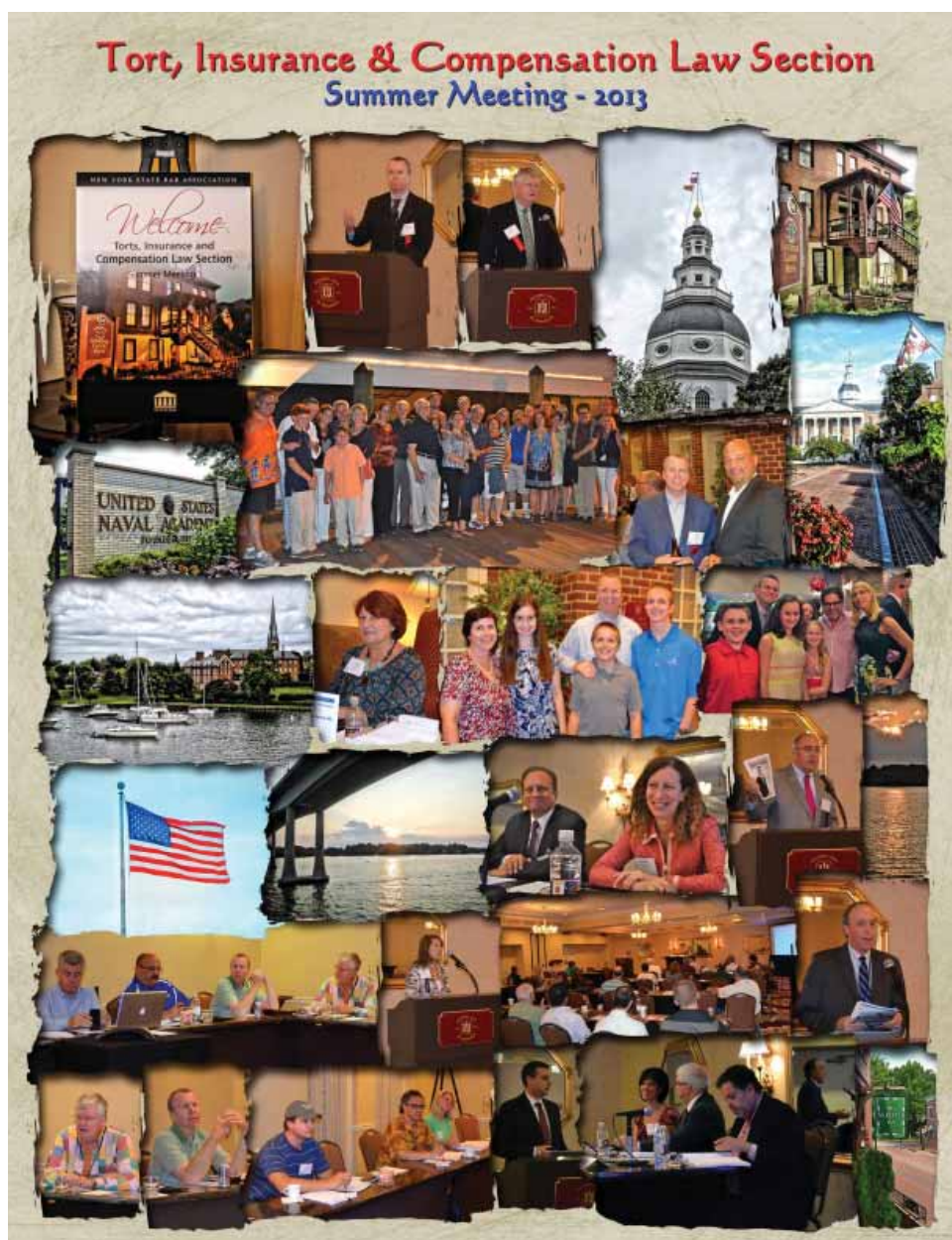
*“...especially, when it is done in a really cool locale...”*



**Photo Caption—Summary.** *[Photo by]*



**Photo Caption—Summary.** *[Photo by]*



**Photo Caption—Summary.** *[Photo by]*



**Photo Caption—Summary.** *[Photo by]*



**Photo Caption—Summary.** *[Photo by]*



**Photo Caption—Summary.** *[Photo by]*



# New benefit brings members unlimited access to premier e-library

State Bar members now have unlimited access to a vast electronic library of New York state and selected federal statutes, regulations, court decisions and other legal documents—at no cost.

Fastcase, an online legal research tool, is the latest addition to the State Bar's members-only benefits.

Using sorting algorithms, Fastcase offers an alternate and quick way to do legal research, allowing users to sort citations in multiple ways.

"We are pleased to offer free access to Fastcase as a benefit to all State Bar members," said President David M. Schraver of Rochester (Nixon Peabody LLP). "Fastcase is a valuable legal research tool, whether used alone or with other research tools."

State Bar members are eligible for an additional benefit beyond unlimited access to New York and selected legal content. For \$195 a year, they can access the full Fastcase library of all 50 states. The nonmember list price for full library is \$995 per year.

In addition, a specially tailored benefit will help new attorney members gain professional and financial footing during their first two years of practice. They qualify for free access to Fastcase's entire national and 50-state library.

Fastcase offers multiple ways to conduct research. For example:

- Relevant cases can be sorted by date, by level of court, alphabetically or by the number of times they are cited in other cases. Fastcase can identify the most authoritative cases in the results.
- Results can be viewed on a map, using bubbles to display how often and how recently cases have been cited.
- Annotated citations of federal and New York state statutes provide case citations, which can be sorted by case name, decision date or frequency of citation.
- Bad Law Bot flags a case that may have been overturned or overturned in part.



To access the Fastcase benefits, members can click the Fastcase button on the State Bar's new website, which goes live in September. Fastcase is available on desktop computers, laptops, tablets and cell phones.

The New York State Bar Association is the 24<sup>th</sup> state bar association to offer Fastcase as a member benefit.

Members of the State Bar also are eligible for discounted subscriptions to Loislaw Connect, another online legal research tool. Loislaw offers members access to section newsletters and journals in a searchable, citation-enhanced format. For more information, see **LINK**. ♦

## TECHLEX

By Barbara Beauchamp

## Check out the easy-to-use features on NYSBA's new website



Beauchamp

The State Bar's website is getting a major make-over this month and the look is dramatically different—check it out: [www.nysba.org](http://www.nysba.org).

For the last few years we've been working on a very, very large project: the conversion of our website software, creating a new e-commerce engine, enhancing our search tools, implementing new online communities and the graphical redesign of our website. The most obvious change is the new look.

Good design—on the web, in your home, or around your city—is marked by one very important element, functionality. Architect I.M. Pei designs stunning buildings that often seem to defy gravity and have unexpected lines and curves, but are exquisitely functional. With tremendous effort and guidance from the State Bar's Electronic Communications Committee, we've chosen a design for our website ([www.nysba.org](http://www.nysba.org)) that combines great visual appeal with improved functionality.

For example, the navigation bar now runs across the page and features drop down menus with fly-out sub-menus to make all content available

from the home page. That navigation continues on internal pages, so moving around the site is easy and intuitive.

The homepage of the site is another way we made interacting with the State Bar easier. At the top of the page, there is a prominent login button, and when a user is logged in, that button switches to the user's name. Clicking a small arrow next to the user's name displays membership type, renewal date and provides access to the customized MyNYSBA page, a direct link to purchased products for download and quick access to the user's sections.

The login screen allows you to enter your username and password once and have the site remember your login on all future visits. (You need to do this at each computer or device you use. The "remember me" feature is specific to your computer or device, not your username and password.)

### Search for it

Another critically important feature is the website search tool – Decisiv Search powered by Recommind near the top of the page. This state-of-the-art search engine has been used by the State Bar for a number of years. In the new iteration, the search is more powerful and search results are can be filtered by more factors to tailor the results to a specific type of information.

Search is consistently one of the most used features of our website. But with the new design and the new software, it becomes even more relevant. When the new software is implemented, the address of every single page will change. The State Bar's staff worked hard to reconnect links and make content easy to find. But if you are not able to locate a page, use the search tools to help find it.

There are numerous other helpful features on the new site: sortable events from the home page, direct access to online communities, recently approved reports, articles and blog

posts from members, current news from the State Bar. A new element at the bottom of the page, a mega footer, features a series of links for items not found in the navigation menus. The mega footer, like the navigation menus, is available on every page.

For more information on our new website, check out the brochure inserted in this issue.

We welcome your feedback on the new website and encourage you to explore, login, search, set your MyNYSBA preferences—and enjoy it. Share your thoughts at [webmaster@nysba.org](mailto:webmaster@nysba.org). ♦





## The Bar Around The Corner: Nigerian Lawyers Association



**Association Address / Phone:** 305 Broadway, 14th floor, New York, NY 10007; 718-522-0103

**Web site:** [www.nigerianlawyers.org](http://www.nigerianlawyers.org)

**Founded:** 1999

**Number of Members:** 385

**Brief Association Vision:** To cultivate the science of jurisprudence, facilitate and advance the fair and equitable administration of justice, serve the needs of the members of the Nigerian legal community and the Nigerian community as a whole, in their understanding of and access to the law, and to educate and assist such persons in their daily dealings with the law.

**Brief History:** The Nigerian Lawyers Association (NLA) was incorporated in 1999 as a not-for-profit, non-partisan association of attorneys and counselors-at-law. It has taken great strides in its short existence. Each past administration has worked tirelessly to bring a variety of enrichment programs to its members and the surrounding community. From the creation of legal clinics in 1999, to the inception of the scholarship program in 2010, the NLA has clearly demonstrated a commitment to furthering its mission.

**What is your association's most popular outing / social event?** Each year, NLA confers awards on individuals who have made inspiring professional or public service contributions that have significantly impacted a community, a nation or the world at an Annual Merit Awards Dinner. This

event is always invigorating and insightful, as distinguished Nigerians impart words of wisdom and encouragement to attendees. The evening culminates in an elegant sit-down dinner of traditional Nigerian cuisine followed by dancing to the beats of local and international artists.

**What are your association's most important current projects / initiatives?** *Public Relations*—NLA works hard to strengthen the image of Nigerians both in America and abroad. In June, the NLA invited CEOs and journalists from key Nigerian publications and community organizations to discuss the media's role in promoting a positive image of the country. Though the discussion was intense at times, we reached a consensus that, at the very least, a fair and balanced representation of the country is warranted.

NLA is uniquely positioned because it has sponsors in the U.S. and Nigeria. One of the NLA's future goals is to explore alternative ways to connect with the Nigerian community and facilitate justice. In that regard, the NLA will facilitate dialogue with Nigeria-based firms and the Nigerian Bar Association (based in Nigeria) to determine how the NLA could better serve the Nigerian community.

*Legal Clinics*—NLA conducts pro bono legal clinics in venues such as churches, mosques, community centers and local libraries. The clinics, which have been held in Manhattan, Brooklyn, Bronx and Queens, address various legal problems, including real estate, bankruptcy, immigration, family law and criminal law. One of the clinics involves Deferred Action Childhood Arrivals ("DACA"), which is part of a series of clinics throughout New York sponsored by the Department of State to provide free legal assistance to a growing number of eligible youth.

### NLA3 image

The Nigerian Lawyers Association held its annual dinner on Oct. 13, 2012 in New York City, where member of the year awardees were honored. L- R, Immediate Past President Yomi Ajaiyeoba; Board of Directors Immediate Past Chair Oliver Mbamara of Brooklyn (Office Of Temporary And Disability Assistance); Patrick Okeke; President Nnenna Onua of Brooklyn (Soleil, Onua & Associates, LLP) and Board of Directors Chair Courage Otaigbe of New York City (IBM Corporation).

NLA is the proud recipient of the Conference of Bar Leaders' 2011 Bar Leaders Innovation Award, presented in recognition of the NLA's pro bono clinics.

*Legal Internship Program*—Established in 2008, this program provides young attorneys, law students and law graduates based in the U.S. with opportunities to intern with a participating law firm based in Nigeria. Students who participate in the program receive a discounted airline ticket from JFK to Lagos, Nigeria.

*Scholarship Program*—The program, launched in 2010, helps law students and recent graduates achieve their academic objectives. NLA awards scholarships in three categories: JD Program (1<sup>st</sup> and 2<sup>nd</sup> year law students); LLM Program/Bar Exam Scholarship; and 3L Bar Exam Scholarship.

*Journal Publication*—The Nigerian Lawyer publishes papers and commentaries on a variety of legal topics of interest to NLA members and its wider

audience. Today, it enjoys a readership of community leaders, government officials and professionals in academia, finance, and medicine in the U.S. and in Nigeria.

**If your association had no budget restrictions, what project / initiative would you first take on?** We would adopt a similar program to Taglit-Birthright Israel that would allow NLA members and those interested in the NLA's initiatives to observe firsthand the Nigerian legal system and assess some of its pressing legal issues, such as human rights violations. Often, issues in Nigeria have impact on the Nigerian community in the U.S. Also, visits to Nigeria could enhance attorneys' skills, particularly if they practice in an area of law that has global impact in the business and/or legal communities.

The Bar Around The Corner is a project of the New York State Conference of Bar Leaders, [www.nyscbl.org](http://www.nyscbl.org). ♦

## Pro Bono: NYSBA hosting law school forum on need for civil right to counsel

By Gloria Herron Arthur, Director



Herron Arthur

This year is the 50<sup>th</sup> anniversary of *Gideon v. Wainwright*, which established a constitutional right to counsel for criminal defendants who cannot afford a lawyer. Calling it an “obvious truth,” Justice Hugo Black declared that forcing a criminal defendant to confront his accusers without an attorney constituted a “denial of fundamental fairness, [and] shocking to the universal sense of justice.”

Is it not equally obvious that fundamental fairness also requires counsel be appointed to represent low-income and vulnerable members of society in civil cases involving the possible loss of basic life necessities? Surveys show that the majority of the public, including many law students, believe such a civil right to counsel already exists. Sadly, they are mistaken.

There is a growing national movement advocating for the establishment of a civil right to counsel. If enacted, a civil right to counsel would ensure equal access to justice for society’s low-income and most vulnerable persons by providing legal representation in such fundamental areas as shelter, public benefits, and domestic violence.

Through its advocacy for increased funding for legal services providers and encouragement of pro bono, the State Bar has long supported the goal of making counsel available to those who need it most, regardless of their ability to pay.

In 2008, the House of Delegates approved a report submitted by the President’s Committee on Access to Justice entitled, “Toward a Right to Counsel in Civil Cases in New York.” The report identified the most critical areas of civil unmet legal needs in New York and advocated for the establishment of a civil right to counsel to address these needs.

The House also approved a resolution calling for counsel to be provided

for vulnerable and low-income persons in evictions, foreclosures, and when a claimant was denied unemployment insurance benefits—just three of the identified basic life needs.

### Live forum offered

Continuing the State Bar’s commitment to raising awareness about the ever-pressing need for expanded access to justice, President David M. Schraver is hosting a free forum on the civil right to counsel on October 3 from 5 p.m. to 7:30 p.m. at the State Bar Center in Albany.

Targeted primarily at law students, the forum is intended to correct misperceptions about this important issue through discussions about the limited scope of the right to counsel in New York and other states. Information also will be provided about the growing acceptance within the international community to the concept of a civil right to counsel.

New York’s 15 law schools, as well as those at Yale, Seton Hall and

Rutgers, will be linked by video to the State Bar forum that will feature a distinguished group of panelists. Chief Judge Jonathan Lippman will speak and Schraver will moderate the forum. Immediately following the broadcast, each law school will host panel discussions on its respective campus. As the next generation of lawyers, it is hoped that students will be inspired by the forum and become future advocates for the establishment of a civil right to counsel.

Anyone interested in the civil right to counsel issue is welcome to participate in any of the forums. In Albany, attendees can choose to attend the State Bar Center event or the forum at Albany Law School. To view the Albany program agenda and to register to attend the live forum, go to: [www.nysba.org/probono/CivilRightCounsel](http://www.nysba.org/probono/CivilRightCounsel). For details regarding each law school’s program, please check their respective webpages. ♦

## NYSBA celebrates National Pro Bono Week

The American Bar Association has designated October 20-26 as National Pro Bono Week.

Launched in 2009, the goal of National Pro Bono Week is three-fold: (1) to recognize the significant contributions made by the scores of attorneys who already participate in pro bono, (2) to educate the public and the legal profession about the ever-growing unmet legal needs of low-income people, and (3) to encourage more attorneys to volunteer.

Marking the celebration’s fourth anniversary, the State Bar is hosting a kick-off celebration on October 18 at the State Bar Center in Albany. Co-sponsors are The Legal Project, Albany County Bar Association, Legal Aid Society of Northeastern NY, Albany Law School and the Third Judicial District Pro Bono Planning Committee.

The theme of the Albany celebration is “Recognizing Judges Who Support Pro Bono.” Retired U.S. Magistrate Judge George H. Lowe will be recognized at the luncheon for his six years as co-chair of the President’s Committee on Access to Justice and for his life-long support of pro bono.

Other honorees include Hon. George B. Ceresia, Jr. of Troy (Rensselaer County Supreme Court, retired), Hon. Christine M. Clark of Schenectady (Schenectady County Supreme Court), Hon. Robert E. Littlefield, Jr. of Albany (Chief Judge, U.S. Bankruptcy Court), and Hon. Gary F. Stiglmeier of Albany (Albany City Court Civil Part).

For details, contact Gloria Herron Arthur, director, Department of Pro Bono Affairs, [garthur@nysba.org](mailto:garthur@nysba.org). ♦

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## Law Practice Management

By Katherine Suchocki, Director

### Closing your law practice: A checklist for planning ahead



Suchocki

The Law Practice Management Department provides members with resources on practice management trends, marketing, client development, legal technology and finance for solo practitioners as well as managing partners at a national law firm.

Checklists, best practices, publications and continuing legal education programs are available at [www.nysba.org/LPM](http://www.nysba.org/LPM) that provide up-to-date information and practical tips to help you better manage your law practice.

As the director of the Law Practice Management Department, I receive calls and email inquiries daily on various topics ranging from setting up a practice in New York and setting up an escrow account to file and document management and getting new clients.

Recently, I received several inquiries about closing a law practice. The State

Bar's Planning Ahead Guide can help with that. It is available free at [www.nysba.org/PlanningAhead](http://www.nysba.org/PlanningAhead). (Please note that we are currently updating the Planning Ahead Guide so that it will be as up-to-date as possible.)

In this guide, you will find sample letters and templates and a checklist for closing your law practice.

Some of those checklist items include:

1. Finalize as many active files as possible.
2. Write to clients with active files, advising them that you are unable to continue representing them and that they need to retain new counsel. Your letter should inform them about time limitations and time frames important to their matters.
3. For cases that have pending court dates, depositions or hearings, discuss how to proceed with affected clients. Where appropriate, request extensions, continuances and the rescheduling of hearing dates. Send written confirmations of these extensions, continuances and rescheduled dates to opposing counsel and to your client.

4. For cases before administrative bodies and courts, obtain clients' permission to submit motions and orders to withdraw as counsel of record.

5. If the client is obtaining a new attorney, be certain that a Substitution of Attorney form is filed.

6. Make sure that all matters have a motion and order allowing your withdrawal as counsel of record or a Substitution of Attorney filed with the court.

7. Make copies of files for clients. Clients should either pick up copies of their files (and sign a receipt acknowledging that they have received them) or sign an authorization for you to release copies of their files to their new attorneys.

8. Write to all clients for whom you have retained original wills, advising them that you are closing your office and request that they pick up their wills.

9. Tell clients where their closed files will be stored and whom they should contact in order to retrieve them. Obtain clients' permission to destroy their files after approximately seven years.

10. If you are a sole practitioner, have your calls forwarded to you or another person who can assist your clients.

#### Should you sell, or retire?

The Law Practice Management Department also offers several CLE programs on selling your practice or retiring.

The following programs are available online:

- "Retirement 101 – Selling Your Law Practice - A Program for Solo and Small Firm Practitioners;" 1.5 MCLE credits; \$50 for members
- "Closing or Selling a Law Practice;" 3.5 MCLE credits; \$95 for members
- "Planning for the Orderly Succession of a Law Firm;" 2.0 MCLE credits; \$50 for members.

For more information about these programs, visit [www.nysba.org/LPM](http://www.nysba.org/LPM).

If you have questions about law practice management resources available to members, please contact me at [ksuchocki@nysba.org](mailto:ksuchocki@nysba.org) or 518-487-5590.



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## Governmental Relations

By Ronald F. Kennedy, Director

### Sequestration and the impact on access to justice—a growing problem



Kennedy

Sequestration is an issue that has caused significant concern to virtually every segment of the federal government and related areas of the private sector. For the legal profession, there should be growing concern over the so-called sequestration process pursuant to the Budget Control Act of 2011 (BCA) and its impact.

The sequestration process was created by the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings). Enacted in 2011, the BCA established specific budget goals that must be met in order to avoid the sequestration process. However, Congress has failed to pass a budget that would meet those goals; so on March 1, massive, automatic cuts were imposed on both military/defense and non-military budgets.

#### Sequestration's impact on federal courts

Those automatic cuts have slowly, but surely, taken a toll on the justice system. In a congressional hearing on July 23 regarding sequestration and the courts, Judge Julia Gibbons, chair of the Committee on the Budget of the Judicial Conference of the United States, warned Congress that continued budget cuts would devastate the nation's system of justice, threatening public safety, constitutional rights and

economic well-being.

Judge Gibbons told the Senate Subcommittee on Bankruptcy and the Courts:

- **Job cuts.** Clerks of court and probation and pretrial services offices are expected to lose as many as 1,000 staff in 2013, with furloughs accounting for an additional 8,600 workdays lost. Those offices have lost 2,100 positions since July 2011. The current staffing level is the lowest since 1999, despite significant workload growth in that time;
- **Public safety risks.** Judge Gibbons noted that funding for courthouse security has been cut 30 percent, creating security vulnerabilities throughout the federal court system. Moreover, the courts' probation and pretrial supervision offices have lost 7 percent of their staffing since July 2011, while supervising a record number of offenders and criminal defendants;
- **Cuts in court-appointed counsel.** Between October 2012 and June 2013, the Federal Defender offices downsized by about 6 percent. It is anticipated that at least 15 days of payments to panel attorneys will be suspended and that Federal Defender organization staff will be furloughed for an average of 15 days over the last half of this fiscal year; and,
- **FY 2014 concerns.** The Judiciary has great concern that a continuing resolution for FY 2014 at current sequestration levels would result in the loss of thousands of additional court and federal defender jobs, as well as deeper cuts in court services.

As we approach the end of the federal government's fiscal year on September 30, lobbyists from every large sector in the economy—such as military contractors, the airlines, and the food industry—have pressed Congress for “anomalies,” or exemptions, from the budget cuts. The legal profession has an obligation to support the courts in their effort to be heard.

In 2012, then-President Seymour W. James, Jr. and current President David M. Schraver were among the bar leaders calling attention to this issue. They urged federal policymakers to avert the devastating impact of those cuts. Schraver has continued to carry the State Bar's message to Congress. You may view Schraver's letter to Senator Christopher Coons, who chaired the hearing on July 23, at [www.nysba.org/CoonsLtr](http://www.nysba.org/CoonsLtr).

“Our primary focus at a federal level is to educate our congressional delegation in Washington about the impact of sequestration on the courts and on the funding of legal services, particularly the Legal Services Corporation. We intend to help ensure that ‘access to justice’ is not lost among the calls for preferential treatment by other interests and programs on Capitol Hill,” Schraver said.

Clearly, if the sequestration process goes forward for 10 years, as called for by the Budget Control Act, it would have a devastating and long-lasting impact on the federal courts.

#### Sequestration's impact on the LSC

The Legal Services Corporation

(LSC) is the nation's single largest provider of grants to civil legal organizations that assist individuals struggling to get by on incomes below or near the poverty line.

Those benefiting from LSC-funded programs are among the most vulnerable Americans, including veterans returning from combat, domestic violence victims, those coping with the aftereffects of natural disasters, families involved in child custody disputes, people with disabilities, and individuals undergoing foreclosures or other housing issues.

Due to economic conditions, the number of people who qualify for legal services is at an all-time high; more than 63 million Americans, including 22 million children, are eligible for civil legal assistance.

Of course, lawyers are committed to doing their share. The bar contributes many hours a year in voluntary pro bono legal services to the indigent. However, these efforts alone are insufficient to meet the needs of the indigent. Ultimately, society, acting through its elected leaders, must provide adequate public funding to do so.

More cuts to LSC's budget, as those imposed by the sequestration process, would have definite and devastating consequences for vulnerable New Yorkers in need of legal assistance.

As Congress reconvenes this fall, the State Bar will continue to call on New York's congressional delegation to take all necessary steps to provide adequate funding for the federal court system and LSC during the 2014 fiscal year. ♦

## The New York Bar Foundation

By The New York Bar Foundation President Cristine Cioffi

### Your gift matters



Cioffi

While fall and the end of the calendar year are approaching, it is just the beginning of our grant cycle in The Foundation.

I am pleased to report that during the last grant cycle we were

able to present grants totaling \$385,000 to 66 organizations across New York. This financial support will benefit children and adults throughout our state's communities.

The New York Bar Foundation grant program assists organizations with

law-related projects that: (1) facilitate the delivery of legal services to those in need; (2) improve the justice system and the law; (3) enhance professional competence and ethics; and (4) increase public understanding of the law.

Our grants support programs that provide access to justice to domestic violence victims, to low-income immigrants and older individuals who are neglected or abused.

Portions of grant funding also will help those seeking legal assistance with bankruptcy, foreclosures, debt collection, consumer debt and legal guardianships for disabled children.

Each of these challenges impact the quality of life of our neighbors across

hundreds of communities throughout New York state. Your generosity helps these organizations provide legal representation to the underserved and supports legal education.

#### You can make a difference

Funding for the projects comes from contributions to The Foundation by lawyers, law firms, corporations and others. One hundred percent of the funds contributed are awarded to beneficiary organizations. All administrative expenses of the Foundation are paid from other sources.

In the past three years, The New York Bar Foundation has awarded over \$3,000,000 in grants to 115 organiza-

tions throughout New York.

One of my goals as president of the Foundation's Board of Directors is to increase awareness of the grant opportunities we provide and to solicit grant application submissions from geographic regions of New York state where we have not made grants in the past.

The submission deadline is October 1. I invite you to communicate with nonprofits near you that meet one of our four criteria above and inform them of this opportunity.

Applications and grant guideline information is available on our website at [www.tnybf.org](http://www.tnybf.org). ♦



# Process for selecting NYSBA legislative priorities

Fall is the time of the year when the State Bar selects its legislative priorities for the upcoming year. New section and committee leaders as well as the general membership will find the process by which legislative priorities are selected of interest.

On Jan. 25, 2002, the House of Delegates approved as State Bar policy a report by the Special Committee on Legislative Advocacy. A section of that report, which was intended to enhance the State Bar's legislative program, pertained to the goal of refining the State Bar's "message" to the Legislature and the establishment of a steering committee to accomplish that goal.

Focusing our efforts on clear legislative priorities has improved the State Bar's effectiveness. An enhanced federal and state legislative action process, with direct involvement by the leadership, promotes consistency and coordination, and helps to keep State Bar entities, members and staff involved in an organized manner.

Accordingly, in early July, President David M. Schraver wrote to all section and committee officers, providing a complete list of the State Bar's Legislative Priorities for 2013. (Available at [www.nysba.org/LP2013](http://www.nysba.org/LP2013).) He encouraged them to participate in formulating the 2014 legislative priorities.

September 9 was the deadline for submission of recommendations to the Department of Governmental Relations.

The State Bar's Committee on Federal Legislative Priorities, chaired by John Nonna of New York City (Patton Boggs LLP), and the Committee on Legislative Policy, chaired by Hermes Fernandez of Albany (Bond, Schoeneck & King, PLLC), draw upon members' expertise and experience with the legislative process.

This has enabled the State Bar to enhance its impact on legislation at the federal and state levels. Both committees will meet in September. The committees review the current priorities, sift through

recommendations and make their own. In October, Nonna and Fernandez will report on their committees' recommendations to the Steering Committee on Legislative Priorities, which is comprised of the president, the president-elect, the chairs of the committees on Legislative Policy (Fernandez) and Federal Legislative Priorities (Nonna), and the executive director.

The Steering Committee then will submit a report to the State Bar's Executive Committee for approval and establishment of the 2014 priorities list at its meeting on November 1. ♦

—Ronald Kennedy

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## Lawyer Assistance Program

By Patricia Spataro, Director

### Anatomy of a second chance



Spataro

My eight-year-old grandson is very forgetful, like most eight-year-olds. He lived with me for much of the summer because he loves the summer camp near my house.

One day, he asked to take his iPod to camp with him. I told him what the consequences would be if it didn't come home with him at the end of the day. He lost it—the iPod, that is.

There were consequences, including the loss of his beloved iPod... a loss for which I secretly rejoiced. Yes, I know what they cost, but have you ever tried to get an eight-year-old off an iPod? He faced his consequences and got off for good behavior. I am Grandma, after all.

Since I believe in second chances, when he asked the following week to bring some Legos to camp, I said yes. I reminded him of the consequences and he said he was ready to do better this time. When I picked him up at the end of the day, he hugged me and immediately opened his hand to show me his Legos. Redemption!

Teaching an eight-year-old about responsibility and consequences may be very different than dealing with professionals who have fallen from grace, but the key elements are the same. One, everyone is entitled to a second chance. Two, a second chance must be well planned or you will most likely be in a position to decide on a third chance.

#### Chances are....

We give and get second chances all the time, but when it comes to serious matters like declining work quality and addiction, the ordinary second chance seldom works. Pleas from a spouse to stop drinking or a managing partner to step up work performance do little to motivate change, and more to create hostages of the person making the request.

Pleas are demands without consequences and usually do not help anyone change and can lead to frustration, anger, resentment and even to liability for everyone involved.

Pleas rob the person with the problem of an opportunity to change and rob those impacted by the behavior of any clear resolution. Remember, most of us do not change unless we abso-

lutely have to, and even then there is no guarantee... that's how hard it is to change.

A carefully planned second chance can increase the likelihood of success. Helping the person whose behavior is out of control is the ultimate goal, but stopping the insanity it is causing drives us to deliver ultimatums.

Unfortunately, a high tolerance for insanity or lack of confidence in your stand against the problem behavior may cause you to tread lightly. If the behavior is serious as the examples given—problem drinking and failing work performance—a strategic second chance can minimize and possibly eliminate the imminent threats and risks. We have no time to waste on a weak second chance when the risks can mean loss of license and reputation, harm to others and even death.

The components of a strong second chance include:

- Identifying the problem behavior. Stick to the facts and not your gut sense of what are the facts. Facts are less likely to be debated than any "gut sense" speculation. Don't wait for the behaviors to be horrible for you to act. Behaviors follow a common path: once is an accident, twice is a coincidence, and three times is a pattern. Don't wait until the behaviors have occurred a dozen times before realizing they are not going away on their own, something for which we all desperately wish.
- Identifying how the behavior is having a negative impact on work, health, relationships and finances. The facts about the impact will help make your case.
- Showing compassion. Since no one is without sin, it is only right to be compassionate by showing respect and preserving a person's dignity. During this step, it is important to offer resources on where to get help, if help is needed and or wanted. Don't shy away from behaviors that appear to be linked to mental health problems. It may be the one thing that prompts a person to get help.
- Identifying consequences. This is the trickiest of all the steps and the one that is most often left out because it is too hard to say: "If the behaviors don't stop, or stop but start again, here is what I will do." Consequences must be realistic and something you can commit to 100 percent. Using a particular consequence to motivate, but without actually following through with it is

a terrible gamble. If you can't or won't follow through, the problem behavior will get a stronger hold on the person and he or she will, in turn, get a stronger hold on you. Again, be realistic. A small consequence may seem inconsequential but it sends a strong message that you are taking a stand and mean business. It's about exercising personal power and refusing to be a victim of someone else's bad choices. It is not about getting out the big guns and blowing this away. "Big gun" consequences can backfire.

Compassion and consequences hold the whole thing together. Compassion without consequences is enabling. Consequences without compassion is punitive.

Sometimes it is the effort that's

important, and not the results. If the person fails to change, as often is the case, they know what your response will be. There are no surprises or agony over what you should do. And you are no longer at the mercy of choices. I see a well-planned second chance fitting of a John Kennedy quote: "Fix the hole in the roof when the sun is shining."

Having a map of where you want to go makes it easier to get there.

Perhaps the most important thing about second chances is that you might only get one clear shot at a good second chance. Seize the moment and make it matter.

Don't go it alone. Call 800-255-0569 for assistance. ♦

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# Seeking nominations for Annual Meeting awards

A trailblazing attorney could join the distinguished group of Schapiro Award recipients. The attorney universally respected by colleagues, adversaries and judges might be recognized for his or her professionalism and example. Perhaps your specialty bar association developed an innovative program to help the public.

Various State Bar sections and committees will honor outstanding lawyers, like those above, for their contributions to the profession and public at the 2014 Annual Meeting. Nominations for several awards are open now.

## Kay Crawford Murray Award

This award recognizes attorneys who value diversity and help women attorneys to succeed.

Sponsored by the Committee on Women in the Law, the award is named for past committee chair Kay Crawford Murray, who raised awareness of women's issues and advocated for a model childbirth and parenting policy for law firms.

Nominees can be attorneys who either have had a distinguished legal career or who are up-and-comers. Nominees must be active members of bar associations that advance the professional and personal development of women attorneys; actively mentor women attorneys; and contribute substantially to diversity in the legal profession.

Nominations are due October 18. Applications are available at [www.nysba.org/womeninthelaw](http://www.nysba.org/womeninthelaw). They should be sent to the Committee on Women in the Law, New York State Bar Association, One Elk Street, Albany,

NY 12207, faxed to 518/463-8527, or emailed to [lschupp@nysba.org](mailto:lschupp@nysba.org).

The award will be presented at the committee's luncheon on Jan. 28, 2014.

## Ruth G. Schapiro Memorial Award

The Committee on Women in the Law will honor a member who has made a noteworthy contribution toward addressing issues of concern to women, including domestic violence, child abuse, bias, health care and gender equity.

The award honors the committee's first chair, the late Ruth G. Schapiro. Past recipients include former Chief Judge Judith S. Kaye and past State Bar presidents Maryann Saccomando Freedman, M. Catherine Richardson and Kathryn Grant Madigan.

Nominations are due October 18. Applications are available at [www.nysba.org/womeninthelaw](http://www.nysba.org/womeninthelaw). They should be sent to the Committee on Women in the Law, New York State Bar Association, One Elk Street, Albany, NY 12207, faxed to 518/463-8527, or emailed to [lschupp@nysba.org](mailto:lschupp@nysba.org).

Current committee members are not eligible.

## Outstanding Young Lawyer Award

The Young Lawyers Section's Outstanding Young Lawyer Award recognizes an attorney who has practiced less than 10 years and has rendered outstanding service to both the community and the legal profession.

These activities may include, but are not limited to, pro bono service, service to bar associations and community organizations, and activities that enhance the profession and benefit the public.

Nominations must be postmarked by November 8. They should be sent to the Outstanding Young Lawyer Award, c/o Tiffany Bardwell, New York State Bar Association, One Elk Street, Albany, NY 12207, or emailed to [tbardwell@nysba.org](mailto:tbardwell@nysba.org).

## Attorney Professionalism Award

With this award, the Committee on Attorney Professionalism recognizes a member for extraordinary dedication to clients, unwavering commitment to promoting respect for the legal system and exemplary ethical conduct, and as a role model for competence, good judgment, integrity and civility.

The award shines a light on practicing attorneys who are especially valued by their clients and colleagues. It is not a lifetime achievement award.

Nominations are available on the committee's website. They should be postmarked by November 13 and returned to the Committee on Attorney Professionalism, New York State Bar Association, One Elk Street, Albany, New York 12207.

The award will be presented during the House of Delegates dinner on Jan. 30, 2014.

## Haywood Burns Award

Throughout his life, Dean W. Haywood Burns, the former head of the City University of New York School of Law, was an advocate for civil rights and for the powerless, especially in South Africa.

This award is presented to an individual whose contributions to New York reflect Burns' commitment to the struggle for equality and justice.

Nomination forms are due November 22. They are available at [www.nysba.org/civilrights](http://www.nysba.org/civilrights). They should be sent to Linda Schupp, Bar Services Department, New York State Bar Association, One Elk Street, Albany, NY 12207 or [lschupp@nysba.org](mailto:lschupp@nysba.org). Non-attorneys can be nominated.

The award will be presented at a reception on Jan. 30, 2014.

## Conference of Bar Leaders Innovation Awards

Nominations for the New York State Conference of Bar Leaders Innovation Awards will be accepted until November 22.

The awards honor local bar associations for their innovative and timely professional and public service programs.

Nominations will be evaluated for their effect on the bar and/or the public; ingenuity and creativity in planning the project; and the scope of the project in relation to the association's resources.

Nomination forms are available at [www.nyscbl.org](http://www.nyscbl.org).

Awards will be presented at a breakfast on Jan. 31, 2014. ♦

—Brandon Vogel

## Attorneys urged to answer needs survey on seniors and the disabled

The Legal Services Initiative is asking that selected attorneys complete an online survey on the legal needs of senior citizens, individuals with disabilities and their unpaid caregivers.

The survey, which can be completed online in about 15 minutes, recently was sent to 600 randomly selected attorneys, according to the Initiative's administrators.

The results of the survey will be used by a statewide work group this fall to advance the Initiative's primary goal of ensuring equal access

to justice for those groups and increase their access to affordable legal assistance.

The initiative is a partnership that includes Gov. Andrew Cuomo, state offices for the aging and people with developmental disabilities, the Office of Court Administration and the State Bar.

For information, contact Vera Prosper at [vera.prosper@ofa.state.ny.us](mailto:vera.prosper@ofa.state.ny.us) or 518-474-4382, or Elziabeth Hooks at [ehooks@courts.state.ny.us](mailto:ehooks@courts.state.ny.us) or 212-428-2120.

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# CLE Seminar Schedule

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PRACTICAL SKILLS SERIES			
P/S BASIC MATRIMONIAL PRACTICE			
(W)	October 16	Buffalo	Holiday Inn Amherst
		Long Island	Melville Marriott
(Th)	October 17	Westchester	Holiday Inn Mt. Kisco
(F)	October 18	Syracuse	Sheraton Syracuse University Hotel
(M)	October 21	Albany	New York State Nurses Association
		New York City	Concierge Conference Center
P/S INTRODUCTION TO ESTATE PLANNING			
(M)	October 28	Rochester	Holiday Inn Rochester Airport
(T)	October 29	Buffalo	Holiday Inn Amherst
		Westchester	Holiday Inn Mt. Kisco
(W)	October 30	Albany	New York State Nurses Association
		New York City	New York's Hotel Pennsylvania
(Th)	October 31	Long Island	Melville Marriott
		Syracuse	Sheraton Syracuse University Hotel
P/S BASICS OF BANKRUPTCY			
(M)	November 4	Buffalo	Holiday Inn Amherst
(T)	November 5	Long Island	Melville Marriott
(Th)	November 7	New York City	New York's Hotel Pennsylvania
(Th)	December 5	Albany	New York State Nurses Association
(F)	December 6	Syracuse	Sheraton Syracuse University Hotel
P/S BASICS OF CIVIL PRACTICE – THE TRIAL			
(T)	November 19	Buffalo	Holiday Inn Amherst
		New York City	New York's Hotel Pennsylvania
		Westchester	Holiday Inn Mt. Kisco
(Th)	November 21	Albany	New York State Nurses Association
		Long Island	Melville Marriott
		Syracuse	Sheraton Syracuse University Hotel

HENRY MILLER – THE TRIAL	
<b>(Th) October 10</b>	
Long Island	Melville Marriott
<b>(T) October 29</b>	
New York City	Concierge Conference Center

HOT TOPICS IN REAL PROPERTY LAW	
<b>(Th) September 26</b>	
Buffalo	Holiday Inn Amherst
<b>(F) November 8</b>	
New York City	New York's Hotel Pennsylvania

<b>(Th) November 14</b>	
Long Island	Melville Marriott
<b>(F) November 22</b>	
Westchester	Doubletree Hotel Tarrytown

BRIDGING THE GAP	
<b>(T-W) October 1-2</b> <i>(Video Conf.)</i>	
Albany	New York State Nurses Association

<b>(T-W) October 1-2</b> <i>(Video Conf.)</i>	
Buffalo	The Conference Center Niagara Falls

<b>(T-W) October 1-2</b> <i>(Live)</i>	
New York City	New York's Hotel Pennsylvania

THE FREEDOM OF INFORMATION AND THE OPEN MEETINGS LAWS: THE BRAVE NEW WORLD OF OPEN GOVERNMENT –	
<i>(9:00 a.m. – 12:00 p.m.) – Live &amp; Webcast</i>	
<b>(W) October 2</b>	
Albany	New York State Bar Association

PROTECTING YOUR PRACTICE – RISK MANAGEMENT FOR LAWYERS	
<i>(9:00 a.m. – 1:00 p.m.)</i>	
<b>(F) October 4</b>	
Buffalo	Holiday Inn Amherst
Long Island	Long Island Marriott
<b>(F) October 18</b>	
Albany	New York State Nurses Association
	The New Yorker Hotel
<b>(F) October 25</b>	
Westchester	Holiday Inn Mt. Kisco

GAIN THE EDGE	
<b>(W) October 9</b>	
Albany	New York State Bar Association
<b>(Th) October 10</b>	
New York City	Concierge Conference Center

WOMEN ON THE MOVE	
<i>(1:00 p.m. – 4:50 p.m.)</i>	
<b>(Th) October 17</b>	
Albany	New York State Bar Association

THE FIRST LINE OF DEFENSE: ADVOCATING FOR THE BEST IMMIGRANT OUTCOMES IN CRIMINAL AND FAMILY LAW CASES	
<i>(9:00 a.m. – 1:00 p.m.)</i>	
<b>(F) October 18</b>	
New York City	Concierge Conference Center

LITIGATING THE PRODUCTS LIABILITY CASE: LAW AND PRACTICE	
<b>(T) October 22</b>	
Buffalo	Holiday Inn Amherst
<b>(Th) October 24</b>	
New York City	Holiday Inn Manhattan
<b>(F) November 1</b>	
Albany	New York State Nurses Association

TAX ASPECTS OF REAL PROPERTY TRANSACTIONS	
<i>(9:00 a.m. – 1:00 p.m.)</i>	
<b>(T) October 22</b>	
Long Island	Long Island Marriott
<b>(Th) October 24</b>	
New York City	Concierge Conference Center

MATRIMONIAL TRIAL INSTITUTE IV: A MOCK FINANCIAL TRIAL	
<b>(F) October 25</b>	
Buffalo	Holiday Inn Amherst
<b>(F) November 1</b>	
Long Island	Melville Marriott
<b>(F) November 15</b>	
Syracuse	Sheraton Syracuse University Hotel
<b>(F) December 6</b>	
Albany	New York State Nurses Association
<b>(F) December 13</b>	
New York City	Concierge Conference Center

NEW YORK APPELLATE PRACTICE	
<b>(F) October 25</b>	
Long Island	Melville Marriott
<b>(T) October 29</b>	
Rochester	Holiday Inn Rochester Airport
<b>(M) November 4</b>	
Albany	Holiday Inn Albany – Wolf Road
<b>(Th) November 14</b>	
Westchester	Elmwood Country Club
<b>(Th) November 21</b>	
New York City	Concierge Conference Center

VETERANS BENEFITS: PRACTICE AND PROCEDURE AT THE VA AND BEYOND	
<i>(9:00 a.m. – 12:00 p.m.) – Live &amp; Webcast</i>	
<b>(F) October 25</b>	
New York City	Concierge Conference Center

SPECIAL EDUCATION LAW UPDATE 2013	
<b>(F) November 1</b>	
Buffalo	Holiday Inn Amherst
<b>(W) November 6</b>	
Long Island	Melville Marriott
Westchester	Holiday Inn Mt. Kisco
<b>(W) November 13</b>	
New York City	Concierge Conference Center
<b>(W) November 20</b>	
Syracuse	Sheraton Syracuse University Hotel
<b>(F) November 22</b>	
Albany	New York State Bar Association

SHARPENING YOUR PRESENTATION SKILLS FOR LAWYERS	
<i>(9:00 a.m. – 1:00 p.m.) – Live &amp; Webcast</i>	
<b>(M) November 4</b>	
New York City	New York's Hotel Pennsylvania

REPRESENTING ENTREPRENEURIAL BUSINESSES: FUNDAMENTAL LITIGATION & CORPORATE ISSUES	
<i>(9:00 a.m. – 1:10 p.m.)</i>	
<b>(M) November 4</b>	
Long Island	Melville Marriott
<b>(W) November 6</b>	
New York City	Concierge Conference Center
<b>(Th) December 12</b>	
Albany	Holiday Inn Albany – Wolf Road

NOT-for-PROFIT ORGANIZATIONS	
<b>(W) November 6</b>	
Buffalo	Holiday Inn Amherst
<b>(F) November 15</b>	
Albany	New York State Nurses Association
<b>(Th) December 5</b>	
Syracuse	Sheraton Syracuse University Hotel
<b>(Th) December 12</b>	
New York City	New York's Hotel Pennsylvania

11 <sup>TH</sup> ANNUAL SOPHISTICATED TRUSTS AND ESTATES INSTITUTE	
<b>(Th-F) November 7-8</b>	
New York City	New York Marriott Marquis

ADVANCED DOCUMENT DRAFTING FOR THE ELDER LAW ATTORNEY	
<b>(W) November 13</b>	
Westchester	Elmwood Country Club
<b>(Th) November 14</b>	
Buffalo	Holiday Inn Amherst
<b>(W) November 20</b>	
Long Island	Melville Marriott
<b>(F) November 22</b>	
Syracuse	Sheraton Syracuse University Hotel
<b>(W) December 4</b>	
Albany	Albany Marriott
<b>(T) December 10</b>	
New York City	New York's Hotel Pennsylvania

BASIC FEDERAL CIVIL PRACTICE	
<b>(W) November 13</b>	
Long Island	Melville Marriott
<b>(Th) November 14</b>	
Albany	New York State Nurses Association
<b>(W) December 4</b>	
Rochester	Holiday Inn Rochester Airport
<b>(Th) December 5</b>	
New York City	Radisson Martinique on Broadway

STARTING A PRACTICE PART II – MINI MBA FOR JD'S – BASIC BUSINESS SKILLS FOR STARTING AND RUNNING A PRACTICE IN NEW YORK	
<b>(Th) November 14</b>	
New York City	The New Yorker Hotel

CONSTRUCTION & SURETY LAW: BASIC SKILLS AND APPLIED TOPICS	
<i>– Live &amp; Webcast</i>	
<b>(F) November 15</b>	
New York City	Concierge Conference Center



# RECENT DECISIONS & CASE LAW DEVELOPMENTS

The State Bar is pleased to provide you with case summaries and legislation alerts prepared by **CasePrepPlus™**, the Association's affinity partner. **CasePrepPlus™** is an online service highlighting and summarizing the most recent and significant New York appellate cases (with links to the full opinions), and Second Circuit and U.S. Supreme Court cases having significance for New York practitioners—plus alerts and reminders about recent legislation and uniform rules changes.

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## First Department

**PERSONAL INJURY. WORKERS' COMPENSATION EXCLUSIVITY. NEW JERSEY LAW. "INTENTIONAL WRONG" EXCEPTION. FAILURE TO REPLACE MACHINE GUARD.** Plaintiff brought a plenary negligence and intentional tort action against his employer, a New Jersey company, to recover damages for injuries sustained while using a hot leather stamping machine where a safety screen was removed by the company that previously owned the machine. In moving for summary judgment, the defendant contended that plaintiff's action was barred by the exclusivity provisions of New Jersey's Workers' Compensation Law. In opposition, plaintiff contended that his action was not barred pursuant to New Jersey's "intentional wrong" exception because the defendant knew that its conduct in not replacing the safety screen was "virtually certain" to result in an injury. Order denying defendant's motion for summary judgment is reversed (3-2), and motion granted. New Jersey's "intentional wrong" standard has two components: "(1) there must be a substantial certainty that the employer's conduct will cause injury or death; and (2) such conduct must be viewed in the context of industry reality; i.e., whether the injury may fairly be viewed as a fact of life of industrial employment, or is it rather plainly beyond anything the legislature could have contemplated as entitling the employee to recover only under the Compensation Act." Here, plaintiff's contention that the defendant knew and appreciated the virtual certainty of an injury does not meet the "intentional wrong" standard. *Lebron v. Leather*.

**LEGAL MALPRACTICE. ASSET PURCHASE AGREEMENT. PRIORITY LIEN ON ALL INVENTORY.** Plaintiff, a commercial lender, brought a legal malpractice action against the defendant firm for failing to advise it that its \$125 million loan to a company that filed bankruptcy was not secured by a first priority lien on the debtor's entire inventory. In moving for summary judgment, the defendant firm submitted undisputed evidence, consisting

of a press release issued by the plaintiff, that it knew that its lien was not on the debtor's entire inventory. Order denying defendant's motion is reversed, and motion granted. The defendant's uncontroverted proof demonstrated that the plaintiff could not prove that it would not have made the loan had the firm provided it with accurate information about the extent of its lien. *Ableco Finance LLC v. Hilson*.

**CRIMINAL PROCEDURE. UNIFORM ACT TO SECURE THE ATTENDANCE OF WITNESSES FROM WITHOUT THE STATE IN CRIMINAL CASES. CPL 640.10. SHIELD LAW. CIVIL RIGHTS LAW §79-(h)(b). JOURNALISTS. APPLICABILITY. CLARIFICATION.** Petitioner, a defendant in a Colorado criminal case, brought a proceeding pursuant to the Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Cases [CPL 640.10] to compel the attendance of the respondent at his trial. In opposition, the respondent contended that she was not subject to the statute because of the privilege she had under New York's "Shield Law" [Civil Right Law §79-(h)(b)]. Order granting the petition is affirmed (3-2). The "Shield Law" does not prohibit a journalist from being compelled to appear in court and testify pursuant to CPL 640.10. However, a journalist is entitled to assert the "Shield Law" when testifying, including the privilege of not having to reveal sources. *Holmes v. Winter*.

**CIVIL PROCEDURE. SUMMARY JUDGMENT IN LIEU OF COMPLAINT. FOREIGN DECREE. ENFORCEMENT. LEGAL INTERPRETATION.** Plaintiff moved for summary judgment in lieu of a complaint [CPLR 3213] to enforce a "ruling" issued by a Spanish court. In support, plaintiff submitted the affidavit of a legal expert who opined that the "ruling" constituted an enforceable judgment under Spanish law, which was countered by the defendant's legal expert. Order granting plaintiff's motion is reversed, and motion denied. New York will recognize and enforce foreign decrees that are "final, conclusive and enforceable where rendered" [CPLR 5302]. Here,

given the dispute between the parties' legal experts, the Supreme Court improperly determined as a matter of law that the Spanish ruling constituted an "enforceable judgment" under Spanish law. *Sea Trade v. Coutasodontis*.

## Second Department

**PERSONAL INJURY. PUBLIC HIGH SCHOOL. NEGLIGENT SUPERVISION. GYM. TRACK.** In this wrongful death action of an 11th grader arising out of her collapse while running around a track during gym at the Broad Channel High School in Queens, plaintiffs alleged that the defendants negligently supervised the decedent and failed to resuscitate her. Among other things, plaintiffs claimed that the gym teacher denied the decedent's request to stop and rest after she completed the first lap, that CPR was not administered, and that an AED (automated external defibrillator) was not available [Education Law §917(1)]. Order denying the parties' respective motions for summary judgment is modified to the extent of dismissing plaintiffs' claims that the school and its personnel were negligent immediately after the decedent collapsed. The school submitted uncontroverted evidence that the decedent was breathing and had a pulse just moments before the EMS crew arrived, and that CPR and the administration of an AED are contraindicated where a person is breathing and has a pulse. However, plaintiffs raised an issue of fact as to whether the gym teacher negligently supervised the decedent by denying her request to stop running after she completed the first lap. Of note, also, is that the Supreme Court did not have to rule on the question of whether a private right of action exists under the AED statute [Education Law §917(1)]. *Palmer v. City of New York*.

**PERSONAL INJURY. POLICE. GML §205-e. PREDICATE. LABOR LAW §27-a(3)(a)(1). INOPERATIVE MACE CAN.** Plaintiff, an NYPD officer, was injured after she initially was unable to subdue a suspect with Mace because the can that was provided to her by the department was broken. In moving to dismiss plaintiff's GML §205-e cause of action predicated

upon a violation of Labor Law §27-a(3)(a)(1) [safety and health standards for public employees], the City contended that plaintiff's injuries did not result from a recognized hazard in her place of employment. Order denying the City's motion to dismiss for failure to state a cause of action under GML §205-e is reversed, and motion granted. Plaintiff failed to allege that her injuries resulted from a "recognized hazard" within the meaning of the cited Labor Law section. *Blake v. City of New York*.

**REAL PROPERTY LAW. CONSOLIDATION OF FIRST AND SECOND MORTGAGES. ASSIGNMENT OF FIRST MORTGAGE.** Plaintiff, who consolidated first and second mortgages from the same lender pursuant to a Consolidation, Extension and Modification Agreement (CEMA), brought an action for a judgment declaring that the first mortgage was null and void. The defendants, as assignees of the first mortgage, moved for a judgment declaring that the first mortgage was not null and void. Order denying defendants' motion is reversed, and motion granted. Although the CEMA created a single lien, "a consolidation of outstanding loans is a device intended for the convenience of only the contracting parties and cannot impair liens in favor of parties that are not the contracting parties, which retain their independent force and effect." Here, the first note and mortgage were not satisfied. Rather, they were simply consolidated into the CEMA. Further, and contrary to the plaintiff's contention, the assignment of the first mortgage loan did not render the obligation satisfied and discharged. *Benson v. Deutsche Bank*.

**FAMILY LAW. CUSTODIAL PARENT. RELOCATION TO FLORIDA.** In this child custody proceeding, petitioner (mother), who had physical custody of the parties' two children, sought leave to relocate with the children to Florida. In support, petitioner testified that the children's quality of life would be significantly improved because the cost of living would be lower than in New York, where she was struggling financially, and that her mother and other close

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