

DAVID P. MIRANDA
Secretary
Heslin Rothenberg Farley & Mesiti PC
5 Columbia Circle
Albany, NY 12203
518/452-5600
FAX 518/452-5579
dpm@hrfmlaw.com

March 28, 2014

REPORT OF THE SECRETARY

To: Members of the House of Delegates

I. Resolutions Committee

The Resolutions Committee is responsible for monitoring and determining the implementation of recommendations contained in reports adopted by the Executive Committee and/or House of Delegates. The Secretary, as chair, updates the House on the status of these initiatives.

The committee reached out to sections and committees in February for assistance with the implementation of a report issued by the Special Committee on Human Trafficking. The committee is collecting responsive information and plans to provide a report to the Executive Committee in June.

II. Status of Initiatives Approved by Executive Committee and/or House of Delegates

A. Veterans' Legal Services

In November 2012 the House approved the report and recommendations of the Special Committee on Veterans. One of the recommendations contained in that report was that NYSBA's Committee on Lawyer Referral Service develop a panel of lawyers willing to assist veterans with various legal matters with a free initial telephone consultation and reduced fees. On Veteran's Day in November 2013, the Lawyer Referral and Information Service launched such a program, with plans to run it until Memorial Day 2014. Currently, 250 lawyers statewide have signed up to participate, and more than 90% of callers have been placed with participating lawyers. If attorneys are not available to assist a caller, the LRIS staff will try to refer the caller to other available resources.

B. Judicial Campaign Contributions

22 NYCRR § 151 ("Part 151") was promulgated at the request of Court of Appeals Chief Judge Jonathan Lippman in response to growing concerns over judges receiving campaign contributions from attorneys and litigants who frequently appear before them. These concerns over "pay to play" in the court system sparked debate over the judiciary's impartiality.

The Committee on Court Structure and Operations wrote a report that examined the implementation, enforcement, and effectiveness of Part 151, which address the potential conflict of interest created when a judge is assigned to a case in which the parties, their attorneys, and/or their attorneys' law firms have

contributed to the assigned judge's campaign. The report included the background of Part 151, the regulation's contribution guidelines, and a survey of Office of Court Administration ("OCA") District Executives' experience with Part 151.

In January 2014, the report was approved by the Association's Executive Committee and made available to OCA.

C. Civil Practice Law and Rules

The Association's Committee on Civil Practice Law and Rules has traditionally been active in developing and advocating for amendments to the CPLR that would enhance the practice and procedures relating to civil litigation in state courts. Among the affirmative legislative proposals submitted by the Committee to the Association's Executive Committee are the following:

- Proposal to amend CPLR 3212(a) to require that any shortening of the time to move for summary judgment from the usual 120 days after filing of the note of issue, be effected only "by order specific to the case;"
- Proposal that would add to the end of CPLR 3216(b)(3), governing service of 90-day demands to file a note of issue, "Where the demand is served by the court, the demand shall set forth the specific conduct constituting the neglect, which conduct shall demonstrate a general pattern of delay in proceeding with the litigation;"
- Proposal to overhaul of CPLR 3213, governing motions for summary judgment in lieu of a complaint, which would expand the availability of such motions from judgments and "instruments for the payment of money only," as at present; and,
- Proposal to amend CPLR 3402(a), governing notes of issue, providing that no note of issue may be filed without either: a.) a stipulation of the parties; b.) a court order certifying that discovery is complete or directing the filing of the note of issue with enumerated disclosure outstanding; or c.) a certificate of readiness certifying that all disclosure is complete and that a good-faith effort was made to secure a stipulation from opposing counsel.

The proposals have been submitted to the Legislature, and the Association continues to advocate in support of this important segment of its legislative program.

D. Uniform Notice of Claim

In 2012, the Association's Executive Committee voted to support legislation that would amend the Civil Practice Law and Rules and the General Municipal Law to establish the Uniform Notice of Claim Act (Act). The Act would provide plaintiffs with a uniform, fair and statutorily consistent procedure for serving a notice of claim of intention to commence a proceeding against a governmental or quasi-governmental entity for damages suffered as an aggrieved party, and similarly provide for a statutorily consistent statute of limitations applicable to such actions.

The Association issued a memorandum supporting and seeking enactment of the legislation. The memo stated, in part:

Costly, time-consuming and resource-wasting litigation often ensues over arcane issues of notice of claim service and other procedural quirks, unnecessarily burdening the courts as well as the agencies involved, while at the same time undermining public confidence in the reasonableness and rationality of New York's laws. This bill would provide a uniform, fair and easily accessible method for serving a notice of claim via service on the Secretary of State in addition to those methods of service currently existing, and thus provide uniformity to procedural rules governing actions against governmental and quasi-governmental entities.

The Governor signed the legislation into law as Chapter 500 of the Laws of 2012.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David P. Miranda". The signature is written in a cursive, flowing style with a large initial "D".

David P. Miranda