To: Members of the House of Delegates

Re: November 7, 2015 meeting

Enclosed are the agenda and related background materials for the upcoming meeting of the House of Delegates scheduled to begin at 9:00 a.m. on Saturday, November 7, 2015 at the Bar Center in Albany. The enclosed background materials cover agenda items 1-3 and 7-11.

We look forward to seeing you in Albany.

David P. Miranda
President

Claire P. Gutekunst
President-Elect
# Agenda

1. Approval of minutes of June 20, 2015 meeting  
   9:00 a.m.

2. Report of Treasurer – Ms. Sharon Stern Gerstman  
   9:05 a.m.

3. Report and recommendations of Finance Committee re proposed  
   2016 income and expense budget– Mr. John S. Marwell  
   9:15 a.m.

4. Report and recommendations of Committee on Bylaws –  
   Ms. Eileen E. Buholtz  
   9:30 a.m.

5. Report of President – Mr. David P. Miranda  
   9:45 a.m.

6. Report of Nominating Committee – Mr. Seymour W. James, Jr.  
   10:05 a.m.

7. Report and recommendations of Committee on Standards of  
   Attorney Conduct – Prof. Barbara S. Gillers  
   10:15 a.m.

8. Report and recommendations of Committee on the New York  
   State Constitution – Mr. Henry M. Greenberg  
   10:35 a.m.

9. Report and recommendations of Committee on Professional  
   Discipline – Ms. Sarah Jo Hamilton  
   10:55 a.m.

10. Report and recommendations of Committee on Women  
    in the Law – Ms. Ellen G. Makofsky and Ms. Susan L. Harper  
    11:20 a.m.

11. Report and recommendations of New York County Lawyers’  
    Association – Mr. Michael Miller  
    11:40 a.m.

    12:00 p.m.

13. Administrative items – Ms. Claire P. Gutekunst  
    12:10 p.m.

14. New business  
    12:20 p.m.

15. Date and place of next meeting:  
    Friday, January 29, 2016  
    New York Hilton Midtown, New York City
Ms. Gutekunst presided over the meeting as Chair of the House.

1. **Call to order, introduction of new members.** The meeting was called to order and the Pledge of Allegiance was recited, and Ms. Gutekunst welcomed the new members of the House.

2. **Minutes of March 28, 2015 meeting.** The minutes were accepted as previously distributed.

3. **Report of the Treasurer.** Sharon Stern Gerstman, Treasurer, updated the House with respect to dues and CLE revenue, and reviewed the Association’s expenditures with respect to Bar Center operations; administration; technology; marketing, membership and member benefits; governance; programming; CLE and publications; and advocacy and improvement of justice. The report was received with thanks.

4. **Memorial to Hon. Robert P. Patterson, Jr.** Maxwell S. Pfeifer, past president of the Association, presented a memorial in honor of Hon. Robert P. Patterson, Jr., past president of the Association and judge of the United States District Court for the Southern District of New York, who passed away in April 2015. A moment of silence was observed out of respect for Judge Patterson’s memory and his contributions to the Judiciary and the legal profession.
5. **Presentation of Root-Stimson Award.** President Miranda presented the Root-Stimson Award, which honors members of the profession for outstanding community service, to Jeffrey A. Moerdler of New York City. Of counsel at Mintz Levin Cohn Ferris Glovsky and Popeo, he was honored in particular for his volunteer endeavors as an emergency medical technician and his service on multiple boards.

6. **Installation of President.** Mr. Miranda was formally installed as President. The oath of office was administered by Hon. Judith S. Kaye, former Chief Judge of the State of New York. Mr. Miranda then addressed the House with respect to his planned initiatives for his term as President.

7. **Report of President.** Mr. Miranda highlighted the information contained in his printed report, a copy of which is appended to these minutes.

8. **Presentation to living “Trailblazers.”** Mr. Miranda presented awards to two of the three living women “Trailblazers” recognized by the Committee on Women in the Law – Hon. Judith S. Kaye, first woman judge of the Court of Appeals and first woman Chief Judge of the State of New York, and Shirley Adelson Siegel, chief of the New York State Attorney General’s Civil Rights Bureau. He noted that Maryann Saccomando Freedman, first woman President of the Association, was unable to attend the meeting and that her award would be presented in Buffalo.

9. **Special Committee on Re-Entry.** Committee co-chairs Sheila A. Gaddis and Ronald J. Tabak reviewed the committee’s work to date to develop recommendations to implement several proposals made by the Special Committee on Collateral Consequences of Conviction, including educational programs for the incarcerated; the availability of affordable housing; family contact for the incarcerated; pre-release programs; and alternatives to incarceration. They reported that the committee plans to issue its report by November 15 for consideration at the January 2016 House meeting. The report was received with thanks.

10. **Memorial to Hon. Richard J. Bartlett.** Stephen P. Younger, past president of the Association, presented a memorial in honor of Hon. Richard J. Bartlett, the first Chief Administrative Judge of the State of New York and past president of The New York Bar Foundation, who passed away in May 2015. On behalf of The Foundation, John H. Gross presented Judge Bartlett’s family with a plaque in his honor. A moment of silence was observed out of respect for Judge Bartlett’s memory and his contributions to the legal profession.

11. **Report of Commercial and Federal Litigation Section.** Mark Arthur Berman, co-chair of the section’s Social Media Committee, presented an informational report on the section’s 2015 Social Media Guidelines, which are intended to assist lawyers to understand the ethical challenges of social media. The report was received with thanks.

12. **Presentation of Trial Lawyers Section National Trial Advocacy Awards.** Thomas P. Valet, past chair of the Trial Lawyers Section, presented awards to teams from Hofstra
University School of Law and St. John’s University School of Law, and recognized the St. John’s team as overall champion for advancing farthest in the national competition.

13. **Report of Committee on Women in the Law.** Committee co-chair Ellen G. Makofsky, together with committee member Susan L. Harper, reviewed the Family and Medical Insurance Leave Act, which would provide paid leave for family care and medical emergencies. They noted that following the meeting the report would be circulated for comment and would be presented for vote at the November 7, 2015 House meeting. The report was received with thanks.

14. **Report of The New York Bar Foundation.** John H. Gross, President of The Foundation, presented an informational report on recent developments with respect to The Foundation, noting that The Foundation had awarded $530,000 to over 100 grant recipients last year. The report was received with thanks.

15. **Update on Chief Judge’s Commission on Statewide Professional Discipline.** Glenn Lau-Kee, Immediate Past President and a member of the commission, updated the House on the commission’s work to date. The commission is conducting a comprehensive review of the state’s attorney disciplinary system to determine what is working well and what can work better and to offer recommendations to enhance the efficiency and effectiveness of New York’s attorney discipline process. He noted that the Association has current positions on some of the issues being considered by the commission, including the point at which disciplinary proceedings should become public. The report was received with thanks.

16. **Report of ABA State Delegate.** Mark H. Alcott, ABA State Delegate, updated the House on ABA activity and leadership. The report was received with thanks.

17. **Administrative items.** Ms. Gutekunft reported on the following:

   a. The Special Committee on Criminal Discovery, which presented its report to the House in January 2015, is being discharged with the consent of its co-chairs. She thanked the committee for its work.

   b. **New Audit Committee members.** At its June 18-19, 2015 meeting, the Executive Committee had confirmed the appointment of Michael L. Costello and Robert T. Schofield, IV as new members of the Audit Committee. Pursuant to the Bylaws, the House is required to ratify the selection of these members. A motion was adopted to ratify the members’ selection.

   c. The Office of Court Administration published for comment amendments to the rules governing the use of cameras in the courts, with comments due August 10, 2015. At its June 18-19 meeting, the Executive Committee approved a motion to request OCA for an additional 120 days to submit comments.
d. **Rules for submission of reports.** Ms. Gutekunst reminded the delegates that the Association has adopted rules for submission of reports for consideration by the House and the Executive Committee and asked that members review the rules.

e. Ms. Gutekunst thanked the association staff for their work in preparing for the meetings.

f. She thanked local bar officers for serving in the House and encouraged them to invite Mr. Miranda and her to attend events.

18. **New business.** Michael Miller, 1st District Vice-President, asked for a moment of silence in memory of the church members killed in Charleston, South Carolina earlier in the week and that the meeting be adjourned in their memory.

19. **Date and place of next meeting.** Ms. Gutekunst announced that the next meeting of the House of Delegates would take place on Saturday, November 7, 2015 at the Bar Center in Albany.

20. **Adjournment.** There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,

Ellen G. Makofsky
Secretary
June 17, 2015

**President’s Report June 2015**

**To the House of Delegates**

**Wrongful Convictions**

On June 1, the New York State Bar Association, the Innocence Project and the District Attorneys Association of the State of New York issued a joint statement saying the three organizations had agreed on wrongful conviction legislation. This historic accord was the result of months of diplomatic efforts by Immediate Past President Glenn Lau-Kee. This also brought to fruition many of the recommendations in 2009 by the Task Force on Wrongful Convictions under Past President Bernice K. Leber.

We agreed on language to require the recording of custodial interrogations in certain serious crimes and requiring blind or double-blind identification procedures when asking a witness to identify a suspect. We also agreed on the use of photographs in identifying suspects. The bill was well-received by key legislators.

**The State Constitution**

One of my primary focuses this year will be the work of the Committee on the New York State Constitution, chaired by Henry M. Greenberg of Albany, a shareholder at Greenberg Traurig and former counsel to then-New York State Attorney General Andrew M. Cuomo.

The committee will study the state Constitution in anticipation of a 2017 vote by New Yorkers on whether to call a Constitutional Convention to amend, revise or replace the current document. Regardless of the outcome of the vote, the committee’s work will identify possible areas for change, making the Association a major part of the statewide dialogue on improving certain legal system functions, such as grand juries, court restructuring and sentencing reform, among others.

**Pathway to the Profession**

Effective June 1, all law students enrolled at New York’s 15 law schools are eligible for free membership in NYSBA. That gives them access to 23 practice-area sections and the Young Lawyers Section, their own online community that connects them with seasoned attorneys from all practice areas, law school alumni communities, bar exam preparation tools, information on scholarships and writing competitions, coaching and mentoring and other exclusive member benefits. I encourage individual members and our sections to participate, as well.
A primary vehicle for helping the next generation is our Pathway to the Profession program. It was established to support and prepare law students in their transition into practice through tailored programs that complement existing curriculum, and creating opportunities for faculty to deepen the students’ academic experience and exposure. The goal is for NYSBA to provide a bridge between law school and the profession.

NYSBA’s Publications Department is producing a book to assist law students and new attorneys as they enter the profession. “Pathway to the Profession: From Law School to Lawyer” is a compilation of substantive, practice-oriented materials on topics, such as legal writing and legal research, motion practice, attorney professionalism, and marketing.

Teaming with local bars
Another priority this year is increasing NYSBA’s collaboration with local bars. As a past president of the Albany County Bar Association, I know how important it is to keep in touch statewide. I plan to attend as many bar activities as possible throughout the state. Over the last two-and-a-half months, I have been on the road visiting local bars, section events and participating in some other special events:

- In March, I participated in the Young Lawyer Trial Academy at Cornell Law School
- On Law Day, I was in the Court of Appeals historic Richardson Courtroom as Then-President Glenn Lau-Kee spoke eloquently on the importance of the Magna Carta to today’s legal profession. Later, I was proud to salute the recipients of the President’s Pro Bono Service Awards.
- Again in May, I was happy to speak at the TICL and Trial Lawyers sections reception for new Court of Appeals Judges Leslie Stein and Eugene Fahey at the Bar Center.
- I also spoke at the Lawyer Assistance Program’s Spring Retreat, at the bar events in Erie County, Nassau and Suffolk County, Brooklyn, the Fourth J.D., Orange County, Albany County, Queens and Warren counties.
- I traveled to London and the ABA’s special events surrounding the anniversary of the signing of the Magna Carta in 1215.
- After the London trip, on June 15, I attended the U.S. Supreme Court admission of our Young Lawyers Section.

Legislative Policy:
During the past three months, we have lobbied key legislators in the State Capitol and on Capitol Hill in Washington, D.C. on several issues of great concern to our Association and the New York legal community. We also were active participants in the American Bar Association (ABA) Annual Lobby Day.

State legislative priorities:

Wrongful Convictions— As indicated above, we have been working with the District Attorneys Association of the State of New York and the Innocence Project over the last several months to reach an agreement on legislation to address some of the causes of wrongful convictions. On June 2, we were proud to announce that we reached agreement to require the recording of custodial interrogations and to make changes to procedures related to the eyewitness identification. A bill based on this agreement has been introduced in both houses. Our advocacy
continued as the scheduled end of the legislative session approached this week. At the time this report went to print, the status of the bill was undetermined.

**Age of Criminal Responsibility**– We have been advocating all session long to raise the age of criminal responsibility. The debate on this issue continues with resolution this session unlikely. On May 27, the Association again urged our state leaders to address this important issue.

These federal Legislative priorities will be the focus of additional lobbying during my year as president:

**Federal Budget Priorities:**

The federal appropriations process has begun and will continue through the summer and early fall, as the beginning of Federal Fiscal Year (FY) 2016 approaches on October 1. The Association continues to monitor and advocate to minimize the impact of the threat of federal budget sequestration in FY 2016 on issues of importance to the profession.

**Federal Court System Funding:** We will strongly advocate, as we did in 2012 and 2013, to ensure a minimal impact of a possible budget sequestration on our federal court system. I am preparing a letter to be sent to our Congressional delegation. I hope to enlist the help of many of our local bar associations in this effort.

**Legal Services Corporation (LSC) Funding:** Continuing our advocacy for our long-held priority of access to justice, I sent a letter to our Congressional delegation as they work through the federal budget appropriations process urging them to fund the LSC at the level recommended by President Obama. Moreover, I urged that they neither vote to cut funding below the current fiscal year funding level, nor vote to completely defund LSC, as some members of Congress have suggested.

Reports regarding activity by Sections/Committees: This year we have seen significant progress on the state legislative front for all of the hard work on reports prepared by many of our sections and committees.

**Family Law Section:** S5678/A7645 - Spousal Maintenance – Last year the Family Law Section successfully opposed legislation that would have made significant and possibly harmful changes to the law regarding spousal maintenance. After successfully stopping the harmful bill last year, leaders of the Family Law Section engaged with several other stakeholders to negotiate a spousal maintenance bill, which was introduced this session and is widely supported. This bill has been passed by the Assembly and at the time this report was sent to print was pending in the Senate.

Congratulations and deep thanks to our sections and committees, and all of our members who take the time to work on behalf of the profession to improve the laws of this state.

**Committee on Continuing Legal Education**

Deborah Scalise, chair of the Committee on Continuing Legal Education, informed us that the New York State CLE Board has acted on the recommendation submitted by the committee

3
allowing newly admitted attorneys to fulfill part of their MCLE requirements by means of non-traditional formats, including live webcasts and recorded formats.

The committee’s recommendation, approved by the NYSBA Executive Committee and submitted to the board in January 2014, identified the need for newly admitted attorneys to have flexibility in meeting their MCLE requirements, highlighting the time and cost factors attached to fulfilling those requirements solely through live programming.

After a comment and review process, the board announced the change on June 15. The change will be effective Jan. 1, 2016. Currently, new attorneys (defined as those in practice two years from bar admission) can only fulfill their MCLE requirements by attending live in-person CLE programs.

This new format change will allow NYSBA CLE to provide new attorneys access to webcast and recorded programming at significant cost savings. Our forthcoming implementation of segmentation and bundling discount benefits will place NYSBA in a solid position to meet the anticipated demand by new attorneys for quality online and recorded programming.

**New York State Law Digest**

The first issue of the New York State Law Digest under new editor David L. Ferstendig was published in May. Ferstendig, an expert on New York civil practice and procedure, succeeded David D. Siegel, who was widely recognized as a leading expert on New York’s Civil Practice Law and Rules (CPLR). Professor Siegel edited and wrote the Law Digest for 37 years.

**Pro Bono**

The Presidential Pro Bono Service Awards were presented on May 5. The event was attended by Chief Judge Jonathan Lippman, President Glenn Lau-Kee and myself. Twenty awards were presented to recognize extraordinary pro bono efforts made by attorneys, law firms, students, law school groups, and corporate counsel or government offices.

On June 5, the Committee to Ensure Quality of Mandated Representation presented the Denison Ray Criminal Defender Award to Gregory A. Kilburn, the assistant public defender in Wyoming County. Excellence in Mandated Representation Awards were presented to attorney Joanne Macri, director of Regional Initiatives for the Indigent Legal Services office in Albany; the Center for Family Representation; and the Justice First Project of the Center for Appellate Litigation.

**Human Trafficking Award**

The CLE department’s March 25 program, “Human Trafficking in New York State: Legal Issues and Advocating for the Victim,” was awarded the Association for Continuing Legal Education (ACLEA) Award of Outstanding Achievement in the Public Interest category of the ACLEA’s Best Awards. Designed to educate attorneys in New York and worldwide, NYSBA CLE’s human trafficking program focused on what the legal profession can do to help end this crime.
The award will be presented on August 4 at the ACLEA Annual Meeting in Chicago. The 2.5-MCLE credit program reached more than 1,080 participants worldwide – more than 720 live, with more than 360 additional attorneys accessing the program through the recorded video archive on the NYSBA website.

Participants were from 23 U.S. jurisdictions (including California, Texas, Illinois, Florida, and Washington, D.C.) and 11 countries (Australia, Canada, Germany, Ireland, Israel, Japan, the Netherlands, Paraguay, Portugal, Russia, and the United Kingdom).

**Task Force on Gun Violence**
A report by the Task Force on Gun Violence, a two-year examination, was approved at the April House of Delegates and will be published in book form in the near future. The report focuses on public education about gun laws and the Second Amendment. Citing a lack of gun violence data, the report also recommends support for federal efforts to collect and share data on firearms violence.

**ABA Partnership Award**
Our Committee on Diversity and Inclusion will receive the American Bar Association’s Partnership Award at the National Conference of Bar Presidents meeting during the ABA Annual Meeting. The committee was chosen for its Youth Law Day program that encourages minority law students to pursue legal careers. The award salutes bar association projects directed at increasing the participation and advancement of lawyers of color as well as other underrepresented constituents.

**Judiciary**

**Mandatory pro bono reporting:** After more than a year of discussion with Chief Judge Jonathan Lippman and the Office of Court Administration by Immediate Past President Lau-Kee and myself, rules dictating mandatory reporting of attorneys’ pro bono work and charitable contributions were modified. Under a new ruling that went into effect on May 1, attorneys are now allowed to anonymously disclose their pro bono work and contributions when they complete their re-registration forms. The results will be reported only in the aggregate in the final rules.

**Uniform Bar Examination:** On Law Day, New York became the first of the nation’s largest states to adopt the Uniform Bar Examination (UBE), and only the 16th state to use the national credential for lawyers. The first law students to take the UBE in New York will do so in July 2016.

Prior to adoption, NYSBA had urged Chief Judge Jonathan Lippman to delay his planned introduction of the UBE in July 2015 so that there could be further study of the disparate impact, bar pass rates and added costs the UBE would bring with it.

As a result, a study committee headed by Court of Appeals Associate Judge Jenny Rivera held several hearings and heard testimony from myself, Past President David Schraver, co-chair of the Committee on Legal Education and Admission to the Bar Eileen Millett, past chair of the Young Lawyers Section Sarah Gold, and many others on the UBE. I spoke about
New York’s reputation as the “gold standard” for practicing law around the country and internationally and the importance of applicants for admission demonstrating an understanding of New York law.

**Non-Resident Lawyers**

The Subcommittee on Non-Resident Membership of NYSBA’s Committee on Membership held its Fifth Annual Breakfast Roundtable on May 13 in conjunction with the International Section’s Global Law Week. The Roundtable attracted 60 attendees (in person and via live web cast) who participated in a continuing legal education program entitled, "Online Communications and Social Media in a Global World." The CLE speaker was David P. Atkins, a partner in the Connecticut law firm of Pullman & Comley LLC.

During my travel to London I met with representatives of our Association’s United Kingdom chapter and with the Law Society of England and Wales about finding opportunities to work together.

We are monitoring the U.S. Court of Appeals for the Second Circuit for its reading on the constitutionality of New York Judiciary Law §470, which requires nonresident lawyers to maintain a physical office in New York in order to practice in New York.

*Schoenefeld v. State of New York* is a case pending before the U.S. Court of Appeals for the Second Circuit.

In 2014, the Second Circuit certified the following question to the New York State Court of Appeals: “Under New York Judiciary Law §470, which mandates that a nonresident attorney maintain an ‘office for the transaction of law business’ within the state of New York, what are the minimum requirements necessary to satisfy that mandate?” On March 31, the State Court of Appeals issued an opinion concluding that the statute requires nonresident attorneys to maintain a physical office in New York.

With the state Court of Appeals having decided the certified question, the matter now returns to the Second Circuit for a determination of the constitutionality of Judiciary Law §470 under the Privileges and Immunities Clause of the U.S. Constitution.

**Commission on Statewide Lawyer Discipline:** Chief Judge Jonathan Lippman has named past presidents Vincent E. Doyle III and Glenn Lau-Kee and Sarah Jo Hamilton, chair of NYSBA’s Professional Discipline Committee, to a statewide Commission on Lawyer Discipline. The commission is charged with examining the state disciplinary process for lawyers and to make recommendations on how to modify the process.

**Court Advocates Proposal:** The report and recommendations of the Committee to Study the Court Advocates Proposal was approved at the March meeting of the House of Delegates. Calling the proposal reasonable as a short-term response to the needs of the Housing and Civil courts, the Committee noted that it is mindful of concerns that it not dilute efforts to achieve Civil Gideon, where every tenant in Housing Court, and other litigants facing potential deprivation of significant rights, is represented by an attorney.
The proposed legislation would authorize a concept of limited representation of individuals by non-lawyers. Housing and consumer court advocates, under the supervision of an attorney, would provide representation to low-income New Yorkers who otherwise could not afford counsel. The housing court advocates would assist tenants to defend against nonpayment eviction proceedings, pursue remedies for violation of the Housing Code and obtain repairs in holdover proceedings. Advocates also would be authorized to assist debtors in New York City civil courts.

**Fall House of Delegates Meeting**

Our next House of Delegates and Executive Committee meetings will be held on Friday, November 6, and Saturday, November 7, at the State Bar Center in Albany. I hope to see you there.

Sincerely,

[Signature]

7
Attached for your reference are the Association’s financial statements through September 30, 2015.
### REVENUE

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<th>Membership Dues</th>
<th>2015 Budget</th>
<th>Adjustments</th>
<th>2015 Budget As Adjusted</th>
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<th>% Received 9/30/2015</th>
<th>2014 Received 9/30/2014</th>
<th>% Received 9/30/2014</th>
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**Sections:**

| Dues            | 1,444,600   | 1,444,600   | 1,396,950               | 96.70%                        | 1,475,905           | 96.54%                  |
| Programs        | 2,495,450   | 2,495,450   | 2,005,308               | 80.36%                        | 2,568,895           | 75.85%                  |

**Investment Income**

| Investment Income | 319,000    | 319,000    | 207,764                 | 65.13%                        | 254,000             | 104.28%                 |

**Advertising**

| Advertising     | 370,000    | 370,000    | 94,014                  | 25.41%                        | 323,000             | 16.22%                  |

**CLE**

| CLE            | 4,470,000   | 4,470,000   | 2,529,655               | 56.59%                        | 4,808,100           | 65.99%                  |

**USI Affinity Payment**

| USI Affinity Payment | 2,025,000 | 2,025,000 | 1,474,780               | 72.83%                        | 1,972,000           | 77.19%                  |

**Annual Meeting**

| Annual Meeting | 933,000    | 933,000    | 1,982,529               | 87.09%                        | 875,000             | 106.05%                 |

**House of Delegates & Committees**

| House of Delegates & Committees | 125,200   | 125,200   | 169,723                 | 50.14%                        | 320,000             | 51.44%                  |

**Publications, Royalties and Other**

| Publications, Royalties and Other | 1,440,000 | 1,440,000 | 763,014                 | 52.99%                        | 1,600,000           | 48.99%                  |

**Total Revenue**

| Total Revenue | 25,310,750 | 0          | 20,417,756              | 80.67%                        | 25,969,900          | 83.69%                  |

### EXPENSE

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**Bar Center:**

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<td>100,193</td>
<td>41.92%</td>
<td>291,500</td>
<td>44.70%</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>State Bar News</td>
<td>294,300</td>
<td>294,300</td>
<td>183,815</td>
<td>62.46%</td>
<td>284,300</td>
<td>62.80%</td>
<td></td>
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</tbody>
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**Meetings:**

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Meeting</td>
<td>402,500</td>
<td>402,500</td>
<td>378,080</td>
<td>93.93%</td>
<td>366,500</td>
<td>104.16%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>House of Delegates, Officers and Executive Committee</td>
<td>467,850</td>
<td>467,850</td>
<td>401,993</td>
<td>85.92%</td>
<td>463,650</td>
<td>80.00%</td>
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</table>

**Committees:**

<table>
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<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>CLE</td>
<td>2,017,800</td>
<td>2,017,800</td>
<td>1,209,590</td>
<td>59.95%</td>
<td>2,199,201</td>
<td>65.83%</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>LPM/EECTF</td>
<td>89,425</td>
<td>89,425</td>
<td>60,699</td>
<td>67.88%</td>
<td>95,400</td>
<td>70.52%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marketing</td>
<td>249,500</td>
<td>249,500</td>
<td>45,081</td>
<td>18.07%</td>
<td>132,620</td>
<td>30.29%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Media Services</td>
<td>302,050</td>
<td>302,050</td>
<td>168,443</td>
<td>55.77%</td>
<td>300,250</td>
<td>66.09%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Membership</td>
<td>768,400</td>
<td>768,400</td>
<td>361,537</td>
<td>47.05%</td>
<td>788,870</td>
<td>51.25%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All Others</td>
<td>2,582,145</td>
<td>2,582,145</td>
<td>1,779,259</td>
<td>68.91%</td>
<td>2,774,420</td>
<td>68.57%</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total Expense**

| Total Expense | 25,180,870 | 0 | 17,334,889 | 68.84% | 25,723,310 | 69.92% |

**Budgeted Surplus**

| Budgeted Surplus | 129,880 | 0 | 3,082,867 | 68.84% | 246,590 | 3,749,181 |
### New York State Bar Association

**Statements of Financial Position**

**As of September 30, 2015**

<table>
<thead>
<tr>
<th>ASSETS</th>
<th>UNAUDITED 9/30/2015</th>
<th>UNAUDITED 9/30/2014</th>
<th>UNAUDITED 12/31/2014</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current Assets:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Cash and Cash Equivalents</td>
<td>9,144,175</td>
<td>7,821,862</td>
<td>14,557,437</td>
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<tr>
<td>Accounts Receivable</td>
<td>108,571</td>
<td>95,573</td>
<td>40,162</td>
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<tr>
<td>Accrued interest receivable</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prepaid expenses</td>
<td>1,119,278</td>
<td>622,246</td>
<td>1,313,109</td>
</tr>
<tr>
<td>Inventories</td>
<td>17,620</td>
<td>122,855</td>
<td>100,249</td>
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<tr>
<td>Royalties and Admin. Fees receivable</td>
<td>491,593</td>
<td>507,383</td>
<td>695,613</td>
</tr>
<tr>
<td><strong>Total Current Assets</strong></td>
<td>10,881,237</td>
<td>9,169,919</td>
<td>16,706,570</td>
</tr>
<tr>
<td><strong>Board Designated Accounts:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Cromwell Fund:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and Investments at Market Value</td>
<td>1,944,920</td>
<td>1,962,320</td>
<td>2,029,908</td>
</tr>
<tr>
<td>Accrued interest receivable</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Replacement Reserve Account:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equipment replacement reserve</td>
<td>1,116,247</td>
<td>1,115,867</td>
<td>1,115,980</td>
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<tr>
<td>Repairs replacement reserve</td>
<td>793,428</td>
<td>793,157</td>
<td>793,237</td>
</tr>
<tr>
<td>Furniture replacement reserve</td>
<td>219,690</td>
<td>219,615</td>
<td>219,638</td>
</tr>
<tr>
<td><strong>Long-Term Reserve Account:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and Investments at Market Value</td>
<td>18,077,213</td>
<td>18,252,623</td>
<td>18,775,488</td>
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<tr>
<td>Accrued interest receivable</td>
<td>0</td>
<td>0</td>
<td>45,759</td>
</tr>
<tr>
<td><strong>Sections Accounts:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section Accounts Cash equivalents and Investments at market value</td>
<td>3,075,812</td>
<td>3,011,383</td>
<td>3,028,673</td>
</tr>
<tr>
<td>Cash</td>
<td>727,277</td>
<td>630,098</td>
<td>172,990</td>
</tr>
<tr>
<td><strong>Fixed Assets:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Furniture and fixtures</td>
<td>1,332,511</td>
<td>1,332,511</td>
<td>1,332,511</td>
</tr>
<tr>
<td>Leasehold Improvements</td>
<td>1,363,251</td>
<td>1,363,251</td>
<td>1,363,251</td>
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<tr>
<td>Equipment</td>
<td>7,478,998</td>
<td>7,601,158</td>
<td>7,567,818</td>
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<tr>
<td>Telephone</td>
<td>107,636</td>
<td>107,636</td>
<td>107,636</td>
</tr>
<tr>
<td><strong>Total Assets</strong></td>
<td>38,966,419</td>
<td>37,816,611</td>
<td>45,407,658</td>
</tr>
</tbody>
</table>

<p>| LIABILITIES AND FUND BALANCES | | | |
| Accounts Payable &amp; other accrued expenses | 630,400 | 735,076 | 1,342,261 |
| Deferred dues | 79,408 | 71,399 | 8,942,291 |
| Deferred grant revenue | 30,187 | 30,390 | 31,710 |
| Other deferred revenue | 1,613,464 | 115,288 | 620,588 |
| Unearned Income CLE | 39,507 | 42,881 | 60,366 |
| Income Taxes Payable | 0 | | |
| Payable To The New York Bar Foundation | 1,826 | 520 | 111,252 |
| <strong>Total current liabilities &amp; Deferred Revenue</strong> | 2,394,792 | 995,554 | 11,107,938 |
| <strong>Long Term Liabilities:</strong> | | | |
| Accrued Pension Costs | 2,133,318 | 590,800 | 2,270,818 |
| Accrued Other Postretirement Benefit Costs | 7,099,992 | 5,142,872 | 6,874,992 |
| Accrued Supplemental Plan Costs and Defined Contribution Plan Costs | 402,600 | 461,000 | 456,194 |
| <strong>Total Liabilities &amp; Deferred Revenue</strong> | 12,030,702 | 7,190,226 | 20,709,942 |
| <strong>Board designated for:</strong> | | | |
| Cromwell Account | 1,944,920 | 1,962,320 | 2,029,908 |
| Replacement Reserve Account | 2,129,365 | 2,128,639 | 2,128,855 |
| Long-Term Reserve Account | 2,129,365 | 2,128,639 | 2,128,855 |
| Section Accounts | 3,075,812 | 3,011,383 | 3,028,673 |
| Invested in Fixed Assets (Less capital lease) | 8,441,303 | 12,057,951 | 9,173,484 |
| Undesignated | 3,075,812 | 3,011,383 | 3,028,673 |
| <strong>Total Net Assets</strong> | 26,935,717 | 30,626,385 | 24,697,715 |
| <strong>Total Liabilities and Net Assets</strong> | 38,966,419 | 37,816,611 | 45,407,658 |</p>
<table>
<thead>
<tr>
<th>Year</th>
<th>September</th>
<th>September</th>
<th>December</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
<td>2014</td>
<td>2014</td>
</tr>
</tbody>
</table>

**REVENUES AND OTHER SUPPORT**

- **Membership dues**: $10,876,453, $11,308,336, $11,328,611
- **Section revenues**
  - Dues: 1,396,950, 1,424,856, 1,424,678
  - Programs: 2,005,308, 1,948,459, 2,128,225
  - Continuing legal education program: 2,529,655, 3,172,829, 4,289,018
  - Administrative fee and royalty revenue: 1,607,930, 1,651,747, 2,263,151
  - Annual meeting: 812,529, 927,905, 927,610
  - Investment income: 364,466, 463,089, 890,597
  - Reference Books, Formbooks and Disk Products: 763,014, 783,830, 1,327,486
  - Other revenue: 218,566, 254,776, 333,564

**Total revenue and other support**: 20,574,871, 21,935,827, 24,912,940

**PROGRAM EXPENSES**

- Continuing legal education program: 1,938,289, 2,127,677, 2,957,080
- Graphics: 1,503,885, 1,562,739, 1,992,629
- Government relations program: 468,458, 451,719, 585,441
- Law, youth and citizenship program: 170,027, 195,980, 256,908
- Lawyer referral and information services: 140,987, 156,657, 195,742
- Law practice management services: 165,738, 135,966, 172,210
- Media / public relations services: 396,478, 424,974, 558,462
- Meetings services: 294,742, 293,040, 377,332
- Membership services: 701,652, 730,234, 961,043
- Pro bono program: 156,420, 149,849, 193,167
- Local bar program: 99,734
- House of delegates: 368,446, 325,843, 411,046
- Executive committee: 33,547, 45,066, 55,331
- Other committees: 528,507, 741,992, 866,027
- Sections: 2,674,981, 2,743,216, 3,379,913
- Section newsletters: 111,863, 101,595, 128,595
- Reference Books, Formbooks and Disk Products: 839,960, 857,555, 1,168,780
- Publications: 647,496, 677,363, 854,363
- Annual meeting expenses: 378,080, 381,729, 381,729

**Total program expenses**: 11,786,832, 12,268,310, 15,711,004

**MANAGEMENT AND GENERAL EXPENSES**

- Salaries and fringe benefits: 2,669,234, 2,724,704, 4,094,860
- Pension plans and other employee benefit plan costs: 677,835, 681,499, 4,148,168
- Rent and equipment costs: 760,030, 915,420, 1,162,217
- Consultant and other fees: 734,931, 733,814, 1,089,836
- Depreciation and amortization: 423,750, 428,788, 584,163
- Other expenses: 282,278, 233,013, 357,117

**Total management and general expenses**: 5,548,058, 5,717,238, 11,436,361

**CHANGES IN NET ASSETS BEFORE INVESTMENT TRANSACTIONS AND OTHER ITEMS**

- Realized and unrealized gain (loss) on investments: 3,239,981, 3,950,279, (2,234,425)
- Realized gain (loss) on sale of equipment: (1,001,978), 467,901, 723,934

**CHANGES IN NET ASSETS**

- Net assets, beginning of year: 24,697,714, 26,218,515, 26,218,515
- Net assets, end of year: 26,935,717, 30,626,385, 24,697,714
REQUESTED ACTION: Approval of the 2016 Association income and expense budget.

Attached is the 2016 proposed Association operating budget. The budget has projected income of $24,390,450 and expense of $24,379,370, leaving a projected surplus of $11,080.

The budget will be presented by John S. Marwell, chair of the Finance Committee.
2016 PROPOSED BUDGET

THE ASSOCIATION HAS PROJECTED REVENUE OF $24,390,450 AND EXPENSE OF $24,379,370 LEAVING A PROJECTED SURPLUS OF $11,080.
### NEW YORK STATE BAR ASSOCIATION

#### 2016 PROPOSED INCOME BUDGET

<table>
<thead>
<tr>
<th>Item</th>
<th>2015 Budget</th>
<th>Received Year End</th>
<th>Projected Year End</th>
<th>Proposed Budget</th>
<th>2014 Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Membership Dues</td>
<td>11,350,000</td>
<td>10,766,429</td>
<td>10,825,000</td>
<td>10,925,000</td>
<td>11,328,611</td>
</tr>
<tr>
<td>Continuing Legal Education</td>
<td>4,470,000</td>
<td>1,883,460</td>
<td>4,060,000</td>
<td>4,050,000</td>
<td>4,289,018</td>
</tr>
<tr>
<td>Investment Income</td>
<td>319,000</td>
<td>141,872</td>
<td>390,000</td>
<td>390,000</td>
<td>417,920</td>
</tr>
<tr>
<td>Advertising</td>
<td>395,000</td>
<td>56,536</td>
<td>130,000</td>
<td>130,000</td>
<td>98,177</td>
</tr>
<tr>
<td>Reference Materials</td>
<td>1,440,000</td>
<td>467,806</td>
<td>1,360,000</td>
<td>1,450,000</td>
<td>1,327,486</td>
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<tr>
<td>Publications and Miscellaneous</td>
<td>313,500</td>
<td>100,287</td>
<td>268,650</td>
<td>271,800</td>
<td>300,132</td>
</tr>
<tr>
<td>Insurance Program</td>
<td>2,025,000</td>
<td>983,187</td>
<td>2,025,000</td>
<td>2,025,000</td>
<td>2,029,531</td>
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<tr>
<td>Annual Meeting</td>
<td>933,000</td>
<td>813,213</td>
<td>814,285</td>
<td>919,500</td>
<td>927,610</td>
</tr>
<tr>
<td>House of Delegates</td>
<td>30,200</td>
<td>26,625</td>
<td>30,650</td>
<td>31,200</td>
<td>29,825</td>
</tr>
<tr>
<td>Committees</td>
<td>95,000</td>
<td>53,044</td>
<td>95,000</td>
<td>175,000</td>
<td>146,478</td>
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<tr>
<td>Sections</td>
<td>3,940,050</td>
<td>0</td>
<td>3,934,075</td>
<td>4,022,950</td>
<td>3,552,903</td>
</tr>
</tbody>
</table>

**TOTALS**

|          | 25,310,750 | 15,292,459 | 23,932,660 | 24,390,450 | 24,447,691 |

Page 4

Page 5

Pages 11 & 12
## 2016 Proposed Expense Budget

<table>
<thead>
<tr>
<th>Item</th>
<th>2015 Budget</th>
<th>Expended to 6/30/2015</th>
<th>Projected Year End</th>
<th>2016 Proposed Budget</th>
<th>2014 Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries and Fringe Benefits</td>
<td>10,742,600</td>
<td>5,332,846</td>
<td>10,649,000</td>
<td>10,365,900</td>
<td>13,819,553</td>
</tr>
<tr>
<td>Less: Allocations</td>
<td>(10,740,500)</td>
<td>(5,332,846)</td>
<td>(10,649,000)</td>
<td>(10,365,900)</td>
<td>(13,819,553)</td>
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<tr>
<td>Bar Center Operations</td>
<td>2,122,450</td>
<td>1,016,227</td>
<td>2,037,750</td>
<td>1,890,450</td>
<td>2,361,967</td>
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<tr>
<td>Publications and Meetings</td>
<td>1,926,850</td>
<td>1,136,657</td>
<td>1,771,310</td>
<td>1,748,850</td>
<td>1,702,469</td>
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<td>Committees</td>
<td>17,228,220</td>
<td>8,295,732</td>
<td>16,545,708</td>
<td>16,778,420</td>
<td>18,694,167</td>
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<tr>
<td>Sections</td>
<td>3,886,150</td>
<td>2,073,490</td>
<td>3,777,000</td>
<td>3,961,650</td>
<td>3,379,914</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td>25,165,770</td>
<td>12,522,105</td>
<td>24,131,768</td>
<td>24,379,370</td>
<td>27,138,517</td>
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</tbody>
</table>
# NEW YORK STATE BAR ASSOCIATION
## 2016 MEMBERSHIP DUES
### (BASED ON PROJECTED MEMBERSHIP)

<table>
<thead>
<tr>
<th>Class</th>
<th>Dues</th>
<th>Paid Members</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Regular Membership:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sustaining Members</td>
<td>400</td>
<td>664</td>
<td>265,600</td>
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<tr>
<td>Members admitted 2008 and Prior</td>
<td>275</td>
<td>27,605</td>
<td>7,591,375</td>
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<tr>
<td>Members admitted 2009-2010</td>
<td>185</td>
<td>1,743</td>
<td>322,455</td>
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<tr>
<td>Members admitted 2011-2012</td>
<td>125</td>
<td>1,965</td>
<td>245,625</td>
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<tr>
<td>Members admitted 2013-2015</td>
<td>60</td>
<td>3,755</td>
<td>225,300</td>
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<tr>
<td>Special Dues Classes</td>
<td>70</td>
<td>1,047</td>
<td>73,290</td>
</tr>
<tr>
<td>Law Students</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>36,779</td>
<td>8,723,645</td>
<td></td>
</tr>
</tbody>
</table>

| **Out-of-State Members:**                  |      |              |              |
| Sustaining Members                         | 400  | 112          | 44,800       |
| Members admitted 2008 and Prior            | 180  | 9,227        | 1,660,860    |
| Members admitted 2009-2010                 | 150  | 1,172        | 175,800      |
| Members admitted 2011-2012                 | 120  | 1,303        | 156,360      |
| Members admitted 2013-2015                 | 60   | 2,349        | 140,940      |
| **Total**                                  | 14,163 | 2,178,760    |              |

| **Total**                                  | 50,942 | 10,902,405   |              |
| **Amount for Changes in Dues Category**    |        |              | 22,595       |

**PROPOSED DUES REVENUE**

10,925,000
```

CONTINUING LEGAL EDUCATION INCOME
2016 PROPOSED BUDGET

<table>
<thead>
<tr>
<th>ITEM NAME</th>
<th>2015 BUDGET</th>
<th>RECEIVED To 6/30/2015</th>
<th>PROJECTED YEAR END</th>
<th>2016 PROPOSED BUDGET</th>
<th>2014 ACTUAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Programs</td>
<td>2,500,000</td>
<td>1,045,991</td>
<td>2,300,000</td>
<td>2,300,000</td>
<td>2,381,261</td>
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<tr>
<td>Webcast Program Income</td>
<td>700,000</td>
<td>294,958</td>
<td>600,000</td>
<td>600,000</td>
<td>614,897</td>
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<tr>
<td>LPM Program Income</td>
<td>100,000</td>
<td>50,462</td>
<td>100,000</td>
<td>100,000</td>
<td>0</td>
</tr>
<tr>
<td>On-Line</td>
<td>650,000</td>
<td>308,783</td>
<td>675,000</td>
<td>700,000</td>
<td>652,516</td>
</tr>
<tr>
<td>Audio Compact Disk (CD)</td>
<td>350,000</td>
<td>116,095</td>
<td>250,000</td>
<td>220,000</td>
<td>411,022</td>
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<tr>
<td>Course Book</td>
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Prepared by staff.
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### CONTINUING LEGAL EDUCATION

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<th>PROJECTED YEAR END</th>
<th>2016 PROPOSED BUDGET</th>
<th>2014 ACTUAL</th>
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Prepared by staff.
## CLE General Department

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<th>2016 Proposed Budget</th>
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| Total                                  | 2,968,200   | 1,505,142             | 2,983,450          | 2,801,050             | 3,353,803   |

Prepared by staff
# BAR CENTER OPERATIONS AND ADMINISTRATIVE EXPENSE

## 2016 PROPOSED BUDGET

<table>
<thead>
<tr>
<th>Item</th>
<th>2015 BUDGET</th>
<th>EXPENDED to 6/30/2015</th>
<th>PROJECTED YEAR END</th>
<th>2016 PROPOSED BUDGET</th>
<th>2014 ACTUAL</th>
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<td><strong>1,890,450</strong></td>
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## PUBLICATIONS AND MEETINGS

### PUBLICATIONS

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<th>EXPENDED to 6/30/2015</th>
<th>PROJECTED YEAR END</th>
<th>2016 PROPOSED BUDGET</th>
<th>2014 ACTUAL</th>
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<tbody>
<tr>
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<td>489,200</td>
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### MEETINGS

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<th>2016 PROPOSED BUDGET</th>
<th>2014 ACTUAL</th>
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**TOTAL PUBLICATIONS AND MEETINGS**

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<th>2016 PROPOSED BUDGET</th>
<th>2014 ACTUAL</th>
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## COMMITTEES
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<th>2016 Proposed Budget</th>
<th>2014 Actual Budget</th>
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## SECTIONS

### 2016 PROPOSED LUNCHEONS, PROGRAMS AND OTHER INCOME BUDGET

<table>
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<th>RECEIVED To 6/30/2015</th>
<th>PROJECTED YEAR END</th>
<th>2016 PROPOSED BUDGET</th>
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<td>Antitrust</td>
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**TOTAL**                                        | **2,495,450** | **1,502,343** | **2,528,975** | **2,606,550** | **2,128,225**
### 2016 Proposed Expense Budget

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**TOTALS**                           | **3,886,150**| **2,073,490**         | **3,777,000**      | **3,961,650**| **3,379,914**|
REQUESTED ACTION: Subscription to the Bylaws amendments proposed by the Committee on Bylaws to allow for their consideration at the Annual Meeting of the Association.

The Committee on Bylaws has reviewed provisions of the Association Bylaws that it believes would benefit from clarification and simplification. In addition, in response to recommendations from the Nominating Committee, the Bylaws Committee is proposing changes with respect to the position of member-at-large and eligibility to serve on the Nominating Committee while being considered as a candidate for certain offices.

The attached memorandum from the committee outlines the recommended amendments. A copy of the Bylaws marked to show changes from the existing version is attached to the committee’s report.

Under procedures established in the Bylaws, the proposed amendments must be subscribed to by a majority of all members of the House of Delegates in order to be considered at a meeting of the Association. Subscription can take place at this meeting to allow for consideration of these proposed amendments at the Annual Meeting of the Association on January 29, 2016.

The report will be presented at the November 1 meeting by Eileen E. Buholtz, Chair of the Committee on Bylaws.
To:    Members of the House of Delegates

Re:    Report on Proposed Bylaws Amendments

INTRODUCTION

During the past several months, the Bylaws Committee has reviewed provisions of the Association Bylaws that the committee believes would benefit from clarification and simplification. In addition, the Nominating Committee has made several recommendations for proposed amendments, noted within this report.

For ease of reference, our proposed amendments are described in separate subsections of this report. A redlined copy of the Bylaws with recommended amendments for your consideration is attached to the report. New language is indicated by underlining, and deleted language is indicated by strikethrough.

ARTICLE V – HOUSE OF DELEGATES

We recommend the amendment of Article V, section 3(K) to clarify that members of the House must be “in good standing.” In addition, we recommend the amendment of Article V, section 3(L)(1) to refer to “Vice-President(s) in recognition of the fact that there are two Vice-Presidents for the First District.

ARTICLE VI – COMMITTEES

We recommend the amendment of Article VI, section 1(A) to clarify that committees of the House of Delegates do not have authority to amend or repeal any resolution of the House of Delegates or to take action that would bind the Association or the House of Delegates unless authorized by law, by the Bylaws, or in the resolution establishing the committee. In addition, we recommend the amendment of Article VI, section 1(B) to clarify that committees of the Association do not have authority to exercise powers of either the House or the Association and do not have the authority to bind the House or the Association. We also recommend an addition to Article VI, section 1(C) to provide that committees not specifically established in the Bylaws may be abolished by the Executive Committee. Finally, we recommend an amendment to Article VI, section 2(E) to provide that notice of meetings may be provided by mail, electronic means, or other means authorized by law.

VIII – NOMINATING COMMITTEE

We recommend the amendment of Article VIII, section 1(B) to allow a member of the Nominating Committee to remain eligible for nomination to the positions of Vice-President, section member-at-large of the Executive Committee, or young lawyer member-at-large of the Executive
Committee. These amendments are recommended in recognition of the fact that the Nominating Committee does not vote upon candidates for these positions. We also recommend the amendment of Article VIII, section 1(C) to clarify that the member-at-large of the Nominating Committee serves ex officio without election by the House.

Upon the recommendation of the Nominating Committee, we are recommending the amendment of Article VIII, section 1(C)(6) to make clear that the past president designated to fill a vacancy in the position of member-at-large of the Nominating Committee shall be designated as an alternate member-at-large. While the Model Rules of the Nominating Committee permit “alternates” to attend meetings of the Nominating Committee, the Bylaws currently are silent as to whether this past president is an “alternate” for purposes of meeting attendance.

Finally, we recommend the amendment of Article VIII, section 1(D) to clarify that the term limitations for service on the Nominating Committee do not apply to service as a member-at-large of the Nominating Committee.

ARTICLE XI – ELECTIONS AND TERMS

We recommend the amendment of Article XI, section to clarify the term of office for officers, elected delegates and member-at-large of the Executive Committee and to delete an outdated provision relating to the terms of member-at-large of the Executive Committee.

APPENDIX A

We recommend the addition of the title “Committees of the Association” to the list of committees.

CONCLUSION

We commend proposed Bylaws amendments to you for your consideration and subscription at the November 7, 2015 meeting of the House of Delegates. If subscribed, each grouping of amendments will be presented for discussion and adoption at the 2016 Annual Meeting.

Respectfully submitted,

COMMITTEE ON BYLAWS

Eileen E. Buholtz, Chair
Michael E. Getnick
LaMarr J. Jackson
A. Thomas Levin
Kathryn Grant Madigan
Eileen D. Millett
Anita D. Pelletier
Lesley Friedman Rosenthal
Jay G. Safer
Robert T. Schofield, IV
David M. Schraver
Oliver C. Young
Executive Committee liaison: Claire P. Gutekunst
Staff liaison: Kathleen R. Mulligan Baxter
# TABLE OF CONTENTS

Enabling Act ...............................................................................................................................5
Name...........................................................................................................................................7
Purposes ......................................................................................................................................7
Members ......................................................................................................................................7
Officers .......................................................................................................................................10
House of Delegates ..................................................................................................................13
Committees ...............................................................................................................................19
Executive Committee ...............................................................................................................21
Nominating Committee and Nominations for Office .........................................................24
Finance and Audit Committees .............................................................................................29
Sections and Divisions of Sections .........................................................................................31
Elections and Terms .................................................................................................................32
Meetings of the Association ....................................................................................................32
Meetings by Telephonic Equipment ........................................................................................34
Indemnification ........................................................................................................................34
Cooperation with Other Bar Associations and Federations of Bar Associations ...........34
Publications ...............................................................................................................................35
Amendments ............................................................................................................................36
Appendix A: Standing Committees of the Association ......................................................37
Appendix B: Audit Committee Duties and Responsibilities ................................................39
ENABLING ACT

LAWS OF NEW YORK—1877

CHAPTER 210

“AN ACT to incorporate the New York State Bar Association.”

Passed May 2, 1877.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The members of the voluntary association, which was formed in the City of Albany, November twenty-first, eighteen hundred and seventy-six, under the name of the New York State Bar Association, of which association John K. Porter, of the first judicial district is president; and Charles W. Sanford, of the first judicial district; John J. Armstrong, of the second judicial district; Samuel Hand, of the third judicial district; Platt Potter, of the fourth judicial district; William Ruger, of the fifth judicial district; Horatio Ballard, of the sixth judicial district; James L. Angle, of the seventh judicial district, and Myron H. Peck, of the eighth judicial district, are vice-presidents, and of which the judges of the United States Courts, residing in this State, the judges of the Court of Appeals, and justices of the Supreme Court of this State are honorary members, and all persons who shall hereafter be associated with them are hereby created a body corporate, under the name of the “New York State Bar Association.” And the said association is formed to cultivate the science of jurisprudence, to promote reform in the law, to facilitate the administration of justice, to elevate the standard of integrity, honor and courtesy in the legal profession, and to cherish the spirit of brotherhood among the members thereof.

Section 2. Said corporation shall have power to acquire by lease or purchase, suitable buildings, library and furniture for the use of the corporation; to borrow money for such purposes and issue bonds therefore, and to secure the same by mortgage, and generally to acquire and take by purchase, gift, devise, bequest, subject to the provisions of law relating to devises and bequests by last will and testament or otherwise, and to hold, transfer and convey all or any such real and personal property as may be necessary for attaining the objects, and carrying into effect the purpose of such corporation.

Section 3. The constitution, bylaws, rules and regulations originally adopted by said voluntary association shall be the constitution, bylaws, rules and regulations of the corporation hereby created, which shall have power from time to time to alter, modify and change the same; and the members of the executive committee of said association
shall be the first trustees of the corporation hereby created, and continue to be such trustees until others are elected in their places as prescribed by said constitution and bylaws, and the several officers and committees of said association shall be the officers and committees of the corporation hereby created with the powers and duties prescribed by said constitution and bylaws, rules and regulations, until their successors shall be similarly duly elected and installed.

Section 4. All property, rights and interests of the said association now held by any or either of the officers thereof, or by any person or persons for its use and benefit shall, by virtue of this act, vest in and become the property of the corporation hereby created, subject to the payment of the debts of said association, if any; all interest of any member of said association, and of the corporation hereby created, in such property, shall terminate and vest in the corporation upon his ceasing to be a member thereof.

Section 5. This corporation shall possess the powers and be subject to the liabilities prescribed by the third title of the eighteenth chapter of the first part of the Revised Statutes. This corporation shall deposit a copy of its charter, constitution and bylaws, and of each of its annual reports, in the State Library at Albany, and each of the libraries provided for the use of the justices of the Supreme Court in the several counties of the State. It shall be the duty of every local bar association to deposit with the New York State Bar Association, a copy of its act or certificate of incorporation, or its articles of association, and its constitution and bylaws and its annual report.

Section 6. This act shall take effect immediately.
THE BYLAWS OF THE NEW YORK STATE BAR ASSOCIATION

I. NAME
The name of this Association shall be “New York State Bar Association.”

II. PURPOSES
The purposes of the Association are to cultivate the science of jurisprudence; to promote reform in the law; to facilitate the administration of justice; to elevate the standard of integrity, honor, professional skill and courtesy in the legal profession; to cherish and foster a spirit of collegiality among the members of the Association; to apply its knowledge and experience in the field of the law to promote the public good; to promote and correlate the same and similar objectives in and among the Bar organizations in the State of New York in the interest of the legal profession and of the public and to uphold and defend the Constitution of the United States and the Constitution of the State of New York.

III. MEMBERS

Section 1. Membership. There shall be six classes of membership in the Association: Active, Associate, Affiliate, Honorary, Sustaining and Law Student, and the members shall be divided among such classes according to their eligibility.

A. Active Members. Any member of the legal profession in good standing admitted to practice in the State of New York may become an Active member by submitting any required application form and supporting documentation to the Executive Director. Upon payment of the applicable dues following such submission, the applicant shall immediately be entitled to all of the rights and subject to all responsibilities of membership.

B. Associate Members. Any member of the legal profession in good standing in any state, territory or possession of the United States or another country but not in New York may become an Associate member by submitting any required application form and supporting documentation to the Executive Director. Upon payment of the applicable dues following such submission, the applicant shall immediately be entitled to all of the rights and subject to all of the responsibilities of membership, with the exception of being an officer of the Association, being a member of the House of Delegates or Executive Committee, or serving as a Section Chair; provided, however, that upon the request of a Section Executive Committee and with the consent of the Association Executive Committee, an Associate member may serve as a Section Chair.

C. Affiliate Members. Any person holding a law degree but not admitted to practice in any state, territory or possession of the United States or another country who is employed by a law school approved under the rules of the Court of Appeals, or who is employed by a bar association, may become an Affiliate member by submitting any
required application form and supporting documentation to the Executive Director. Upon payment of the applicable dues following such submission, the applicant shall immediately be entitled to all of the rights and subject to all of the responsibilities of membership except those of voting, being an officer of the Association, being a member of the House of Delegates or Executive Committee, or being Chair of a Section or Committee.

D. Honorary Members. Honorary members may be elected by the Association.

E. Law Student Members.

1. Any law student in good standing, if not otherwise eligible for membership in this Association, may become a Law Student member by written application to the Executive Director, endorsed as to the applicant’s good standing as above prescribed on behalf of the applicant’s law school, and by payment of the annual dues of the current year, provided that the law school is an approved law school under the Rules of the Court of Appeals. A Law Student member shall cease to be such at the end of any calendar year in which, for any reason other than graduation or service in the Armed Forces of the United States or in any statutory substitute for such service, the law student ceases to be enrolled in good standing in an approved law school, provided that continuance of such membership because of service in the Armed Forces of the United States or in any statutory substitute for such service shall cease one year after the termination of such service if the Law Student member has not by that time again become a law student and met all qualifications for becoming a Law Student member. A Law Student member shall be exempt from dues while in service of the Armed Forces of the United States or in any statutory substitute for such service.

2. A Law Student member shall have all the powers and privileges of an Active member of the Association except those of voting, being an officer of the Association, serving as a member of the Executive Committee or House of Delegates, or serving as Chair of a Section or Committee.

3. A Law Student member may become an Active or Associate member of the Association, as the case may be, without further application upon notice to the Association of admission to the bar of any state, territory or possession of the United States or another country within nine months after graduation from law school (exclusive of time spent in the Armed Forces of the United States or in any statutory substitute for such service) accompanied by payment of the annual dues for the current year.

F. Sustaining Membership. The House of Delegates shall have the power to establish Sustaining memberships in the Association and to fix from time to time the amount of dues therefor. Sustaining membership shall be available to such members of any class as are willing, for the support of the general work of the Association, to pay such amount as annual dues in any year, in lieu of the dues prescribed pursuant to
Section 2 of this Article. A member who elects to be a Sustaining member in any year shall not be obligated thereby to continue as such in any subsequent year. Sustaining members shall have the same rights and privileges as pertain to the class of which they are a member. Subject to the provisions of this Article, the House of Delegates shall have power to make appropriate regulations as to such Sustaining membership and the collection of sustaining dues therefrom.

Section 2. Dues. The annual dues of all members shall be in such amounts as may be fixed and determined from time to time by the House of Delegates. All such dues shall be payable at the beginning of the fiscal year of the Association. The House of Delegates upon recommendation of the Executive Committee and the Finance Committee shall have the power to prorate the annual dues for the current year of those who become members during the year; to suspend the accrual and payment of the dues of any member during the term of such member’s service with the Armed Forces of the United States; and to waive, in whole or in part, the dues of any member or former member of the Association that may be in arrears or may thereafter become payable, or both.

Section 3. Assessments. The House of Delegates shall have the power to levy assessments in such annual amount and for such number of years as it shall determine on all classes of members alike, or in different amounts or proportions for different classes of members. All such assessments shall become payable at such time during the year as the House of Delegates may determine upon at least thirty days notice to the members. The House of Delegates upon recommendation of the Executive Committee and the Finance Committee shall have the power to prorate the assessment for the current year of those who become members during the year; to suspend the accrual and payment of the assessment of any member during the term of such member’s service with the Armed Forces of the United States; and to waive, in whole or in part, the assessment of any member or former member of the Association that may be in arrears or may thereafter become payable, or both.

Section 4. Restriction of Membership. No person who advocates the overthrow of the government of the United States, or of any state, territory or possession thereof, or of any political subdivision therein, by force or other illegal means, shall be a member of the Association.

Section 5. Termination of Membership.
   A. If any member fails to pay yearly dues within one month after receipt of the second dues notice, it shall be the duty of the Treasurer to send a letter and notice that unless said dues are paid within one month thereafter the member shall cease to be a member of the Association and forfeit all rights in respect thereof.

   B. If any member fails to pay any assessment within one month after receipt of the second notice of such assessment, it shall be the duty of the Treasurer to send a letter and notice that unless said assessment is paid within one month thereafter, the member
shall cease to be a member of the Association and shall forfeit all rights in respect thereof.

C. The House of Delegates may suspend or expel any member for misconduct in the member’s relations to the Association, or to the profession, upon the recommendation of the Committee on Professional Discipline after a hearing held by that committee upon reasonable notice to such member to appear and present a defense. Any member shall automatically be removed from membership in the event of a final court order of disbarment or suspension of the member from the practice of law in New York State. Any member suspended or expelled from membership under terms of this paragraph may be reinstated as a member by vote of the House of Delegates, without any adjustment of dues.

D. Any member may resign from membership in the Association by submitting a resignation in writing to the Executive Director or Secretary of the Association, without any adjustment of dues.

E. All interest in the property of the Association of persons ceasing to be members by expulsion, resignation or otherwise shall thereupon vest absolutely in the Association.

IV. OFFICERS

The officers of the Association shall be a President, a President-Elect, a Vice-President for each judicial district with the exception of the First Judicial District which shall have two Vice-Presidents, a Secretary, a Treasurer and such additional offices as may be established from time to time by the House of Delegates. A nominee for President-Elect of the Association must be a member of the House of Delegates or have served as a member of the House of Delegates within five years preceding the time of such nomination. All officers of the Association shall be active members of the Association.

Section 1. President.

A. The President shall be the chief executive officer of the Association.

B. The President shall preside at all meetings of the Executive Committee and of the Association and, in the absence of the President-Elect, shall preside at meetings of the House of Delegates.

C. The President is authorized to represent this Association in any effort not inconsistent with these Bylaws to bring about closer cooperation between this Association and the American Bar Association and other bar associations, and for that purpose to appoint any committees that may be deemed desirable for such general purpose.
D. Except as otherwise provided in these Bylaws, the President shall be an ex officio member of all committees without the power to vote unless already a member of such committee.

Section 2. President-Elect.

A. The President-Elect shall chair the House of Delegates.

B. The President-Elect shall assist the President in meeting with representatives of local bar associations and in overseeing the effective functioning of sections and committees. The President-Elect shall also perform such other duties as shall be assigned by the President or by the House of Delegates.

C. Except as otherwise provided in these Bylaws, the President-Elect shall be an ex officio member of all standing committees and special committees without the power to vote unless already a member of such committee.

D. The President-Elect shall automatically become President on June 1st of the year following the year of election.

Section 3. Vice-Presidents.

A. There shall be one Vice-President from each judicial district with the exception of the First Judicial District which shall have two Vice-Presidents.

B. It shall be the duty of the Vice-Presidents to promote cooperation between this Association and the local associations in their respective judicial districts and with any federation embracing all or part of their districts; and by visitation or otherwise to stimulate activities therein in harmony with the current work of this Association. The elected members of the House of Delegates for each judicial district shall collaborate with the Vice-Presidents under their direction in promoting cooperation with such local associations or federations.

C. The Vice-Presidents of the Association shall be responsible for the maintenance of good relationships between the Association and the members of the bar residing or practicing in their respective judicial districts and shall represent the President within their respective districts during the President’s absence therefrom. Each such Vice-President shall visit the various local bar associations within the judicial district and federations of such bar associations on frequent appropriate occasions, shall arrange meetings for the President with representatives of such local bar associations within the Vice-President’s judicial district, and shall perform such other acts within the judicial district on behalf of the President as the President shall specifically require.

D. In the absence of the President and the President-Elect from a meeting of the Association, House of Delegates or Executive Committee, the Vice-President with seniority of membership shall preside at such meeting during such absence. In the
absence of the President and the President-Elect and all Vice-Presidents, the senior member of the House of Delegates shall preside over meetings of the House; the senior member of the Executive Committee shall preside over meetings of the Committee and the senior member of the Association shall preside over meetings of the Association. For the purposes of this paragraph “senior member” shall mean the member with the greatest number of years of membership in the Association.

Section 4. Secretary. It shall be the duty of the Secretary to:

A. Keep a record of the proceedings of the Association, and of such other matters as may be directed by the Association to be placed on its files or record;

B. Keep an accurate roll of officers and members;

C. Notify officers and members of committees of their election or appointment;

D. Issue notices of all meetings, with a brief note in case of special meetings of the object for which they are called;

E. Furnish the Treasurer with the names of persons who have become members;

F. Keep the seal of the Association;

G. Maintain a list of the Association’s standing committees, special committees and sections together with the statement of their powers and duties as such powers and duties may, from time to time, be amended by resolution of the House of Delegates or in such other manner as may be permitted herein;

H. Maintain such membership records and information as may be directed by the House of Delegates or the Executive Committee.

Section 5. Treasurer. It shall be the duty of the Treasurer to:

A. Collect, and under direction of the House of Delegates, disburse the funds of the Association;

B. Keep regular accounts in books of the Association, which accounts shall be open to inspection by any member of the Executive Committee;

C. Report, in writing, at each stated meeting of the Association, and to the House of Delegates as and when required by them, the financial condition of the Association. The Treasurer’s annual report for the fiscal year shall be presented at a stated meeting of the House of Delegates occurring within six months of the close of that fiscal year, and shall exhibit an audited statement of receipts and expenditures, of outstanding obligations and appropriations, and also an estimate of resources and expenditures for the ensuing year. The Treasurer’s accounts shall at all times be subject to examination and audit by
the House of Delegates and by the Association, or by a special committee appointed for that purpose;

D. Make available, upon the written request of any member of the Association, a copy of the Treasurer’s annual report.

Section 6. Additional Officers. The House of Delegates may establish such offices as it shall from time to time determine, and may appoint the initial occupant of each such office. Successors shall be elected annually by the House of Delegates as set forth in Article XI. The terms of office of such officers and their powers and duties, which shall be consistent with the powers and duties of any elected officers they are to assist, shall be set forth in the appointing resolution.

Section 7. Death, Disability or Resignation. In the event of the death, resignation or total disability of the President, the President-Elect shall automatically succeed to the office of President for the unexpired term and the term next following. In the event of the death, resignation or total disability of the President-Elect, or in the event the President-Elect succeeds to the presidency as provided in this section, the President shall serve as Acting Chair of the House of Delegates until the vacancy in the office of President-Elect shall be filled by election of the House of Delegates following nomination of a candidate by the Nominating Committee. In advance of making such nomination, the Nominating Committee shall give appropriate notice of the vacancy and of the House of Delegates meeting at which the election is to be held. The Nominating Committee shall file its report of a nominee with the Secretary at least 30 days in advance of the House of Delegates meeting at which the election is to be held, and the report shall be open to inspection by any member of the Association. Any 50 members of the Association may also nominate candidates for President-Elect by filing a petition signed by such members with the Secretary not later than ten days before the meeting at which the election is to take place. Nominations not made by the Nominating Committee or the membership in the manner prescribed shall not be considered or voted upon. The determination of total disability of the President or President-Elect shall be made by the House of Delegates and its decision thereon shall be final. Except as provided in Article V, Section 3(K), a vacancy in any other office shall be filled by appointment of the House of Delegates.

V. HOUSE OF DELEGATES

Section 1. Duties. The members of the House of Delegates shall be the Trustees of the Association, and shall have the duty, power and authority to:

A. Control and manage the business and affairs of the Association and to determine the policy of the Association subject to referendum pursuant to the provisions of section 2 of this Article;
B. Supervise, direct and control the officers, Executive Committee, sections, committees, and, through the Executive Committee, employees of the Association;

C. Exercise all the powers necessary or incidental to the control and administration of the business and offices of the Association and to the determination of its policies and recommendations.

Section 2. Policy Referendum. The House of Delegates may, at any time, by a two-thirds vote of its entire membership, refer and submit to the members of the Association defined questions affecting the policy or actions of the Association which, in the opinion of the House of Delegates, are of significant and practical consequence to the legal profession and the public. The result of a referendum, when duly ascertained by such a vote, shall be binding on the House of Delegates and shall control the action of the Association, its officers, sections, committees and employees.

Section 3. Composition. The House of Delegates shall be composed of:

A. The officers of the Association;

B. The members-at-large of the Executive Committee;

C. Three members of the Association from each judicial district to be elected by the Association after nomination in the manner provided for herein, to be known as elected delegates;

D. The past presidents of the Association;

E. Any member of the Association who is serving or has served as President of the American Bar Association;

F. Representatives from each of the sections of the Association to be known as section delegates.

1. These delegates who may, but need not be officers of their respective sections, shall be designated as follows:

<table>
<thead>
<tr>
<th>Section</th>
<th>Delegates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Young Lawyers Section</td>
<td>4</td>
</tr>
<tr>
<td>Judicial Section</td>
<td>2</td>
</tr>
<tr>
<td>3,501 or more members</td>
<td>4</td>
</tr>
<tr>
<td>2,001 to 3,500 members</td>
<td>3</td>
</tr>
<tr>
<td>1,501 to 2,000 members</td>
<td>2</td>
</tr>
<tr>
<td>1,500 or fewer members</td>
<td>1</td>
</tr>
</tbody>
</table>

2. The section delegates shall be selected according to procedures established by their sections.
3. For the purpose of determining the number of delegates to which sections are entitled, December 31 of the year preceding the year of selection shall be the date as of which the number of members of the sections shall be fixed.

G. Delegates from county or such other duly constituted bar associations as the House of Delegates may designate (hereinafter referred to as county bar associations). These delegates shall be known as bar association delegates and shall be designated on the following basis:

1. One delegate from each county bar association having 100 or more members but less than 300 members of the New York State Bar Association in its county, the delegate to be designated by the governing body of such association.

2. Two delegates from each county bar association having 300 or more members but less than 1,000 members of the New York State Bar Association in its county, the delegates to be designated by the governing body of such association.

3. From each county bar association having 1,000 or more members of the New York State Bar Association in its county, three delegates for the first 1,000 members, plus one delegate for each additional 1,000 members, or major fraction thereof; such delegates to be designated by the governing body of such association.

4. The Association of the Bar of the City of New York shall be entitled to the same number of delegates as the New York County Lawyers' Association.

5. In each judicial district in which there are two or more county bar associations in counties having less than 100 members each of the New York State Bar Association, one or more delegates shall be designated to represent such county bar associations as a group by the governing bodies of such county bar associations in a manner to be specified by the House of Delegates. The number of delegates designated shall be based upon the aggregate number of New York State Bar Association members in said counties, as follows:

<table>
<thead>
<tr>
<th>Number of Members</th>
<th>Delegates</th>
</tr>
</thead>
<tbody>
<tr>
<td>50-299 members</td>
<td>1 delegate</td>
</tr>
<tr>
<td>300-999 members</td>
<td>2 delegates</td>
</tr>
<tr>
<td>1,000 or more members</td>
<td>3 delegates for the first 1,000 members, plus one delegate for each additional 1,000 members or major fraction thereof.</td>
</tr>
</tbody>
</table>

6. The terms “in its county” and “in said counties” as used in subparagraphs 1 through 5 of this paragraph E shall be interpreted and applied on the basis of the mailing address for each member as it appears on the official mailing list maintained in the office of the New York State Bar Association.
7. For the purpose of determining the number of delegates to which county and other bar associations are entitled, December 31 of the year preceding the year of selection shall be the date as of which the number of members of county and other bar associations shall be fixed.

H. Twelve delegates to be appointed by the President then in office from a range of racial and ethnic minority groups identified by the National Association for Law Placement. At least two and no more than four of such delegates shall be appointed from each Judicial Department, and all appointments shall be subject to confirmation by the Executive Committee. This subsection shall expire ten years from the date of amendment (January 31, 2014) and shall be removed from these Bylaws without further action of the Association. Notwithstanding such expiration, the final term authorized under this provision shall be for a full year, concluding May 31, 2025.

I. Two delegates to be appointed by the President then in office from those members identified as Active members as set forth in Article III, Section 1(A) of these Bylaws who neither work nor reside in New York State, subject to confirmation by the Executive Committee.

J. The delegates representing the New York State Bar Association in the American Bar Association House of Delegates, and the American Bar Association State Delegate from New York and the New York State representative on the American Bar Association Board of Governors provided they are members of the New York State Bar Association.

K. Each member of the House of Delegates must be a member of the New York State Bar Association in good standing.

L. Vacancies.

1. Any vacancy among the elected delegates shall be filled by majority vote of the elected delegates upon nomination by the Vice-President(s) and remaining elected delegates from the district in which the vacancy exists. Any vacancy among the section delegates or the bar association delegates shall be filled by the section or bar association or group of bar associations whose representative has created the vacancy.

2. In case of the death, resignation or total disability of the President-Elect of the Association, the House shall fill the vacancy for the remainder of the term by a vote of a majority of the members of the House present at a meeting. Notice that such an election will be held shall be mailed by the Secretary of the Association to each delegate not less than 14 days before the date fixed for the meeting.
3. A vacancy in the office of Vice-President shall be filled on an interim basis by the members of the Nominating Committee from that judicial district. In selecting an interim designee, the district members on the Nominating Committee shall actively solicit and consult with the delegates to the House of Delegates from that district. Such consultation shall be accomplished by a meeting of the delegates from the district, in person to the extent practicable, or by telephonic equipment if necessary. The interim designee so selected shall be subject to confirmation by majority vote of the House of Delegates at the next meeting to fill the remainder of the term.

4. Vacancies among the offices of Secretary, Treasurer, or member-at-large of the Executive Committee shall be filled on an interim basis by majority vote of the members of the Executive Committee at a meeting, subject to confirmation by majority vote of the House of Delegates at the next meeting to fill the remainder of the term.

M. Alternate Delegates.

1. Each section or bar association represented in the House of Delegates may designate an alternate to serve during the absence of any of its delegates at a meeting of the House, except that those bar associations entitled to six or more delegates may designate a total of two alternates. Such alternates shall be selected at the same time as the regularly designated delegates.

2. When substituting for a regularly designated delegate, an alternate shall assume all obligations and privileges of a regularly designated delegate. Notice of this substitution shall be given to the Secretary by the regular delegate who is unable to attend or by the Vice-President or any other House of Delegates member from the absentee’s district or any officer of a section. In the absence or unavailability of the Secretary, such notice shall be given to the President or the President-Elect. Notice shall be given at least 24 hours in advance of the meeting which the alternate will be attending, although this requirement may be waived by the President or President-Elect for good cause.

3. The alternate delegate’s service is limited to that meeting of the House for which notice of substitution has been given and is not considered a lapse in service for the regularly designated delegate.

4. A section or bar association may designate an individual as an alternate without limit as to the number of consecutive terms that may be served in that capacity, except that an individual completing four consecutive years as a regularly designated delegate shall not be eligible for designation as an alternate in the ensuing year. The alternate must be eligible to serve as a member of the House.

Section 4. Terms.
A. Past presidents of the Association and current or past presidents of the American Bar Association who remain members of the Association shall serve as delegates for life. The President, President-Elect, Secretary and Treasurer shall serve as delegates during their terms of office.

B. The term of office of all other delegates shall be one year unless otherwise specified in these Bylaws.

C. Except for past presidents of the Association or American Bar Association, members of the Executive Committee, the delegates representing the New York State Bar Association in the American Bar Association House of Delegates, the American Bar Association State Delegate from New York and the New York State representative on the American Bar Association Board of Governors, delegates may serve no more than four consecutive terms in any combination of delegate capacities. Membership on the Executive Committee or service as an alternate delegate will not be included in the computation of this four year limitation. Service on the Executive Committee occurring without break between terms as a regularly designated delegate will be treated as a non-interruption of service as a delegate. In the instance of an alternate delegate, attendance during any term at two or more House of Delegates meetings for which notice of substitution has been given in accordance with Section 3(M) of this article shall constitute a year of service as a delegate.

D. The term of each member of the House of Delegates shall commence on June 1 unless otherwise specified in these Bylaws.

Section 5. Meetings.
A. Upon not less than 15 days’ written notice, the House of Delegates shall meet at such times and places as it shall fix, but not less than four times each year including one meeting to be held in conjunction with the Annual Meeting of the Association.

B. One hundred members shall constitute a quorum for the transaction of business.

C. The President-Elect shall preside and serve as Chair of the House of Delegates.

D. Each member of the House of Delegates shall have one vote to be cast in person. Any action required or permitted to be taken by the House of Delegates may be taken without a meeting if all delegates consent in writing to the adoption of a resolution authorizing the action.

E. The House of Delegates, through its chair, shall at each stated annual meeting report a summary of its proceedings since its last annual report (except such matters as are required to be kept confidential by statute or by these Bylaws of the Association), together with any suggestions deemed suitable and appertaining to its powers, duties or business.
F. The Secretary shall promptly transmit to every member of the House of Delegates the minutes of every meeting of the House of Delegates.

VI. COMMITTEES

Section 1. Committees.

A. The House of Delegates by resolution adopted by majority of the entire House of Delegates may designate committees of the House of Delegates consisting of at least three or more member of the House of Delegates. Such resolutions shall define the respective powers and duties of such committees, provided that no committee shall have authority as to the following matters:

1. The submission to members of any action requiring members’ approval under applicable law

2. The filling of vacancies in the House of Delegates or in any committee of the House of Delegates.

3. The fixing of compensation of the House of Delegates for serving on the House of Delegates or on any committee (if any such compensation is paid).

4. The amendment or repeal of the Bylaws, or the adoption of new Bylaws.

5. The amendment or repeal of any resolution of the House of Delegates which by its terms shall not be so amendable or repealable.

6. The taking of any action which would be binding upon the Association or the House of Delegates, unless specifically authorized by law, in these Bylaws, or in the resolution establishing the committee.

B. The House of Delegates, the Executive Committee or the President may designate committees of the Association. Such committees shall not be committees of the House of Delegates, shall not exercise any of the powers of the House of Delegates or the Association, or have the authority to bind the House of Delegates or the Association, and shall be advisory only. Except as otherwise provided herein, the President annually shall appoint the members, designate the chairs and fill vacancies in committees of the Association.

C. Any committee specifically established in these Bylaws may be abolished only by amendment to these Bylaws. Any other committee may be abolished by the Executive Committee.
D. Each committee shall have the specific powers and duties set forth in these Bylaws or by resolution establishing the committee; and such general powers and duties as may be prescribed for committees generally.

E. When a committee is organized, it shall be the chair’s duty to submit to its members such matters for the consideration of the committee as any member may desire, or that the chair may deem germane to the objects for which the committee was appointed.

F. Each committee may report to the House of Delegates at any time and shall so report whenever requested to do so by the President or by the Chair of the House of Delegates or by vote of the House of Delegates. A list of committees shall be maintained by the Secretary and included as Appendix A to these Bylaws.

Section 2. General Provisions.

A. The resolution or announcement creating any committee shall not be entered upon the permanent records of the Association until approved as to form by the Executive Committee.

B. Anything hereinbefore to the contrary notwithstanding, members of each committee shall continue to serve until the appointment or election of successor members of the committee.

C. Except as otherwise expressly provided herein or by the resolution establishing it, one-third of the committee members will constitute a quorum of each committee.

D. Each committee will have power to adopt rules and regulations for its own governance and procedure; to declare a vacancy after three successive absences of a member; and to order and arrange for the convenient transaction of business and discharge of its duties by correspondence or through subcommittees, or otherwise. Rules and regulations adopted by a committee will be enforceable only by members of that committee and by no other person. Any rules and regulations adopted by a committee must be consistent with these Bylaws.

E. The chair of each committee will have power to call a meeting thereof on due notice (which may be by mail, electronic means, or other means as authorized by law; telegraph or telephone); and the Secretary of the Association shall, by like notice, call a meeting on the request in writing of at least one-third of the committee, or of the President of the Association.

F. Under direction of each committee, the secretary thereof will keep its records and minutes, and prepare and transmit the required reports.
G. Every committee shall meet and organize promptly after appointment and shall also meet at such times and places as may be designated by the chair, by the President of the Association or by the House of Delegates.

H. No committee or officer or member thereof shall have the power to make the Association liable for any debt except upon the express authorization of the House of Delegates.

I. Any committee, with the approval of the House of Delegates, may report to the Association at any time. On instructions of the House of Delegates, a report which has been made to that body or to the President shall be made to the Association at a regular or special meeting. The reports of all committees to the Association shall be in writing and, unless recommitted by a vote of the Association, shall be received of course without a motion for acceptance. All committee reports recommending or requiring any action or expression of opinion by the Association must be accompanied by an appropriate form of resolution.

J. Each committee is encouraged to establish and maintain liaison with committees of other bar associations or bar federations charged with observance and supervision of the same general topic and field of activity, for the exchange of information and opinions and, with the approval of the House of Delegates or the Executive Committee, to take action in collaboration with one or more such associations or federations.

K. Notwithstanding any other provision of the Bylaws, all committees are subject to the rules herein set forth with regard to supervision by the House of Delegates or the Executive Committee.

L. The President may appoint committee members who are not members of the Association to any committee of the Association, the membership of which is appointed by the President.

VII. EXECUTIVE COMMITTEE

Section 1. Composition. The Executive Committee shall be a committee of the House of Delegates and shall consist of:

A. The President of the Association;

B. The President-Elect of the Association;

C. The Secretary and Treasurer of the Association;

D. All Vice-Presidents of the Association;

E. The immediate past president of the Association;
F. 1. Eight members-at-large who shall be members of the House of Delegates or section or committee chairpersons at the time of selection, or who have served as members of the House of Delegates or section or committee chairpersons within three years preceding the time of such nomination. Not less than two of the members-at-large shall be selected from the First Judicial District. Two of the members-at-large shall be selected to further ethnic and racial diversity and may not be drawn from the same Judicial District. Ten years from the date of amendment (January 31, 2014), the provision for the two members-at-large selected to further ethnic and racial diversity shall expire and be removed from these Bylaws without further action of the Association, and the number of these members-at-large on the Executive Committee shall revert to six. Notwithstanding such expiration, the final term authorized under this provision shall be for a full two-year term, concluding May 31, 2025.

2. Two members-at-large who shall have served as section delegates to the House of Delegates within three years of their selection. Initial terms shall be staggered, with one member selected to serve a two-year term and one member selected to serve a one-year term, notwithstanding the provisions of Section 2 of this article.

3. One member-at-large who shall have served as a section delegate to the House of Delegates from the Young Lawyers Section within three years of the time of selection.

4. The terms of office of each member-at-large shall be two years.

Section 2. Terms. A Vice-President or member-at-large of the Executive Committee may serve no more than four consecutive terms of combined service as a Vice-President and member-at-large of the Executive Committee, and members-at-large may serve no more than four consecutive terms in such capacity. This limitation shall not apply to the President, the President-Elect or the immediate Past President serving on the Executive Committee. The Secretary may serve no more than four consecutive terms and the Treasurer no more than four consecutive terms in their respective capacities.

For the purposes of calculating the number of consecutive terms permitted by this section, each two-year term of a member-at-large of the Executive Committee whose term commenced on or after June 1, 2009 shall be considered two terms.

Section 3. Powers and Duties. Between meetings of the House of Delegates, the Executive Committee shall manage the business, affairs and activities of the Association; and it shall study and report to the House of Delegates on all matters referred to it. The Committee shall report to the House of Delegates at each meeting thereof on the actions taken by it since the previous meeting of the House of Delegates. The Secretary of the Association shall mail to each member of the House of Delegates a copy of the minutes of each meeting of the Executive Committee.
Section 4. General Supervision over Committees and Sections. Notwithstanding any other provision of these Bylaws and subject to any rules established by the House of Delegates, all committees, sections and divisions of sections shall be subject to such rules as the Executive Committee may promulgate to supervise and coordinate the action and functioning of all committees (other than the Nominating Committee) and of all sections, and divisions of sections, including limitations upon the issuance of public statements by committees, sections, and divisions of sections or members thereof as may be deemed appropriate.

Section 5. Issuance of Reports and Legislative Action.

A. Pending Proposals. Each committee or section shall have power and authority, in its own name, publicly or otherwise, to support or oppose pending legislative action at the local, state or federal level. Any statement of support or in opposition to such legislation pending shall conspicuously disclose the fact that the position of the committee or section, as the case may be, is not the position of the Association until approved and adopted by the House of Delegates.

B. Initiation of Legislative Action. Committees and sections may publish reports and recommendations on matters within their jurisdiction. They may promote or initiate local, state or federal legislative action with the specific approval of the House of Delegates or the Executive Committee. Such action, however, is prohibited unless so approved and no action whatsoever shall be taken by any committee or section in the name of the Association without the express authority of the House of Delegates or the Executive Committee.

C. Issuance of reports regarding legislative action.

1. In commenting on pending legislation or seeking to initiate legislative action, as described hereinabove in subdivisions A and B, or in publishing reports on subjects within their jurisdiction on such legislation or legislative action, committees or sections may not publicly espouse positions, issue statements or release reports which are inconsistent with policy adopted by the House of Delegates or the Executive Committee. With respect to positions adopted by the Executive Committee, however, same shall be binding for six months from the date of adoption unless acted upon sooner by the House of Delegates.

2. At least five business days in advance of the intended release date, which shall be stated in the transmittal document, any prospective position, statement or report by a committee or section regarding pending or proposed legislation shall be submitted to the President solely for a determination as to whether the prospective position, statement or report is inconsistent with policy previously adopted by the House of Delegates or Executive Committee. The President may waive this notice requirement at the request of the committee or section. Authorization to release the report shall be deemed to have been given unless the President notifies the committee
or section to the contrary prior to the intended release date. Any adverse determination by the President may be appealed to the Executive Committee.

Section 6. Meetings.

A. The Executive Committee shall meet on the call of the President at times and places to be fixed by the President, including a meeting immediately prior to or in conjunction with any meeting of the House of Delegates.

B. At each meeting of the Executive Committee, a majority of the total membership of the Committee shall constitute a quorum.

C. Any action required or permitted to be taken by the Executive Committee may be taken without a meeting if all of the members of the Committee consent in writing to the adoption of a resolution authorizing the action.

VIII. NOMINATING COMMITTEE AND NOMINATIONS FOR OFFICE

Section 1. Nominating Committee.

A. 1. The Nominating Committee shall be a committee of the Association and shall submit nominations of candidates for all offices required by Article XI to be filled by election at each Annual Meeting or at the meeting of the House of Delegates immediately following each Annual Meeting. Its report of such nominations shall be filed with the Secretary not later than 40 days before such meetings and shall be open to inspection by any member of the Association.

2. Declaration of Candidacy. Individuals seeking the office of President-Elect shall file with the Secretary a declaration of candidacy for such office no later than September 1 of the year in which the Nominating Committee is to consider such candidacy. Any declaration not filed in accordance with this procedure shall not be considered by the Nominating Committee, except that by majority vote at any meeting, the Nominating Committee may waive this requirement.

3. In selecting nominees for Vice-President and elected delegate, the district members on the Nominating Committee shall actively solicit and consult with the delegates to the House of Delegates from their respective districts. Such consultation shall be accomplished by a meeting of the delegates from each respective district, in person to the extent practicable or by telephonic equipment if necessary, to be held no later than 90 days before the Annual Meeting or the meeting of the House of Delegates immediately thereafter at which the offices of Vice-President and elected delegate are to be filled by election. The district members of the Nominating Committee from each district shall file a written report with the chair of the Nominating Committee at least ten days in advance of the meeting of the Nominating Committee at which the nominations are to be made summarizing the manner in which the solicitation and consultation were conducted. The Nominating Committee’s report to the House of
Delegates shall include the nominees for Vice-President and Elected Delegates as recommended by the district members from each respective district.

4. In selecting nominees for Executive Committee member-at-large referenced in Article VII, section 1(F)(2), the Nominating Committee shall actively solicit and consult with the section delegates to the House of Delegates. Such consultation shall be accomplished by a meeting of the section delegates, in person to the extent practicable or by telephonic equipment if necessary, to be held no later than 90 days before the Annual Meeting or the meeting of the House of Delegates immediately thereafter at which the offices of member-at-large are to be filled by election. The section delegates shall file a written report with the chair of the Nominating Committee at least ten days in advance of the meeting of the Nominating Committee at which the nominations are to be made summarizing the manner in which the solicitation and consultation were conducted. The Nominating Committee’s report to the House of Delegates shall include the nominees for member-at-large as recommended by the section delegates.

5. In selecting nominees for Executive Committee member-at-large referenced in Article VII, section 1(F)(3), the Nominating Committee shall actively solicit and consult with the Young Lawyers Section. Such consultation shall be accomplished by a meeting of the Section’s Executive Committee, in person to the extent practicable or by telephonic equipment if necessary, to be held no less than 90 days before the Annual Meeting or the meeting of the House of Delegates immediately thereafter at which the offices of member-at-large are to be filled by election. The Young Lawyers Section shall file a written report with the chair of the Nominating Committee at least ten days in advance of the meeting of the Nominating Committee at which the nominations are to be made summarizing the manner in which the solicitation and consultation were conducted. The Nominating Committee’s report to the House of Delegates shall include the nominee for member-at-large as recommended by the Young Lawyers Section.

6. Election of New York State Bar Association Delegates to the American Bar Association House of Delegates. Delegates to the American Bar Association House of Delegates shall be nominated and elected pursuant to the following procedures:

(a) Ten delegates to the American Bar Association House of Delegates, or such number as the Association may be entitled to select from time to time, shall be elected, each for a term of two years commencing at the adjournment of the Annual Meeting of the American Bar Association House of Delegates. The term of such delegates shall be alternated beginning with an even numbered year, so that the terms are staggered as equally as possible, in accordance with the appropriate provisions of the American Bar Association Constitution and Bylaws. In addition, one lawyer less than thirty-five years of age at the beginning of his or her term shall be elected as Young Lawyer Delegate in even-numbered years for a term of two years commencing at the
adjournment of the Annual Meeting of the American Bar Association House of Delegates.

(b) Such delegates shall be elected at a meeting of the New York State Bar Association House of Delegates occurring in the calendar year during which their terms shall commence.

(c) The Nominating Committee is designated to choose all nominees to the American Bar Association House of Delegates after consultation with the Executive Committee of the Association and to choose its nominee for young lawyer delegate after additional consultation with the Executive Committee of the Young Lawyers Section of the Association. Any member of the New York State Bar Association House of Delegates, chair of the Association’s sections and committees, or local bar association represented in the New York State Bar Association House of Delegates may forward the names and relevant qualifications of suggested nominees to the Secretary of the Association by September 1 of the year preceding that in which the election is to be held.

(d) The Nominating Committee shall file its report of such nominations with the Secretary for announcement at the meeting of the New York State Bar Association House of Delegates immediately preceding that at which the election is to be held, and said report shall be open to inspection thereafter by any member of the Association. The Secretary of the Association shall report all nominations made by the Nominating Committee or by members of the Association by means of any publication of the Association sent to all members.

(e) In addition to the nominees of the Nominating Committee, one or more additional nominations may be made by petition signed by not less than fifteen members of the New York State Bar Association House of Delegates and filed with the Secretary of the Association not later than twenty-five days before the meeting at which the election is to be held.

(f) Nominations not made in accordance with the foregoing procedures shall not be considered or voted upon.

(g) At the meeting of the New York State Bar Association House of Delegates at which the election is held, the young lawyer delegate shall be voted upon separately from the other delegate positions.

(h) If a delegate is absent from a meeting, the position shall be filled by the President of the Association for that meeting.
(i) If a delegate resigns, is disqualified, or dies, the Nominating Committee shall reconvene to elect a successor for the unexpired term.

B. While serving on the Nominating Committee, a member shall not be eligible for nomination as President-Elect, Secretary, Treasurer, Vice-President, or member-at-large of the Executive Committee, provided however that a member of the Nominating Committee shall be eligible for nomination to the Executive Committee as a section member-at-large or a young lawyer member-at-large. A member may remove such ineligibility by resigning from the Nominating Committee in advance of the first meeting in the Association year of the Nominating Committee on which such person is serving. By majority vote at any meeting, the Nominating Committee may waive this deadline and accept the resignation unless nominations for the office for which the member wishes to be considered were reviewed at the first meeting.

C. At its second regular meeting after the Annual Meeting of the Association, the House of Delegates shall elect a Nominating Committee consisting of members from each judicial district as provided herein. The and three at-large members and alternate at-large member shall serve ex officio as provided in these Bylaws, without election by the House.

1. District members shall be selected by the Vice-Presidents and elected delegates from such judicial district on the following basis: Two members from each judicial district for up to the first 3,000 members of the New York State Bar Association in that district with the exception of the First Judicial District, which shall have three Nominating Committee members for such first 3,000 New York State Bar Association members; and a further Nominating Committee member for each additional 3,000 members, or major fraction thereof. One of the members so selected shall be a member of the House of Delegates at the time of selection and the other members so selected must have been members of the House of Delegates within two years of the time of selection or must currently be, or within two years of the time of selection must have been, section officers or the chairs of an Association committee.

2. The Vice-Presidents and elected delegates from each district shall also select alternate members from that district who must have been members of the House of Delegates within two years of the time of selection or must currently be, or, within two years of the time of selection must have been, a section officer or the chair of an Association committee, with the number of alternates to be determined as follows: each district shall be entitled to one alternate for its initial two Nominating Committee members and a further alternate for each additional three Nominating Committee members, or major fraction thereof. Service as an alternate delegate shall not constitute membership in the House of Delegates for purposes of this section.

3. In selecting the district members and alternates, the Vice-Presidents and elected delegates shall actively solicit and consult with the delegates to the House of
Delegates from their respective districts. Such consultation shall be accomplished by a meeting of the delegates from each respective district, in person to the extent practicable or by telephonic equipment if necessary, to be held no later than 30 days before the meeting of the House of Delegates at which the Nominating Committee is to be named. The Vice-Presidents from each district shall file a written report with the President of the Association at least 10 days in advance of the meeting of the House of Delegates at which the Nominating Committee is to be named identifying their selections and summarizing the manner in which the solicitation and consultation process was conducted.

4. The foregoing formula for the designation of district members shall take effect for the Nominating Committee to be selected in 1999. The number of representatives selected in that year shall remain fixed for the ensuing four years, at which time the representative entitlements shall be recalculated pursuant to the foregoing formula, with this recalculation to be repeated thereafter at five-year intervals. For purposes of determining the number of members to which districts are entitled in those years when a calculation is to be made, December 31 of the year preceding the year of selection shall be the date as of which the number of members in districts shall be fixed.

5. The members-at-large shall be past Presidents at the time of their selection and will have completed their post presidency year on the Executive Committee by the time the next Nominating Committee convenes, and they shall serve in accordance with the following rotations:

(a) The immediate past President once removed shall be a member-at-large of the Nominating Committee.

(b) That same past President shall serve as chair of the Nominating Committee the following year.

(c) That same past President shall then again serve as a member-at-large of the Nominating Committee the year following service as chair.

(d) Following the three specified years, such past President may serve on the Nominating Committee only if otherwise elected or designated pursuant to these Bylaws, and subject to Bylaws limitations on consecutive terms of service.

6. The position of any member-at-large who is unable or unavailable to serve on the Nominating Committee for any meeting shall be filled by a past President, other than the immediate past President, designated in reverse order of past service. The foregoing provision notwithstanding, a vacancy in the position of chair shall be filled by an available past President who served most recently as chair. The past President who
would be the first eligible and available to fill an at-large vacancy shall be designated as
an alternate member-at-large.

D. A member of the Nominating Committee may not serve more than six
consecutive terms either as a regularly designated member or alternate or in any
combination of such two capacities. This paragraph shall not apply to service as a
member-at-large of the Nominating Committee, and such service as a member-at-large
shall not be considered service on the Nominating Committee for the purpose of this
paragraph.

E. Alternate members may attend all meetings of the Nominating Committee in a
non-voting capacity. In the event a vacancy should arise in the position of a district
member for any reason or should a district member be absent from a meeting of the
Nominating Committee, an alternate member from that district shall to be designated to
assume the responsibilities of that position by the chair of the Nominating Committee.
Alternates for districts entitled to more than one alternate shall be prioritized at the time
of selection, and shall serve, when necessary, in that order. In the event of a vacancy,
the district alternate so designated shall then fill the unexpired balance of the one-year
term of the member being replaced. In the event of an absence, the district alternate so
designated shall replace the district member only for the meeting at which the district
member is absent, unless the district member is also absent for subsequent meetings.

F. The model rules of the Nominating Committee shall remain in effect until
subsequently amended. Each successive Nominating Committee shall be authorized to
modify or add rules as it deems appropriate to govern its operations for that year only,
with the rules to revert to the model rules format at the conclusion of that year. Any
proposed permanent change to the model rules shall be authorized by vote of the
House of Delegates.

G. Not later than 20 days before the first scheduled meeting of the House of
Delegates after the Annual Meeting of the Association, the Nominating Committee shall
file with the Secretary a written report of the members-at-large of the Nominating
Committee designated by these Bylaws to serve during the following year. Notice of
such designation shall be given by the Secretary to all members of the House of
Delegates at the meeting.

Section 2. Nominations by Membership. Any 150 members of the Association with
respect to any of the offices to be filled, or any 75 members residing in a judicial district
with respect to the offices of Vice-President and elected delegate from that district, may
also nominate candidates by filing a separate nomination for each candidate and office,
signed by such members, with the Secretary not later than 25 days before the meeting at
which the election is to take place.
Section 3. Reporting by Secretary. The Secretary shall report all nominations made by the Nominating Committee or by members to the members of the Association by means of any publication of the Association sent to all members. Nominations not made by the Nominating Committee or the membership in the manner prescribed shall not be considered or voted upon.

IX. FINANCE, AUDIT AND COMPENSATION COMMITTEES

Section 1. Finance Committee.

A. Duties. The Finance Committee shall be a committee of the Association responsible for the continuing supervision of all of the financial affairs of the Association other than those duties specifically assigned to the Audit Committee pursuant to Section 2 of this Article, and for preparing annually for submission to the House of Delegates a proposed income and expense budget.

B. Members. The Committee shall consist of six members of the Association appointed by the President, subject to confirmation by the Executive Committee and ratification by the House of Delegates:

(1) Commencing June 1, 2004, terms of appointment shall be staggered, with three members appointed to serve for two-year terms, and three for one-year terms. Thereafter, three members shall be appointed annually to serve for two-year terms. Members completing their terms shall be eligible for reappointment.

(2) A vacancy arising during any term shall be filled for the unexpired balance of the term by appointment made by the President then in office.

(3) The Association President, President-Elect, Treasurer and immediate past President shall serve as ex officio members and shall be entitled to vote in the deliberations of the Committee.

Section 2. Audit Committee.

A. Duties. The Audit Committee shall be a committee of the Association responsible for assuring the independence of the Association’s independent auditor, reviewing the Association’s accounting policies and the adequacy of internal control systems, and overseeing the accuracy of the Association’s financial statements and reports. The specific duties and responsibilities of the Audit Committee are set forth in Appendix B and may be amended, as appropriate, by the House of Delegates.

B. Members. The Audit Committee shall consist of seven members of the Association at least three of which are “independent directors” as defined under the New York Not-for-Profit Law. All committee members should be free from any relationship that would interfere with the exercise of their independent judgment on behalf of the Committee as set forth in further detail in Appendix B. They shall be
appointed by the President:

(1) The members being appointed in any given year shall serve for two-year terms. All appointments shall be subject to confirmation by the Executive Committee and ratification by the House of Delegates. The Executive Committee shall determine that each appointee is free from any relationship that in its opinion would interfere with the exercise of his or her independent judgment as a member of the Audit Committee. Members completing their terms shall be eligible for reappointment.

(2) The chair of the Audit Committee shall be designated by the President subject to confirmation by the Executive Committee and ratification by the House of Delegates.

(3) The Chair shall have the authority to call an executive session meeting of the Audit Committee at which only voting members of the Committee shall be entitled to attend.

(4) A vacancy arising during any term shall be filled for the unexpired balance of the term by appointment made by the President then in office, subject to confirmation by the Executive Committee and ratification by the House of Delegates.

(5) The Treasurer shall serve as an ex officio member, but shall not be permitted to vote in the deliberations of the Committee. Neither the President, the President-Elect, the Secretary, nor the Chair of the Finance Committee shall be eligible to serve as members of the Committee in any capacity.

Section 3. Compensation Committee.

A. Duties. The Compensation Committee shall be a committee of the House of Delegates and shall be responsible for assuring the reasonableness of the compensation of Association executives.

B. Members. The Compensation Committee shall consist of three or more members of the House of Delegates who are free from any relationship with the executives whose compensation is being reviewed. They shall be nominated by the President:

1. The members being appointed in any given year shall serve for two-year terms. All appointments shall be subject to confirmation by the Executive Committee and ratification by the House of Delegates. Members completing their terms shall be eligible for reappointment.
2. The chair of the Compensation Committee shall be designated by the President.

3. The Chair shall have the authority to call an executive session meeting of the Compensation Committee at which only voting members of the Committee shall be entitled to attend.

4. A vacancy arising during any term shall be filled for the unexpired balance of the term by appointment made by the President then in office subject to confirmation by the Executive Committee and ratification by the House of Delegates.

5. The Treasurer shall serve as an ex officio member, but shall not be permitted to vote in the deliberations of the Committee. No member of the executive staff of the Association shall serve as a member of the Committee.

X. SECTIONS AND DIVISIONS OF SECTIONS

Section 1. Creation and Abolition. The House of Delegates may from time to time establish sections of the Association and divisions of sections which shall be considered committees of the Association. Sections and divisions of sections may be abolished by the House of Delegates or by the Association.

Section 2. Bylaws. Each duly authorized section of the Association may adopt Bylaws, not inconsistent with the Bylaws of the Association, for the regulation of its affairs and for the determination and definition of its aims and purposes and qualifications of membership therein, but such Bylaws shall become effective only upon approval by the Executive Committee.

Section 3. Officers. Each such section may elect a chair, vice-chair and secretary, and such other officers as its Bylaws may provide.

Section 4. Sub-Committees. Each such section may create sub-committees or task forces relating to particular branches of the general activities of the section.

Section 5. Dues. The executive committee of a section or if there be none, the members at an annual meeting of the section may, subject to the approval of the Finance Committee, fix the amount of annual dues, the payment of which shall be a condition to membership in the section.

XI. ELECTIONS AND TERMS

A. Elections. At each Annual Meeting there shall be elected the elected delegates of the House of Delegates. At the meeting of the House of Delegates immediately following the Annual Meeting of the Association, the House shall elect a President-Elect, all Vice-Presidents, a Secretary, a Treasurer, the members-at-large of the
Executive Committee who shall be selected pursuant to the requirements of Article VII, Section 1(F), and such other officers as may be required to fill any additional offices established pursuant to Article IV.

B. Terms. The officers, elected delegates, and members-at-large of the Executive Committee elected at such meeting shall hold their offices from the next succeeding June 1st through the next May 31st of the following year, provided, however, that the members-at-large of the Executive Committee whose terms commence on or after June 1, 2009 shall hold their offices from June 1st in the year of their election through May 31st of the second year following the year of their election.

XII. MEETINGS OF THE ASSOCIATION

Section 1. Annual Meeting. The Association shall meet annually on such days and at such places as the House of Delegates may select. Any meeting of the Association may adjourn to any other date(s) and place(s) upon a majority vote of those present.

A. Written notice shall be given of each meeting of members, shall state the place, date and time of the meeting and, unless it is an Annual Meeting, shall also indicate that it is being issued by or at the direction of the person or persons calling the meeting. Notice of a Special Meeting shall also state the purpose or purposes for which it is being called and no business shall be conducted at the meeting that is not included in such notice.

B. A copy of the notice of any meeting shall be given, personally, by first-class mail, by fax or by electronic mail not less than ten nor more than fifty days before the date of the meeting. If notice is provided by another class of mail, notice shall be given not less than thirty days nor more than sixty days before such date, to each member entitled to vote at such meeting. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the member at the member’s address as it appears on the record of members, or if the member shall have other address, then directed to the member at such other address. If sent by fax or electronic mail, such notice is given when directed to the member’s fax number or electronic mail address as it appears on the record of members, or to such fax number or other electronic mail address as filed with the Secretary of the Association; provided, that notice shall not be deemed delivered if: (a) the Association is unable to deliver two consecutive notices to the individual by electronic mail or fax; or (b) the Association otherwise becomes aware that notice cannot be delivered to the individual by electronic mail or fax.

C. Nothing herein contained shall prevent the consideration at the Annual Meeting of any other business that may be regularly brought before it.

Section 2. Special Meetings. A special meeting may be called at any time by the President or the House of Delegates, or shall be called by the Secretary within 60 days
after the filing with the Secretary of a written request for the calling of a special meeting. Said request shall specify the purpose of the special meeting and shall be signed by at least 1 percent of the members of the Association of whom at least twenty-five members shall reside in each judicial district. Such special meeting shall be held at such time and at such place as the President shall designate, and no business shall be transacted thereat other than that specified in the notice thereof. Notice of a special meeting shall be by publication by any means of communication reasonably designed to notify all members of the Association.

**Section 3. Quorum.** At every meeting of the Association the presence of 100 members shall constitute a quorum. Only active members of the Association shall have the right to vote at any meeting of the Association, and no vote shall be cast by proxy.

**Section 4. Order of Business.**

**A.** At annual and adjourned meetings of the Association, after the appropriate opening thereof, the order of business will be:

1. Reading of the minutes of the preceding meeting.
2. Report of Nominating Committee.
3. Election of elected delegates to the House of Delegates.
5. Report of Treasurer.
8. Reports of Committees.
9. Special orders.
10. Miscellaneous business.

**B.** The President, or presiding officer, as a matter of discretion, is authorized: (1) to change the order of business at any meeting; (2) to limit the time of debate or discussion on any matter or business; and (3) to call for a vote on any matter by ballot. Robert’s Rules of Order Revised shall govern the proceedings of the Association, its House of Delegates and its Executive Committee, except as otherwise provided herein.

**Section 5. Rules of Order as to Resolutions.** At meetings of the Association, precedence shall be given to resolutions proposed by any member, 20 days’ notice of which, in writing, shall previously have been filed with the Secretary, and resolutions reported by any committee. All other resolutions, except parliamentary motions, shall be referred, without debate, to the Committee on Resolutions.

**XIII. MEETING BY TELEPHONIC EQUIPMENT**

Any committee, including but not limited to the Executive Committee, or section may, upon not less than 24 hours’ written notice by mail or electronic means, conduct a meeting by means of a conference telephone or similar communications equipment
allowing all members participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting. A written record of all action taken at such meetings shall be maintained.

XIV. INDEMNIFICATION

To the extent permitted by law, the officers and other members of the House of Delegates, members of sections and committees of the Association, and employees of the Association, when acting as such, shall be defended, indemnified and held harmless against all cost, damage and expense actually and personally incurred by or imposed upon them in connection with the defense of any action, suit or proceeding, or any other matter having to do with their acts or conduct in such capacity.

XV. COOPERATION WITH OTHER BAR ASSOCIATIONS AND FEDERATIONS OF BAR ASSOCIATIONS

Section 1. Cooperation. In order to more readily attain the objectives of its organization, this Association shall cooperate with local bar associations, other state bar associations and with judicial district or other regional federations of local bar associations, both within and without the state, in such manner as is consistent with its own and their autonomy, and shall encourage and assist, when desired, in the formation of new local bar associations and federations; and shall endeavor to maintain constant interchange of opinion and unity of effort between the Association and such local associations and federations in promoting reform in the law, facilitating the administration of justice, elevating the standards of the profession and cherishing the spirit of collegiality among the members of the Bar. A reciprocal relation and duty to the American Bar Association is also recognized.

Section 2. Committees. To further these purposes, the Bylaws may designate officers or authorize the appointment of committees whose duty it shall be to represent this Association in promoting such cooperation and may make provision for official representation both in the meetings and on the committees of this Association, of such local associations and federations by members of this Association in such manner and upon such condition as may be from time to time herein provided.

Section 3. Independence of Local and County Associations. Nothing contained herein and no action or recommendation of the Association, its House of Delegates or Executive Committee shall be construed to bind or commit in any respect any county or local bar association or to obligate such county or local bar association to accept or carry out any policy or recommendation of the Association, its House of Delegates or its Executive Committee. The participation of any county or local bar association in the Association shall be at all times voluntary and shall not subject such county or local bar association to any financial or other obligation or liability except as it may voluntarily assume.
Section 4. Election of New York State Bar Association Delegates to the American Bar Association House of Delegates. The nomination and election of delegates to the American Bar Association House of Delegates shall take place in accordance with the provisions of Article VIII, section 1(A)(6) of these Bylaws.

XVI. PUBLICATIONS

Section 1. Journal. The Journal shall be edited and published by a Board of Editors chosen by and under the direction of the Executive Committee. It shall be the responsibility of the Board of Editors to determine the format and contents of the Journal.

Section 2. Other Publications. All other publications authorized by the House of Delegates or the Executive Committee of the Association and not expressly provided for in these Bylaws shall be edited and published under the supervision of the Executive Committee.

XVII. AMENDMENTS

These Bylaws may be amended only by a two-thirds vote of the members present at a meeting of the Association, after compliance with either of the following procedures:

(a) By written proposal subscribed by at least ten members of the Association submitted to the Secretary at least sixty days in advance of a meeting of the Association, which proposal shall then be circulated with the notice of that meeting, and with the subsequent endorsement of at least fifty members attending that meeting for which such notice was given, after which it will be submitted to the next meeting of the Association for approval; or

(b) A majority of all the members of the House of Delegates may subscribe and file proposed amendments with the Secretary followed by notice to all members of the Association from the Secretary that said amendments will be considered at the next meeting of the Association held at least sixty days later, at which meeting such amendments may then be considered.

On consideration of any proposed amendment, further revisions thereof germane to the substance of such amendments may be considered and acted upon.
Appendix A

Committees of the Association

COMMITTEE ON ANIMALS AND THE LAW
COMMITTEE ON ANNUAL AWARD
COMMITTEE ON ASSOCIATION INSURANCE PROGRAMS
COMMITTEE ON ATTORNEY PROFESSIONALISM
COMMITTEE ON ATTORNEYS IN PUBLIC SERVICE
AUDIT COMMITTEE
COMMITTEE ON BYLAWS
COMMITTEE ON CHILDREN AND THE LAW
COMMITTEE ON CIVIL PRACTICE LAW AND RULES
COMMITTEE ON CIVIL RIGHTS
COMMITTEE ON COMMITTEES
COMMITTEE ON CONTINUING LEGAL EDUCATION
COMMITTEE ON COURT STRUCTURE AND OPERATIONS
COMMITTEE ON COURTS OF APPELLATE JURISDICTION
COMMITTEE ON DISABILITY RIGHTS
COMMITTEE ON DIVERSITY AND INCLUSION
ELECTRONIC COMMUNICATIONS COMMITTEE
COMMITTEE TO ENSURE QUALITY OF MANDATED REPRESENTATION
EXECUTIVE COMMITTEE
COMMITTEE ON FEDERAL LEGISLATIVE PRIORITIES
FINANCE COMMITTEE
COMMITTEE ON IMMIGRATION REPRESENTATION
JUDICIAL WELLNESS COMMITTEE
COMMITTEE ON LAW PRACTICE MANAGEMENT
COMMITTEE ON LAW, YOUTH AND CITIZENSHIP
LAWYER ASSISTANCE COMMITTEE
COMMITTEE ON LAWYER REFERRAL SERVICE
COMMITTEE ON LAWYERS IN TRANSITION
COMMITTEE ON LEADERSHIP DEVELOPMENT
COMMITTEE ON LEGAL AID
COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR
COMMITTEE ON LEGISLATIVE POLICY
COMMITTEE ON LGBT PEOPLE AND THE LAW
COMMITTEE ON MASS DISASTER RESPONSE
COMMITTEE ON MEDIA LAW
COMMITTEE ON MEMBERSHIP
NOMINATING COMMITTEE
PRESIDENT’S COMMITTEE ON ACCESS TO JUSTICE
COMMITTEE ON PROCEDURES FOR JUDICIAL DISCIPLINE
COMMITTEE ON PROFESSIONAL DISCIPLINE
Appendix B

AUDIT COMMITTEE COMPOSITION, DUTIES AND RESPONSIBILITIES

I. The Audit Committee shall consist solely of “Independent Members.” An Independent Member is a person who must satisfy all three of the following criteria:

1. The individual is not and has not been an employee of, or does not have a relative that is or was a key employee of, the Association or an affiliate of the Association in the past three years;
2. The individual and his or her relatives have not received compensation or other payments exceeding a total of $10,000 during the last three fiscal years of the organization from the Association or its affiliate, other than compensation for services provided in the capacity as a member of the Executive Committee or Audit Committee or reimbursement for expenses reasonably incurred as a member of the Executive Committee or Audit Committee; and
3. The individual is not an employee of, nor have a substantial financial interest in, any entity that has made a payment to (other than a charitable donation) or received payments from the Association or its affiliate for property or services in an amount, which in the last three fiscal years, exceeds the lesser of $25,000 or 2% of such entity’s consolidated gross revenues (“Association Vendor”). The individual’s relatives may not be an officer of nor have a substantial financial interest in an Association Vendor.

II. The Audit Committee shall:

1. Meet at least twice annually, and more frequently as circumstances may warrant. One of those meetings shall include, in separate executive sessions, meetings with the independent auditor, the Executive Director and such other members of the staff, as the Audit Committee determines, to discuss any matters within the scope of the Committee’s duties that these individuals believe or the Committee believes should be discussed privately with the Audit Committee.

2. Assure the independence of the independent auditor and be directly responsible for the appointment, compensation and oversight of the work of the independent auditor. The Audit Committee shall also consider the periodic rotation of auditors or of auditing partners. The Audit Committee shall also discuss with the independent auditor the scope and plan of the annual audit and consider any changes in standard accounting practices from year to year prior to the commencement of the audit.
3. Review and discuss with the independent auditor the adequacy of the Association’s internal controls and management’s commitment and ability to effectuate such recommendations for improvements in the internal controls as the independent auditor may recommend, and any material risks and weaknesses in internal controls identified by the independent auditor. The Audit Committee shall also discuss with management its response to the independent auditor’s assessment.

4. Review with the independent auditor the coordination of audit efforts to assure completeness of coverage, reduction of redundant efforts, and the effective use of audit resources, and the adequacy of the Association’s accounting and financial reporting processes.

5. Inquire of management and the independent auditor about significant risks or exposures and steps management has taken to minimize such risks to the Association.

6. Review the results of the annual audits, the management letter, previous recommendations to management the extent to which difficulties, if any, were encountered in the course of the audit, including any restrictions on the scope of audit inquiries or access to information, or any significant disagreements between the independent auditor and management, with the independent auditor.

7. Assure that the Association maintains a satisfactory document retention program.

8. Establish procedures for: (a) the receipt, retention, and treatment of complaints received by the Association regarding accounting, internal account controls, or auditing matters; and (b) the confidential, anonymous submission by Association employees or others of concerns regarding questionable accounting or auditing matters.

9. Conduct or authorize investigations into any matters within the Audit Committee’s scope of duties and responsibilities, and monitor the possible financial impact of legal matters that could impact the financial health of the Association.

10. Report periodically to the Executive Committee and the House of Delegates on significant activities of the Audit Committee.

11. Coordinate its activities, as may be appropriate, with the Finance Committee.
12. Obtain confirmation from management that all necessary tax filings have been made.

13. Review conflict of interest and whistleblower policies and if appropriate, make recommendations for changes to such policies. Make inquiry, if it deems appropriate, regarding any reported related-party transactions.

14. Assess the independence of all external investment advisers engaged by NYSBA, including any conflicts of interest such adviser has or may have, as required by law.

15. Make provision for such financial training as Audit Committee members may deem appropriate to assist them in the effective and knowledgeable discharge of their duties and responsibilities.

16. Review this set of duties and responsibilities annually and propose any changes that may be warranted to the House of Delegates.

17. Perform such additional functions and have such additional powers as may be necessary or appropriate for the performance of its duties and responsibilities or as may be delegated from time to time by the House of Delegates to the Audit Committee.

Appendix B approved by
the House of Delegates
February 1, 2008, as
amended November 17, 2012
further amended June 21, 2014

Appendix B approved by
the House of Delegates
February 1, 2008, as
amended November 17, 2012
further amended June 21, 2014
REQUESTED ACTION: Approval of the report and recommendations of the Committee on Standards of Attorney Conduct.

In September, the Office of Court Administration (OCA) published for comment two proposed amendments to the Rules of the Court of Appeals. The first is an amendment to Part 522 relating to the licensing of in-house counsel; the amendment would expand licensing to permit members of the legal profession licensed in foreign jurisdictions to register as in-house counsel. The second is a new Part 523, which would permit a lawyer admitted in another jurisdiction to provide legal services on a temporary basis in New York.

In 2010, our Association, together with the New York City Bar Association and the New York County Lawyers’ Association submitted a report to OCA recommending the adoption of Part 522. Our proposal recommended registration by both out-of-state and foreign lawyers; as adopted in April 2011, however, Part 522 limits registration to out-of-state lawyers.

Similarly, in 2012 our Association submitted a report to OCA recommending the adoption of court rules permitting temporary practice in New York by a lawyer licensed in another jurisdiction. The OCA report notes that the proposal is based principally on the NYSBA proposal and on ABA Model Rule 5.5.

The OCA proposed rules have been reviewed by the Committee on Standards of Attorney Conduct, which prepared the reports adopted by the House in 2010 and 2012. The committee’s report is attached. With respect to licensing foreign attorneys as in-house counsel, the committee recommends that the rule be adopted and that consideration should be given to how the rule might apply to in-house counsel from jurisdictions who are not regulated as “lawyers” in their home jurisdictions but are otherwise qualified to be registered in-house counsel in New York.

With respect to temporary practice, the committee recommends that the rule be adopted with modifications relating to the definition of “foreign lawyer” and accommodation of certain foreign in-house lawyers. In addition, the report responds to specific questions contained in the OCA request for comment.
The report will be presented by Prof. Barbara S. Gillers, vice-chair of the Committee on Standards of Attorney Conduct.
NEW YORK STATE BAR ASSOCIATION

NEW YORK STATE BAR ASSOCIATION COMMENTS ON PROPOSED CHANGES TO THE RULES OF THE COURT OF APPEALS THAT WOULD (1) PERMIT TEMPORARY PRACTICE BY OUT-OF-STATE AND FOREIGN LAWYERS AND (2) ALLOW FOREIGN LAWYERS TO REGISTER UNDER THE IN-HOUSE COUNSEL RULE

November **, 2015

The committee is solely responsible for the contents of this report. It does not represent the position of the New York State Bar Association unless and until approved by the Executive Committee or House of Delegates.
Table of Contents

I. Introduction

II. Discussion

III. Which Foreign Lawyers Should Be Covered by these Rules?
   A. Who Is a Foreign Lawyer?
   B. Recommended Modifications
      1. Definition of Foreign Lawyer
      2. A New Provision to Accommodate Certain Foreign In-House Counsel

IV. Questions Posed in the September 4th OCA Memo
   A. Question One: Should the Rule Contain a Definition of “Temporary Practice”?
   B. Question Two: Should the Rule Include a Registration Requirement?
   C. Question Three: Should There be Additional Disciplinary Procedures?
   D. Question Four: Should the Rule Apply to Candidates Applying for Admission to the New York Bar?
   E. Question Five: Should the Rule Apply to Registered In-House Counsel and Licensed Legal Consultants?

V. The In-House Counsel Amendments

VI. Conclusion
Executive Summary

This report recommends that:

- The proposed Temporary Practice Rule should be modified by replacing “admitted and authorized to practice law in another jurisdiction” with the definition of foreign lawyer that is currently in New York’s Rule on Licensing Legal Consultants and is proposed for the In-House Counsel Registration Rule. This change would avoid potential ambiguity and align the Temporary Practice Rule with ABA Model Rules, such rules elsewhere, and the other New York rules addressing foreign lawyers which, among other things, require that the foreign lawyer be subject in their home countries to some kind of formal admission system and “effective regulation.”

- The following phrase should be added to the opening paragraph of the proposed Temporary Practice Rule: “or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction” (see infra at pp. 10-11).

- The Temporary Practice Rules should not define “temporary practice.”

- The Temporary Practice Rule should not include a registration requirement.

- No additional disciplinary procedures or bodies are necessary for the enforcement of the Temporary Practice Rule.

- The Temporary Practice Rule should not apply to candidates applying for admission to the New York bar. Lawyers permitted to practice pending admission would be seeking to establish a continuous and permanent presence in New York. By contrast, temporary lawyers do not seek to establish a permanent and continuous presence. While policy considerations may overlap, there are sufficient differences between bar applicants and temporary lawyers to warrant separate rules. Our 2012 recommendation for a rule permitting practice pending admission would recognize these differences. The NYSBA would be pleased to submit a supplemental report in light of developments since 2012.

- The Temporary Practice Rule should not apply to registered in-house counsel from other states or to licensed foreign legal consultants because these lawyers
can practice temporarily in New York based on their home-state or home-country status. If the Court adopts the In-House Counsel Amendments, it will not be necessary to specifically apply the Temporary Practice Rule to registered foreign in-house counsel either.

- The In-House Counsel Amendments published for comment on September 24, 2015 should be adopted. The Court should then consider ways to make this rule apply to in-house counsel from European and other jurisdictions who are not effectively regulated as “lawyers” in their home jurisdictions but who are otherwise sufficiently qualified to be registered in-house counsel in New York.

I. Introduction

The New York State Bar Association (“NYSBA”) respectfully submits these comments in response to two proposals issued in September 2015 by the Office of Court Administration (“OCA”). One proposes a new Court of Appeals Rule, to be adopted as 22 NYCRR § 523, which would permit temporary practice by out-of-state and foreign lawyers (the “Temporary Practice Rule”). The second proposes amendments to the Court of Appeals Rule on Registration of In-House Counsel, set forth at 22 NYCRR § 522. The amendments would permit foreign lawyers to register (the “In-House Counsel Amendments”).

The NYSBA applauds these major steps forward for the courts and the legal profession in New York. The Temporary Practice Rule will enhance New York’s role as a center of world commerce “by permitting lawyers from other jurisdictions to appear in this state to work on transactional or short-term litigation-related matters (so-called ‘fly-in, fly-out’ events).” The proposed In-House Counsel Amendments will open in-house practice to many foreign lawyers, as it has been open to out-of-state lawyers since April 2011 to salutary effect.

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1 On September 4, 2015, the Office of Court Administration (“OCA”) issued a memo seeking comments on the proposed new 22 NYCRR § 523 (the “September 4th OCA Memo”). On September 21, 2015, OCA issued an amended version of proposed 22 NYCRR § 523 (the “September 21st OCA Memo”), clarifying that “subsections (a) through (d) of section 523.2 set forth separate and disjunctive conditions under which temporary practice may occur.” We believe the September 4th OCA Memo made clear that these subsections should be read in the disjunctive, as they are under ABA M.R. 5.5(c), but welcome the clarification. On September 24, 2015, OCA issued a memo seeking comment on proposed amendments to 22 NYCRR § 522, which would permit foreign lawyers to register under the in-house counsel rule (the “September 24th OCA Memo”).

2 See September 4th OCA Memo at 1.
New York has long been a worldwide hub of complex dispute resolution and sophisticated commercial transactions. With the development of globalization and technology, New York’s prominence has only increased. It is thus right and fitting that New York be a leader in opening the doors of its legal profession to out-of-state and foreign lawyers, so long as the courts and the public are protected in the process. The September 2015 proposals accomplish both goals. We commend these initiatives, which make major contributions to the law governing lawyers in New York. In this report, we address OCA’s request for comments.3

II. Discussion

Under the Temporary Practice Rule, a lawyer who is “admitted and authorized to practice law in another jurisdiction within or outside the United States who is not disbarred or suspended from practice in any jurisdiction. . . .” may provide services in New York “if the services arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice . . . .”4 This standard works well for lawyers from other states. We have long supported extending this privilege to our colleagues from around the United States. We believe the Temporary Practice Rule is clear and well-crafted to accomplish this goal.

The principal issue raised by both the Temporary Practice Rule and the In-House Counsel Amendments, however, is how New York should define “foreign lawyer.” In general, we support rules that will open New York to a wide range of foreign practitioners, so long as the public and the courts are protected. Broad rules on foreign lawyers will bring even more international legal business to New York. They will create good-will across the legal profession worldwide. They will also open opportunities to New York lawyers as global trade increases because allowing more foreigners to work here will tend to encourage a general lessening of barriers elsewhere.

The Temporary Practice Rule is “modeled principally on (1) a draft rule recommended by the NYSBA in 2012 . . . and (2) American Bar Association (ABA) Model Rule (‘M.R.’) 5.5 permitting the temporary practice of law by attorneys licensed

3 See, September 4th OCA Memo at 1-2; September 24th OCA Memo at 1.
4 See Proposed 22 NYCRR § 523.2 (Scope of Temporary Practice – General); § 523.2(c) & (d) (emphasis added).
in other U.S. jurisdictions under certain prescribed circumstances. . . “5 But the Temporary Practice Rule does not include the definition of foreign lawyer that is contained in ABA M.R. 5.5 or in other ABA Rules allowing practice by foreign lawyers. The ABA definition requires that a foreign lawyer “be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority.”6

The In-House Amendments, by contrast, do adopt the ABA definition of “foreign lawyer.”7 Under the In-House Amendments a foreign lawyer must be “a member in good standing of a recognized legal profession in a foreign (non-U.S.) jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation by a duly constituted professional body or a public authority.”8 New York’s current rule on licensing foreign legal consultants also contains this definition.9

In general we support this approach. The Court could reasonably choose to define foreign lawyer differently in the Temporary Practice Rule because the Rule’s purpose is unique. The Temporary Practice Rule contemplates the brief, intermittent, and occasional provision of services in New York by a foreign lawyer. By contrast, the In-House

5 ABA M.R. 5.5(d) also permits lawyers “admitted . . . in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction . . . ” to serve as in-house counsel.
7 September 24th OCA Memo, passim.
8 In-House Counsel Amendments at § 522.1(b)(1)(a). The ABA Model Rule for Registration of In-House Counsel, as amended in 2013, contains the same definition. See http://bit.ly/1rjlrU4 (last visited October 6, 2015). The ABA uses the same definition of foreign lawyers for M.R. 5.5, the Model Rule for Temporary Practice by Foreign Lawyers, the Model Rule for In-House Registration and the Model Rule for the Licensing and Practice of Foreign Legal Consultants. Most jurisdictions adopting a rule permitting practice by foreign lawyers use the same or a similar definition. See discussion infra at pp 8-9.
9 See, 22 NYCRR § 521.1(a)(1) (to qualify for licensed legal consultant status, a lawyer must be “a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to practice as attorneys or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority”).
Counsel Amendments permit a foreign lawyer to establish a permanent and continuous presence in New York. Still, we suggest some modifications, as detailed below.

III. Which Foreign Lawyers Should Be Covered By These Rules

A. Who Is a Foreign “Lawyer”?

Foreign lawyers practice under a variety of regimes. Some foreign jurisdictions permit legal practice without formal admission to the bar. For example, in Mexico, lawyers (abogados) obtain a practice certificate (cedula) from the Government to practice by completing a five-year law degree program and registering with the Ministry of Education (Art. 25 of the Ley General de Profesiones), but they are not members of any bar association (colegios de profesionistas). The registration with the Ministry of Education and the cedula is a filing, rather than a formal admission process that might involve, e.g., an examination of a candidate’s background, character and fitness. In some countries practitioners who consider themselves lawyers are not subject to professional regulation at all. Rather, their conduct --- if improper --- would be controlled only through broadly focused civil and criminal laws that govern non-lawyers as well. Our review of available resources also suggests that --- while most foreign countries require some type of study in order to be authorized to practice law --- many foreign countries require undergraduate degrees only. Many countries also do not conduct any character and fitness investigations. By some counts, fewer than 1/3 of the countries worldwide that authorize the practice of law have any formal organization governing the legal profession.

Finally, in some countries --- notably in France, other countries in the European Union, and elsewhere --- in-house counsel are not treated as lawyers at all. They are not members of the bar. The attorney-client privilege does not attach to their communications.

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11 This summary is based on conversations with European lawyers, people affiliated with the ABA, charts prepared in connection with ABA deliberations on related issues, and a review of the Summary of State Foreign Lawyer Practice Rules by Laurel Terry dated 4/28/15 http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mjp_8_9_status_chart.authcheckdam.pdf (last visited October 6, 2015) and the links cited therein.
with their corporate clients.\textsuperscript{12} By contrast, other countries --- including some countries in Europe (e.g. Denmark, Ireland, Portugal, Spain the U.K. and Germany) ---- allow in-house counsel to be members of the bar.\textsuperscript{13}

Against this potpourri of regulatory and licensing regimes (or lack of thereof) the challenge for New York is to adopt rules that will accommodate the needs of an increasingly global and cross-border profession, yet protect the public and the courts in New York. We believe the proposals largely do this --- but suggest some small modifications.

B. Recommended Modifications

1. Definition of Foreign Lawyer

As noted, the Temporary Practice Rule permits practice by any lawyer from outside the U.S. who is “admitted and authorized to practice law in another jurisdiction.”\textsuperscript{14} This phrase is ambiguous and hard to apply. As noted above, in some countries a person is never formally “admitted” but may be authorized to practice law without taking a bar exam or completing a legal education or submitting to a character investigation --- and is also not subject to effective regulation. Most importantly, since we understand a key assumption underlying the Temporary Practice Rule to be that the home jurisdiction will be primarily responsible for regulating such lawyers, the lack of effective regulation elsewhere creates a risk to the public here.\textsuperscript{15}

\textsuperscript{12} See, \textit{Akzo Nobel Chemicals, Ltd. v. European Commission}, Case-550/07, [2010] \url{http://curia.europa.eu/juris/document/document.jsf?text=&docid=82839&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=37940} (last visited October 6, 2015) (in-house counsel lack sufficient independence to be members of the bar; the attorney-client privilege does not attach to communications between in-house counsel and their corporate clients; at least 19 of the 28 members of the European Union (Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Estonia, Finland, France, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Poland, Romania, the Slovak Republic, Slovenia, and Sweden) prohibit in-house counsel from becoming members of the bar;). See also, \textit{Règlement Intérieur National de la Profession d’Avocat – RIN} \url{http://cnb.avocat.fr/Reglement-Interieur-National-de-la-profession-d-avocat-RIN_a281.html#1} (last visited October 7, 2015) (in-house counsel cannot be members of the bar).


\textsuperscript{14} Proposed 22 NYCRR § 523.2 opening paragraph. See also, § 523.2(c) (permitting certain services related to the lawyer’s practice “in a jurisdiction in which the lawyer is admitted”); §523.2(d)(same).

\textsuperscript{15} Even in Virginia --- the only jurisdiction of which we are aware that has adopted an “authorized to practice” standard --- the rule also provides that the lawyer must be authorized “by the duly constituted and authorized governmental body of any State or Territory of the United States or the District of Columbia, or a foreign nation.” Va. R. Prof. Conduct 5.5(d)(1) (emphasis added).
We recommend instead that the Temporary Practice Rule incorporate the definition of foreign lawyer that is already codified in New York’s Rule on Licensing Legal Consultants and is proposed in the In-House Counsel Amendments. These provisions require that a foreign lawyer be

- a member in good standing of a recognized legal profession in a foreign (non-U.S.) jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation by a duly constituted professional body or a public authority.

Jurisdictions that now allow temporary practice by foreign lawyers use a similar definition and require, at a minimum “admission” or a “license”, which, as we understand those terms, both assume a regulatory regime. The advantage of this definition is that it is clear, nearly uniform throughout the jurisdictions that have adopted a rule permitting

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16 22 NYCRR § 521.1(a)(1).
17 Proposed § 522(1)(b)(1).
18 At least eight of the ten jurisdictions that allow temporary practice by foreign lawyers have adopted the same or a similar definition. See, e.g., Colorado Rule 205.2 [https://www.coloradosupremecourt.com/BL/Forms/New%20Admission%20Rules%20(9-1-14).pdf](https://www.coloradosupremecourt.com/BL/Forms/New%20Admission%20Rules%20(9-1-14).pdf) (last visited October 2, 2015) (to practice as a temporary attorney in Colorado, a foreign lawyer must be, inter alia, “a member of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as attorneys or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority”); http://courts.delaware.gov/rules/DLRPCFebruary2010.pdf (last visited October 2, 2015) (lawyer must be “admitted” in a foreign jurisdiction and “not suspended or disbarred”, which suggests an effective regulatory regime); D.C. App.R. 49(b)(12)(i) and (13) [http://www.dccourts.gov/internet/documents/rule49.pdf](http://www.dccourts.gov/internet/documents/rule49.pdf) (last visited October 2, 2015) (“is authorized to practice law by the highest court of a state or territory or by a foreign country, and is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court.”); Florida Rule of Prof. C. 4-45(d) [https://www.floridabar.org/divexe/rrtfb.nsf/FV/AE4F324F9F246B2085257A2C00628278](https://www.floridabar.org/divexe/rrtfb.nsf/FV/AE4F324F9F246B2085257A2C00628278) (last visited October 2, 2015) (the foreign lawyer must be, inter alia, a “member in good standing of a recognized legal profession in a foreign jurisdiction whose members are admitted to practice as lawyers or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority”); Georgia Rule of Prof C. 5.5(e), (f) & (g) [http://www.gabar.org/barrules/handbookdetail.cfm?what=rule&id=129](http://www.gabar.org/barrules/handbookdetail.cfm?what=rule&id=129) (last visited October 2, 2015) (the foreign lawyer must be, inter alia, “a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or public authority”); New Hampshire Supreme Court Rule 42C(b) [http://www.courts.state.nh.us/rules/scc/sr-42c.htm](http://www.courts.state.nh.us/rules/scc/sr-42c.htm) (last visited October 2, 2015) (same); Oregon Rule Prof. C. 5.5(c), (d), and note following the rule [https://www.osbar.org/docs/rulesregs/orpc.pdf](https://www.osbar.org/docs/rulesregs/orpc.pdf) (last visited October 2, 2015) (the foreign lawyer must be “admitted in another jurisdiction, and not disbarred or suspended from practice in any jurisdiction”; this provision inserted to permit “foreign-licensed lawyers” to practice temporarily in Oregon); Pennsylvania Rule 5.5(c) [http://www.pacode.com/secure/data/204/chapter81/s5.5.html](http://www.pacode.com/secure/data/204/chapter81/s5.5.html) (last visited October 2, 2015) (“a lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide [certain temporary] legal services”).
temporary practice by foreign lawyers, and provided as a model by the ABA in its rules addressing practice by foreign lawyers in the U.S. Lawyers in and outside the U.S. will be able to better gauge what is permitted.

This well-accepted definition will benefit lawyers and the courts. Analysis and interpretation will be available more broadly, as the contours of the definition develop through judicial interpretation. Lawyers and the courts will also benefit from what is likely to be more authority, clearer guidelines, and harmonized interpretation.

The limitation of this definition is that it may exclude from temporary practice in New York foreign “lawyers” who may be qualified by education and experience to practice here but are not formally “admitted” and may not be subject to an effective regulatory regime in their home countries. So, using this definition may exclude lawyers from countries like Mexico where, we understand, there is no formal admission and no effective regulatory apparatus. If the Court wishes to ensure that such lawyers could practice here, an alternative amendment would be to substitute the phrase “authorized” for the phrase “admitted and authorized” where it appears in proposed § 523.2 as follows: “A lawyer admitted and authorized to practice law in another jurisdiction . . .”.19

2. A New Provision To Accommodate Certain Foreign In-House Lawyers

We also recommend that the Temporary Practice Rule specifically include certain foreign in-house counsel --- from Europe and elsewhere --- who may not be considered “lawyers” in their home jurisdictions.20 We see no reason why an in-house counsel from Montana would be allowed to continue to advise his or her employer on brief or sporadic visits to New York but an in-house counsel from France or Italy would not be able to do so, where each in-house counsel’s services are limited to work for their entity employer. The employers have an on-going and close relationship with their in-house lawyers. These employers are well positioned to evaluate the competence and quality of these

19 Likewise, the phrase “a jurisdiction in which the lawyer is admitted to practice” in § 532.2(c) and (d) would be changed to “a jurisdiction in which the lawyer is authorized to practice.” We are aware of no U.S. jurisdiction that has adopted such a broad rule, but New York may wish to take the lead in expanding opportunities for foreign practitioners to serve their clients here. In either case --- whether or not New York adopts the well accepted definition of foreign lawyer that insures admission and effective regulation elsewhere --- we urge the adoption of the new provision recommended in section III(B)(2) of this report (see text at p. 10 - 11) which would ensure that in-house counsel from jurisdictions that do not formally treat in-house counsel as lawyers at all are unambiguously included in the Temporary Practice Rule.
20 See discussion supra at pp. 8 - 9.
lawyers, who would not in any event be providing legal services to the general public. As a consequence, these services would involve little risk to the public, and would be beneficial to the large foreign companies, businesses, and other entities that do business here and may from time-to-time need the temporary assistance of their own in-house lawyers who are based in their home countries.\textsuperscript{21}

We suggest inserting the phrase into the general paragraph under § 523.2: “or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction.” The provision would then read as follows (new language is underscored):

\begin{verbatim}
22 NYCRR § 523.2 A lawyer . . . who is not disbarred or suspended from practice in any jurisdiction, or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction, may provide on a temporary basis in this state legal services . . .
\end{verbatim}

IV. Questions Posed in the September 4\textsuperscript{th} OCA Memo

A. Question One: Should the Rule Contain a Definition of “Temporary Practice”?\textsuperscript{21}

The rule should not contain a definition of “temporary practice.”

“Temporary practice” is difficult to define, and highly fact specific. Perhaps for that reason, the temporary practice rules in every jurisdiction of which we are aware --- more than 40 --- do not define the term. Nor does ABA Model Rule 5.5. As stated in Comment [6] to M.R. 5.5:

\begin{verbatim}
There is no single test to determine whether a lawyer’s services are provided on a “temporary basis” in this jurisdiction, and may therefore be permissible under paragraph (c). Services may be “temporary” even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

Leaving the term undefined allows for individual analysis based on the wide variety of circumstances in which temporary practice may occur, and also paves the way for definitions through judicial interpretation in concrete cases. We thus recommend that the rule contain no definition of “temporary practice.”
\end{verbatim}

B: Question Two: Should the Rule Include a Registration Requirement?

\textsuperscript{21} As noted, however, (see Executive Summary, supra, at p.2; see also infra at pp. 15 - 16) we recommend that the in-house counsel registration rule retain the more broadly adopted definition for foreign lawyers who come to New York as in-house counsel on a continuous or permanent basis. New York has a significant interest in protecting the public by insuring that these lawyers are regulated well beyond the monitoring provided by their employer-clients.
No registration requirement should be imposed. It would be a significant step backward, and frustrate the goals of the Temporary Practice Rule.

The home jurisdiction authorities will retain primary responsibility for regulating lawyers practicing temporarily in New York under this rule. Most of these lawyers will practice in New York only for the short-term or intermittently. Many of them will “fly in and fly out” for a few days --- or even for one day a year --- to perform services related to a matter and client based elsewhere. Setting up new procedures and an agency to discipline them would impose significant burdens and expense --- on the lawyers from outside New York and on the New York disciplinary system --- with no measurable protection for the public. The rule should contain no registration requirement.

C. Question Three: Should There be Additional Disciplinary Procedures?

No additional disciplinary procedures are needed. New York can discipline lawyers temporarily practicing in New York through the regular disciplinary machinery. And, as appropriate, the matter can then be sent to the lawyer’s home jurisdiction for review.

The Temporary Practice Rule makes clear that the New York Rules of Professional Conduct apply to temporary practitioners and that they can be disciplined by the New York authorities. The rules of each Department clearly establish that disciplinary prosecutors have power to enforce these rules against any lawyer who commits misconduct in New York, regardless of where the lawyer is admitted to practice. Other states that have adopted temporary practice rules have imposed

22 Perhaps for these reasons, of the more than 40 jurisdictions that have adopted a temporary practice rule, including the 10 that embrace foreign lawyers, only a few have adopted some form of registration. See, e.g. Connecticut R.P.C. 5.5(f) http://www.jud.ct.gov/publications/PracticeBook/PB.pdf (last visited October 6, 2015) (requiring pre-and post-notifications and fees); New Jersey RPC 5.5 (b) & (c) and NJR 1:20-1 (b) & (c) (registration and fee required, but only for certain work); New Mexico Rule and NMRA 24-106 (requiring registration fees for some services). Our review of these registration requirements reveals that they are cumbersome, uneven, and difficult to enforce. Most importantly they appear unnecessary. We have not heard reports of problems in the jurisdictions that do not have registration requirements.
23 Proposed 22 NYCRR § 523.3 says: “A lawyer who practices law in this state pursuant to this Rule is subject to the New York Rules of Professional Conduct and to the disciplinary authority of this state . . . to the same extent as if the lawyer were admitted or authorized to practice in the state.” See also NY R.P.C. 8.5(a) (out-of-state lawyer may be subject to disciplinary authority of this state and home jurisdiction); NY R.P.C. 8.5(b)(1) (lawyer admitted pro hac vice in New York subject to New York discipline); NY R.P.C. 8.5(b)(2) (out-of-state transactional lawyer subject to New York discipline if particular conduct has “its principal effect” in New York).
24 See, 22 NYCRR § 603.1 (First Department; “[t]his Part shall apply to all attorneys who are admitted to practice, reside in, commit acts in or have offices in this judicial department. . . .”) (emphasis added); 22
discipline on out-of-state lawyers who engage in misconduct within their borders. No additional disciplinary procedures are necessary.

**D. Question Four: Should the Rule Apply to Candidates Applying for Admission to the New York Bar?**

In 2012 we recommended that New York adopt a rule permitting practice pending admission. We continue to believe New York should do so. Globalization, advances in technology, economic changes, and client demands have only intensified since then. There is even more cross-border practice today --- and a related need for lawyers to relocate from time to time.

A lawyer may need to relocate for many reasons beyond the lawyer’s control. For example, a lawyer may need to move to New York in order to accommodate the needs of a client who has moved to a new jurisdiction. A lawyer may receive a job opportunity in, or may be transferred to, a jurisdiction other than the jurisdiction of original licensure --- often requiring relocation within a very short time. Lawyers sometimes have to relocate due to changes in personal circumstances, such as the relocation of a spouse or domestic partner, or due to military deployment. In a connected world, lawyers increasingly need to relocate during their careers, often more than once and frequently without sufficient notice to obtain bar admission before the move.

But we also believe that temporary practice pending admission is best established by a separate rule, not as part of new § 523. Lawyers who are permitted to practice pending admission seek to establish a continuous and permanent presence in New York. Indeed, practice pending admission may entail a continuous presence in New York for as long as a year. By contrast, a temporary lawyer does not seek to establish a

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NYCRR § 691.1 (Second Department; same language); 22 NYCRR § 806.1 (Third Department; “[t]his Part shall apply to all attorneys who are admitted to practice, reside or have an office in, or who are employed or transact business in, the third judicial department”) (emphasis added); 22 NYCRR § 1022.1 (“[t]his Part shall apply to all attorneys who . . . practice within the Fourth Department”).

25 See, e.g., In re Gerber 2015 WL 5016552 (N.D. 2015) (publicly admonishing a Minnesota lawyer who practiced law in North Dakota without securing temporary license to practice); In re Kingsley, 950 A.2d. 659 (DE 2008) (disciplining an out-of-state lawyer for practice in Delaware without seeking temporary admission or other authorized status); In re Parilman, 947 N.E.2d 915 (Ind. 2011) (barring Arizona lawyer who solicited clients in Indiana in violation of Indiana Rules from practicing in Indiana, including “temporary admission”).

26 For example, the process for admission without examination requires an applicant to prepare an application seeking personal and professional information that can take weeks or months to gather. See 22 NYCRR § 520.10(b). The process for seeking admission via the bar exam can take seven months or
continuous and permanent presence in New York. While relevant considerations overlap, there are sufficient differences, in our view, to warrant separate attention.

We urge the Court to adopt a rule permitting practice pending admission, like the one we proposed in 2012. We would be pleased to submit an updated report that could examine the experience of other jurisdictions and developments in this area since 2012.27

E. Question Five: Should the Rule Apply to Registered In-House Counsel and Licensed Legal Consultants?

It is not necessary to make the Temporary Practice Rule cover lawyers registered in-house counsel from other U.S. jurisdictions or licensed legal consultants. These lawyers will be able to practice temporarily in New York based on their home-state or home-country status. For example, a foreign legal consultant in Missouri who is admitted in England will be able to practice temporarily in New York based on his or her admission in England. If the Court adopts the In-House Counsel Amendments, it will

27 In particular, the ABA has adopted a model rule on practice pending admission. Some states have also adopted such rules. See, e.g., District of Columbia Court of Appeals Rule 49(c)(8) [http://www.dcappeals.gov/dccourts/docs/rule49.pdf (last visited October 7, 2015)] (out-of-state lawyers may practice from a principal office located in D.C. for a period not to exceed 360 days if other requirements are met; court has asked for comments by November 11, 2015, on proposed revisions regarding inter alia, in-house attorneys); Missouri Supreme Court Rule 8.06, [http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/0/e0bcf992eb92f9ae86256db7007379ef?OpenDocument (last visited October 7, 2015)] (similar to the D.C. Rule); Colorado Court Rule 205.6 [http://www.courts.co.us/userfiles/file/Court_Probation/Supreme_Court/Rule_Changes/2014/2014(09)%20clean.PDF (last visited October 7, 2015)] (permits practice pending admission for up to 365 days); North Carolina Rule 5.5(e) [http://www.nccbar.com/rules/rules.asp?page=47 (last visited October 7, 2015)] (practice pending admission permitted only upon application, if the lawyer is licensed in a state that has a reciprocal provision and other requirements are met); Kansas Court Rule 710 [http://www.kscourts.org/rules/Rule-Info.asp?r1=Rules+Relating+to+Admission+of+Attorneys&r2=427 (last visited October 7, 2015)] (permitting practice pending admission, with conditions); North Dakota Court Rule 6.1, [http://www.ndcourts.gov/court/notices/20130024/rule6.1.htm (last visited October 7, 2015)] temporary practice pending admission, with conditions). The full text of the ABA Model Rule on Practice Pending Admission can be found here: [http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/model_rule_practice_pending_admission_authcheckdam.pdf (last visited October 8, 2015)]. The full text of such rules from other jurisdictions can be found here: [http://www.americanbar.org/groups/professional_responsibility/policy.html (last visited October 8, 2015)].
not be necessary to apply the rule specifically to registered in-house counsel from foreign jurisdictions either. They will be able to practice based on their home-state admission.

V. The In-House Counsel Amendments

The In-House Counsel Amendments permit foreign lawyers to register as in-house lawyers. This is a welcome step forward, and in-line with significant precedent. As the September 24th OCA Memo notes, and in addition to the ABA Model Rules discussed throughout this report:

- The Conference of Chief Justices has recommended that states amend their in-house registration rules to permit registration by foreign lawyers,
- Fifteen jurisdictions have adopted rules permitting registration by foreign in-house counsel; and
- The NYSBA, NYC Bar Association, and the New York County Lawyers’ Association issued a joint report (in November 2010) recommending that New York adopt rules permitting registration as in-house counsel by out-of-state and foreign lawyers.\(^{28}\)

The In-House Counsel Amendments adopt the same definition of foreign lawyer as is currently in the New York Rule on Licensing Legal Consultants. The proposed definition is also consistent with the ABA’s definition of foreign lawyers, and the definition used by many of the jurisdictions that have already adopted rules permitting registration by foreign in-house counsel.\(^{29}\) We support this approach to the registration

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28 September 24th OCA Memo at 1.
29 See, e.g., Connecticut Bar Examining Committee Rules https://www.jud.ct.gov/cbec/housecounsel.htm#qualify (last visited October 2, 2015) (to register as an in-house counsel a lawyer must be “a member of the bar in good standing in another jurisdiction (state, DC, US territory or foreign country)”); Georgia Rule Prof. C. 5.5(f) & (g) https://www.gabar.org/barrules/handbookdetail.cfm?what=rule&id=129 (last visited October 2, 2015) (the foreign lawyers must be “a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority”); Iowa Rules on Admission to the Bar § 31.16(1)(d) (the foreign lawyer must be “a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority”). Some rules specifically give their courts discretion to permit the registration of a foreign lawyer who does not meet a formal definition. See, e.g., Delaware Rule 55.1 http://courts.delaware.gov/forms/download.aspx?id=39368 (last visited October 2, 2015) (to practice in-house “lawyers admitted to practice in a jurisdiction outside of the United States may apply individually to
of in-house counsel who will have a continuous and permanent presence in New York and believe that New York should use the same definition each time it uses the term “foreign lawyer” is referenced in our rules. This definition protects the public because it excludes from continuous or permanent practice in New York anyone who is not “admitted to practice” and not “subject to effective regulation.”

However, and as set forth above, in-house counsel in many foreign jurisdictions, particularly in Europe, are not admitted to the bar and would apparently not qualify under this definition. We note that the ABA is currently studying ways to include in its in-house registration rules qualified in-house practitioners from Europe and elsewhere who are not called “lawyers” in their home countries and are not subject to any formal disciplinary or regulatory regimes. We think New York should consider such an addition as well. One possibility would be for New York to add language like the following to the In-House Registration Amendments: “The Appellate Divisions in each Department may, in their discretion, allow a lawyer lawfully practicing as in-house counsel in a foreign jurisdiction who does not meet all the requirements of this rule to register as an in-house counsel after consideration of other criteria, including the lawyer’s legal education, references and experience.” Other approaches may emerge. We expect to review the ABA’s work and make further recommendations on this question when that work is completed.

VI. Conclusion

The NYSBA believes that the principles embodied by both the proposed Temporary Practice Rule and the proposed In-House Counsel Amendments are salutary and strongly endorses these initiatives by the Court. For the reasons stated in this Report, we offer the following specific recommendations and responses to the OCA's requests for comments:

- The proposed Temporary Practice Rule should be modified by replacing “admitted and authorized to practice law in another jurisdiction” with the definition of foreign lawyer that is currently in New York’s Rule on Licensing Legal Consultants and is proposed for the In-House Counsel Registration Rule. This change would avoid potential ambiguity and align the Temporary Practice
Rule with ABA Model Rules, such rules elsewhere, and the other New York rules addressing foreign lawyers which, among other things, require that the foreign lawyer be subject in their home countries to some kind of formal admission system and “effective regulation”.

- The following phrase should be added to the opening paragraph of the proposed Temporary Practice Rule: “or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction” (see *supra* at pp. 9-10).
- The Temporary Practice Rules should not define “temporary practice.”
- The Temporary Practice Rule should not include a registration requirement.
- No additional disciplinary procedures or bodies are necessary for the enforcement of the Temporary Practice Rule.

- The Temporary Practice Rule should not apply to candidates applying for admission to the New York bar. Lawyers permitted to practice pending admission would be seeking to establish a continuous and permanent presence in New York. By contrast, temporary lawyers do not seek to establish a permanent and continuous presence in New York. While some policy considerations regarding bar applicants and temporary lawyers may overlap, there are sufficient differences to warrant separate rules. Our 2012 recommendation for a rule permitting practice pending admission would recognize these differences. The NYSBA would be pleased to submit a supplemental report in light of developments since 2012.

- The Temporary Practice Rule should not apply to registered in-house counsel from other states or to licensed foreign legal consultants because these lawyers can practice temporarily in New York based on their home-state or home-country status. If the Court adopts the In-House Counsel Amendments, it will not be necessary to specifically apply the Temporary Practice Rule to registered foreign in-house counsel either.

- The In-House Counsel Amendments published for comment on September 24, 2015 should be adopted. The Court should then consider ways to make this rule apply to in-house counsel from European and other jurisdictions who are not
effectively regulated as “lawyers” in their home jurisdictions but who are otherwise sufficiently qualified to be registered in-house counsel in New York.

Dated: November **, 2015

Respectfully submitted,

David P. Miranda, President
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New York State Bar Committee on Standards of Attorney Conduct
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*Subcommittee Members
REQUEST FOR COMMENT
IN-HOUSE COUNSEL
MEMORANDUM

September 24, 2015

To: All Interested Persons

From: John W. McConnell

Re: Proposed amendment of 22 NYCRR Part 522 of the Rules of the Court of Appeals, relating to permitting foreign lawyers to register as In-House Counsel.

Public comment is requested on a proposed amendment of Part 522 of the Rules of the Court of Appeals that would permit the Appellate Division to register as in-house counsel an applicant who is a member in good standing of a recognized legal profession in a foreign jurisdiction (Exh. A). Part 522, adopted in April 2011, requires registration by attorneys who, though not admitted to the New York bar, are employed full-time in this state as in-house counsel by a corporation, partnership, association or other legal entity not itself engaged in the practice of law. Part 522 presently does not apply to attorneys admitted in jurisdictions outside the U.S. The Conference of Chief Justices and the American Bar Association have recommended that states amend their rules governing registration of in-house counsel to permit registration by foreign lawyers (Exh. B). Fifteen jurisdictions have adopted rules recognizing foreign in-house counsel (Exh. C). In November 2010, the New York State Bar Association, New York City Bar Association and New York County Lawyers’ Association issued a joint report in support of rules permitting both out-of-state and foreign lawyers to register as in-house counsel in New York (Exh. D).

As amended, section 522.1(b) would permit the Appellate Division to register as in-house counsel an applicant who “is a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation by a duly constituted professional body or a public authority” (Exh. A). Under section 522.3, registered foreign in-house counsel would be required to remain active members in good standing of a recognized legal profession in a foreign jurisdiction; notify the Appellate Division promptly of any disciplinary disposition in another jurisdiction; comply with the laws and rules governing attorneys admitted to the practice of law in New York; and register biennially with the Office of Court Administration.
Persons commenting on this proposal may also wish to review the proposed amendment of Part 523 of the Rules of the Court of Appeals, authorizing temporary law practice in New York by out-of-state and foreign lawyers. See www.nycourts.gov/rules/comments/index.shtml.

Persons wishing to comment on this proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. Comments must be received no later than November 9, 2015.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.
EXHIBIT A
§ 522.1 Registration of In-House Counsel

(a) In-House Counsel defined. An in-house counsel is an attorney who is employed full time in this State by a non-governmental corporation, partnership, association, or other legal entity, including its subsidiaries and organizational affiliates, that is not itself engaged in the practice of law or the rendering of legal services outside such organization.

(b) In its discretion, the Appellate Division may register as in-house counsel an applicant who:

(1) has been admitted to practice in the highest law court in any other state or territory of the United States or in the District of Columbia; or (b) is a member in good standing of a recognized legal profession in a foreign (non-U.S.) jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation by a duly constituted professional body or a public authority;

(2) is currently admitted to the bar as an active member in good standing in at least one other jurisdiction (within or outside the U.S.) which would similarly permit an attorney admitted to practice in this State to register as in-house counsel; and

(3) possesses the good moral character and general fitness requisite for a member of the bar of this State.

§ 522.2 Proof required

An applicant under this Part shall file with the Clerk of the Appellate Division of the department in which the applicant resides, is employed or intends to be employed as in-house counsel:

(a) a certificate of good standing from each jurisdiction in which the applicant is licensed to practice law; and

(b) a letter from each such jurisdiction's grievance committee, or other body entertaining complaints against attorneys, certifying whether charges have been filed with or by such committee or body against the applicant, and, if so, the substance of the charges and the disposition thereof; and

(c) an affidavit certifying that the applicant:

(1) performs or will perform legal services in this State solely and exclusively as provided in section 522.4; and

(2) agrees to be subject to the disciplinary authority of this State and to comply with the New York Rules of Professional Conduct (22 NYCRR Part 1200) and the rules governing the conduct of attorneys in the judicial department where the attorney's registration will be issued;
and

(d) an affidavit or affirmation signed by an officer, director, or general counsel of the applicant's employer, on behalf of said employer, attesting that the applicant is or will be employed as an attorney for the employer and that the nature of the employment conforms to the requirements of this Part.

(e) Documents in languages other than English shall be submitted with a certified English translation.

§ 522.3 Compliance

An attorney registered as in-house counsel under this Part shall:

(a) remain an active member in good standing in at least one state or territory of the United States or in the District of Columbia or a foreign jurisdiction as described in § 522.1(b)(1);

(b) promptly notify the appropriate Appellate Division department of a disposition made in a disciplinary proceeding in another jurisdiction;

(c) register with the Office of Court Administration and comply with the appropriate biennial registration requirements; and

(d) except as specifically limited herein, abide by all of the laws and rules that govern attorneys admitted to the practice of law in this State.

§ 522.4 Scope of legal services

An attorney registered as in-house counsel under this Part shall:

(a) provide legal services in this State only to the single employer entity or its organizational affiliates, including entities that control, are controlled by, or are under common control with the employer entity, and to employees, officers and directors of such entities, but only on matters directly related to the attorney's work for the employer entity, and to the extent consistent with the New York Rules of Professional Conduct;

(b) not make appearances in this State before a tribunal, as that term is defined in the New York Rules of Professional Conduct (22 NYCRR 1200.0 Rule 1.0[w]) or engage in any activity for which pro hac vice admission would be required if engaged in by an attorney who is not admitted to the practice of law in this State;

(c) not provide personal or individual legal services to any customers, shareholders, owners, partners, officers, employees or agents of the identified employer; and

(d) not hold oneself out as an attorney admitted to practice in this State except on the employer's
§ 522.5 Termination of registration

(a) Registration as in-house counsel under this Part shall terminate when:

(1) the attorney ceases to be an active member in another jurisdiction, as required in section 522.1(b)(2); or

(2) the attorney ceases to be an employee of the employer listed on the attorney's application, provided, however, that if such attorney, within 30 days of ceasing to be such an employee, becomes employed by another employer for which such attorney shall perform legal services as in-house counsel, such attorney may request continued registration under this Part by filing within said 30-day period with the appropriate Appellate Division department an affidavit to such effect, stating the dates on which the prior employment ceased and the new employment commenced, identifying the new employer and reaffirming that the attorney will provide legal services in this State solely and exclusively as permitted in section 522.4. The attorney shall also file an affidavit or affirmation of the new employer as described in section 522.2(d) and shall file an amended statement within said 30-day period with the Office of Court Administration.

(b) In the event that the employment of an attorney registered under this Part ceases with no subsequent employment by a successor employer, the attorney, within 30 days thereof, shall file with the Appellate Division department where registered a statement to such effect, stating the date that employment ceased. Noncompliance with this provision shall result in the automatic termination of the attorney's registration under this Part;

(c) Noncompliance with the provisions of section 468-a of the Judiciary Law and the rules promulgated thereunder, insofar as pertinent, shall, 30 days following the date set forth therein for compliance, result in the termination of the attorney's rights under this Part.

§ 522.6 Subsequent admission on motion

Where a person registered under this Part subsequently seeks to obtain admission without examination under section 520.10 of the Rules of this Court, the provision of legal services under this Part shall not be deemed to be the practice of law for the purpose of meeting the requirements of section 520.10(a)(2)(i).

§ 522.7 Saving Clause and Noncompliance

(a) An attorney employed as in-house counsel, as that term is defined in section 522.1(a), on the effective date of this Part, shall within 90 days of the date thereof, file an application in accordance with section 522.2. Attorneys employed as in-house counsel after the effective date of this Part shall file such an application within 30 days of the commencement of such employment;

(b) Failure to comply with the provisions of this Part shall be deemed professional misconduct,
provided, however, that the Appellate Division may upon application of the attorney grant an extension upon good cause shown.

§ 522.8 Pro bono legal services

Notwithstanding the restrictions set forth in section 522.4 of this Part, an attorney registered as in-house counsel under this Part may provide pro bono legal services in this State in accordance with New York Rules of Professional Conduct (22 NYCRR 1200.0) rule 6.1(b) and other comparable definitions of pro bono legal services in New York under the following terms and conditions. An attorney providing pro bono legal services under this section:

(a) shall be admitted to practice and in good standing in another state or territory of the United States or in the District of Columbia and possess the good moral character and general fitness requisite for a member of the bar of this State, as evidenced by the attorney's registration pursuant to section 522.1(b) of this Part;

(b) pursuant to section 522.2(c)(2) of this Part, agrees to be subject to the disciplinary authority of this State and to comply with the laws and rules that govern attorneys admitted to the practice of law in this State, including the New York Rules of Professional Conduct (22 NYCRR Part 1200.0) and the rules governing the conduct of attorneys in the judicial department where the attorney's registration is issued;

(c) may appear, either in person or by signing pleadings, in a matter pending before a tribunal, as that term is defined in New York Rules of Professional Conduct (22 NYCRR 1200.0) rule 1.0(w), at the discretion of the tribunal, without being admitted pro hac vice in the matter. Prior to any appearance before a tribunal, a registered in-house counsel must provide notice to the tribunal that the attorney is not admitted to practice in New York but is registered as in-house counsel pursuant to this Part. Such notice shall be in a form approved by the Appellate Division; and

(d) shall not hold oneself out as an attorney admitted to practice in this State, in compliance with section 522.4(d) of this Part.
EXHIBIT B
WHEREAS, the number of foreign companies with offices and operations within the United States has grown rapidly over the past decade and is expected to continue to increase; and

WHEREAS, the proportion of the United States population with family, property, estate and business interests abroad has increased substantially over the past decade; and

WHEREAS, the number of legal transactions and disputes involving foreign law and foreign lawyers is increasing as a result of these trends; and

WHEREAS, the American Bar Association Commission on Ethics 20/20 has developed proposed changes to the ABA Model Rules, reflecting the increased demand for carefully limited and regulated practice authority for foreign lawyers in the United States to serve as in-house counsel and through restricted pro hac vice admission; and

WHEREAS, the November 2012 versions of the Commission’s proposals pending before the ABA House of Delegates consist of comprehensive regulatory models that would allow jurisdictions wanting to adopt such rules and procedures to do so in a manner that is protective of the public and the profession while meeting client needs; and

WHEREAS, the Conference of Chief Justices previously endorsed an earlier, less restrictive draft of those proposals in 2010; and

WHEREAS, multiple states already have amended their rules to permit foreign lawyers to work for their employers in the United States as in-house counsel and to gain admission pro hac vice and have done so without adverse effects;
NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices supports, in principle, the proposed changes to the Model Rules reflected in ABA 2013 Midyear Meeting Resolutions 107A - Model Rule 5.5 Inbound Foreign Lawyers; 107B - Model Rule for Registration of In-House Counsel; and 107C - Model Rule on Pro Hac Vice Admission, and urges their adoption by the ABA House of Delegates and consideration by the states.

Adopted as proposed by the CCJ Professionalism and Competence of the Bar Committee and the Task Force on the Regulation of Foreign Lawyers and the International Practice of Law at the Conference of Chief Justices 2013 Midyear Meeting on January 30, 2013.
RESOLVED, That the American Bar Association amends the ABA Model Rule for Registration of In-House Counsel as follows (insertions underlined, deletions struck through):

Model Rule for Registration of In-House Counsel

GENERAL PROVISIONS:

A. A lawyer who is admitted to the practice of law in another United States jurisdiction or is a foreign lawyer, who is employed as a lawyer and has a continuous presence in this jurisdiction by an organization, the business of which is lawful and consists of activities other than the practice of law or the provision of legal services, and who has a systematic and continuous presence in this jurisdiction as permitted pursuant to Rule 5.5(d)(1) of the Model Rules of Professional Conduct, the business of which is lawful and consists of activities other than the practice of law or the provision of legal services, shall register as in-house counsel within [180 days] of the commencement of employment as a lawyer or if currently so employed then within [180 days] of the effective date of this Rule, by submitting to the [registration authority] the following:

1) A completed application in the form prescribed by the [registration authority];
2) A fee in the amount determined by the [registration authority];
3) Documents proving admission to practice law and current good standing in all jurisdictions, U.S. and foreign, in which the lawyer is admitted to practice law;
REVISED 107B

4) If the jurisdiction is foreign and the documents are not in English, the lawyer shall submit an English translation and satisfactory proof of the accuracy of the translation; and

5) An affidavit from an officer, director, or general counsel of the employing entity attesting to the lawyer's employment by the entity and the capacity in which the lawyer is so employed, and stating that the employment conforms to the requirements of this Rule.

For purposes of this Rule, a “foreign lawyer” is a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority.

SCOPE OF AUTHORITY OF REGISTERED LAWYER:

B. A lawyer registered under this section of Rule shall have the rights and privileges otherwise applicable to members of the bar of this jurisdiction with the following restrictions:

1. The registered lawyer is authorized to provide legal services to the entity client or its organizational affiliates, including entities that control, are controlled by, or are under common control with the employer, and for employees, officers and directors of such entities, but only on matters directly related to their work for the entity and only to the extent consistent with Rule 1.7 of the Model Rules of Professional Conduct [or jurisdictional equivalent provision in the jurisdiction]; and

2. The registered lawyer shall not:
   a. Except as otherwise permitted by the rules of this jurisdiction, appear before a court or any other tribunal as defined in Rule 1.0(m) of the Model Rules of Professional Conduct [or jurisdictional equivalent]; or
   b. Offer or provide legal services or advice to any person other than as described in paragraph B.1., or hold himself or herself out as being authorized to practice law in this jurisdiction other than as described in paragraph B.1.; and
   c. If a foreign lawyer, provide advice on the law of this or another U.S. jurisdiction or of the United States except in consultation with a U.S. on the basis of advice from a lawyer who is duly licensed and authorized to provide such advice.

PRO BONO PRACTICE:

C. Notwithstanding the provisions of paragraph B above, a lawyer registered under this section of Rule is authorized to provide pro bono legal services through an established not-for-profit bar association, pro bono program or legal services program or through such organization(s) specifically authorized in this jurisdiction.

OBLIGATIONS:

D. A lawyer registered under this section of Rule shall:

1. Pay an annual fee in the amount of $_______;

2. Pay any annual client protection fund assessment;
33. Fulfill the continuing legal education requirements that are required of active members of the bar in this jurisdiction;

34. Report within [____] days to the jurisdiction the following:
   a. Termination of the lawyer's employment as described in paragraph B.4.;
   b. Whether or not public, any change in the lawyer's license status in another jurisdiction, whether U.S. or foreign, including by the lawyer's resignation;
   c. Whether or not public, any disciplinary charge, finding, or sanction concerning the lawyer by any disciplinary authority, court, or other tribunal in any jurisdiction, U.S. or foreign.

LOCAL DISCIPLINE:

E. A registered lawyer under this section Rule shall be subject to the [jurisdiction's Rules of Professional Conduct], [jurisdiction's Rules of Lawyer Disciplinary Enforcement], and all other laws and rules governing lawyers admitted to the active practice of law in this jurisdiction. The [jurisdiction's disciplinary counsel] has and shall retain jurisdiction over the registered lawyer with respect to the conduct of the lawyer in this or another jurisdiction to the same extent as it has over lawyers generally admitted in this jurisdiction.

AUTOMATIC TERMINATION:

F. A registered lawyer's rights and privileges under this Rule section automatically terminate when:
   1. The lawyer's employment terminates;
   2. The lawyer is suspended or disbarred from practice in any jurisdiction or any court or agency before which the lawyer is admitted, U.S. or foreign; or
   3. The lawyer fails to maintain active status in at least one jurisdiction, U.S. or foreign.

REINSTATEMENT:

G. A registered lawyer whose registration is terminated under paragraph F.1. above, may be reinstated within [____] months of termination upon submission to the [registration authority] of the following:
   1. An application for reinstatement in a form prescribed by the [registration authority];
   2. A reinstatement fee in the amount of $____________;
   3. An affidavit from the current employing entity as prescribed in paragraph A.4.

SANCTIONS:

H. A lawyer under this Rule who fails to register shall be:
   1. Subject to professional discipline in this jurisdiction;
   2. Ineligible for admission on motion in this jurisdiction;
   3. Referred by the [registration authority] to the this [jurisdiction's bar admissions authority]; and 4. Referred by the [registration authority] to the disciplinary authority of the jurisdictions of licensure, U.S. and/or foreign.
EXHIBIT C
### Summary of State Foreign Lawyer Practice Rules (4/29/15*)

Prepared by Professor Laurel Terry (LTerry@psu.edu) based on implementation information contained in charts prepared by the ABA Center for Professional Responsibility dated 4/28/2015 and 4/28/15 available at [http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/recommendations.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/recommendations.authcheckdam.pdf) and [http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/state_implementation_selected_e20_20_rules.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/state_implementation_selected_e20_20_rules.authcheckdam.pdf)

*This document (or an updated version) is available online on an ABA webpage and my webpage: see [http://tjnyud.com/lallaoertemmap](http://tjnyud.com/lallaoertemmap)*

There are five methods by which foreign lawyers might actively practice in the United States: 1) through a license that permits only limited practice, known as a foreign legal consultant rule (addressed in MJP Report 201H); 2) through a rule that permits temporary transactional work by foreign lawyers (addressed in MJP Report 201J); 3) through a rule that permits foreign lawyers to apply for pro hac vice admission [ABA Resolution #107C (Feb. 2013)]; 4) through a rule that permits foreign lawyers to serve as in-house counsel [ABA Resolutions #J07A&B (Feb. 2013)]; and 5) through full admission as a regularly licensed lawyer in a U.S. jurisdiction. (The ABA does not have a policy on Method #5 although there are a number of foreign lawyers admitted annually; information about state full admission rules is available in NCBE's annual COMPREHENSIVE GUIDE TO BAR ADMISSIONS. See also NCBE Statistics.)

In 2015, the Conference of Chief Justices (CCJ) adopted a Resolution that urged states to adopt explicit policies on issues 1-4 and on the issue of "association." States that are considering whether to adopt rules regarding these five methods of foreign lawyer admission might want to consider the model provided in *International Trade in Legal Services and Professional Regulation: A Framework for State Bars Based on the Georgia Experience*, available at [http://tinyurl.com/GAtoolkit](http://tinyurl.com/GAtoolkit). The CCJ endorsed this "Toolkit" in 2014.

<table>
<thead>
<tr>
<th>Jurisdictions with FLC Rules</th>
<th>Explicitly Permit Foreign Lawyer Temporary Practice</th>
<th>Jurisdictions that Permit Foreign Lawyer Pro Hac Vice</th>
<th>Jurisdictions that Permit Foreign In-House Counsel</th>
<th>Since 2010 has had a foreign-educated full-admission applicant</th>
</tr>
</thead>
<tbody>
<tr>
<td>33</td>
<td>10</td>
<td>16</td>
<td>15</td>
<td>32</td>
</tr>
<tr>
<td>AK, AZ, CA, CO, CT, DE (Rule 55.2), DC, FL, GA, HI, ID, IL, IN, IA, LA, MA, MI, MN, MO, NH, NJ, NM, NY, NC, ND, OH, OR, PA, SC, TX, UT, VA, WA</td>
<td>CO, DC (Rule 49(c)(13), DE (RPC 5.5(d)), FL, GA, NH, NM (includes transactional matters), OR, PA, VA</td>
<td>CO, DC (Rule 49), GA (Rule 4.4), IL, ME, MI, NM, NY, OH (Rule XII), OK (Art. II(5)), OR, PA, TX (Rule XIX), UT (appeal courts only; see Utah Rule of Appellate Procedure 40; cf. Rule 14-806), VA, WI</td>
<td>AZ, CO (205.5), CT, DC, DE (Rule 55.1), GA, IN (Rule 6(2)), KS, NC, OR (allowed on a temporary basis under Rule 5.5(c); further study underway), TX, VA (Part 1A), WA, WI, WV</td>
<td>AL, AK, AZ, CA, CO, CT, DC, FL, GA, HI, IL, IA, LA, ME, MD, MA, MI, MO, NV, NH, NY, OH, OR, PA, RI, TN, TX, UT, VT, VA, WA, WI</td>
</tr>
<tr>
<td>ABA Model FLC Rule (2006)</td>
<td>ABA Model Rule for Temporary Practice by Foreign Lawyers</td>
<td>ABA Model Pro Hac Vice Rule</td>
<td>ABA Model Rule for Foreign In-House Counsel and Registration Rule</td>
<td>No ABA policy; Council did not act on Committee Proposal; see state rules</td>
</tr>
<tr>
<td>ABA Commission on Multijurisdictional Practice web page</td>
<td>State Rules—Temporary Practice by Foreign Lawyers (ABA chart)</td>
<td>Comparison of ABA Model Rule for Pro Hac Vice Admission with State Versions and Amendments Since August 2002 (ABA chart)</td>
<td>In-House Corporate Counsel Registration Rules (ABA chart); Comparison of ABA Model Rule for Registration of In-House Counsel with State Versions (ABA chart); State-by-State Adoption of Selected Ethics 20/20 Commission Policies (ABA chart)</td>
<td>NCBE COMPREHENSIVE GUIDE TO BAR ADMISSIONS</td>
</tr>
</tbody>
</table>

*Note: As the map on the back of this page shows, five jurisdictions—Colorado, the District of Columbia, Georgia, Oregon, and Virginia—have rules for all 5 methods; two jurisdictions have rules on 4 methods (PA, and TX); and 12 jurisdictions have rules on 3 methods (AZ, CT, DE, FL, IL, MI, NH, NY, OH, UT, WA, and WI). [Prior editions of the map erroneously included Pennsylvania among the "five method" states.]*
Jurisdictions with Rules Regarding Foreign Lawyer Practice
by Prof. Laurel Terry (LTerry@psu.edu). April 29, 2015, based on data from the ABA Center for Professional Responsibility and NCBE

LEGEND (see back page for additional information)

Yellow shading = has a foreign legal consultant rule
= rule permits temporary practice by foreign lawyers (also known as FIFO or fly-in, fly-out)
★ = rule permits foreign pro hac vice admission
▲ = rule permits foreign in-house counsel
○ = has had at least one foreign-educated applicant sit for a bar exam between 2010 and 2013.
EXHIBIT D
NEW YORK STATE BAR ASSOCIATION
NEW YORK CITY BAR ASSOCIATION
NEW YORK COUNTY LAWYERS' ASSOCIATION

PROPOSED RULES FOR
LICENSING OF IN-HOUSE COUNSEL

NOVEMBER 2010
JOINT REPORT OF THE
NEW YORK STATE BAR ASSOCIATION
ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
NEW YORK COUNTY LAWYERS' ASSOCIATION

THE NEW YORK COURT OF APPEALS SHOULD ADOPT
RULES ADMITTING IN-HOUSE LAWYERS
WHO ARE LICENSED AND IN GOOD STANDING ELSEWHERE

Introduction

The New York State Bar Association (NYSBA), the Association of the Bar of the City of New York (City Bar), and the New York County Lawyers’ Association (NYCLA) respectfully submit this report (hereafter, the “Joint Report”) to the Court of Appeals. Together, we ask the Court to promulgate admission rules for in-house counsel by adopting proposed new Part 522 of the Rules of the Court of Appeals (to be codified at Title 22 New York Rules and Regulations (“NYCRR”) § 522.1 et seq.). We hope this united effort, by three important bar associations in New York, will persuade the Court that the time has come for New York to adopt such rules.

The rules we propose would permit lawyers in good standing admitted in another U.S. jurisdiction (hereinafter, “out-of-state lawyers”) or in a non-U.S. jurisdiction (hereinafter, “foreign lawyers”) to practice in-house in New York without passing the New York bar exam and without meeting practice requirements otherwise required for admission on motion. 1

Appendix A contains the proposed rules, which also give New York disciplinary jurisdiction over these lawyers, oblige them to meet CLE and other requirements, and expand the availability of pro bono services. The rules will aid New York-admitted lawyers who seek similar admission in other jurisdictions that require reciprocity. The rules will also generate additional revenue in annual bar registration and other fees.

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1 The proposed rule would also extend to foreign lawyers practicing in-house who are admitted in jurisdictions other than common law jurisdictions. The current rules for admission on motion extend only to lawyers admitted in common law jurisdictions. 22 NYCRR §520.1(b)(1)(iii).
Summary of Recommendations

Law practice for in-house lawyers is increasingly national and global in scope. Recognizing this trend, forty-four states plus the District of Columbia have already adopted rules identical or similar to the ones we propose. As set forth in more detail below, the NYSBA, the City Bar, and NYCLA urge the Court to join these jurisdictions by adopting the proposed rules.

The new rules will reinforce New York's competitive advantage in attracting large companies, businesses, and non-profit and other entities that may now be reluctant to locate here because of possible unauthorized-practice-of-law ("UPL") consequences for their legal staff. The rules would also bring any currently unlicensed in-house counsel into compliance while, at the same time, enhance the New York Courts' and disciplinary agencies' power to regulate out-of-state lawyers who are already here (or in the future come here) but operate (or would operate) under the radar. We respectfully submit that employers who have an on-going employment relationship with their in-house lawyers are in a position to evaluate the competence and quality of their in-house lawyers and, under our proposed rules, registered in-house counsel would not be permitted to provide legal services to the general public. Moreover, most employers large enough to need in-house counsel are in any event sophisticated consumers of legal services.

Background

This Joint Report represents a united effort by three major bar associations to bring New York in line with the overwhelming majority of other jurisdictions that have adopted admission rules for in-house counsel. Each of our Associations has independently studied these issues, met or conferred separately with our relevant constituencies, and adopted this Joint Report. We believe that the New York Court of Appeals should act on this issue now. The process through which we have come to this joint effort is itself indicative that the time is ripe for this important change. A brief word about that process follows.

For several years, the Committee on Standards of Attorney Conduct of the NYSBA ("COSAC") has studied admission rules for in-house counsel. Spearheaded by the late Steven

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2 Anecdotal evidence suggests that some in-house lawyers already practice in New York without a New York license. The proposed rules would eliminate this anomaly and enable the Courts and the disciplinary systems to identify and regulate these in-house lawyers.
Krane, former NYSBA president and past chair of COSAC, the NYSBA House of Delegates recommended in 2003 and again in 2008 that New York adopt a disciplinary rule that would include a safe-harbor for practice by in-house counsel admitted elsewhere.3

The City Bar, too, has studied these issues for years. As noted, the City Bar supported a disciplinary rule like M.R. 5.5(d). 4 Most recently, in June 2010, the City Bar adopted the Report of its Committee on Professional Responsibility entitled Proposed Rule Authorizing the Practice of Law in New York by In-House Counsel Licensed in Other States. Appendix B contains a full copy of the Report, which makes a proposal that is consistent with this Joint Report.

NYCLA too has participated in the debate and review of an in-house counsel rule and other provisions related to multi-jurisdictional practice. In June 2010 the Executive Board of NYCLA voted to endorse the principles contained in our proposed new Part 522 of the Rules of the Court of Appeals. The NYCLA Board also voted specifically to endorse the proposal by the ABA Commission on Ethics 20/20 recommending that the ABA amend its model registration rule to include foreign lawyers practicing in-house in the United States, a recommendation that the rules we propose incorporates. 5

Discussion

A. The proposed rules will align New York with the overwhelming majority of U.S. jurisdictions, and enable the Courts to regulate lawyers who already practice here but escape review.

As noted, forty-four states plus the District of Columbia have already adopted rules permitting practice by out-of-state lawyers employed by an entity.6 Like the rules we propose,

3 Proposed NYRPC 5.5(d), as approved by the NYSBA House of Delegates in 2003 and 2008 provides: “A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in New York State that: (1) are provided to the lawyer’s employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission.” ABA M.R. 5.5(d) is identical to that proposed rule. The City Bar supported a similar change.

4 See Letter from E. Leo Milonas to A. Vincent Buzard, Secretary, New York State Bar Association, May 27, 2003.

5 See discussion infra at 4-6.

6 Based on telephone conversations on July 8, 2010, by Barbara S. Gillers with John A. Holtaway, Lead Senior Counsel, Client Protection and Policy Implementation, American Bar Association. See also
the rules of these other jurisdictions empower the adopting states to monitor, regulate, and discipline in-house counsel who are otherwise beyond their reach. We are aware of no adverse consequences following the adoption of these rules in those jurisdictions.

Seven of the forty-five jurisdictions that have adopted rules similar to the ones we propose also permit in-house practice by foreign lawyers. Only New York and five other states have not adopted either Model Rule 5.5(d)(1) or a registration rule for in-house counsel. As recently as December 2009, the NYSBA Ethics Committee called for action regarding in-house lawyers, noting the absence of any clear law in New York. See NY State Op. 835 entitled “Multijurisdictional Practice by Corporate Counsel.”

New York should be in the vanguard, not the backwater, of these trends. The rules adopted in the vast majority of U.S. jurisdictions reflect the reality of law practice in the 21st Century, particularly for cross-border and global entities and their lawyers, who move frequently between affiliates. New York's outlier status undermines the State's position as a business and non-profit capital of the world. The rules may inhibit entities and their lawyers from locating here because of the UPL implications. For those already here, the current regime invites disregard of our Rules of Professional Conduct. These lawyers are able to ignore the rules and escape discovery. They are not regulated because, until an incident arises, there is no way for the courts and disciplinary counsel to identify them. The proposed rule will make these lawyers


These states are: Arizona, Connecticut, Delaware, Georgia, Virginia, Washington, and Wisconsin. See http://www.abanet.org/cpr/mjp/8_and_9_status_chart.pdf. In addition, a Working Group of the ABA Commission on Ethics 20/20 has recommended that the ABA Model Rule for Registration of In-House Counsel be amended to include foreign lawyers. See Memo, June 1, 2010, from Jamie S. Gorelick and Michael Traynor, Co-Chairs, ABA Commission on Ethics 20/20, to “ABA Entities, Courts, Bar Associations (state, local and international) Law Schools, Individuals and Entities”, re “Memoranda and Templates for Comment -- Inbound Foreign Lawyer Issues.”

The other five states without any in-house counsel rule are: Hawaii, Mississippi, Montana, Texas, and West Virginia. Of these, Mississippi has Rule 5.5 under consideration. Texas has an express policy authorizing in-house counsel to perform many significant legal services without a local license. Based on telephone conversation on July 8, 2010 between Barbara S. Gillers and John A. Holtaway, see fn 6 supra. See also Chart re State Implementation of ABA MJP Policies at http://www.abanet.org/cpr/mjp/recommendations.pdf dated April 12, 2010 Texas Board of Law Examiners Policy Statement on Practice Requirements for Rule XIII at: http://www.btle.state.tx.us/atty_us/lawpolicy.
accountable, and empower our courts and disciplinary agencies to properly monitor, regulate, and sanction them.

B. The proposed rules reinforce good lawyering, will protect the public and the integrity of the court system, and will generate fees.

The proposed rules require in-house lawyers to register and, among other things, to meet the same CLE requirements as all other members of the New York bar. The rules would give the public the same information it now has about other members of the bar, who are also required to register. The rules will generate revenue by requiring in-house lawyers to pay the same fees that all other members of the New York bar must pay. The rules present little risk to clients because in-house lawyers would not be able to provide legal services to the general public, and employers, who are by and large sophisticated consumers of legal services, are able to assess the competence and quality of their in-house lawyers.

In particular, we submit that the fact that the proposed rules apply only to in-house counsel justifies relaxing the current requirements for admission on motion to eliminate the practice and common-law-jurisdiction requirements. Foreign companies who have in-house counsel and a significant presence in the United States frequently wish to have the advice of some of their home-country lawyers, including junior lawyers, to assist their U.S. operations. The companies who hire these lawyers or bring them to the United States are both fully aware of the background and training of their employees and fully capable of evaluating the company’s needs. They do not need the protection of the practice and training requirements of the ordinary admission-on-motion rules.

C. The Court of Appeals clearly has power to adopt the proposed rules.

The Court of Appeals has inherent, implicit and plenary power over the regulation of attorneys in New York. Judiciary Law § 53(2) in particular specifies that the Court of Appeals “may make such provisions as it shall deem proper for admission to practice as attorneys and

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9 The provisions of the rule are modeled on the ABA Model Rule for Registration of In-House Counsel, adopted by the ABA House of Delegates in August 2008. Appendix C contains a copy of the ABA Model Rule for Registration of In-House Counsel and the Report submitted to the ABA House of Delegates.

10 22 NYCRR § 520.10(a)(1) and (2).
counselors, of persons who have been admitted to practice in other states or countries.” See N.Y. JUD. LAW § 53(2) (2010) (emphasis added).

Judiciary Law § 90 specifically addresses the power of the Court of Appeals to admit out-of-state lawyers and foreign lawyers without taking the regular bar examination. Section 90 (b) says, “[U]pon the application, pursuant to the rules of the court of appeals, of any person who has been admitted to practice law in another state or territory or the District of Columbia . . . or in a foreign country, to be admitted to practice as an attorney and counselor-at-law in the courts of this state without taking the regular bar examination, the appellate division . . . shall admit him . . . .” See N.Y. JUD. LAW § 90(b) (2010) (emphasis added).\(^\text{11}\) Section 90 also requires that at least one other jurisdiction in which the applying lawyer is admitted “would similarly admit an attorney or counselor-at-law admitted to practice in New York state to its bar without examination.” See N.Y. JUD. LAW § 90(b) (2010). Our proposed rule contains such a reciprocity requirement, which would extend to those jurisdictions that would permit a New York lawyer to practice as an in-house lawyer either under a registration procedure or a general law or rule or policy permitting lawyers admitted elsewhere to practice in the jurisdiction. See Proposed Rule § 522.1(b).

Exercising these powers, the Court of Appeals has already adopted rules for admitting out-of-state lawyers and common-law-admitted foreign lawyers to practice in New York as part of the Court’s rules governing admission of attorneys generally. The rules appear at 22 NYCRR Part 520, and are entitled “Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law” (hereinafter referred to as the “General Admission Rules”).

The General Admission Rules specifically provide for the admission of out-of-state and foreign lawyers without passing the bar exam, at § 520.10. In particular, these rules require proof of admission in a U.S. or common-law jurisdiction (§ 520.10(a)(1)(i)), reciprocity (§ 520.10(a)

\(^{11}\) Section 90(b) reads: “Upon the application, pursuant to the rules of the court of appeals, of any person who has been admitted to practice law in another state or territory or the District of Columbia of the United States or in a foreign country, to be admitted to practice as an attorney and counselor-at-law in the courts of this state without taking the regular bar examination, the appellate division of the supreme court, if it shall be satisfied that such person is currently admitted to the bar in such other jurisdiction or jurisdictions . . . , possesses the character and general fitness requisite for an attorney and counselor at law and has satisfied the requirements of section 3-503 of the general obligations law, shall admit him to practice . . . .” (emphasis added).
(1)(iii)), and practice for at least five of the preceding seven years (§ 520.10(a)(2)(i)). These rules also give the Appellate Divisions discretion to impose character and fitness requirements (§ 520.10(d)). Part 520 states further that the Court of Appeals may “vary the application of or waive any provision of [these] rules” (§ 520.14).

Lawyers admitted under current Part 520 are, and lawyers who would be admitted under new Part 522 would be, admitted lawyers in New York and thus come under all provisions of the Judiciary Law, including § 468-a, except, of course, they could only practice while employed in-house.

Judiciary Law §468-a requires “[e]very attorney and counselor-at-law admitted to practice [in New York to] file a biennial registration statement with the administrative office of the courts . . . .” See N.Y. JUD. LAW § 468-a (1) (2010) (emphasis added). Admitted and registered attorneys are also required to pay a biennial registration fee of $350. See N.Y. JUD. LAW § 468-a (4)(2010). The statute says further that “[s]uch fee shall be required of every attorney who is admitted and licensed to practice law in this state whether or not the attorney is engaged in the practice of law in this state or elsewhere.” See N.Y. JUD. LAW § 468-a (4)(2010) (emphasis added). Thus, once a lawyer is admitted to practice here under the Court of Appeals rules, he or she is required by act of the legislature to pay the annual registration fee. The registration rules for in-house lawyers that we propose build on these rules. They would become 22 NYCRR Part 522, would bring registered in-house lawyers under the Judiciary Law,

12 Under § 522.9 of the proposed rule, if an in-house counsel later applied to be admitted upon motion in order to engage in private practice, practice as in-house counsel under the proposed rule would be deemed practice in a qualifying jurisdiction for purposes of the five-of-the-last-seven-year requirement, as long as the applicant was admitted in a “reciprocal” jurisdiction.

13 The Court of Appeals has also adopted rules for licensing foreign legal consultants, which appear at 22 NYCRR Part 521. These rules set forth standards for admission as a foreign legal consultant, which include good standing in qualified foreign bars, practice for at least three of the preceding five years, and “good moral character and general fitness.” See § 521.1(a)(1) – (5) (2010).

14 The registration rules for in-house counsel adopted by other jurisdictions also require payment of attorney registration fees. Some also require payment of other fees, e.g., application fees. See ABA Center for Professional Responsibility Policy Implementation Committee Chart on In-House Corporate Counsel Rules, as of April 12, 2010 at http://www.abanet.org/cpr/mjp/in-house_rules.pdf (e.g., Alabama: $725 application fee; annual fee of $350; California: $550 to apply, $363 for moral character check, $390 annual State Bar Fee; Connecticut: $1,000 filing fee and payment of annual registration fee and annual payment to client security fund; Florida: $1,300 application fee and annual dues of $265; Oregon: $750 application fee and annual dues of $416).
including § 468-a, and would require them to pay the same fees that apply to all lawyers admitted on motion, including application fees (see, e.g., § 520.10(c)).

Conclusion

Accordingly, the New York State Bar Association, the Association of the Bar of the City of New York, and the New York County Lawyers' Association urge the Court of Appeals to adopt proposed new Part 522, which sets forth admission rules for in-house counsel.

Dated: October 22, 2010

Respectfully submitted,

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Appendix A: [Proposed] Part 522. Rules of the Court of Appeals
for the Licensing of In-House Counsel

§ 522.1 General regulation as to licensing

(a) A lawyer admitted to the practice of law in another jurisdiction who has a continuous presence in New York and is employed as a lawyer by a single organization, the business of which is lawful and consists of activities other than the practice of law or the provision of legal services, shall register as in-house counsel within 180 days of the commencement of employment as a lawyer in the state or if currently so employed then within 180 days of the effective date of this rule, by submitting to the New York State Office of Attorney Registration the following:

(1) A completed application in the form prescribed by the Office of Attorney Registration setting forth information showing that the lawyer has met the requirements of this Part and possesses the good moral character and general fitness requisite for a member of the New York bar. The character and fitness requirement may be met by an affidavit from an officer, director, or general counsel of the employing entity attesting to the applicant’s good moral character and general fitness to practice law in New York;

(2) A registration fee in the same amount and according to the same schedule as required by other members of the New York bar;

(3) Documents proving admission to practice law and current good standing in all jurisdictions in which the lawyer is admitted to practice law; and

(4) An affidavit from an officer, director, or general counsel of the employing entity attesting to the lawyer’s employment by the entity and the capacity in which the lawyer is so employed, and stating that the employment conforms to the requirements of this rule.

(b) Registration and law practice under this Part is only permitted if one other jurisdiction where the lawyer is admitted would similarly permit an attorney or counselor-at-law admitted to practice in New York State without examination to engage in practice as described in § 522.1(a). This requirement of reciprocity is satisfied when the other jurisdiction would permit a New York lawyer to practice as an in-house lawyer under any registration procedure or general law or rule or policy permitting lawyers admitted elsewhere to practice as an in-house lawyer in the jurisdiction.

(c) A lawyer seeking to register under this Part may practice in-house during the 180-day period identified in (a) above and, if all materials identified in (a)(1)-(4) are timely submitted, until the lawyer’s registration becomes effective. Any lawyer whose registration is denied must cease practicing law in New York.
§ 522.2 Scope of practice

A lawyer registered to practice as an in-house lawyer under this Part shall have the rights and privileges otherwise applicable to members of the New York bar with the following restrictions:

(a) The registered lawyer is authorized to provide legal services to the single entity client or its organizational affiliates, including entities that control, are controlled by, or are under common control with the employer, and for employees, officers and directors of such entities, but only on matters directly related to their work for the entity and to the extent consistent with the New York Rules of Professional Conduct; and

(b) The registered lawyer shall not:

(i) Except as otherwise permitted by the rules and law of New York, appear before a court or any other tribunal as defined in Rule 1.0(m) of the New York Rules of Professional Conduct, or

(ii) Offer or provide legal services or advice to any person other than as described in this Part, or hold himself or herself out as being authorized to practice law in New York other than as described in this Part.

§ 522.3 Pro bono practice

Notwithstanding the provisions of § 522.2 above, a lawyer registered under this Part and admitted in any U.S. jurisdiction is authorized to provide pro bono legal services through an established not-for-profit bar association, pro bono or legal services program, or through such other organization(s) as are specifically authorized to provide pro bono representation in New York.

§ 522.4 Rights and obligations

In addition to the obligations set forth in § 522.1 and elsewhere in this Part, a lawyer registered under this Part shall:

(a) Fulfill the continuing legal education requirements that are required of active members of the New York bar;

(b) Report to the Office of Attorney Registration the occurrence of any of the following events within 30 days of such occurrence:

(i) Termination of the lawyer’s employment as described in § 522.1(a)(4);

(ii) Whether or not public, any change in the lawyer’s license status in another jurisdiction, including by the lawyer’s resignation;

(iii) Whether or not public, any disciplinary charge, finding, or sanction concerning the lawyer by any disciplinary authority, court, or other tribunal in any jurisdiction.
§ 522.5 Disciplinary provisions

A registered lawyer under this Part shall be subject to the New York Rules of Professional Conduct and all other laws and rules governing lawyers admitted to the active practice of law in New York. The Disciplinary Committees, Grievance Committees, Committees on Professional Standards, and any other relevant bodies of the Appellate Division where the in-house lawyer practices, resides, commits acts in, or has offices in, as described in Parts 603.1, 691.1, 806.1, and 1022.19 shall retain jurisdiction over the registered lawyer with respect to the conduct of the lawyer in this or another jurisdiction to the same extent as they have jurisdiction over lawyers generally admitted in New York.

§ 522.6 Automatic termination

A registered lawyer's rights and privileges under this section automatically terminate when:

(a) The lawyer's employment as described in § 522.1(a)(4) terminates;
(b) The lawyer is suspended or disbarred from practice in any jurisdiction or any court or agency before which the lawyer is admitted; or
(c) The lawyer fails to maintain (current admission) (active status) in at least one jurisdiction.

§ 522.7 Reinstatement

A registered lawyer whose registration is terminated under § 522.6 of the Part may be reinstated within three months of termination upon submission to the Office of Attorney Registration of the following:

(a) An application for reinstatement in a form prescribed by the Office of Attorney Registration;
(b) A reinstatement fee in the amount of $_________; and,
(c) An affidavit from the current employing entity as prescribed in § 522.1(a)(4) of this Part.

§ 522.8 Sanctions

A lawyer who practices as described in § 522.1(a) without registering as required by this Part shall be:

(a) Subject to professional discipline in this jurisdiction in the same manner and to the same extent as members of the bar of New York;
(b) Ineligible for admission on application or on motion in this jurisdiction for a period of two years unless good cause is shown for the failure to register;
(c) Referred by the Office of Attorney Registration to the Appellate Division; and

(d) Referred by the Office of Attorney Registration to the disciplinary authority of the jurisdictions of licensure.

§ 522.9 Subsequent admission on motion

Where a person admitted under this Part subsequently seeks to obtain admission without examination under § 520.10, practice under this Part shall be deemed to be practice in a jurisdiction meeting the requirements of § 520.10(a)(2)(i) if the person is admitted in a jurisdiction that meets the requirements of § 520.10(a)(1)(iii).
Appendix B: Report of the Association of the Bar of the City of New York Committee on Professional Responsibility

ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK COMMITTEE ON PROFESSIONAL RESPONSIBILITY PROPOSED RULE AUTHORIZING THE PRACTICE OF LAW IN NEW YORK BY IN-HOUSE COUNSEL LICENSED IN OTHER STATES

June 2010

Summary of Issue

The Committee recommends that the Court of Appeals adopt a rule of practice that would allow attorneys licensed to practice law in other states, and who are employed by a client-employer in New York ("In-house Counsel"), to practice law in this State without being admitted to the Bar of the State of New York. Forty three other states and the District of Columbia have already adopted rules of professional conduct that are the substantial equivalent of ABA Model Rule 5.5(d)(1), or taken some other comparable step.

Substantial changes to the rules relating to multijurisdictional practice, including rules which would impact the responsibilities of In-house Counsel, have been proposed in New York and twice been refused. However, the proposals that were previously rejected would have made a number of different and material changes to the rules relating to multi-jurisdictional practice in New York. The proposal suggested herein, by contrast, is far narrower, limiting authorization to practice in New York solely to In-house counsel. In the view of this Committee, such a narrow proposal would be more well received -- not as an addition to the Rules of Professional Conduct (the "RPC"), but rather as a Rule to be adopted by the Court of Appeals, to be placed within its current Rules in Part 520 ("Rules for the Admission of Attorneys and Counselors at Law") as a new Rule 520.16, as follows:

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15 ABA Model Rule 5.5(d)(1) provides:
(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:
   (1) are provided to the lawyer’s employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission. . . .
[Proposed] Section 520.16 Legal Services for Employer

(a) A person admitted to practice law in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that are provided to such person's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission. Such persons shall be entitled to the rights and subject to the obligations set forth in the Rules of Professional Conduct and those arising from other conditions and requirements that apply to a member of the bar of this State under the rules of court governing members of the bar.

(b) A person providing legal services under this Rule shall be subject to professional discipline in the same manner and to the same extent as members of the bar of this State.

Discussion

As of October 2009, 43 states plus the District of Columbia have enacted either ABA Model Rule 5.5(d)(1) or some other rule allowing In-house counsel to practice without passing the local bar exam and going through the normal admission process. See http://www.abanet.org/cpr/mjp/in-house_rules.pdf. The reasons for adopting such a rule are several:

• In-house counsel are often relocated from one State to another, and the inability to practice in New York without substantial delay, effort and expense will adversely affect not only such In-house counsel but also their employer;

• The absence of such a rule puts New York at a competitive economic disadvantage vis a vis other states;

• Allowing the free-flow of talented lawyers into New York will enhance New York as a place for large businesses to locate their headquarters and other major offices;

• Under the proposed rule, although In-house counsel would be admitted to practice in another State, they would “be subject to professional discipline in the same manner and to the same extent as members of the bar of this State,” and so would be subject to New York’s disciplinary rules and authority;
Any employer large enough to need to hire In-house counsel would be sophisticated enough to evaluate what such counsel is (and isn't) competent to do in the context of the employer's needs; and

The proposed rule bars the In-house counsel from providing services to anyone other than the employer, so there is little risk that unsophisticated clients will be harmed by the Rule.

Moreover, anecdotal evidence suggests that numerous In-house counsel are already working in New York, without being admitted to the New York Bar, arguably in contravention of RPC 5.5(a) ("A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction") and applicable Rules of the Court of Appeals. It is likely that such lawyers, and perhaps their employers, simply have failed to give consideration to the applicable rules or have assumed that they are in compliance because the practice of out-of-state lawyers working as In-house counsel in New York is commonplace. In our view, the status quo promotes disrespect for the law.

We are aware of one principal objection that is sometimes made against adopting a rule such as that proposed here. That is, it is argued that such a rule will undesirably increase competition for jobs in New York, to the disadvantage of those lawyers already admitted here. There is no question that there is some truth to this assertion. However, the Committee believes that this concern is far out-weighed by the benefits to New York of: (i) allowing the highest quality lawyers to work here as In-house counsel, (ii) making it easier for large businesses to do business in New York; and (iii) eliminating the problem that many In-house counsel face, in which they must choose between leaving (or not coming to) New York, or practicing here under a cloud of ethical ambiguity.

Conclusion

In sum, for the reasons stated, we propose that the New York Court of Appeals adopt (new) Rule 520.16, as set forth above, authorizing the practice of law in New York by In-house counsel who are otherwise licensed to practice in a state outside of New York.
REQUEST FOR COMMENT
TEMPORARY PRACTICE
MEMORANDUM

To: Members of the Public
From: John W. McConnell
Re: Amendment to Proposed Temporary Practice Rule for Public Comment
Date: September 21, 2015

It has been brought to our attention that an amendment to section 523.2(a) of the proposed Rule regarding temporary practice is required to clarify the rule's intent. The draft rule initially proposed for public comment stated, in pertinent part:

§ 523.2 Scope of temporary practice - general.

A lawyer admitted and authorized to practice law in another jurisdiction within or outside the United States, who is not disbarred or suspended from practice in any jurisdiction, may provide on a temporary basis in this state legal services that the lawyer could provide in such jurisdiction (and that may generally be provided by a lawyer admitted to practice within this state) and:

(a) are undertaken in association with a lawyer who is admitted to practice in this state and who actively participates in, and assumes joint responsibility for, the matter;

(b) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer or a person the lawyer is assisting is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized; or ...
The amended proposed rule inserts an “or” at the end of section 523.2(a), as follows (emphasis added):

§ 523.2 Scope of temporary practice - general.

A lawyer admitted and authorized to practice law in another jurisdiction within or outside the United States, who is not disbarred or suspended from practice in any jurisdiction, may provide on a temporary basis in this state legal services that the lawyer could provide in such jurisdiction (and that may generally be provided by a lawyer admitted to practice within this state) and:

(a) are undertaken in association with a lawyer who is admitted to practice in this state and who actively participates in, and assumes joint responsibility for, the matter; or

(b) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer or a person the lawyer is assisting is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized; or ...

This amendment is intended to clarify that subsections (a) through (d) of section 523.2 set forth separate and disjunctive conditions under which temporary practice may occur. That is, under the rule, attorneys from other jurisdictions may provide (1) services in association with an actively participating New York lawyer who assume joint responsibility, or (2) services that “are in or reasonably related to a pending or potential proceeding ...”; or (3) services that “are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding...”, or (4) services that are not within subsections (b) and (c) and arise out of, or are reasonably related to, the attorney’s practice in a jurisdiction where she or he is admitted.
§ 523.1 General regulation as to lawyers admitted in another jurisdiction
§ 523.2 Scope of practice – general
§ 523.3 Disciplinary authority

§ 523.1 General regulation as to lawyers admitted in another jurisdiction.

A lawyer who is not admitted to practice in this state shall not:

(a) except as authorized by these rules or other law, establish an office or other systematic and continuous presence in this state for the practice of law; or

(b) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this state.

§ 523.2 Scope of temporary practice - general.

A lawyer admitted and authorized to practice law in another jurisdiction within or outside the United States, who is not disbarred or suspended from practice in any jurisdiction, may provide on a temporary basis in this state legal services that the lawyer could provide in such jurisdiction (and that may generally be provided by a lawyer admitted to practice within this state) and:

(a) are undertaken in association with a lawyer who is admitted to practice in this state and who actively participates in, and assumes joint responsibility for, the matter; or

(b) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer or a person the lawyer is assisting is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized; or

(c) are in or reasonably related to a pending or potential arbitration, mediation or other alternative dispute resolution proceeding held or to be held in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(d) are not within paragraph (b) or (c) of this Rule and arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice.
§ 523.3 Disciplinary authority.

A lawyer who practices law in this state pursuant to this Rule is subject to the New York Rules of Professional Conduct and to the disciplinary authority of this state in connection with practice under this Rule to the same extent as if the lawyer were admitted or authorized to practice in the state.
REQUESTED ACTION: Approval of the report and recommendations of the Committee on the New York State Constitution.

In July 2015, NYSBA President David P. Miranda appointed the Committee on the New York State Constitution to serve as a resource on issues or matters relating to the State Constitution; to make recommendations regarding possible constitutional amendments; to provide advice regarding the upcoming 2017 referendum on whether to convene a constitutional convention; and to promote initiatives to educate the legal community and the public about the State Constitution. In this report, the committee has reviewed preparatory commissions established in connection with previous constitutional referenda/conventions.

As a result of its review, the committee is making the following recommendations:

- The state should establish a non-partisan preparatory Constitutional Convention as soon as possible.

- The commission should be tasked with (a) educating the public about the State Constitution and the constitutional change process; (b) making a comprehensive study of the Constitution and compiling recommended proposals for change and simplification; (c) researching the conduct of, and procedures used at, past Constitutional Conventions; and (d) undertaking and directing the preparation and publication of impartial background papers, studies, reports, and other materials for the delegates and public prior to and during the Convention if one is held.

- The preparatory commission should have an expert, non-partisan staff.

- The preparatory commission and its staff should be supported by adequate appropriations from the State government.

The report will be presented by Henry M. Greenberg, chair of the Committee on the New York State Constitution.
The opinions expressed are those of the committee preparing this report and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates or Executive Committee.
Membership of the New York State Bar Association’s Committee on the New York State Constitution

CHAIR:
Henry M. Greenberg, Esq.

MEMBERS:
Mark H. Alcott, Esq.
Hon. Cheryl E. Chambers
Hon. Carmen Beauchamp Ciparick
Linda Jane Clark, Esq.
David L. Cohen, Esq.
John R. Dunne, Esq.
Margaret J. Finerty, Esq.
Mark F. Glaser, Esq.
Hon. Victoria A. Graffeo
Peter J. Kiernan, Esq.
Eric Lane, Esq.
A. Thomas Levin, Esq.
Justine M. Luongo, Esq.
John M. Nonna, Esq.
Joseph B. Porter, Esq.
Andrea Carapella Rendo, Esq.
Sandra Rivera, Esq.
Nicholas Adams Robinson, Esq.
Alan Rothstein, Esq.
Hon. Alan D. Scheinkman
Hon. John W. Sweeny, Jr.
Claiborne E. Walthall, Esq.
G. Robert Witmer, Jr., Esq.
Stephen P. Younger, Esq.
Jeremy A. Benjamin, Esq., Liaison to Civil Rights Committee
Hermes Fernandez, Esq., Executive Committee Liaison
Betty Lugo, Esq., Liaison to Trial Lawyers Section
Alan Rothstein, Esq., Liaison to New York City Bar Association
Richard Rifkin, NYSBA Staff Liaison
Ronald F. Kennedy, NYSBA Staff Liaison
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction and Executive Summary</td>
<td>1</td>
</tr>
<tr>
<td>I. Background of the Report</td>
<td>4</td>
</tr>
<tr>
<td>II. Historical Overview of Preparatory Commissions and Conventions</td>
<td>5</td>
</tr>
<tr>
<td>A. Constitutional Convention Commission (1914-1915)</td>
<td>5</td>
</tr>
<tr>
<td>B. Constitutional Convention Committee (1937-1938)</td>
<td>8</td>
</tr>
<tr>
<td>C. Temporary Commission on the Constitutional Convention (1956-1958)</td>
<td>10</td>
</tr>
<tr>
<td>E. 1977 Referendum on a Constitutional Convention</td>
<td>15</td>
</tr>
<tr>
<td>F. Temporary Commission on Constitutional Revision (1993-1995)</td>
<td>16</td>
</tr>
<tr>
<td>III. Recommendations</td>
<td>18</td>
</tr>
<tr>
<td>IV. Conclusion</td>
<td>23</td>
</tr>
</tbody>
</table>
INTRODUCTION AND EXECUTIVE SUMMARY

The New York State Constitution mandates that every 20 years New Yorkers are asked the following question: “Shall there be a convention to revise the constitution and amend the same?” The next such mandatory referendum will be held on November 7, 2017. What follows is a report and recommendations of the New York State Bar Association’s (“State Bar”) Committee on the New York State Constitution (“the Committee”) concerning the establishment of a non-partisan preparatory commission in advance of the upcoming vote on a Constitutional Convention.

The State Constitution is the governing charter for the State of New York. More than six times longer than the U.S. Constitution, the State Constitution establishes the structure of State government and enumerates fundamental rights and liberties. It governs our courts, schools, local government structure, State finance, and development in the Adirondacks — to name only a few of the countless ways it affects the lives of New Yorkers.

The State Legislature can propose amendments to the State Constitution, subject to voter approval. However, the framers of the Constitution wanted to make sure that there was an even more direct way for the citizenry to review fundamental principles of governance. That is why at least once every 20 years New Yorkers get to decide for themselves whether to hold a Constitutional Convention.

1 N.Y. CONST. art. XIX, § 2 (“At the general election to be held in the year nineteen hundred fifty-seven, and every twentieth year thereafter, and also at such times as the legislature may by law provide, the question “Shall there be a convention to revise the constitution and amend the same?” shall be submitted to and decided by the electors of the state; and in case a majority of the electors voting thereon shall decide in favor of a convention for such purpose, the electors of every senate district of the state, as then organized, shall elect three delegates at the next ensuing general election, and the electors of the state voting at the same election shall elect fifteen delegates-at-large. The delegates so elected shall convene at the capitol on the first Tuesday of April next ensuing after their election, and shall continue their session until the business of such convention shall have been completed. . . .”).
The Convention vote in 2017 presents the electorate with a constitutional choice of profound importance. Absent a legislative initiative, we will not have this opportunity for another twenty years. So, the State should properly prepare for this referendum, regardless of the outcome.

In the Twentieth Century, every Constitutional Convention in New York was (and two mandatory Convention votes were) preceded by a preparatory commission created and supported by the State government. Conventional wisdom was that if a referendum vote approved a Constitutional Convention, expert, non-partisan preparations were required well in advance of the Convention delegates’ assembly. Indeed, most delegates to a Convention had insufficient time or resources to plan or carry out factual investigations or legal research on their own initiative. To a significant degree, the delegates had to rely on research and materials developed by others.

Thus, since 1914, the State has vested in temporary constitutional commissions the important — indeed indispensable — responsibility of doing the research, data-collection and other preparations necessary to conduct a Constitutional Convention. “Some [commissions] were appointed by the governor; others were established by the legislature. Some were created in anticipation of a vote on the mandatory Convention question; 

2 See, e.g., Robert Moses, Another New York State Constitutional Convention, 31 St. John’s L. Rev. 201, 207 (1957) (“Today here in New York much depends on the preliminary work of the Constitutional Convention Commission if there is to be a Constitutional Convention at all. The importance of a genuinely expert, non-partisan approach cannot be overstated.”).

3 See Samuel McCune Lindsay, Constitution Making in New York, The Survey, July 31, 1915, at 391, 392 (“What a convention can attempt in the study of new problems depends largely upon the preparation made in advance of the assembly of the convention. There is not time for the committees to plan or carry out investigations of their own initiative, and in a constitutional convention there is not the accumulated experience and tradition of special subjects that are often carried over from session to session in a legislative committee through the hold-over members who serve several terms. The constitutional convention can do little more than study the materials put in their hands by interested parties.”).
others resulted from the need to prepare quickly after the question passed.”

And some produced bodies of research and work product useful not only to Convention delegates, but also policymakers, courts and scholars decades after.

The State’s extensive history with preparatory commissions makes clear that the formation of such an entity — with adequate funding, top-notch staff, and support from all branches of government — is necessary to properly plan and prepare for the mandatory Convention vote and a Convention, if the voters approve the call for one. Accordingly, this Committee recommends as follows:

First, the State should establish a non-partisan preparatory commission as soon as possible.

Second, the commission should be tasked with, among other duties: (a) educating the public about the State Constitution and the constitutional change process; (b) making a comprehensive study of the Constitution and compiling recommended proposals for change and simplification; (c) researching the conduct of, and procedures used at, past Constitutional Conventions; and (d) undertaking and directing the preparation and publication of impartial background papers, studies, reports and other materials for the delegates and public prior to and during the Convention, if one is held.

Third, the commission should have an expert, non-partisan staff.

Fourth, the commission and its staff should be supported by adequate appropriations from the State government.

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5 Id.
This report is divided into four sections. Part I summarizes the background of the Committee on the New York State Constitution and the issuance of this report. Part II provides a historical overview of past preparatory commissions for Constitutional Conventions. Part III presents the Committee’s recommendations and discusses various lessons from past preparatory commissions and Conventions. Part IV concludes that the importance of the mandatory referendum in 2017 and a potential Convention obliges the State to appropriately plan and prepare, and recommends that the establishment of a preparatory commission is the best way to do so.

I. BACKGROUND OF THE REPORT

On July 24, 2015, State Bar President David P. Miranda announced the creation of The Committee on the New York State Constitution. The Committee’s function is to serve as a resource for the State Bar on issues and matters relating to or affecting the State Constitution; make recommendations regarding potential constitutional amendments; provide advice and counsel regarding the mandatory referendum in 2017 on whether to convene a State Constitutional Convention; and promote initiatives designed to educate the legal community and public about the State Constitution.

At the Committee’s first meeting on August 27, 2015, President Miranda requested that the members study and make recommendations on whether the State should establish a preparatory commission to plan and prepare for a Constitutional Convention. The Committee then heard from Professor Gerald Benjamin, Associate Vice President for Regional Engagement and Director of the Benjamin Center for Public Policy Initiatives at SUNY New Paltz, a nationally respected political scientist and commentator on state and local government. Professor Benjamin presented an overview of issues relating to the 2017 mandatory referendum and the conduct of a Constitutional Convention, and spoke about his service as Research Director of the Temporary Commission on Constitutional Revision from 1993 to 1995. Next, the Committee reviewed and discussed a research memorandum that surveyed the history of past preparatory commissions for
Constitutional Conventions, described the work product created by them, and identified key issues that must be considered in creating such a commission today.

After further discussion and review, the Committee concluded that the State government should establish, in advance of the mandatory Convention referendum in 2017, a non-partisan preparatory commission, as it has done in the past. This position is set forth and elaborated on in this report, which was unanimously approved by the Committee at a meeting held on September 30, 2015.

II. HISTORICAL OVERVIEW OF PREPARATORY COMMISSIONS AND CONVENTIONS

In the Twentieth Century, the question of whether to hold a Constitutional Convention was placed before the voters on six occasions (1914, 1936, 1957, 1964, 1977 and 1997) and was answered in the affirmative three times, resulting in Constitutional Conventions held in 1915, 1938 and 1967. Preparatory commissions were established by the State in advance of these Conventions as well as the mandatory Convention votes in 1957 and 1997. Each of these commissions is discussed in turn, highlighting the circumstances leading to their establishment, composition, work product, staff support and funding.

A. Constitutional Convention Commission (1914-1915)

On April 7, 1914, the voters approved the call for a Constitutional Convention by a slim majority (153,322 to 151,969). Shortly thereafter, the Governor signed into law a bill establishing the “New York State Constitutional Convention Commission” with full power and authority to “collect, compile and print such information and data as it may deem useful for the delegates to the constitutional convention . . . in their deliberations at

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such convention.” The Commission was specifically tasked to supply research materials to the Convention delegates before the Convention was to convene in April 1915.

The Commission consisted of the Majority Leader of the Senate, the Speaker of the Assembly, and three citizens of the State appointed by the Governor. The Commission’s enabling legislation provided for no compensation to the members, but provided expenses, and also provided for the employment of paid “clerical, expert and other assistance.” For this purpose, the Legislature initially appropriated $5,000.

The Commission’s Chair was Morgan J. O’Brien, a former Justice of the State Supreme Court. The Commission selected its staff and fixed their compensation. The State agency responsible for providing assistance to the Commission, the Department of Efficiency and Economy, relied heavily on a newly formed private organization dedicated to producing research of government organizations, the New York Bureau of Municipal Research. The Bureau assigned 20 people to this project, including Charles A. Beard,


8 Id.


10 L. 1914, ch. 261, § 1.

11 Id. § 2.

12 Id. § 1.

13 Galie, Ordered Liberty, supra note 6, at 193.
later to become one of the most influential historians and political scientists in American history.\textsuperscript{14}

The Commission produced a 768-page report for the 1915 Convention delegates that contained a comprehensive and detailed description of the organization and functions of the State government.\textsuperscript{15} The Commission also produced a 246-page appraisal of the State Constitution and government.\textsuperscript{16} The comprehensiveness and quality of these materials established New York as the first state in the nation to lay a solid research foundation for a Constitutional Convention.\textsuperscript{17} In fact, “[t]he report of the commission was the first comprehensive description of a state government ever prepared.”\textsuperscript{18} These materials ensured that the delegates to the Convention arrived well-prepared\textsuperscript{19} and established a precedent of detailed preparation for two future mandatory Convention referenda (1957 and 1997) and Constitutional Conventions (1938 and 1967).\textsuperscript{20}

\textsuperscript{14} Id.; Schick, Constitutional Convention of 1915, supra note 7, at 43-44.

\textsuperscript{15} New York State Department of Efficiency and Economy, Government of the State of New York: A Survey of Its Organization and Functions (1915).


\textsuperscript{17} Galie, Ordered Liberty, supra note 6, at 193. See also Schick, Constitutional Convention of 1915, supra note 7, at 43.


\textsuperscript{19} Id. at 1299. The 1915 Constitutional Convention convened on April 4, 1915 and adjourned on September 4, 1915.

\textsuperscript{20} Id. at 1300.
B. Constitutional Convention Committee (1937-1938)

On November 3, 1936, the voters approved the call for a Constitutional Convention by a vote of 1,413,604 to 1,190,275. In response, Governor Herbert H. Lehman recommended in his annual message to the Legislature that past practice be followed by establishing a non-partisan committee to assemble and collate data for the use of the Convention. “It seems to be extremely short-sighted,” he observed, “for us to do nothing until the day the convention assembles.” The two Houses of the Legislature, however, did not adopt the Governor’s recommendation.

In the face of the Legislature’s inaction, on July 7, 1937, Governor Lehman announced the appointment of the “New York State Constitutional Committee.” Consisting of 42 members, the Committee was “non-partisan and non-political in character and in motive,” and responsible for undertaking and directing “the preparation and publication of accurate, thorough, and above all, impartial studies on the important phases of government, certain to be considered at the Constitutional Convention.” Governor Lehman made clear that the Committee’s purpose was not “to

21 Id. at 1304.


23 O’ROURKE & CAMPBELL, CONSTITUTION-MAKING, supra note 22, at 67 (“[Governor Lehman’s] . . . recommendation . . . was unable to scale the heights of partisanship. A bill was passed by the Senate, but the legislature adjourned without authorizing such a fact-finding committee, despite Governor Lehman’s assurance that the committee would be restricted to fact-finding, with no power over the order or the character of business to be handled by the convention.”).

24 1937 PUBLIC PAPERS OF GOVERNOR LEHMAN 664 [hereinafter LEHMAN PAPERS].

25 Id.
determine an agenda for the Convention . . . Its functions will be confined to fact-finding studies and to the collection of data.”

Although all of the Committee’s members were appointed by the Governor, the Legislature appropriated money in support of its work.

The Committee’s Chair was then-State Supreme Court Justice (later Lieutenant Governor and Governor) Charles Poletti. He and the other Committee members were supported by a substantial staff of at least 16 people. In addition, at Governor Lehman’s direction, 15 people were assigned from the State Law Revision Commission to work with the Committee. More than 100 others, including leading academics, government officials, and private citizens, also provided assistance, advice and counsel.

The Committee produced 12 reports: five reference volumes, along with volumes devoted to problems related to the bill of rights, taxation and finance, and issues of home rule and local government. As constitutional historian Peter J. Galie has observed, “despite the haste in gathering this material, the Poletti Committee, as it became known, produced one of the most comprehensive and reliable source[s] of information on the New York Constitution.”

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26 Id.


28 Information regarding the Poletti Committee’s staff and other support was gleaned from introductory notes at the front of each of the 12 reports produced by the Committee. The reports are accessible online from the New York State Library: [http://128.121.13.244/awweb/main.jsp?flag=collection&smd=1&cl=library1_lib&field11=1301505&tm=1442777021299&itype=advs&menu=on](http://128.121.13.244/awweb/main.jsp?flag=collection&smd=1&cl=library1_lib&field11=1301505&tm=1442777021299&itype=advs&menu=on) (last visited on Sept 20, 2015).

C. Temporary Commission on the Constitutional Convention (1956-1958)

In 1956, more than a year before the mandatory referendum on a Constitutional Convention, the Legislature established the “New York State Temporary Constitution Convention Commission.” The Commission was given three responsibilities: (1) to study proposals for change and simplification of the Constitution; (2) to collect and present information and data useful for the delegates and electorate prior to and during the convention; and (3) to issue reports to the Governor and the Legislature. The interim reports were due not later than March 1, 1957, and from time to time thereafter until March 1, 1959, provided, however, that if the voters decided against the Convention the Commission would terminate on February 1, 1958.

The Commission was composed of 15 members, five named by the Governor, five by the Majority Leader of the Senate, and five by the Speaker
of the Assembly. When a dispute developed between Republican leaders and Governor W. Averell Harriman over who would serve as the Commission’s chair, Harriman appointed Nelson A. Rockefeller (who later became Governor).

The Commission had an outstanding staff, with nearly 70 expert consultants to conduct policy reviews. On September 26, 1956, the Commission held its first organizational meeting, and issued its First Interim Report on February 19, 1957. The report provided a brief outline of the State’s constitutional history, a description of methods of amending the Constitution, and staff studies that updated the compilation of state constitutions that had served the 1938 Convention and presented an outline of proposed background studies in local government. The Commission indicated that it would look for opportunities to simplify the existing Constitution in non-controversial ways.

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32 L. 1956, ch. 814, § 2.

33 GALIE, ORDERED LIBERTY, supra note 6, at 262. See RICHARD NORTON SMITH, ON HIS OWN TERMS: A LIFE OF NELSON ROCKEFELLER 267-269 (2014) [hereinafter ROCKEFELLER].

34 Smith, ROCKEFELLER, supra note 33, at 270. The Commission’s Executive Director was Dr. William J. Ronan, the 44-year old Dean of the New York University Graduate School of Public Administration and Social Science. The Counsel to the commission was George L. Hinman, a highly respected 51-year-old lawyer from Binghamton. Id. at 270-271.


37 Id.
In June 1957, the Commission held public hearings in Buffalo, Albany and New York City to provide the public an opportunity to present suggestions and proposals for constitutional revision and simplification. At the hearings more than 80 people representing their individual points of view or those of organized groups appeared before the Commission.

In the spring of 1957, the Commission created an Inter-Law School Committee on Constitutional Simplification. The Committee examined 54 sections of the Constitution, recommending elimination of 23 of them as superfluous and outmoded. Other sections were deemed so cumbersome and “harmfully detailed” that they could “be rewritten and substantially shortened.”

At the summer meeting of the State Bar in June 1957, Chairman Rockefeller said that the two questions voters would face in November were (1) whether the state Constitution needs amending, and if so, (2) whether a convention or the alternative legislative method would be more effective. He observed that there was “no group in the state which is more interested in these questions or whose judgment and informed opinion can be more helpful to the voters in deciding these issues than the New York State Bar Association.”

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38 DULLEA, CHARTER REVISION, supra note 35, at 34-35.


41 Rockefeller, Work of the State Constitutional Convention Commission, supra note 30, at 314.
On September 19, 1957, the Commission issued a Second Interim Report\textsuperscript{42} that summarized the proposals gathered by the Commission from individuals and 107 organizations during public hearings. The subjects receiving the greatest attention were local governments and home rule, legislative apportionments, organization and procedure.\textsuperscript{43}

On November 5, 1957, the electorate voted against a Constitutional Convention by a vote of 1,368,068 to 1,242,538. Nevertheless, the Commission remained in existence under the name Special Committee on the Revision and Simplification of the Constitution. Before going out of existence in 1961, this body issued a number of reports, some of which provided the basis for amendments to the Constitution subsequently proposed by the Legislature and approved by the people.\textsuperscript{44}


As a result of legislative action calling for a referendum vote, in November 1964, the voters approved the call for a Convention by a vote of 1,681,438 to 1,468,431.\textsuperscript{45} The following year, the Legislature established the “temporary state commission on the revision and simplification of the constitution and to prepare for a constitutional convention.”\textsuperscript{46} The Commission was charged with making “a comprehensive study of the constitution with a view to proposing simplification of the constitution,” in addition to the traditional assignment of collecting and compiling useful


\textsuperscript{43} Id.; see Dullea, Charter Revision, supra note 35, at 34-35 (summarizing Second Interim Report).

\textsuperscript{44} Williams, Constitutional Commission, supra note 4, at 50.

\textsuperscript{45} Galie, Ordered Liberty, supra note 6, at 307.

\textsuperscript{46} L. 1965, Ch. 443, § 1.
information and data for the delegates and public before the convening of, and during the course of, the Constitutional Convention.47

The Commission was comprised of 18 members, with the Governor, the Speaker of the Assembly, and the Senate Majority Leader each appointing six members.48 However, the Commission’s work was delayed because of policy conflicts, personality clashes, and disputes over the Commission’s leadership and staff.49 The Commission’s membership roster was not announced until December 20, 1965, and its first planning meeting was not held until January 20, 1966.50

Also, delays in appropriating money to support the Commission’s work strained the relationship between the Commission’s initial chair (who resigned) and the Legislature.51 Moreover, whereas earlier Commissions had been able to pick and choose among those subjects they wished to present to the Legislature, the Commission’s enabling legislation was construed to require the Commission to address every article of the Constitution.52

The Commission had a 28-person staff, supported by numerous consultants on a wide range of subject areas.53 The Legislature initially

47 Id.

48 Id., at § 2.

49 Galie & Bopst, A Worthy Tradition, supra note 18, at 1312-1313.

50 DULLEA, CHARTER REVISION, supra note 35, at 131.

51 The Commission’s initial chair was Henry T. Heald, president of the Ford Foundation, who resigned on June 30, 1966. He was replaced by Sol Neil Corbin, a former Counsel to Governor Nelson A. Rockefeller. Id. at 130-132.

52 Id. at 131-134; see L. 1965, ch. 443, § 1 (requiring the commission to undertake a comprehensive study of the Constitution).

53 The Commission’s staff and consultants are listed at the front of the Commission’s 16 reports, which are accessible online from the New York State Library:
appropriated $150,000 for the Commission, although the State eventually spent over a million dollars on it.\footnote{William J. van den Heuvel, \textit{Reflections on Constitutional Conventions}, 40 N.Y.S.B.J. 261 (June 1968) [hereinafter \textit{Reflections}].}

Hampered by partisan divisions, the Commission issued 16 reports relatively late in the process, with modernization, simplification and reorganization as the dominant themes.\footnote{Galie, \textit{Ordered Liberty}, supra note 6, at 309; Williams, \textit{Constitutional Commission}, supra note 4, at 50. The 1967 Constitutional Convention convened on April 4, 1967 and adjourned on September 26, 1967.} The reports were “non-controversial and uneven in quality” and had little impact on the Convention.\footnote{Donna E. Shalala, \textit{The City and the Constitution: The 1967 Convention’s Response to the Urban Crisis} 134 (1972); see Galie & Bopst, \textit{A Worthy Tradition}, supra note 18, at 1313 (“the reports were largely ignored by the convention . . . .”).}

E. 1977 Referendum on a Constitutional Convention

No commission was established by the Governor or the Legislature during the run up to the mandatory Convention vote in 1977.\footnote{Williams, \textit{Constitutional Commissions}, supra note 3, at 50.} The City of New York was engulfed in a major fiscal crisis, and the legislative leaders were openly hostile to a Convention. “There are a substantial number of issues that require hefty analysis,” said a key staffer to the Speaker of the Assembly. “The Legislature for the past several years has been dealing with daily crises.”\footnote{Gerald Benjamin, \textit{A Convention for New York: Overcoming Our Constitutional Catch-22}, 12 \textit{Govt. Law & Policy} J. 13, 15 (Spring 2010) (quoting Michael DelGiudice, a key staffer to Assembly Speaker Stanley Steingut).} On November 8, 1977, the electorate voted against a

Constitutional Convention by a substantial margin (1,668,137 to 1,126,902). The State’s failure to prepare for a Convention was used as an argument against calling it.\textsuperscript{59}

F. **Temporary Commission on Constitutional Revision (1993-1995)**

In May of 1993, four years in advance of the next mandatory Convention vote, Governor Mario M. Cuomo established by executive order the “Temporary New York State Commission on Constitutional Revision.”\textsuperscript{60} The Commission had 18 members. Its chair was Peter Goldmark, Jr., President of the Rockefeller Foundation, and its work was supported by the Rockefeller Institute of Government of the State University of New York.\textsuperscript{61}

In his executive order creating the Commission, Governor Cuomo called attention to the mandatory Convention vote to be held in 1997 and the need to prepare for and educate the public about it (or an earlier Convention if one were called).\textsuperscript{62} Specifically, Governor Cuomo directed the Commission to:

- consider the constitutional change process and the range of constitutional issues to be considered by the people;
- study the processes for convening, staffing, holding and acting on the recommendations of a Convention;
- determine the views of New Yorkers on constitutional matters;

\textsuperscript{59} Id.

\textsuperscript{60} Exec. Order No. 172 (May 1993).

\textsuperscript{61} Id.; DECISION 1997, supra note 4, at viii.

\textsuperscript{62} See Exec. Order No. 172 (“WHEREAS, it is important that the people be educated so that they make an informed decision on whether a convention is desirable in 1997 or earlier if the Legislature agrees to pose the question; . . . “WHEREAS, the State government must be prepared if the people decide that a convention should be held . . . ”).
• develop “a broad-based agenda” of constitutional issues and concerns;

• provide “an objective and non-partisan outline” of the range of constitutional issues; and

• engage in a range of activities designed to focus attention on constitutional change.63

The Commission lacked the approval or financial support of the Legislature.64 It did have a distinguished (albeit small) staff of seven persons who operated on a budget of approximately $200,000 to $250,000.65 The Commission held hearings throughout the State and in March 1994 issued an interim report that explored and made recommendations regarding the delegate selection process.66 It also issued a periodic newsletter entitled Constitutional Matters and a briefing book relating to the State Constitution.67

63 Id. ¶¶ II-IV; GALIE, ORDERED LIBERTY, supra note 6, at 351 (citing TEMPORARY NEW YORK STATE COMMISSION ON CONSTITUTIONAL REVISION, MISSION STATEMENT (1993)).

64 GALIE, ORDERED LIBERTY, supra note 6, at 353.

65 The Commission’s Counsel and Executive Director was Professor Eric Lane of the Hofstra University Law School, and its Research Director was Dean Gerald Benjamin of the State University of New York at New Paltz. Both of their work for the Commission was on a part-time basis. They were supported by a staff of five.

66 Id.; TEMPORARY NEW YORK STATE COMMISSION ON CONSTITUTIONAL REVISION, THE DELEGATE SELECTION PROCESS: AN INTERIM REPORT (Mar. 1994) [hereinafter DELEGATE SELECTION PROCESS].

The Commission’s final report was published in February 1995, two years and nine months before the mandated 1997 Convention vote. In particular, the Commission called on the Legislature and the Governor to create “Action Panels” to develop a coherent reform package in four important subject areas: State fiscal integrity, State and local relations, education and public safety. If policymakers failed to adequately address these issues, a majority of the Commission’s members maintained that a Convention should be held.

On November 4, 1997, the electorate voted against a Constitutional Convention by a substantial margin (1,579,390 to 929,415).

III. RECOMMENDATIONS

The following recommendations were approved by the Committee voting at its September 30, 2015 meeting when the recommendations were discussed.

Recommendation 1: The State should establish a non-partisan preparatory Constitutional Convention commission as soon as possible.

As it has done several times in the past, the State should create a preparatory Constitutional Convention commission as soon as possible. Nearly 50 years have passed since New York last held a Constitutional Convention. Likewise, 18 years have passed since the last referendum vote in 1997. As a result, the collective memory on preparing for and organizing a Convention has waned significantly. The Commission will face not only a herculean task reviewing New York’s Constitution and the numerous


69 Id. at 12-21.

subjects it encompasses, but also a massive historical reclamation project to develop and provide information on the mechanics of a Convention itself.

Although past commissions have been created both before and after the referendum vote, we recommend creation of a preparatory commission as soon as possible and, in any event, well in advance of the November 2017 referendum.\footnote{See O’ROURKE & CAMPBELL, CONSTITUTION-MAKING, supra note 22, at 273-274 (recommending that a preparatory commission “should function, at least, during the two years prior to the submission to the voters of the question of a convention”). In 1956 and 1993, Commissions were created in advance of referendums; whereas in 1914, 1936 and 1965, Commissions were created subsequent to the electorate’s call for a Constitutional Convention.} A hastily set up commission, after an affirmative decision to hold a Convention has been made, will likely be of little use either to the public or the delegates. As Governor Lehman once observed, “[i]t seems to be extremely short-sighted for us to do nothing until the day the convention assembles.”\footnote{LEHMAN PAPERS, supra note 24, at 664.} “Without adequate planning,” he explained, “there will inevitably be great waste of money, time and effort to the end that the very objects of the Convention will be defeated.”\footnote{Id.}

Thus, with the 2017 referendum only two years away, there is a pressing need for a preparatory commission to begin work immediately.

The Legislature created the commissions for the 1915 Convention, the 1957 referendum and the 1967 Convention; Governors established commissions for the 1938 Convention and the 1997 referendum. History teaches that regardless how a preparatory commission is formed, it requires the support of all branches of government to produce useful and
comprehensive work product for the benefit of New York voters, lawmakers, interested groups, and delegates if a Convention is held.  

Likewise, it is critical that the membership of the preparatory commission be technically proficient, experienced, and diverse in every way. More, the commission must be non-partisan in character and motive, “commanding by its impartial mandate” the confidence of the general public and the delegates if a Convention is held.

**Recommendation 2: The commission should be tasked with**

(a) educating the public about the State Constitution and the constitutional change process; (b) making a comprehensive study of the Constitution and compiling recommended proposals for change and simplification; (c) researching the conduct of, and procedures used at, past Constitutional Conventions; and (d) undertaking and directing the preparation and publication of impartial background papers, studies, reports and other materials for the delegates and public prior to and during the Convention, if one is held.

Past preparatory commissions have been given various assignments, such as investigating the entirety of the Constitution in 1967, or only selected portions in 1997. Commissions have also varied in their approach to resulting work products. The Poletti Committee reports provided comprehensive study of nearly all areas, while the 1967 Commission’s work product to the delegates was primarily questions framing the issues that the Commission felt to be important. However, one contemporary commentator noted that the 1967 Commission’s approach of posing

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74 A cautionary tale is the delay in funding of the Commission created for the 1967 Convention, which delay unsteadied the Commission’s leadership and staff. **DULLEA, CHARTER REVISION, supra** note 35, at 132.

75 Van den Heuvel, Reflections, supra note 54, at 263.

76 *Id.*
questions to the delegates as opposed to providing substantive information was ineffective.\footnote{Id.}

The State Constitution and its ramifications “are so complex and the structure of the Government that has been erected within the framework of the constitution has so many wide and varied implications that a broad frame of reference is essential.”\footnote{Rockefeller, \textit{Work of the State Constitutional Convention Commission}, \textit{supra} note 30, at 317.} Therefore, among its other duties, the preparatory commission should:

Make a comprehensive study of the Constitution and compile recommended proposals for change and simplification;

Research the conduct of, and procedures used at, past Constitutional Conventions;

Study and make recommendations regarding the selection process for Convention delegates;

Undertake and direct the preparation and publication of impartial background papers, studies, reports and other materials for the delegates and public prior to and during the Convention, if one is held;

Brief the principal constitutional questions that were debated and considered at previous Conventions;

Collect data on the constitutional amendments proposed and adopted in other states on subjects of substantial interest to New Yorkers; and
Collect and collate data on the important changes that have been made in the State’s structure of government since the adoption of the present Constitution in 1894/1938.

Finally, the preparatory commission should recommend ways to educate the public about the State Constitution and the constitutional change process. Indeed, “[s]ome New Yorkers do not know there is a state constitution, much less how it may affect their lives.”

Recommendation 3: The preparatory commission should have an expert, non-partisan staff.

The preparatory commission must have a dedicated, full-time, expert staff under the direction and assistance of an executive director, a research director and a counsel. Adequate support staff will be necessary, too. The commission will face the daunting task not only of examining the substantive areas of the Constitution and related issues, but also surveying and educating the public, and helping to plan and prepare for a Convention, if one is held. The preparatory commissions created for the 1915 and 1938 Conventions, and the one created in the 1957 Convention referendum — all hailed as successful — had the support of sizable research and support staffs, state agencies, good government groups, and leading academics. Nothing less is required today for a preparatory commission to successfully plan and prepare the State for the mandatory referendum in 2017 and a potential Convention in 2019.

Recommendation 4: The preparatory commission and its staff should be supported by adequate appropriations from the State government.

A preparatory constitutional convention commission will require significant appropriations to accomplish its substantial task. As noted, the preparatory commission created for the 1967 Convention received an initial

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79 Delegate Selection Process, supra note 66, at 36.
that grew to approximately one million dollars by the time its work was completed in 1967.81

Based on past experience, a preparatory commission will require financial support from the State government in order to hire qualified staff and ensure a high quality work product. Given the substantial governmental expenditure that an actual Constitutional Convention would require, a significant appropriation for a commission’s work is a wise investment. Should the voters approve the call for a Constitutional Convention in 2017, additional appropriations will be necessary.

IV. CONCLUSION

In the November 2017 general election, New York voters will decide whether to hold a Constitutional Convention commencing in April 2019. This will be a constitutional choice of profound importance; a rare opportunity to debate fundamental principles of governance. Absent a legislative initiative, the State will not have this opportunity for another twenty years.

Whatever the outcome of the referendum, the public should be educated about the relevant issues. The establishment of a preparatory commission is a first step in beginning the “deliberative process that could result in our later being offered either an entirely new Constitution or a series of amendments to the existing Constitution.”82 The 1957 and 1997 mandatory Convention votes were preceded by such commissions. The need for a commission today is even greater than those past cycles. There are few living delegates from the last Convention in 1967, and little, if any, institutional memory on how to hold one. The hard, complex work of preparing for a vote and Convention cannot begin too soon.

80 L. 1965, ch. 443 § 11.
81 Van den Heuvel, Reflections, supra note 54, at 263.
82 Delegate Selection Process, supra note 66, at 1.
REQUESTED ACTION: Approval of the comments prepared by the Committee on Professional Discipline for submission to the Office of Court Administration.

In March 2015, Chief Judge Jonathan Lippman appointed the Commission on Statewide Attorney Discipline to review New York’s attorney disciplinary system to make recommendations to enhance the effectiveness of the system. The commission held three public hearings and received oral and written testimony from a number of interested parties, and on September 24, 2015, the commission issued a report containing recommendations for a number of significant changes. The Office of Court Administration has issued a request for comments on the report, with comments being due no later than November 9, 2015.

The NYSBA Committee on Professional Discipline was asked to review the report’s recommendations, and the committee’s comments are attached. As set forth in the comments, the committee was in general agreement with ten of the commission’s eleven recommendations, the exception being the commission’s Recommendation #3 relating to unsealing disciplinary proceedings.

Attached to the report is the Executive Summary of the commission’s report, setting forth its eleven recommendations. The full report of the commission may be accessed at http://www.nycourts.gov/rules/comments/PDF/AD-SWDiscCommittee.pdf.

The report will be presented by Sarah Jo Hamilton, chair of the Committee on Professional Discipline.
MEMORANDUM

TO: Executive Committee

FROM: Sarah Jo Hamilton, Chair,
Committee on Professional Discipline

RE: Commission on Statewide Attorney Discipline Report

DATE: October 26, 2015

The Committee on Professional Discipline was asked to comment on the report issued by the Commission on Statewide Attorney Discipline (COSAD), which report was sent to NYSBA by the Administrative Board of the New York courts. The report contains eleven recommendations designed to eliminate the disparities in the procedures and sanctions among the four Appellate Divisions who have independent jurisdiction over the discipline of lawyers in the four judicial departments, and to foster openness and consumer protection in the disciplinary process. The recommendations are set forth in the Executive Summary of the Report, which is attached to this memorandum.

Based on the comments submitted by members of our Committee, our Committee was generally in agreement with ten of the eleven recommendations, although some members had comments on some of the proposals. Those comments are noted in this report. The only area of disagreement concerns Recommendation (3), a compromise recommendation by COSAD to unseal the disciplinary proceedings upon application to the Court by a grievance committee and upon a finding by the Court that the attorney’s conduct places clients at significant risk, or presents an immediate threat to the public interest.

As to the other recommendations, our members agree that the COSAD Report sets forth necessary and long overdue changes to the patchwork disciplinary system we currently have. Below are specific comments with respect to the COSAD recommendations.

Recommendation 1. – Adoption of Uniform Rules and Procedures

We are in full support of statewide, uniform rules for the disciplinary process.

We note that the recommendation includes most of the uniform discovery rules as contained in the Discovery Report written by our Committee and submitted by our President to COSAD. Among other things, our Discovery Report recommended depositions of witnesses upon order of the hearing
referee in a disciplinary hearing. However, COSAD recommended that all disciplinary hearings be designated Special Proceedings (CPLR Article 4) where discovery is specifically upon application to the Court. (Three of the four judicial departments treat disciplinary proceedings as special proceedings.) A minority of members of the COSAD Subcommittee tasked with uniformity issues was in favor of full discovery as set forth in the NYSBA Discovery Report, believing that successful application to the Court was not as easily accomplished as application to a Referee.

Members of our Committee, who authored the NYSBA discovery recommendations strongly recommend that the proper application for deposition of a witness should be to the disciplinary hearing Referee, who is in a better position to make a knowledgeable and expeditious decision than the Court. Further, some of our members agreed with the COSAD minority, that discovery in Special Proceedings is rarely, if ever granted. We are unaware of any application to the Court for deposition of witnesses under Special Proceedings in those judicial departments where disciplinary proceedings are designated Special Proceedings. One of our members felt that since apparently no discovery depositions of witnesses take place under current rules, if deposition of witnesses is specifically addressed in new rules, even in the context of a Special Proceeding by application to the Court, there may be more opportunity and willingness to order depositions upon good cause than there is currently.

Recommendation 2. — Adoption of Guidelines for Imposing Disciplinary Sanctions

We endorse the adoption of Standards for Imposing Discipline as guidelines in sanctioning attorneys, and believe that standards will promote uniformity of sanctions statewide. Currently, as the COSAD report states clearly, there is very little uniformity with respect to sanctions imposed upon respondents throughout the state, and the use of Standards as guidelines, will bring the four courts closer in their determinations in disciplinary matters. We note that the standards should be used as guides only, and not constitute mandatory dispositions. Use of standards in sanction will also foster ease and uniformity in plea bargaining in disciplinary cases throughout the state. (See discussion below with respect to Recommendation 7)

Recommendation 3. – Unsealing the Disciplinary Proceedings

The COSAD Report states that its compromise recommendation of allowing grievance committees to apply to the Court to unseal disciplinary proceedings upon a showing that the attorney’s conduct places clients at significant risk, or presents an immediate threat to the public interest will effectively balance the competing interests of protecting the legal consumer contemplating retaining an attorney while ensuring that the reputations of innocent attorneys are not unjustly tarnished.

Our Committee has grave reservations with respect to this recommendation. First, we do not believe that unsealing the disciplinary process, which is confidential under Judiciary Law Section 90(10), prior to a finding of misconduct by a Court is necessary to protect the public. Our members expressed concern that there was no detail or discussion in the COSAD Report with respect to who would have the authority to approve an application by the Grievance Committee i.e., Chief Counsel, full Committee, or two members of the Committee as is currently done in the First Department. A second serious concern was what would be the standard of proof of significant risk or immediate threat. Finally, there was no significant discussion in the recommendation of disclosure of mental health or substance
abuse problems which might be raised during the proceedings, and which would be damaging to an attorney respondent.

Some members of our Committee felt that rather than an early unsealing, an expedited proceeding for an attorney deemed to be a threat would ensure due process and protect the public interest. A specific comment reads, “In service of the public good, the legal profession has high standards of professional conduct, often higher than general societal norms (e.g., civility, advertising, client confidentiality, conflicts, client loyalty, etc.). Disciplinary enforcement improves the legal profession which serves the public good, sans publicity. Attorneys may run afoul of such standards without culpable mindset, without intent to cause harm to a client or the public, and without in fact causing harm to a client or the public. The full course of due process should come to a conclusion before a casting public doubt on an attorney’s fitness to practice law.”

We believe that these are serious concerns and must be addressed by any rule-making body charged with the drafting of uniform disciplinary rules.

**Recommendation 4. -- Expansion of LAP Diversion Program**

Three of the four judicial departments currently have programs to divert an attorney accused of minor misconduct to an assistance program where alcohol or substance abuse is a contributing factor to the misconduct. Our committee strongly urges the implementation of diversion programs statewide, and the expansion of diversion to mental health problems or illness. We support the NYSBA Lawyers Assistance Committee proposal which was submitted by NYSBA to COSAD and forms the basis of COSAD’s recommendation.

**Recommendation 5. -- Administrative Suspension for Failure to Register**

We strongly support COSAD’s recommendation of an automatic “administrative” suspension for failure to timely register or pay registration fees. Currently the grievance and disciplinary committees are tasked with chasing down delinquent attorneys, many of whom are in other jurisdictions. In cases where notice has been attempted or given, and the attorney remains delinquent, the grievance committees must devote resources to a formal proceeding for a disciplinary suspension. Our Committee takes the position that there is a very real distinction between failure to pay registration fees, and actual misconduct in the course of legal practice, and such a distinction is not recognized or noted on the OCA website where attorney sanctions are listed. Lateral consequences of such discipline, which must reported and explained by attorneys seeking admission or appointments would be ameliorated with the “administrative” suspension, including automatic reinstatement upon registration without Court involvement.

**Recommendation 6. -- Disciplinary Website**

We unanimously support the recommendation that a statewide, consumer friendly, website be established by OCA, with telephone support for those consumers who may not have access to the internet.
Recommendation 7. -- Plea Bargaining in Disciplinary Cases

Our Committee supports the recommendation that plea bargaining, or discipline upon consent, using standards for sanctions, be specifically permitted by the Courts. Currently there is no plea bargaining, or process for agreeing to short circuit the disciplinary hearing process even in cases where respondent admits misconduct. Further, the use of standards in such cases would promote uniformity of sanctions and would greatly assist the Court in determining whether to approve an agreement by the grievance committee and respondent. Such agreements with approval by the Court would greatly expedite many proceedings.

Recommendation 8. -- Court Referral of Prosecutorial Misconduct

Our Committee generally approves the COSAD recommendation that Court decisions finding prosecutorial misconduct be mandated to refer those decisions to the appropriate grievance committee for determination, and that the grievance committees keep appropriate records with respect to the disposition of these referrals. However, our members are concerned that a disciplinary referral in the case of inadvertent, or unintentional violation of law governing prosecutors, may be unnecessary, and even unjust. Some of our members noted that in the context of criminal proceedings a finding of misconduct is not personally appealable by an individual prosecutor, and that consideration of this fact should be made in the context of a referral to a grievance committee.

Recommendation 9. -- Statewide Coordinator of Discipline

While our Committee agreed with the proposal, one member of our Committee disagreed with the necessity for a statewide coordinator at the Office of Court Administration since all grievance committees need more staff and more funding, and if uniform rules are adopted, and uniform webpages offer the information which a coordinator would collect, there would be no need for such a position.

Recommendation 10. -- Establishment of Statewide Advisory Board on Attorney Discipline

Our Committee agrees that OCA should implement as quickly as possible the appointment of members to a Statewide Advisory Board on Attorney Discipline to implement the COSAD recommendations, especially with respect to drafting uniform rules and standards throughout the state.

Recommendation 11. -- Increase Funding to Disciplinary Committees

Our Committee is strongly in favor of increasing funding and staffing throughout the state. Our disciplinary and grievance committees are generally understaffed, and backlogs abound. Increasing funding for staff and support would assist in eliminating undue delay in the processing of disciplinary matters.

The Committee on Professional Discipline, despite some of the concerns noted in this report, overwhelmingly supports the COSAD proposals to unify and expedite the disciplinary process, and revise the system to be more responsive to the legal consumer. The vast majority of the COSAD
recommendations are long overdue, and we are encouraged that these proposals for reform emanate from the Court.

Sarah Jo Hamilton
COMMISSION ON STATEWIDE ATTORNEY DISCIPLINE
EXECUTIVE SUMMARY

In March 2015, Chief Judge Jonathan Lippman created the Commission on Statewide Attorney Discipline to conduct a comprehensive review of New York’s attorney disciplinary system to determine what is working well, what can work better and to offer recommendations to enhance the efficiency and effectiveness of New York's attorney discipline process.

Among the issues considered by the Commission were whether New York's current departmental-based system leads to regional disparities in the implementation of discipline; if conversion to a statewide system is desirable; the point at which disciplinary charges or findings should be publicly revealed; and, how to achieve dispositions more quickly to provide much needed closure to both clients and attorneys.

After rigorous deliberation, three public hearings in different regions of the state and input from a myriad of stakeholders-legal consumers, lawyers, bar associations, affinity and specialized bar groups, advocates and others-the Commission recommends, through consensus\(^3\) a series of critical reforms, including but not necessarily restricted to the following:

1. Approval by the Administrative Board of the Courts, and by each Department of the Appellate Division, of statewide uniform rules and procedures governing the processing of disciplinary matters at both the investigatory and adjudicatory levels, from intake through final disposition, which strike the necessary balance between facilitating prompt resolution of complaints and affording the attorney an opportunity to fairly defend the allegations. These new rules and procedures should include uniform discovery rules and information-sharing for attorneys who are the subject of a disciplinary complaint. This recommendation is of the highest priority and a firm deadline for adoption should be established.

\(^3\) The Commission's recommendations reflect a clear consensus view. Although the Commission was unanimous in its approval of the majority of proposals, there are members who disagree with certain recommendations or portions thereof.
2. Adoption of guidelines modeled after the ABA Standards for Imposing Lawyer Sanctions to ensure more consistent, uniform results statewide.

3. Amendment of the current rules of the Appellate Division to expressly authorize each disciplinary committee to seek, either separately or in conjunction with an application for interim suspension and upon notice to the affected attorney, an order unsealing proceedings to permit the publication of charges pursuant to Judiciary Law §90(10), upon a finding by the Court that the attorney's conduct places clients at significant risk or presents an immediate threat to the public interest. The amendment would be approved by the Administrative Board of the Courts and approved by each Department of the Appellate Division.

4. Implementation of a statewide diversion/alternatives to discipline program to address matters involving alcohol, substance abuse and mental illness.

5. Revision of court rules to uniformly allow for "administrative" suspension and reinstatement of attorneys who are delinquent in timely registering or paying registration fees. Such "administrative" suspension should occur automatically after a period of delinquency and following written notice to the attorney. In revising these rules, particular attention should be paid to streamlining the process as well as to enhancing coordination and the exchange of information between each Department of the Appellate Division and the Office of Court Administration (OCA).

6. Creation of a more easily accessible, searchable, consumer-friendly, statewide website geared toward the legal consumer. Critical information, such as where to file a grievance, should be available in languages in addition to English. Consideration should also be given to establishing a telephone "hot line" to accommodate individuals who do not have access to the internet.
7. Revision of court rules and procedures to allow "plea bargaining," or discipline upon consent, to encourage prompt resolution of disciplinary charges, where appropriate.

8. Action by the Administrative Board of the Courts to ensure that judicial determinations of prosecutorial misconduct are promptly referred to the appropriate disciplinary committee. Further, appropriate record management practices and procedures should be revised (or adopted) to allow each Department of the Appellate Division to better record and track disciplinary matters involving prosecutorial misconduct with a view toward generating annual statistical reports.

9. Establishment of a new position of Statewide Coordinator of Attorney Discipline. The Coordinator would function as a liaison/ resource for each Department of the Appellate Division. The precise powers and functions of the new position is to be further defined by the Administrative Board of the Courts. The Commission envisions, however, that the Coordinator would be tasked with assisting the Administrative Board of the Courts in fostering uniformity in procedures and sanctions, encouraging communication and consistency among the Departments of the Appellate Division, producing an annual statistical report providing statewide data on the administration of attorney discipline, and recommending ongoing reforms as deemed necessary. The need for this position is immediate and the Administrative Board of the Courts should select a suitable candidate as soon as is practicable.
10. Appointment of members to a Statewide Advisory Board on Attorney Discipline, consisting of volunteers from around the state, to assist in implementing these recommendations and to study and propose additional recommendations to further the goals of uniformity, transparency and efficiency in the attorney disciplinary system.

11. Increase to funding and staffing across-the-board for the disciplinary committees.
Dear Ms. Hamilton:

First, thank you for your presentation on October 10 regarding Professional Liability/Ethics: Minimize Your Risk with Best Practices, as well as your comments, assistance and guidance at the Torts, Insurance and Compensation Law (TICL) Executive Committee meeting on October 11.

TICL appointed a Fast Action Committee to review the September 2015 Final Report to Chief Judge Jonathan Lippman, the Court of Appeals and the Administrative Board of the Courts drafted by the NYS Commission on Statewide Attorney Discipline. The Fast Action Committee offers the following comments regarding the Final Report and the recommendations and proposals made therein. In doing so, we reference the comments we wish to make to the numbered points contained in the Executive Summary of the Final Report.

1. Approval by the Administrative Board of the Courts, and by each Department of the Appellate Division, of statewide uniform rules and procedures governing the processing of disciplinary matters at both the investigatory and adjudicatory levels, from intake through final disposition, which strike the necessary balance between facilitating prompt resolution of complaints and affording the attorney an opportunity to fairly defend the allegations. These new rules and procedures should include uniform discovery rules and information-sharing for attorneys who are the subject of a disciplinary complaint.

TICL supports the recommendation that the Appellate Division develop statewide

Sarah Jo Hamilton, Esq.
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Re: NYS Commission on Statewide Attorney Discipline
Final Report to Chief Judge Jonathan Lippman

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Paul S. Edelman, Editor Emeritus, Hastings on Hudson
David A. Glazer, Editor, New York City

TICL Community Newsletter:
A. G. Chancellor, III, Melville
Diana Neuman, New York City
uniform rules for discovery and information sharing for attorneys who are the subject of a disciplinary complaint.

2. Adoption of guidelines modeled after the ABA Standards for Imposing Lawyer Sanctions to ensure more consistent, uniform results statewide.

TICL supports the recommendation to adopt guidelines modeled after the ABA Standards for Imposing Lawyer Sanctions. However, TICL only supports this recommendation to adopt such guidelines if they remain guidelines or are deemed advisory. TICL opposes a rigid application of any standard relative to lawyer sanctions. TICL supports the ability of the Appellate Division to treat each case individually and pass judgment based upon the facts and merits of each individual case.

3. Amendment of the current rules of the Appellate Division to expressly authorize each disciplinary committee to seek, either separately or in conjunction with an application for interim suspension and upon notice to the affected attorney, an order unsealing proceedings to permit the publication of charges pursuant to Judiciary Law §90(10), upon a finding by the Court that the attorney’s conduct places clients at significant risk or presents an immediate threat to the public interest. The amendment would be approved by the Administrative Board of the Courts and approved by each Department of the Appellate Division.

TICL does not support the recommendation to amend the rules to authorize the disciplinary committees to seek to unseal proceedings and publication of charges. TICL believes that such action would be contrary to the express provisions of Section 90(10) of the Judiciary Law which authorizes the Appellate Division to unseal a record or proceeding for good cause shown. TICL would support a recommendation that gives the disciplinary committees the authority to petition the Appellate Division to “unseal” a record if it deems that there is an immediate risk of harm to the public or the specific client.

4. Implementation of a statewide diversion/alternatives to discipline program to address matters involving alcohol, substance abuse and mental illness.

TICL supports the implementation of alternatives to sanctions and/or diversion programs for those matters involving mental illness, substance and/or alcohol abuse

Thank you for giving TICL the opportunity to comment on this very important initiative.

Sincerely,

Mirna M. Santiago, Esq. Chair of TICL
Kenneth A. Krajewski, Esq. Vice-Chair of TICL
Hon. George J. Silver Co-Chair, Ethics and Professionalism
Hon. Douglas J. Hayden Co-Chair, Ethics and Professionalism
A. Michael Furman, Esq. Co-Chair Professional Liability
Lawton W. Squires, Esq. Co-Chair Professional Liability
REQUESTED ACTION: Approval of the report and recommendations of the Committee on Women in the Law.

Attached is a report from the Committee on Women in the Law recommending that the Association support enactment of the Family and Medical Insurance Leave Act (FMILA). If enacted, the FMILA would provide workers with up to 12 weeks of partial income when taking leave for their own health, including pregnancy and childbirth recovery; for the health of a child, spouse, parent or domestic partner; for the birth or adoption of a child; or for particular military caregiving and leave purposes. It would be administered through a new Office of Paid Family and Medical Leave within the Social Security Administration and would be funded by employee and employer payroll contributions.

The committee notes that the Family and Medical Leave Act, enacted in 1993, provides up to 12 weeks of unpaid leave; however, only half of the workforce qualifies for the unpaid leave and, of those who do qualify, only a small portion can afford to take unpaid leave. Given the amount of debt obligations of younger workers, it is not possible for many workers to take time off without income replacement.

As set forth in the report, the Act would create an independent trust fund to be administered by the Social Security Administration, which would collect fees and provide benefits. Eligible individuals must be insured for disability insurance benefits; have earned income from employment during the prior year; have filed an application for benefits; and have been engaged in qualified caregiving or anticipate being so engaged.

The report notes several concerns that have been expressed regarding FMILA and its effect on business. The committee notes, however, that several states have already implemented forms of paid leave and officials in those states have found the programs to be beneficial.

The report was presented to you on an informational basis at the June 2015 House meeting. It was published online for comment on August 12. Attached are comments from Past President A. Thomas Levin and Executive Committee member-at-large Elena DeFio Kean, as well as comments submitted on behalf of the New York County
Lawyers’ Association. You will be advised of any additional comments received in advance of the meeting.

The report will be presented by Ellen G. Makofsky, co-chair of the Committee on Women in the Law, and Legislative Affairs Subcommittee co-chair Susan L. Harper.
MEMORANDUM IN SUPPORT

NYSBA’s Committee on Women in the Law
Supports the Passage of the
Family and Medical Insurance Leave Act:
S786 of 2015 by Senator Gillibrand

The committee is solely responsible for the contents of this report. It does not represent the position of the New York State Bar Association unless and until approved by the Executive Committee or House of Delegates.

Overview

The New York State Bar Association’s (NYSBA) Committee on Women in the Law (CWIL) strongly recommends that the NYSBA’s Executive Committee and House of Delegates support the proposed Family and Medical Insurance Leave Act, Bill S. 786 (S. 786), that would provide workers with family and medical leave insurance benefit payments when a family or medical need arises.

Traditionally, women have been the primary caregivers in our country. However, with more than half of all women in the U.S. workforce today, the rapidly aging U.S. population, and generational workforce shifts the need for our country to revisit and address family and medical leave is essential. The Family and Medical Insurance Leave Act is a timely, pragmatic and useful strategic solution in the development of a national uniform strategy and business planning approach that supports businesses and the U.S. workforce of today and tomorrow.

Legislative Summary

The Family and Medical Insurance Leave Act (the “Family Act”) would:

1) Provide workers with up to **12 weeks of partial income when they take time** for their own serious health condition, including pregnancy and childbirth recovery; the serious health condition of a child, parent, spouse or domestic partner; the birth or adoption of a child; and/or for particular military caregiving and leave purposes.

2) Enable workers to earn **66 percent** of their monthly wages, up to a capped amount.

3) **Cover workers in all companies, no matter their size.** Younger, part-time, lower-wage and contingent workers would be eligible for benefits.

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2 Id. at 2, 3.
4) Be funded by small employee and employer payroll contributions of two-tenths of one percent each (two cents per $10 in wages, or about $1.50 per week for a typical worker).

5) Be administered through a new Office of Paid Family and Medical Leave within the Social Security Administration. Payroll contributions would cover both insurance benefits and administrative costs.3

The purpose of the Family and Medical Insurance Leave Act is as follows:

SEC. 2. FINDINGS AND PURPOSE.4

....

(b) PURPOSE—It is the PURPOSE of this ACT—

(1) to help working families, including single working parents and dual-earner families, afford to take time away from work to provide care for a family member and be good workers;

(2) to provide workers with a reasonable level of wage replacement during time away from work for a serious health condition, for the birth or adoption of a child, for the care of a child, spouse, or parent who has a serious health condition, for the care of an injured service member, or for qualifying exigencies arising from the deployment of a service member;

(3) to address sex discrimination, promote the goal of equal employment opportunity for women and men, and to provide relief when employers violate the law; and

(4) to accomplish the purposes described in paragraphs (1), (2), and (3) in a manner that accommodates the legitimate interests of employers.5


5 Id. at SEC. 2. (b)(1)(1)-(4), p. 8, Ins. 3-22.
Introduction

We all have families and most of us will face the responsibility, at some point in our lives, of taking care of our loved ones, whether for the birth or adoption of a child, sudden illness of a family member, or addressing the needs of our aging parents. When the need for caretaking arises, American workers face a heart-wrenching dilemma: wanting to be there for a family member but, at the same time, worrying that doing so will jeopardize their own or their family’s economic and job security. The United States is alone among developed countries in failing to guarantee at least some form of paid family leave.6 The time is ripe for the United States to join other nations and champion our hard-working workforce when a brief leave is needed to help our loved ones.

Planning for Our Futures
A Strategy That Makes Sense for Employers and Employees

While we do not always know when illness will strike, with the Family Act employees and employers will be able to responsibly plan for an event’s occurrence. The Family Act would create an independent trust funded by payroll contributions made by both employees and employers that would be housed within the Social Security Administration. Private sector workers and self-employed people who have a basic level of work and earnings history would be eligible to apply for benefits under the Act.

Currently, under the Family and Medical Leave Act of 1993, American workers – employees and the self-employed – must leave work without any income to attend to a medical emergency or to care for a newborn or adopted child.7 Through the Family Act’s independent trust, individuals with the requisite work history would be eligible to receive partial wage replacement of up to 66% of an individual’s monthly wages for 60 workdays or 12 weeks and not have to worry about jeopardizing their families’ economic security in these circumstances. “When workers care for themselves and their loved ones, employers experience positive impacts,”8 including improved morale and less employee attrition.9

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8 S. 786, 114th Cong. (March 18, 2015), U.S. Government Publishing Office, www.gpo.gov/fdsys/pkg/BILLS-114s786is/pdf/BILLS-114s786is.pdf, at Sec. 2. (a) (18), p. 7, lns. 20-22 (last visited Jun. 2, 2015). See also Section 2. (a) (18) of the Family and Medical Insurance Leave Act:

More than four times as many worksites covered by FMLA reported positive effects on employee productivity, absenteeism, turnover, career advancement and morale, as well as the business’ profitability as reported negative effects in the Department of Labor’s 2012 survey on the FMLA.
Current Legislation and State of Affairs

Over twenty years have passed since the current Family and Medical Leave Act of 1993 (“FMLA of 1993”) was enacted. FMLA of 1993 provides 12 weeks of unpaid job protected leave for the employee’s own serious health-related event, for the birth or adoption of a child, or to care for a spouse, a parent or a child who has fallen ill. Studies indicate that between 50 and 60% of the workforce is covered by the FMLA of 1993. However, an estimated one-half of eligible workers cannot afford to take leave because it is unpaid.

FMLA of 1993 has other shortcomings. It does not provide any financial support, making it impossible for many families to take advantage of its provisions because they cannot afford to forgo their weekly or biweekly paycheck. Further, the reach of FMLA of 1993 is too limited to provide families with the critical support they need to care for their own health issue, a new baby, or a sick parent.

The Senate sponsors of Bill S. 786 revealed some troubling findings concerning the effectiveness of the FMLA of 1993:

“According to the Department of Labor, nearly half the workers who qualified for leave under the Family and Medical Leave Act of 1993 (FMLA) in 2011 were unable to take the leave because they could not afford to take time off without pay.” Thus, the FMLA of 1993 is not an effective policy for the entire workforce, in that only an estimated half of eligible workers have the financial ability to benefit from the policy.

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10 Id. at 5
12 Id.
“Six in ten workers who took partially paid or unpaid leave reported difficulty making ends meet; half of these workers were forced to cut their leaves short due to financial constraints.”

“Only 13 percent of all workers had access to paid family leave in 2013 and it was available to only 4 percent of individuals working in the lowest paying jobs. Workers who lack paid family leave face lost wages or even job loss when they miss work because of their own illness or to care for an ill child or parent.”

“The average worker age 50 and older who leaves the workforce to care for an elderly parent loses more than $300,000 in earnings and retirement income.”

These findings reveal that the FMLA of 1993 has not been an effective policy for the majority of the workforce, even in the case where individual workers qualify for unpaid leave. The paid leave policy needs to be updated to meet the covered family and medical leave needs of all workers, not just a handful. If enacted, the Family Act would address many of the economic and job security issues related to family and medical leave that impact workers and their families at times of great need. While the FMLA of 1993 was an initial step in the right direction, the United States needs to modernize its two-decade old policy to address the aging population and changed workforce of today. It is time for the United States to revisit its approach and modernize its laws to provide American workers with a measure of financial support during a covered family or medical leave.

The Aging Population and Changing Workforce

In 1993 (when the FMLA of 1993 was enacted), the U.S. population 65 years and older was approximately 32.8 million. As of 2013, this population numbered 44.7 million. By 2030, only 15 years from now, our country’s elderly population is expected to double. By 2030, the population of persons age 65 and older will number “about 72.1

18 Id. at SEC. 2. (a) (4), pg. 3, Ins. 3-9 (last visited Jun 2, 2015).
19 Id. at SEC. 2. (a) (4), pg. 3, Ins. 21-23 (last visited June 2, 2015).
20 U.S. Department of Health and Human Services, Administration for Community Living, Administration on Aging, Administration on Aging (AoA), A Profile of Older Americans: 2004, www.aoa.acl.gov/Aging_Statistics/Profile/2004/3.aspx (last visited Jun. 2, 2015) ("The older population—persons 65 years or older—numbered 35.9 million in 2003. They represented 12.9% of the U.S. population, about one in every eight Americans. The number of older Americans increased by 3.1 million or 9.5% since 1993.").
million”\(^{23}\) and is projected to increase by approximately another 20 million through 2060, as indicated in the historic graph below from the U.S. Department of Health and Human Service’s Administration on Aging.\(^{24}\)

![Figure 1: Number of Persons 65+, 1900 to 2060 (numbers in millions)](image)

Note: Increments in years are uneven.


With this drastic population shift, “the number of people with chronic medical conditions is expected to reach 157 million by 2020,” or in five years.\(^{25}\) Further, persons reaching age 65 have an average life expectancy of an additional 19.3 years (20.5 years for

\(^{23}\) Id. (emphasis added).


females and 17.9 years for males). As the Family Act states, “many of these individuals at some point will require family care…and time off at some point to address serious health conditions.”

The Millennial Generation: A Workforce with Unique Challenges

Unlike Baby Boomers and some of the Generation X population, who grew up in a time of low-cost housing, affordable colleges, and who were able to prosper in traditional single-family income households, today’s multigenerational workforce is not that fortunate. In fact, according to Goldman Sachs, the Millennial Generation, the largest generation in the workforce, born between 1980 and 2000, has less money to spend than did previous generations and is “encumbered with debt.” “Student loan payments are taking up a growing chunk of postgraduate millennial income.” As a result of this heavy debt burden and residual effects of the recession, many younger workers are living longer with their parents, forgoing buying houses and cars, and even delaying having children.

Many parents of Millennials are Baby Boomers who are or will become older Americans very shortly. When the FMLA of 1993 was passed, college graduates were not burdened with the same financial debt obligation as the Millennial Generation workforce is today, and back then many women could still afford to be primary caregivers. However, the realities of the increased cost of living and economics of today do not readily permit this. Women now make up half the workforce, and their incomes are vital to ensure their family’s financial security. Younger men and women in the workforce must meet their financial/contractual debt obligations, too, including student loans and mortgages. Simply put, many workers today do not have the luxury to take time off to care for a loved one without the support of some income replacement. Accordingly, family caregivers may not be readily available.

Further, many Millennial generation men want to be hands-on fathers as well as breadwinners. As reported in the New York Times in July 2015, “the majority of young men and women say they would ideally like to equally share earning and caregiving with their spouse”; however, workplace policies have not caught up with changing expectations at home.

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29 Id.
A national policy, like the proposed Family Act,\textsuperscript{32} that can provide workers with some income replacement if a medical leave need arises needs to be put in place to address the changed realities and personal expectations of the workforce since the FMLA of 1993 was enacted.

**Women Are Half of Our Labor Force and Are the Primary Caregivers**

*Paid Family Leave Addresses Gender Inequality, Too*

Since the FMLA was enacted in 1993, not only do we have multi-generations in the workforce, the Greatest Generation, Baby Boomers, Generation X, Generation Y/Millennial, but there are more women in the workplace than ever before. According to the U.S. Department of Labor, approximately 57\% of all women participate in the labor force today.\textsuperscript{33}

An estimated 66\% of caregivers are female.\textsuperscript{34} However, only 11\% of the private sector workers and 17\% of public sector workers reported having access to paid leave through their employer.\textsuperscript{35}

Complicating this further, the outdated notion of the “traditional family” comprising a stay-at-home mom and breadwinner dad is no longer the norm. The U.S. Department of Labor reports that 70\% of all women with children under 18 years old are in the labor force.\textsuperscript{36} In 2013, approximately 67.4\% of married women with children under the age of 18 were in the labor force.\textsuperscript{37} During the same time period, 25.3\% of families with children under the age of 18 were headed by a mother without a spouse and 7\% of families were headed by a father without a spouse.\textsuperscript{38}

Minority and low-income caregivers may be additionally challenged. “One study concluded that the caregiving time burden falls most heavily on lower-income women:

\textsuperscript{38} Id.
52% of women caregivers with incomes at or below the national median of $35,000 spend 20+ hours each week providing care.” 39

Despite women’s greater participation in the workforce, women still earn less than men—approximately 77 to 80 cents for every dollar a man earns—impacting both their current earnings and retirement.40 Income and retirement are further eroded when women take unpaid leave to perform caregiving duties, which can push some of them into poverty or public assistance. Moreover, “[t]he negative impact on a caregiver’s retirement fund is approximately $40,000 more for women than it is for men.”41 The Family Caregiver Alliance estimates that, “in total, the cost impact of caregiving on the individual female caregiver in terms of lost wages and Social Security benefits equals $324,044.”42

Consider how those thousands of dollars could help a woman and her family meet day-to-day living expenses or in investing for retirement. Instead, as the primary caregiver, her financial security is compromised. It is time the United States joins the rest of the world in guaranteeing some form of paid family and medical leave to workers.

Implementing the Family Act is critical at a time when the population is aging and most American women and men are expected to pull their own economic weight in the household. Earning $.77 to every $1.00 a man earns, women are already income- and retirement-disadvantaged. Yet women continue to serve as the primary caregivers to families and still need to work to make ends meet. Families depend on women’s income for economic security.43 The Family Act, if enacted, will address some of these inequalities that women face, without jeopardizing their economic security or impacting loved ones.


According to Human Rights Watch, “The US is alone among developed countries in failing to guarantee at least some form of paid family leave.”44 Most countries worldwide


[42] Id.


provide some form of maternity leave. As the following graph exhibits, many countries give new fathers paid time off as well, or allow parents to share paid leave.45

**Paid Parental Leave: U.S. vs. The World**

The U.S. joins Lesotho, Swaziland and Papua New Guinea as the only countries that do not mandate paid maternity leave. Most countries ensure at least three months of paid leave for new mothers, and many give fathers benefits too.

Why is the United States woefully behind the rest of the world when it comes to paid maternity leave?

A study done in 1998 by the International Labour Organization (ILO) looked at 120 countries and determined there were only six countries that did not provide paid leave.46 On the list were the United States, Lesotho, Swaziland, Australia, New Zealand and Papua New Guinea.47 However, “[w]hen Australia passed a parental leave law in 2010, it left the U.S. as the only industrialized nation not to mandate paid leave for mothers of

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47 *Id.*
newborns.” Today, “[o]ut of the 185 countries and territories with information available, all but three provide cash benefits to women during maternity leave.” The United States, along with Oman and Papua New Guinea, do not provide paid maternity leave. There are now at least 70 countries that guarantee paid paternity leave. It is time that the United States adopt a paid family leave policy.

After women give birth, their careers are often interrupted. However, many women are forced to return to work quickly as they cannot afford to stay home. Returning to work too early after giving birth can sometimes jeopardize their health and job performance. Paid family leave policies, including maternity leave, have been shown to have a positive impact on infant mortality and maternal mental health.

Moreover, the sponsors of the Family Act report, “[p]aid family and medical leave promotes families’ financial security and independence, increases worker retention, and promotes savings for taxpayers.” Many top business leaders agree with this statement. Susan Wojcicki, CEO of YouTube for Google and the mother of five children, recently wrote of the positive impact that paid leave has had on individuals and Google, commenting, “[w]hen we increased paid leave at Google to 18 weeks, the rate at which new mothers left fell by 50%.”

Supporting this trend, in August 2015, Netflix, Microsoft and Adobe announced more generous parental paid leave policies for their workforce. Netflix has instituted a one-year paid parental leave policy as part of the company’s effort to “keeping the most talented individuals in their field”; however this benefit applies only to Netflix’s higher-paid “salaried streaming employees,” and does not extend to the company’s lowest wage earners in their DVD division or call center. While these new generous leave policies in Silicon Valley are steps in the right direction, as commentators have stated, without a national leave policy in place, lower wage workers are often left out.

48 Hall, id.
49 International Labour Organization, Maternity and paternity at work, Law and practice across the world, 2014, fortunetodotcom.files.wordpress.com/2014/05/wcms_242615.pdf at p. 16 (last visited Jun. 3, 2015). See also Adam Peck and Bryce Covert, U.S. Paid Family Leave Versus the Rest of the World, In 2 Disturbing Charts, Thinkprogress, July 30, 2014, thinkprogress.org/economy/2014/07/30/3465922/paid-family-leave (“Out of 185 countries, the United States is just one of three that doesn’t guarantee paid maternity leave, the others being Oman and Papua New Guinea.”) Id.
Sponsors of the Family Act also point out that “Women who take paid leave after a child’s birth are more likely to be in the labor force in the 9 to 12 months after a child’s birth and to earn higher wages the year following their child’s birth. Both men and women who take paid leave after a child’s birth are less likely to receive food stamps and public assistance in the year following a child’s birth.”

What About Dad?

More men want to play a greater role in caregiving. However, there is little financial incentive for new dads. With respect to “private paid leave offered directly to employees by employers, 58% of mothers who gave birth and were offered leave by their employers received some form of disability pay, but only 14% of men on paternity leave received any replacement income (2012 National Study of Employers). That means 42% of mothers and 86% of fathers with employer supported leave received no income at all.” Moreover, many employer-paid paternity policies provide, on average, only three weeks to new fathers.

Fathers who want to share equally in parental caregiving and whose companies have paid parental leave policy on the books sometimes face challenges when seeking to take it.

The proposed Family Act embraces the realities of the workforce of today by providing a pragmatic solution for women and men when they need to take a family or personal medical leave, aligning the United States with the policies of the vast majority of industrialized countries.


55 S. 786, 114th Cong. (March 18, 2015), U.S. Government Publishing Office,


How Does the Family and Medical Insurance Leave Act Work?
A Summary of the Family and Medical Insurance Leave Act

“The Family and Medical Insurance Leave Act would create an independent trust fund within the Social Security Administration to collect fees and to provide benefits. This trust would be self-funded through employer and employee funded contributions of 0.2 percent wages each, creating a self-sufficient program that would not add to the federal budget.”59 It would require the creation of a new agency, Office of Paid Family and Medical Leave, housed within the Social Security Administration60 to implement and administer the trust and the Family Act’s purposes.61 “A one-time appropriation from the general revenues would be required to cover initial benefits and administrative costs that would be required to be paid back in 10 years under the law.”62 The independent trust would provide insurance for families with serious medical issues.63 It would also provide insurance to those in need, similar to unemployment insurance or an earned worker benefit.64 While the FMLA of 1993 is limited to only about half of the workforce, the Family Act would apply to all workers, women and men.65

To be eligible for a family and medical leave insurance benefit, the individual must qualify under Section 5(a) of the Family Act as follows:

(a) IN GENERAL.—Every individual who—

(1) is insured for disability insurance benefits (as determined under section 223(c) of the Social Security Act (42 U.S.C. 423(c))) at the time such individual’s application is filed;

(2) has earned income from employment during the 12 months prior to the month in which the application is filed;

(3) has filed an application for a family and medical leave insurance benefit in accordance with subsection (d); and

60 Id.
63 See id. at Section 2(b)(2) at pages 31-35.
64 See id. at Section 5(a), page 13, line 15.
65 See id. at Section 2(a) page 8.
(4) was engaged in qualified caregiving or anticipates being so engaged, during the period that begins 90 days before the date on which such application is filed or within 30 days after such date, shall be entitled to such a benefit for each month in the benefit period specified in subsection (c), not to exceed 60 caregiving days per benefit period.66

The benefit amount is calculated under section 5(b) of the Family Act67 and “would amount to 66% of an individual’s monthly wages (based on the highest earnings from the prior three years, up to a capped monthly amount). If the person takes the maximum number of days, which is 60 work days, the “benefits would range from a minimum benefit of $580 to a maximum benefit of $4000 per month in the program’s first year.”68

**Paid Family and Medical Leave Operates Like Insurance**

Through a modest monthly paycheck deduction, employees would contribute to fund the insurance trust that would pay out benefits to an individual who needs to take medical or family medical leave.69 Employees and employers already make joint paycheck contributions to Social Security Insurance. It is estimated that if the Family Act is adopted:

> the average woman worker earning the median weekly wage would only need to contribute $1.38 per week (for a total of $72.04 per year) into the program and even the highest wage earners would have a maximum contribution of $4.36 per week, or $227.40 per year. This means that for less than ONE Tall brewed Starbucks coffee ($1.85) or about the cost of ONE Venti latte per week (over $4), we could create a program that will be so beneficial for our families.70

This investment of dollars by workers and employers make sense. Workers and employers may not “opt out” since the program is “designed to be a national program that

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is supported by every worker and employer.”71 It is also designed to work in tandem with
state paid leave programs and temporary disability insurance programs and would not
supersede or preempt state laws that provide family and medical leave insurance.

Opposition

Change always brings resistance. The introduction of FMLA of 1993 in the early 1990s
was met with business and political opposition. Sponsor former U.S. Representative
Patricia Schroeder introduced proposed legislation after she found herself out of a job,
when her employer, in the late 1960s and early 1970s, did not provide maternity leave.72
“Her original bill proposed six months for mothers and time off for fathers as well as a
pilot for paid leave.”73 The legislation stalled under President Ronald Regan and was
reintroduced with a proposed four-month leave.74

The Chamber of Commerce and other business lobbies opposed the legislation,
and some politicians claimed it would destroy American companies. By the time
the bill passed nine years later – and two vetoes by President George H.W. Bush –
the bill applied to companies with 50 employees or more and Congress had
reduced the number to 12 unpaid weeks….Schroeder viewed the bill’s passage as
a first step; she expected it to eventually include longer, paid leave and apply to
smaller companies. When Congress invited her to celebrate the bill’s 20th
anniversary in 2013, she refused to attend. “What’s to celebrate?” she said. “You
haven’t expanded it at all.”75

Opponents, including the Business Council of New York State and the National
Federation of Independent Businesses, have focused on how the bill would mandate paid
leave, taking the issue of whether and how to cover an employee’s medical leave out of
the hands of individual private employers.76 In a recent press release, the Council stated it
“believes it is important to allow employers to fashion their overall leave policies based
on their own circumstances and capabilities within the context of company-specific
compensation plans.”77

71 The Family and Medical Insurance Leave (FAMILY) Act: Frequently Asked Questions, at FAQ 11 and
17, National Partnership for Women & Families (March 2015).
72 Rebecca Ruiz, No Family Left Behind, January 25, 2015, mashable.com/2015/01/25/maternity-leave-
policy-united-states/.
73 Id.
74 Id.
75 Id.
76 The Business Council, Business Council opposes paid family leave proposals in testimony to Senate
Labor and Social Services Committees, March 25, 2015, www.bcnys.org/whatsnew/2015/032515-council-
77 Id.
Moreover, the Council added that “[m]andatory leave legislation imposes one-size-fits all requirements on employers, regardless of company specific capacity for employee compensation and workforce flexibility.”

While some employees have access to employer-fashioned paid leave, the majority of Americans do not. As mentioned earlier in the section “Women are Half of Our Labor Force and Are the Primary Caregivers,” data indicates that currently only 11% of private sector workers and 17% of public sector workers report having access to paid leave through their employer.

Most important, while higher-level executive earners may have the ability to negotiate such benefits as part of their compensation packages, lower-level and mid-tiered private sector and public sector workers are often not in the bargaining position to negotiate paid leave benefits. Further, the Business Council’s position overlooks the support the Act would provide for self-employed individuals.

The National Federation of Independent Businesses has also focused its opposition on the Act’s creation of a mandate, saying “[p]aid leave should be an option to small business owners if they can afford it.”

However, “surveys by the Small Business Majority, which favors paid leave,” show “six in 10 New York businesses supporting the system embodied in Gillibrand’s bill.”

Further, the American business community is not united in opposition to the Family Act. The national Better Business Bureau has issued a statement on its website in support of the Act. It says, in part:

Business leaders from across the country support the Family and Medical Insurance Leave Act (FAMILY Act), federal legislation that would create a national paid family and medical leave insurance program. Three states – California, New Jersey, and Rhode Island – already have family leave insurance programs. Business owners from those states can attest to the ease of implementing such programs, and the many benefits. And businesses in other states are eager for their employees to have access to a national program.

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78 Id.
81 Id.
The Better Business Bureau website lists quotes from male and female business owners and leaders who support the Family Act, including these comments from New York State:

“A large number of studies show that childcare, flexible work hours, and paid family leave all have a very high return on investment (ROI). Moreover, there is compelling evidence that points to the fact that companies can measurably improve their bottom line by transforming a company’s corporate culture into one of a truly caring organization—which basically means, putting the interests of their employees first! The FAMILY Act will enable employers of all sizes to more easily offer paid family and medical leave. It will help businesses to do what’s good for employees and good for the bottom line.”– Cynthia DiBartolo, CEO, Tigress Financial Partners LLC and Chairperson, Greater New York Chamber of Commerce (New York).

“Paid family and medical leave is personally important to me. As a father of two in a family where both parents work outside the home, I know how difficult it is to be both a good parent and a good worker. While at the State Department, I watched my staff, who had no paid family leave, struggle to cobble together paid sick leave and annual vacation time in order to take time with new babies. And as a businessman, I’ve seen that demonstrating loyalty and respect for our people reinforces the same in return. A federal law that guarantees all workers paid family and medical leave is critical to supporting our people and economic stability. I support the FAMILY Act because it is not only good for families and businesses, it also makes economic sense.”– Tom Nides, Vice Chairman, Morgan Stanley and former Deputy Secretary of State (New York).

“As a working mom, I experienced firsthand what it is like to have to choose between doing my job and caring for my family. Now, as a business owner, I know how important it is to ensure that my employees have paid family and medical leave. The FAMILY Act will make it possible for me to offer paid family and medical leave without breaking the bank—and it will ensure that my workers don’t encounter the same struggles I was faced with while raising my children.”– Carolyn Barrett, Founder and CEO, Barrett International Technology, Inc. (New York).83

More than 180 countries provide paid family and medical leave “without damage to their economies.”84 In the U.S. “evidence from the states show that the concerns that

83 Id.
[opponents] raised are unfounded.”85 In fact, “surveys in California and New Jersey [states that have adopted paid leave laws] show no negative economic effect on employers there, with most reporting positive impact on employee retention, productivity and morale.”86

It is time for the United States to join all of the world’s other industrialized nations in embracing a paid family leave policy.

State Laws That Support Families

Several states have enacted paid leave and temporary disability insurance laws that supplement the support provided to families by the FMLA of 1993.87 Officials in these states have found that these employee paid leave programs and jointly paid and/or employee paid temporary disability leave programs (TDI) are beneficial to both employees and employers.

California

California became the first state to guarantee paid family leave in 2002.88 Similar to the proposed Family Act,89 California created an insurance-based system to provide up to six weeks of paid leave to care for a newly born or adopted child or a seriously ill family member.90 A study was undertaken to evaluate the financial benefits of the program.91 In addition to the obvious support to the employee in need of paid leave, the report documented numerous financial benefits to society as a whole, including financial savings for businesses from decreased employee turnover and reduced dependency on public assistance programs.92

86 Freedman, id.
92 Id. at 4 – 5.
A key finding of the report is that a great deal of employee turnover is the result of an employee’s inability to take paid leave in the event of serious medical needs of a new baby or family member.93 The Family Act would thus provide businesses with potentially enormous savings from decreased employee turnover.

Another key finding of the report is that paid leave provides a reduced dependency on public assistance programs such as food stamps, which are commonly accessed by employees on unpaid leave, and unemployment insurance, which is used by employees who are laid off.94 Further, paid leave may also attract more women to the workforce, by making it easier to work while caring for a family member, and resulting in greater tax collection for the benefit of all society.

A report released for the 10-year anniversary of California’s Paid Leave Act highlights that between 2004 and 2014, Californians filed approximately 1.8 million claims to care for a family member or bond with a new child.95 The overwhelming majority of California employers report that the program had a positive or neutral effect on their business.96 California families have experienced positive economic and health effects, and the vast majority of California employers perceive a positive impact on employee productivity, profitability and performance, or no effect, which means that the fears that some employers articulated when the policy was being considered never materialized.97 In 2013, legislation (Senate Bill 770) expanded eligibility to also include the following family members: parent-in-law, grandparent, grandchild, and sibling.98

New Jersey


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93 Id.
94 Id.
96 Id.
payroll contributions, and family care is funded by the employee.\textsuperscript{100} In addition, it covers employees for “six weeks for family care” and “26 weeks for own disability.”\textsuperscript{101} In terms of eligibility: “Employee must have had at least 20 calendar weeks of covered New Jersey employment, each being a week of being paid $165 or more, or having been paid $8,300 or more in such employment during the base period.”\textsuperscript{102} New Jersey officials have reported that “the paid-sick-leave laws are working and that businesses are complying.”\textsuperscript{103} Moreover, a graduate studies presentation at Rutgers’s University concluded that “overall, business experienced no effects on business profitability/performance and employee productivity regardless of employee size.”\textsuperscript{104}

**Rhode Island**

Rhode Island residents have long been entitled to income relief when they are unable to work due to injury or illness through the Temporary Disability Insurance Program funded by employees. The temporary caregiver insurance program was folded into that existing program to compensate workers who leave their jobs temporarily to care for a family member or to bond with a new baby.\textsuperscript{105}

Funding for family care is provided through employee payroll deduction and benefits are currently paid for four weeks, with no more than 30 weeks total when combining the benefits with disability and family care\textsuperscript{106} Employees taking advantage of this option are paid approximately 60% of their salary with a maximum benefit of $752/week.\textsuperscript{107} The program covers all private sector employers and some public employers.

**Washington**

Washington (Wash. Rev. Code § 49.86.010 (8)): In 2007, Washington was the second state to pass a paid family leave law, which guarantees employees up to five weeks of paid leave “to care for a newborn or newly adopted child.”\textsuperscript{108} According to the law:

\textsuperscript{100} Id.
\textsuperscript{102} Id. (citing http://lwd.state.nj.us/labor/fli/content/fli_faq.html#22).
\textsuperscript{106} Id.
\textsuperscript{107} Id.
Washington’s law applies only to parental leave. Eligible employees may receive partial pay when they take time off to care for a newborn or newly adopted child. Employees are eligible if they’ve worked at least 680 hours during the prior year or the year that ended three months before their leave starts.109

For employees who work at least 35 hours a week, the benefit amount is $250 per week. Employees who work fewer hours will receive a prorated amount.”110

New York

New York does not currently have a formal family paid leave law. Bills S3004 (Senate) and A3870 (Assembly) were introduced this year to provide employees with 12 weeks of paid leave “to care for a new child or seriously ill family member.”111 In 2014 the New York Assembly passed the Paid Family Leave Act (A.1793-B), but the Senate bill did not pass.112

A Strategic Business Planning Tool for Companies

The lack of paid family medical leave is an issue affecting all workers, not just those who are parents. Many Americans have aging parents or have had a family member with a sudden disability or illness requiring their help and want to do what is right by their family and their employer. Paid family leave promotes good business and family values.

It has been found that, “[n]early every other developed country provides these forms of paid leave without damage to their economies; in states and cities that already have paid sick days or paid family leave, the effect on businesses has been either positive or neutral”113 as was indicated earlier in California, New Jersey and Rhode Island.

109 Id.
110 Id.
113 Mariya Strauss, Crushing the Dream: The Business Lobby Groups Blocking Your Paid Leave, February 6, 2015, Political Research Associates (emphasis in the original),
Moreover, it is pointed out that “[w]orkers earn their own sick days in states and cities that have passed paid sick days laws, and research has established that it doesn’t hurt the business’ bottom lines.”114 Likewise, with the Family Act workers, including the self-employed, must work to earn paid leave and contribute through a payroll deduction.115

Having a uniform strategic approach, one that “[minimizes] business disruption,” attrition, and “[kept] employees engaged and productive over the long term” saves businesses money.116 Disruption is minimized because everyone knows the rules and businesses can plan in advance how the work will get done.117 Furthermore, for the small investment by employers and employees, the dividends are great. As pointed out by some business leaders, when paid leave programs are implemented, employee morale is increased and businesses will save thousands of dollars through lower attrition, avoiding loss of thousands of man-hours and dollars expensed on rehiring and training workers.118

Conclusion

There is strong and compelling evidence that a national paid leave policy would result in a win-win for businesses, workers, and families. The time is now for the United States to join the over 180 nations worldwide with paid leave policies by modernizing our outdated laws on family leave, thereby addressing the realities of the modern day workforce and our country’s aging population that is expected to double within several years. The Family Act creates a measure of economic security during periods of family medical need for all workers – salaried, wage, and the self-employed – and paid leave policies have been found to improve bottom-line outcomes for businesses and health outcomes for children, adults and seniors. Moreover, the Family Act would help family caregivers remain in the workforce, as well as address inequalities and imbalances that many workers face.119

In financial planning, there is an old adage “that people do not plan to fail, but fail to plan.” The Family and Medical Insurance Leave Act presents an enormous opportunity for our country to implement a plan that will help and support all American workers and their families, when they need it most. For the foregoing reasons, the Committee on


114 Id.


117 Id.

118 Id.

119 See id.

Women and the Law recommends that the New York State Bar Association support the Family and Medical Insurance Leave Act, Bill S. 786, including as an Association legislative priority, to ensure some income replacement when a worker needs to take family or medical leave. Our families are counting on us.

Submitted by the New York State Bar Association Committee on Women and the Law

Ellen G. Makofsky, Co-chair
Garden City

Ferve E. Ozturk, Co-chair
New York

Report Drafted by CWIL Legislative Affairs Subcommittee:

Susan L. Harper, Co-chair
Dawn Kirby, Co-chair
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Draft Submitted on August 19, 2015
NEW YORK COUNTY LAWYERS ASSOCIATION’S ENDORSEMENT OF AND COMMENTS ON MEMORANDUM OF THE NYSBA COMMITTEE ON WOMEN IN THE LAW IN SUPPORT OF THE FAMILY AND MEDICAL INSURANCE LEAVE ACT, BILL S. 786

Introduction

This memorandum is submitted by New York County Lawyers Association (“NYCLA”), as originally approved by NYCLA’s Labor Relations & Employment Law Committee and the Women in the Law Committee. NYCLA endorses the draft Memorandum In Support prepared by the New State Bar Association’s (“NYSBA”) Committee on Women in the Law (“WITL”) supporting the passage of the proposed Family and Medical Insurance Leave Act, Bill S. 786 (the “Family Act”). The Family Act, introduced to the U.S. Senate on March 18, 2015, would provide up to 12 weeks of partial wage replacement for a qualifying event as defined in the Family and Medical Leave Act (“FMLA”).

NYCLA reviewed the NYSBA WITL Committee’s draft Memorandum In Support (the “Report”), and offers the following suggestions and comments aimed at improving the Report.

Comments and Suggestions

I. Additional Supporting Information

A. Statistical Information from New York State

Throughout, the Report utilizes an array of statistics to drive home the value of Family Act, particularly to working mothers and families with aging family members. These statistics are crucial in showing how the Family Act responds to the needs of the workers in the current climate, as well as the needs and obstacles that workers will face in the future. Much of the data included, however, is from national reporting. We believe the Report would be more persuasive if it included additional statistical and other information specific to New York. Accordingly, we suggest that the Report incorporate the following New York-focused data.

Recommended addition for section titled “Current Legislation and State of Affairs” (pages 4-5): The need for paid family leave is acutely felt here in New York. In September 2015, New York City Comptroller Scott M. Stringer issued a report entitled “Families and Flexibility: Building the 21st Century Workplace” (the “Stringer Survey” or “report”), with findings that support the enactment of the Family Act from the perspective of New York city workers. The Stringer Survey “yielded over 1,100 responses from residents of all five boroughs working in a range of industries, from professional services and education, to

1 This Report was adopted by the NYCLA Board of Directors at its meeting on October 13, 2015.

health care, retail, and construction between June and August 2015.” Those surveyed reported the following reasons for having to take time off from work: medical appointments (88 percent); caring for a spouse, parent, grandparent, or friend (55 percent); a child’s illness/doctor’s appointment (45 percent); attending a child’s activity, such as an athletic event, recital, or play (35 percent); picking up a child from school (34 percent). The report concluded that, “[w]hile a majority of respondents took sick leave, vacation time, or ‘personal’ days to attend to these matters, over a quarter took unpaid leave and only 11 percent took paid family leave.” The report further concluded that, “The results demonstrate how we as a society have failed to create a workplace culture that values family and flexibility—to the detriment of economic productivity and social progress.”

In May 2015, New York City Public Advocate Letitia James issued a report entitled “Paid Family Leave: The Long Overdue Benefit (the “James Report”), which highlighted the need for paid leave in New York City. The James Report states, “Given the high cost of living in New York City, many workers cannot afford to take unpaid time off from work and worry about the protection of their job.”

The James Report further explains that, “New Yorkers who want to take leave but who do not have full paid leave benefits from their employers are limited to utilizing the state’s Temporary Disability Insurance for certain types of leave or the federal FMLA. . . . The New York State Temporary Disability Insurance Program (TDI) program is currently inadequate for the type of paid family leave envisioned by the Public Advocate. TDI provides five to seven weeks of benefits for recovery from childbirth; however, this benefit does not include new fathers, adoptive parents, or care for a seriously ill family member(s). Additionally, TDI has not been adjusted over time to keep pace with rising living costs. As seen in the graph on the following page, the current cap of $170 per week of benefits, which has been frozen for 25 years, lags dramatically below that of every other state with TDI (where maximum weekly benefits average $757.50).”

Recommended addition for section titled “How Does the Family and Medical Insurance Leave Act Work?” (pages 13-15): The Stringer Survey found that “80 percent of respondents support a paid family leave system funded by small employee payroll deductions, as currently proposed in the New York State Legislature. Only six percent of respondents oppose such a system . . . .”

Recommended addition for section titled “What About Dad” (pages 12-13): “The vast majority of respondents [to the Stringer survey] – 86 percent – believe that paid family leave should apply equally to mothers and fathers – an encouraging sign that the modern workforce recognizes the importance of shared parenting responsibilities.”

Recommended addition for section titled “The Aging Population and Changing Workplace” (pages 5-7): The James Report reveals that, “New York City’s population is growing older with the number of people age 65 and over projected to increase 44.2%, from 938,000 in 2000 to 1.35 million in 2030. Paid

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family leave allows employees to take time off to care for ailing parents or guardians, a responsibility becoming more common given these figures.”

B. Data Concerning the Positive Impact of Parental Time at Home on Both Children and Mothers

The Report emphasizes the many benefits the Family Act will have on families of varying compositions, including the positive impact of paid leave on maternal and infant health. We feel this point will have greater impact if accompanied by empirical evidence of these benefits. Accordingly, we suggest that the Report incorporate research demonstrating the positive developmental and health related benefits to children and parents that paid parental leave offers.

Recommended addition for section titled “U.S. Women Lack Paid Maternity Leave – U.S. Men Lack Paid Paternity Leave, Too” (pages 9-12): A report by the National Center for Children in Poverty (“NCCP”) in April 2012 entitled “Paid Family Leave, Strengthening Families and our Future,” illustrates several correlations between parental time at home and health benefits to young children. The report highlights an association between early maternal return to work after giving birth and reductions in immunizations, well-baby care, and breastfeeding. Research shows that although job-protected paid leave has a large impact on mortality, leave that is unpaid or does not protect jobs “has no significant mortality effect, possibly because of low take-up of these forms of leave.” The NCCP’s report explains that children’s brains grow very quickly in the first months of life. Research suggests that “interacting with familiar, responsive and stimulating primary caregivers during the first two years of life is critically important to a child’s social, emotional, and intellectual development.” Additionally, the NCCP’s report notes that, in studies examining the length of maternity leave and maternal health, several have found evidence of improved mental health among mothers with longer leaves.

A March 2007 article by Sheila B. Kamerman, DSW, Compton Foundation Centennial Professor of Columbia University entitled “Maternity, Paternity, and Parental Leave Policies: The Potential Impacts on Children and Their Families,” summarizes recent research on the effects of paid leave on children’s development. Among the several studies mentioned is one which found that paid parental leaves improved child health as measured by birthweight and infant mortality rates. The researcher attributed his findings to the fact that “parental leave has favourable and possibly cost-effective impacts on pediatric health.”


C. The Family Act in an International Context

The Report discusses the international landscape on paid parental leave and observes that many nations provide paid parental leave for their citizens. This information provides a compelling illustration of the trend throughout the world to recognize the significant benefits of paid parental leave. NYCLA suggests that the NYSBA WITL Committee bolster this argument by including information substantiating that, not only is the U.S. behind much of the world in providing paid parental leave, but that by international standards, it is expected to provide such leave to its citizens.

Recommended addition for section titled “U.S. Women Lack Paid Maternity Leave – U.S. Men Lack Paid Paternity Leave, Too” (pages 9-12): A recent Memorandum addressing the “International and Regional Standards and Guidelines on Maternity Benefits and Country Samples of Best Practices,” prepared by Sharon Pia Hickey for the Avon Global Center for Women and Justice at Cornell Law School6 concludes that “International treaties and guidelines promote paid maternity, paternity and family leave, and advocate for measures to prevent discrimination against caregivers. In particular, international law affirms the global consensus that the provision of maternity leave is essential to promote gender equality and protect women’s human rights.” Currently, the U.S. falls well short of the norms and expectations of the international community.

II. Additional Considerations and Recommendations

A. Why Isn’t This an Issue for New York’s Legislature?

NYCLA anticipates that opponents of the Family Act will argue that the proposed insurance benefits may be better handled on the state level. As the Report observes, at least three states already have a form of family leave insurance. NYCLA suggests that the Report offer justifications for why federal family insurance is preferable to a state by state system. Specifically, NYCLA recommends that the Report describe in further detail the benefits of the Family Act, including that it would offer a uniform, national insurance system with a uniform infrastructure for administration, and that the bill proposed is a natural complement to existing federal leave law (the FMLA) which, for many employees, is the only guaranteed leave available. The Report also should highlight the lack of state action on this issue, including in New York. Specifically, prior paid family leave bills have passed the New York State Assembly in 2005, 2007, and 2014, but have failed to muster approval from the New York Senate. Such information could be incorporated in the New York section of the state law analysis, at page 21 of the Report.

B. Interplay Between the Family Act and Existing New York Law

NYCLA suggests that the Report discuss the Family Act’s relationship with existing New York State and local laws. Specifically, Section 5(g) of the Family Act provides that the proposed bill “does not preempt or supercede any provision of State or local law that authorizes a State or local municipality to provide paid family and medical leave benefits similar to the benefits provided under this section.” 5(g)(1). The bill also provides that, “Nothing in this Act shall be construed to diminish the obligation of an employer to comply with any contract, collective bargaining agreement, or any employment benefit program or plan that provides greater paid leave or other leave rights to employees than the rights established under this Act.” 5(g)(2).

We believe it would be beneficial for the Report to address from an employer perspective how the Family Act would interact with a) existing employer paid leave policies that provide for greater benefits than the Family Act; b) existing employer policies requiring employees to exhaust paid time off when commencing FMLA leave; c) the New York Paid Sick Leave Act, and d) existing contractual obligations outlined in a collective bargaining agreement. In addition, we suggest that the Report address the operational impact of implementing the Family Act.

C. Anti-Retaliation Provision of the Family Act

The Family Act should prohibit retaliation in the same manner as the FMLA. Accordingly, we recommend inserting the following language towards the end of the Report, or even as a footnote in the “Current Legislation and State of Affairs” section in the discussion of the FMLA:

Although it does not provide for paid leave, the FMLA prohibits both interference with exercise of FMLA rights, and retaliation for exercise of those rights. 29 U.S.C.A. § 2615 and 29 C.F.R. § 825.220. The Family Act as currently drafted does not contain a similar provision. As practitioners in New York, we know first-hand that such provisions are essential to the effective administration of employee leave rights under the FMLA. As the Family Act will serve a somewhat different, albeit complimentary, purpose than the FMLA, we would ask Congress to include a similar anti-retaliation language in the final bill. We note that similar bills under Rhode Island and New Jersey law contain anti-retaliation provisions. N.J.S.A. § 34:11B-9; R.I.G.L. § 28-48-5.

D. Comments on Overall Presentation

As drafted, the Report focuses on the benefits the Family Act would provide to what it considers its primary beneficiary, women in the workforce. This focus is both laudable and logical, particularly given that an estimated 66% of caregivers are women. However, in addition to incorporating the New York-focused data suggested in Section I.A., NYCLA recommends more generally that additional references to New York, and the benefits New York’s ever-growing workforce will receive through enactment of the Family Act, be added throughout the Report where possible. We believe that an overall New York-centric presentation will have a greater impact on Congressional opinion than will a more broadly themed report.
From a presentation standpoint, we also would suggest rethinking the Report’s somewhat negative characterization of the FMLA. Currently, the Report suggests that the Family Act will remedy a shortcoming in the drafting of the FMLA. A more persuasive tone may be to present the Family Act as complimentary to the FMLA, because the proposed bill will promote the goals of the FMLA allowing a greater percentage of workers to take time off for an FMLA qualifying event.

Finally, with wide access to data and the potential for information overload, it is vital that the presentation of the Report clearly and concisely outline the Family Act’s goals and the Report’s strong arguments in support of the bill’s passage. To that end, NYCLA suggests that NYSBA WITL Committee review the Report for structure and organization before submission. Additionally, certain graphics contained within the report present readability concerns that the WITL Committee may wish to address prior to submission.

On behalf of the NYCLA Labor Relations & Employment Law Committee:

Gregory S. Chiarello, Co-Chair  
Stephen McQuade, Co-Chair

Labor Relations & Employment Law Drafting Committee  
Onya Brinson  
Gregory S. Chiarello  
Stephen McQuade  
Julianne Yanez  
Jamie Yonks

On behalf of the NYCLA Women in the Law Committee:

Jamie Sinclair, Co-Chair  
Caroline Fuchs, Co-Chair

Women in the Law Drafting Committee  

Elina Balagula  
Jennifer Becker  
Jenna Felz  
Sharon Pia Hickey  
Judie Saunders
I have reviewed the report and find it compelling for all the social reasons that it makes sense and why there is a need. However, I have several questions that the report does not address and I believe are critical to the discussion.

1. First, how will this federal benefit work in NYS and NYS disability benefits that are paid in some circumstances that would also qualify under this program? Will these benefits be in addition to the NYS Disability benefits? Paid simultaneously or after NYS disability? Could there potentially be an opportunity for payments collectively exceeding their current salary if paid together?

2. The report indicates that the program will be administered by the Social Security Administration and that there will be no fiscal impact long term as there will be an initial payment from the general fund to address the start-up costs. (Forgive my paraphrasing). First, would the administrative costs continue each year in salaries, administrative costs, hearings, appeals, etc. Has this cost been appropriately explored? Notwithstanding the aforementioned concerns, absent appropriate funding and strong administration the concern would be that this program would place more demands on an already burdened system.

3. This program would provide for partially paid 12 weeks for qualifying events that mirror those outlined in FMLA and apply to all employers irrespective of size. The greatest concern is whether the obligations of FMLA apply to this program, i.e. job security for 12 weeks? How can a small business 10 employees or less sustain a business plan for 12 weeks without its employees. They would be required to obtain temp coverage for 12 weeks, in a small business that is not feasible in many circumstances and the “key” person definition in FMLA may not be applicable in this scenario. If FMLA rules will essentially apply to all employers regardless of size, it could be absolutely crippling to small business. Thus clarification on this issue is important and the difficulties faced by small businesses must be considered.

Thank you all for your hard work on this issue and I appreciate your time and consideration of my comments.

Very truly,

Elena

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Subject: Committee on Women in the Law supporting the enactment of the Family and Medical Insurance Leave Act

I fully agree with this report regarding the merits of this legislation, and also agree that it would be a salutary advance for it to be enacted into law.

However, I am concerned that this report crosses the fine line between the Bar being an advocate for improvement of the justice system and protecting civil rights on the one hand, or being an advocate for social change on the other.

As an organization of lawyers who have divergent and diverse points of view, we usually try to focus on issues regarding improvement of the legal system and the justice system, where we have particular expertise as lawyers which gives us perspective different from the general public. We also try to do this where we have consensus on the issue, and this is one of the reasons NYSBA is respected as an “honest broker” and a source of expertise.

However, when we get into social issues, where lawyers don’t have any more expertise or experience than other members of the general public, the Bar Association should think carefully about jumping in. When we do, we reduce our effectiveness as a change agent with respect to legal issues, and come to be regarded as having a more political bent than professional. We should tread carefully with respect to these issues.

When we enter the arena of political issues, rather than legal ones, we open the door to similar proposals on a wide range of issues where advocacy can have the unintended effect of diminishing our voice in the legislative arena and subject NYSBA to criticism as being just another special interest group.

I’d like to hear some discussion of this, not with respect to whether the proposal is a good idea (I’m already convinced), but whether the proposal is a good idea for NYSBA to advocate. Meritorious as this idea is, I don’t think that it would be one of our legislative priorities even if the House were to approve it.

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“The trouble with finding quotes on the internet is determining whether or not they are genuine.” —Abraham Lincoln
Staff Memorandum

HOUSE OF DELEGATES
Agenda Item #10

Attached are comments submitted by the Labor and Employment Law Section with respect to the report and recommendations of the Committee on Women in the Law on the Family and Medical Insurance Leave Act.
TO: NYSBA Reports Group

FROM: William A. Herbert, Chair, NYSBA Labor and Employment Law Section

DATE: October 23, 2015

RE: Staff Memorandum of the Committee on Women in the Law in Support of the Family and Medical Insurance Leave Bill

Introduction

The NYSBA Labor & Employment Section submits this memorandum in response to the request for comments concerning the Staff Memorandum of the Committee on Women in the Law in support of the Family and Medical Insurance Leave Act (FMLA) which will be submitted to the House of Delegates.

The NYSBA Labor & Employment Section includes members who represent employers, unions, and individual employees. We also have members who are arbitrators, mediators and academics. The Section membership includes many individuals with extensive expertise concerning family, medical and disability leave and benefits. It would have been advantageous for our Section’s experts to have been consulted prior to the submission of the Staff Memorandum requesting the NYSBA Executive Committee and House of Delegates to endorse FMLA.

The diversity of the backgrounds, opinions and clientele of our Section membership makes it difficult to reach consensus on whether to support any proposed legislation, particularly bills impacting the workplace. The difficulty in developing a consensus with respect to the Staff Memorandum has been compounded by the relatively short duration of the comment period. The Section would need substantially more time to
prepare and submit an in-depth position statement with respect to the recommendation concerning FMILA.

With that said, it is important to underscore our country’s history with respect to proposed social legislation over the past century. Each effort to ameliorate a social problem or expand the social safety net, particularly as it relates to the workplace, has been met with the argument that the costs outweigh the intended benefits. Alternatively, the legislation has been challenged as being unnecessary, unworkable, unconstitutional or inconsistent with societal values. Despite the repetitious nature of the opposition to progressive legislation, enacted social programs and workplace legal protections including the Social Security Act, the Fair Labor Standards Act, the Wagner Act, Title VII of the 1964 Civil Rights Act, the Americans with Disabilities Act, and the Family Medical Leave Act (FMLA) have been largely successful, and remain broadly favored.

**Preliminary Comments on the Staff Memorandum**

Following receipt of the request for comments regarding the Staff Memorandum, the co-chairs of the Labor & Employment Section Workplace Rights and Responsibilities Committee and the Legislation and Regulatory Developments Committee were asked to provide input concerning the Staff Memorandum and the FMILA. Below are substantial portions of their comments, which have been edited and reformatted for purposes of submitting this memorandum.

**A. Workplace Rights and Responsibilities Committee**

Geoffrey A. Mort and Dennis A. Lalli, the co-chairs of the Workplace Rights and Responsibilities Committee, agree that the Staff Memorandum does a masterful job of demonstrating why FMILA would be beneficial to many workers who would be entitled to paid leave when at present their leave entitlements under the FMLA are unpaid. As will be delineated below, however, management co-chair Dennis A. Lalli has identified what he considers to be shortcomings in the Staff Memorandum that need to be addressed, including an analysis of the bill’s cost formula, before the Labor & Employment Section can present a reasoned position for or against the Staff Memorandum’s recommendation.

Employee co-chair Geoffrey Mort wholeheartedly supports the Staff Memorandum’s recommendation believing that the proposal to provide twelve weeks of partial income tied with FMLA leave is sufficiently important that it should be enacted. In his view, the public policy objectives of FIMLA transcend any argument about the details of funding the insurance trust, which can be modified at a future point. He believes that too large an emphasis on the bill’s funding arrangements is a distraction from the real issue, which is meeting a pressing societal need. The United States is substantially behind other developed nations with regard to the quality and kinds of social services if provides its
citizens. That said, Mr. Mort concedes that an argument can be made for exempting employers with four or fewer employees from FMILA.

The following are the issues identified by management co-chair Dennis Lalli concerning the Staff Memorandum:

1. **No Analysis of Costs.** FMILA would be operated as an independent, “self-sufficient,” Social Security-like trust fund administered within the Social Security Administration. According to the Staff Memorandum’s quotation of material from the office of Senator Gillibrand, one of the sponsors of the bill, the cost of benefits and the cost of administering the program would be funded by employer and employee “contributions,” each equal to .2% of gross wages, for a total of .4% of wages. It is estimated that “the average woman worker earning the median weekly wage” would have to “contribute” only $72.04 per year ($144.08 when you include the employer’s match; the maximum “contribution” is said to be $4.36 per week, or $227.40 per year – ($454.80 when you include the employer’s match).

The Staff Memorandum appears to accept as a given that this is sufficient; certainly it does not undertake any analysis of the adequacy of these funding projections. However, this cost estimate seems plainly insufficient. Indeed, it seems to a skeptic to be an exceedingly and unrealistically small amount of funding, masking an underlying intent to get the camel’s nose under the tent for now, and then increase the “contributions” later, when the program is failing because the amount of “contributions” turned out to be insufficient.

The cost of the California paid sick leave program, which is funded by an increase in the tax that employees pay to the state-mandated short-term disability insurance program, suggests that a total of .4% of wages is wholly insufficient. The California program is to be funded according to its costs, at a rate of not less than .1% and not more than 1.5% of wages. The rate in 2015 is .9%, and is increasing to 1.0% in 2016 -- two and a half times the “contributions” to be required by the FMILA. Moreover, the California program funds a maximum of only six weeks of paid leave, not the 12 weeks that FMILA would fund.

The New Jersey family leave program is funded by a worker-paid tax of only 1% of the first $31,500 of wages, or $31.50 per year. But the program applies to parental leaves of

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1 On its face, the median “contribution” of $144.08 per week seems a meagre amount when you consider that it has to cover up to 12 weeks’ paid leave for employee and family sicknesses AND the cost of administering the program. Unless people start getting sick, having babies, and having family members who are ill with a great deal less frequency that they seem to do now, this doesn’t even pass the straight face test.
absence only, and doesn’t appear to cover the employee’s own sickness. Moreover, it covers only six weeks of paid leave, not 12, and the employer may require the employee to use up to two weeks of accrued sick leave or vacation time; that time is offset against the six-week leave period covered by the statute, substantially reducing the cost of benefits for many participants.

In short, it seems that a responsible assessment of FMILA should include an analysis of the adequacy of its funding arrangement. The Staff Memorandum does not do that. It is suggested that the Section undertake such an analysis before taking a position on the Staff Memorandum, or at least identify this flaw in the Staff Memorandum’s support for the bill.

2. No Assessment of the Impact of Extending Application of Act to All Employers, Irrespective of Size. The FMLA provides job-protected leave, but applies only to employers of more than 50 employees. The FMLA would apply to all employees (including part-time and contingent workers) of all employers, no matter how small the employer. Critically, it would not provide that employers are obligated to hold an employee’s job open. The Staff Memorandum does a very good job of describing why employees need the benefits it provides and why those benefits would be good for employees. However, it does not even acknowledge, much less address, the fact that the benefits to be provided do not include job-protected leave for workers who are employed by employers who do not have enough employees to be covered by the FMLA or similar state laws.

The structure of FMILA appears to create the likelihood that many employees of small employers will feel entitled to take paid time off that they might not take off if they were not going to be paid. This feature, however, is bound to create confusion and disillusionment when an employer that is too small to be able to get by feasibly without an important employee replaces that employee during her FMILA leave. The employee, thinking she was entitled to take paid leave, may well have assumed erroneously that her leave was job protected, only to learn upon reporting back to work 12 weeks later that her position was filled and that she – lawfully – has no job.

It would appear that any informed recommendation for or against the FMILA would have to include an examination of this issue.

3. No Attempt to Explain Why Enactment of FMILA Would Be Preferable to Raising the Rate of Contributions to the Social Security Trust Fund or Funding Child Care. Concededly, the issue of legislative priorities is not as critical to an analysis of whether the FMILA is a worthwhile legislative initiative when we are considering the bill in isolation. But it seems self-evident that if we are to talk about a new trust fund to be administered by the Social Security Administration, we need to consider the fact that the Social Security trust fund is said to be in need of increased funding, which Congress
has been unable to raise. If we cannot generate support for an increase in Social Security contributions, it seems that when we are discussing the creation of a new matched contribution trust fund system, we should address the question whether this new system warrants priority over fixing what has been asserted to be a problem with the current Social Security system.

4. **Impact on Small Businesses and Employees.** It is premature to endorse the Staff Memorandum without considering the impact FMILA would have on small employers and on employees who will want to take leaves of absence that are not job-protected or how the FMILA would fit within other pressing social justice priorities that the legislature necessarily will have to address in deciding whether to pass the bill. An employer who has only ten employees has a much harder time absorbing the loss of an employee for 12 weeks than does one with 50 employees – to say nothing of the burdens that such an absences places on the other 9 co-workers.

5. **Lack of a Government-Provided Health Care Option.** One of the reasons the Staff Memorandum raises in support of the FMILA is the fact that most developed nations have paid sick leave and it’s “about time” the U.S. did, too. However, most employers in other developed nations do not have to pay for their employees’ health care because there is a government-provided health care option. As a result, the comparisons that are made with other developed countries are misplaced.

6. **No Discussion of Whether FMILA Reinforces, Rather Than Combats, Sexual Stereotypes.** The focus of the FMILA on paid caregiving tends to reinforce, rather than rebut, the stereotype that caregiving is women’s work, since the Staff Memorandum characterizes FMILA as a women’s rights issue. Devoting substantial funds to improved child care resources might be a preferable way of accomplishing the goals of FMILA in a way that tends to defeat, rather than promote, this stereotype, by putting women and men on a more equal footing in regard to the impact of child-rearing on a person’s ability to participate in the workplace.

B. **Legislation and Regulatory Developments Committee**

The following are comments received from our Legislation and Regulatory Development Committee co-chairs Joanne Seltzer, Timothy Taylor and Jonathan Weinberger.

As outlined below, there are positive aspects to the FMILA from the employee side, and some comments or reservations from the employer and union sides.

Social insurance programs, such as social security and unemployment benefits, are broadly favored by Americans. Although we might not like paying the insurance
premiums, the benefits come in handy when catastrophe strikes. The FMLA is a modest expansion of social insurance benefits, funded from payroll, like social security contributions. It expands the application of the FMLA to all employers, decouples the qualifying period from the particular employer thereby freeing up mobility in the employment market, provides benefits for the self-employed in the increasingly “gig” economy, and provides partial income financial support during the FMLA leave period, without which people living paycheck to paycheck are frequently in financial trouble. Currently, only about one half of the workforce has the benefit of FMLA leave, and without financial support. Since there is currently no financial support, one half of those who qualify for FMLA leave cannot afford to take it, or have to cut their leave short for financial reasons, with obvious emotional and financial consequences for the worker and those the worker may be caring for. A policy which enables the creation of new families in a younger generation that is less prosperous than previous generations and the care of the increasing aging population is a plus for society. Aside from their own medical conditions, which may force workers to take leave, the FMLA will enable workers to avoid a painful choice between supporting themselves and starting a family or caring for their family.

Although initially opposed by business groups, there seems to have been a favorable reaction from those groups after passage of paid family leave laws in California, Rhode Island and New Jersey. Currently, about 11% of private sector workers have access to some form of paid medical leave paid for by employers without social insurance. While voluntary policies may be preferable, the benefits of social insurance cannot be achieved that way because of short term bottom line competitive pressures, and employer fears of negative financial consequences.

However, the Staff Memorandum cites studies which show no negative economic effect on employers, with positive impact on employee retention, productivity and morale, thus decreasing costs and increasing profits. Currently, the social cost of family leave is limited to people who qualify for other social insurance programs, such as public assistance, food stamps and unemployment insurance. The United States is the only developed country without some form of paid family leave.

Nevertheless, there are still some concerns from the employer and union points of view. Most of these concerns have centered on the “one size fits all” quality of this and other social insurance programs. There is no consideration in the proposed bill for exemptions for smaller employers and, although the employer contribution is modest, it could add to the operating costs of a smaller employer and either negatively impact the business or discourage the smaller employer from hiring additional employees.
REQUESTED ACTION: Approval of the report and recommendations of the New York County Lawyers’ Association.

Attached is a report from the New York County Lawyers’ Association recommending an amendment to New York Retirement and Social Security Law §60 to permit state-paid judges to elect to have their beneficiaries receive a pension in lieu of regular death benefit upon their death while in office. Under current law, if a judge dies while in office, his or her beneficiaries receive a more modest death benefit than the pension benefits to which they would be entitled if the judge dies after retirement (the “death gamble”). The report notes that prior to 2000, this policy applied to teachers, police officers and fire fighters; however, when the law was amended to change the policy as to these groups, it remained in place for judges and some non-judicial personnel. While non-judges can take advantage of early retirement opportunities, judges cannot, and in order to earn sufficient retirement credits they must remain in office.

Attached to the report are comments supporting the proposal from the Judicial Section, the Suffolk County Bar Association, the Brooklyn Bar Association, the Dutchess County Bar Association, the Bar Association of Erie County, and the Board of Justices, First Judicial District.

The report will be presented by Michael Miller, Vice President, First Judicial District.
Judges do not often die in office. When they do, however, their families not only suffer the loss of a loved-one, but they also suffer significant financial loss due to an anomaly in Section 60 of New York’s Retirement and Social Security Law. In essence, for members of the judiciary, there is what many refer to as a “Death Gamble”— if a judge (and certain other New York State employees) dies while in office, his or her beneficiaries receive a more modest death benefit compared to the more substantial pension benefits that beneficiaries of a retired judge receive if the judge dies while retired. Additionally, the beneficiaries of a judge who dies in office may not elect any of the benefit options available to a judge who retires.

You might ask, “Doesn’t this violate the Employee Retirement Income Security Act (ERISA)? Wasn’t ERISA adopted to do away with such unfair and Draconian rules?” Generally, the answer is “yes”; however, pension plans for state employees are not subject to the provisions of ERISA.

Prior to legislation enacted in 2000, the Death Gamble applied to thousands of police officers, firefighters and teachers in New York State, in addition to members of the judiciary and certain non-judicial personnel. As a result of very strong union advocacy representing New York State police officers, firefighters and teachers, the 2000 bill removed the gamble for police officers, firefighters and teachers who had served in their jobs for a minimum period of time. Unfortunately, members of the judiciary were specifically excluded from the 2000 legislation removing the Death Gamble.

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1 This Report was prepared by the NYCLA Ad Hoc Working Group on the Death Gamble, which includes Michael Miller, Chair, Hon. Helen Freedman (ret.), Lucas A. Ferrara, Hon. Kevin McKay (ret.), Hon. Richard Lee Price, and Robert G. Silversmith.

2 When a State employee joins the Retirement System, she/he is assigned to a tier based on their date of membership. There are six tiers in the Employees’ Retirement System (ERS). The tier determines:
   - Eligibility for benefits;
   - The formula used in the calculation of benefits;
   - Death benefit coverage;
   - Service crediting; and
   - other matters.

State employees whose employment commenced prior to July 1, 1973 (referred to as Tier 1 employees) are excluded from the provisions of the Death Gamble. However, only a small number of State employees qualify as Tier 1 and their numbers continue to decline over time. See, e.g. Office of the State Comptroller, New York State and Local Retirement System, What Tier Are You In? See also, Office of the State Comptroller, New York State and Local Retirement System, Career Plan for ERS Tier 1 Members.
In summary, the 2000 legislation modified state pension rules to provide that the beneficiaries of those police officers, firefighters and teachers eligible for Service Retirement at the time of their deaths now had the same benefit options available to them that the decedents would have had – the beneficiaries are eligible to receive a lump sum equal to the amount the decedent would have been entitled to receive had the decedent retired on the day before his or her death or, importantly, if chosen, a monthly retirement allowance.\(^3\)

Thus, while the Death Gamble was eliminated for thousands of police officers, firefighters and teachers, nonetheless, judges and certain non-judicial employees continue to work under the specter of this unfair pension provision. For non-judicial personnel subject to the Death Gamble, this disparity has, to a great extent, been buffered by the proliferation of early retirement opportunities afforded to most public employees.\(^4\) This is especially so in recent years, as a result of initiatives in connection with judicial budget cutting efforts. Rather than having to remain in service for longer periods after they become eligible to retire in order to increase their pensions, most non-judicial employees of the Unified Court System have been able to retire early while adding significantly to their pension credit. By doing so, they have eliminated the need to take the Death Gamble on living long enough, while remaining in employment, to earn an adequate pension.\(^5\)

Judges, however, have not been able to take advantage of these early retirement opportunities, as they have been excluded as a group from each of the relevant statutes and early retirement incentives. The result is that judges, many of whom become judges later in life, must continue in service at some risk to their families’ financial welfare. Without an early retirement incentive by which to augment their eventual pensions, they have no choice but to remain in service if they wish to earn additional retirement credit. Not only is this grossly unjust in and of itself, it is also unfair that judges, who are the cornerstone of our justice system, are excluded from the benefit options available to most other state employees. When judges continue to serve after the age of 60, they are further disadvantaged by a provision that results in a 4% reduction per year (up to 40%) in the amount of death benefit available if they die while still employed by the state. Thus, the beneficiaries of a judge who dies in office after the age of 70 may only receive a lump sum equal to 60% of three times the decedent’s average salary during her/his final three years in

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> “A reduction in the Judiciary’s workforce has also been a central factor in controlling costs. Over the past five years, as a result of participation in the Early Retirement Incentive Program, targeted layoffs, a hiring freeze, and other measures, the non-judicial workforce of the court system has been reduced by more than 1,900 employees.”

service. As time goes by, these unfair pension provisions may be yet additional disincentives for many to undertake judicial service, or to continue judicial service when they are at the height of their professional abilities.\(^6\)

Although the Death Gamble has existed for a number of years, many in the organized bar are not aware of this unfair and Draconian structure. For more than a decade, Court administration has sought to persuade the legislature to correct this unfair and unjust situation by amending the relevant provisions of the Retirement and Social Security Law to permit state-paid judges and justices of the Unified Court System to elect to have their beneficiaries receive a pension in lieu of the comparatively modest death benefit, upon their death while in service. Judicial budget reductions, a long overdue judicial salary increase, as well as funding for civil legal services for poor people and for additional Family Court judges have, for good reason, dominated the Court Administrators’ attention. However, as a result, it has been very difficult to get traction in the legislature to correct the unfairness of the Death Gamble.

Several times in recent years the Office of Court Administration (OCA) has submitted proposed legislation to remove the Death Gamble for judges.\(^7\) According to the New York State Comptroller’s office, the cost to ameliorate this provision is relatively modest. In 2011, the most recent occasion that OCA submitted proposed legislation to correct this injustice, the Retirement Systems Actuary of the Office of the New York State Comptroller calculated that if such an amendment were adopted, “[i]t is estimated that there will be increases in the annual contributions of the State of New York of approximately $170,000 for the fiscal year ending March 31, 2012…” and that there would be a one-time payment of a “past service cost of approximately $3.3 million.”\(^8\) The calculations today would be very similar. These amounts reflect a tiny share of the current $1.8 billion court budget, yet the benefit to our dedicated judiciary’s families would be enormous. A copy of the 2011 proposed legislation is attached.

Section 50 of the Legislative Law requires that a “fiscal note” from the Office of the New York State Comptroller be appended to the proposed bill. Such a request was made by Marc Bloustein, OCA’s Legislative Counsel, in connection with the 2011 proposal for amendment to the Retirement and Social Security Law consistent with the terms outlined above. From time to

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\(^6\) Hon. Helen Freedman (ret.), a member of the NYCLA Board of Directors and the Working Group that prepared this report, notes that the Death Gamble was a significant factor in her decision to retire as an Associate Justice of the Appellate Division, First Department.

\(^7\) 2004 Senate 7213 (Sen. DeFrancisco)  
Assembly 10550-A (M. of A. Weinstein)  
2005-06 OCA 2005-3  
Senate 3969-A (Sen. DeFrancisco)  
2007-08 OCA 2007-48  
Senate 5852 (Sen. DeFrancisco)  
2009-10 OCA 2009-2R  
Assembly 8711 (M. of A. Lopez)  
2011-12 Legislative Bill Drafting Commission 09805-02-1.

\(^8\) See, attached Fiscal Note #2011-139 from Michael Dutcher, Retirement Systems Actuary to Marc Bloustein, Legislative Counsel to OCA, dated March 18, 2011. See also, attached draft bill 09805-02-1 dated March 18, 2011.
time, private bills have been enacted which provide that a particular deceased judge is deemed to have retired before her/his death while still on the bench, thus providing the deceased judge’s beneficiaries with the benefit options that would have been available to the deceased judge had she/he retired rather than died while still in office. While this is a good precedent, in light of political vagaries, the complexities of the legislative process, uncertainty and delay for beneficiaries, this is not a reliable or desirable way to address this problem.

Therefore, the NYCLA Board of Directors has adopted a resolution urging an amendment of §60 of New York’s Retirement and Social Security Law, to permit state-paid judges and justices of the Unified Court System to elect to have their beneficiaries receive a pension in lieu of the regular death benefit, upon their death while in service. Additionally, if a judge did not make the election prior to death, the designated beneficiary of the judge’s death benefit should be authorized to make the election for the deceased judge posthumously and to choose from the pension payment options contained in §90 of New York’s Retirement and Social Security Law.

Governor Andrew Cuomo signed a private bill on December 29, 2014, which deemed Justice Gustin Reichbach, who died in office on July 14, 2012, to have retired before his untimely death while still on the bench, thus providing his beneficiaries with the benefit options that would have been available to him had he retired rather than died while still in office. Three Supreme Court Justices have died in office in the past several months: On November 16, 2014, New York County Supreme Justice Louis York died while in office, approximately six weeks before reaching mandatory retirement. On February 12, 2015, Nassau County Supreme Court Justice Thomas Phelan died while in office. On March 8, 2015, Staten Island Acting Supreme Court Justice Robert Collini died while in office. Thus, their beneficiaries were not entitled to elect among the various benefit options which would have been available to the deceased judges had they retired.

It should be noted that NYCLA’s Judicial Section and Civil Court Practice Section have each adopted a resolution calling for NYCLA to urge the New York State Legislature to pass and the Governor to sign into law legislation to ameliorate this unfair and unjust situation. Additionally, they proposed that NYCLA submit a similar resolution to the New York State Bar Association for consideration by its House of Delegates, and that NYCLA then reach out to every County Bar Association in New York State and to the New York City Bar Association and seek their respective support as co-sponsors of the said resolution.
The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1) Single House Bill (introduced and printed separately in either or both houses). Uni-Bill (introduced simultaneously in both houses and printed as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed copies of bill and 4 copies of memorandum in support (single house); or 6 signed copies of bill and 8 copies of memorandum in support (uni-bill).
Section 1. Section 60 of the retirement and social security law is amended by adding a new subdivision g to read as follows:

q. 1. Notwithstanding any provision of this section, a member, or within ninety days after his or her death, the person nominated by him or her to receive his or her ordinary death benefit, may elect to receive, in lieu of such benefit, a death benefit in the form of the pension to which such member would have been entitled had he or she retired effective before his or her death. For purposes of this subdivision, the person making the election hereunder shall, at that time, elect among the options provided in section ninety of this article; and such option shall be given effect as if made by the member.

2. The death benefit provided by this subdivision shall not be payable unless the member, at the time of his or her death, is eligible to retire and is a state-paid judge or justice of the unified court system (including a retired judge of the court of appeals or retired justice of the supreme court who is serving as a justice of the supreme court pursuant to certification by the administrative board of the courts in accordance with section one hundred fourteen or one hundred fifteen of the judiciary law) or a housing judge of the civil court of the city of New York ("eligible employee"). In the event that a member elects the death benefit provided by this subdivision and, at the time of his or her death, he or she has not retired but is not an eligible employee, his or her beneficiary shall be entitled to the ordinary death benefit provided by the other provisions of this section and/or such other benefits as may elsewhere be authorized by law.

§ 2. Section 448 of the retirement and social security law is amended by adding a new subdivision h to read as follows:
h. 1. Notwithstanding any provision of this section, a member who is subject to the provisions of this article, or within ninety days after his or her death, the person nominated by him or her to receive his or her death benefit hereunder, may elect to receive, in lieu of such benefit, a death benefit in the form of the pension to which such member would have been entitled had he or she retired effective before his or her death. For purposes of this subdivision, the person making the election hereunder shall, at that time, elect among the options provided in section ninety of this chapter; and such option shall be given effect as if made by the member.

2. The death benefit provided by this subdivision shall not be payable unless the member, at the time of his or her death, is eligible to retire and is a state-paid judge or justice of the unified court system (including a retired judge of the court of appeals or retired justice of the supreme court who is serving as a justice of the supreme court pursuant to certification by the administrative board of the courts in accordance with section one hundred fourteen or one hundred fifteen of the judiciary law) or a housing judge of the civil court of the city of New York ("eligible employee"). In the event that a member elects the death benefit provided by this subdivision and, at the time of his or her death, he or she has not retired but is not an eligible employee, his or her beneficiary shall be entitled to the death benefit provided by the other provisions of this section and/or such other benefits as may elsewhere be authorized by law.

§ 3. Section 606 of the retirement and social security law is amended by adding a new subdivision f to read as follows:

f. 1. Notwithstanding any provision of this section, a member who is subject to the provisions of this article, or within ninety days after
his or her death, the person nominated by him or her to receive his or her death benefit hereunder, may elect to receive, in lieu of such benefit, a death benefit in the form of the pension to which such member would have been entitled had he or she retired effective before his or her death. For purposes of this subdivision, the person making the election hereunder shall, at that time, elect among the options provided in section ninety of this chapter; and such option shall be given effect as if made by the member.

2. The death benefit provided by this subdivision shall not be payable unless the member, at the time of his or her death, is eligible to retire and is a state-paid judge or justice of the unified court system (including a retired judge of the court of appeals or retired justice of the supreme court who is serving as a justice of the supreme court pursuant to certification by the administrative board of the courts in accordance with section one hundred fourteen or one hundred fifteen of the judiciary law) or a housing judge of the civil court of the city of New York ("eligible employee"). In the event that a member elects the death benefit provided by this subdivision and, at the time of his or her death, he or she has not retired but is not an eligible employee, his or her beneficiary shall be entitled to the death benefit provided by the other provisions of this section and/or such other benefits as may elsewhere be authorized by law.

§ 4. This act shall take effect immediately and shall apply to members of the retirement system dying on or after such effective date.

FISCAL NOTE.—Pursuant to Legislative Law, Section 50:
This bill would modify the active member death benefit for judges in the Unified Court System who are eligible for a service retirement, to be the service retirement benefit as if the judges had retired before
their death. The beneficiaries would then choose an option pursuant to Section 90 of the Retirement and Social Security Law. Affected beneficiaries would become eligible to receive an enhanced lump sum amount under the "cash refund-initial value" option rather than the current active member death benefit.

If this bill is enacted, it is estimated that there will be increases in the annual contributions of the State of New York of approximately $170,000 for the fiscal year ending March 31, 2012.

In addition to the annual contributions discussed above, there will be an immediate past service cost of approximately $3.3 million which will be borne by the State of New York as a one-time payment assuming a payment date of March 1, 2012.

This estimate is based on approximately 1,200 judges in the Unified Court System with an estimated annual salary for the fiscal year ending March 31, 2010 of approximately $156 million.

This estimate, dated March 18, 2011, and intended for use only during the 2011 Legislative Session, is Fiscal Note No. 2011-139, prepared by the Actuary for the New York State and Local Employees' Retirement System.
IN SUPPORT OF

AN ACT to amend the retirement and social security law, in relation to death benefits for the beneficiaries of certain members of the retirement system.

This measure is designed principally to cure an inequity arising under current provisions of the Retirement and Social Security Law insofar as they govern entitlement to death benefits. Such provisions call for payment of death benefits in lieu of a pension to the beneficiary of a public employee when he or she dies in service. These death benefits generally are of lesser value than the pension to which such an employee and his or her beneficiaries would be entitled were the employee to have retired before death. In recent years, this disparity has, to some extent, been buffered by the proliferation of early retirement opportunities extended to many, if not most public employees. Rather than having to remain in service for longer periods after they become eligible to retire, in order to beef up their pensions, employees have been able to retire early while adding significantly to their pension credit. By so doing, they have eliminated the need to gamble on living long enough, while remaining in employment, to earn an adequate pension.

Judges are among the few classes of public employees who have not been able to take advantage of the early retirement opportunities. They have been excluded as a group from each of the relevant statutes. The result is that many judges, most of whom first enter upon their judicial duties in their fifties, or even in their sixties, must continue in service at some risk to their families’ financial welfare. Without an early retirement incentive by which to augment their eventual pension, they have no choice but to remain in service if they wish to earn additional retirement credit. By so doing, they chance death before retirement, in which event their beneficiaries likely will be entitled to less than if they were able to retire and then died thereafter. Given the benefits being made...
available to many others, this is unfair. Moreover, it is a disincentive for many to undertake judicial service.

This measure would redress this problem. It would amend provisions of the Retirement and Social Security Law to permit State-paid judges and justices of the Unified Court System to elect to have their beneficiaries receive a pension, in lieu of the regular death benefit, upon their death while in service. Judges making this election would be required to identify which of the section 90 pension options should govern payment of this pension. If a judge did not make the election described here as of his or her death, the person designated as a beneficiary of the judge’s death benefit would be authorized to make the election for him or her posthumously, and to choose the pension payment option as well.

This measure, which would take effect immediately and shall apply to members of the retirement system dying on or after such effective date.

2004 Legislative History: Senate 7213 (Sen. DeFrancisco) [ref to Civil Service and Pensions]
Assembly 10550-A (M. of A. Weinstein)
[ref to Governmental Employees]

2005-06 Legislative History: OCA 2005-3
Senate 3969-A (Sen. DeFrancisco) [ref to Civil Service and Pensions]

2007-08 Legislative History: OCA 2007-48
Senate 5852 (Sen. DeFrancisco) [ref to Civil Service and Pensions]

2009-10 Legislative History: OCA 2009-2R
Assembly 8711 (M. of A. Lopez) [ref to Governmental Employees]
March 18, 2011

Mr. Marc Bloustein
Legislative Counsel, OCA
Empire State Plaza
4 ESP, Suite 2001
Albany NY 12223-1450

Dear Mr. Bloustein:

Re: Fiscal Note #2011-139

This is in response to your request for a fiscal note for a bill that would modify the death benefit for judges in the Unified Court System who are eligible for a service retirement, to be the service retirement benefit as if the judge had retired before their death (Research #139).

The fiscal note, required by Section 50 of the Legislative Law, which may not be altered and which must be appended to the bill in its entirety, is:

“This bill would modify the active member death benefit for judges in the Unified Court System who are eligible for a service retirement, to be the service retirement benefit as if the judges had retired before their death. The beneficiaries would then choose an option pursuant to Section 90 of the Retirement and Social Security Law. Affected beneficiaries would become eligible to receive an enhanced lump sum amount under the “cash refund-initial value” option rather than the current active member death benefit.

“If this bill is enacted, it is estimated that there will be increases in the annual contributions of the State of New York of approximately $170,000 for the fiscal year ending March 31, 2012.

“In addition to the annual contributions discussed above, there will be an immediate past service cost of approximately $3.3 million which will be borne by the State of New York as a one-time payment assuming a payment date of March 1, 2012.

“This estimate is based on approximately 1,200 judges in the Unified Court System with an estimated annual salary for the fiscal year ending March 31, 2010 of approximately $156 million.

“This estimate, dated March 18, 2011, and intended for use only during the 2011 Legislative Session, is Fiscal Note No. 2011-139, prepared by the Actuary for the New York State and Local Employees’ Retirement System.”

If you have any questions about this cost estimate, please feel free to contact us.

Sincerely,

Michael Dutcher
Retirement Systems Actuary

Michael Dutcher
Retirement Systems Actuary
MD of l:\2011 FN Requests\139\fn 2011-139.doc
Dear Ms. McHargue,

The Council of Judicial Association, duly convened on September 18, 2015 voted unanimously in support of the NYCLA Report.

As a delegate from the Judicial Section, I intend to vote in favor of the Report if it is presented to the House of Delegates at the November 7th meeting.

Sincerely,

HON. JOHN F. O’DONNELL
Presiding Member

October 9, 2015

Kim McHargue
New York State Bar Association
One Elk Street
Albany, New York 12207

RE: NYCLA REPORT

FORMER CHAIRS:
- Hon. Bernard S. Meyer
- Hon. Fred J. Munder
- Hon. David F. Lee, Jr.
- Hon. Nathaniel T. Helman
- Hon. Henry A. Hudson
- Hon. Ellis J. Staley, Jr.
- Hon. Arnold L. Fein
- Hon. Frederick M. Marshall
- Hon. Martin B. Stecher
- Hon. Edward S. Conway
- Hon. Nat H. Hentel
- Hon. Lawrence J. Bracken
- Hon. Maxine Duberstein
- Hon. T. Paul Kane
- Hon. Louis D. Laurino
- Hon. Martin Evans
- Hon. Thomas M. Stark
- Hon. John R. Tenney
- Hon. C. Raymond Radigan
- Hon. Leonard A. Weiss
- Hon. Edwin Kassoff
- Hon. Geoffrey O’Connell
- Hon. Vincent E. Doyle, Jr.
- Hon. Daniel F. Luciano
- Hon. M. Dolores Denman
- Hon. Michelle Weston Patterson
- Hon. John T. Buckley
- Hon. A. Gail Prudenti
- Hon. Robert Charles Kohm
- Hon. Rose H. Scioni
- Hon. Charles E. Ramos
- Hon. Anthony J. Garramone
- Hon. Terry Jane Ruderman
- Hon. Robert F. Julian
- Hon. Angela M. Mazzarelli
- Hon. Leonard B. Austin
- Hon. Eileen Bransten
- Hon. Joseph J. Cassata
- Hon. Leland G. DeGrasse
- Hon. Deborah H. Karalunas
- Hon. Paul G. Feinman
- Hon. Rachel Kretser
- Hon. Ellen M. Spodek
October 22, 2015

Michael Miller, Esq.
666 Fifth Avenue, Suite 1717
New York, New York 10103-0001

Re: Section 60 of New York’s Retirement and Social Security Law
“Death Gamble”

Dear Mr. Miller:

The Board of Directors of the Suffolk County Bar Association, at their regular meeting held on Monday, September 28, 2015, adopted a resolution supporting the proposal of the New York County Lawyers’ Association to amend §60 of New York’s Retirement Social Security Law to permit state-paid judges and justices of the Unified Court System to elect to have their beneficiaries receive a pension in lieu of the regular death benefit upon their death while in service. Such amendment would afford the beneficiaries of judges or justices who die in office the same benefit options which would have been available to them if the deceased judge or justice had retired.

As President of the Suffolk County Bar Association, and on behalf of our Officers, Directors and members, thank you for the opportunity to be a part of this important effort.

Very truly yours,

Donna England
President
October 7, 2015
Michael Miller, Esq.
666 Fifth Avenue, Suite 1717
New York, NY 10103-0001

Re: Death Gamble

Dear Mr. Miller,

The Brooklyn Bar Association Board of Trustees, at the September 9, 2015 meeting unanimously adopted a resolution in support of the New York County Lawyers Association Report and Resolution concerning the Death Gamble.

The Brooklyn Bar Association leadership is in line with the NYCLA resolution is seeking an amendment of Section 60 of New York’s Retirement and Social Security Law. Such amendment would afford the beneficiaries of judges who die in office the same benefit options which would have been available to them if the deceased judge had retired.

We look forward to adding our support to NYCLA resolution when it appears on the NYSBA House of Delegates agenda.

Very truly yours,

[Signature]

Arthur L. Aidala
President
August 4, 2015

Sophia Gianacoplos
Executive Director
New York County Lawyers Association
14 Vesey Street
New York, New York 10007

Dear Ms. Gianacoplos:

At the August 3, 2015 meeting of the Dutchess County Bar Association
Executive Committee, the New York County Lawyers Association’s
resolution to amend Section 60 of New York’s Retirement and Social
Security Law was discussed.

Judges should be afforded the same benefit options as other state employees.
Amending Section 60 of New York’s Retirement and Social Security Law
will allow judges, and their families, to take full advantage of the pensions
they have earned. Accordingly, we support the New York County Lawyers
Association’s resolution to amend Section 60 of New York’s Retirement and
Social Security Law.

Sincerely,

[Signature]
Sharon Faulkner, Esq.
President
September 22, 2015

Michael Miller, Esq.
666 Fifth Avenue, Suite 1717
New York, NY 10103-0001

Re: Section 60 of New York’s Retirement and Social Security Law

Dear Michael,

The Board of Directors of the Bar Association of Erie County has resolved to support the proposal of the New York County Lawyers’ Association to urge an amendment of §60 of New York’s Retirement Social Security Law to permit state-paid judges and justices of the Unified Court System to elect to have their beneficiaries receive a pension in lieu of the regular death benefit upon their death while in service. Additionally, if a judge did not make the election prior to death, the designated beneficiary of the judge’s death benefit should be authorized to make the election for the deceased judge posthumously and to choose from the pension payment options contained in §90 of New York’s Retirement and Social Security Law.

Thank you for the opportunity to be part of this important effort.

Best regards,

Very Truly Yours,

Kevin W. Spitler
President

cc: Hon. Eugene F. Pigott, Jr.,
Hon. Eugene M. Fahey
Hon. Paula L. Feroleso
Hon. Deborah A. Chimes, Chair, BAEC Judges Committee
Gregory T. Miller, Vice President
Board of Justices, First Judicial District

New York County Lawyers’ Association
14 Vesey Street
New York, New York 10007
Attn. Michael Miller
July 10, 2015

Re: Death Gamble Resolution

Dear NYCLA:

At the July meeting of our Board of Justices, we passed a resolution to thank you for all the work NYCLA has done in support of legislative change to Section 60 of New York’s Retirement and Social Security Law. We salute the leadership role you have undertaken in bringing this injustice to the attention of the New York State Bar.

The Death Gamble has visited unanticipated hardship on surviving families of some of our most distinguished judges. With allies like you, we can foresee a day when no one will learn pension rights are not available because of the sudden death of beloved spouse.

Thank you for all your good work.

Yours truly,

Joan B. Lobis
Attached is a letter from the Women’s Bar Association of the State of New York in support of the report and recommendations of the New York County Lawyers’ Association.
October 23, 2015

New York County Lawyers’ Association
14 Vesey Street
New York, New York 10007

Attn: Michael Miller, Esq.

Re: Death Gamble Resolution

Dear Mr. Miller and the Members of NYCLA:

On behalf of the more than 4,300 members of the Women's Bar Association of the State of New York (WBASNY), it is my pleasure to inform you that we have voted, unanimously, to support NYCLA’s resolution seeking an amendment to Section 60 of New York State’s Retirement and Social Security Law. (The Death Gamble)

As an organization committed to promoting and safeguarding women, children and families, WBASNY supports such an amendment that will ameliorate the unfair provisions of this Law and which will afford beneficiaries of a judge who dies while still in office the same benefit options which would have been available had the judge retired.

I thank you for your leadership regarding The Death Gamble and we are proud to support your efforts in this regard.

Very truly yours,

[Signature]

Andrea F. Composto
President, WBASNY
REPORT BY THE COUNCIL ON JUDICIAL ADMINISTRATION
RECOMMENDING THAT THE BENEFICIARIES OF JUDGES AND JUSTICES OF
THE UNIFIED COURT SYSTEM WHO DIE IN OFFICE BE ENTITLED TO RECEIVE
A PENSION INSTEAD OF A DEATH BENEFIT

In Matter of Hilda L. O’Brien v. Morris S. Tremaine as Comptroller of the State of New
York, 285 N.Y. 233, 235-236 (1941), the Court of Appeals reviewed the State Comptroller’s
denial of a retirement allowance to the widow of the Late Associate Judge John F. O’Brien, who
died six (6) days before his retirement.

In 1939, while John F. O’Brien was rendering the thirteenth year of his
distinguished service as an Associate Judge of [the Court of Appeals], he
suffered a serious impairment of health. By reason of that fact, and on
December first of that year, he filed a written application with the State
Comptroller***for retirement from active judicial service and for payment to
him, beginning January 1, 1940, of a retirement allowance ***. Judge O’Brien
was then sixty-five years of age. He had joined the retirement system in 1928
and thereafter ... he made the required contributions to the annuity savings
fund, which contributions covered both his prior public service of more than
twenty-eight years as an Assistant Corporation Counsel of the City of New
York and his entire service as an Associate Justice of the Court of Appeals.
By his application filed December 1, 1939, he selected “Option No. 2” ***to
be the form of optional benefit under which he elected that payments should
be made, and nominated his wife *** to receive any benefit payable according
to law after his death.

Judge O’Brien died December 25, 1939, six days before the date which he had
fixed for his retirement. Thereafter, on May 18, 1940, his widow applied to
the State Comptroller for payment of the optional retirement benefits to which
she claimed to be entitled under “Option No. 2.”

After affording [Mrs. O’Brien] a full hearing, the Comptroller denied her
application on the ground that the death of Judge O’Brien had occurred before
his retirement and at a time when his status was that of a member of the
Retirement System, not a beneficiary thereof,***. The Comptroller also ruled
that *** [Mrs. O’Brien] was entitled to the return of all contributions made by
her deceased husband and, in addition thereto, the death benefit provided by
section 65-b [of the Civil Service Law].
By a unanimous vote, the Court of Appeals affirmed the Comptroller’s decision because it had no power to amend the terms of a clearly drawn statute.

Despite the passage of 74 years, the law remains unchanged. The beneficiaries of a judge who, either dies in office, or before his or her retirement becomes effective receive a death benefit equal to three times the judge’s average salary during the his or her final three years in office. However, once a judge reaches 60 years of age, his or her death benefit is reduced by 4% per annum up to a maximum of 40%.\(^1\) In other words, the death benefit of a judge who dies in office at the age of 70 is reduced to only 60% of three times the judge’s average salary during the his or her final three years in office. Neither the full, nor the reduced death benefits are as generous as the more substantial pension benefits the judge’s beneficiaries would have received had the judge passed away while retired; and neither the full, nor the reduced death benefits provide beneficiaries with the option to receive a monthly allowance.

In this day and age, judges are forced to gamble that they can live long enough to retire so that when they die, their families will be entitled to receive an adequate pension that they can opt to receive as a monthly allowance. This situation has been characterized as the *Death Gamble*. Unfortunately, if a judge loses the *Death Gamble* and dies in office, it is the judge’s family which suffers by receiving the necessarily smaller lump sum death benefit instead of a pension. Moreover, for the many judges who enter judicial service in their fifties or sixties without prior governmental service, the *Death Gamble* is not theoretical, as they hope to serve long enough to accrue significant retirement credit.

Prior to 2000, thousands of police officers, firefighters, teachers, judges and certain non-judicial personnel were required to risk the *Death Gamble*. Recognizing the unfairness of forcing participants and their families to gamble on whether a participant would live long enough to retire on an adequate pension, in 2000, the Legislature relieved those police officers, firefighters and teachers who were eligible for Service Retirement at the time of their deaths from the need to gamble with their families’ financial security.\(^2\) Their beneficiaries were given the same benefit options that would have been available to them had the participants retired on the date before their deaths, or had the participants chosen a monthly retirement allowance. Judges and justices of the Unified Court System were specifically excluded from the Legislation. The 2000 law only exempted police officers, firefighters and teachers from the general operation of New York Retirement and Social Security Law §§ 60 f. 1. and 3, and 448 1.

Although non-judicial court personnel also face the *Death Gamble*, their situation has been ameliorated by OCA’s increasing use of early retirements to trim its budget. Instead of remaining in service to increase their pension after becoming eligible to retire, non-judicial employees have been able to retire early while significantly increasing their pension credits. Judges and justices are not eligible to participate in such early retirement programs.

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\(^1\) See, New York Retirement and Social Security Law § 448 a. 2. and 3.

OCA has offered legislation to eliminate the Death Gamble for judges and justices. The last such bill A.8711 was introduced in the 2009-2010 legislative session on June 4, 2009. The bill sought to amend New York Retirement and Social Security Law §§ 60, 448 and 606 in order to permit an eligible retirement system member to elect to have the member’s beneficiaries receive, in lieu of an ordinary death benefit, the retirement benefit such beneficiaries would have been entitled to receive had the member retired effective prior to the date of his or her death. It would also permit the late judge’s death benefit beneficiary to posthumously make the election if the judge failed to do so before he or she passed away. Unfortunately, OCA’s efforts have met with a notable lack of success.

The New York City Bar Association Council on Judicial Administration urges the Legislature to amend New York Retirement and Social Security Law §§ 60, 448 and 606 to permit an eligible retirement system member (such as a sitting judge) to elect that the member’s beneficiary receives, in lieu of an ordinary death benefit, the death benefit to which such beneficiary would have been entitled to receive had the member retired effective prior to the date of his or her death; and to permit the late judge’s death benefit beneficiary to posthumously make the election if the judge failed to do so before he or she passed away.

October 2015
October 30, 2015

Michael Miller, Esq.
666 Fifth Avenue, Suite 1717
New York, New York 10103

Re: NYSBA House of Delegates
Section 60 of New York’s Retirement and Social Security Law “Death Gamble”

Dear Mr. Miller:

The Board of Directors of the Broome County Bar Association, at their monthly meeting held Friday, September 18, 2015, adopted a resolution supporting the proposal of the New York County Lawyers’ Association to amend §60 of New York’s Retirement Social Security Law to permit state-paid judges and justices of the Unified Court System to elect to have their beneficiaries receive a pension in lieu of the regular death benefit upon their death while in service.

On behalf of the Broome County Bar Association, I thank you for the opportunity to be a part of this important effort.

Sincerely,

F. Paul Battisti
President
Broome County Bar Association
NEW YORK STATE BAR ASSOCIATION
MINUTES OF EXECUTIVE COMMITTEE MEETING
THE OTESAGA, COOPERSTOWN, NEW YORK
JUNE 18-19, 2015


Mr. Miranda presided over the meeting as President of the Association.

1. Mr. Miranda called the meeting to order, and Matthew R. Coseo, Michael L. Fox, Taa R. Grays, Claire P. Gutekunst, Michael Miller, Steven E. Millon, and Sheldon K. Smith were welcomed as new/returning members of the Executive Committee.

2. Approval of minutes of meeting. The minutes of the March 27, 2015 meeting and the June 4, 2015 teleconference meeting were accepted as distributed.

3. Consent Calendar.
   a. Confirmation of Audit Committee appointments.
   b. Approval of stated purpose of Committee on Procedures for Judicial Discipline.

The consent calendar, consisting of the items listed above, was approved by voice vote.

4. Report of the Treasurer. Ms. Gerstman, in her capacity as Treasurer, updated the Executive Committee with respect to dues and CLE revenue, and then provided an overview of the Association’s expenditures. She reviewed expenditures with respect to Bar Center operations; administration; technology; marketing, membership and member benefits; governance; programming; CLE and publications; and advocacy and improvement of justice. The report was received with thanks.

5. Report of Lawyer Assistance Committee. Gary M. Reing, the committee’s chair, together with committee secretary Thomas E. Schimmerling and Patricia Spataro, Director of the Lawyer Assistance Program, presented an informational report reviewing the committee’s and the Program’s activities during the prior year. They noted that 2015 marks the 25th anniversary of the operation of the Lawyer Assistance Program. The report was re-
ceived with thanks. The committee then presented an award to Glenn Lau-Kee for his support of the Program during his presidency.

6. **Request of Committee on Media Law re NYSBA report on sealing records of convictions.** Lynn Beth Oberlander, chair of the Committee on Media Law, together with committee member R. Townsend Davis, Jr., outlined the committee’s concerns with respect to a portion of the 2012 report approved by the House of Delegates with respect to sealing criminal convictions. They questioned the constitutionality of proposed legislation relating to sanctions against publishers. In her capacity as chair of the Criminal Justice Section, Ms. Wallach noted that the section is open to working with the committee to develop alternate language. After discussion, a motion was adopted to table consideration of the proposal in order to permit the committee to review a recently submitted letter from the Criminal Justice Section.

7. **Report and recommendations of Committee on Lawyer Referral Service.** In his capacity as the committee’s Executive Committee liaison, Mr. Gaffney outlined an affirmative legislative proposal to amend Judiciary Law §498 to provide for confidentiality protection for communications between a bar association lawyer referral service and consumers who contact such a service. After discussion, a motion was adopted to approve the proposal.

8. **Report of New York Law Digest Editor.** David L. Ferstendig, the new Editor of the New York Law Digest, presented an informational report on his plans for upcoming issues of the Digest, including additional materials on procedural elements and more electronic communications. The report was received with thanks.

9. **Report and recommendation of Committee on Committees.** Donald C. Doerr, chair of the committee, reviewed the committee’s report and recommendations with respect to the operation of 14 committees. After discussion, motions were adopted with respect to the following:
   a) A motion was adopted to table the recommendation regarding the Special Committee on Re-Entry.
   b) A motion was adopted to approve the recommendation regarding the Special Committee on Criminal Discovery.
   c) A motion was adopted to approve the recommendation regarding the Committee on Court Structure and Operations.
   d) A motion was adopted to table the recommendation regarding the Committee on Unlawful Practice of Law.
   e) A motion was adopted to table the recommendation regarding the Committee on Volunteer Lawyers in order to develop a more defined mission statement.
   f) A motion was adopted to approve the recommendation regarding the Committee on Annual Award.
   g) A motion was adopted to approve the recommendation with respect to updating committee mission statements.
10. **Report re technology.** David L. Adkins, Chief Technology Officer, provided the Executive Committee with a report on the Association’s technology initiatives, including key technology metrics; website; Communities; mobile devices; CLE segmentation; social media; and content. The report was received with thanks.

11. **Discussion of Executive Committee liaison responsibilities and duties of Vice Presidents.** Mr. Miranda led a discussion of liaisons’ roles in facilitating communication, providing guidance on policy and procedure, and encouraging sections and committees to undertake projects. He asked liaisons to maintain regular contact with their groups, encourage them to submit reports for consideration by the Executive Committee and/or House of Delegates and comment on reports submitted by other groups, and to be mindful of the need for diversity. He outlined the reimbursement policy for liaisons attending section and committee meetings.

Mr. Miranda also reviewed the responsibilities of Vice Presidents, as set forth in the By-laws, to promote relations with local bars and members in their respective districts. He noted the importance of informing local bar leaders, including those of minority and specialty bars, of Association initiatives and encouraged them to advise the Association of local bar concerns.

Mr. Miranda noted that at this and future meetings, he would invite liaisons and Vice Presidents to provide updates with respect to their assigned groups and judicial districts. In this regard, Ms. Wallach provided an update on the work of the Criminal Justice Section; Mr. Fox provided an update on the work of the Young Lawyers Section; and Ms. Barreiro outlined concerns raised by associations in the Sixth District with respect to continuing legal education.

12. **Proposed amendments to name and purpose of Municipal Law Section.** In his capacity as the section’s Executive Committee liaison, Mr. Goldenberg outlined proposed amendments to the section bylaws to change the name of the section to the Local and State Government Law Section and to expand its mission to address the needs of lawyers who are employed by state government or who practice before state agencies. He noted that the Executive Committee’s approval would be contingent upon the section’s approval of the amendments at its September 2015 meeting. After discussion, a motion was adopted to approve the amendments.

13. **Report and recommendations of Committee on Children and the Law.** Betsy R. Ruslander, the committee’s chair, reviewed an affirmative legislative proposal to amend Family Court Act §1051 to permit the Family Court to dismiss a neglect proceeding at any point in the proceeding on the grounds that the court’s aid is not required. After discussion, a motion was adopted to approve the proposal.

14. **Report re legislative matters.** In his capacity as chair of the Committee on Legislative Policy, Mr. Fernandez updated the Executive Committee on the 2015 state legislative session, particularly with respect to the Association’s legislative priorities. The report was received with thanks.
15. **Report and recommendations of Committee on Membership.** In her capacity as chair of the committee, Ms. Wallach provided an update on the committee’s activities, including a plan to focus on three segments of membership: law students and young lawyers, with particular emphasis on the Pathways to the Profession program; solo and small firm attorneys; and public sector and non-resident attorneys. The report was received with thanks.

16. **Report of Executive Director.** David R. Watson, Executive Director, and Elizabeth Derrico, Associate Executive Director, highlighted staff efforts with respect to the focus on segmented membership as set forth in the preceding paragraph. In addition, the outlined a planned section membership sale and a practice management web initiative being developed in conjunction with USI Affinity and CuroLegal. The report was received with thanks.

17. **Report re staff diversity.** Executive Director David R. Watson reviewed a study of current staff diversity levels as compared to the Albany/Schenectady/Troy metropolitan area, as well as goals and strategies to increase staff diversity. The report was received with thanks.

18. **Report of ABA State Delegate.** Mark H. Alcott, ABA State Delegate, updated the Executive Committee on ABA activity and leadership. The report was received with thanks.

19. **Report of Committee on Women in the Law.** In her capacity as committee co-chair, Ms. Makofsky, together with committee member Susan L. Harper, reviewed the Family and Medical Insurance Leave Act, which would provide paid leave for family care and medical emergencies. They noted that following the meeting the report would be circulated for comment and would be presented for vote at the November 7, 2015 House meeting. The report was received with thanks.

21. **Update on Chief Judge’s Commission on Statewide Professional Discipline.** Mr. Lau-Kee, a member of the commission, updated the Executive Committee on the commission’s work to date. The commission is conducting a comprehensive review of the state’s attorney disciplinary system to determine what is working well and what can work better and to offer recommendations to enhance the efficiency and effectiveness of New York’s attorney discipline process. He noted that the Association has current positions on some of the issues being considered by the commission, including the point at which disciplinary proceedings should become public. The report was received with thanks.

22. **Report of Committee on Professional Discipline.** Richard Rifkin, the committee’s staff liaison, reviewed the committee’s report on the use of collateral estoppel in disciplinary proceedings, noting that the committee had concluded that no changes are required at present. The report was received with thanks.

23. **Report of Special Committee on Re-Entry.** Susan B. Lindenauer, a member of the committee, reviewed the committee’s work to date to develop recommendations to implement
several proposals made by the Special Committee on Collateral Consequences of Conviction, including educational programs for the incarcerated; the availability of affordable housing; family contact for the incarcerated; pre-release programs; and alternatives to incarceration. She reported that the committee plans to issue its report by November 15 for consideration at the January 2016 House meeting. The report was received with thanks.

24. **Report and recommendations of Special Committee on Continuing Legal Education.** In his capacity as chair of the Special Committee, Mr. Miranda reviewed the process used by the committee in its review of NYSBA’s delivery of CLE and the recommendations being made by the committee, including the recommendation that the Association retain the current structure. After discussion, a motion was adopted to approve the report and recommendations.

25. **Report of Committee on Continuing Legal Education.** Committee chair Deborah A. Scalise and H. Douglas Guevara, Senior Director of Continuing Legal Education, reviewed the strategic plan being developed by the committee, including national and local trends, the current state of NYSBA CLE programming, and the steps that the Committee on Continuing Legal Education is taking to ensure continuing value for member retention and recruitment. The committee invited comments from the Executive Committee to be considered by the committee at its summer 2015 meeting. The report was received with thanks.

26. **Report and recommendations of the Trusts and Estates Law Section.** Jennifer F. Hillman, co-chair of the section’s Committee on Legislation and Governmental Relations, outlined an affirmative legislative proposal to amend section 1310 of the Surrogate’s Court Procedure Act (SCPA) with respect to the collection of personal property by affidavit. After discussion, a motion was adopted to table consideration of the proposal in order to ask the Health Law Section to review and comment.

27. **Report of President.** Mr. Miranda highlighted the information contained in his printed report, a copy of which is appended to these minutes. In addition, he reviewed in greater detail the practice management project being developed, noting that the goal is to have it ready for demonstration at the 2016 Annual Meeting.

28. **New Business.**

   a. **Report of The New York Bar Foundation.** John H. Gross, President of The Foundation, provided an update on Foundation activity, noting that The Foundation planned to work closely with the Association in meeting the needs of the project supported by The Foundation. The report was received with thanks.

   b. **Cameras in the Courtroom.** Mr. Miller reported that the office of Court Administration had released for comment proposed amendments to the rules governing the use of cameras in the courts, noting that the deadline for comments is August 10, 2015. After discussion, a motion was adopted to request an additional 120 days for comment.
29. **Date and place of next meeting.** The next meeting of the Executive Committee will be held on Friday, November 6, 2015 at the Bar Center in Albany.

30. **Adjournment.** There being no further business, the meeting of the Executive Committee was adjourned.

Respectfully submitted,

[Signature]

Ellen G. Makofsky
Secretary

Guests: Timothy J. Fennell, Sarah Jo Hamilton, Thomas J. Kniffen, David H. Tennant.

Mr. Miranda presided as President of the Association.

1. Report and recommendations of Committee on Professional Discipline. Sarah Jo Hamilton, chair of the committee, reviewed the committee’s report and recommendations with respect to the use of discovery in attorney disciplinary proceedings. It was noted that if approved, the report would serve as the basis for President Miranda’s testimony at the July 28, 2015 hearing of the Chief Judge’s Commission on Statewide Attorney Discipline. After discussion, a motion was adopted to approve the report and recommendations. Messrs. Cohen and Smith abstained from voting.

2. Request of Committee on Veterans to submit an *amicus curiae* brief. Committee chair Timothy J. Fennell, together with committee member Thomas J. Kniffen, outlined a proposed *amicus curiae* brief for submission in *Disabled American Veterans v. McDonald*, a case pending before the United States Court of Appeals for the Federal Circuit, challenging amendments to Veterans Administration regulations with respect to submission of disability claims. They noted that the proposed brief would focus on the adverse impact of the amendments on elderly and homeless veterans. After discussion, a motion was adopted to approve the preparation and submission of the brief. Messrs. Cohen, Coseo and Napoletano volunteered to serve as a subcommittee to review the brief prior to submission.

3. Consideration of *amicus curiae* participation in *Fisher v. University of Texas*. David H. Tennant reviewed the procedural history of this case, which relates to the use of race as a factor in college admission policies, noting that the Association had participated as *amicus* when this case previously was before the United States Supreme Court. He noted that as in the prior *amicus* brief, the Association’s brief would focus on the importance of diversity in law schools and the profession. After discussion, a motion was adopted to approve *amicus* participation. Mr. Tennant will prepare the brief for submission.

4. Consideration of *amicus curiae* participation in *Ambac Assurance Corp. v. Countrywide Home Loans, Inc.* Mr. Goldberg outlined the issues in this case, pending before the New York State Court of Appeals, with respect to the application of the common interest doctrine as an exception to attorney-client privilege. After discussion, it was the consensus of the committee that *amicus* participation should not be approved in the absence of input from potentially interested sections and committees.
5. **Adjournment.** There being no further business to come before the Executive Committee, the meeting was adjourned.

Respectfully submitted,

[Signature]

Ellen G. Makofsky
Secretary

Guests: Susan B. Lindenauer, Patricia Spataro.

Mr. Miranda presided as President of the Association.

1. Report and recommendations of Lawyer Assistance Committee. Patricia Spataro, Director of the Lawyer Assistance Program, reviewed the committee’s recommendation that the Appellate Divisions adopt a uniform rule for diversion of disciplinary matters involving substance abuse or mental health issues for submission to the Chief Judge’s Commission on Statewide Attorney Discipline. After discussion, a motion was adopted to approve the report and recommendations. Mr. Lau-Kee abstained from participating in the discussion and vote.

2. Proposed submission to the Office of Indigent Legal Services. Susan B. Lindenauer, co-chair of the Task Force on Family Court, reviewed a proposed letter to be submitted to the Office of Indigent Legal Services in response to a request for comments on issues involved in determining financial eligibility for the appointment of assigned counsel. After discussion, a motion was adopted to approve the proposed submission. Ms. Grays abstained from participating in the discussion and vote.

3. Proposed submission to Vera Institute of Justice on behalf of Prisoners’ Legal Services. Mr. Miranda reviewed a proposed letter prepared by the Committee on Immigration Representation to the Vera Institute of Justice in support of a grant application by Prisoners’ Legal Services to provide representation to incarcerated immigrants at Ulster Immigration Center. After discussion, a motion was adopted to approve submission of the letter on behalf of the Association. Mr. Cohen abstained from participating in the vote.

4. Judicial Compensation Commission. Mr. Miranda reported that a state commission is being formed to review judicial compensation and make a report by December 1, and that he wanted to form a working group of the Executive Committee to develop recommendations for submission to the commission. He asked members interested in serving on the working group to contact him regarding their interest.

5. Adjournment. There being no further business to come before the Executive Committee, the meeting was adjourned.

Respectfully submitted,

[Signature]

Ellen G. Makofsky
Secretary