

Message from the Chair



Richard K. Zuckerman

Happy end of Summer (is there such a thing?)/ start of Fall and welcome to the newest edition of the *Municipal Lawyer*. Many things, most of them good, have occurred within our Section since I last wrote to you.

For example, our 2018 Annual Meeting at the New York Hilton was a smashing

success, with a record

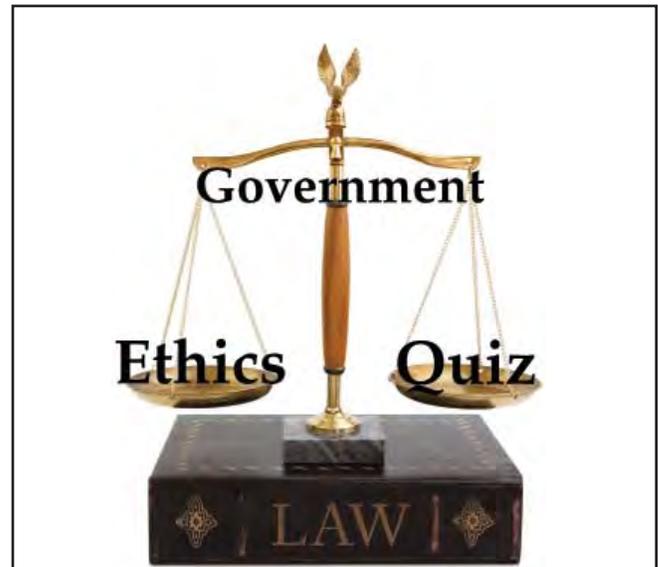
112 attendees, thanks in large part to Co-Chairs **A. Joseph Scott** and **Martha Krisel**. Topics, and their presenters, included *Blurred Lines—Zoning Limited to Regulation of Use Rather Than User* (**Adam Wekstein**); *Navigating the Approval Process: The Interplay Between Municipal Land Use Boards* (**Kathleen Deegan Dickson**); *Update on New York State’s “Zombie Law”* (**Wade Beltramo**); *Takings After Murr v. Wisconsin* (**Charles Malcomb**); *Sign Codes in the Wake of Reed v. Town of Gilbert* (**Mindy Zoghlin**); *Social Media as a First Amendment Protected Forum* (**Jessica Copeland**); and *Ethical Issues: Conflict of Interest Update on New York State Conflict of Interest Law* (**Steve Leventhal**).

Our April 27, 2018 Spring Government Law Forum, held at the Bar Center in Albany and across the State via webcast, was attended/viewed by approximately 88 attorneys. Presentations included *Minority and Woman-Owned Business Enterprise (MWBE) Purchasing in New York* (**Martha Mann Alfaro** and **Norreen VanDoren**); *New York State Response to Changes in Federal Tax Law* (**Danshera Cords** and **Kathleen Hodgdon**); and *State and Local Government Financial Disclosure Requirements* (**Seth Agata** and **Steve Leventhal**). Special thanks go to Program Co-Chairs **Sharon Berlin**, **Spencer Fisher**, **Mike Kenneally** and **Alyse Terhune**, and NYSBA Section Liaisons **Beth Gould** and **Sydney Joy** (see below), for ensuring that it all came together.

Although it has taken longer than we would have liked to get it to you, this issue of the *Municipal Lawyer* showcases several of the many talented members of our Section, and I would like to take a moment to acknowledge them and our other authors: *Government Ethics Quiz* (**former Section Chair Mark Davies** and **Steve Leventhal**); *U.S. Supreme Court Delivers a Big Victory for State and Local Governments in Murr v. State*

of Wisconsin (**John Echeverria**); *Notice of Claim Requirements: A Survey of Recent Court of Appeals Decisions* (**Jim Bilik**); *Lexjac, LLC v. Inc. Village of Muttontown: Second Circuit Clarifies Key Elements of N.Y. Gen. Mun. Law Art. 18* (**Steve Leventhal**); *Ancient Streets: Creation of the Implied Easement* (**Kristen Motel**); *New Legislation on Sexual Harassment Will Significantly Affect the Handling of These Cases for Municipalities* (**Kristin Klein Wheaton**);

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Sponsored by the Section's
Ethics and Professionalism Committee

Q *Hypothetical 1:* A licensed engineer serves as a member of the town zoning board. At a public meeting, an application for a variance is presented. When the matter is called to be heard, the engineer discloses that he is the applicant’s paid consultant, and assisted in reviewing the plans that are a part of the application. The architect recuses himself, and refrains from participating in the discussions, deliberations, or vote. Was the engineer’s conflict of interest cured by his recusal?

Hypothetical 2: A village building department employs two architects as plan examiners, each of whom practices in the village. From time to time, their paying clients submit applications to the building department, including plans that they have prepared. Each of them recuses herself in connection with their respective clients’ applications. Each of them reviews the applications submitted by clients of the other. Were the architects’ conflicts of interest cured by their recusals?

Answer and analysis on page 6

and *Book Review: Why Commercial Litigation in New York State Courts, 4th Edition, Belongs in Your Library* (former Section Chair **Linda S. Kingsley**).

By the time you read this, it will almost be time to attend our Fall 2018 Meeting, which is being held in the Westin in Buffalo on September 28 and 29, 2018. The Program features a wide variety of interesting topics and entertaining speakers, including *NYS Freedom of Information Law (FOIL) Basics*, presented by **Chris Trapp**; *Notice of Claim Basics*, presented by **John Campolieto**; *Ethical Issues for New Public Sector Attorneys—Reliance on a Supervisor’s Resolution of a Question of Professional Duty*, presented by **Jim Bilik**; *Update from the State’s 2018 Legislative Session*, presented by **Charles Malcomb**; *Recent Federal Tax Law Changes and Federal Tax Hot Topics for Municipalities and State Government, Including Remedial NYS Legislation*, presented by **Marla Waiss**; *SEQRA –2018 Amendments*, presented by **Lawrence. Weintraub** and **Thomas King**; *A Half Century of Home Rule in New York*, presented by **Rick Su**; *Latest Developments on Sexual Harassment and Discrimination in the Public Workplace and the Effects of the #MeToo Movement*, presented by **Kristin Klein Wheaton** and **Lindy Korn**, and moderated by **Lise Gelernter**; *Janus and Beyond: The Demise of Agency Fees*, presented by **John Corcoran** and **Judith Crelin Mayle**; and *Ethical Issues for Public Sector Attorneys in NYS, Including the Limitations on Attorney-Client Privilege for State and Local Government Lawyers*, presented by **James Milles**. We hope that you will be able to attend!

Our Section is co-sponsoring NYSBA’s Administrative Agency Practice CLE program, scheduled for November 1, 2018 in New York City and November 8, 2018 in Albany. Topics and their presenters include, *Hearings Under the New York State Administrative Procedure Act Articles 3-5 and State Administrative Law Judges’ Model Code of Conduct* (the **Hon. James F. Horan** in New York City and the **Hon. James T. McClymonds** in Albany); *Proceedings Before the New York State Division of Tax Appeals/Tax Appeals Tribunal*, presented by the **Hon. James Connolly**; *Proceedings Before the New York City Office of Administrative Trials and Hearings (OATH) (NYC)*, presented by the **Hon. Raymond E. Kramer**; *Hearings Before Special Education Impartial Hearing Officers in New York*, presented by **Doug Libby**; *Hearings Before the New York State Workers’ Compensation Board, Including Administration of the Paid Family Leave (PFL) Law*, presented by **David Wertheim**; *Hearings Before the New York State Department of Environmental Conservation*, presented by the **Hon. James T. McClymonds**; *Hearings Before the New York State Department of Health and the State Board for Professional Medical Conduct*, presented by the **Hon. James F. Horan** in New York City and Albany, and the **Hon. Natalie Bordeaux** in New York City and the **Hon. Dawn MacKillop-Soller** in Albany.

Our Section’s 2019 Annual Meeting will be held a week early this year, on January 17, 2019, once again

at the New York Hilton. Program Co-Chairs former NYSBA and Section Chair **A. Thomas Levin**, **Bernis Nelson** and **Adam Wekstein** are busy planning this all-day program, and welcome your suggestions for topics and speakers.

Our Section’s Officers (First Vice-Chair **Sharon Berlin**, Second Vice-Chair **Mike Kenneally** and Secretary **Lisa Cobb**) and Executive Committee Members continue to diligently work to try to provide you with a valuable bang for your Section dues buck. The Executive Committee meets monthly by conference call and the minutes, once approved, are posted and made available at communities.nysba.org. Typical meeting agendas address approximately 20 items (in under an hour, by the way) including, for example, our efforts (thank you to in particular to **A. Thomas Levin**) to update and submit our Section’s *Model Pro Bono Policy for Attorney-Employees of Local Governments and Local Government Agencies* to NYSBA’s House of Delegates as a companion and supplement to the NYSBA’s previously adopted *Model Pro Bono Policy and Procedures for Attorneys in State and Federal Government Agencies*.

Section Committees continue to provide members with information about latest developments and speaking and writing opportunities. Shoutouts are in order for some of our more active committees, such as (but certainly not limited to) the Committee on Attorneys in Public Services (**Spencer Fisher** and **Michelle Kelson**, Co-Chairs), the Employment Relations Committee (**Jim Bilik** and **Chris Trapp**, Co-Chairs), the Administrative Law Judges Committee (chaired by the **Hon. James T. McClymonds**) and our Long-Range Planning Committee, chaired by **Alyse Terhune** and which, with the Executive Committee’s approval, has planned our 2019 Fall Meeting for October 25-26 in Saratoga Springs, and our 2020 75th Anniversary Fall Meeting for Philadelphia, tentatively scheduled for October 23-25, 2020. An extra special thank you also goes to our Section Committee Coordinator, **Chris Trapp**, for his ongoing efforts at pushing our committees to do even more.

On a bittersweet note, long-time Section liaison and friend **Beth Gould** left NYSBA this Spring and moved on to greener pastures with the Girl Scouts of America. I’m sure her position will soon be filled by very capable hands. Still, we miss you, Beth!

As you can see, there is much to look forward to for the rest of this year, though my beloved New York Mets do not seem to fit within that category. Still, it’s almost hockey season and then 2019. Let’s Go Rangers!

On behalf of all of us in the Section’s leadership, thank you for your continued membership and support!

Richard K. Zuckerman