

# HOD Roundup

Pro bono task force looks to address unmet pro bono needs, match attorneys throughout state

By Christina Couto

Identifying ways to address unmet and underserved pro bono legal services needs—and match attorneys with pro bono opportunities—the Joint Pro Bono Task Force presented its first informational report to the House of Delegates on April 2.

“We’ve got to make it easier for our lawyers to get involved,” said Marion Hancock Fish of Syracuse (Hancock Estabrook, LLP), who presented the report with fellow co-chair, Judge Barry Kamins of New York City (Aidala, Bertuna & Kamins P.C.).

“The task force is determined to build upon the wealth of existing resources,” Fish said. “And I’m not just referring to resources of finances, but volunteers, leadership and of knowledge.”

The task force is a joint effort between the State Bar and The New York Bar Foundation. In October, 2015, State Bar President David P. Miranda and John H. Gross, president of the Foundation, appointed the joint task force members.

Kamins noted that it is the first task force the State Bar and Foundation have formed together, creating a “unified mission that underscores the fact that both groups recognize the need to identify unmet pro bono needs in New York.”

“The mission of the task force is to allow the State Bar to find a better method of matching attorneys around the state who want to do pro bono work with available opportunities,” he said.



**Juries and social media**—Mark A. Berman of New York City, in his presentation of the Commercial and Federal Litigation Section’s Social Media Jury Instructions report, explains that explicit instructions are needed to ensure that social media is not misused at trial. The presentation to the House of Delegates was informational. [Photo by Marty Kerins, Jr.]

The report makes five observations regarding pro bono needs:

- Attorneys who want to do pro bono work often do not know which legal services organizations support their desired pro bono opportunities.
- There is a need to effectively match attorneys to the right pro bono opportunities.
- Rural communities have a great need for pro bono services, but there are too few attorneys or legal services providers in those areas.
- Online access to pro bono opportunities must be improved.



**Addressing pro bono**—Marion Hancock Fish of Syracuse and Judge Barry Kamins of New York City present the report of the Task Force on Pro Bono Needs, which identifies ways to address unmet legal services needs, during the April 2 House of Delegates meeting. [Photo by Marty Kerins, Jr.]

- Limited scope representation to provide legal assistance without a formal attorney-client relationship could have a significant impact.
- In addition to finishing its first report, Fish announced that the task force has formed four subcommittees. The subcommittees include Existing Services and Programs Under Development, chaired by Sheila A. Gaddis of Rochester; Lawyer Recruitment, chaired by Roger Maldonado of New York City; Financial Resources, chaired by Susan Lindenauer of New

York City; and Structure, chaired by Christine Cioffi of Niskayuna.

## Funding

On March 31, the Foundation “took a big step,” agreeing, in concept, to the establishment of a fund to support the task force’s pro bono initiatives, Fish said. “And beyond that . . . I can announce today that we already have four pledges—both co-chairs of the task force as well as President Miranda and President Gross have made pledges to support the fund.”

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## State power versus local autonomy: HOD OKs Bar’s home rule report

By Lise Bang-Jensen and Christina Couto

At its April 2 meeting, the House of Delegates endorsed a report that concludes the Home Rule provision of the state Constitution, which is intended to give local governments a measure of autonomy, has been eroded by state laws and court decisions over the past 50 years.

The topic “is a subject ripe for consideration and debate for all concerned,” recommends the report, suggesting it might be studied by a proposed preparatory commission prior to November 2017, when New York voters will decide whether to convene a constitutional convention. The last convention was held in 1967.

Henry M. Greenberg of Albany (Greenberg Traurig, LLP), who chairs the Committee on the New York State

Constitution which drafted the report, made the presentation to the House.

### Open for debate

“We expect our Home Rule report will enhance public understanding of the relationship between the state and local governments,” said State Bar President David P. Miranda, who created the State Bar committee. “It also offers a valuable resource for further study.”

No other tier of government has greater impact on the daily lives of New Yorkers than local government, according to the report, noting local governments’ responsibility for drinking water, social services, sewerage, zoning, schools, roads, parks, police, courts, jails, trash disposal and more.

Home rule, Greenberg told the House, “is the principle that local gov-

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**Constitutional question**—Executive Committee member Michael Miller asks a follow-up question following Henry M. Greenberg’s presentation of the report by the Committee on the New York State Constitution, which focuses on constitutional home rule, during the April 2 House of Delegates meeting. [Photo by Marty Kerins, Jr.]

## Governmental Relations

By Ronald F. Kennedy, Director

### Advocacy groups' activities contribute to enhancement of access to justice for the public



Kennedy

Even casual readers of this column will recall the many references to NYSBA leaders' advocacy activity on major issues, such as adequate funding at the state and federal courts to

support access to justice. Funding for both civil and criminal defense services and addressing wrongful convictions, often receive a great deal of attention.

There are, of course, many other similar issues recognizable to State Bar members throughout New York. All the time and attention focused on these extremely important issues is not only justifiable, but necessary because of the far-reaching impact of the issues on fundamental elements of the justice system.

Nevertheless, I want to take this opportunity to summarize advocacy successes that most readers will never have heard about, because the success involved proposals that were opposed and not enacted, rather than an initiative or affirmative proposal that became law.

Three NYSBA groups were involved in these unheralded victories during the recently-concluded 2016–17 state budget process: the Committee on the Tort System, the Workers' Compensation Division of the Torts, Insurance and Compensation Law Section (TICL), and the Elder Law and Special Needs Section.

Here is a brief summary of the issues involved:

#### Advocacy by Committee on the Tort System

The proposed Executive Budget would have amended various sections of law to relieve the Secretary of State from the responsibility for mailing a copy of service of summons and complaint to business entities registered with the Department of State. (Service of process is accepted by the secretary, according to the state Business Corporation Law and numerous others statutes.)

The committee argued that if this proposal were enacted, it would have a deleterious effect on the well-established and effective procedure now relied upon for service of legal papers upon business entities, and that the negative effect would far outweigh any minuscule savings that may be realized by the Department of State.

The Legislature agreed that the system that is now in place, and has been for many decades, was developed for good reasons that have not changed and that proposal would cause uncertainty regarding this well-accepted procedure.

#### Advocacy by TICL's Workers' Compensation Division (WCD)

Provisions in the state's proposed Executive Budget to amend the Workers' Compensation Law would have modified the appeals process within the Workers' Compensation Board. One of the proposed changes would have allowed an appeal to be decided by "any Board employee who is licensed to practice law in the State of New York or a single Board member."

The WCD strongly opposed the change and argued that allowing employees of the board to render decisions on appeals would be a drastic change within the system and would limit rights to a meaningful appeal.

The division's view was that the freedom to render a meaningful and independent review of issues before the board would be eliminated. Without meaningful review within the agency, appeals to appellate courts would see a significant increase. The division asserted that, if enacted, the proposal would severely limit the due process rights of all parties in the system, and that those changes should not be made.

The proposal, and others opposed by the division, was eliminated from the final budget bills.

#### Advocacy by the Elder Law and Special Needs Section

During this year's budget process, the section reiterated arguments against the elimination of "spousal refusal" in connection with rights and benefits under the Medicaid program.

The section has long argued that the state's proposals in this area would have the effect of terminating married relationships in order to avoid the loss of their home and total impoverishment of the well spouse, and also would remove an important caregiver from the home.

Further, contrary to repeated arguments by some state policymakers that the government would save money, the section argued it is likely that eliminating spousal refusal would result in a significant negative fiscal impact to the state. Finally, any alleged abuse

under existing law can now be remedied by the government bringing support and contribution proceedings against refusing spouses who have sufficient resources and income to pay toward the ill spouse's care.

This proposal, and others opposed by the section, was eliminated from the

final budget bills.

Congratulations to the many people involved with the advocacy activities of these three NYSBA groups. Their efforts preserve the operation of law and procedures in diverse, significant practice areas, and enhance access to justice for the public. ♦

### MacCrate remembered for lawyering skills

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feller's counsel from 1959–1962 and considered him a close friend.

He was becoming active within the State Bar, as well. In 1966–67, he chaired the Committee on the State Constitution.

From December 1969 to March 1970, he served as special counsel to the Department of the Army for the investigation of the My Lai Massacre, in which American troops killed hundreds of civilians in 1968. It was an emotional assignment for MacCrate and he later expressed his disappointment in the commission's verdict.

#### Importance of family

Born and raised in Brooklyn, MacCrate received his undergraduate degree from Haverford College in Pennsylvania.

His wife, Constance Trapp Mac-

Crate, died on January 21. He is survived by his three children and their spouses, Christopher MacCrate (Kari Barlow), Barbara MacCrate Stout (Chuck Stout), and Thomas MacCrate (Claire MacCrate); 10 grandchildren and seven great-grandchildren.

Memorial contributions may be made to The MacCrate Fund to Preserve the Core Values of the Legal Profession, c/o The New York Bar Foundation, 1 Elk Street, Albany, NY, 12207.

A memorial service for MacCrate and his wife was held on April 30 at the Congregational Church of Manhasset.

Read a profile about MacCrate that was published in the July/August 2011 Stat Bar News at [www.nysba.org/RobertMacCrateProfile](http://www.nysba.org/RobertMacCrateProfile). ♦

*Sears Doherty is State Bar News editor.*

### Second Constitution report approved

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ernments have the ability to be masters of their own fates, chart their own destiny, to make judgments about local matters."

A 19th Century concept, the latest version of Constitutional Home Rule was enshrined in Article IX of the state Constitution in 1963. At the time, Governor Nelson A. Rockefeller predicted that home rule "and its implementing legislation would strengthen the governments closest to the people so that they may meet the present and emerging needs" of the times.

Five decades later, Greenberg observed, "the high hopes of those who framed Article IX have not been realized. Home Rule as a concept has been significantly limited by decades of litigation, two doctrines developed by the courts—the state concern doctrine and the state preemption doctrine—and state legislation that is often referred to somewhat disparagingly as unfunded mandates."

As a result, the state Legislature

has assumed the power to regulate such local concerns as taxi cabs in New York City, salaries of certain upstate district attorneys, and hours of bars and taverns, to name just three examples of micromanagement by state government.

The report on Constitutional Home Rule is available at [www.nysba.org/homerulereport](http://www.nysba.org/homerulereport).

In preparation for the November 2017 vote, the Committee on the New York State Constitution plans to issue reports on other aspects of the state Constitution.

The Committee's first report, approved at the Nov. 7, 2015 House of Delegates meeting, called for the creation of a non-partisan preparatory Constitutional Convention Commission. It is available at [www.nysba.org/nysconstitutionreport](http://www.nysba.org/nysconstitutionreport). ♦

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