



NEW YORK STATE BAR ASSOCIATION State Bar News

NOVEMBER/DECEMBER 2016 | VOLUME 58, NO. 6 | WWW.NYSBA.ORG

Limited scope, diversity/inclusion CLE among items House considers

By Christina Couto

Asking the State Bar to “take a stand,” members of the President’s Committee on Access to Justice urged passage of a committee report in support of limited scope representation (LSR) during the House of Delegates meeting in Albany on November 5.

“What we are simply asking is that the Association take a stand, which it has not done in the past, specifically endorsing the concept of limited scope representation, where appropriate,” said com-

mittee member Michael Miller of Manhattan (Law Office of Michael Miller).

“And indeed, where appropriate, we recognize that limited scope is not one-size-fits-all.”

Miller said that “it does not satisfy each and every potential legal challenge that people have, but in appropriate circumstances, where there is consent, where there is full disclosure and knowledge from that of the client, we believe that it is a tremendously effective tool in increasing access to justice.”

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[Photo courtesy of NYS Office for the Prevention of Domestic Violence]

Shining light on domestic violence

The Alfred E. Smith Building in Albany (the state capitol building is at right) was illuminated in purple throughout October in recognition of Domestic Violence Awareness Month. NYSBA has joined forces with the Women’s Bar Association of the State of New York on an initiative to enhance access to legal services for victims of domestic violence. See article on page 7.

Paperless law firms tout greater efficiency, flexibility

By Christian Nolan

Whether the motive is to help the environment, save space or to simply have a more efficient filing system, lawyers are increasingly “going paperless” with their law offices.

Some lawyers boast going completely digital and eliminating paper entirely, though many more say they still need to use some paper, but

are making a concerted effort to reduce paper usage wherever possible.

“We’re into it. My desk doesn’t have any drawers by design,” said Stuart Meyer of New York City (Law Offices of Stuart S. Meyer). “It was bought this way to continually remind me that we don’t keep paper in this office.”

Meyer said he recalled times spending hours in a day just looking for a

single document and thought there had to be a better way. So when he started his own matrimonial law practice seven years ago he vowed to eliminate paper from the start.

“As soon as you get into the bad habit of keeping paper files it’s so hard to get out of it,” said Meyer. “It’s nice walking in in the morning and seeing an uncluttered desk . . . You feel

like you’ve got this all under control.”

Meyer believes the “efficiency” of going paperless helps him compete with larger firms. He said most documents in his practice are transferred via emailed pdfs.

“We are able to compete with the bigger firms who have a lot more resources because my office is so much better organized than

theirs,” said Meyer.

New York commercial real estate attorney Joshua Stein (Joshua Stein PLLC) said that aside from a 2-foot collection

“We’re very disciplined about scanning everything, naming everything, and having a well-structured filing system,” said Stein. “If

“For some people just reducing the amount of paper would go a long way,”

— Lawrence Schnapf

of original signed documents in his safe, he has gone paperless.

you misfile something you might as well just

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Annual Meeting 2017

First look at State Bar’s Annual Meeting events and programs

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Delegates at Work

Delegates meet in Albany to do work for the good of State Bar members

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Michael Miller nominated as State Bar's president-elect



Miller

The State Bar's Nominating Committee announced the following nominations for offices with terms commencing on June 1, 2017. The nominees will be voted on at the Jan. 27, 2017 Annual Meeting and House meeting in New York City.

Executive Committee

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Sherry Levin Wallach, *Mount Kisco*

Treasurer:

Scott M. Karson, *Melville*

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Taa Grays, *New York City*
TBD

Second District:

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Third District:

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Fourth District:

Matthew R. Coseo, *Ballston Spa*

Fifth District:

Stuart J. LaRose, *Syracuse*

Sixth District:

Alyssa M. Barriero, *Ithaca*

Seventh District:

David H. Tennant, *Rochester*

Eighth District:

Norman P. Effman, *Warsaw*

Ninth District:

Michael L. Fox, *Newburgh*

Tenth District:

Peter H. Levy, *Jericho*

Eleventh District:

Karina E. Alomar, *Ridgewood*

Twelfth District:

Steven E. Millon, *New York City*

Thirteenth District:

Jonathan B. Behrins, *Staten Island*

Executive Committee Members-at-Large

Margaret J. Finerty, *New York City*

William T. Russell, Jr., *New York City*

Richard Gutierrez, *Forest Hills*

Elected Delegates to the House of Delegates

First District:

Carrie H. Cohen, *New York City*
James B. Kobak, Jr., *New York City*
Stewart D. Aaron, *New York City*

Second District:

Andrea E. Bonina, *Brooklyn*
Andrew M. Fallek, *New York City*
Barton Slavin, *New York City*

Third District:

Glinnesa D. Gailliard, *Albany*
Robert T. Schofield, IV *Albany*
Hermes Fernandez, *Albany*

Fourth District:

Marne L. Onderdonk, *Saratoga Springs*
Patricia L.R. Rodriguez, *Schenectady*
Peter V. Coffey, *Schenectady*

Fifth District:

Gioia A. Gensini, *Syracuse*
Timothy J. Fennell, *Oswego*
L. Graeme Spicer, *Syracuse*

Sixth District:

Patrick J. Flanagan, *Norwich*
Robert M. Shafer, *Tully*
Michael R. May, *Ithaca*

Seventh District:

Amy L. Christensen, *Rochester*
June M. Castellano, *Rochester*
LaMarr J. Jackson, *Rochester*

Eighth District:

Jessica M. Lazarin, *Buffalo*
Kathleen M. Sweet, *Buffalo*
Oliver Young, *Buffalo*

Ninth District:

Julie Cvek Curley, *White Plains*
Andrew Schriver, *White Plains*
Robert Marcus, *White Plains*

Tenth District:

Peter J. Mancuso, *North Bellmore*
Rosemarie Tully, *Huntington*
William T. Ferris III, *Islandia*

Eleventh District:

Frank Bruno, Jr., *Glendale*
Chanwoo Lee, *Flushing*
Guy R. Vitacco, Jr., *Elmhurst*

Twelfth District:

Samuel M. Braverman, *New York City*
Carlos M. Calderón, *Scarsdale*
Michael A. Marinaccio, *White Plains*

Thirteenth District:

Orin Cohen, *Staten Island*
Edwina Frances Martin, *Staten Island*
Claire Cody Miller, *Staten Island*

Delegates to ABA House of Delegates (2018–2020 term)

Claire P. Gutekunst, *New York City*
Seymour W. James, Jr., *New York City*
Glenn Lau-Kee, *New York City*
Stephen P. Younger, *New York City*
Michael Miller, *New York City*

Section Member-at-Large of the Executive Committee

Andre R. Jaglom, *New York City*

Young Lawyer Member-at-Large of Executive Committee

Sarah E. Gold, *Albany*

Nominating Committee Chair

Glenn Lau-Kee, *New York City*

Nominating Committee Members-at-Large

David M. Schraver, *Rochester*
Glenn Lau-Kee, *New York City*
David P. Miranda, *Albany*

NEW YORK STATE BAR ASSOCIATION

Executive Director

The New York State Bar Association is soliciting applications for the position of Executive Director, the chief administrative officer of the Association. In addition to oversight of the 125-person staff operation in Albany, New York, the Executive Director is responsible for leading, managing and executing the affairs of the Association and implementing its policies to the overall benefit of the organization and its membership. The Executive Director will ensure that the daily activities of the Association are consistent with its strategic direction.

Founded in 1876, the New York State Bar Association is the largest voluntary state bar association in the nation. It has 74,000 members from across New York, all 50 states and Washington, D.C., and 120 countries.

Additional information about the New York State Bar Association is available on the State Bar website (www.nysba.org), as is the complete job description, including requirements (www.nysba.org/EDjob/.)

Indications of interest, inquiries and applications should be directed by email to:

Barbara Mendel Mayden
Young Mayden, LLC
bmayden@youngmayden.com

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State Bar's value, relevance key to shaping the profession

By David Watson,
Executive Director

"What do you want to be when you grow up, David?"

"I want to be the executive director of the New York State Bar Association!" Ok, that's not really what I said. I actually wanted to be a fireman.

Truthfully, if anyone had told me years ago that someday I would have the chance to be the executive director of the New York State Bar Association, I would have said "not a chance."

It's funny how life gives you opportunities you never imagine. As I write this piece, I am eight weeks away from starting a new job as executive director for the Institute of Continuing Legal Education (ICLE) at the University of Michigan. I have made the choice to move back to the Midwest to be closer to my family.

As I wrap up my tenure here at the New York State Bar Association

(NYSBA), I wanted to leave you with some thoughts and perspective based on what I have experienced as your executive director for the past two-and-a-half years.

When organizations go through a strategic assessment, they will often utilize a SWOT analysis. SWOT stands for strengths, weaknesses, opportunities and threats. Here is my view of these critical areas for the NYSBA.

Strengths

The NYSBA has a number of strengths, but I would like to focus on three of those here. First of all, the NYSBA brand is a strength.

The NYSBA is recognized as one of the premier bar associations in the country, if not the world. Over one-third of our membership is currently comprised of attorneys who reside outside of New York. And that number will continue to grow.

New York is recognized as a center of legal commerce and a thought leader. As one other executive director from another prominent bar association once noted, "when the New York State Bar Association sneezes, the rest of barland catches cold."

In addition to our brand being a strength, I want to compliment the incredible staff I have had the great fortune of working with here at the NYSBA. These talented, committed and passionate individuals do so very much for the members of the NYSBA and for the legal profession as a whole. They are truly an asset and literally make magic happen each and every day.

The third strength the NYSBA has is its volunteer leaders who serve in a variety of leadership roles. These volunteer leaders' dedicated service not only benefits the NYSBA membership, but has a significant impact on legal services



Farewell—David Watson addresses the House of Delegates during its November 5 meeting in Albany, reflecting on his time as executive director and where he sees the State Bar's role in the future. [Photo by Marty Kerins, Jr.]

provided to the public statewide.

Weaknesses

While we have great history and there is great respect for the process by which decisions are made, this same process, while thoughtful, meaningful and steeped with tradition, does not afford

the NYSBA the opportunity to be as nimble and responsive to the rapidly changing legal landscape as it needs to be.

Our value and relevance will depend largely on how we assist in the development and shaping of the legal profession for the future. Nimble and strategic

responsiveness will be critical to the NYSBA's success in this endeavor.

Opportunities

We have the opportunity to continue to be a respected and pioneering thought leader for the legal profession. The

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[Photo by Sarah Coole]

Luminary Award

For its LawHubSM website, the State Bar was honored with a Luminary Award, presented by the National Association of Bar Executives (NABE) during its communications meeting October 20 in Savannah, Georgia. The award recognizes the work of outstanding marketing and communication projects by bar associations the past year. From left, Leanna Dickstein, chair of the NABE Communications Section; State Bar staff Kevin Getnick, membership development and managing counsel, Brandon Vogel, social media and web content manager, and Grazia Yaeger, director of marketing.

State Bar launches national search for a new executive director

The State Bar Association has launched a national search for a new executive director to succeed David R. Watson.

President Claire P. Gutekunst named a 10-member Executive Director Search Committee shortly after Watson accepted a job as executive director of the Institute of Continuing Legal Education at the University of Michigan in Ann Arbor.

"We thank Dave Watson for his leadership of the State Bar and the profession. His entrepreneurial spirit has positioned the Association to better serve our members, the legal profession and the larger community as the legal field

evolves," she said.

Watson, who will continue at the Association until December 31, moved to Albany in 2014, having previously served as executive director of the Cleveland Metropolitan Bar Association.

The Executive Director Search Committee, chaired by Gutekunst, is being assisted by Barbara Mendel Mayden of Young Mayden, a national legal search and consulting firm. She previously practiced law at Skadden, Arps, Slate, Meagher & Flom, and White & Case in New York City.

As the chief administrative officer of the New York State Bar Association, the executive direc-

tor oversees the day-to-day operations of the 74,000-member organization and helps implement policies approved by the House of Delegates and Executive Committee. It has 125 employees at its Albany headquarters and nearby print shop.

The Association

The Association is a national leader in analyzing how technology, globalization and diversity, among other factors, are altering the way attorneys practice law today and will in the future. It also has developed a practice management software tailored to

Continued on page 12

Limited scope representation, diversity and inclusion CLE credit among House discussions

Continued from page 1

The report, which Miller presented with William T. Russell, Jr. of New York City (Simpson, Thacher & Bartlett LLP), co-chair of the committee, recommends Association support of the concept and utilization of LSR for low- and moderate-income individuals in certain civil cases. The state court system has supported LSR on the basis that such representation gives greater access to justice and relieves the burden on the court system.

A growing number of New Yorkers—1.8 million per year—appear unrepresented by counsel in cases involving family and housing court, consumer debt matters, foreclosures or other civil matters, according to the report.

The House unanimously approved the report.

D&I credit comment period extended

The House voted to extend by one week the date that comments may be submitted regarding the report and recommendations of the Continuing Legal Education (CLE) Committee, which urges support of a diversity and

inclusion (D&I) requirement in New York's mandatory CLE regulations.

Following concern from delegates who needed more time to review the report, the due date for comments was changed from January 6 to January 13, 2017.

The CLE Committee's informational report, presented by Ellen G. Makofsky of Garden City (Makofsky & Associates, P.C.), chair of the committee, and committee member Mirna M. Santiago of the Bronx (Acacia Network, LLP), notes that the changing demographics of the country demonstrate a need for attorneys to be well-versed in issues relating to the representation of minorities and other diverse people.

Supporting the American Bar Association's proposal that diversity and inclusion and elimination of bias be made a mandatory part of the attorney CLE requirement in New York, the report proposes one or two credit hours of D&I CLE be required for the biennial reporting period.

"We recommend that the diversity and inclu-

sion CLE be a stand-alone ("floating") CLE requirement, but not add to the 32 credit hours required for new attorneys or the 24 hours required for more experienced attorneys," the report says.

The House is expected to vote on the D&I CLE credit at its January 27, 2017 meeting.

Article XIV

Calling the "forever wild" clause of the New York State Constitution "one of the crown jewels of the New York Constitution," Henry M. Greenberg of Albany (Greenberg Traurig, LLP), chair of the Committee on the New York State Constitution, presented the report and recommendations concerning The Conservation Article in the State Constitution (Article XIV) to the House.

The Article XIV report, approved by the House, states that if and when the state establishes a preparatory constitutional commission, such commission should study Article XIV with respect to simplifying the text, addressing

obsolete provisions and considering how to enhance its effectiveness.

Article XVI, the "forever wild" provision that protects the state-owned Forest Preserve in the Adirondacks and Catskills, was adopted as a result of a New York State Constitutional Convention in 1894. The report notes that concerns were raised in the past that a future constitutional convention might seek changes to the provision. However, the report, reviewing the record of past referendums, found wide public support for the "forever wild" clause.

The State Bar does not have a position on whether a constitutional convention should be convened. Immediate Past President David P. Miranda of Albany (Heslin Rothenberg Farley & Mesiti, PC) created the Constitution committee in July, 2015 to serve as a resource on matters related to the state Constitution; to make recommendations regarding possible constitutional amendments; provide advice regarding the 2017 referendum on whether to convene a convention;

and to promote initiatives to educate the legal community and the public.

The report is the committee's third. Others include The Establishment of a Preparatory State Commission on a Constitutional Convention, approved by the House in November, 2015 and Constitutional Home Rule, approved in April.

Membership challenge

The President's Membership Challenge will kick off in January, 2017 and is scheduled to run through the 2018 membership year.

"The goal is to increase in 2017 the membership of our great Association by just 2 percent," said Thomas J. Maroney, who co-chairs the Membership Challenge Subcommittee with Michelle H. Wildgrube. "Let's exceed those expectations."

In 2018, the goal is a 3 percent increase. "If everyone in this room just brought one more member into our Association, that makes a difference," Maroney said. "We want to highlight the importance of, if you're a lawyer, you

should be a member of this great Association."

Maroney and Wildgrube encouraged members to refer to new, wallet-sized pamphlets that highlight benefits of joining the State Bar. "We want you to refer to that card so that you'll be comfortable with your elevator speech about the New York State Bar Association," Wildgrube said, adding that it is "incredibly hard for new members to feel a part of the group, because we're [a] big [organization]. We have friends already."

She encouraged members to meet and greet other members and urge them to join sections to retain their membership, and get involved at a higher or greater level of involvement, adding that there will be multiple events during Annual Meeting January 23 to 28 to create networking opportunities.

To view the House of Delegates agenda materials, visit nysba.org/Nov2016Houseagenda/materials/ ♦

Christina Couto is NYSBA's State Bar News editor

Governmental Relations

By Ronald F. Kennedy, Director

Amendment to Judiciary Law enhances operation of judicial wellness and assistance committees



Kennedy

Previous columns this year have highlighted legislative success that the Association had during New York State's 2016 regular legislative session. I want to extend congratulations to those who were directly involved regarding another of the Association's affirmative legislative proposals, which was recently signed into

law as Chapter 356 of the Laws of 2016.

This new chapter amended the Judiciary Law to grant assurances of confidentiality to the work of the judicial wellness and judicial assistance committees operated by bar associations throughout New York State.

Section 499 of the Judiciary Law governs committees that assist lawyers affected by alcoholism, drug abuse and other mental health issues. It currently

provides that communications between lawyers and members of lawyer assistance committees are privileged, and that the members of such committees are immune from liability when acting in good faith in related matters.

This provision, which was enacted in 1993 based on a proposal by the New York State Bar Association, has been critically important to the success of the Association's Lawyer Assistance Program and similar programs of other bar associations.

Judicial Wellness Committee

The Association has recognized that judges, like lawyers, may be affected by the day-to-day stress of their work. It has created a Judicial Wellness Committee to assist judges much as its Lawyer Assistance Committee has been assisting lawyers for more than two decades. As part of their work, the Association's Judicial Wellness Committee, as well as other similar committees, receives highly personal and sensitive information.

The Association had been concerned that the work of its Judicial Wellness Committee was not adequate-

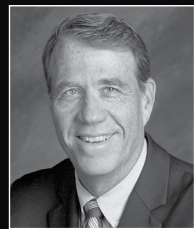
ly covered by the current provisions of the Judiciary Law applicable to lawyer assistance committees. By amending the law to add a new Article 22-A, the protections now covering lawyers assisted by lawyer assistance committees would apply to judges seeking or obtaining help from judicial wellness or assistance committees throughout the state.

One important difference between section 499 and Article 22-A is that the privilege does not apply to committee members when information received by a member reveals that a judge is committing or is likely to commit a substantial violation of the rules governing judicial conduct. This provision was included after discussions with state policymakers, in order to ensure protection of the public's interest in the operation of New York's justice system.

Development of the Association's affirmative legislative proposal and enactment of the legislation is the result of extensive effort by the Association's Judicial Wellness Committee, chaired by Hon. Karen Peters, and NYSBA's special counsel, Richard Rifkin. ♦

JUST THIS ONCE, IT'S HARD TO STAY NEUTRAL

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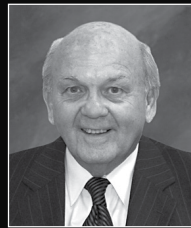
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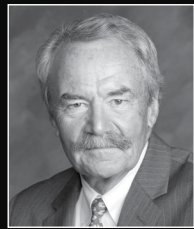
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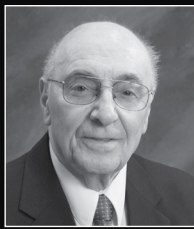
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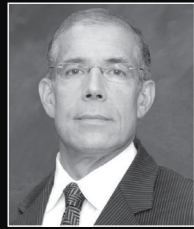
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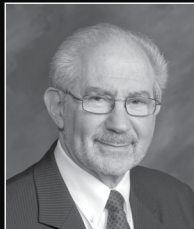
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Pro Bono Services

By Kristen Wagner, Director

Pro Bono Services kicks off Pro Bono Week 2016, cites successful launch of Free Legal Answers



Wagner

The New York State Bar Association's Pro Bono Services Department rolled out NY.freelegalanswers.org this fall and has been happy to see low-income New Yorkers from across the state receive the legal advice they need, at no cost, from volunteer attorneys.

This new pro bono service is part of a national project conducted by the American Bar Association; NYSBA is the host organization for New York's participation in the project. As of October 4, New York was one of 21 states actively participating in the national project.

Pro Bono Week kick-off

To kick off the launch of NY.freelegalanswers.org and celebrate Pro Bono Week, the Pro Bono Services Department hosted a Pro Bono Week kick-off event

and Free Legal Answers "Lunch and Learn" CLE program on October 18 at the State Bar Center in Albany. Attorneys and civil legal service providers in the Capital Region were welcomed by President-elect Sharon Stern Gerstman and participated in a CLE program on the ethics of limited scope representation, presented by Lianne Pinchuk of the Albany County Bar Association and Albany Law School.

Following the CLE presentation, the group was addressed by President Claire Gutekunst via video recording and enjoyed lunch during the screening of short videos highlighting various pro bono opportunities across the state (the recordings can be found at www.nysba.org/probono).

After lunch, Tali Albuquerk, the ABA's site administrator for the national Free Legal Answers project, provided a live demonstration of the service and conducted Q&A with the audience. This event was a lively celebration of pro bono week, providing CLE credit, highlighting pro bono opportunities across the state, and sharing valuable information about the Free Legal Answers service. We thank the speakers and all those in attendance.

To learn more about NY.freelegalanswers.org, go to www.nysba.org/probono. To volunteer for Free Legal Answers, go directly to NY.freelegalanswers.org and sign up today!

Pro bono recognition

Eight attorneys from the New York City metropolitan area were recognized October 27 for their exemplary pro bono service at a Pro Bono Award Ceremony in New York City, co-sponsored by New York County Lawyers' Association, New York State Bar Association, and New York State Courts Access to Justice Program. The awards were presented by President-elect Sharon Stern Gerstman.

As always, NYSBA encourages all attorneys to do pro bono work; the need is great, and there are a variety of pro bono volunteer opportunities available to fit every lifestyle and schedule. If you need assistance finding the right pro bono opportunity for you, feel free to call the Pro Bono Services Department at (518) 487-5641 or email me at kwagner@nysba.org.

We can help you do the public good! ♦

State Bar's future key to shaping profession

Continued from page 3

legal market is changing at light speed. How legal services are provided is very different today than just a few short years ago.

Legal Zoom, Rocket Lawyer, Avvo and other for-profit entities are staking their claim and successfully addressing the legal needs of the consumer. It is not a question of whether these entities are going to have an impact. They are already here and the impact they are making with the average consumer is significant.

The NYSBA's opportunity centers on what role we choose to play in relationship to these entities. Many of our members are utilizing Avvo to increase their online marketing presence. If, however, we choose to ignore these entities or conduct ourselves in a manner that does not acknowledge their significance, we are missing a tremendous opportunity.

The NYSBA is uniquely suited to be instrumental in improving how these entities pro-

vide commoditized legal services and ensuring the rules of ethics and professionalism that have long been the cornerstones of our profession are honored, adhered to and respected by these for-profit legal service providers.

Threats

Never in the history of bar associations has the challenge to recruit and retain members been so great. Law school classes across the country have contracted—in some cases to half the size of entering law school classes from just three years ago. A record number of Baby Boomer lawyers are set to retire in the next five years. The next generation of lawyers is looking for "real" opportunities for mentoring and hands-on/experiential learning.

What role can the NYSBA play to address these threats? Young lawyers are looking for practical skills training and mentoring. They are looking for experiential learning opportunities.

They want to spend an afternoon learning and applying new skills and then utilize those skills the "next day" in their practice lives. And they are looking to connect with a community to assist them in becoming outstanding lawyers and business people. The NYSBA can assist in addressing all of these needs effectively and provide real value and a sense of community.

I want to express my sincere thanks for the opportunity to serve this tremendous organization as your executive director. It has been my honor and privilege to have had the opportunity to do so. While the decision to leave the NYSBA has been a difficult one, I am pleased to be able to address the needs of my family and also am looking forward to working with the tremendous team at ICLE.

I wish the NYSBA, its volunteers, members and outstanding staff all the very best, the greatest of happiness and continued success. ♦



Online assistance—Tali Albuquerk of the American Bar Association explains how attorneys can perform pro bono work by using Free Legal Answers, an online access-to-justice initiative. Utilized by about 40 states, Free Legal Answers allows those who cannot afford legal representation to ask basic questions about civil legal matters. Albuquerk is the ABA's Free Legal Answers site administrator. [Photo by Christina Couto]



Justice Rising—Maya Wiley, leader of the Civilian Complaint Review Board, presents the keynote address during the 2016 Partnership Conference September 15 in Albany. More than 450 civil legal services nonprofit organization directors, staff attorneys, pro bono coordinators and others attended the three-day event. [Photo by Mary Kerins, Jr.]

State Bar, WBASNY join forces to increase legal access services for domestic violence victims

By Christian Nolan

In an effort to enhance access to legal services for victims of domestic violence in New York, the State Bar Association and the Women's Bar Association of the State of New York have announced the formation of the NYSBA/WBASNY Domestic Violence Initiative.

Women and men who leave abusive relationships frequently have limited resources. Many desperately need legal assistance in seeking orders of protection against their abusers and in dealing with legal issues such as housing, child custody, support and visitation, and divorce.

"High-quality civil legal assistance plays a vital role in protecting the health and well-being of victims and their children," said

State Bar President Claire P. Gutekunst. "Despite tremendous efforts by legal services lawyers and pro bono volunteers, the need dwarfs the available resources."

To increase access to justice for domestic violence victims, WBASNY President Jacqueline Flug said, "the initiative will work with legal service providers, local bar associations and pro bono attorneys to educate, recruit and train additional volunteer attorneys."

In addition to developing pro bono programs for underserved communities across the state, the initiative will "consider and make recommendations about possible legislation to strengthen protections for victims of domestic violence," Gutekunst said.

Domestic violence is ongoing, purposeful

behavior aimed at exerting power and control over one's intimate partner and can be psychological, physical, sexual or economic in nature. It also can involve other family members.

The newly formed initiative will focus on domestic violence involving people in current or former intimate relationships, whether or not they have lived together. Domestic violence victims can be of any gender identity, sexual orientation, age, race, ethnicity or income.

Nationally, almost 25 percent of women and 10 percent of men are estimated to have suffered sexual violence by an intimate partner; and more than 22 percent of women and 14 percent of men are estimated to have been subjected to at least one act of severe physical violence in an

intimate relationship, according to a study by the Centers for Disease Control and Prevention.

The initiative will build upon prior efforts of State Bar sections and committees and of the WBASNY to aid victims of domestic violence.

"The State Bar and WBASNY will leverage their experience and their members' expertise to increase the services currently provided to victims and their families," Gutekunst said.

Judy Harris Kluger, executive director of Sanctuary for Families in New York City, and Amy Schwartz-Wallace, leader of Empire Justice Center's statewide domestic violence practice in Rochester, are co-chairs of the initiative.

The initiative's membership includes representatives of legal services providers, bar associa-



Purple power—In recognition of Domestic Violence Awareness Month in October, Erie County Hall in Buffalo was lit in the color purple to "Shine A Light" on the issue. Various public buildings and landmarks were similarly lit throughout the state. [Photo courtesy of NYS Office for the Prevention of Domestic Violence]

tions, law firm pro bono programs, the court system and law schools. ♦ Nolan is NYSBA's senior writer.

Bar Briefs

Clerkship honors Past President M. Catherine Richardson

The M. Catherine Richardson Clerkship Program will offer paid summer clerkship positions to 1L students (during the summer between the students' first and second years of law school) in various offices of the firm, including Syracuse, Buffalo, Albany and Rochester.



Richardson

The program is named after Richardson, who served as president of the State Bar from 1996 to 1997 and the New York Bar Foundation from 2009 to 2012.

"I am delighted to lend my name in furtherance of Bond's commitment to diversity and inclusion," Richardson said. "Throughout my career, I have always

believed in the importance of strengthening diversity in the profession."

Calling her a true pioneer and champion of diversity and inclusion in the legal profession, Kevin Bernstein, chair of the firm's management committee, said "it is truly a great honor for us to be able to name our clerkship program after a trailblazer like Catherine Richardson. There was very

little diversity in the legal profession as a whole at the time Catherine graduated from law school and joined the firm."

State Bar now offers cyber insurance

The State Bar has expanded its insurance offerings to members and now offers cyber insurance.

Cyber insurance is the latest in a series of insurance products—individual life, disability, auto, home, lawyers' professional liability, group medical and prescription drug—available to NYSBA members in partnership with USI Affinity.

"Many law firms believe that cyber liability risks are already covered by legal professional liability (LPL) or indemnity insurance," said Mike Mooney of USI Affinity. "While LPL insurance affords some coverage for cyber liability risks, there are limitations to the coverage provided by a law firm's LPL policy, and there are distinct advantages to shifting that coverage to a dedicated cyber policy."

USI Affinity provides insurance, financial and risk management services to members of affinity organizations such as associations, alumni groups, nonprofits and other organizations. For more information about cyber insurance, contact Mooney at Mike.Mooney@usi.com or 800 265-2876.

Domestic violence, Free Legal Answers focus of radio spots

President Claire P. Gutekunst has taken to the airwaves with the radio spots focusing on domestic vio-

lence and Free Legal Answers, the Association's new pro bono campaign.

The messages, which are 30- and 60-seconds long, are running on upstate commercial radio stations for four weeks through December 4. They are produced in cooperation with Non-Commercial Sustaining Announcement Program of the New York State Broadcasters Association.

In September, Gutekunst announced an initiative to raise awareness of domestic violence and enhance victims' access to legal services. In one radio spot, she advises victims about a domestic violence hotline. A second message is aimed at individuals who suspect a friend or family member might be a victim of domestic violence.

In the other series of spots, Gutekunst promotes a Free Legal Answers website, sponsored by NYSBA and the American Bar Association. It allows low-income New Yorkers to post non-criminal legal questions online and have them answered by pro bono attorneys.

To listen to all four radio spots, go to nysba.org/gutekunstspots/.

View bills that passed both houses of the state Legislature

To view a list of the bills that passed the 2016 New York State legislative session, visit nysba.org/2016PassedBothHouses.

Text of the legislation and sponsor's memorandum may be viewed by entering the bill number at public.leginfo.state.ny.us/menuf.cgi ♦

Paperless firms—the wave of the future?

Continued from page 1

throw it in the garbage because you'll never be able to find it."

Stein said getting a high-end scanner is crucial. Both Stein and Meyer recommended a Fujitsu scanner, mainly for its reliability and ease of use.

Stein said he believes going paperless is actually more work and doesn't save you any money. He said it's easier to drop paper in a file than to take the time to scan.

However, Stein said his paperless files are more reliable and it's easier to find files when you need them, including when you're on the road, by accessing the firm's server remotely. He recommends backing up all files and taking proper security measures to protect them.

Lawrence Schnapf, chair of the State Bar's Environmental Law Section, says his firm, Schnapf LLC in New York City, is 95 percent paperless. However, Schnapf does not expect that percentage from his peers.

Schnapf provided some easy steps for law

firms to help the environment by reducing paper use without worrying about just how paperless they are.

"The idea of going completely paperless is extremely aspirational," said Schnapf. "For some people just reducing the amount of paper would go a long way."

For instance, Schnapf recommends double-sided printing, emailing documents whenever possible and recycling all paper used in the office. He also recommended additional settings on the printer to reduce paper usage such as the draft setting, which he said reduces ink usage too; remove unnecessary cover sheets; and print documents in a single-spaced format.

Schnapf said the little paper he does use is mainly for documents that require signatures. He said some firms utilize e-signature software, though he still prefers to put pen to paper for that, as do many clients.

While noting he was reluctant to stereotype, he said generally older lawyers still prefer paper



Say no to paper—Stuart Meyer is seated at his drawerless desk in New York City. Meyer is at the forefront of the paperless movement, having eliminated paper use since he started his own matrimonial law practice seven years ago. *[Photo courtesy of Stuart Meyer]*

documents and reading documents in hand, whereas younger lawyers, prefer to read and transfer files digitally.

Schnapf said the efficiency that comes with less paper usage in the law office could actually reduce billable hours. However, the efficiency is attractive to clients, some of whom he said prefer all their documents digitally.

"Clients nowadays are really looking for flexible billing arrangements. Going paperless can help facilitate that," said Schnapf. "The more efficient you can be, the

more competitive you can be in those situations."

Schnapf said as chair of the Environmental Law Section, he believes in leading by example. He urges section and bar members to opt out of hard copy mailings for bar association materials whenever possible, instead receiving just a digital copy of newsletters.

Schnapf said he has set the lofty goal of having 95 percent of the Environmental Law Section's membership receive only a digital copy of the section's newsletter.

"We've had a pretty

good initial response," said Schnapf.

Schnapf said he also hopes newsletters will soon be available on a phone app, to make their accessibility easier for members.

In July, NYSBA presented a continuing legal education event entitled "How to Achieve Meaningful Paper Reduction in Your Practice." Barron Henley, an attorney with Affinity Consulting who presented the course, stressed the importance of training staff when going paperless.

"This is the most important aspect of the entire project," said Henley. "Ideally, you'll have someone conduct the training for you at your office using your new equipment and software. Even people who don't think they'll be scanning or who have said they don't want to should be included in the training. The reality is that once resistant individuals see how easy and constructive it is to scan, many of them will change their minds. Seeing it work firsthand is pretty inspiring."

Henley, from the onset of the event, told lawyers that going entirely paperless was likely not achievable but that reducing paper use can increase efficiency.

"For most law firms and departments, a truly paperless office is just not achievable. Sometimes you just need the paper and there's no stopping the flow of paper that others send you," said Henley. "With common sense techniques and basic hardware and software combinations, the mountains of paper will shrink. You'll waste less time searching for paper, you'll have a healthier bottom line, enjoy your practice more and be able to provide better client service."

Stein, now six years removed from using paper in his law practice, said he could "never imagine going back to paper."

"I think going paperless is the wave of the future," said Stein. ♦

Nolan is NYSBA's senior writer.

State Bar's 'Sandy hotline' has helped thousands of New Yorkers

By Eva Valentin-Espinal

Although it has been four years since Superstorm Sandy battered the northeast, it has also been four years of legal issues for the storm's victims.

Through the coordinated efforts of the State Bar's Lawyer Referral and Information Service (LRIS), 100 volunteer attorneys have provided free legal consultations to Superstorm Sandy victims since the storm hit in 2012.

The deadliest and most destructive storm of the 2012 Atlantic hurricane season and the second-costliest hurricane in

U.S. history, Sandy was a Category 2 storm when it barreled into the northeastern United States in the fall of 2012.

To date, the Association's Sandy hotline has received more than 2,900 calls. Many of the calls involved insurance questions, Federal Emergency Management Agency (FEMA) appeals and landlord/tenant disputes. As the official disaster legal service hotline for New York State, NYSBA's Sandy hotline provided FEMA with valuable statistics on the types of problems that hurricane victims were experiencing.

The Superstorm Sandy call volume

ranged from week to week, with straightforward issues concerning questions about automobile insurance coverage to FEMA denials to persons living in illegal apartments.

A woman from Staten Island called because she had five boats in her front yard and a city-owned tree fell down on her house. The city at the time said that they'd be there in a month to check out damage even though the fire department said it was unsafe.

One caller had artwork on display at a local gallery and was concerned when he had trouble accessing his work to see if anything

was salvageable.

A Coney Island pizzeria owner called with insurance policy questions regarding damage to her landmark Neptune Avenue restaurant. (The restaurant recently re-opened for business.)

Coordinating the State Bar's efforts with local

"The hotline could not have been possible without the help of attorneys who did not hesitate to volunteer,"

bar associations and legal service providers helped maximize our assistance to thousands of people.

The State Bar was instrumental in obtain-

ing access for local bar associations to New York City restoration centers, so that they could provide on-site legal clinics for victims. Additionally, the LRIS participated in ad hoc legal services provider groups that coordinated efforts to help victims in New York City

and on Long Island. The hotline could not have been possible without the help of attorneys who did not hesitate to volunteer, even though many may have been

victims themselves. Many of the volunteers were available to give consultations to dozens of victims for many months.

The State Bar staff referred calls to attorneys in upstate and western New York and to those attorneys who were able to assist in New York City and on Long Island. Volunteer attorneys from California, Washington, D.C., Florida, Illinois, Michigan and Pennsylvania also helped. ♦

Valentin-Espinal is NYSBA's manager of Lawyer Referral and Information Service.

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Intellectual Property Law Section Profile

By Erica D. Klein

IP Section encourages a collaborative community, fostering education and professional development



Klein

I always smile when I think about my introduction—or, better, my induction—to the Intellectual Property Law Section eight years ago.

I randomly attended a section CLE program, learned a lot, met wonderful people, and was co-chairing the section's hallmark "Women in IP" program a month later. So began my journey

into, and recently culminating in my leadership of, a community of practitioners who are some of the brightest, most engaged IP attorneys anywhere, whose goals are not only to enrich the foundations of our practice, but also to provide a supportive community of our peers.

The Intellectual Property Law Section offers so much, it's difficult to know where to begin.

Our CLE programs, which range in topic, format and time of day, are second to none. We regularly offer programs highlighting current substantive issues, both on core topics such as trademarks and patents, and on less conventional topics such as data protection and advertising.

Our programs cover various knowledge levels, offering benefits to newly admitted attorneys and

those with decades of experience. We have 16 committees and initiatives that organize these programs and we also support individuals to spearhead projects of interest.

In addition to educational-based programming, our section sponsors several professional development and networking programs. This June will mark our 15th annual "Women in IP" program—founded and led by the amazing Joyce Creidy (a former section chair)—which always provides an exceptional opportunity to meet, and learn from, some of the most impressive women in our field.

Our wildly successful, first annual full-day Fall program held last November, entitled "IP Due Diligence in Corporate Transactions," led by Robin Silverman (section vice chair) and Danielle Maggiamo, brought together legal and business leaders to share strategies and provide practical, skills-based advice.

Robin and Danielle marshalled our second annual full-day Fall program, "The Future of IP," held November 10, which was another tremendous success.

Our programs integrate networking opportunities throughout the day, encouraging our members to build a supportive and collaborative community not only of colleagues, but of friends.

In addition to top-notch programming, professional development efforts, and networking opportunities, our members receive Bright Ideas—a content-

rich, scholarly publication that addresses current and challenging IP issues.

Under the direction and dedication of Jonathan Bloom, Bright Ideas not only highlights timely topics, but also offers opportunities, including for emerging practitioners, to publish articles and become known.

Beyond all of the above, our section encourages collaboration with other NYSBA sections and initiatives, including those focused on young lawyers, diversity, pro bono and other synergistic areas. Our section is proud to support our members' wide array of interests and experiences, all of which add to our individual and collective identities.

I have been extremely fortunate to be a part of the Intellectual Property Law Section over the past eight years, and I could not be more proud to be part of its current leadership. I strongly urge anyone with an interest in intellectual property law to become involved. You—and our section—will be the better for it. ♦

Erica D. Klein is chair of the Intellectual Property Section. She is a partner at Kramer Levin Naftalis & Frankel LLP in New York City, where her practice focuses on IP transactions and licensing, as well as counseling on issues relating to branding, privacy, social media, and the creation, protection and enforcement of various intellectual property rights.

Things to know about the Defend Trade Secrets Act

By Victoria A. Cundiff

The new Defend Trade Secrets Act (DTSA, or act) establishes a federal-private civil cause of action for misappropriation. The act provides an additional tool to protect trade secrets. It does not preempt existing state law on trade secrets, and claims under the act can be asserted in either federal or state court.

Many of the DTSA's provisions will be familiar to New York practitioners. The act protects all information, whether or not in tangible form, if the owner has taken reasonable measures to keep such information secret and the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another

person who can obtain economic value from the disclosure or use of the information.

Unlike the holdings in some New York cases, the DTSA does not require that the trade secret be in continuous use by the complaining party. It does require that the information relate to a product or service used, or intended for use in, interstate or foreign commerce.

Like existing New York law, the DTSA prohibits "misappropriation"—the actual or threatened wrongful acquisition, use and/or disclosure of the secret.

The DTSA applies to acts of misappropriation occurring outside the United States if the offender is a citizen or permanent resident alien of the United States or an organization organized under the laws of the

United States or a state or if an act in furtherance of the offense was committed in the United States.

Like current New York state law, the DTSA permits an award of actual damages, disgorgement of unjust gains or a reasonable royalty, and injunctive relief.

Unlike New York common law, the DTSA expressly provides that the court may award attorney fees where the claimant establishes willful misappropriation as well as where a claim of misappropriation is maintained or opposed in bad faith. The DTSA also expressly provides that in cases of willful and malicious misappropriation, the court may award exemplary damages of up to twice actual damages.

Importantly, these express remedies are not available to employers in

suits against former employees unless the employer has first complied with new requirements. The DTSA grants employees immunity under both state and federal law for confidential disclosures of trade secrets to government organizations to assert alleged wrongdoing and for use of trade secrets in litigation under confidentiality safeguards.

Organizations entering into or renewing confidentiality agreements with employees, broadly defined to include independent contractors and consultants, after May 11, 2016 "shall" provide notice of these immunities. If they fail to do so, they may not recover exemplary damages or attorney fees the act would otherwise permit against the employees who did not receive notice.

Courts enforcing the DTSA have broad authority to grant injunctive relief that does not otherwise conflict with an applicable state law prohibiting restraints on the practice of a lawful profession, trade, or business. The DTSA prohibits courts from entering an injunction to "prevent a person from entering into an employment relationship"—the "purest" form of inevitable disclosure injunctions.

The act also requires that "conditions placed on such employment shall be based on evidence of threatened misappropriation and not merely on the information the person knows.

The DTSA permits claimants to seek seizure orders on an ex parte basis in extraordinary circumstances to prevent the dissemination of a trade secret, but only on a

proper evidentiary showing spelled out in detail in the act. Any person who suffers damages by reason of a wrongful or excessive seizure may recover damages.

The DTSA requires that organizations must take reasonable measures to protect their trade secrets against misappropriation and present evidence, not simply conjecture, of misappropriation. Parties that misappropriate other's trade secrets will now face additional legal risk if they do. ♦

Victoria A. Cundiff is a litigation partner at Paul Hastings LLP in New York City and co-chair of the IP Section's Trade Secrets Committee. Much of her practice is directed to preventing trade secrets misappropriation and litigating and resolving trade secrets disputes.

Young Lawyers

By Amelia Lo

Legal conferences: a good way to broaden horizons, meet experts and enrich your legal knowledge



Lo

Attending legal conferences is a good way for young lawyers to learn about cutting-edge areas of law, gain international exposure and meet like-minded lawyers with both similar and diverse practices.

If the conference is international, there exist even more opportunities to meet lawyers from diverse jurisdictions and areas of practices, and learn about their culture and way of life.

Legal conferences are held regionally and internationally, and you may want to choose one that fits both your interests and practice area. NYSBA organizes a number of conferences each year, including at the Annual Meeting, section meetings and CLE conferences. For example, NYSBA's International Section held a seasonal meeting in Paris October 19–21, 2016, which covered a variety of topics on mergers and acquisitions, including discussions on the impact of Brexit.

Before the conference

To make the most of your opportunity, it is advisable to first visit the conference website and find out more about the topics that will be covered at the con-

ference and who will be presenting and attending the conference.

Your itinerary or schedule for the conference also depends on whether you are going alone or with a delegation. Often, there may be many parallel sections, and if you are going with a colleague or a friend, you can each attend one section and then share with each other what you have learned. If you are traveling to another state or country, travel and transit plans should be arranged ahead of time.

During the conference

Depending on where you are traveling, there may be issues of jet lag or airline delays. Arrive at the conference early for registration, as there are likely to be queues of people attending conferences—the longest I experienced was a solid 8-hour stand-up queue for a conference at the United Nations headquarters.

Take advantage of the long lines and use this time to talk to people who are also waiting. Not only is this an easy way to connect with other attendees, but it encourages you to come out of your comfort zone.

When you are at the conference, besides listening attentively, it is also a good idea to take notes, and ask questions during the Q&A session. Participate in social events as much as possible, because they provide interesting and invaluable opportunities to get to know other members of the profession, both personally and professionally.

After the conference

After the conference is a good time to follow up with the connections you made, and to consolidate and/or reorganize the notes you have taken. It is useful to prepare a summary and share them with your colleagues and peers, when they ask about the conference. In this way, the legal and intellectual debates and new perspectives at the various conferences can indeed transcend nationalities and horizons.

Sponsorship or representations

Sometimes bar associations or law societies select and sponsor young lawyers to attend conferences. For instance, I was one of the youngest lawyers selected to represent the Law Society of Hong Kong to participate in the 19th biennial Commonwealth Law Conference, where I was fortunate to interact and engage in in-depth discussions and debates on a number of interesting topics with leading practitioners.

If you are interested in such opportunities, do visit the website of your local legal associations and I wish you a productive and enjoyable learning experience! ♦

Amelia Lo is admitted to practice law in the state of New York and is vice-chair of the Hong Kong Federation of Women Lawyers' Organizing Committee and Corporate Restructuring Committee.

State Bar inundated with requests for copies of pocket U.S. Constitution

By Christina Couto

James Madison would be proud.

Requests for copies of the pocket-sized U.S. Constitution that the State Bar's Law, Youth and Citizenship Program give away have soared since an article about it appeared in the September/October 2016 State Bar News.

Within two weeks of the article's publication, LYC Director Martha Noordsy said that she had already responded to requests for more than 1,100 copies of the document.

"As a civics educator, it makes me happy that so many are interested in this document," Noordsy said. "The U.S. Constitution is an amazing text and it is so important for Americans to read the

language of the document and understand the impact that this has and will continue to have in the future."

Requests have poured in from numerous State Bar members in New York—as well as out of state, including Minnesota, California and Michigan—and from law firms, police departments and even an attorney who requested a copy be sent to his daughter, a first-year law student.

"During my eight years on the House of Delegates and many years serving on various Executive Committees, I do not recall the State Bar doing something as meaningful as this," said Steven L. Kessler of New York City (Law Offices of Steven L. Kessler), who requested a copy for his

daughter, a first-year law student at Syracuse Law School. "In fact, I have (and carry with me) a pocket-sized Constitution that I received at an ABA conference a few years back. You should be commended for starting this on the State Bar level."

Kate Gray of Copland and Brenner in Troy wrote that "we saw the article in the State Bar News about pocket-sized copies of the U.S. Constitution, and would love to offer them to our clients once approved for naturalization as U.S. citizens."

The chief of police in the town of Wallkill, Robert C. Hertman, wrote: "I am a member of the N.Y.S. Bar Association. Having just read the September/October 2016 edition of State Bar News, I compliment you

on offering free pocket-sized copies of the U.S. Constitution.

"In addition to being an attorney . . . I am also Chief of Police for the Town of Wallkill, N.Y. Police Department. Our Police Department works in conjunction with several civic-minded organizations including, among others, the Police Youth Coalition, Police Community Council and veterans groups. These groups consist of several dozen regular members and service over 100 people a year."

To request copies of the pocket-sized Constitution, email mnoordsy@nysba.org. ♦

Couto is NYSBA's State Bar News editor.



[Photo by Christina Couto]

Women on the Move

U.S. District Judge Mae A. D'Agostino of the Northern District of New York discusses the use of social media as evidence in court from a judge's perception during the Women on the Move continuing legal education and networking event October 26 at the State Bar Association. "Exposure, Evidence and Ethics—Social Media's 21st Century Role in Lawyering," was sponsored by the committees on Women in the Law, Lawyers in Transition, Law Practice Management and Continuing Legal Education.

The Bar Around The Corner: Bronx County Bar Association



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Court Building
851 Grand Concourse,
Room 124, Bronx, New
York, 10451
718-293-2227
Website:
www.bronxbar.com
Founded: 1902
Number of members:
1,000

Vision/purpose

The Bronx is a diverse community and the Bronx County Bar Association (BCBA) is a reflection of that diversity. The BCBA is known as the friendly bar association, as we promote congeniality among our members and the public. The BCBA facilitates communication between the bench and the bar and supports the staff and administration of the courthouses in which its members practice.

The BCBA maintains a law library for the public and its members to encourage education and understanding of the law and the legal process in the community.

Brief history

The Bronx Bar Association was founded 114 years ago to provide an opportunity for attorneys to combine their efforts to improve the quality of representation for the citizens of Bronx County. A referral service was created to provide the public with access to attorneys with various specialties at a nominal fee in the library.

How has your membership over the years helped to improve your association?

Our members have supported our Endowment, which promotes community improvement, educational scholarship programs, a Courthouse Gender Fairness Committee and a mock trial program for students in the community.

What is your association's most pressing concern regarding the legal profession?

The BCBA is greatly concerned with the erosion of the right to counsel as granted under the landmark Supreme Court case of *Gideon v. Wainwright*. In New York City, attorneys from the 18b panel had represented indigent people charged with crimes in conflict cases.



Bronx Bar officers—Bronx Bar Association officers, from left: Peter T. Ridge, secretary; Michael J. Barsky, financial secretary; Tina Wells, second vice president; Corey A. Sokoler, president; Daniel D. Cassidy, first vice president; Lester C. Rodrigues, chairperson of the Board; and Wayne A. J. Whattley, treasurer.

The city has replaced many of these attorneys who average 20 years' experience and more than 75 cases to verdict with much less experienced attorneys.

The city has now announced its intention to put out a request for proposal for representation of the indigent on homicide cases. This means that the most veteran, skilled and accomplished attorneys from the 18b panel will be replaced as counsel on new homicide cases with much less-experienced attorneys.

This is unacceptable. Impoverished people facing 25 years to life in jail deserve the best attorneys the city has to offer and not attorneys who are just now learning their profession. The BCBA will lead the fight to ensure that all people are properly represented with experienced counsel when charged with a crime.

What is your favorite social event?

Our favorite social event is the Tribute with Humor for Alan B. Friedberg and Michael A. Marinaccio, which was held on November 17 at Maestro's Catering Hall. We honored their contributions to the Legal Profession and to our Association. We also have a golf outing and a dinner cruise planned for next summer.

What is the Bronx County Bar Association's current initiative?

Currently, we are advocating for the creation of a Misdemeanor Mental Health Treatment Court in Bronx County. There is a felony Judicial Diversion/Treatment Court that evaluates individuals charged with felonies and then places them in programs for treatment and monitoring.

However, there is no specialized court for persons



Special thanks—Corey A. Sokoler, president of the Bronx County Bar Association, presents Bronx County District Attorney Darcel D. Clark with an award in recognition of her service to the bench, bar and citizens of Bronx County, during the Association's annual dinner at the Marina del Rey earlier this year.

charged with misdemeanors and one should not have to graduate to a felony charge to get the mental health treatment they so desperately need. If we can identify persons in need of mental health treatment at an early stage, we can get them the treatment they need and hopefully never see them back in court on felony charges. ♦

The Bar Around the Corner is a project of the Committee for Bar Leaders of New York State.

State Bar seeks new executive director

Continued from page 3

individual attorneys, called LawHUBSM, which has attracted the interest of bar associations across the country.

True to its 1876 founding mission to "promote reform in the law," the Association actively lobbies the state Legislature and Congress on a broad array of legislative issues. In advance of a 2017 ref-

erendum on whether New York should convene a constitutional convention, the State Bar has taken a leadership role in educating the public about issues that a convention might consider. Its fourth report will examine restructuring New York's court system.

A description of the executive director posi-

tion is available at nysba.org/EDjob/.

Indications of interest, inquiries and applications should be directed by email to Barbara Mendel Mayden at bmayden@youngmayden.com.

Individuals wishing to suggest possible candidates also can contact Mayden via email. ♦

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Remembering the Brooklyn DA

At right, Brooklyn District Attorney Kenneth P. Thompson answers reporters' questions after giving the keynote address at the State Bar Association's 2015 Presidential Summit on Wrongful Conviction in New York City.

At the time, Thompson said, "I stand with this Association to do all we can as the Brooklyn DA and all we can in this country to do what is right—to protect the public and do justice."

In an October 11 statement, President Claire P. Gutekunst expressed sadness on behalf of the State Bar Association upon hearing of Thompson's death on October 9.

"Although, sadly, Ken Thompson's voice has been stilled, his legacy will inspire our Association's continued efforts to end wrongful convictions, thus protecting the public and doing justice," Gutekunst said. ♦

[Photo by Jacques Cornell]



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HOUSE OF DELEGATES IN ACTION



The bottom line—T. Andrew Brown, chair of the Finance Committee, presents the report and recommendations of the Finance Committee, as Secretary Ellen G. Makofsky, to Brown's right, prepares to tweet.



All photos by Marty Kerins, Jr.

Join us—Michelle H. Wildgrube encourages State Bar members to become "ambassadors" as she and Thomas J. Maroney explain the President's Membership Challenge. Wildgrube and Maroney are co-chairs of the Challenge, which will run through the 2018 membership year.



Article XIV—Michael W. Galligan of New York City addresses attendees following the report and recommendations of the Committee on the New York State Constitution.



CLE report—Mirna M. Santiago presents the report and recommendations of the Committee on Continuing Legal Education, which includes support of a diversity and inclusion continuing legal education credit.



A packed house—State Bar members fill the Great Hall (and adjacent library) at the State Bar Center during the November 5, 2016 House of Delegates meeting in Albany.

NYSBA 140th Annual Meeting Calendar

ANNUAL MEETING 2017

JANUARY 23–27, 2017
NEW YORK CITY
New York Hilton Midtown



CONNECT INSPIRE LEARN

MONDAY JANUARY 23, 2017

SECTION MEETINGS

International Section

Engagement or Retreat? International Integration in an Increasingly Nationalist World.

Awards Luncheon 12:00 p.m. – 2:00 p.m.
Meeting 2:00 p.m. – 5:00 p.m.

TUESDAY JANUARY 24, 2017

SECTION MEETINGS

Elder Law and Special Needs Section

Program will include a **Medicaid, Guardianship and Tax Update**. Additional presentations will be on annuities; IRAs and qualified plans in relation to Supplemental Needs Trusts.

Meeting 1:30 p.m. – 5:45 p.m.
Reception follows program off-site: Warwick New York, 65 West 54th Street

Entertainment, Arts and Sports Law Section

The first panel will be a **General Counsel Roundtable moderated by Eriq Gardner, Senior Editor of THR Esq.** The second

panel will discuss **Crisis Management for Entertainers: From Legal to Publicity Issues.**

Meeting 1:00 p.m. – 5:30 p.m.
Reception follows off-site: Bill's Bar & Burger Rockefeller Center

General Practice Section and the Committee on Professional Discipline

Disclosure of client confidence, and how the new ethics rules apply; and a perennial favorite, hot tips from the experts—rapid-fire updates on the latest issues in a variety of legal topics and changes to law. Appropriate for the general practice or solo/small firm attorney—or any attorney who wants to keep current with a well-rounded knowledge in the practice of law.

Meeting 9:00 a.m. – 1:00 p.m.

Intellectual Property Law Section

Brexit and the impact on IP portfolios, protection plans, and client expectations; patent law and software protection considerations after *Electric Power Group, LLC v. Alstom S.A.*; designs and protection strategies, from clothing, to industry, to architecture; Defend Trade Secrets Act of 2016 (DTSA), the Uniform Trade Secrets Act (UTSA), and current issues in NY Trade Secrets Law.

Meeting 8:45 a.m. – 5:30 p.m.
Luncheon 12:35 p.m. – 2:00 p.m.
Reception follows program.

Tax Section

Current Topics in Corporate, Partnership, and International Tax. Outlook for 2017 Business Tax Reform.

Meeting 8:45 a.m. – 4:00 p.m.
Luncheon 12:30 p.m. – 2:00 p.m.

COMMITTEE PROGRAMS

Committee on Women in the Law

NEW DAY THIS YEAR!

Stepping Up Your Game: Leadership, Advancement and Presentation Skills for Career Success.

This program will help women attorneys develop the leadership and critical presentation skills necessary to make a lasting impact on their careers and to achieve success. A panel of leading attorneys will discuss leadership and presentation skills that can help you rise to the top. The second panel will address the importance of women in the state and federal judiciary and the impact this representation has on the legal community and on women litigants and parties. The third segment will be a presentation of a motion to compel production of privileged information from both sides of the table, including a critique by experts in professional responsibility and privilege on what works and what doesn't on legal issues and presentation skills.

Program 9:00 a.m. – 4:15 p.m.

Kay Crawford Murray Luncheon
1:15 p.m. – 2:15 p.m.

Networking Reception 4:15 p.m. – 5:30 p.m.

Law Practice Management Free Program

Introduction to Legal Research Using Fastcase

Fastcase is recognized as the leading next-generation legal research service that puts a comprehensive law library and powerful searching, sorting, and visualization tools at your fingertips. With the release of Fastcase 7 the all-new version of Fastcase has become even more robust. Fastcase's libraries are searchable by keyword (or "Boolean" search), natural language search, or citation lookup. This class will focus on the extensive libraries available as an exclusive New York State Bar Association member benefit. You will learn how to best use Fastcase's research tools to find the best answers fast, saving you time, and making your practice more competitive.

Program 8:00 a.m. – 9:00 a.m.

WEDNESDAY

JANUARY 25, 2017

PRESIDENTIAL SUMMIT

The two-part summit will consist of the following topics:

Artificial Intelligence and Its Impact on the Legal Profession

It's Not About "Revenge" or "Porn": The Problem of Intimate Partner Violence and Non-Consensual Sexual Image Exploitation

Program 2:00 p.m. – 5:00 p.m.

President's Reception

Complimentary Reception for all Annual Meeting registrants.

5:00 p.m. – 6:30 p.m.

SECTION MEETINGS

Business Law and Corporate Counsel Sections

Business Law Section: The Attorney's Role in Promoting a Strong Corporate Culture. In the wake of the global financial crisis and revelations of improper conduct, businesses are scrutinizing their internal corporate culture and how the tone from the top affects every aspect of corporate life. Does it promote ethical behavior and compliance? Does it emphasize short-term profit? Is it self-protective? What incentives are given to employees, and to exhibit what kinds of behavior? Business lawyers and in-house counsel are being asked to address such issues, and our three distinguished panelists will share their insights: H. Rodgin Cohen, Senior Chairman, Sullivan & Cromwell; Thomas Baxter, Sullivan & Cromwell, formerly EVP and General Counsel, Federal Reserve Bank of New York; Professor Bruce Green, Fordham Law School.

Corporate Counsel Section: Overzealous Employees and the Internal Investigation – What's a Corporate Counsel to Do?

Meeting 9:00 a.m. – 12:30 p.m.

Reception/Luncheon 12:30 p.m. – 1:45 p.m.

**Register by January 13th
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www.nysba.org/am2017

NYSBA 140th Annual Meeting Calendar

Commercial and Federal Litigation Section

Our first panel will address **Current Ethics Issues in Commercial Litigation**, including recent developments related to privilege issues arising in the context of litigation concerning the scope of the common-interest doctrine following the decision of the Court of Appeals in *Ambac Assurance Corp. v. Countrywide Home Loans Inc.*; privilege issues implicated in internal investigations by corporate counsel; transfer of the privilege in mergers and acquisitions; the use of law firm general counsel, and other ethical developments. Our second panel will address **Appellate Attacks on Arbitration Awards**, including discussion of the scope of permitted review under the Federal Arbitration Act and New York's Civil Practice Law and Rules; the use of appellate arbitration panels; the impact these standards have on the arbitration process, and the timely and efficient resolution of disputes through arbitration.

Meeting 8:30 a.m. – 12:15 p.m.
Reception/Luncheon 12:15 p.m. – 2:00 p.m.

Criminal Justice Section

The New Frontier: Cyber Crimes. Hot Topics in Criminal Law and Procedure.

Join the section for its Awards Luncheon with speaker, Dr. Heather Ann Thompson, Author of *Blood in the Water: The Attica Uprising of 1971 and Its Legacy*.

Meeting 8:45 a.m. – 12:00 p.m.
Awards Luncheon 12:15 p.m. – 2:00 p.m.

Health Law Section

This program will focus on various "hot topics" in New York health law, including: Health information exchanges and their connection to delivery system reform: consent issues, quality metrics and latest updates; new practice models: concierge medicine and direct primary care: set-up, structure, legal issues and differences; DSRIP update: PPS projects, collaborations and future; changing reimbursement, MACRA, value-based purchasing and impact on providers and care; Healthcare start-ups: what to consider if working with one; changes in employment law affecting healthcare employers; legal ethics for healthcare lawyers: considering capacity in terms of execution of contracts, advance directives and medical decisions; FDA rules and enforcement affecting healthcare providers; dealing with public health emergencies, including Zika, new CMS

emergency preparedness requirements, and water sanitation crises (as in Flint, Michigan).

Meeting 9:00 a.m. – 12:30 p.m.
Luncheon 12:30 p.m. – 1:30 p.m.
Meeting resumes 2:00 p.m. – 4:45 p.m.

Torts, Insurance & Compensation Law and Trial Lawyers Sections

Reception/Dinner 6:30 p.m. off-site: Cipriani 42nd Street, 110 E. 42nd Street
Honoree/Speaker: Janet M. DiFiore, Chief Judge, NYS Court of Appeals

Trusts and Estates Law Section

Lessons from Astor, Clark and Redstone: The Incapacitated Client. In case of Incapacity: Representing the Incapacitated Person; During Incapacity: Guardianship 101 and Other Options; After Incapacity: The Fall-Out: Defending Actions of the Alleged "Incapacitated" Person and Legislative Initiatives. Luncheon Speaker will be James Stewart "the Redstone Case."

Meeting 9:00 a.m. – 12:00 p.m.
Reception/Luncheon 12:00 p.m. – 2:15 p.m.
Reception 6:00 p.m. – 8:00 p.m. off-site: The University Club, One West 54th Street at 5th Avenue

Young Lawyers Section

CPLR – Strategic Gems and Possible Pitfalls and Ethics for Young Attorneys

Meeting 8:45 a.m. – 12:15 p.m.
Attendees are invited to attend the Executive Committee Meeting Luncheon and Awards Presentation immediately following the program.

COMMITTEE PROGRAMS

Committee on Animals and the Law

Practicing Animal Law: What Every Attorney Needs to Know About How Laws Impact the Animals in Our Homes and Lives. A practical discussion on laws relating to animals. Topics to be discussed include: planning for an animal's care after the owner's death or incapacity; conflict resolution with respect to animal custody upon dissolution of relationships; and laws that focus on service and emotional support animals.

Program 1:30 p.m. – 5:00 p.m.

Committee on Law, Youth and Citizenship

Public Education and the Law
Program 9:00 a.m. – 12:00 p.m.

THURSDAY

JANUARY 26, 2017

SECTION MEETINGS

Antitrust Law Section

This year's annual meeting will address **significant developments in antitrust law**, including panels on antitrust and industry concentration, ethics and antitrust in a global context, judicial perspectives on antitrust trials, and the antitrust enforcement gap between the U.S. and Europe.

Meeting 8:45 a.m. – 5:00 p.m.
Antitrust Associates & Young Lawyers Reception 5:00 p.m. – 6:00 p.m.
Reception/Dinner off-site: University Club, One West 54th Street at 5th Avenue

Dispute Resolution Section

NEW TIME

New Arbitration rules proposed by the CFPB; update on new developments in ADR; Dispute Resolution Programs "Below the Radar"

Networking Luncheon 12:30 – 1:30 p.m. off-site: Dorsey & Whitney LLP, 51 West 52nd Street
Meeting 2:00 p.m. – 5:00 p.m.
Reception follows program off-site: Dorsey & Whitney LLP, 51 West 52nd Street

Family Law Section

Matrimonial Case Updates: The Year in Review.

Reception/Awards Luncheon 12:00 p.m. – 2:00 p.m.
Meeting 2:00 p.m. – 4:30 p.m.
Chair's Reception 5:30 p.m. – 7:30 p.m. off-site: New York Athletic Club, 180 Central Park South.

Food, Drug & Cosmetic Law Section

Hot Topics in Food, Drug & Cosmetic Law including: animal health, drug pricing developments; latest enforcement

developments in cosmetic law; legal status of tobacco products, updating 510(k)s; new guidance and refurbishing of medical devices.

Meeting 1:00 p.m. – 5:30 p.m.

Local and State Government Law Section

An Analysis of the Newly Enacted Zombie Property and Foreclosure Law; Municipal Regulation of Drones; Evolving Issues in State and Local Government Ethics; Regulating Short Term Rentals; and Defense and Indemnification of Municipal Employees.

Meeting 9:00 a.m. – 4:35 p.m.

Real Property Law Section

Zombie Housing, Cyber Security, §1031 Like-Kind Exchanges

Program 8:00 a.m. – 12:15 p.m.
Reception/Luncheon off-site: The 21 Club, 21 West 52nd Street 12:30 p.m. – 2:15 p.m.

Senior Lawyers Section and Law Practice Management Committee

A "Guide" for your senior life; financial elements of retirement planning; introduction to "The Planning Ahead Guide" for your practice; sale of a professional practice: financial and tax considerations; ethical considerations on the sale of a professional practice.

Meeting 9:00 a.m. – 1:00 p.m.

Torts, Insurance & Compensation Law and Trial Lawyers Sections

Lies, Damn Lies, & Errata Sheets — Deposition Shenanigans, Obstreperous Witnesses, Problem Lawyers, etc.

Additional topics include: Discovery Issues (Medical Records, Social Media etc.); Assumption of the Risk – What It Is and What It Is not; CPLR Update; Cyber Risk and Liability; Keep Your Eye on the Ball: the Current State of Assumption of the Risk and Comparative Negligence.

Meeting 8:45 a.m. – 4:00 p.m.
Lunch on your own.

Young Lawyers Section

Bridging the Gap – Provides newly admitted attorneys essentials to the practice of law in New York.

Meeting 9:00 a.m. – 5:00 p.m.
Lunch on your own.

COMMITTEE PROGRAMS

Committees on Civil Rights and Diversity and Inclusion

Disrupting Implicit Bias to Advance Diversity and Inclusion: Practical Steps to Counter the Effects of Implicit Bias in the Legal Profession

FREE PROGRAMS HELD AT ANNUAL MEETING

Career Development Program | Monday, January 23rd | Program 2:00 p.m. – 5:00 p.m. | Reception 5:00 p.m. – 6:00 p.m.

Back in Practice: Returning to the Legal Profession and LinkedIn for Lawyers and Law Students
Brand Management: How to Get the Most Out of LinkedIn and Other Social Media

This year's program features two panel discussions. Stay to network with panelists and participants from 5:00 p.m. – 6:00 p.m. Pre-registration is required for this program. *(Please note this program does not carry MCLE credit.)*

Celebrate Diversity in the Bar | Monday, January 23rd | 6:00 p.m. – 8:00 p.m.

Celebrate the Profession at the Annual *Celebrate Diversity in the Bar* award program and networking reception on Monday, January 23rd from 6:00 p.m. – 8:00 p.m. This year we are pleased to recognize the Honorable Denny Chin, United States Circuit Judge for the United States Court of Appeals for the Second Circuit. Pre-registration is required for this program.

NYSBA 140th Annual Meeting Calendar

How can lawyers, judges or other members of the legal profession interrupt our unconscious biases so our actions, advocacy, thoughts and decisions align well with our values and the dictates of our profession? This program will offer practical steps to interrupt and overcome our “blind spots.” From diminishing “covering,” increasing education and training, and creating structures for our work—hiring, recruiting, mentorship, interviewing clients and witnesses, picking and instructing juries—this workshop will offer practical assistance to lawyers and members of the legal profession who want to learn how to counter their own biases, as well as the biases of their colleagues.

Program 2:00 p.m. – 5:30 p.m.

Committee on Condominiums and Cooperatives of the Real Property Law Section

Coop/Condo Update – Current Trends and Issues

Program 2:30 p.m. – 5:30 p.m.

Task Force on Zombie Housing of the Real Property Law Section

Zombie Housing Legislation: A Good Start?

Program 2:30 p.m. – 5:00 p.m.

Committee on Disability Rights

Who Helps When the Lawyer Is the One in Need? Understanding the impact of disabilities in the legal profession.

Program 9:15 a.m. – 12:00 p.m.

“LPM” Day: Committee on Law Practice Management, the Committees on Attorney Professionalism, CLE and Lawyer Assistance

Law Firm Check Up: What’s the State of Your Law Firm’s Health? Is your office lease coming up for renewal? Has technology outstripped your law office equipment? Should you purchase or lease? What new pitfalls exist in law firm Human Resource issues? Do your marketing efforts and website comply with ethical requirements and best practices? Not sure what your attorneys are doing on social media? Do you have a good idea of the types of insurance coverage you need to protect your practice, yourself and your employees? Have you given any thought about how to structure a retirement plan for the future? This year’s New York State Bar Association Law Practice Management Committee annual meeting will focus on these topics and provide you with information so that you can perform your own Law Firm Checkup.

Program 9:00 a.m. – 5:00 p.m.
Lunch will be included.

Law Practice Management Free Program

Introduction to Legal Research Using Fastcase

Fastcase is recognized as the leading next-generation legal research service that puts a comprehensive law library and powerful searching, sorting, and visualization tools at your fingertips. With the release of Fastcase 7 the all-new version of Fastcase has become even more robust. Fastcase’s libraries are searchable by keyword (or “Boolean” search), natural language search, or citation lookup. This class will focus on the extensive libraries available as an exclusive New York State Bar Association member benefit. You will learn how to best use Fastcase’s research tools to find the best answers fast, saving you time, and making your practice more competitive.

Program 8:00 a.m. – 9:00 a.m.

Advanced Legal Research Using Fastcase

Fastcase is the leading next-generation legal research service that puts a comprehensive law library and powerful searching, sorting, and visualization tools at your fingertips. Fastcase’s libraries are searchable by keyword (or “Boolean” search), natural language search, or citation lookup. This advanced class is for members already familiar with the basics of Fastcase who want to get the most out of this powerful research tool. Discover the all-new Fastcase 7, get tips on developing a research strategy, find more cases with Forecite and authority check, and use the interactive timeline to spot the most important cases.

Program 2:30 p.m. – 3:30 p.m.

FRIDAY

JANUARY 27, 2017

SECTION MEETINGS

Environmental Law Section

Challenges Presented by the Anthropocene

- Toxic Substance Control Act (TSCA) Reform: It Is Here, but How Will It Work?
- Pesticides: Risk versus Reward and Collateral Damage – Avoiding Silent Spring Redux
- Co-Existence – Animals in the Built Environment: A review of a series of issues from animal-friendly development planning to guarding against the presence of unwanted intruders
- Ethics – The Challenges Presented by the Use of Social Media

Meeting 8:30 a.m. – 12:30 p.m.

Reception/Luncheon 12:30 p.m. – 2:00 p.m.

Judicial Section/Council of Judicial Associations

Reception/Luncheon 12:30 p.m. – 2:00 p.m.

Labor and Employment Law Section

Plenary Sessions: Retaliation/First Amendment in the Workplace; “Emergency” Ethical Decisions & Cyber Security

Workshops: (A) Mechanics of Mediation; (B) Workplace Rights; (C) Recent NLRB Cases; (D) ERISA

Attendees must select a workshop when registering.

Meeting 8:30 a.m. – 12:30 p.m.

Luncheon 12:30 p.m. – 2:00 p.m.

Young Lawyers Section

Bridging the Gap – Provides newly admitted attorneys essentials to the practice of law in New York.

Meeting 9:00 a.m. – 5:00 p.m.
Lunch on your own.

COMMITTEE PROGRAMS

Committee on Children and the Law

The Voice of the Children

The voice of the child has been dramatically strengthened in the past ten years. The law guardian has been reinvented as the attorney for the child in all cases, and involvement of children in their foster care cases has now been legislated. Judges and lawyers alike have had to adapt to a more active approach to the role of the child in Family Court and family law proceedings. This program will go beyond the recognized right of children to be represented effectively, and to be heard, to consider what wisdom the children can bring to the proceedings, from their unique knowledge and understanding of their circumstances to the developmental limitations of their age, in both child custody and child welfare cases. The means of input, from in camera interviews and forensic reports to presentation of their cases by their attorneys, will be critically examined.

Program 9:00 a.m. – 12:15 p.m.

Committee on Not-For-Profit of the Real Property Law Section

Hot Topics in Not-For-Profit Law will address construction issues for not-for-profit development and expansion projects, sales, mortgages and leases by religious corporations and the Attorney General approval process, and the State lobbying law.

Program 9:00 a.m. – 12:00 p.m.

MCLE PLENARY SESSION: PRESIDENTIAL SUMMIT

Wednesday, January 25, 2017 | 2:00 p.m. – 5:00 p.m.

Artificial Intelligence and Its Impact on the Legal Profession

Artificial Intelligence (“AI”) affects our daily lives in so many ways. AI is used to assist in predicting the weather. Robots are now used to do household chores. AI assists in reducing pollutants and ensuring safe air and water for us to enjoy. Robots have and will continue to play a vital role in space exploration – studying distant galaxies. The Department of Homeland Security uses robots to detect and remove explosive devices and sort through countless data to analyze potential terrorist threats. Robots are also used in hospitals and clinics to perform any number of surgical procedures. Many of the trades on Wall Street are performed automatically relying on AI algorithms to analyze market trends and buy or sell accordingly. What about the legal profession? What impact has AI had and will it continue to have on the practice of law and delivery of legal services? Join us for a renowned panel of experts as they discuss Artificial Intelligence and its impact on the legal profession and legal marketplace.

It’s Not About “Revenge” or “Porn”: The Problem of Intimate Partner Violence and Non-Consensual Sexual Image Exploitation

Advances in technology and the ubiquity of the Internet and social media have given rise to a damaging new form of abuse, commonly, but mistakenly, referred to as “revenge porn.” The threat or actual dissemination of sexually explicit images of an intimate partner without consent is a new tool for abusers to exert power and control over their victims, a hallmark of domestic violence. Abusers can obtain sexual images in many ways – with the victim’s consent within the context of a romantic relationship, through coercion, unlawful surveillance, hacking, or by photo shopping fake images with the victim’s face. However obtained or manufactured, they allow an abusive person to wreak havoc on the victim’s life, by using threats of dissemination to force the victim to do what the abuser wants or by sending the images to family, employers or “revenge porn” websites, causing intense public humiliation, trauma, degradation, danger, job loss, and isolation. Once these images go public, victims are forced to navigate massive and complex hurdles as they attempt to remove the offending images from the public sphere.

Please join a panel of experts to learn about image exploitation as a form of domestic violence and what research indicates about its particular impact on domestic violence victims. Panelists will also discuss legal strategies for assisting victims of this form of abuse, particularly given the limitations of New York’s current legislative scheme in place to address this problem.

Law Practice Management

By Katherine Suchocki, Director

The law firm checkup—your practice as a business; your annual physical



Suchocki

It's time for a law firm checkup. As the saying goes, "an ounce of prevention is better than a pound of cure"—systematic reviews are essential to the continuous growth of any business. A strategic review of your firm's operations, current processes and procedures can identify challenges and areas for improvement.

As the year comes to close, now is the perfect time to take a step back and review where you are and where you are headed. Call it your annual physical.

This year's NYSBA Law Practice Management Committee Annual Meeting "LPM Day" program will provide information so you can perform your own law firm checkup. Chaired by Marian C. Rice, of Garden City (L'Abbate, Balkan, Colavita & Contini, L.L.P.), the full-day program will be co-sponsored by the Committee on Attorney Professionalism and the Committee on Lawyer Assistance on Thursday, January 26, 2017 at the New York Hilton from 9 a.m. to 5 p.m. Lunch will be provided by USI Affinity.

Key areas to review

1. Client intake, client relations, confidentiality and security

As lawyers, we are in the service industry. Client relations and law office management go hand in hand. The way a firm conducts business has a direct influence on clients. Everything from security measures, employee training on client confidentiality to how up-to-date a firm's technology is has a direct impact on productivity and profitability.

Perform a thorough review of your client intake processes and procedures. Does your firm take the proper security measures to protect client data? Have you reviewed your conflicts checking process? Have you reviewed your letters of engagement, non-engagement letters and retainer agreements? Have you taken appropriate steps to protect client information?

2. Your office lease, office equipment, software and records management

When was the last time you reviewed your office lease? How old are your computers? What software are you using for billing, calendaring and document management? Do you maintain a firm wide calendaring system or use automated reminders?

One of the best ways to improve the bottom line of a document-intensive practice is to improve efficiency. Are you using the best document destruction policy that conforms with the Rules of Professional Conduct? Have you updated your anti-virus software? Inventoried closed client files? If you have off-site storage, what are your current and future needs?

3. Staff management and human resource issues

Review employee compensation routinely. Are your employees satisfied? Do you have high turnover? Setting expectations for staff is key. Do you have an employee handbook? Do you have job descriptions for all positions?

Be sure you are training, supervising and managing staff effectively. You cannot make everyone happy all the time. But you may be able to address matters that, if left unresolved, may cause you to lose employees you would like to keep. Have you cross-trained staff? When someone leaves who has admin rights to change passcodes?

Have you reviewed your partnership agreement or your operating agreement? Do the provisions relating to operation of the firm still reflect actual

practices? How are disputes resolved? What happens when someone departs a law firm? Are you considering outsourcing work? Attorney and staff wellness are key.

4. Finance, billing, accounting review

Review your billing procedures and record keeping. Do you have a clear understanding of what you have to bill and collect every month to cover your firm's monthly expenses including salaries? Do you know your year to date profit or loss? Do you have a cash flow report that you can look at every month as a simple way to keep an eye on your actual account balances.

You can create a simple budget tracker/financial spreadsheet. Having correct and current data is essential for making good business decisions. Train your clients to expect to pay monthly for their legal services. Implement monthly billing procedures and collect all payments before they hit 90 days past due.

5. Insurance and risk management

Read and review all your current policies. Do you have appropriate lawyers professional liability and other insurance coverage? Have you used your carrier's best practices and tool kits?

6. Marketing and business development

Is your website in compliance with the Rules? Perform a full assessment with action steps for website, logo, and marketing materials. Do you send client newsletters? What is the return on investment for your firm's marketing efforts. Is the content on your website up-to-date?

Are you using lawyer referral services and online directories? Are your postings current? Perform a practice area review. Are you thinking of adding a practice group or dissolving one? Google your name and firm name. Review what appears and your social media presence.

7. Planning for the future, retirement plans and options for law firms

Do you have a retirement plan? Have you reviewed funds in your 401(k) and made appropriate changes. Have you considered what will happen to the firm when you retire? Have you utilized the New York State Bar Association's free online Planning Ahead Guide? It is available at www.nysba.org/PlanningAhead. Long-term planning and succession planning are key. Best practices, checklists and forms will help you to plan ahead.

These topics and more will be covered at the January LPM Day program. We hope you will join us for an informative discussion to help you with your law firm checkup.

Your firm culture is only as strong as you make it. We want to help you be a better law firm manager. The Law Practice Management Committee sponsors a mini-MBA series of programs covering topics including finance, human resources, marketing and technology. All programs are available online, on demand. Learn more at www.nysba.org/LPM. ♦

The Law Practice Management Department is always looking for members willing to share their advice and best practices. If you would like to get involved, please reach out to me at ksuchocki@nysba.org.



[Photo courtesy of Sharon Stern Gerstman]

JEOPARDY!

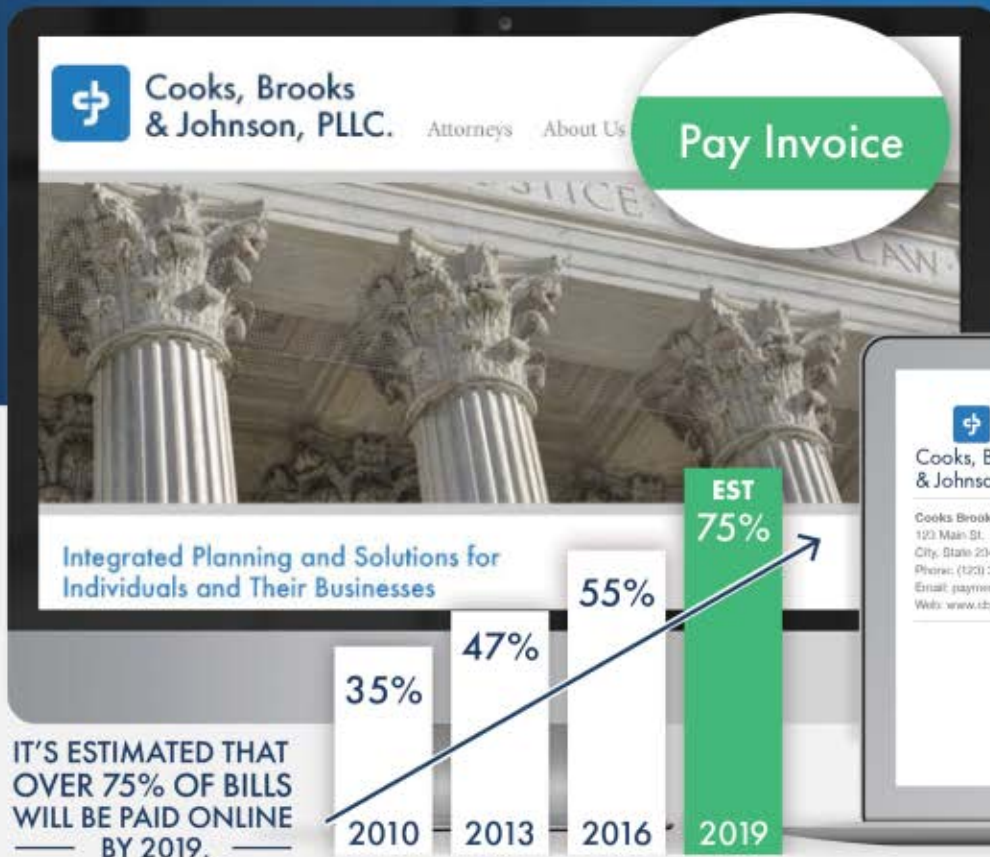
President-elect Sharon Stern Gerstman poses with game show host Alex Trebek. Gerstman appeared on an episode of Jeopardy! on November 3.

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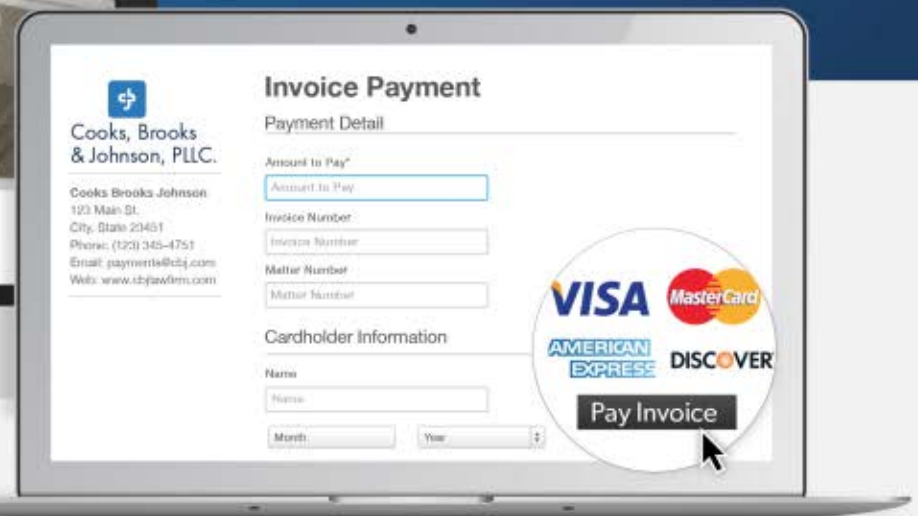
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Importance of understanding—and embracing—diversity as look of classrooms change highlights LYC conference

By Christina Couto

Understanding the increasing diversity in schools—and learning how to effectively talk about it in classrooms—dominated the 2016 civics- and law-related education conference in Geneva, N.Y. October 14.

The conference, “Teach for Justice: Impact of America’s Diversity,” sponsored by the State Bar Association’s Law, Youth and Citizenship Committee, featured 12 breakout sessions addressing issues that teachers have traditionally shied away from in the classroom.

Uncertainty about appropriate instructional strategies related to religious diversity was just one of the breakout session topics.

“A lot of teachers feel they need to scrub out religion from schools,” said David A. Scott, who presented a session on

religious diversity and First Amendment freedoms. “I think this is wrong. As teachers, we need to balance how we talk about religion in school.”

Scott, a teacher and licensed attorney, is the coordinator of Project PATCH, the Northport-East Northport school District’s K through 12 law and civic education program, said that “rights are inalienable. Responsibilities are mutual, and respect about how we debate—not only what we debate—is critical.”

Race in admissions

In “Race in College Admissions in 2016,” Seth F. Gilbertson talked about the use of race in making admissions decisions at colleges, citing the recent Supreme Court decision in *Fisher v. University of Texas at Austin* (2013 and 2016).



First Amendment freedoms—David A. Scott, a teacher and licensed attorney, explains that landmark Supreme Court decisions can be used to help teachers and students better understand the importance of religion clauses in the First Amendment as a foundation for building a culture of “civility and respect.” One of the cases he discussed was *West Virginia State Board of Education v. Barnett* (1943), where the Court decided that students could not be compelled to participate in the flag salute. [Photo by Christina Couto]

In *Fisher*, the Supreme Court voided the lower appellate court’s ruling in favor of the university and remanded the case, holding that the lower court had not applied the standard of “strict scrutiny,” the most stringent standard of judicial review, to its admissions program. The Court’s ruling in *Fisher* did not directly revisit the constitutionality of using race as a factor in college admissions.

“There has to be a compelling state interest,” said Gilbertson, who is associate counsel with the State University of New York’s Office of General Counsel. “How do you address that compelling interest? You have to use the most narrow means possible—you need to use a scalpel, not a sledgehammer.”

Miranda v. Arizona

Mary Miller, education services director for the New York News Publishers Association, said that using high-profile court cases can help engage students in understanding the rights

of those accused of crimes and advance the cause of social justice.

In “*Miranda v. Arizona*: Lessons in Social Justice and the Rights of the Accused,” Miller looked to a variety of right-to-counsel cases leading up to *Miranda* and explained that the *Miranda* warning is often repeated on television and in movies, but not always fully understood.

She cited *Mapp v. Ohio*, where evidence taken in violation of a constitutional right may not be used at trial; *Gideon v. Wainwright*, where states must provide an attorney to persons accused of a crime if they cannot afford one; and *Escobedo v. Illinois*, where persons suspected of a crime have the right to have a lawyer present during police interrogations; among others, as examples to share with students about understanding their rights.

Noting that 2016 is the 50th anniversary of the *Miranda* case, Miller said that it “has existed for a reason” and is important

“Classrooms do not look the same as they did 10 years ago,”

— Suzette M. Meléndez

students understand it.

Other topics covered during the conference included the history of women winning the right to vote (the campaign for which began in nearby Seneca Falls, N.Y.); identifying the best books that can be used to discuss diversity; teaching constitutional topics to high school students; simulating a constitutional convention in the classroom; and understanding New York’s rural immigrants.

Embracing diversity

Jonah Triebwasser, chair of the LYC Committee, welcomed attendees to the conference during a luncheon buffet and introduced keynote speaker Suzette M. Meléndez, director of Children’s Rights and Family Law Clinic in Syracuse and co-keynote speaker Sarah Reckess, director of the Center for

Court Innovation’s Syracuse office.

Recognizing and appreciating diversity in school settings adds perspective, said Meléndez, who is also an adjunct professor at Syracuse University College of Law.

“Classrooms do not look the same as they did 10 years ago,” she explained. “Our world is getting smaller. We’re having more and more interactions with people from other cultures.”

Ultimately, those interactions—and diversity—produce better results, Meléndez said. “I was always raised to appreciate culture, so I don’t really engage in being color blind. I want to see other people’s culture and welcome it and respect it and learn from it.” ♦

Couto is NYSBA’s State Bar News editor.



Embracing differences—Diversity in schools topped the agenda at the Law, Youth and Citizenship Committee’s fall conference in Geneva, N.Y. October 14. [Photo by Christina Couto]

The New York Bar Foundation

By John H. Gross, The New York Bar Foundation President

'Tremendous need' prompts New York Bar Foundation to work to double its grant program



Gross

Earlier this year, The Foundation embarked upon a fundraising campaign to assist in our goal of doubling the grant program.

We committed to increasing our efforts because there remains a tremendous need for legal services for those that can't afford them. We continue to work on these efforts because we believe that with you,

we are in a unique position to be able to help make an impact on some of the most pressing quality of life issues facing our New York communities.

Together we help in making a difference. Because of your support, as I write this column we are nearing \$100,000 in new revenue. This will help to increase the grant program and our efforts of providing more support to legal services that fight homelessness, domestic violence, human trafficking, and elder abuse.

Firm Challenge

One of the new fundraising initiatives, the "Firm Challenge," has generated over \$57,000 in commitments from firms of all sizes across New York thus

far. Participation gives firms the opportunity to be recognized as a philanthropic partner that cares to make a difference through The New York Bar Foundation. Thank you and welcome to our most recent firm participants Hughes Hubbard & Reed LLP, Strook, Strook & Lavan, LLP and Farrell Fritz, PC.

Working together we can make a difference outside of New York as well. Our network of caring colleagues across New York continually display the compassion of the legal profession, most recently by helping to raise over \$7,300 in Disaster Relief for Louisiana. Your generosity will help legal organizations in Louisiana make a difference in their communities by helping victims of the devastating floods in need of legal assistance. Many of those that gave were first-time donors, attorneys that have found a way to make a difference by working with The Foundation.

As President Gutekunst referenced in her recent "Do The Public Good" column, you can assist in increasing access to justice through The Foundation.



Working together—NYSBA and Foundation leadership meet to discuss ways The Foundation and NYSBA can work together to help those in need. From left, Foundation Executive Deborah Auspelmyer; State Bar Executive Director David Watson; Fellows Chair Emily F. Franchina; Foundation President John H. Gross; and State Bar President Claire P. Gutekunst. [Photo courtesy of The New York Bar Foundation]

I invite you to continue to work with us in helping to make a difference by donating at tnybf.org/donation/ or contributing to the Foundation when you renew your NYSBA membership.

On behalf of The Foundation Board of Directors and staff we thank you for all you do and wish you a healthy and happy holiday season! ♦

Contact Foundation Executive Deborah Auspelmyer at *The Foundation* at (518) 487-5650 or dauspelmyer@tnybf.org for more information about *The Fellows and the Circles of Giving*.

Foundation recognized for philanthropy by New York nonprofit publication

The New York Bar Foundation was recognized for its philanthropy with a Cause Award from New York Nonprofit (NYN) Media on November 2 in New York City.

"Out of nearly 100 nominations from worthy individuals and organizations, The New York Bar Foundation was selected by New York Nonprofit Media to win a Cause Award in philanthropy for being responsive to the current pressing social services issues challenging low-income individuals throughout the state—such as human trafficking, community re-entry and immigration—and for growing their capacity to fund organizations

working to address those challenges," said Aimée Simpierre, editor-at-large of NYN Media.

"The Foundation being recognized is a wonderful accolade to the thousands of attorneys that work with us and support us in making a difference," said John H. Gross, Foundation president, who accepted the award on behalf of attorneys across New York who endeavor to make a difference.

"Many of the nonprofit organizations we assist through our grant program provide essential legal services to low-income individuals," Gross said. "They impact life-changing, quality-of-life issues such as senior

homelessness prevention, human trafficking, immigration, veteran's programs, wage justice, re-entry and domestic violence. But we couldn't support any of these initiatives without the volunteers, donors, and Fellows that assist The Foundation."

Gross noted that the legal profession often goes unrecognized for its philanthropic generosity.

In addition to philanthropy, NYN Media also presented awards in the areas of aging; criminal justice; disability/access; education; employment; food insecurity; homelessness/housing; overall sector support; mental/behavioral health; and youth development. ♦

Have an IMPACT!

As the charitable arm of the New York State Bar Association, The Foundation seeks donations for its grant program which assists non-profit organizations across New York in providing legal services to those in need.

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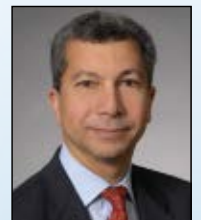
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"I am proud to be a Fellow of The Foundation and serve as a Board member and Assistant-chair of the Grant Review Committee. I give to The Foundation because it supports legal services organizations across the State that provide essential legal services to people who otherwise would not be able to afford a lawyer. I have had the opportunity to meet with some of the grant recipients and have heard firsthand how lawyers make a difference to these organizations."



Roger Juan Maldonado

Balber Pichard Maldonado & Van Der Tuin, PC,
New York, NY

Information Technology

By Jason Nagel, Managing Director

Here are five key things you need to know about the State Bar's online communities



Nagel

If you are a New York State Bar Association member, there's a 71 percent chance you are subscribed to at least one online community. Since launching in Winter 2014, our sections and committees have upgraded from listserve email systems to more vibrant, functional online communities.

In the past year alone, we have had more than 16,000 discussions through the communities. Our remaining listserves will officially end on December 1 and we will exclusively have all member-to-member communications through the online communities.

If you are a longtime community user or a new subscriber, here are some things you might not know about the communities to improve your experience:

1. You don't have to log in to post or respond to messages: Since August 2014, Higher Logic, our vendor, has allowed Reply by Email functionality. At the top of each community email, you will see your community and underneath, "Post New Message."

Similarly, on each message, you can hit Reply to Group or Reply to Sender via email to respond to a specific post. It will pull up a blank email form for you to respond from; the message will also be posted online directly from your email. Community messages are set up differently than listserve emails so there's no mystery as to who sent you the message. Lastly, you can post and respond to messages through LawHUBSM. There's a communities card with the most recent discussions available for your convenience.

2. You can import your LinkedIn profile into the communities: In a few easy steps, your LinkedIn profile can be transferred to the community, even your profile picture. You are far more likely to contribute to a community if you recognize familiar faces.

Don't have a LinkedIn profile, but want to post a picture? No problem. You can upload your own photo by visiting your profile and selecting "Change Picture" under Actions in the top left. You can also make connections on the communities as you would on LinkedIn.

3. Videos, photos and documents can be uploaded to the library: The community supports a wide variety of file types and any file up to 5 GB can be uploaded. Sections have made great use of the community libraries to post photos from their events. Like our discussion boards, every file is stored and

searchable. You can also send files straight from your email and they will go into the community library.

4. There's a communities app: On the App Store and Google Play Store, there's an app available for the NYSBA Communities. Search "NYSBA" and three results will come up. Download the NYSBA Communities App and you will have to log-in just once. You can access a listing of your communities' posts in chronological order, most recent first.

5. Opt-in communities: We auto-subscribe all members of sections and committees to their communities, but we also host an opt-in community related to legal technology. Here, members can post questions about software, latest tech developments, anything that helps your practice through technology.

To get started, go to communities.nysba.org and go to the Groups Tab. On the "Modify Communication Settings" area, you can choose to receive notifications from this community or change your settings for other communities if you prefer.

Want to learn more or get started? Visit communities.nysba.org and join the discussion. ♦

Nagel is NYSBA's managing director of Information Technology operations.

Eight recognized for enhancing access to justice in state

As part of National Pro Bono Week, eight New York City-area lawyers were honored by the State Bar Association for their efforts in providing free legal services to indigent clients.

The lawyers received their awards at the New

York City Civil Court on Oct. 27 at an event where the New York County Lawyers Association and the NYS Courts Access to Justice Program recognized additional attorneys for their pro bono work.

"These awards high-

light all of the hard work lawyers generously give of themselves for low-income individuals," said State Bar President-elect Sharon Stern Gerstman, who presented the awards. "We are incredibly proud of their efforts to enhance access to jus-

tice for New Yorkers who otherwise would not have been able to afford an attorney."

The American Bar Association established National Pro Bono Week in 2009 to support local efforts to expand the delivery of pro bono legal services, recognize the significant efforts of pro bono attorneys and showcase the tremendous difference that pro bono lawyers make to the system of justice, communities and to the clients they serve.

Pro Bono Volunteer honorees

Peter Lattanzio, of Kaye Scholar, is representing a large group of gas station workers from Nepal for alleged unpaid wages. He has devoted 237 hours to the case in the past year. He is also president of the Young Leaders Council—Services for the UnderServed, a nonprofit helping low-income people with disabilities.

John Aerni, of Winston & Strawn, helped obtain justice for a client living in rural upstate New York who was unlawfully evicted. The case also achieved systemic change that will benefit tenants throughout the state.

Matthew Levy, of Simpson Thatcher & Bartlett, represents victims of human trafficking and domestic violence. He has worked with attorneys from Sanctuary for Families to identify women who might be eligible for a temporary immigration status available to trafficking victims.

Attorney Emeritus Program Volunteer honorees

Larry Alexander, a longtime volunteer with Legal Services NYC's housing advocates, has assisted six debtors with Chapter 7 bankruptcy for the NYC Bankruptcy Assistance Project since 2014.

John Bryant volunteers for The Legal Aid

Society and has worked primarily on Social Security benefits issues. Bryant is also conducting research for a foster care benefits case before the Appellate Division.

Robert Hilliard has been working with Safe Passage and has represented five children. He has also worked on matters in family court and immigration court.

Elizabeth King, who has been a pro bono attorney with Legal Services of the Hudson Valley since 2009, enrolled in the Attorney Emeritus Program in May and has performed more than 133 hours of work since.

Martin Schwartz has been volunteering at Student Advocacy since the fall of 2015, representing many students and their families at suspension hearings in Westchester County. ♦

—Christian Nolan



National Pro Bono Week—From left, Administrative Judge for the Family Court of the City of New York Edwina Richardson-Mendelson, State Bar President-elect Sharon Stern Gerstman and New York County Lawyers Association President Carol A. Sigmond were on hand at the New York City Civil Court October 27, where the State Bar recognized eight New York City-area lawyers for their pro bono service.



[Photo courtesy of Claire P. Gutekunst]

Bon jour!

From left, Neil A. Quartaro, chair of the International Law Section, President Claire P. Gutekunst, Lakhdar Brahimi, United Nations and Arab League special envoy to Syria 2012–14, and François Berbinau, co-chair of the 2016 Paris Program, attended the International Law Section's October meeting in Paris, France.

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We invite you to submit articles showcasing excellence in pro bono service for upcoming editions of the Pro Bono Newsletter. For more information, go to www.nysba.org/probono.



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November/December 2016

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RECENT DECISIONS & CASE LAW DEVELOPMENTS

The New York State Bar Association is pleased to announce that it has begun providing members with case summaries as part of NYSBA's CasePrepPlus service. CasePrepPlus is an online service highlighting and summarizing the most recent and significant New York appellate cases (with access to the full opinions). The case summaries, prepared by Bruce Freeman, Esq., of Rochester, New York, save the practitioner valuable time by including only the most relevant cases, sorted by court and topic. This service is part of our ongoing initiative to continually provide relevant benefits to NYSBA members.

COURT OF APPEALS

INEFFECTIVE ASSISTANCE OF COUNSEL COULD NOT HAVE AFFECTED THE PROCEEDINGS; DEFENDANT'S MOTION TO SET ASIDE HIS CONVICTION PROPERLY DENIED.

The Court of Appeals, in a full-fledged opinion by Judge Pigott, determined defendant had been wrongly informed by his attorney that he was subject to consecutive sentences, and therefore defendant had received ineffective assistance of counsel. However, the People presented evidence that, because of the horrendous nature of the crime, there was no possibility defendant would have been offered a plea bargain. Therefore the erroneous advice could not have affected the proceedings. Defendant's motion to set aside his conviction was properly denied: "... [D]efendant was required to show more than incorrect advice by defense counsel. Here, the record supports the Appellate Division's determination that there was no possibility that a reduced plea would have been offered to defendant. Therefore, the incorrect advice could not have affected the outcome of the proceedings. The People entertained no plea possibility or any reduction in the sentence given, among other things, the maximum sentence defendant faced for killing two adults and injuring a third was an aggregate term of just 5 to 15 years. Nor was there any proof that the court would have extended an offer to a reduced sentence. Rather, the sentencing court remarked that it did not think the maximum sentence was enough punishment for defendant under the circumstances of this case." *People v Bank*, 2016 NY Slip Op 07110, CtApp 11-1-16

DEFENDANT PROPERLY IMPEACHED WITH SPONTANEOUS STATEMENTS MADE TO THE POLICE AT THE SCENE OF HIS ARREST; SPONTANEOUS STATEMENT MADE NO MENTION OF AN ATTACK ON DEFENDANT BY THE COMPLAINANT WHICH

DEFENDANT DESCRIBED AT TRIAL.

The Court of Appeals, in a full-fledged opinion by Judge DiFiore, with a concurring opinion, determined defendant was properly impeached with a spontaneous statement made to police at the time of his arrest for robbing the complainant. At trial, defendant testified the complainant had struck him with a board. However, the alleged attack with a board was not mentioned in defendant's spontaneous statement at the scene: "Here ... defendant's statement was not the product of interrogation, but was made spontaneously at the scene, prior to the issuance of Miranda warnings. In addition, the substance of defendant's spontaneous statement was not inculpatory, but a description of the complainant's conduct and was made to inform the police when the information was timely to their decision as to whether to arrest defendant or complainant. Even more significant, defendant admitted in his direct testimony that he was not silent and that he had given the police his version of complainant's misconduct at the scene. Consequently, the credibility of his initial spontaneous statement was legitimately called into question by his trial testimony. Here, defendant elected to provide some explanation of what happened at the scene, and it was unnatural to have omitted the significantly more favorable version of events to which he testified at trial — that complainant had assaulted him. '[D]efendant's conspicuous omission of these exculpatory facts in his voluntary statement to police tended to show that his trial testimony was a recent fabrication' ...". *People v Chery*, 2016 NY Slip Op 07109, CtApp 11-1-16

FIRST DEPARTMENT

AMUSEMENT TAX AND CABARET TAX PROVISIONS ARE NOT UNCONSTITUTIONALLY APPLIED TO AN ADULT ENTERTAINMENT CLUB; TAX EXEMPTIONS FOR CERTAIN TYPES OF DRAMATIC OR MUSICAL ART PERFORMANCES ARE PROPERLY NOT AVAILABLE TO THE CLUB.

The First Department, in a full-fledged opinion by Justice Tom, determined the provisions of the Tax Law which allow the imposition of an

amusement tax and a cabaret tax were not unconstitutional either facially or as applied to the plaintiffs. The plaintiffs operate a men's entertainment club featuring topless dancers (Hustler Club). The Tax Law includes exemptions for certain types of entertainment, i.e., dramatic or musical art performances. Plaintiffs argued the exemptions should apply to the adult entertainment at the club, as well. In rejecting the constitutional arguments, the court wrote: "Here, the Tax Laws are laws 'of general application' The Amusement Tax applies to sales at '[a]ny place where any facilities for entertainment, amusement, or sports are provided' (Tax Law § 1101[d][10]), and the Cabaret Tax applies to sales at '[a]ny roof garden, cabaret or other similar place which furnishes a public performance for profit' (Tax Law § 1101[d][12]). The Tax Laws 'ha[ve] not selected a narrow group to bear fully the burden of the tax' ... , since the taxes imposed on plaintiffs are equally applicable to many other types of entertainment and recreational activities, including sporting events, car races, amusement parks, arcades, zoos, animal performances, and magic acts Nor are the performances of the sort presented at the Hustler Club 'singled out for special treatment'... based on their erotic, sexual, or adult nature. The performances merely happen to fall under the very broad categories of 'entertainment' or 'amusement,' for purposes of the Amusement Tax, and 'public performance for profit,' for purposes of the Cabaret Tax." *MSG Rest. Group, LLC v State of New York*, 2016 NY Slip Op 07280, 1st Dept 11-3-16

SECOND DEPARTMENT

PLAINTIFF'S ATTEMPT TO DEMONSTRATE STANDING FAILED BECAUSE THE SUBMITTED AFFIDAVIT DID NOT MEET THE REQUIREMENTS OF THE BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE; AFFIDAVIT SUBMITTED IN REPLY PAPERS CANNOT BE CONSIDERED.

The Second Department determined plaintiff loan service did not demonstrate standing to bring this foreclosure action. The affidavit submitted by the plaintiff did not meet the requirements of the business records exception to the hearsay rule. An affidavit

submitted with the reply papers could not be considered: "...[T]he plaintiff relied on the affidavit of Jaclyn Holloway, an assistant secretary of Nationstar Mortgage, LLC (hereinafter Nationstar). Holloway alleged that, after the action was commenced, the plaintiff delivered the note to NationStar. She alleged that, 'pursuant to the business records of [the plaintiff],' the plaintiff had physical possession of the note when it commenced the action. However, the plaintiff failed to demonstrate the admissibility of the records relied upon by Holloway under the business records exception to the hearsay rule (see CPLR 4518[a]) since Holloway did not attest that she was personally familiar with the record-keeping practices and procedures of the plaintiff Consequently, Holloway's allegations based on those records were inadmissible ... , and, therefore, insufficient to meet the plaintiff's prima facie burden to establish its standing The plaintiff could not rely on the affidavit of its vice president to meet its prima facie burden since the affidavit was improperly submitted for the first time in its reply papers ...". *Aurora Loan Servs., LLC v Baritz*, 2016 NY Slip Op 07154, 2nd Dept 11-2-16

THIRD DEPARTMENT

VOCATIONAL FACTORS PROPERLY CONSIDERED IN SETTING COMPENSATION FOR PERMANENTLY DISABLED LABORER.

The Third Department determined the Workers' Compensation Board properly took into account the claimant's "vocational factors," i.e., limited education, language barrier, work history, when setting the appropriate compensation. Claimant suffered a permanent partial disability and had been employed as a landscaper: "Here, ... claimant suffered a permanent partial disability, there is no expectation that he will ever return to his former or similar employment as a laborer, and the Board necessarily considered vocational factors when it established his loss of wage-earning capacity. Because the evidence

Continued on page 25

CLE Seminar Schedule

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GAIN THE EDGE: NEGOTIATION STRATEGIES FOR LAWYERS

(F) December 9 | New York City

New York Society of Security Analysts

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STORYTELLING FOR LAWYERS WITH WILLIAM BERNHARDT

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(F) December 9 Albany New York

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ADVANCED REAL ESTATE TOPICS 2016

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DISABILITIES IN THE LEGAL PROFESSION

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LABOR LAW CLAIMS, COVERAGE AND LITIGATION

(W) December 14 | Syracuse

Sheraton Syracuse University Hotel

(Th) December 15 | Long Island

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Albany

New York State Bar Association

(F) December 16 | Buffalo

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Recent Decisions & Case Law Developments

Continued from page 24

established that claimant did not earn actual wages, the statute authorized the Board to “[fix] in the interest of justice . . . such wage[-]earning capacity as shall be reasonable . . . having due regard to the nature of his injury and his physical impairment” (Workers’ Compensation Law § 15 [5-a]). . . [W]e find that the [statute’s] broad discretionary language authorized the Board to consider vocational factors that reflected claimant’s true ability to secure employment, particularly in the absence of evidence to negate claimant’s testimony that his injury contributed to his loss of wage-earning capacity Consequently, under the circumstances presented, we perceive no error in the Board’s determination to fix claimant’s wage-earning capacity based on the undisputed evidence of his physical disability and loss of wage-earning capacity resulting from his functional limitations and vocational impediments *Matter of Rosales v Eugene J. Felice Landscaping*, 2016 NY Slip Op 07239, 2nd Dept 11-3-16 ♦

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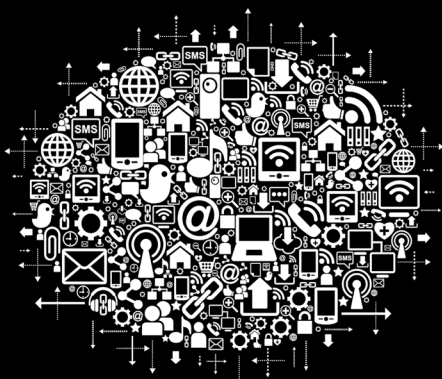
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