



**NEW YORK STATE BAR ASSOCIATION  
MEETING OF THE HOUSE OF DELEGATES  
REMOTE MEETING  
SATURDAY, APRIL 10, 2021 – 9:00 A.M.**

**AGENDA**

1. Call to order, Pledge of Allegiance, and welcome 9:00 a.m.
2. Approval of minutes of January 30, 2021 meeting 9:03 a.m.
3. Report of Treasurer – Mr. Domenick Napoletano 9:05 a.m.
4. Report of Finance Committee – Mr. John H. Gross 9:15 a.m.
5. Election of Nominating Committee and State Bar Delegates to ABA House of Delegates – Ms. Sharon Stern Gerstman 9:25 a.m.
6. Report of President – Mr. Scott M. Karson 9:30 a.m.
7. Presentation of 2020 Root-Stimson Award to Mr. Lawrence W. Golden – Mr. Scott M. Karson 9:45 a.m.
8. Report of Committee on NYSBA Facilities – Mr. David P. Miranda 10:00 a.m.
9. Report of Task Force on Racial Injustice and Police Reform – Mr. T. Andrew Brown and Ms. Taa Grays 10:20 a.m.
10. Report of Task Force on Nursing Homes and Long-Term Care – Mr. Hermes Fernandez and Ms. Sandra D. Rivera 10:35 a.m.
11. Report of Task Force on COVID-19 Immunity and Liability – Mr. A. Craig Purcell and Ms. Jennifer M. Schwartzott 10:50 a.m.
12. Report of Task Force on Attorney Well-Being – Ms. M. Elizabeth Coreno and Hon. Karen K. Peters (Ret.) 11:05 a.m.
13. Report and Recommendations of Committee on Standards of Attorney Conduct – Mr. Joseph E. Neuhaus 11:20 a.m.
14. Report of Task Force on the New York Bar Examination – Hon. Alan D. Scheinkman (Ret). 11:40 a.m.
15. Report of The New York Bar Foundation – Ms. Lesley Rosenthal 11:55 a.m.
16. Administrative Items – Mr. T. Andrew Brown 12:05 p.m.

- 17. New Business 12:10 p.m.
- 18. Date and place of next meeting:  
Saturday, June 12, 2021

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF HOUSE OF DELEGATES MEETING  
REMOTE MEETING  
JANUARY 30, 2021**

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**PRESENT:** Abneri; Adigwe; Alcott; Alicea; Alomar; Alsina; Bahn; Barnes; Bascoe; Battistoni; Baum; Behrins; Beltran; Berkey; Berman; Betz; Billings; Bladykas; Boston; Brown; Buholtz; Buzard; Castellano; Chambers; Chandrasekhar; Chang; Christopher; Cohen, D.; Cohen, M.; Cohn; Dean; DeFio Kean; Degnan; Doerr; Doxey; Doyle; Eberle; Effman; England; Fallek; Fennell; Fernandez; Filabi; Filemyr; Finerty; First; Fishberg; Foley; Fox, J.; Fox, M.; Freedman; Frumkin; Genoa; Gerstman; Getnick; Gilmartin; Gold; Good; Grady; Grays; Griesemer; Grimaldi; Gross; Gutekunst; Gutenberger; Gutierrez; Hack; Harper; Hartman; Heath; Hobika; Holtzman; Jaglom; James; Jimenez; Jochmans; Joseph; Kamins; Kamholz; Kapnick; Katz; Kehoe; Kelly; Kendall; Kenney; Kiernan; Kimura; Kirby; Kobak; Kretser; Kretzing; LaBarbera; Lanouette; Lara; LaRose; Lau-Kee; Lawrence; Leber; Leo; Lessard; Leventhal; Levin; Levy; Lewis; Lindenauer; Lisi; Lugo; MacLean; Madigan; Maldonado; Marinaccio; Markowitz; Maroney; Marotta; Matos; May; McElwreath; McGinn; McNamara, C.; McNamara, M.; Meyer, H.; Meyer, J.; Middleton; Miller, M.; Miller, R.; Millett; Milone; Minkoff; Minkowitz; Miranda; Montagnino; Moore; Moretti; Morrissey; Mukherji; Muller; Mulry; Napoletano; Newman; Noble; Nolfo; O’Connell, B.; O’Connell, D.; Onderdonk; Owens; Palermo, A.; Palermo, C.; Pappalardo; Perlman; Pessala; Pitegoff; Pleat; Poster-Zimmerman; Purcell; Radick; Reed, L.; Reed, M.; Riano; Richardson; Richman; Richter; Rivera Agosto; Robinson; Rosenthal; Russ; Russell; Ryan; Ryba; Safer; Samuels; Santiago; Scheinkman; Schofield; Schraver; Schwartz-Wallace; Scott; Seiden; Sen; Shafer; Shampnoi; Shapiro; Sheldon; Shoemaker; Sigmond; Silkenat; Sise; Slavit; Sonberg; Starkman; Stoeckmann; Swanson; Sweet; Tambasco; Taylor; Tesser; Triebwasser; van der Meulen; Vaughn; Ventura; Vigdor; Warner; Waterman; Weiss; Westlake; Wimpfheimer; Wolff; Woodley; Yeung-Ha; Young; Younger; Zimmerman.

2. Report of the Treasurer. The Treasurer’s report for twelve months ending December 31, 2020, which had been presented by Treasurer Domenick Napoletano to members of the Association at the Annual Meeting, was received with thanks.
  
3. Report of the Nominating Committee and election of officers and members-at-large of the Executive Committee. Sharon Stern Gerstman, chair of the Nominating Committee, reported that the Committee had nominated the following individuals for election to the indicated offices for the 2021-2022 Association year: President-Elect: Sherry Levin Wallach, White Plains; Secretary: Taa R. Grays, New York City; Treasurer: Domenick Napoletano, Brooklyn; and Vice Presidents: First District – Diana S. Sen and Michael McNamara, New York City; Second – Aimee L. Richter, Brooklyn; Third – Robert T. Schofield IV, Albany; Fourth – Nancy Sciocchetti, Saratoga Springs; Fifth – Jean Marie Westlake, East Syracuse; Sixth – Richard C. Lewis, Binghamton; Seventh – Mark J. Moretti, Rochester; Eighth – Kathleen M. Sweet, Buffalo; Ninth – Adam Seiden, Mount Vernon; Tenth – Donna England, Centereach; Eleventh – David L. Cohen, Kew Gardens; Twelfth – Michael A. Marinaccio, White Plains; Thirteenth – Orin J. Cohen, Staten Island. Nominated as members-at-large of the Executive Committee were Sandra Rivera, Albany; Thomas J. Maroney, New York City; LaMarr Jackson, Rochester; and Simeon H. Baum, New York City.

There being no further nominations, a motion was made and carried unanimously to elect the above-named individuals as officers and members-at-large of the Executive Committee.

4. Report of Committee on NYSBA Facilities. David P. Miranda, chair of the committee, together with committee members Michael McNamara and Sandra Rivera, updated the House with respect to its ongoing review of the use of the One Elk Street premises and discussions with representatives of The New York Bar Foundation. In her capacity as a member of the Finance Committee, Ms. Rivera reported on the Finance Committee's work in reviewing the costs of maintaining and updating One Elk Street and its review of the potential use of Association reserves in this regard. The report was received with thanks.
5. Report and recommendations of Committee on Immigration Representation. Hasan Shafiqullah, chair of the committee, reviewed the committee's report recommending the creation of an Article I immigration court to insulate immigration adjudication from political pressure. After discussion, a motion was adopted to approve the report and recommendations.
6. Report and recommendations of Committee on Mandated Representation. Norman P. Effman, past chair of the committee, presented proposed amendments to the Standards for Mandated Representation, originally approved by the House of Delegates in 2005 and intended to provide guidance to providers of mandated representation to ensure the provision of high-quality legal representation. After discussion, a motion was adopted to approve amendments.
7. Report of LGBTQ Law Section. Christopher R. Riano, chair of the section, updated the House regarding the section's activities since the House approved its creation in November 2020. The report was received with thanks.
8. Report of Committee on Association Communications and Publications. Prof. Michael L. Fox, chair of the committee, presented an informational report on the committee's activities and goals for 2021. The report was received with thanks.
9. Administrative items. Mr. Brown reported on the following:  
  
NYSBA delegates to ABA House of Delegates. At the April 10, 2021 meeting, the House would be requested to elect five of the Association's 11 delegates to the American Bar Association House of Delegates. The Nominating Committee had nominated the following individuals: Claire P. Gutekunst, Yonkers; Scott M. Karson, Melville; Bernice K. Leber, New York City; Michael Miller, New York City; Sherry Levin Wallach, White Plains.
10. Date and place of next meeting. Mr. Brown announced that the next meeting of the House of Delegates would take place on Saturday, April 10, 2021 as a remote meeting.

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

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Sherry', followed by a long horizontal line that tapers to the right.

Sherry Levin Wallach  
Secretary



**SCOTT M. KARSON**

President

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**President's Report  
Annual Meeting of the New York State Bar Association  
January 30, 2021**

Good morning, and welcome to the 144<sup>th</sup> Annual Meeting of the New York State Bar Association. Over the last 11 days our members – the bench and bar of New York – have gathered via Zoom for dozens of CLE programs, networking events, and section meetings. After registering approximately 4,000 total attendees, it is safe to say that this year's Virtual Annual Meeting was a resounding success. We are happy to report that, even going fully virtual and missing the various in-person networking opportunities that our traditional Annual Meeting provides, we have not seen a significant decline in registrations. Indeed, the level of participation and enthusiasm is as high as ever.

A review of the list of events and presenters explains why – our virtual Annual Meeting has been graced by such luminary guests as Attorney General Letitia James, Chief Judge Janet DiFiore, Senator Amy Klobuchar of Minnesota, and Secretary Jeh Johnson. COVID-19 has completely altered the practice of law, and our section and committee meetings have been full of content to help our members navigate these major changes. The Presidential Summit, featuring the esteemed scholars Dean Erwin Chemerinsky of UC Berkeley School of Law and Dr. Irwin Redlener of Columbia University Medical Center, was a thoughtful examination of the legal, constitutional, and public health issues surrounding the COVID-19 pandemic. I was beyond pleased to see so many cherished colleagues in the virtual audience of the Summit and at our other Annual Meeting events.

I extend my heartfelt congratulations to our members, many I consider dear friends, who have been honored with awards and commendations over the course of our Annual Meeting. Your dedication, service, and hard work are what makes NYSBA great, and, indeed, what defines us as a profession.

I would like to use this opportunity to extend my sincere congratulations to the Franklin H. Williams Judicial Commission, which is celebrating its Thirtieth Anniversary this year. This permanent commission, named in honor of distinguished attorney and civil rights leader Franklin H. Williams, is charged with promoting racial and ethnic fairness in the courts. In that regard, we commend the bold recommendations contained in the report from special adviser Secretary Jeh Johnson on equal justice in the New York State Courts and support all efforts on the implementation of these recommendations within the Unified Court System.

NYSBA, as always, stands ready to provide full support to our partners within the bench and bar in ensuring equal justice in the New York State Courts. Indeed, the ceaseless pursuit of equal justice for all guides our momentum as an Association.

Racial injustice – the stain on our national conscience – demands our entire civil society’s immediate, careful, and considerable attention. I applaud the NYSBA Task Force on Racial Injustice and Police Reform, ably led by President-Elect T. Andrew Brown and Secretary -Elect Taa Grays, for its hard examination of the issues contributing to police brutality. This task force has held three public forums over the past six months, as well as a well-attended recent CLE that focused on the issue of community and civilian oversight of policing. I look forward to the continued work of the Task Force as they develop recommendations to end the destructive policing practices that disproportionately impact persons of color and contribute to such gross injustices.

I am pleased to report that the Association has taken an active lead in responding to the many major events that have gripped our nation since I last addressed the House in November. After what was surely the most consequential presidential election of our lifetime, we have witnessed a peaceful transition of power from the old administration to the new. The rule of law and our democratic traditions have prevailed. I thank our special Task Force on the Presidential Election for leading our response to the 2020 election – the informational webinars and articles prepared by this group were an informative and impartial resource for our profession and the public. From the election to the inauguration, from the second CARES Act to the first days of the Biden Administration, NYSBA truly reacted to history as it unfolded. Indeed, a special webinar on impeachment was presented mere minutes after the House of Representatives charged former President Trump. This is a true testament to the quick adaptability of our members, and another demonstration of the power and potential of our virtual Bar Center as a tool of communication.

2021 is only a month old, but it has already been a year of progress and action. At the federal level, the Biden Administration has taken executive action to preserve and fortify the Deferred Action for Childhood Arrivals (“DACA”) immigration policy, revisit civil immigration enforcement, continue the pause of federal student loan payments, return the United States to the Paris Climate Agreement, and combat discrimination based on gender identity or sexual orientation – all goals and priorities of our Association.

Here in New York, Governor Cuomo in December signed into law an Association-advanced bill that simplifies and improves the state’s power of attorney form. This was truly a cause for celebration. NYSBA had long advocated for reform of the power of attorney form – the older form, quite simply, was an unnecessarily complicated document, and needlessly confusing. The new user-friendly – and consumer-friendly – form benefits not just attorneys but our clients and all New Yorkers and their families who rely on these documents for essential life-planning purposes.

Going forward, NYSBA will continue to monitor and participate in the ongoing state budget negotiations. Governor Cuomo’s recent State of the State address contained several items of interest to our membership, including the legalization and regulation of cannabis for recreational adult-use, the expansion of reliable broadband service in underserved rural and urban areas, and full funding of the Liberty Defense Project.

Of special note is the Governor's creation of a statewide New York Vaccine Equity Task Force to monitor the vaccination of millions of New Yorkers against COVID-19. As the House is well-aware, NYSBA, in the adopted resolutions of its Health Section, has rightfully called for assurance that all New Yorkers have equitable access to the vaccine. NYSBA will continue to guide our policymakers and elected leaders as New York as they navigate through the COVID-19 crisis. Although the light is not yet in sight, I am confident that the end of the tunnel is soon approaching.

In the meantime, I encourage you to be steadfast in your support for the underprivileged in this extraordinary time of need. As president-elect, I pledged to take on a pro bono matter while serving as president of the Association. I am pleased to say that I have taken on a pro bono appeal to the Appellate Division, Fourth Department through the Committee on Courts of Appellate Jurisdiction's Pro Bono Appeals Program.

I am even more pleased that so many of you have also heeded the call to help, whether through participation in the COVID-19 pro bono initiative, which is co-partnered by NYSBA and Unified Court System, or through service with your local bar association, law school, or legal service provider. Over 2,250 New Yorkers have been helped through the NYSBA Unemployment Insurance and Surrogate's Court small estates pro bono projects since May. To further help small businesses avoid evictions, New York State, alongside Start Small Think Big and the New York State Bar Association, will next launch the Commercial Eviction Prevention Partnership to provide mediation for landlords and commercial tenants facing eviction. I look forward to sharing more information on this initiative with you in the days to come.

As we approach the spring, the Task Force on Nursing Homes and Long-Term Care and the Task Force on COVID-19 Immunity and Liability continue in their earnest work to investigate and make recommendations in these critical areas. The Task Force on Attorney Well-Being is likewise persistently engaged in efforts to support and improve the quality of life of all lawyers. And our sections and committees will continue, as always, to present CLE webinars, publish articles and other useful content, and develop cutting-edge public policy proposals.

We do not know what the next few months will hold, but we can be cautiously optimistic that life will get better. I am proud that NYSBA has risen to meet the many challenges presented over the past year and has reinvented itself in order to continue to serve its members and advocate for its policy priorities.

The pandemic has upended every aspect of our lives – both professional and personal – and NYSBA has been well-positioned to quickly adapt to the new virtual reality in which we live. We will continue to refine our approach going forward to ensure we are both providing the real-time information and programs our members have come to expect and also are being responsible stewards of their hard-earned membership dues.

The Association is reviewing every aspect of its operations, including the future of its brick-and-mortar home at One Elk Street. While we all feel emotionally connected to the Bar Center and have many happy memories there, we must be realistic about whether the considerable space, which requires a significant financial investment to be brought up to code, continues to be necessary in the so-called new normal. We will continue to keep our members up to date as this situation unfolds.

I look forward to addressing you again in April. As always, I thank my fellow officers – President-Elect T. Andrew Brown, Secretary Sherry Levin Wallach, Treasurer Domenick Napoletano, and Immediate Past President Hank Greenberg – for their service, wisdom, advice, and friendship. I also thank Executive Director Pamela McDevitt and our unparalleled staff for their tireless performance during these difficult times. I thank our section and committee chairs and all presenters for their exceptional dedication in ensuring that this virtual Annual Meeting was a success. And I thank you, our delegates, and members, for all that you do to make our Association great. It is my pleasure to serve as your NYSBA president. Stay well.



**NEW YORK STATE BAR ASSOCIATION  
2021 OPERATING BUDGET  
TWO MONTHS OF CALENDAR YEAR 2021**

**REVENUE**

	<b>2021 BUDGET</b>	<b>ADJUST- MENTS</b>	<b>2021 BUDGET AS ADJUSTED</b>	<b><u>UNAUDITED</u> RECEIVED 2/28/2021</b>	<b>% RECEIVED 2/28/2021</b>	<b>2020 BUDGET</b>	<b><u>UNAUDITED</u> RECEIVED 2/29/2020</b>	<b>% RECEIVED 2/29/2020</b>
<b>MEMBERSHIP DUES</b>	8,764,295		8,764,295	8,230,064	93.90%	9,732,250	8,518,600	87.53%
<b>SECTIONS:</b>								
Dues	1,200,000		1,200,000	1,006,391	83.87%	1,321,800	1,131,622	85.61%
Programs	1,733,315		1,733,315	216,736	12.50%	3,123,430	669,903	21.45%
<b>INVESTMENT INCOME</b>	494,420		494,420	(30,899)	-6.25%	500,800	-33,458	-6.68%
<b>ADVERTISING</b>	183,000		183,000	18,082	9.88%	250,000	21,009	8.40%
<b>CONTINUING LEGAL EDUCATION</b>	2,950,000		2,950,000	357,258	12.11%	3,220,000	929,105	28.85%
<b>USI AFFINITY PAYMENT</b>	2,154,000		2,154,000	357,274	16.59%	2,306,000	481,566	20.88%
<b>ANNUAL MEETING</b>	276,225		276,225	488,728	176.93%	1,312,000	1,585,376	120.84%
<b>HOUSE OF DELEGATES &amp; COMMITTEES</b>	27,000		27,000	1,312	4.86%	174,750	7,440	4.26%
<b>PUBLICATIONS, ROYALTIES AND OTHER</b>	210,700		210,700	32,031	15.20%	216,200	38,860	17.97%
<b>REFERENCE MATERIALS</b>	1,300,000		1,300,000	97,922	7.53%	1,250,000	106,170	8.49%
<b>TOTAL REVENUE</b>	<b>19,292,955</b>	<b>0</b>	<b>19,292,955</b>	<b>10,774,899</b>	<b>55.85%</b>	<b>23,407,230</b>	<b>13,456,193</b>	<b>57.49%</b>

**EXPENSE**

	<b>2021 BUDGET</b>	<b>ADJUST- MENTS</b>	<b>2021 BUDGET AS ADJUSTED</b>	<b><u>UNAUDITED</u> EXPENDED 2/28/2021</b>	<b>% EXPENDED 2/28/2021</b>	<b>2020 BUDGET</b>	<b><u>UNAUDITED</u> EXPENDED 2/29/2020</b>	<b>% EXPENDED 2/29/2020</b>
<b>SALARIES &amp; FRINGE</b>	8,334,264		8,334,264	1,303,558	15.64%	8,790,034	1,368,082	15.56%
<b>BAR CENTER:</b>								
Rent	284,000		284,000	31,766	11.19%	284,000	56,951	20.05%
Building Services	365,000		365,000	51,449	14.10%	397,000	63,243	15.93%
Insurance	164,000		164,000	31,575	19.25%	170,000	22,500	13.24%
Taxes	180,250		180,250	66,562	36.93%	7,750	96,213	1241.46%
Plant and Equipment	893,500		893,500	139,732	15.64%	890,500	119,981	13.47%
Administration	526,100		526,100	80,953	15.39%	537,600	109,067	20.29%
<b>SECTIONS</b>	2,920,715		2,920,715	87,286	2.99%	4,445,230	492,087	11.07%
<b>PUBLICATIONS:</b>								
Reference Materials	248,800		248,800	14,021	5.64%	312,800	26,213	8.38%
Journal	245,700		245,700	43,357	17.65%	396,500	37,555	9.47%
Law Digest	75,000		75,000	11,068	14.76%	156,000	29,560	18.95%
State Bar News	85,500		85,500	2,300	2.69%	122,300	14,456	11.82%
<b>MEETINGS:</b>								
Annual Meeting	24,250		24,250	38,806	160.02%	714,700	2,154,958	301.52%
House of Delegates, Officers and Executive Committee	309,000		309,000	39,759	12.87%	468,825	42,090	8.98%
<b>COMMITTEES:</b>								
Continuing Legal Education	435,000		435,000	7,893	1.81%	1,480,500	118,587	8.01%
LPM / Electronic Communication Committee	1,400		1,400	-	0.00%	38,100	2,005	5.26%
Marketing / Membership	850,000		850,000	107,363	12.63%	877,050	126,165	14.39%
Media Services	269,450		269,450	51,056	18.95%	144,720	54,900	37.94%
All Other Committees and Departments	2,590,135		2,590,135	390,753	15.09%	2,983,790	454,172	15.22%
<b>TOTAL EXPENSE</b>	<b>18,802,064</b>	<b>0</b>	<b>18,802,064</b>	<b>2,499,257</b>	<b>13.29%</b>	<b>23,217,399</b>	<b>5,388,785</b>	<b>23.21%</b>
<b>BUDGETED SURPLUS</b>	<b>490,891</b>	<b>0</b>	<b>490,891</b>	<b>8,275,642</b>		<b>189,831</b>	<b>8,067,408</b>	

**NEW YORK STATE BAR ASSOCIATION  
STATEMENTS OF FINANCIAL POSITION  
AS OF FEBRUARY 28, 2021**

<u>ASSETS</u>	<u>UNAUDITED</u> <u>2/28/2021</u>	<u>UNAUDITED</u> <u>2/28/2020</u>	<u>UNAUDITED</u> <u>12/31/2020</u>
<b><u>Current Assets:</u></b>			
General Cash and Cash Equivalents	17,681,820	14,735,708	16,126,279
Accounts Receivable	244,311	188,390	194,902
Prepaid expenses	605,096	898,455	602,714
Royalties and Admin. Fees receivable	833,394	425,617	803,397
Total Current Assets	19,364,621	16,248,170	17,727,292
<b><u>Board Designated Accounts:</u></b>			
<b><u>Cromwell Fund:</u></b>			
Cash and Investments at Market Value	2,983,286	2,490,308	2,962,151
Accrued interest receivable	0	0	0
	2,983,286	2,490,308	2,962,151
<b><u>Replacement Reserve Account:</u></b>			
Equipment replacement reserve	1,117,844	1,117,695	1,117,826
Repairs replacement reserve	794,562	794,457	794,550
Furniture replacement reserve	220,004	219,975	220,000
	2,132,410	2,132,127	2,132,376
<b><u>Long-Term Reserve Account:</u></b>			
Cash and Investments at Market Value	30,648,202	25,060,429	30,108,641
Accrued interest receivable	0	0	117,962
	30,648,202	25,060,429	30,226,603
<b><u>Sections Accounts:</u></b>			
Section Accounts Cash equivalents and Investments at market value	4,033,402	3,954,951	4,046,948
Cash	1,135,841	1,309,438	255,059
	5,169,243	5,264,389	4,302,007
<b><u>Fixed Assets:</u></b>			
Furniture and fixtures	1,463,037	1,448,300	1,463,037
Leasehold Improvements	1,470,688	1,470,688	1,470,688
Equipment	3,988,520	9,808,495	3,906,126
Telephone	0	107,636	0
	6,922,245	12,835,119	6,839,851
Less accumulated depreciation	4,117,789	10,293,121	3,993,589
Net fixed assets	2,804,456	2,541,998	2,846,262
Total Assets	63,102,218	53,737,421	60,196,691
<b><u>LIABILITIES AND FUND BALANCES</u></b>			
<b><u>Current liabilities:</u></b>			
Accounts Payable & other accrued expenses	501,952	1,333,189	784,252
Deferred dues	0	0	6,162,500
Deferred income special	192,307	423,076	230,768
Deferred grant revenue	29,906	29,906	29,906
Other deferred revenue	415,671	15,037	1,000,235
PPP Loan Payable	1,482,957	0	0
Unearned Income - CLE	0	48,474	0
Payable To The New York Bar Foundation	11,205	7,307	19,965
Total current liabilities & Deferred Revenue	2,633,998	1,856,989	8,227,626
<b><u>Long Term Liabilities:</u></b>			
Accrued Other Postretirement Benefit Costs	8,766,735	8,115,883	8,706,735
Accrued Supplemental Plan Costs and Defined Contribution Plan Costs	73,377	60,000	299,674
Total Liabilities & Deferred Revenue	11,474,110	10,032,872	17,234,035
<b><u>Board designated for:</u></b>			
Cromwell Account	2,983,286	2,490,308	2,962,151
Replacement Reserve Account	2,132,410	2,132,127	2,132,376
Long-Term Reserve Account	21,808,090	16,884,546	21,102,232
Section Accounts	5,169,243	5,264,389	4,302,007
Invested in Fixed Assets (Less capital lease)	2,804,456	2,541,998	2,846,262
Undesignated	16,730,623	14,391,181	9,617,628
Total Net Assets	51,628,108	43,704,549	42,962,656
Total Liabilities and Net Assets	63,102,218	53,737,421	60,196,691

**New York State Bar Association**  
**Statement of Activities**  
**For the Two Months Ending February 28, 2021**

	<u>February 2021</u>	<u>February 2020</u>	<u>December 2020</u>
<b>REVENUES AND OTHER SUPPORT</b>			
Membership dues	8,230,064	8,518,600	9,317,495
Section revenues			
Dues	1,006,391	1,131,622	1,241,688
Programs	216,736	669,903	769,606
Continuing legal education program	357,258	929,105	3,043,386
Administrative fee and royalty revenue	373,339	519,344	2,594,862
Annual meeting	488,728	1,585,376	1,582,326
Investment income	(20,400)	(15,027)	1,469,873
Reference Books, Formbooks and Disk Products	97,920	106,170	1,032,334
Other revenue	59,739	29,531	289,238
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Total revenue and other support	10,809,775	13,474,624	21,340,808
<b>PROGRAM EXPENSES</b>			
Continuing legal education program	110,018	248,747	1,260,881
Graphics	198,537	241,914	1,222,630
Government relations program	49,741	66,652	476,962
Law, youth and citizenship program	-	11,770	(185)
Lawyer assistance program	21,319	32,171	216,082
Lawyer referral and information services	311	19,215	14,518
Law practice management services	8,370	8,808	58,309
Media / public relations services	115,649	152,700	726,958
Business Operations	-	77,921	1,461,003
Marketing and Membership services	210,476	244,253	1,293,354
Pro bono program	30,356	28,663	187,586
Local bar program	-	14,495	41,105
House of delegates	39,542	39,930	198,716
Executive committee	19	2,160	14,020
Other committees	15,012	24,133	337,223
Sections	87,286	492,087	1,756,235
Section newsletters	42,596	27,048	192,810
Reference Books, Formbooks and Disk Products	101,401	112,787	726,284
Publications	56,724	81,571	462,750
Annual meeting expenses	38,806	2,154,958	958,195
	<hr/>	<hr/>	<hr/>
Total program expenses	1,126,163	4,081,983	11,605,436
<b>MANAGEMENT AND GENERAL EXPENSES</b>			
Salaries and fringe benefits	601,206	487,034	2,607,343
Pension plans and other employee benefit plan costs	114,106	110,157	932,832
Rent and equipment costs	264,797	297,385	1,435,041
Consultant and other fees	257,812	244,199	1,379,868
Depreciation and amortization	124,200	100,000	657,511
Other expenses	10,973	68,028	215,728
	<hr/>	<hr/>	<hr/>
Total management and general expenses	1,373,094	1,306,803	7,228,323
<b>CHANGES IN NET ASSETS BEFORE INVESTMENT TRANSACTIONS AND OTHER ITEMS</b>			
	<b>8,310,518</b>	<b>8,085,838</b>	<b>2,507,049</b>
Realized and unrealized gain (loss) on investments	354,934	(1,220,339)	3,590,055
Realized gain (loss) on sale of equipment	-	-	26,500
<b>CHANGES IN NET ASSETS</b>			
	<b>8,665,452</b>	<b>6,865,499</b>	<b>6,123,604</b>
Net assets, beginning of year	42,962,656	36,839,052	36,839,052
	<hr/>	<hr/>	<hr/>
Net assets, end of year	51,628,108	43,704,551	42,962,656





**SCOTT M. KARSON**

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**Report of President Scott M. Karson to the  
NYSBA House of Delegates  
April 10, 2021**

My fellow delegates, friends, and colleagues, when I assumed the presidency of the New York State Bar Association last June, we were roughly three months into the coronavirus pandemic that has fundamentally changed the way our Association, our profession – and the world at large – operates.

At that time, I had no way of knowing how long this disruption would last. In fact, by June the pandemic had already lasted longer than I had imagined it would. I have a vivid memory of that day in March 2020 when my law office down on Long Island closed pursuant to the Governor’s executive order, and I naively told my colleagues at the firm that we’d be back in the office within a week! I never considered the possibility that one year later, I would hold the distinction of being the Association’s first all-virtual president in its 144-year history.

What I did know was that everything I thought my leadership of the Association would entail in the months leading up to my presidency would be drastically different. But while uncertainty has plagued us all throughout the pandemic, one thing remained certain – NYSBA’s resiliency and preparedness for what lay ahead.

My term started in unprecedented fashion when I was afforded the unique and unforgettable privilege of being installed as president of the Association via Zoom by New York's distinguished Chief Judge Janet DiFiore. That honor was repeated several weeks later when I was virtually installed once again, this time by Senior Associate Judge Jenny Rivera during the June 2020 meeting of our House of Delegates.

Zoom meetings became the norm at NYSBA. While you have heard me lament on prior occasions that nothing replaces the collegiality and camaraderie of an in-person NYSBA event, the Association has experienced record setting attendance during the pandemic for its virtual House of Delegates meetings and perhaps, even more notably, for our two-week all virtual Annual Meeting in late January 2021. I am very pleased to report that the Annual Meeting was a tremendous success with over 4,500 attendees, including many first-time attendees. The Presidential Summit, which featured Dean Erwin Chemerinsky of UC Berkeley School of Law and Dr. Irwin Redlener of Columbia University – known affectionately as the “E(I)rwins” – was a thoughtful discussion on the legal and constitutional issues surrounding the COVID-19 crisis. Even the virtual piano bar was an entertaining – and amusing – event that helped bring our members closer together.

Also, NYSBA continuing legal education programs have not failed to attract members to engaging and informative webinars, many of them helping lawyers stay updated on COVID-19 and its impact on their practices. The Trial Academy, led by Secretary Sherry Levin Wallach, was a virtual success, as was the virtual International Estate Planning Institute. Our sections and committees continue their diligent work with our CLE Department to prepare and produce timely

programs. Indeed, on a lighter note, the “The Ten Zoom Lessons Learned from ‘I Am Not A Cat’” webinar had over 500 registrants!

It is incredibly positive to see how engaged our membership remains despite the isolation that easily can be felt during these uncertain times. Your support helped me persevere during a period where not only the presidency of NYSBA – but life in general – was anything but normal.

It has also been wonderful to see such a positive reaction to the Association’s message in the public sphere. I have attempted to maintain the Association’s focus on its bedrock principle, adherence to the rule of law, particularly in my statements to the media, which have covered a broad range of subjects including criticism of unlawful conduct on the part of governments, assailing recurring incidents of gun violence, criticizing unwarranted attacks on the members of our profession for simply doing their jobs, and weighing in on the horrific January 6, 2021 Capitol riots.

NYSBA’s message with regard to the pandemic also generated attention from mainstream and legal media alike, especially after the great work of NYSBA’s Health Law Section, which recommended that New York consider mandating a COVID-19 vaccine once a scientific consensus emerged that it was safe, effective and necessary. NYSBA’s recommendations struck a balance between government’s responsibility to protect the majority of New Yorkers while safeguarding personal freedoms prescribed by the Constitution. A story on the recommendation in the New York Law Journal was the publication’s best-read story for months, demonstrating how influential NYSBA has become.

In response to the pandemic, I appointed three new task forces. The first task force I'm sure you are all familiar with by now – the Task Force on Attorney Well-Being – whose work became even more important after the pandemic hit given the impact it has had on our mental and physical health. But what you might not know is that an in-depth survey conducted by the task force will provide the most comprehensive data on lawyer well-being ever gathered in New York. I'm looking forward to the task force presenting its report to the House of Delegates this year.

Another task force is investigating why a disproportionate number of residents died from COVID-19 in nursing homes and long-term care facilities across the state. The task force will recommend regulatory and statutory changes to prevent such loss of life from ever happening again. And a third task force is examining issues of tort and contractual liability, as well as immunity from such liability and related business concerns.

Unrelated to COVID-19 but also vitally important is the work of our Task Force on Racial Injustice and Police Reform. Created in the aftermath of the horrific killing of George Floyd while in police custody, this task force remains hard at work to understand the issues that contribute to police misconduct and to provide recommendations to policymakers, law enforcement and the judiciary to end harmful policing practices that disproportionately impact persons of color. The trial of former Minneapolis Police Officer Derek Chauvin, which began at the end of March and is continuing as we gather here, reminds us of the significance of the task force's work.

I am extremely proud of the hard work of all these task forces and am looking forward to the coming weeks and months when they release their comprehensive reports and recommendations.

Another major accomplishment that occurred during my tenure was passage of the law NYSBA advanced to simplify the power of attorney form in New York. When the law was signed in December, it represented the collective work of many years of NYSBA leadership and advocacy, including that of many of my predecessors, and I am proud that it became law during my watch.

On March 11, Congress advanced NYSBA's federal legislative priority, stemming from the report of the Task Force on Mass Shootings and Assault Weapons that the House adopted last November, calling for background checks for the purchases of firearms. These two bills now move to the Senate, where Majority Leader Chuck Schumer has vowed to bring them to the Floor for a vote – President Biden remains personally committed to addressing gun violence.

President Biden's infrastructure plan, which calls for investing dollars to build high-speed broadband infrastructure to reach 100 percent coverage in the United States, would likewise advance priorities of the Association as vested in the House's adoption last April of the report of the Task Force on Rural Justice and in the adoption last June of a resolution calling for expanded broadband across New York State.

I am immensely proud of our member's commitment to diversity and inclusion. The Committee on Diversity and Inclusions' 28-day racial equity challenge during February – Black History Month – had over 400 participants. I am likewise proud to report that as of this writing all

Sections of the Association have submitted or are finalizing the submission of their own Diversity Plans, as required by the Diversity Plan adopted by this very House in January 2020. NYSBA also made history at our November House of Delegates meeting when the LGBTQ Section was launched. The group was converted from a committee to a section, which gives all NYSBA members the opportunity to participate in the section's work and allocates additional resources to expand its initiatives. Established in 2008, the Committee on LGBTQ People and the Law has served as a critical voice for members of the LGBTQ community and its allies. It was the work of that committee, as a matter of fact, that led me on behalf of NYSBA to sign and file an amicus brief in the United States Supreme Court in *Fulton v. City of Philadelphia* arguing that a religious organization with a government contract to provide foster care services cannot discriminate against same sex couples who wish to become foster parents. This case has been argued before the Supreme Court and we await a decision.

When I began my term as president, I encouraged all my colleagues – from seasoned lawyers and leaders of the bar to newly admitted lawyers – to take on pro bono work in the coming year, particularly during this time when there are so many people truly in need of help. You stepped up and answered the call. And I'm proud to report that I kept myself true to my word and my campaign pledge, and I am now handling a pro bono appeal in the Appellate Division, Fourth Department through the NYSBA Pro Bono Appeals Program.

In fact, during Chief Judge DiFiore's "State of Our Judiciary" address, she said New Yorkers "owe a debt of gratitude" for the generous pro bono service provided by thousands of lawyers and law firms. She then highlighted the work of NYSBA's COVID-19 Pro Bono Recovery Task Force. The task force – implemented by Immediate Past President Hank Greenberg last year

when the pandemic began and continued during my term – has recruited over 1,000 pro bono lawyers to assist New Yorkers with various pandemic-related legal problems, including Unemployment Insurance Appeals and matters in the Surrogate’s courts to provide free legal assistance in probate matters to individuals and families who lost loved ones to COVID-19.

Against the backdrop of this unprecedented pandemic year, NYSBA faces some critical milestones in 2021. Chief among them is the fact that our lease at One Elk will expire on December 31st. The Association continues to have conversations with The New York Bar Foundation, which, as you know, owns One Elk, to explore all options. To date, the only formal proposal received from The Foundation was contained in a letter addressed to me from Foundation Vice-President Carla Palumbo dated March 11, 2021, wherein The Foundation proposed a three-year extension of the current lease at an annual rental of \$302,000 per annum (representing a rent freeze of the current base rent now in effect) and containing an expression of willingness on the part of The Foundation to come to terms regarding a greater contribution to the Association concerning The Foundation’s administrative expenses. The other terms of the current lease, including the Association’s responsibility for repairs and maintenance of the premise, would remain in full force and effect. Thus, The Foundation’s proposal amounted to a continuation of the status quo for three additional years. This proposal is contrary to the urgency to act now faced by the Association.

We are all deeply and emotionally connected to our current space and have made many positive memories there. However, the expiration of the lease presents an opportunity to reassess the Bar Center’s space needs within the context of changes wrought by the pandemic – both physical and

fiscal. There is also a financial reality to consider: One Elk requires millions of dollars in renovations and repairs in order to make it safe and accessible to our members, staff and visitors.

As I have mentioned, NYSBA was able to quickly shift to an almost entirely virtual operation not long after the pandemic caused widespread shutdowns last year. Our staff didn't miss a beat and continued to provide services and meet member needs while working remotely. We also had success with our online CLE programs, member engagement and our digital communications.

The current rent paid by the Association on One Elk is \$302,229 a year. In addition, the Association is responsible for maintaining insurance for physical loss, property damage and personal injury; all maintenance expenses – both exterior and interior; all taxes; and all utilities. In 2020 alone, these costs added up to more than \$1.1 million. Over the past decade, NYSBA has paid more than \$10 million in rent and lease-related costs for One Elk.

With the necessary repairs and renovations One Elk requires, which are not something we can overlook or forgo, this figure will be much higher over the next 10 years. Projections show that the Association would incur total annual costs of \$1.87 million for the coming decade. That is a total of over \$18 million dollars.

We must face facts. The Association has seen its revenue decline for several years now and has only been able to remain within its budget by making significant cuts on the expense side of its ledger – both in staff and programs. In 2017, the Association had 125 full-time employees. We currently have 89. Programs hit due to the fiscal crisis include two in which I have been involved and which are near and dear to me, Law, Youth and Citizenship and the Trial Academy. Over the

last 5 years, while we have made difficult cuts to staff, programming, and services for our members, the costs of renting and maintaining One Elk and funding business operations have increased.

How we choose to invest our members' dollars over the next several years as the post-pandemic economic recovery continues is critical. We have a responsibility to not only safeguard their investment in the Association, but also preserve NYSBA's ability to serve its members and the public well into the future. As we know all too well now, the future is both unpredictable and fraught with potential challenges. It is imperative that we make smart decisions that put our Association on sound fiscal footing.

As you may know, I have designated a lease negotiation team for the Association, chaired by former NYSBA President David Miranda and also including Sandra Rivera and Michael McNamara. The lease negotiation team chair, David Miranda, will update you all on the conversations the Association has had with the Foundation and its responses to date. The negotiation team has spent months working tirelessly on this issue, and I want to extend my deepest and most profound gratitude to them for their efforts.

On a personal note, I have been privileged to serve alongside a group of incredibly talented and hard-working officers, including President Elect T. Andrew Brown, Secretary Sherry Levin Wallach, who will become president-elect in June, Treasurer Domenick Napoletano and Immediate Past President Hank Greenberg. Each and every one of them has my respect and gratitude, and I am confident that their continuing leadership will serve our Association and its members well.

I also want to express my gratitude to the Association's dedicated staff, led by Executive Director Pamela McDevitt, for the support and assistance they have provided to me and their unwavering service to NYSBA during these unprecedented times.

I also thank and congratulate you, the members of the House of Delegates, for your service on this body – the heart and soul of our Association. I look forward to continuing to serve with you as a member of the House in the years to come.

My fellow members, as this is my final report to the House as your President, I can report to you without hesitation that my presidency has been one of the most rewarding experiences of my life – virtual though it was. Together, we have demonstrated once again how vital the work is that the Association does to support our profession and its most sacred ideals, the rule of law and democracy itself. I am looking forward to celebrating and continuing that work by your side once again when the pandemic subsides.

Thank you.



# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item # 12

**REQUESTED ACTION:** Approval of the report and recommendations of the Committee on Standards of Attorney Conduct (COSAC).

In January 2020, the House of Delegates approved a report and recommendations from COSAC recommending amendments to Rule 1.8(e) of the Rules of Professional Conduct and related Comments that would allow attorneys handling pro bono matters to provide financial assistance to indigent clients beyond advances of court costs and the expenses of litigation. In June 2020, the Appellate Divisions approved amendments to the rule to permit this “humanitarian exception,” but the rule as adopted differs from the rule recommended by the House. As a result, COSAC has prepared new Comments to the rule as adopted by the court, covering the following:

- Restrictions on who may financially assist clients. Rule 1.8(e)(4) as adopted says: “A lawyer providing legal services without fee, a not-for-profit legal services or public interest organization, or a law school clinical or pro bono program, may provide financial assistance to indigent clients.” COSAC’s proposed Comments [10A] and [10B] to Rule 1.8 address this topic.
- Restrictions on promises of financial assistance to clients. Even when a lawyer or organization is permitted to financially assist an indigent litigation client, Rule 1.8(e)(4) says that a lawyer “may not promise or assure financial assistance prior to retention, or as an inducement to continue the lawyer-client relationship.” COSAC’s proposed Comment [10C] addresses this topic.
- Prohibition on loans. A new restriction added by the Administrative Board says: “[F]inancial assistance referenced in this subsection may not include loans or any other form of support that causes the client to be financially beholden to the provider of the assistance.” COSAC’s proposed Comment [10C] addresses this topic.
- Prohibition on using legal services funds for financial assistance. Another new restriction added by the Administrative Board says: “Funds raised for any legal services or public interest organization for purposes of providing legal services will not be considered useable for providing financial assistance to indigent clients ....” COSAC’s proposed Comment [10D] addresses this topic. In addition, Comment [10D] makes clear that lawyers and legal service providers may help indigent clients find other sources of financial assistance.

- COSAC's proposed Comment [10E] makes clear that providing financial assistance to clients is voluntary, not mandatory, and that law firms, organizations, and programs that are willing to provide financial assistance to clients may establish a policy that centralizes decisions on whether and how to provide the permitted financial assistance.

The Appellate Divisions adopt the black-letter Rules of Professional Conduct as Part 1200 of the Joint Rules of the Appellate Division; the court does not adopt the Comments. NYSBA publishes the Comments in order to provide guidance to attorneys as to interpretation of the Rules. If approved by the House, these new Comments will be incorporated into the New York Rules of Professional Conduct with Commentary published by NYSBA.

The report will be presented at the April 10 meeting by past committee chair Joseph E. Neuhaus.

# MEMORANDUM

March 4, 2021

## **COSAC Proposals to Amend Comments Relating to Rule 1.8(e)(4) of the New York Rules of Professional Conduct**

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The New York State Bar Association’s Committee on Standards of Attorney Conduct (“COSAC”) is engaged in a comprehensive review of the New York Rules of Professional Conduct. In this memorandum, COSAC is proposing amendments to the Comments to Rule 1.8 of the New York Rules of Professional Conduct. The proposed amendments offer guidance regarding the amendments to the black letter text of Rule 1.8(e) that were approved by the Administrative Board of the Courts effective June 24, 2020, when the Administrative Board added a new Rule 1.8(e)(4). That new provision, commonly called the “humanitarian exception,” allows non-profit legal services organizations, public interest organizations, law school clinics, and law school pro bono programs, as well as lawyers representing indigents on a no-fee basis, to provide financial assistance to indigent litigation clients, subject to certain restrictions.

The Association’s House of Delegates has authority to approve the proposed amendments to the Comments without judicial approval. (Only black letter changes to the Rules of Professional Conduct require judicial approval, and COSAC is not proposing any black letter changes to Rule 1.8 at this time.)

We first explain the background that led COSAC to propose these amendments. Then we set out each proposed amendment in redline style, underscoring new language ([in blue](#)). (COSAC is not proposing to delete any language in the existing Comments to Rule 1.8.)

### Background

Rule 1.8, which is entitled “Current Clients: Specific Conflict of Interest Rules,” consists of eleven paragraphs. Paragraph (e) restricts the right of lawyers to advance or guarantee financial assistance to a litigation client.

In March 2018, the New York City Bar Professional Responsibility Committee issued a report recommending a ‘humanitarian exception’ to Rule 1.8(e). Specifically, the City Bar recommended amendments to Rule 1.8(e) and related Comments that would allow attorneys handling pro bono matters to provide financial assistance to indigent clients beyond advances of court costs and the expenses of litigation, which Rule 1.8(e) already allows.

### COSAC’s prior proposals for a humanitarian exception

In January 2020, building on the City Bar’s March 2018 report, COSAC recommended that New York adopt a humanitarian exception and various new and amended Comments reflecting the new exception. The House of Delegates voted overwhelmingly to approve the proposed humanitarian

exception and related amendments and additions to the Comments to Rule 1.8. In particular, the House of Delegates approved COSAC's proposals to amend Comments [9B] and [10] to Rule 1.8 in minor ways, to provide, in pertinent part, as follows (with new language underscored and deleted language stricken through):

## COMMENT

### Financial Assistance

[9B] Paragraph (e) eliminates the former requirement that the client remain “ultimately liable” to repay any costs and expenses of litigation that were advanced by the lawyer regardless of whether the client obtained a recovery. ... However, ~~like the former New York rule, subparagraphs (e)(1)-(3)~~ limits permitted financial assistance to court costs directly related to litigation. Examples of permitted expenses include filing fees, expenses of investigation, medical diagnostic work connected with the matter under litigation and treatment necessary for the diagnosis, and the costs of obtaining and presenting evidence. Permitted expenses under subparagraphs (e)(1)-(3) do not include living or medical expenses other than those listed above.

[10] Except in representations covered by subparagraph (e)(4), ~~L~~lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. ...

The House of Delegates also approved COSAC's proposal to add two new Comments to explain COSAC's proposed Rule 1.8(e)(4), but the House approved those new Comments contingent on the Administrative Board's approval of the version of Rule 1.8(e)(4) proposed by COSAC. As it turned out, the version of Rule 1.8(e)(4) adopted by the Administrative Board differed significantly from the version of Rule 1.8(e)(4) proposed by COSAC, adding new restrictions not mentioned in COSAC's version, so COSAC went back to the drawing board to revise prior proposed Comments and to develop new Comments to guide interpretation of the humanitarian exception as actually adopted. This memorandum proposes the new Comments.

On April 12, 2020, in view of the devastating COVID-19 pandemic, NYSBA President Hank Greenberg urgently asked the Administrative Board to approve the humanitarian exception embodied in proposed new Rule 1.8(e)(4).

### Administrative Board approval of a humanitarian exception

The Administrative Board acted quickly. Effective June 24, 2020, the Administrative Board amended Rule 1.8(e). As amended, Rule 1.8(e) provides as follows (underscoring additions and striking through deletions to show the 2020 amendments):

(e) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to the client, except that:

- (1) A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter;
- (2) A lawyer representing an indigent or pro bono client may pay court costs and expenses of litigation on behalf of the client; ~~and~~
- (3) A lawyer, in an action in which an attorney's fee is payable in whole or in part as a percentage of the recovery in the action, may pay on the lawyer's own account court costs and expenses of litigation. In such case, the fee paid to the lawyer from the proceeds of the action may include an amount equal to such costs and expenses incurred; ~~and~~
- (4) A lawyer providing legal services without fee, a not-for-profit legal services or public interest organization, or a law school clinical or pro bono program, may provide financial assistance to indigent clients but may not promise or assure financial assistance prior to retention, or as an inducement to continue the lawyer-client relationship. Funds raised for any legal services or public interest organization for purposes of providing legal services will not be considered useable for providing financial assistance to indigent clients, and financial assistance referenced in this subsection may not include loans or any other form of support that causes the client to be financially beholden to the provider of the assistance.

In August 2020, at the ABA's Annual Meeting, the ABA House of Delegates approved its own version of the humanitarian exception by amending ABA Model Rule 1.8(e) and adding several new Comments to help interpret the new exception. The ABA version is similar but not identical to the New York version of Rule 1.8(e)(4) as approved by the Administrative Board.

## COSAC's Proposed New Comments to Rule 1.8(e)

In light of the amendments to the text of Rule 1.8(e)(4) as adopted by the Administrative Board on June 24, 2020, COSAC proposes the following new paragraphs [10A] through [10E] to the Comments to Rule 1.8 (underscoring them to indicate that they are entirely new):

[10A] Subparagraph (e)(4) allows lawyers providing legal services "without fee," not-for-profit legal services and public interest organizations, and law school clinical and pro bono programs, to provide financial assistance (beyond court costs and expenses of litigation) to indigent clients in connection with contemplated or pending litigation. Examples of financial assistance permitted under subparagraph (e)(4) include payments to cover food, rent, clothing, personal incidentals, and medicine. If financial assistance may have adverse consequences for the client, including, e.g., for receipt of government benefits, receipt of social services, or tax liability, the lawyer should consult with the client about these consequences. See Rule 1.4(b) ("A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation").

Subparagraph (e)(4) does not permit lawyers, organizations, or programs to provide financial assistance beyond court costs and expenses of litigation to clients who are not indigent.

[10B] The term “without fee” means traditional pro bono arrangements for representation of indigent clients in which a lawyer provides services without fee or expectation of fee, even if a statutory attorney fee is ultimately awarded in a case originally accepted as pro bono. See Rule 6.1 Comment [4]. However, a lawyer providing legal services under a contingent fee agreement or other arrangement where the fee is payable from the indigent client’s recovery would not be providing legal services “without fee” for purposes of subparagraph (e)(4), even if the lawyer does not eventually receive a fee.

[10C] Subparagraph (e)(4) is narrowly drawn to avoid potential conflicts of interest and to avoid incentivizing abuses. Thus, subparagraph (e)(4) prohibits loans or any other forms of support that cause the indigent client (or the indigent client’s relatives or others affiliated with the client) to be financially beholden to the lawyer, organization or program providing financial assistance. Similarly, subparagraph (e)(4) does not permit a lawyer, organization or program to promise or assure financial assistance (i) to a prospective indigent client as a means of inducing the indigent client to retain the lawyer, organization, or program, or (ii) as a means of inducing the indigent client to continue an existing lawyer-client relationship. However, the prohibitions in subparagraph (e)(4) on loans, promises, and assurances do not apply to the costs and expenses of litigation that subparagraphs (e)(1)-(3) of this Rule permit a lawyer, program, or organization to advance or pay.

[10D] Legal service or public interest organizations that raise funds for the provision of legal services are prohibited from using those funds to provide the financial assistance permitted by subparagraph (e)(4). Thus, these organizations need to account separately for (i) funds they raise to provide legal services and (ii) funds they raise to provide financial assistance permitted by subparagraph (e)(4). Subparagraph (e)(4) pertains only to direct financial assistance by the organizations or lawyers themselves and does not affect the ability of an organization or program, and the lawyers or others it employs, engages, or supervises, to help an indigent client find other sources of financial assistance. The restriction in subparagraph (e)(4) on using funds raised to provide legal services does not apply to financial assistance for court costs and expenses of litigation referred to in subparagraphs (e)(1)-(3) of the Rule.

[10E] Any financial assistance provided under subparagraph (e)(4) is voluntary and not part of a lawyer’s duty when representing an indigent client. Thus, nothing in subparagraph (e)(4) prevents a lawyer from declining to provide such financial assistance. Nor does subparagraph (e)(4) prevent a law firm, organization, or program from having a policy that centralizes decisions on whether and how to provide financial assistance to indigent clients, or a policy that bars or discourages lawyers (or others the law firm, organization, or program employs, engages, or supervises) from providing such assistance, in order, for example, to assure fairness among clients or to avoid subjecting individual lawyers to financial requests that may impair their relationships with pro bono clients.

As adopted by the Administrative Board, the black letter text of Rule 1.8(e)(4) covers four distinct topics. In this memorandum, COSAC proposes Comments covering all four topics, plus two additional topics. Of course, the introductory language to Rule 1.8(e) specifies that the humanitarian exception in subparagraph (e)(4) – like the exceptions in the other three numbered subparagraphs of Rule 1.8(e) – applies only to lawyers “representing a client in connection with contemplated or pending litigation.” The topics covered in COSAC’s proposed Comments relating to Rule 1.8(e)(4) are as follows:

- *Restrictions on who may financially assist clients.* Rule 1.8(e)(4) as adopted says: “A lawyer providing legal services without fee, a not-for-profit legal services or public interest organization, or a law school clinical or pro bono program, may provide financial assistance to indigent clients.” COSAC’s proposed Comments [10A] and [10B] to Rule 1.8 address this topic.
- *Restrictions on promises of financial assistance to clients.* Even when a lawyer or organization is permitted to financially assist an indigent litigation client, Rule 1.8(e)(4) says that a lawyer “may not promise or assure financial assistance prior to retention, or as an inducement to continue the lawyer-client relationship.” COSAC’s proposed Comment [10C] addresses this topic.
- *Prohibition on loans.* A new restriction added by the Administrative Board says: “[F]inancial assistance referenced in this subsection may not include loans or any other form of support that causes the client to be financially beholden to the provider of the assistance.” COSAC’s proposed Comment [10C] addresses this topic.
- *Prohibition on using legal services funds for financial assistance.* Another new restriction added by the Administrative Board says: “Funds raised for any legal services or public interest organization for purposes of providing legal services will not be considered useable for providing financial assistance to indigent clients ....” COSAC’s proposed Comment [10D] addresses this topic.
- In addition, COSAC’s proposed Comment [10D] makes clear that lawyers and legal service providers may help indigent clients find other sources of financial assistance.
- Finally, COSAC’s proposed Comment [10E] makes clear that providing financial assistance to clients is voluntary, not mandatory, and that law firms, organizations, and programs that are willing to provide financial assistance to clients may establish a policy that centralizes decisions on whether and how to provide the permitted financial assistance.

As COSAC said in its January 15, 2020 report to the House of Delegates recommending that New York adopt a humanitarian exception to Rule 1.8(e), and as COSAC’s proposed Comment [10D] now suggests, lawyers and legal service providers may also ethically discuss, and may actively explore with their clients, “other sources of financial assistance” that may reduce or eliminate the client’s need for financial assistance from lawyers under Rule 1.8(e)(4). Nothing in COSAC’s proposed Comments is meant to detract from those efforts.

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF EXECUTIVE COMMITTEE  
REMOTE MEETING  
FEBRUARY 9, 2021**

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**Members Participating:** Jonathan B. Behrins, Mark A. Berman, T. Andrew Brown, David Louis Cohen, Norman P. Effman, Donna England, Margaret J. Finerty, Jean Gerbini, Sarah E. Gold, Henry M. Greenberg, Richard M. Gutierrez, Andre R. Jaglom, Scott M. Karson, Sherry Levin Wallach, Richard C. Lewis, Michael Marinaccio, Mark J. Moretti, Domenick Napoletano, Aimee L. Richter, William T. Russell, Jr., Mirna M. Santiago, Robert T. Schofield, IV, Hon. Adam Seiden, Diana S. Sen, Carol A. Sigmond, Tucker C. Stanclift, Jean Marie Westlake.

Guests: Sally F. Curran, Adrienne L. Holder, Prof. Michael L. Fox.

Mr. Karson presided as President of the Association.

1. Request of LGBTQ Law Section. The Executive Committee reviewed a proposal from the section for the establishment of two awards. Because the proposal contained a request for Association funding at the inception of the awards, a motion was adopted to table the proposal and refer it to the Finance Committee.
2. Vaccine Prioritization. On behalf of the Committee on Legal Aid, the Committee on Mandated Representation, and the Criminal Justice Section, Ms. Curran, Ms. Holder and Ms. Levin Wallach reviewed a proposed resolution that would provide COVID-19 vaccine prioritization to certain groups of attorneys. House member Prof. Fox outlined a proposed resolution that called for the prioritization of all attorneys for COVID-19 vaccinations. After discussion, a motion to adopt the resolution offered by Prof. Fox failed. A motion was then adopted to approve the following resolution:

**WHEREAS** As known and widely reported, COVID-19 is a pandemic the likes of which has not been seen in over a century since the influenza pandemic of 1918.

**WHEREAS** On November 7, 2020 The New York State Bar Association passed a resolution regarding the COVID-19 pandemic stating that “Once available, a vaccine should first be equitably allocated and distributed based upon widely accepted ethical principles including maximizing benefit to the society as a whole through reducing transmission and morbidity and mortality; recognizing the equal value, worth and dignity of all human persons and human lives; mitigating suffering, health inequities and disparities; and ensuring fairness and transparency in decision making. Health care workers and other essential workers most endangered by COVID-19 and populations at highest risk must be afforded priority access to a vaccine.”

**WHEREAS** Public defenders, civil legal services attorneys (employed by civil legal services law firms under Judiciary Law Section 495(7)), assigned counsel, attorneys for the children (AFCs), retained criminal defense counsel, and their support staff who see clients in person across the country are arguing that they should be among priority groups to receive the COVID-19 vaccine.

**WHEREAS** These lawyers provide services that are essential to ensuring access to justice for some of the most at-risk members of our communities.

**WHEREAS** Public defenders, civil legal services attorneys (employed by civil legal services law firms under Judiciary Law Section 495(7)), assigned counsel, attorneys for the children (AFCs), and retained criminal defense counsel must often provide space within their offices for clients to appear in virtual court and must appear in person in court with clients because it is often difficult to communicate with their clients virtually and virtual communications can raise privacy concerns.

**WHEREAS** Often the courtrooms do not adequately allow for social distancing between attorneys and their clients when appearing in person in court.

**WHEREAS** Criminal defense attorneys also must represent incarcerated clients accused of the most serious crimes and should be vaccinated in short order so that they can visit clients as there are serious privacy issues with virtual or telephonic communications in these instances.

**WHEREAS** Prosecutors must be available to appear in court on a daily basis and they must meet with witnesses and law enforcement regularly.

**WHEREAS** People who are incarcerated should be afforded the same protections as all other personages in criminal proceedings. These individuals are unable to sufficiently engage in social distancing and other protective techniques available to the public at large and therefore are at a heightened risk of COVID-19 infection.

**WHEREAS** in Family Court, indigent persons and their children have a right to counsel in child neglect proceedings, Article 10 & 6, which are urgent proceedings dealing with the removal of a child from a parent and home. These attorneys must meet with their clients.

**WHEREAS** Civil legal services attorneys and support staff interact with and represent indigent clients in urgent civil proceedings such as domestic violence and housing matters, at times in person.

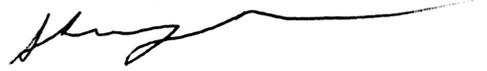
**WHEREAS** Members of the judiciary are required to be in court in these proceedings and these judges preside over numerous cases in a day and are in contact with all the parties to each action.

**THEREFORE, IT IS RESOLVED THAT:**

For all the reasons stated herein, public defenders, assigned counsel attorneys, attorneys for the children (AFCs), client-facing civil legal services attorneys, mandated family court attorneys, retained criminal defense attorneys, prosecutors, incarcerated people including pre-trial detainees, criminal court judges and magistrates, and family court judges and the client-facing staff of these attorneys and judges as well as all lawyers who are by Court order or otherwise obligated to make an in-person appearance, either in a legal proceeding or elsewhere if related to an existing or contemplated court proceeding or process, should be prioritized for the vaccine as essential workers and individuals at high risk and that they immediately be moved into the New York State 1(b) vaccine category.

3. Adjournment. There being no further business to come before the Executive Committee, the meeting was adjourned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Sherry', with a long horizontal flourish extending to the right.

Sherry Levin Wallach  
Secretary

**NEW YORK STATE BAR ASSOCIATION  
MINUTES OF EXECUTIVE COMMITTEE MEETING  
REMOTE MEETING  
JANUARY 28, 2021**

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Present: Jonathan B. Behrins, Mark A. Berman, T. Andrew Brown, John P. Christopher, David Louis Cohen, Norman P. Effman, Donna England, Margaret J. Finerty, Jean F. Gerbini, Sarah E. Gold, Henry M. Greenberg, Richard M. Gutierrez, Andre R. Jaglom, Scott M. Karson, Sherry Levin Wallach, Richard C. Lewis, Michael A. Marinaccio, Ronald C. Minkoff, Mark J. Moretti, Domenick Napoletano, Aimee L. Richter, William T. Russell, Jr., Mirna M. Santiago, Robert T. Schofield, IV, Diana S. Sen, Carol A. Sigmond, Tucker C. Stanclift, Jean Marie Westlake.

Guests: James A. Barnes, Prof. Michael L. Fox, Evan M. Goldberg, Hon. Ronald J. Hedges, Shawndra G. Jones, David P. Miranda, Christopher R. Riano, Hasan Shafiqullah.

Mr. Karson presided over the meeting as President of the Association.

1. Approval of minutes of meetings. The minutes of the November 6, 2020 and December 16, 2020 meetings were approved as distributed.
2. Consent calendar:
  - a. Mission Statement of Committee on the NYS Constitution.
  - b. Bylaws of LGBTQ Law Section.

The consent calendar, consisting of the above items, was approved by voice vote. The LGBTQ Law Section was asked to amend its bylaws to state that the section may “propose” litigation rather than “engage in.”

3. Report of Treasurer. In his capacity as Treasurer, Mr. Napoletano reported that through December 31, 2020, the Association’s total revenue was \$22,031,000, a decrease of approximately \$1.7 million from the previous year, and total expenses were \$19.2 million, a decrease of approximately \$2.3 million over 2019. The report was received with thanks.
4. Report of Executive Director. Pamela McDevitt, Executive Director, and Gerard McAvey, Director of Marketing, updated the Executive Committee with respect to staffing, expenses, Annual Meeting, and technology. The report was received with thanks.
5. Report of Committee on NYSBA Facilities. David P. Miranda, chair of the committee, together with committee member Michael McNamara, updated the Executive Committee with respect to its ongoing review of the use of the One Elk Street premises and discussions with representatives of The New York Bar Foundation. The report was received with thanks.

6. Report and recommendations of Committee on Mandated Representation. In his capacity as past chair of the committee, Mr. Effman presented proposed amendments to the Standards for Mandated Representation, originally approved by the House of Delegates in 2005 and intended to provide guidance to providers of mandated representation to ensure the provision of high-quality legal representation. After discussion, a motion was adopted to endorse the amendments for favorable action by the House.
7. Report and recommendations of Committee on Technology and the Profession. Hon Ronald J. Hedges, co-chair of the committee, presented a proposal that New York adopt a version of Rule 502 of the Federal Rules of Evidence related to inadvertent disclosure. After discussion, a motion was adopted to approve the report and recommendations.
8. Report of Committee on Association Communications and Publications. Prof. Michael L. Fox, chair of the committee, presented an informational report on the committee's activities and goals for 2021. The report was received with thanks.
9. Report re Legislative Activities. Evan Goldberg, chair of the Committee on Legislative Policy, together with Director of Policy Hilary Jochmans, updated the Executive Committee with respect to state and federal legislative activity. The report was received with thanks.
10. Report of Committee on Continuing Legal Education. James R. Barne sand Shawndra G. Jones, co-chairs of the Committee on Continuing Legal Education, together with Senior Director Katherine Suchocki, provided an update on the Association's continuing legal education program, including revenue and expenses and new policies and initiatives. The report was received with thanks.
11. Report of President. Mr. Karson highlighted the items contained in his written report, a copy of which is appended to these minutes,
12. Report and recommendations of Committee on Immigration Representation. Hasan Shafiqullah, chair of the committee, reviewed the committee's report recommending the creation of an Article I immigration court to insulate immigration adjudication from political pressure. After discussion, a motion was adopted to approve the report and recommendations.
13. Report of LGBTQ Law Section. Christopher R. Riano, chair of the section, updated the House regarding the section's activities since the House approved its creation in November 2020. The report was received with thanks.
14. New Business.

Vaccine Prioritization. The Committee on Legal Aid and the Committee on Mandated Representation presented a request that the Association support vaccine prioritization for certain classes of attorneys and that this request be transmitted to the Governor. After

discussion, a motion was adopted to postpone consideration to permit consultation with other groups and that a meeting be scheduled afterward to consider the request.

15. Date and place of next meeting.

Friday, April 9, 2021

Remote Meeting

16. Adjournment. There being no further business, the meeting of the Executive Committee was adjourned.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Sherry', followed by a long horizontal line that tapers to the right.

Sherry Levin Wallach  
Secretary



Report to the  
NYSBA Executive Committee and House of Delegates

April 8, 2021

New York Bar Foundation

*ON THE NEW YORK BAR CENTER*

**BACKGROUND**

A few general points are worth emphasizing before we discuss the elements of our proposed strategy. The elements of this strategy will not be new to those who follow the history of the New York State Bar Association and the origins of the New York Bar Foundation.

The relationship between the Foundation and Association has been a long and productive one, with deep roots within New York's legal community. From the acquisition of the Bar Center in the 1960s to its expansion in the 1980s, the Foundation has remained firmly committed to working with the Association. Now more than ever, as we face the difficult decision to renovate or replace the Bar Center, we believe it is important to build on our shared history and strengthen our commitment to one another.

Over more than half a century, we have time and again found effective and efficient ways of acquiring, constructing, expanding, and renovating the property, for the benefit of our mutual members and the public we serve. Through joint building committees and joint campaign steering committees, we have successfully undertaken the due diligence, fundraising, financing, and case-making needed to get the job done. The joint building committee and joint campaign steering committee model, which was used so effectively in the late 1960s to raise \$1.9 million for site acquisition and buildout, and again in the late 1980s to raise \$6.8 million from about a thousand donors to expand the Bar Center, is an excellent model that we should actively look to replicate.

In addition to a joint fundraising strategy, by arrangement with the Association, the Foundation has taken out mortgages or loans on at least four occasions in connection with its ownership and the Association's long-term usage of the Bar Center: twice from the Association itself and twice from outside banks:

- i. In 1969, the Association transferred title of the 4 properties, 1-4 Elk Street, to the Foundation in exchange for promissory notes, which were subsequently forgiven.
- ii. In 1970, a \$900k loan was made in the Foundation's name from Albany Bank to finance construction costs that exceeded the \$1.9m raised for the initial build. The Association then advanced \$125k to cover immediate cash needs and provided funding to service the loan after the building was opened via lease payments to the Foundation.

iii. In 1978, the Association loaned the Foundation \$400k to finance the costs of expansion and renovation.

iv. In 1991, following the 1990 expansion, the Foundation held a variable rate loan from Norstar. Payments were serviced through rental payments by the Association.

In each case, the Foundation's borrowings were paired with a written commitment from the Association that it would provide the funds to service the loan, either via rent payments or, in the case of an inter-company borrowing between Foundation and Association, via release of promissory notes over time.

Beyond the economic terms of the relationship, the Foundation provides branding and visibility for the good works of lawyers across the state. Together we are strongly associated with causes that resonate deeply with our members, other stakeholders and the community at large, including access to justice, diversity, and the rule of law. We administer dozens of fellowships and scholarships on behalf of the Sections, many of which address diversity and pipeline issues, as well as the Catalyst program that the Chief Judge inspired to support law students interested in public service careers. The Foundation provides a formal structure (including metrics and goals) for these public interest efforts. Just this year alone, the Foundation is funding important public-facing Association initiatives such as the Law, Youth & Citizenship program, High School Mock Trial, and the State Bar's Office of Diversity and Inclusion Youth Day activities, bringing public school students to law firms to increase representation among New York's lawyers. The Foundation also funds NYSBA's Lawyer Assistance Program and the Committee on Courts of Appellate Jurisdiction.

It is in this context and with the historical backdrop in mind, and in the spirit of collaboration that has defined our relationship for the past 50-plus years, that we should undertake to address the important challenges facing us today.

## **THE CURRENT DILEMMA**

The current lease between the Association and Foundation was first entered into in 1991 and then amended and extended in 2007, each for 15-year terms, currently expiring on 12/31/21. According to the terms of the "absolutely net" lease, the Association pays all expenses associated with the property. This includes real estate taxes, building insurance, maintenance and utilities. For two short periods of time, once in the years before 1977, and again between 2012-2018, the Foundation's ownership of the property provided the Association with the financial benefit of a real estate tax exemption. The City of Albany currently does not consider the property tax-exempt.

The forthcoming expiration of the current lease term, and the difficult decisions about what to do next, pose especially difficult challenges in these unprecedented times, faced as we are with the twin crises of a pandemic and associated economic uncertainty – the full impacts of which have yet to be discerned, even by experts in economics and real estate.

We are sensitive to the Association's need to manage its expenses in the current climate. Despite the best efforts of the Association's leadership and staff, we understand

that the Association is concerned in the near-term about a reduction in membership (and longer term, that its strategy emphasizes digital and virtual style programs and activities). Thus, the Association has an interest in reducing operating expenses and fixed costs associated with physical premises, which includes an assessment of how much space the Association might need or want in the future.

We understand that the current economic and real estate environment may make it tempting for the Association to look for a smaller space elsewhere. Clearly, the Association should consider the positive aspects of leasing a commercial space. At the same time, the Bar Center's strategic location and distinctive character reflects the Association's stature, culture, and community with powerful, tangible connections to our history that bolsters its identity. Moreover, the Foundation, by fixing monthly payments for an extended period of time, would protect the Association against rising commercial lease rates, which could increase significantly once economic conditions have improved, and may far outweigh the short-term challenges that we currently face. There may also be some public relations risk to both organizations associated with such a move. Put simply, a quick decision to move to a commercial space could be more damaging and costly than remaining in the current headquarters.

We acknowledge that the Association, based on its due diligence, has indicated that the Bar Center needs substantial improvements and renovations. On March 2, we received the Association's *Dropbox* with information about the condition of the building, alternatives and their costs, as well as needed and desired renovations. The Association has indicated that there are other repairs or renovations that are needed and they will continue to share information as it becomes available.

Both organizations have been working to develop and share the information needed to inform the best path forward.

## **FOUNDATION'S DUE DILIGENCE**

We have engaged the services of an appraiser to perform a full appraisal of the Bar Center and help inform us of its value. The Foundation appreciates the Association's co-investment with us of approximately half the cost of the appraisal now underway. We have followed up as requested regarding timing, and we expect to have that information by mid-April.

In addition to the appraisal, we have sought the advice of a real estate broker to provide us more knowledge of the market and value of the Bar Center. Upon completion of the appraisal process, we expect that it may be necessary to obtain the services of an engineer or an architect to determine what critical repairs are needed.

We have begun some preliminary research on a potential fundraising consultancy for a joint fundraising campaign, roughing out a list of consultants and a draft RFP so that we may jointly receive counsel about the feasibility of a multi-million dollar campaign steering committee.

## NEXT STEPS

We have expressed our willingness to work together with the Association to reach a resolution of these issues to the mutual benefit of both organizations. We also have kept the Association representatives apprised of our due diligence and timing for receiving the reports that we have commissioned. While the need for a solution is urgent to address immediate concerns, we believe it would be an error to rush into a decision or take shortcuts on the way to a long-term building plan and fundraising campaign. We all bear fiduciary duties to our organizations to timely pursue a diligent and thorough process.

In the end, we are confident that the key to resolving the issues before us is the acknowledgment that there is no “Foundation solution” or “Association solution.” The only real solution is a *joint solution* that we need to reach together. To that end, we propose the following recommendations moving forward:

- We should jointly review the appraisal to explore possible mortgage financing options. The appraised value will determine how much can be financed, since loan-to-value is a key metric for a mortgage bank. This will also give us further insight into the marketability of the building should we decide to sell or dispose of some or all of it.
- We should determine the extent of the repairs/renovations to be made. We will need a clear understanding of the timing required for any improvements and the associated cost in order to determine financing options. In the event of sale, we will have to determine the most urgent capital/structural work needed to maximize the building’s marketability.[1]
- We will need to seek the approval of the NYS Attorney General/Charities Bureau should we determine to transfer, sell, or otherwise dispose of some or all of the building, even if the transaction is just between the Foundation and the Association, meeting both prongs of the test that the transaction be “fair and reasonable” to the Foundation and in the interest of its members.
- We urge the appointment of a joint Building Committee, in the model of the Ad Hoc Committee on Bar Center Facilities (leading up to 1990 rededication of the Bar Center), so that we may bring our best problem-solving and fundraising game together to pursue the most efficient and desirable solutions that will maximize the benefits of our next real estate move – whatever that may be.

Finally, we address the following questions to the Association, if the Association wants to stay in the Bar Center:

1. Is the Association willing to join with the Foundation to retain a consultant to explore the feasibility of raising the funds the Association has determined will be necessary to renovate and update the Bar Center for it to stay as has been done in the past?
2. Is the Association willing to join with the Foundation to explore the feasibility of borrowing the funds needed to renovate and update the Bar Center

in order for the Bar Association to stay and to service the debt by rental income from the Association, as has been done in the past?

3. Is the Association willing to join with the Foundation, with the assistance of counsel, to jointly develop a petition for Attorney General approval of the transfer of ownership of the Bar Center in order for the Association to stay in the Bar Center?

## **CONCLUSION**

While the process before us is complex, we believe we are stronger working together to reach decisions for the well-being of both organizations. We explicitly recommend an approach that is adaptive, staged and collaborative. Let us work together once again, as we have done in previous joint building and campaign committees, to resolve these issues in a prudent and timely fashion. We believe this approach can provide flexibility while sustaining member trust and confidence.

The Foundation looks forward to leveraging its fundraising acumen, its 501(c)(3) charitable status, and other assets it has available to help update the building and move both organizations forward.

Respectfully submitted,

Lesley Rosenthal, President

Carla Palumbo, Vice President and President-Elect

Hon. Cheryl E. Chambers, Vice President-Elect

David M. Schraver, Head of the Lease negotiating team

The following documents supplement this memorandum:

1. The Foundation's March 29, 2021 email response to David Miranda's email of March 26 on behalf of the Association.
2. Pages 2-4 of the Foundation's 1975 Restated Certificate of Incorporation which provide a current statement of the purposes of the Foundation.
3. A chronology of Association/Foundation Building Arrangements (describing the tax purposes for placing ownership with the Foundation; describing each party's role in the fundraising efforts and financing arrangements associated with the 1968-1971 initial purchase and construction and the late 1980s expansion and renovation; other financings secured by the building and serviced by rental income from the Association).
4. The brochure from the 1990 rededication of the expanded Bar Center (elaborating on the historical importance of the building, describing the reasons for the expansion, listing the Association and Foundation members of the Ad Hoc Building Committee and Campaign Steering Committee, and the approximately 1,000 donors to the fundraising campaign).
5. A Guide from the NY Attorney General Charities Bureau describing the steps needed to transfer ownership of real property by a New York nonprofit (requiring (1) that the transaction be fair and reasonable to the nonprofit corporation and (2) that the purposes of the nonprofit corporation or the interests of its members will be promoted by the transaction). [See p.6 re. Statutory Standard and pp.6-11 re. the Corporation's Preparation for and the Petition for Attorney General Approval of the Transaction.]

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[1] While we have reviewed the repairs outlined by both President Elect Brown and Chair Miranda, they indicated at our March 22 meeting that immediate and necessary renovations are in the range of \$2.6 million and that the costs could be even more. We learned then for the first time that these costs do not include sprinklers in the Great Hall, a sliding door in the Great Hall, and unspecified work at the front entrance that they have also deemed immediate. Estimates have recently been received and appear to total approximately half a million dollars.

Dear Dave,

Thank you for your note of March 26th. This note responds to your request for the Foundation's "position" on certain matters relating to the building, in advance of your report on March 31.

We prefer to speak in terms of common interests and not positions, in keeping with the tenor and substance of your and Andrew's meeting with the Foundation's board. In that kindred spirit, and in preparation for your report, we hope the following proposed set of common interests is something we can all build on:

1. As you and Andrew both recognized, our two organizations are sister organizations and it is to our mutual advantage to approach the issues surrounding the building from the same side of the table.
2. As shared at our March 22nd meeting, both organizations require further information to best inform our path forward, including items you mentioned you would add to the drop box as well as items you identified at that meeting you were working on but had not yet received (e.g., regarding sprinklers, sliding glass doors, needed modifications to the front entrance).
3. The Foundation appreciates the Association's co-investment with us of approximately half the cost of the appraisal now underway. We have followed up as requested regarding timing, and we expect to have that information by mid-April. Together, we will want to review the appraisal so that we may explore possible mortgage financing, gain further insight into the marketability of the building if we should jointly decide to sell or dispose of some or all of it, understand from an appraisal/purchase point of view (separate from a usability point of view) which would be the most urgent capital/structural needs, if any, ahead of sale; and ultimately, if we were to decide together that it would be advantageous for the two organizations for the Foundation to transfer ownership of the building, whether to the Association or to a third party, we would both be reliant on the appraisal figure as we seek the approval of the NYS Attorney General/Charities Bureau for such a transfer.
4. The Foundation will appreciate the opportunity to designate one or more members to the Building Committee so that we may bring our best problem-solving and fundraising game together, to pursue the most efficient and desirable solutions that will maximize the benefits of our next real estate move, whatever that may be, whether continued use and if so with what structural improvements, on what timeline/phases, how financed, and under what ownership structure; and if not feasible or prudent, then a determination of where to next.
5. At the March 22 meeting, you advised that the costs related to what the Association has identified as immediate and necessary renovations are in the range of \$2.6 million and that the costs could be even more. In fact, you and Andrew also told us for the first time that not factored into these costs are sprinklers in the Great Hall, a sliding door in the Great Hall, and unspecified work at the front entrance that you have also deemed immediate. Estimates for these new items were not given. While we are still in the process of evaluating these costs, we agree that both organizations should come together on a "structure" as to what needs to be done and how it's going to be paid for. Once we reach an agreement on the list of priority items and their related costs, and once we have received the results of the appraisal in a few weeks' time, coming up with a joint timetable and funding plan will be a top priority for the joint group to discuss. In other words, in order to develop such a "structure," we need a clear understanding of the timing of the required renovations and the associated costs in order to assess financing options.
6. We believe it would be advantageous to explore together, from the "same side of the table," the following matters: Capital costs of remaining at One Elk over the long term (e.g., 20-30 years), phased if

necessary or advantageous, such as: Phase I – immediate building needs; Phase II – modernization plan; and Phase III: desirable building enhancements. Comparison with capital costs of moving to a different location over an equivalent period of years, including at are the capital costs associated with moving to different location over the long term, including moving, tenant fit-out, furnishings, technology set-ups, the cost of meeting space for large gathering such as the House of Delegates, and other expenses. We would also like to explore the comparative operating costs of One Elk and alternative space over the long term.

Most importantly, we request the opportunity to address the Association's Executive Committee and make a presentation to the House of Delegates to further explicate these common interests, in that same spirit in which we invited you to address our board.

We thank you for the spirit of partnership and joint problem-solving that we believe will be not only the best way but indeed the only way to serve both organizations' interests and those of the profession and the public that we serve.

Best regards,

Dave Schraver, Lesley Rosenthal, and Carla Palumbo

**From:** David P. Miranda <David.Miranda@hrfmlaw.com>  
**Sent:** Friday, March 26, 2021 1:36 PM  
**To:** Schraver, David <DSchraver@nixonpeabody.com>  
**Cc:** cpalumbo@lasroc.org; cchamber@nycourts.gov; Andrew Brown <abrown@brownhutchinson.com>  
**Subject:** One Elk Negotiations

[EXTERNAL E-MAIL]

Hi Dave

I hope you remain well. Carla asked us to communicate directly with you while she is recovering. All of us wish Carla well and hope for a speedy recovery. At our meeting last Monday, we requested the Foundation's position on a few specific questions.

1. We understand the full appraisal of the building is not yet complete, nevertheless, during the meeting we agreed that the Foundation would let us know what the appraisal means to our negotiations. If, for example, the results of the appraisal will determine the amount of a mortgage or loan the Foundation is prepared to obtain to fund proposed renovations, please tell us. If there is some other purpose

that will inform how the Foundation will fund the proposed renovations, please advise what the Foundation is proposing. If the Foundation has no intention of seeking a mortgage or loan to fund the renovations, please tell us.

2. We discussed, and have provided substantial detail, of the costs to fund immediate and necessary renovations to One Elk if we are to remain in the building beyond the end of the year. As you know, on February 5, 2021, the Association provided the Foundation with a proposal outlining a framework for our organizations to fund proposed renovations and go forward with a new lease. Our proposal was not accepted by the Foundation and no counter proposal on how the Foundation would fund renovations was provided by the Foundation. At the meeting we agreed that the Foundation would provide us with its proposal, including a specific framework to fund the necessary renovations. At this late date, broad generalizations will not suffice.
3. At the meeting, the Foundation asked if we would consider having ownership of One Elk returned to the Association without cost. We indicated that would not change the financial burdens on the Association but we were open to at least considering such a transfer under the right conditions, and in a subsequent conversation between Andrew and Carla we reiterated our willingness to consider that. If this is a proposal that the Foundation wants to make, please do so.

At our meeting we repeatedly expressed the need for urgency in our discussions. We want to give the Foundation an opportunity to fully express its position before any decision is made by the Association. I have been asked to give an update on the status of our negotiations on March 31, 2021. Please provide us with the Foundation's responses to the above questions, and any other information you would like to convey, prior to 2pm on March 31, 2021. Thanks

David P. Miranda  
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## **CHRONOLOGY OF FOUNDATION AND ASSOCIATION RELATIONS RELATIVE TO THE BAR CENTER**

- 1950: NY Bar Foundation (Fdn) was founded by members of NYSBA (Assn) to facilitate charitable and educational activities related to law.
- 1958: Fdn received tax exempt recognition by IRS. Gifts to the Fdn (by members of the Assn and others) are tax deductible, while gifts to the Assn are not.
- 1965-68: Assn acquired 4 contiguous parcels on Elk St. for \$452,731; sold its prior property at 99 Washington Ave for \$136k, and rented temp space at 74 State St during construction. Assn undertook a state-wide building fund campaign and raised \$1.9m from Assn members and their firms for site acquisition and estimated cost of construction. (Original estimated cost was \$1.1m; increased to \$1.9m and eventually \$2.8m). Assn determined for tax purposes to place ownership of the building with the Fdn.
- 1968-69: Construction began in August 1968. Most costs, including cost of construction administration, were paid by Assn from proceeds from the Building Fund Drive.
- 1969: Assn transferred title of the 4 properties to the Fdn in exchange for promissory notes, which were subsequently forgiven.
- 1970: Income from the \$1.9m Building Fund was deemed insufficient to meet construction costs. Fdn borrowed \$900k from an Albany Bank; Assn advanced \$125k to cover immediate cash needs, with Assn lease payments to the Fdn to service the remaining debt after occupancy.
- Summer 1971: construction complete, dedication ceremonies held. Overall cost of construction was \$2.778m.
- June 1, 1971-May 31, 1976: first rental agreement between Assn as tenant and Fdn as LL. Rent was initially established at \$42k/yr based on appraisal.
- 1978: Assn's Exec Ctee authorized a feasibility study for renovation of the upper 3 floors. Assn loaned the Fdn the renovation costs (\$400k) under a loan agreement whereby the Fdn was to repay at 6% interest (the prime rate was 11-12% at that time) by paying \$25k for principal in 1980 and \$50k yearly thereafter plus interest, until the full amount was refunded.
- Mid-late 1980s: Assn grew in membership and staff; determined to acquire properties at 5 and 6 Elk Street and planned to incorporate and renovate into an expanded Bar Center. A 16-member joint building committee was formed, co-chaired by the presidents of the Assn and the Fdn, and including 5 members of the Fdn board. They planned the expansion and building improvements and together raised funds from thousands of sources. Some financing was used to help with the expansion, a variable rate loan that was taken in the name of the Fdn and paid for by rental payments from the Assn.
- 1990: expanded Bar Center was rededicated.

## **HISTORY OF BORROWING AGAINST THE BUILDING BY THE FOUNDATION AS NOMINAL BUILDING OWNER**

- 1969: Assn transferred title of the 4 properties to the Fdn in exchange for promissory notes, which were subsequently forgiven.
- In 1970, a construction loan of \$900k was required from an Albany Bank since Assn building campaign (\$1.9m raised) was insufficient to cover the construction costs, which had ballooned from \$1.1m to \$2.77m. The borrowing was made in the Fdn's name; the Assn advanced \$125k to cover immediate cash needs and provided funding to service the loan after the building was opened via lease payments to the Fdn.
- In 1978, the Assn's executive committee determined to expand and renovate the building. It loaned the Fdn the renovation costs (\$400k) under a loan agreement whereby the Fdn was to repay at 6% interest (the prime rate at that time was 11-12% at that time) by paying \$25k for principal in 1980 and \$50k yearly thereafter plus interest, until the full amount was refunded. All furniture, furnishings and fixtures for the renovated area were purchased by the Assn for \$60k and not transferred to the Fdn. Throughout the period, there was overlapping leadership, commingling of funds between Assn and Fdn. Clerical services and supplies provided by Assn to Fdn without charge.
- In 1991 the Fdn held a variable rate loan from Norstar, which payments were serviced through rental payments by Assn; any upward variations in the floating interest rate were to be covered by Assn as additional rent.



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NEW YORK STATE BAR CENTER

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REDEDICATION

NOVEMBER 10, 1990

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## ACKNOWLEDGEMENTS AND CREDITS

Grateful appreciation is expressed to Whitney North Seymour, Jr., Esq., of New York, for his contribution as Chair of the Advisory Committee on Building Design and Construction.

*Bar Center Rededication logo, booklet design and typography:* The Type & Design Center, Inc., Latham, New York.

*Photography:* Bill Murphy, Albany, New York.

*Prime contractor for renovation of numbers 5 and 6 Elk Street and Bar Center expansion:* L.A. Swyer Co., Inc., Albany, New York.

*Architects:* The Saratoga Associates, Saratoga, New York.

*Office interiors for numbers 5 and 6 Elk Street:* Erno Office Interiors, Clifton Park, New York and Richard Seiden Interiors, Albany, New York.

*Members' lounge and dining area furnishings:* Einhorn Yaffe Prescott, Albany, New York.

*page 17:* Mrs. Kevan Moss of Paul Smith's, New York, served as project designer and coordinator for the historical exhibit cases displayed in the State Bar Center. Mrs. Moss collaborated in writing the descriptive copy

which may be found near the exhibits as well as in the parlor rooms of numbers 5 and 6 Elk Street.

*pages 18-21:* Information researched and written by Patti Martino, an intern in the Association's Department of Communications and Public Affairs. She is a 1990 graduate of the State University of New York at Albany where she studied English Literature and Journalism.

*pages 22-28:* Information compiled by Mrs. Gretchen Sullivan Sorin of Cooperstown, New York, consultant to history museums, retained by The New York Bar Foundation to oversee the restoration of the public meeting space in numbers 5 and 6 Elk Street.

*page 25:* Photo courtesy of the Albany Institute of History and Art.

*page 28:* Designs by Denise Leone of Hamilton, New York, a stained glass artist whose works have been exhibited in the Prudential Guaranty Building in Buffalo, New York which is listed in the National Register of Historic Places. She has also designed and restored stained glass windows for many churches, synagogues and private collections.

*page 29:* Sketches of the 1885 view of Academy Park as seen from Elk Street were done by muralist Richard Yaco of Van Hornesville, New York. For the past 22 years his paintings and drawings have been exhibited throughout the United States in galleries, museums, schools, corporations, the Pentagon, and the Smithsonian Institute.

*pages 32-36:* The Bill of Rights murals were designed by Norman LaLiberte, one of the most versatile and creative artists in America. The nine banners made of brilliantly colored applique fabrics hanging in The Great Hall were originally created and designed by him in 1971. He is now in residence at his studio in Nahant, Massachusetts.

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One Elk Street  
Albany, New York 12207



## THE NEW YORK BAR'S ELK STREET HOME

For more than 100 years, the New York State Bar Association has shaped the development of the law, educated and informed the public, and responded to the demands of a changing society.

Today, with a membership of more than 52,000 lawyers, representing every town, city and county in the state, the New York State Bar Association is the oldest and largest voluntary state bar organization in the nation.

United States Presidents Grover Cleveland and Chester A. Arthur were two prominent members of the State Bar Association. In addition, United States Supreme Court Chief Justice Charles Evans Hughes served as a president of the State Bar. These and other notable Americans have contributed much to the State Bar's history. In its membership, ranking members of the nation's judicial and legislative bodies also have served, formulating and endorsing policies which have achieved national and international significance.

The Association's objectives, stated in its constitution adopted in 1877, are the same today. They are: to cultivate the science of jurisprudence, promote reform in the law, facilitate the administration of justice, and elevate the standard of integrity, honor, professional skill and courtesy in the legal profession.

The New York State Bar Center is owned by The New York Bar Foundation, the charitable and philanthropic arm of the Association, and is leased to the Association.

Founded in 1876, the New York State Bar Association rented space in a number of Albany locations (its first official office was a room on the first floor of the State Capitol) before acquiring its own headquarters at 99 Washington Avenue in 1953.

The original Bar Center space which occupies numbers 1 through 4 Elk Street faces Academy Park. The design combines a new building with three nineteenth century town houses, welding them together to form a single, functional complex. This unique combination of nineteenth century architecture and award-winning contemporary design led former *New York Times* design critic, Ada Louise Huxtable, to write that the building "...is one of the neatest architectural achievements in the country...it is a sophisticated triumph in the most delicate, complex and poorly understood art of the environment: urban design."

The project won the 1969 Progressive Architectural Award from the American Institute of Architects. It was formally dedicated on September 24, 1971. The Association has since received widespread acclaim for the preservation of a section of the historically significant Elk Street/Academy Park neighborhood. The result of the State

Bar's civic minded preservation led to the Department of Interior recognizing the State Bar Center as worthy of inclusion in the National Register of Historic Places.

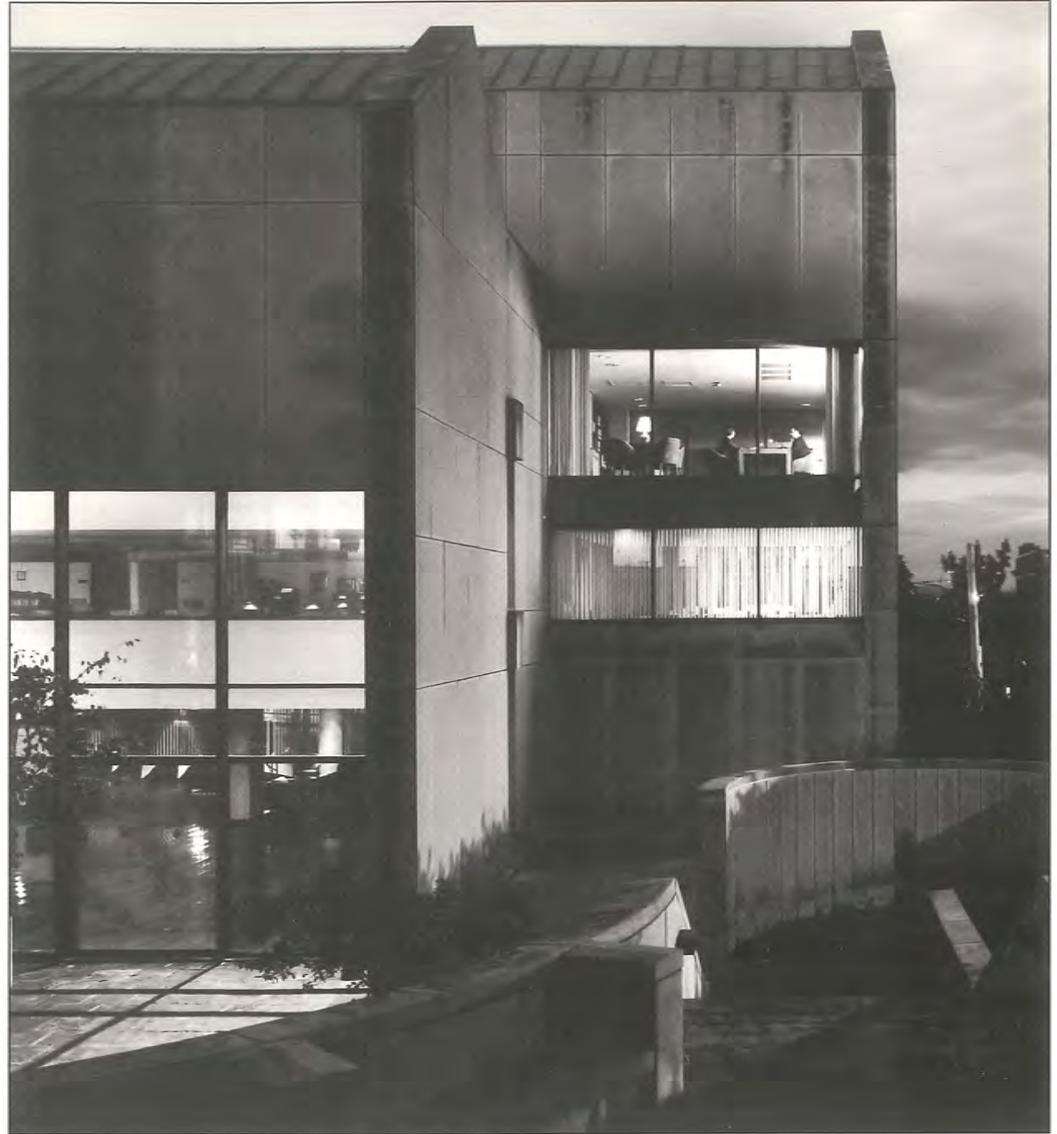
The uniqueness of the Bar Center's design was highlighted in the 1987 book written by Ms. Huxtable, "Goodbye History, Hello Hamburger." She recounts the remarkable creation "of a building for the New York State Bar Association out of three row houses adjacent to the State Capital." As Huxtable tells it, "the preservation of these architecturally middling but urbanistically significant row houses occasioned a marshalling of many preservation interests. A classic case for historic district preservation resulted, to which the Bar Association and its architect, James Stewart Polshek, a fellow of the American Institute of Architects, responded successfully."

She writes, "the result is a demonstration project of how to use the past without turning it into a charade and how to extend its fabric functionally into the 20th century for the best kind of living environmental continuity."

This reverence for the past has been successfully continued in the restoration of numbers 5 and 6 Elk Street.

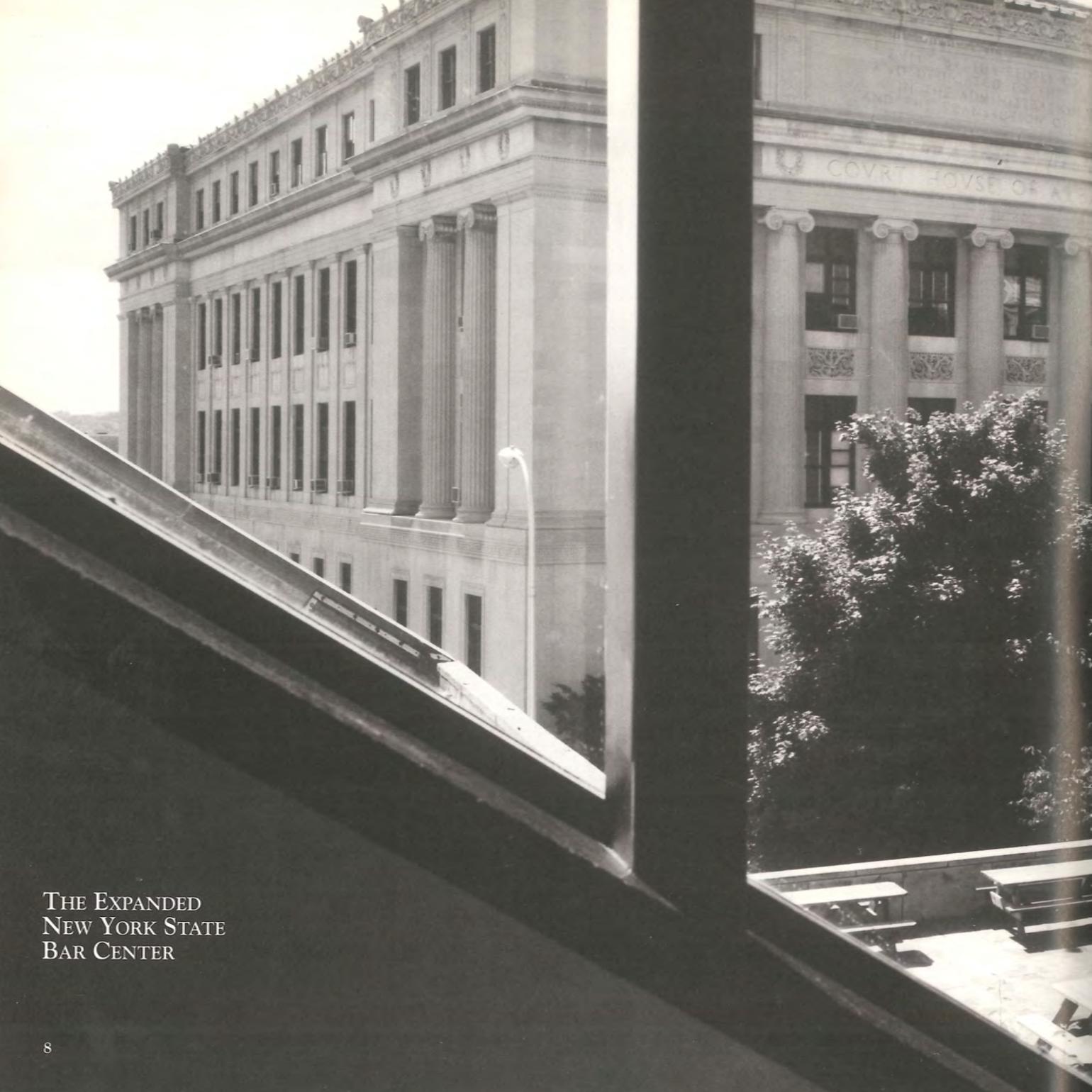
## NYSBA COMPARISONS 1971-1990

- In 1971, when the State Bar Center was dedicated there were approximately 21,000 members in the Association. Today we have 52,000 members and are growing at a rate of approximately 4% per year.
- In 1971 there were 11 substantive law Sections and 65 Committees. Today, 20 Sections are in existence and more than 80 Committees have been created by the Association to respond to professional issues.
- In 1971 the Association was operated on a budget of \$940,000. The 1990 budget is more than \$11 million.
- The House of Delegates, the Association's decision and policy-making body, had an initial membership of 137 when it was created in 1972. Today there are 213 members.
- There were 28 staff persons employed by the Association in 1971. With the creation of new staff positions for the Lawyer Assistance Program, Law Office Economics and Management, and Director of Pro Bono Services, there will be 86 staff persons employed by the end of this year.
- The Continuing Legal Education Department will conduct approximately 153 seminars by the end of 1990 with a projected aggregate attendance in excess of 15,000.

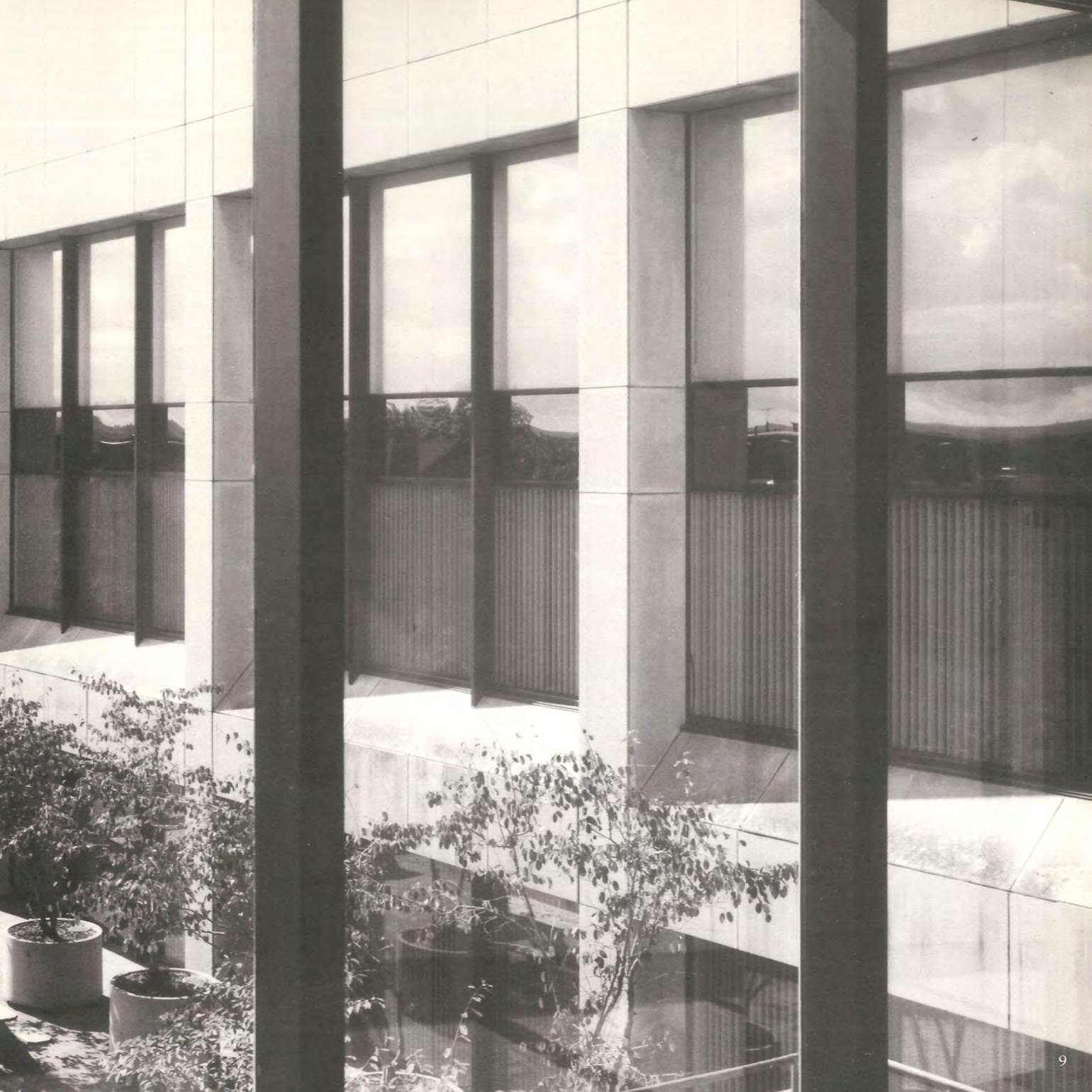


- A wide assortment of informational and educational materials are published and distributed to NYSBA members annually.

The Association's Graphics Department will make more than 40 million impressions in 1990.



THE EXPANDED  
NEW YORK STATE  
BAR CENTER



The expanded headquarters for the New York State Bar Center contains approximately 17,000 square feet of usable space increasing it from 20,000 square feet to 37,000 square feet. About three-quarters of the space is allocated for current administrative needs; the remainder is for much needed facilities for public and member use.

New public/member-use areas on the first floor of numbers 5 and 6 Elk Street contain a conference room suitable for meetings of 30 persons. There is also a conference room/visiting attorneys' room that can be used by visiting attorneys for dictation, small meetings, telephone calls, depositions, and out-of-town conference work.

Located on Elk Street, the Bar Center is easily accessible to local and out-of-town members. The headquarters is located within walking distance of such law-related facilities as the Court of Appeals, Albany County Courthouse, state law library, Justice Building, Attorney General's office, State Capitol, and administrative agencies. It is also located near the downtown business district and other facilities such as the Federal Courthouse and major area law firms.



Our expanded facility has been designed to allow easy access from either the front or rear of the Bar Center. With the administrative offices located on the second, third and fourth floors, and the public/member meeting facilities on the first floor, the interior layout was designed to avoid disruption of routine staff activities while providing easy access to the public/member-use areas. New construction in the rear of these town houses has allowed the consolidation and efficient use of space for the Graphics Department located on the ground floor level.



In addition to this much needed public and office space, the expansion work also included renovation of certain space already existing in the original structure which was built in 1971. A members' lounge and dining area has been constructed adjacent to The Great Hall to accommodate meal functions, coffee breaks and receptions in connection with meetings.

Additionally, much needed support facilities, such as adequate storage space, filing space and an efficient work/mail room were included in the design. The Bar Center is accessible by the handicapped and includes an elevator, stair chair lifts, adequate restroom facilities, and on-site parking for automobiles.





Before the renovation and new construction, direct access from the upper floors of the building constructed in 1971 to the town houses facing the Elk Street part of the Bar Center was not possible and proved inefficient. To remedy this problem a walkway-bridge was built to link the second floor Executive office wing with the second, third, and fourth floors of the newly-renovated Elk Street town houses.







The theme of the exhibit cases located in the Gallery, the Judge David W. Peck Executive Conference Room, and the reception area is, "The Legal Heritage of New York State." The artifacts and memorabilia illustrate the country lawyer, judicial excellence, and the public service character of the profession.

The exhibition captures the essence of the law as it has been practiced by country lawyers such as Samuel Nelson whose law office is reproduced in miniature and modeled after the full-scale replica that is part of the Farmer's Museum in Cooperstown, New York.

The state's contribution to the rich heritage of the nation's judiciary is exemplified through personal items, photographs, letters, and drawings explaining the life and times of two United States Supreme Court Justices, Robert Jackson and Benjamin N. Cardozo.

Since the days of the first Constitutional Congress, the legal profession has adhered to the notion of public service.

Over five generations, the family of Augustus C. Hand served the nation as lawyers, judges and public officials. One of his sons, Samuel, was the second President of the Association, and United States Court of Appeals Judge Learned Hand was a cousin. Rare photographs, and a letter from President Harry Truman highlight this exhibit.



## A BRIEF HISTORY OF “QUALITY ROW”— HOME OF POLITICIANS, LAWYERS AND JUDGES

With its wrought iron balconies, carved columns and stone pediments, it isn't difficult to imagine why Elk Street, facing Lafayette and Academy Parks in downtown Albany, was known in the nineteenth century as “Quality Row.” However, Elk Street earned this title not because of superior craftsmanship, but because of the succes-

sion of prominent politicians, bankers and merchants who chose to live there.

This strip of brick town houses was built in the early 1800's at a time when Albany was making its transformation from a frontier community into a city of economic and political significance. As one of the first up-scale residential neighborhoods

in Albany, Elk Street, along with neighboring Columbia Street, attracted many influential people as its inhabitants. Governmental figures, lawyers and judges chose an Elk Street address because of its proximity to the Capitol, City Hall and the court houses. By the mid 1800's, they were joined by some of the city's most successful industrialists and businessmen.

The expanded New York State Bar Center, located at One Elk Street in Albany, combines five nineteenth century town houses, originally numbered 2-6 with a uniquely twentieth century building. The original One Elk Street was demolished in 1969.

### SHAPERS OF HISTORY

Just as the Association has shaped the development of law, many of the nineteenth century inhabitants of the original 1-6 Elk Street town houses have shaped the history and destiny of Albany as an important industrial and political center. As judges, diplomats and even a future president, their impact was additionally felt throughout the state, across the country and around the world.

After the American Revolution the Albany streets formerly named for the British past were re-named after animals, birds and the new American heroes. A 1794 map of Albany shows



the roads leading away from the city bearing names such as mink, otter and tiger. Of these streets, Elk (formerly Queen Street) and Beaver Street survive today. Perpendicular to these streets were the “bird streets”—Eagle, Hawk, Swan, Dove, Lark, Swallow and Snipe—many of which still remain.

Albany became New York’s state Capital in 1797, claiming governors and state officials as its new residents. The completion of the first Capitol building in 1809 was soon followed by the construction of town houses on nearby Elk and Columbia Streets.

Five brick row houses, numbered 1-5, were built on Elk Street in 1827, most likely from similar plans. Tax assessment records of the period show One Elk Street to be valued at \$3,000 and the others at \$2,500 each.

## POLITICAL LEADERS

Elk and Columbia Streets provided fashionable and convenient homes for many important political leaders beginning in the early 1800’s. One Elk Street was built for James Stevenson who was mayor of Albany from 1826-1828. This building was used as the executive residence for three New York State governors before the state purchased the present

Governor’s mansion on Eagle Street in 1874 which became the official Executive mansion.

The first governor to reside at One Elk Street was Enos Throop who was affiliated with the “Albany Regency,” one of the most powerful political machines of the nineteenth century.

The Regency was formed by Martin Van Buren, a member of the liberal wing of the Republican party to oppose conservative Republican Dewitt Clinton and his followers. This political following, organized in the early 1820’s, helped spawn the early Democratic party and backed Andrew Jackson during his bid for the Presidency in 1828. Van Buren ran for governor of New York that same year in a successful attempt to garner state support for Jackson. He left the governorship after only three months to become Jackson’s Secretary of State and was succeeded by his running mate and fellow Regency member Enos Throop.

In 1830, Throop was elected for an additional term, but decided not to run for re-election the following term. While governor, he opposed both further canal building and increases in the state debt. When Van Buren became President in 1838, he appointed Throop “Charge d’affaires to the Kingdom of the Two Sicilies.”

## “ALBANY REGENCY”

Two other prominent Regency members, William Learned Marcy and Edwin Croswell, lived on the site of the present Bar Center complex. Between 1833 and 1839 Governor Marcy rented number 2 Elk Street for use as his executive residence. As a member of the “Albany Regency” he was State Comptroller (1823-1829),



and Justice of the State Supreme Court (1829-1831). He was a member of the United States Senate (1831-1832) until his election as Governor in 1832.

Marcy served three consecutive terms as governor, during which he remained loyal to the Regency. He supported most of the policies of the Jackson and Van Buren administrations, including “hard money” policies and the Independent Treasury. He also commissioned the first geological survey of the state.

New York’s highest peak is named in his honor.

From 1845-1849 Marcy served as Secretary of War under President James K. Polk, and later as Secretary of State for President Franklin Pierce. He negotiated many treaties including the Gadsden Purchase of 1853 which extended the boundaries of New Mexico and Arizona south into Mexico.

Number 4 Elk Street was built for Edwin Croswell who succeeded Van Buren’s brother-in-law, Edward Cantine, as editor of the *Albany Argus* (1823-1854). Under Croswell’s direction, the newspaper became an important tool for the Regency in disseminating its agenda to the public.

## EXECUTIVE RESIDENCE

One Elk Street was purchased in 1833 by Daniel D. Barnard, a lawyer who lived nearby on 25 Elk Street. Barnard served as a two-term United States Congressman (1827-1829 and 1839-1845). He practiced law in Albany when not in office. From 1850-1853 he was Minister to Prussia.

During Barnard’s ownership, two other governors used One Elk Street as their executive residence, Washington Hunt and Horatio Seymour. The fourth floor was altered from an attic under the gable roof to a full

floor later in 1849 probably for the occupancy of Governor Hunt.

In 1850, Hunt won the gubernatorial election over Horatio Seymour by a narrow margin. As governor, Hunt worked for economy and efficiency in state government. He also sought to enhance transportation by upgrading roads and expanding the canal system. In 1852, Hunt was defeated by Horatio Seymour. Seymour replaced Hunt as both governor and tenant of One Elk Street where he lived until 1854.

Seymour worked to improve the administration of the penal system during his first term as governor. He also vetoed a bill prohibiting the sale of liquor which may have contributed to his defeat in 1854 by temperance candidate Myron Clark. But Seymour returned as governor in 1863. Although he didn't support many of Lincoln's policies, he did support the Union cause during the Civil War and called for an end to the 1863 draft riots in New York City. He was nominated for President in 1868, but was defeated by General Ulysses S. Grant.

## EVIDENCE NOT FOUND

Although Martin Van Buren is listed in the National Register of Historic Places Nomination as the owner of number 4 Elk



Street in 1837, historical research consultant Douglas Sinclair of Albany could not find evidence to support this. According to Sinclair this reference to Van Buren may have been gathered from an undocumented source instead of primary or even secondary records. However, Sinclair discovered during the course of his research that another U.S. President did live on Elk Street.

Franklin D. Roosevelt lived in number 4 Elk Street while he was a state Senator. In the state Legislature (1910-1912), Roosevelt opposed Tammany Hall, the powerful political machine in New York City and became a strong supporter of Woodrow Wilson. When Wilson was elected president in 1912, Roosevelt was chosen as an assistant to the Secretary of the Navy.

As President in the 1930's, Roosevelt's presence was felt in

Albany in the form of the public works projects generated by the New Deal. WPA workers transformed the old Bleeker reservoir into present-day Bleeker Stadium, repaved the city's streets and renovated schools.

## LAST PATROON

Number 6 Elk Street was built in 1834 for William Patterson Van Rensselaer in the Greek Revival style popular during the decade at an estimated value of \$4,000. It appears to have been commissioned by his father, Stephen Van Rensselaer III, the last Patroon, for the use of his son and new wife.



The Van Rensselaer family came from a long line of wealthy, land owning "patroons." The Patroon system was devised in 1629 by the Dutch West India Company to establish settlements in the colonial wilder-

ness. In return for their patronage the Patroons were granted tracts of land, which they leased to tenants.

Stephen Van Rensselaer III played a key role in the development of the first rail line between Albany and Schenectady in 1831. He owned approximately 3,000 tenant farms in Albany and Rensselaer county. At the time of his death in 1839, he was one of the wealthiest residents of the state.

## COURT HOUSES ATTRACT JUDGES

The court houses attracted judges and lawyers to the Capitol Hill neighborhoods. Prominent residents included Circuit Court Judge James Vanderpoel who owned number 5 Elk Street in the 1840's and James B. Jermain, a Supreme Court Judge who lived at number 6 Elk Street (date unknown).

Circuit Court Judge William Wallace, who was elected mayor of Syracuse in 1873, owned number 6 Elk Street at the beginning of the twentieth century. He was appointed United States Judge for the Northern District of New York by President Grant in 1874. In 1882 he became a United States Circuit Court Judge and headed the federal tribunal of the 2d Circuit which includes New York, Connecticut and Vermont.



## BECOMES ECONOMIC CENTER

The invention of the steamboat, the completion of the Erie and Champlain canals and the installation of a railroad network all contributed to Albany's growth as a major center for trade and industry in the nineteenth century.

Beginning in the 1840's and continuing after the Civil War in the 1870's, industrialists and bankers, profiting from improved transportation methods and Albany's strategic position on the Hudson, made their move to Capitol Hill. It was also during this period when the New York State Bar Association was founded in 1876.

The inhabitants of numbers 1-6 Elk Street during this period reflect this trend. Three Elk Street was owned by Richard Varick De Witt, a steamboat agent in the 1840's. At this time

steamboat travel was at its height as hundreds of steamboats moved up and down the Hudson carrying passengers and waterborne freight.

## INDUSTRIALISTS AND BANKERS

The two industries most associated with Albany in the 1800's, cast-iron stoves and lumber, also had their representatives on Elk Street. By the late 1800's there were 15 stove foundries in Albany. During this period Albany's cast-iron stoves received worldwide recognition for superior design and craftsmanship.

Members of the Townsend family, who owned the Townsend Furnace, noted for its steam trap devices, lived at various Elk Street residences beginning in the 1840's. They were joined in 1883 by Joel Rathbone, founder of a large stove factory, who owned number 5.

Curtis Douglas, a lumber dealer, owned number 5 Elk Street in the early 1900's. Lumber was Albany's principal export throughout the eighteenth and most of the nineteenth century. At its peak in the 1870's, Albany was the oldest and largest lumber market in the nation.

Elk Street bankers included Rufus King (2 Elk Street), lawyer and President of the State Bank

of Albany; J.B. Plumb (3 Elk Street), President of the Bank of the Interior; and Harmon Pumpelly (One Elk Street), President of the Albany Gas Company and the Albany Savings Bank.



## ARCHITECTURAL CHANGES

During the late eighteenth century, numbers 1-6 Elk Street received a number of facade and structural changes. The roof of number 2 Elk Street was raised to a steeper pitch and the dormers altered to the Tudor-Jacobean style. The interior of number 5 was altered to the Queen Anne style and its facade was extensively remodeled to reproduce the Italianate style. The exterior of number 3 Elk Street changed several times.

The facades of both numbers 4 and 6 Elk Street were altered to the design of noted Albany

architect Marcus Reynolds in the Colonial Revival style. Reynolds is known as the designer of Albany's first "skyscraper" and the Gideon Putnam Hotel in Saratoga. He also designed the gothic styled former Delaware and Hudson/Albany Evening Journal Building at the foot of State Street and Broadway in Albany.

Reynolds retained the 1827 window treatment on the upper floors and added a floor to number 4 Elk Street in 1900. The owner at that time was Curtis Douglas. In 1906, Circuit Judge William Wallace also commissioned Reynolds to alter number 6 Elk Street. Reynolds retained the 1834 entry and raised the pediment at the roofline to accommodate a fourth floor. He also remodeled the interior using design elements associated with the Federal style, popular a century earlier, on the mantels and woodwork.

Present day Elk Street stands as a reminder of Albany's formation as the state Capital. In the twentieth century, the New York State Bar Association, the country's oldest and largest voluntary state bar association, has earned its place on "Quality Row." With its tradition of concerned service to the legal profession and the public, the Association continues the pioneering tradition long associated with Elk Street.

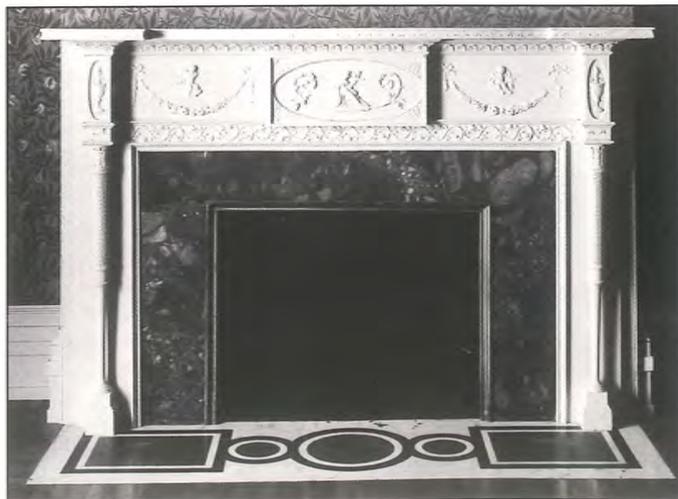
## THE HISTORIC ELK STREET INTERIORS



“Rooms have just as much expression as faces,” wrote author Susan Brown in her 1881 book on household interiors. “They produce just as strong an impression on us at first sight... The walls and the floor, and the tables and chairs, all speak out at once... .” Certainly this is the role of the period interior. It provides those who use a particular space or those who have simply come to visit or experience it with a sense of how people lived in the past.

Episcopal Bishop William Doane who presided over the Cathedral of All Saints was a resident of Elk Street as were prominent attorney John Pruyn, who was the Chancellor of New York, and Erastus Corning Jr. Appropriately they were furnished with high style furniture of the period.

The diaries, paintings and photographs of various rooms along Elk Street indicate that each interior was as unique as its owner’s taste.



Much of what is known specifically about life on Elk Street during the latter part of the nineteenth century comes from the copious diary kept by Huiibertje Pruyn Hamlin, daughter of John Pruyn. Her journal chronicles social life, daily activities and the individuals that lived by what one period account was referred to as “Quality Row,” during the 1880’s when she was growing up. Her life, like that of the other Elk Street residents was generally one of ease for the nineteenth century. Here on “Quality Row,” unlike some of the immigrant neighborhoods in Albany, there was time and money for lavish entertaining, reading literature and enjoying carriage and sleigh rides. Children were cared for by nannies and household staffs were employed to cook and clean the elegant houses. The Pruyn household at one time had a staff of ten.

Household interiors on Elk Street were fashionable, following the dictates of design books of the period, but often combining the styles with abandon. The decades prior to the 1860’s had been characterized often by slavish adherence to a single style of furniture in the decoration of rooms, particularly for the formal parlors of rich families.





The second half of the nineteenth century brought, in rapid succession, a number of revivals which might be mixed together. Colonial Revival furnishings might be combined with a few pieces in the Renaissance or French antique styles. Wicker might be added for warmth and whimsy. With each new decade another revival style was introduced and the old ones were updated or augmented but they did not go out of fashion. Huibertje noted that the parlor of number 13 Elk Street had “furniture [of] rose wood covered with a gorgeous orange Chinese brocade. There was a Florentine cabinet & a Dutch one—both full of mysterious drawers and secret places... There was a wonderful tall leather covered arm chair on the right side of the front room fireplace. It was solidly panelled under the seat... .”

In both drawing rooms, the over mantel mirror carried out the Gothic idea and the glass chandeliers and side lights would have delighted a modern collector. (*Pruyn Diary*, pp. 112, 113, 114). She also describes wallpapers with gay birds, large green leaves and purple grapes, floors with herringbone parquet and covered with large Turkish rugs, walls covered with portraits, and “painting and engravings of Madonnas and Biblical scenes.”

Other furnishings ranged from an antique Chippendale mirror to contemporary sculpture on pedestals by neighbor Erastus Dow Palmer. The overall effect was a typical upper middle class interior, which blended the variety of then popular styles into an eclectic room setting. Such descriptions are important clues to the appearance of Elk Street interiors. Visual materials—photographs and paintings—provide further evidence.





The painting of the interior at number 6 Elk is similarly eclectic but its elements fit together nicely to create a pleasing whole. The wallpapers and carpet in such rooms are the unifying element according to Victorian taste. This interior, like that of number 13 described by Huiibertje Pruyt, reflects the taste of the Aesthetic movement of the time.

Popularized by such English designers as Charles Eastlake and William Morris, and Louis Comfort Tiffany on this side of

the Atlantic, the Aesthetic style was characterized by wallpapers featuring vining plants in restrained colors and heavy, English Revival furniture.

The carpet was also supposed to be in contrast with the wallpaper rather than repeating the same hue. Secondary hues were most popular. Thus, moss green or olive and crimson would be used. Red and green probably would not. Eastlake recommended simple geometric patterns which imitated the designs in Persian carpets. Popular col-

ors included rust, browns and deep golds, maroon and other deep tones.

Brussels carpets were perhaps the most popular weave and came in a multitude of patterns. A loom width was 26 inches and several loom widths were stitched together to form complete carpets. The drawing room rugs in number 6 Elk Street measure 15'2 1/4" wide by 22'4 1/4" long. They fit within the parquet border.

The furnishing plan for number 6 Elk Street is based on research in period documents and pictorial materials, including an 1885 painting of the parlors made by Albany artist Walter Launt Palmer. Jennie Norton, wife of the Rev. Frank Norton, who occupied the house in 1889, appears in the painting used to recreate the historic features of this town house (see photo at left).

Other Albany interiors of the same period were also used to identify features common to all parlors or libraries.

In the parlor in which Mrs. Norton sits are a Gothic chair, a wicker chair, a Rococo Revival chair and an English Revival chair. Barely visible in the rear parlor are two fringed Turkish chairs reflecting a new popular enthusiasm for exotic things.

The tables too are an eclectic mixture of styles, including a lyre based card or side table, a Colonial Revival desk and a low table topped with a brass tray.

Aesthetic interiors were developed as a reaction to the bright colors and excess ornamentation of the mid-Victorian period. More subdued colors and simpler furniture forms, the latter often harkening back to the American Colonial period or of English Revival forms, were popular.

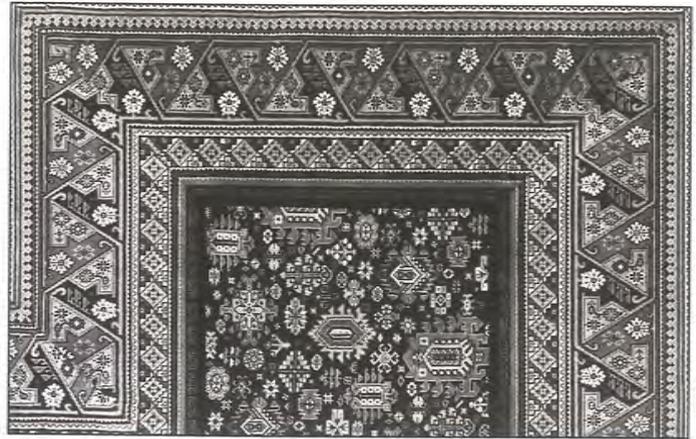
*Photo: Collection of the Albany Institute of History & Art*

The stairhall in number 6 Elk Street is wallpapered in "Summer Street Damask," a freely interpreted foliage and fig pattern. It is an English pattern that dates from about 1850 and is named for the street location of a Queen Anne Revival mansion in Kennebunk, Maine, where it was found.



The frieze paper in the parlors is called "Chauncy Frieze" and is an American design of the 1880's that was found in a villa in Marshall, Michigan.

The parlors of number 6 Elk Street are decorated in "Persis," an English pattern that dates from around 1880 revealing an unstructured spray of sage green and olive Eucalyptus leaves interspersed with gold sunbursts (gilded blossoms). The original for this pattern was found in Boston, Massachusetts, and has also been documented in a photograph taken during the early 1880's inside a mansion in Sydney, Australia.



The weave of the carpet pattern found in the parlors as well as the hallway and stairs in number 6 Elk Street is made of 100 tuft per inch Worsted Wilton construction, the finest woven carpet available today. The two patterns chosen are part of a historic archive of more than 10,000 such patterns that is maintained by Woodward Grosvenor & Co. Ltd., Kidderminster, England. The United States representative of that company, J.R. Burrows & Co., historical-design merchants, Boston, Massachusetts, provided three reproductions of nineteenth century wallpaper designs that are used in the period decoration of number 6 Elk Street.



## HISTORY RESTORED IN 6 ELK STREET

In 1833 when attorney William Patterson Van Rensselaer, half brother of the last Patroon, built number 6 Academy Park, also referred to as number 6 Elk Street, the grain weevil was a serious plague to area farmers, swine were roaming the streets of Albany eating garbage and construction of the New York and Erie Railroad had just begun. Albany, as the state Capital, strategically located on the route to the western part of the state was growing by leaps and bounds. Many of Albany's well-to-do citizens were beginning to construct homes on the small park near the Capitol building. The August 6 edition of the *Albany Evening Journal* noted that William Patterson Van Rensselaer was "erecting a fine house in Elk Street."

The architect of number 6 is not positively known but it is believed to have been either Henry Rector or Philip Hooker. Hooker had constructed several buildings for the Van Rensselaer family some of which were in the Greek Revival style. His many structures were prominent in the city during the late eighteenth and early nineteenth centuries. The Albany Academy (1814-1816), City Hall (1829) and Capitol Building (1804-1809) are among the public buildings known to have been designed by Philip Hooker. Few of his domestic buildings re-

main, but he is known to have worked for many of Albany's most prominent citizens. One of his best known homes is the imposing Hyde Hall on Lake Otsego in Springfield Center, New York. If Hooker indeed designed number 6 Elk, it was done near the end of his career. He died in 1836.

Rector, too, was designing Greek Revival structures and was a prolific architect in and around Albany during this period. He was considerably younger than Philip Hooker and seems to have been one of the primary architects to receive major commissions in Albany after Hooker's death. Unfortunately, relatively little information exists on Henry Rector and

not many of the structures he designed are known.

The Pearl Street Baptist Church (1833), which no longer remains, the State Hall (now the State Court of Appeals) and the Albany Female Academy are structures in the Greek style which were built by Henry Rector. Stanwix Hall, a Van Rensselaer building and one in which William Patterson Van Rensselaer had his law office for a time, is also attributed to Henry Rector. As the primary successor to Philip Hooker he is believed to have been the architect for many other public and private structures around the city which have not been attributed to him. One of these may be number 6 Elk Street.



*The long and short of it—taken in 1910, this photo shows number 3 Elk Street to be one story shorter than it is today. Architectural change, which came later, conforms roof lines.*

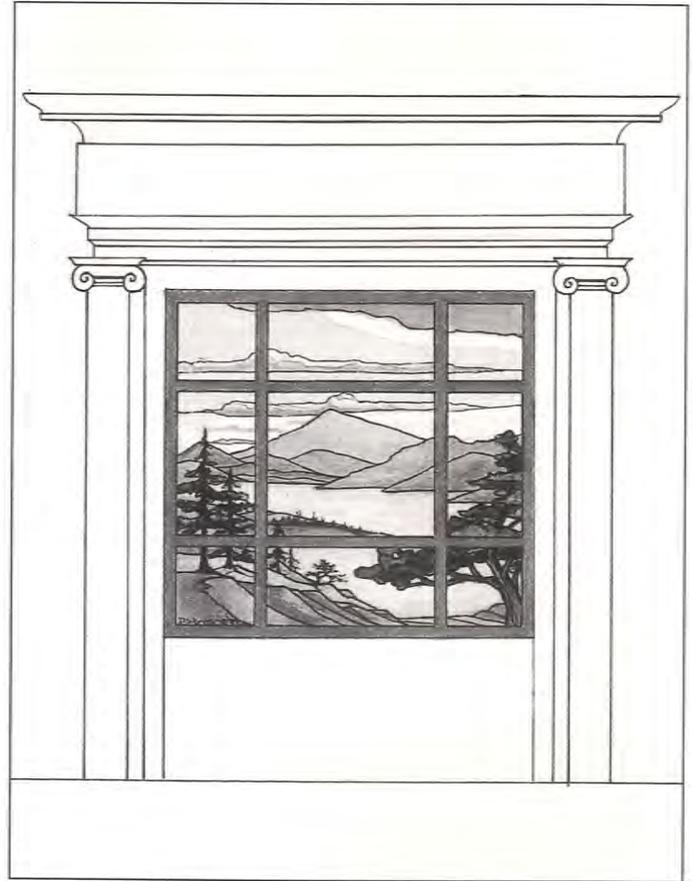
STAINED GLASS  
AT THE REAR OF NUMBER  
6 ELK STREET

Stained glass artist Denise Leone of Hamilton, New York was engaged to create an appropriate glass reproduction.

Ms. Leone is familiar with appropriate nineteenth century styles and has previous experience portraying scenic works. The design at the rear wall of number 6 Elk Street represents Ms. Leone's view of the natural beauty of the Catskill Mountains. Inspired by the work of such classic American painters as Thomas Cole, Frederick Church and Stanford Gifford, Ms. Leone's interpretation of the landscape was drawn from a variety of views of the mountains seen during frequent trips up and down the Hudson River, particularly the view from Frederick Church's home, Olana. Like the work of the Hudson River painters, this landscape is an idealized view, rooted in real places.

"I attempted to see the landscape the way the Hudson River painters would have, unspoiled and wild, a new world Eden," she said. The window is designed to make it appear that the viewer is looking out of a window "onto a painted vista."

To create atmospheric effects and to diminish lead lines some laminating of the glass was done using the technique in the Metropolitan Museum Tiffany windows. The overall measurement of the window is 7'9" x



7'3" for a total of 56 square feet.

Beneath the window are recessed wooden panels which form the framework of the window. This wooden structure also raises the glass above the floor so that it can't be accidentally kicked and broken. Because the window is lit by artificial light, reproduction Tiffany opalescent glass has been used to diffuse the light.

## A 19TH CENTURY ACADEMY PARK BROUGHT BACK INTO 5 ELK STREET

Academy Park was a small neighborhood park in about a two acre irregular square of land bordered by Elk and Eagle streets roughly to the East and Park Place and Washington Avenue to the West. It appears that the park was not particularly unusual and during the interpretive date selected for the period rooms at the State Bar Center—1885—there were many shade trees and no statuary in the park.

The park was in great disrepair for some years prior to its refurbishing in 1881 and was essentially a drainage area for Lafayette Street and a haven for

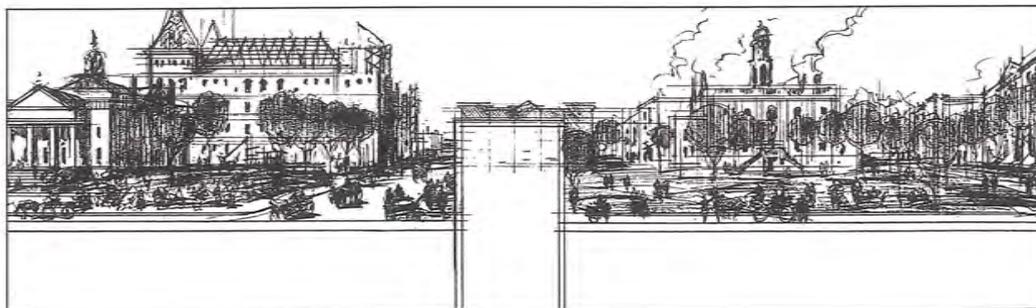
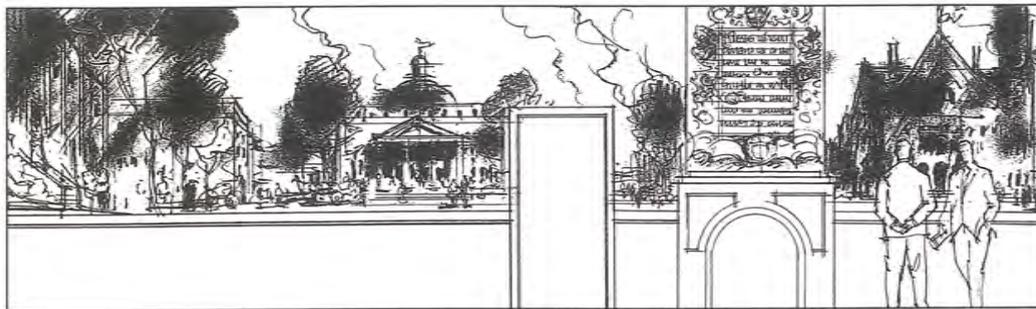
muggers. This was apparently its second refurbishing. Money had also been appropriated in the 1830's to grade the park and enclose it with an iron fence. According to late nineteenth century views, the iron fence seems to have been torn down and Academy Park was surrounded by a low fence, perhaps after its 1881 face lift. This fence appears in the foreground of illustrations of the Albany Academy.

The unique views of the park will be depicted in a mural to be painted on the East and West walls of the parlor in number 5 Elk Street and will include the

unusual buildings which lined the streets of the park during 1876-1877, a time that coincides with the founding of the Association. Most notable are the Albany Academy and the rather fanciful Egyptian revival waterworks which no longer exists. A series of buildings, now no longer standing, lined the Washington Avenue side of the park as well.

The East mural will include a partially raised street level view of the buildings lining Elk Street with their sides receding into one point perspectives together with a portion of the Elk Street town houses. Spaces between the buildings represent State Street, Maiden Lane and other streets to provide the illusion of descent. The West mural will feature Academy Park and the Capitol in the foreground. The new Capitol (still under construction at the time, with its scaffolding and building paraphernalia), and various commercial and residential buildings will also be illustrated.

The inclusion of people in period costumes and carriages by muralist Richard Yaco will add interest and identify the period of the scene.





Judge David Warner Peck

The Executive Conference Room located in number 5 Elk Street is dedicated to the memory of the late Judge David Warner Peck who was the 65th President of the Association from 1962-1963.

Born in Crawfordsville, Indiana in 1902, he entered Wabash College in his hometown at the age of 16, having skipped his senior year of high school. He graduated from Wabash in three years with distinguished honors and worked his way through Harvard Law School as a tutor who sometimes had as many pupils as any faculty member.

Upon graduation, he spent two months with White & Case in New York City before joining

the staff of United States Attorney Emory R. Buckner in the Southern District of New York where he served for three years. He left in 1928 and spent two years in multinational legal activity with the International Telephone and Telegraph Company.

In May 1930 David Peck joined Sullivan & Cromwell, became a partner in 1934, and led the firm's litigation practice until he accepted Governor Thomas E. Dewey's appointment to the New York State Supreme Court in Manhattan in 1943. Two years later, Governor Dewey appointed Judge Peck to the Appellate Division, First Department, and two years after that designated him the Court's Presiding Justice. It is said that he was the youngest justice ever to hold that position.

On the bench he initiated the practice of annually recruiting a new law clerk and left his distinctive mark on each one. They in turn formed a devoted band who proudly claimed for themselves the title of "Peck's Paragons."

As Presiding Justice he conducted a ten-year campaign to reduce congestion in the courts which resulted in significantly reducing calendar delay to its lowest point in 57 years. During this period he was selected by President Dwight Eisenhower to

serve as a Member of the Permanent International Court of Arbitration at The Hague, on which he continued to serve until 1963.

At the end of 1957 Justice Peck left the bench to rejoin Sullivan & Cromwell to resume his role as a trial and appellate advocate of great distinction. He served on various federal and state committees and commissions and in 1959 succeeded Governor Nelson A. Rockefeller as Chairman of the New York Commission on Revision and Simplification of the State Constitution. Elected President of the New York State Bar Association in 1962, three years later he became Chairman of the Board of the American Arbitration Association, a post he held for the next five years.

David Peck authored two books about cases in the New York courts, *The Greer Case* and *Decision At Law*, and remained until his death a champion of court reform and improvements in the administration of justice.

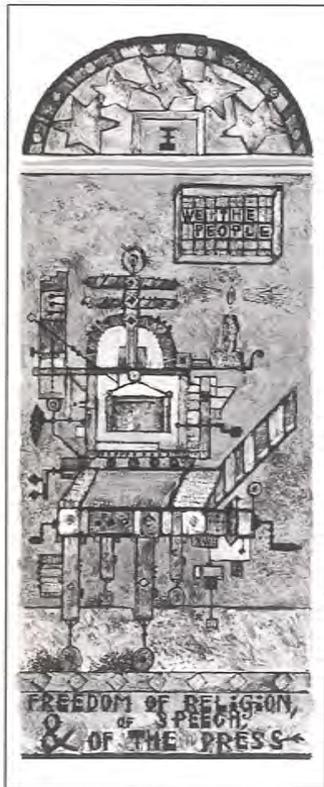
Outside the law, Judge Peck was renowned as a gourmet and connoisseur of French wines which led to his election to high office in the American chapter of the Confrerie des Chevaliers de Tastevin, an international organization of oenophiles based at Clos de Vougeot in Burgundy as well as

in the Commanderie de Bordeaux. To these pleasures he joined a long-standing dedication to the Metropolitan Opera and a penchant for travel which brought him repeatedly to the vineyards of France and, as an avid golfer, to the distinguished courses of Scotland. Judge Peck died in August, 1990 at the age of 87.

The furnishings in this room include a mahogany conference table manufactured by the Buffalo Table Company. This piece employs a classic heirloom finish with Sheraton style legs produced from the original designs of the late eighteenth century (also referred to as Federal style). They support the 24" x 60" dimensions of the table. This kind of table was originally manufactured 150 years ago by the Kittinger Company which is no longer in existence.

The chairs surrounding the table are "The College Chairs," manufactured by Nichols and Stone of Gardner, Massachusetts. They bear the seal of the Association. These are the same chairs that are found in numerous colleges and universities.





## AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

This panel depicts the Gutenberg-style printing press which printed Thomas Paine's revolutionary pamphlet, *Common Sense*, and later helped win popular support for the draft Constitution proposed by the 1787 Constitutional Convention. The font of type in the upper right corner reflects the opening words of the 1776 Declaration of American Independence which was widely distributed as a printed broadside.

The Greek letters Alpha and Omega symbolize the beginning and the end of the alphabet, and represent freedom of religion in the new nation.

## THE GALLERY OF THE BILL OF RIGHTS

Ten Panels by Norman Laliberte Interpreting the First Ten Amendments to the Constitution of the United States, Ratified December 15, 1791.



## AMENDMENT II

A well regulated Militia, being necessary to the security of the free State, the right of the people to keep and bear Arms, shall not be infringed.

Citizen-soldiers have guaranteed the national security of the United States since they defeated foreign mercenaries during the American Revolution. This panel represents the volunteers who took up arms in defense of the colonies, carrying some of the early flags (left to right): 13-star ensign; The 1775 Pine Tree Flag of "Washington's Navy;" the 1776 naval standard "Don't Tread on Me" designed by Col. Gadsden of South Carolina; and the Nashville Regimental flag, "God Armeth the Patriot."

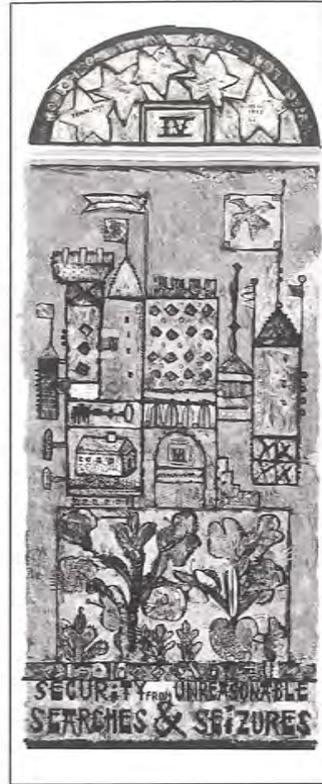
The stars in the arches at the top of each panel reflect the dates of admission of individual states to the union. The band of colors running across all of the panels represents the rainbow.



### AMENDMENT III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

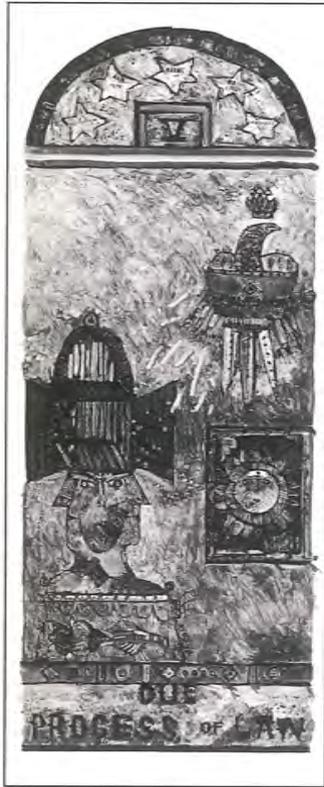
The olive branch and dove of peace above this person's home remind us that military authorities may not force citizens to provide food or shelter against their will.



### AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

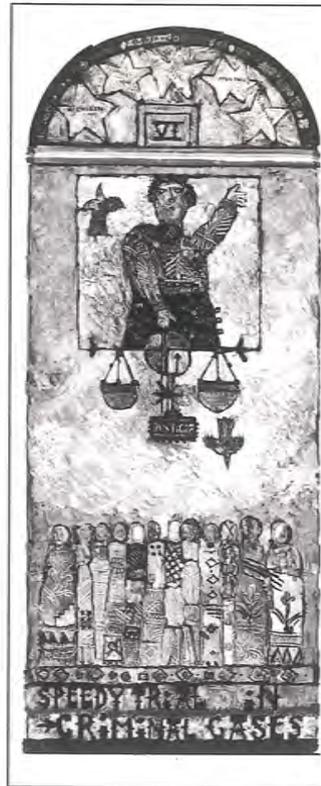
The Bill of Rights guarantees that "A man's home is his castle," as illustrated by replacement of the moat which once surrounded this castle by a bed of flowers.



## AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

The bird of Freedom released from its cage and flying toward heaven symbolizes constitutional protection against denials of due process including double jeopardy, represented by the two-faced figure. The shining sun is the Constitutional guarantee of Justice.



## AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

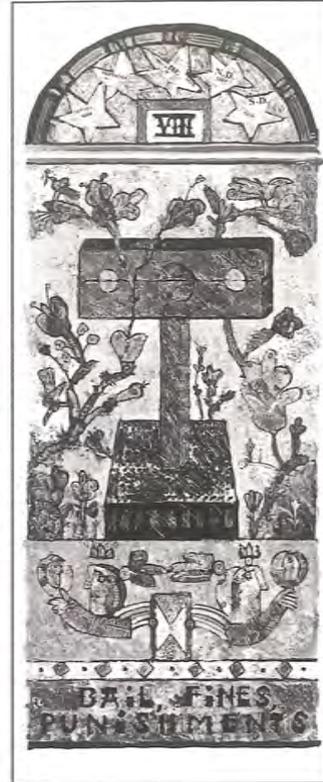
In this panel a criminal jury trial is presided over by an independent and impartial judge to insure that the scales of justice are in exact balance and the jury's verdict is arrived at fairly.



## AMENDMENT VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

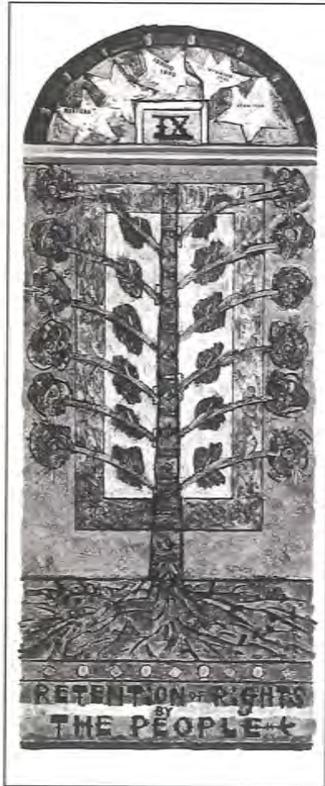
A jury wheel guarantees the random selection of citizens to serve on trial juries, insuring fairness and impartiality.



## AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The stock gone to flower in this panel symbolizes the outlawing of the pillory, the rack, whipping, branding, and other barbaric punishments of the past. The lower panel contains an hour glass representing imprisonment, and figures holding large Greek and Roman coins symbolizing fines and bail.



## AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The branches sprouting from the trunk of the tree represent the natural rights of the people which are encouraged to flower under Constitutional government.



## AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Fifty state birds in flight represent the freedoms enjoyed by the individual states which make up our republican form of government.

copyright 1990 by the artist

## REDEDICATED TO THE BAR'S FUTURE

This commemorative booklet has a dual purpose: it is a permanent record of the Rededication of the expanded New York State Bar Center and a token of appreciation to all who have helped make this historic occasion possible.

Members of the Association responded enthusiastically to the Bar Center fund raising campaign. Their dedication to the difficult job of raising money and their personal generosity as financial contributors gives renewed meaning to the purposes for which this Association was founded.

On a November afternoon 114 years ago, some ninety-one lawyers met in the Assembly

Chamber of the old Capitol and moved the formation of the New York State Bar Association. Our first President, John K. Porter, could not have envisioned the growth of the legal profession, the complexity of vital issues addressed by our colleagues and the continuing expansion of this Association.

Thus, even though only twenty years have passed since the major expansion of our Elk Street headquarters, we soon realized that without additional space, the State Bar's capacity to maintain existing programs while inaugurating new ones would have been severely curtailed. This album chronicles our renovation of the town

houses at 5 and 6 Elk Street with the resulting transformation of this historic space into offices and meeting rooms in keeping with the rich legacy of the Albany block known as "Quality Row."

Today, we rededicate our Center which is much more than a building. It is a living monument to the spirit of this Association which will continue to serve the profession and the public far into the future.

*Angelo T. Cometa*

Angelo T. Cometa  
President

November 10, 1990



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*Photo by ABA/Lauren Shuy*

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**A GUIDE TO SALES AND OTHER DISPOSITION OF ASSETS  
BY NOT-FOR-PROFIT CORPORATIONS**



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**A GUIDE TO SALES AND OTHER DISPOSITION OF ASSETS  
PURSUANT TO NOT-FOR-PROFIT CORPORATION LAW §§ 510, 511 and 511-a  
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**Issue date: December 2018**

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**A GUIDE TO SALES AND OTHER DISPOSITION OF ASSETS  
PURSUANT TO NOT-FOR-PROFIT CORPORATION LAW §§ 510, 511 and 511-a**

**INTRODUCTION**

The New York State Attorney General’s Charities Bureau has prepared this guidance to assist not-for-profit corporations and the attorneys who represent them when seeking approval of the Attorney General and/or the court for sales and other dispositions of their assets, including real and/or personal property, as well as intangible property such as bonds, stocks or certificates of deposit. Not-for-Profit Corporation Law (“N-PCL”). N-PCL §§ 510, 511 and 511-a. Please consult “Religious Corporations: Sales and other Disposition of Assets,” posted at [www.charitiesnys.com](http://www.charitiesnys.com), for guidance concerning property transactions by religious corporations.

New York law governing not-for-profit corporations provides certain protections against the inappropriate transfer of assets of such corporations, including internal procedural rules for authorizing transfers. The law also provides for review by the Attorney General and/or by New York State Supreme Court for certain transactions.

Because of the important and unique role and responsibility of not-for-profit corporations in the lives of our citizens and communities, and because of their legal responsibility to safeguard their assets and provide for the interests of their members and beneficiaries, the law requires the court’s or the Attorney General’s approval of certain transactions by such corporations.

The procedures described in this guidance reflect amendments to the N-PCL that were included in the Nonprofit Revitalization Act of 2013 (“the Act” or “NPRA”) and 2015 and 2016 amendments to the Act. The Act amended the N-PCL and sets forth procedures to be followed when transferring or mortgaging property and gives corporations the option of submitting a petition to the Attorney General OR the Supreme Court on notice to the Attorney General for approval of the transaction. As more fully described below, in an application solely to the Attorney General, the Attorney General may determine that court review of a particular application is appropriate. In such cases, the verified petition must be submitted to the court and to the Attorney General, even though court approval is sought.

This guidance is not a substitute for legal advice from an attorney but is intended to provide guidance to not-for-profit corporations that are seeking to sell or otherwise dispose of their assets and to the lawyers who represent them.

The information in this guidance is general in nature. Each transaction is governed by its own facts, and the Attorney General reviews each one on a case-by-case basis. You are encouraged to discuss the proposed transaction in advance with the Attorney General’s Charities Bureau in New York City or Albany or with an Assistant Attorney General in the appropriate Regional Office of the Attorney General to which you should submit your application. A list of the offices of the Attorney General, their

contact information and the New York counties they serve is in Appendix F. If you anticipate that members or employees of the organization, members of the public served by the organization, a public agency with regulatory oversight or contractual relationships with the organization, or members of the local community may have concerns about the proposed transaction, it is prudent to advise them of the planned transaction in order to address their concerns to the extent feasible, consistent with the mission of the organization, and to document these outreach and consultation efforts.

## **WHAT TRANSACTIONS ARE COVERED**

The sale, lease, exchange or other disposition of all or substantially all of the assets<sup>1</sup> of a charitable not-for-profit corporation<sup>2</sup> requires approval of the Attorney General or the court, with notice to the Attorney General, pursuant to the procedures set forth in the N-PCL. N-PCL §§ 510, 511 and 511-a. The assets may be real and/or personal property, including intangible property such as bonds, stocks or certificates of deposit. N-PCL § 510(a). Transactions by foreign charitable corporations that do business in New York are also covered. N-PCL § 103.

There is no fixed numerical or arithmetic measure of “all or substantially all.” Approval by the Attorney General or the court is required when the transaction involves a large proportion of the corporation’s total assets or when it may affect the ability of the corporation to carry out its purposes, regardless of the percentage of the corporation’s total assets that are the subject of the transaction.

### Exceptions to Covered Transactions by Not-for-Corporations

Mortgages are not covered unless a component of the transaction would otherwise be covered by the N-PCL, such as when there is a conveyance or lease of the property to the lender. N-PCL §§ 510 or 511. Non-charitable not-for-profit corporations do not need Attorney General approval for their transactions. Non-charitable transactions are defined at N-PCL § 102(a)(9-a).

## **ROLE OF THE ATTORNEY GENERAL**

The N-PCL requires not-for-profit corporations seeking to sell, exchange or otherwise dispose of all or substantially all of their assets to submit a verified petition for approval of such transaction *either* to the Attorney General or to the court on notice to the Attorney General.

Whether the petitioner decides to seek approval from the Attorney General or the court, it is advisable to make sure that the contract for the sale of the property is

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<sup>1</sup> Throughout this guidance, the term "transaction" will also be used to refer to the sale, lease, exchange or other disposition of all or substantially all of a not-for-profit corporation's assets.

<sup>2</sup> See N-PCL §§ 102(a)(3-a) and (3-b) for the definitions of charitable corporation and charitable purposes. Corporations previously formed as Type B corporations are, effective July 1, 2014, deemed to be charitable corporations. N-PCL § 201(c).

contingent upon the approval of either the Attorney General and/or the Supreme Court. This will protect the corporation since the sale may only take place if it is approved.

When court approval is sought, the N-PCL requires that, upon filing the verified petition with the court, the Attorney General be given a minimum of 15 days' notice before a hearing on the application. N-PCL § 511. **However, the procedure preferred by the Charities Bureau and most courts is submission of a verified petition and proposed order, in draft form with tabs identifying any exhibits, to the Attorney General for review in advance of filing with the court.** This procedure enables the Attorney General to review the papers to ensure that all statutory requirements are met, all necessary documents are included as exhibits, and any concerns of the Attorney General are resolved *before* submission to the court. A sample petition to the court is attached as Appendix B, a checklist of documents needed to request approval of a transaction is attached as Appendix A, and a sample order is attached as Appendix D.

In the case of an application to the court on notice to the Attorney General, if the Attorney General has no objection to the transaction, the Attorney General's Office will provide the petitioner with a "No Objection" endorsement. Such endorsement, typically provided in a letter to the petitioner or stamped on the proposed order approving the transaction, will waive statutory service of the petition since the papers will have already been submitted to and reviewed by the Office of the Attorney General. The signed petition, which must be exactly the same as the final draft petition and include exactly the same exhibits reviewed by the Attorney General, may then be submitted to the court. However, if a hearing or other proceeding is subsequently scheduled, the petitioner must give notice of such proceeding to the Attorney General. In addition, a copy of the order, when signed by the judge, must be submitted to the Attorney General.

If the Attorney General does not approve a petition, if the Attorney General concludes that court review of the petition is appropriate, or if the corporation chooses to do so, the corporation may apply to the Supreme Court for an order approving the transaction, on notice to the Attorney General, in the judicial district where the corporation's principal office is located.

Circumstances in which the Attorney General may determine that court approval, on notice to the Attorney General, rather than administrative approval of the Attorney General is appropriate include:

- The corporation is insolvent and must proceed on notice to creditors pursuant to N-PCL § 511(c).
- The Attorney General has received complaints or objections from members, creditors of the corporation or other interested persons who are entitled to notice pursuant to N-PCL § 511(b).
- The Attorney General has objections to the transaction that have not been resolved after discussion.

- In addition, there may be circumstances when the Attorney General has no objection to a transaction but determines that review by the court is appropriate, including transactions that are unusually complex or will have an impact on the public.

## **STATUTORY STANDARD**

Under the N-PCL's two-prong test, the court and/or the Attorney General must be satisfied that (1) that the consideration and the terms of the transaction are fair and reasonable to the corporation and (2) that the purposes of the corporation or the interests of its members will be promoted by the transaction. N-PCL §§ 511(d) and 511-a(c). These statutory standards and other statutory requirements are discussed more fully below.

## **THE CORPORATION'S PREPARATION FOR THE TRANSACTION**

### Approval of the Transaction by the Board

The board of directors or trustees must approve the transaction, and, if there are members entitled to vote (see *Approval of the Transaction by Members* below,) the board must adopt a resolution recommending the transaction. A vote of at least two-thirds of the corporation's entire board is required unless the board has 21 or more directors, in which case a vote of a majority of the entire board is sufficient. A corporation's certificate of incorporation or by-laws may provide for greater quorum or voting requirements.

The resolution must specify the terms and conditions of the proposed transaction, including the anticipated consideration to be received by the corporation, the eventual use of the proceeds of the transaction by the corporation, and a statement as to whether or not dissolution of the corporation is contemplated. N-PCL §§ 510(a)(1) and (2).

If the transaction involves a sale or transfer to a "related party,"<sup>3</sup> the corporation must follow the procedures set forth in the N-PCL § 715, including ensuring that the transaction is in the best interest of, and fair and reasonable to, the corporation and that any officer, director or key employee who has an interest in the transaction discloses the facts of that interest.

Where an officer, director, or key employee has such an interest, the officer, director or key employee must not participate in deliberations or votes of the Board in

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<sup>3</sup> "Related party" means (i) any director, officer or key person of the corporation or any affiliate of the corporation; (ii) any relative of any director, officer or key person of the corporation or any affiliate of the corporation; or (iii) any entity in which any individual described in clauses (i) and (ii) of this subparagraph has a thirty-five percent or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent. N-PCL § 102 (23).

considering or approving the action. In addition, in certain circumstances, the Board must explicitly consider reasonable alternatives to the transaction. The abstention of the officer, director, or key employee, and the consideration of reasonable alternatives to the transaction must be documented in the minutes of the Board. Corporations planning a transaction should review and assess their compliance with the requirements of the N-PCL before entering into the transaction. N-PCL § 715.

#### Approval of the Transaction by Members

If a corporation has members with voting rights, the membership must approve the transaction. First, the board must adopt a resolution recommending the transaction. The resolution must describe the parties to and the terms and conditions of the proposed transaction, including the consideration to be received by the corporation, an explanation as to how the proceeds will be used and a statement of whether or not dissolution of the corporation is contemplated. The board resolution must then be submitted to a vote at an annual or special meeting of members entitled to vote on it. N-PCL § 510(a)(1).

Each member and each holder of subvention certificates or bonds of the corporation, whether or not entitled to vote, is entitled to notice of the meeting. The members may approve the proposed transaction according to the terms of the board resolution, or authorize the board to modify the terms and conditions of the proposed transaction, by a two-thirds vote of the members present at the meeting, if the number of affirmative votes is at least equal to the quorum. N-PCL §§ 510(a)(1) and 613.

The quorum for a membership meeting is a majority of the members, unless the corporation's certificate of incorporation or by-laws provides for a greater or lesser quorum requirement. If the certificate of incorporation or by-laws provide for a lesser quorum, the quorum may not be less than the number entitled to cast one hundred votes or one-tenth of the total number of votes entitled to be cast, whichever is less. N-PCL § 608(a) and (b) and 615.

Voting by proxy is permitted for members of not-for-profit corporations, if the by-laws or certificate of incorporation permits proxy voting. N-PCL § 609.

### **PREPARING TO PETITION FOR APPROVAL OF A TRANSACTION**

#### Fair and Reasonable Consideration: Appraisals

In preparing to petition for approval of a transaction, the corporation must determine that the proposed consideration is fair and reasonable. To do so, the corporation must secure an independent appraisal of the property that is the subject of the transaction. Although the statute does not explicitly require an appraisal, court decisions have established that fair market value can best be determined by means of an appraisal, and the court and the Attorney General will generally reject the petition if it is not supported by an appraisal. A licensed appraiser who is completely independent of both buyer and seller must do the appraisal. A real estate agent or broker involved in the sale

of the property may not do the appraisal. A real estate agent or broker “fair market assessment” of a property is NOT the same as an appraisal.

If the asset is real property, the appraisal, which should be done no more than 12 months before the date of the contract, should be based on at least three comparable sales, unless a different valuation method is more appropriate. If the transaction is not an arm’s length transaction (i.e., if it involves a sale or transfer to a director, officer, employee or other person with some connection to the corporation), the Attorney General may require two appraisals. If the proposed transaction is for the development of real property, the appraisal should be based on full FAR (floor area ratio) and evaluate any unused development rights (sometimes called “air rights”).

#### Fair and Reasonable Consideration: Non-cash Consideration

Any non-cash consideration to be received by the corporation in the transaction needs confirmation of value. Such confirmation may be by submission of a third party valuation or, in some instances, acceptable evidence of costs associated with the building and delivery of in-kind consideration such as a new facility. Non-cash consideration may also include, but is not limited to, anticipated future payments based on a partnership or joint venture interest. The value of any future payments, including ground lease payments, should be analyzed showing the net present value using an appropriate discount rate. Please note that anticipated future payments resulting from a joint venture or partnership arrangement are considered speculative and should not form the basis of a seller’s fair and reasonable consideration analysis.

#### Fair and Reasonable Consideration: Security

If the corporation is entering into a development transaction in which the purchaser or a third party plans to build and deliver real property back to the seller, adequate security and assurances need to be evidenced in the documentation. Such security and assurances can take the form of escrow arrangements, guaranties, letters of credit, performance bonds, construction timetables with default provisions and adequate remedies, as well as appropriate provision for conducting the corporation’s activities during construction.

#### Option Contracts

Option contracts require Attorney General or court approval at the time the option is exercised. The Charities Bureau discourages the use of option or other contingent contracts, especially if they may be exercised over a long term.

#### Use of Proceeds of a Transaction

The use of the proceeds must be consistent with the corporation’s purposes. Proceeds cannot be used for the personal benefit of a director, officer, employee, member or other interested party.

If the property being sold is a not-for-profit corporation's main premises and, as of the date of the sale, the corporation has not yet entered into a contract to purchase or lease new premises, the Attorney General will require, as a condition of approval, that the sale proceeds be placed in escrow to ensure that funds will be available to obtain new premises so that the corporation can continue to carry out its corporate purposes.

## **VERIFIED PETITION FOR ATTORNEY GENERAL OR COURT APPROVAL**

The N-PCL requires that charitable not-for-profit corporations seeking to sell, lease, exchange or otherwise dispose of all or substantially all of their assets must seek approval of the Attorney General or the Supreme Court. N-PCL § 510(a)(3). A request for approval of such a transaction must be in the form of a verified petition to the Attorney General or to the Court.

### **Verified Petition to the Attorney General or the Court**

A verified petition to the Attorney General or to the court must include the following information:

- The name of the corporation as it appears on its certificate of incorporation or an amendment. N-PCL § 511(a)(1). A copy of the certificate of incorporation and all amendments, and a certified copy of the corporation's by-laws must be attached as exhibits.
- The address of the corporation's principal location.
- The section of the law under which the corporation was incorporated. N-PCL § 511(a)(1).
- The names of the corporation's directors and principal officers, and their home addresses. N-PCL § 511(a)(2).
- A description of the corporation's activities. N-PCL § 511(a)(3).
- A description of the property that is the subject of the transaction. N-PCL § 511(a)(4). For sales, a copy of the deed must be attached as an exhibit. Include a statement as to whether the deed contains restrictions.
- A copy of the contract or lease must be attached as an exhibit. If the contract has been assigned or will be assigned prior to closing, the assignment agreement must also be attached as an exhibit.
- A statement of the fair value of the property. N-PCL § 511(a)(4). A copy of the appraisal must be attached as an exhibit.

- A statement of the amount of the corporation's debts and liabilities and how they are secured. N-PCL § 511(a)(4). In addition, a copy of the corporation's most recent annual financial report or audited financial statements must be attached as an exhibit. If the corporation does not have annual financial reports, it should prepare a current schedule, certified by its Treasurer, of all assets, liabilities, income and expenses of the corporation and attach it as an exhibit. In certain circumstances, the Attorney General may decide that financial statements certified by an independent accountant are required. If the Petition is brought before the end of the fiscal year, then a financial report to date should be included.
- The consideration to be received by the corporation. N-PCL § 511(a)(5). If the consideration is less than the appraised value of the property, include a documented explanation.
- A description of the proposed use of the consideration. N-PCL § 511(a)(5). If the corporation is purchasing or leasing new premises, a copy of the contract or lease must be attached as an exhibit. Documentation to support the payment of debts, expenses or other use of proceeds must be attached as an exhibit (evidence of debt, invoices and a closing statement.)
- A statement as to whether dissolution of the corporation is contemplated. N-PCL § 511(a)(5).
- A statement that the consideration and the terms of the transaction are fair and reasonable to the corporation and that the purposes of the corporation, or the interests of its members, will be promoted by the transaction, and a statement of the reasons for that determination. N-PCL § 511(a)(6).
- A statement that the transaction was recommended or authorized by a vote of the directors in accordance with law, at a meeting duly called and held. N-PCL § 511(a)(7). The statement must also include the total number of directors, the number of the directors present at the meeting, the vote pro and con, and what constitutes a quorum. A copy of the board resolution, certified by the secretary, must be attached as an exhibit. If any board members have voted against the transaction, provide a brief explanation of the basis for such votes.
- If consent of members of the corporation is required by law, a statement that such consent was given, in accordance with law, at a meeting of the members duly called and held. N-PCL § 511(a)(8). The total number of members, the number of members present at the meeting, the vote pro and con, and the number that constitutes a quorum must be included. A copy of the membership resolution, certified by the secretary, must be attached as an exhibit. If any members have voted against the transaction, provide a brief explanation of the basis for such votes.

- A statement of any unusual or extraordinary circumstances of the transaction that will assist in the Attorney General's and/or court's review.
- A statement that the transaction is arms-length and none of the directors, officers, key employees or members of the corporation or their relatives will receive a direct or indirect financial benefit as a result of the transaction or commitments for distribution of proceeds. If any exceptions to the prior statement are necessary, include a statement of how the related party arrangement was approved by the corporation, including but not limited to, compliance with N-PCL § 715, and exhibits evidencing such approval.
- A statement as to whether or not an application to the Attorney General or the court for similar approval was made previously, and, if so, the determination made concerning the application.
- If the application for approval is made to the Attorney General, a statement that the corporation is not insolvent and will not become insolvent as a result of the transaction. N-PCL § 511-a(b).
- If the application for approval is made to the Attorney General, a statement as to whether any persons or entities have raised, or have a reasonable basis to raise, objections to the transaction, including a statement setting forth the names and addresses of such persons, the nature of their interest, and a description of their objections. N-PCL § 511-a(b).
- A statement of the relief requested (approval to sell real property, approval of lease, etc.). N-PCL § 511(a)(9).

## **Venue**

If the application for approval of the transaction is made to the court, the verified petition must be submitted to the Supreme Court of the judicial district or County Court of the county where the corporation has its office or principal place of carrying out the purposes for which it was formed, even if the property to be sold is located elsewhere. N-PCL §§ 510(a)(3) and 511(a).

If the application for approval of the transaction is to the Attorney General, the verified petition must be submitted to the office of the Attorney General's Charities Bureau in New York City or Albany or to the appropriate Regional Office of the Attorney General that handles such applications in the county where the corporation's principal address is located. A list of the offices of the Attorney General, the New York counties they serve and their contact information is in Appendix F.

## **Notice to Interested Persons**

The court in its discretion may direct that notice of the application be given to any interested person, such as a member, officer or creditor of the corporation. N-PCL § 511(b). The notice must specify the time and place, fixed by the court, for a hearing upon the application. Any person interested, whether or not formally notified, may appear at the hearing and show cause why the application should not be granted.

In certain circumstances, the Attorney General may ask the court to give notice to interested parties (including tenants or other occupants of the premises) and/or hold an evidentiary hearing. For example, if there is a membership dispute, a dispute as to who constitutes a duly authorized board or a question about the adequacy of the consideration, the Attorney General may ask the court to hold an evidentiary hearing to resolve the dispute.

## **Notice to Creditors**

If the corporation is insolvent or if its assets are insufficient to liquidate its debts and liabilities in full, all creditors of the corporation must be served with a notice of the time and place of the hearing. N-PCL 511(c). In such circumstances, notice to creditors is required by statute, and the petition must be approved by the court on notice to the Attorney General.

## **REQUIREMENTS FOR THE COURT ORDER OR ATTORNEY GENERAL APPROVAL**

If the petition requests court approval, a copy of the proposed order should be submitted to the Attorney General with the verified petition. The order should set forth the terms of the transaction and the consideration. For sales, the sale price, the name of the purchaser and the address of the property must be included. For leases, the amount of rent, the term of the lease, the name of the lessee and the address of the property must be included.

The order must also set forth how the corporation will use the proceeds to be received by the corporation. N-PCL § 511(d). If all or part of the proceeds is to be placed in escrow, this must be stated in the order. Funds placed in escrow may only be released by further order of the court on notice to the Attorney General.

*In addition, the Attorney General requires that the order contain the following:* a statement that a copy of the signed court order shall be served on the Attorney General, and that the Attorney General shall receive written notice that the transaction has been completed (i.e., upon closing), if the transaction has been abandoned, or if it is still pending 90 days after court approval.

If the verified petition requests approval of the Attorney General, a copy of the proposed Attorney General Approval should be submitted to the Attorney General with

the petition. The Attorney General Approval should include all of the information described above that is required to be included in a proposed order.

## **REGISTRATION WITH THE ATTORNEY GENERAL'S CHARITIES BUREAU**

If the corporation is required to register with the Attorney General pursuant to Executive Law Article 7-A or Estates, Powers and Trusts Law § 8-1.4, the Attorney General will check to ensure that the corporation is registered and that its annual financial reports are up to date before completing the review of the transaction. If the corporation is not registered, or if its reports are delinquent, it will have to register and file all required annual financial reports before the Attorney General's review can be completed. If the purchaser is required to register, its registration and reports must also be current before the Attorney General's review can be completed. Note that certain corporations, such as religious corporations, are exempt from registration.

**NOTE** – Effective November 1, 2018, registration with the Charities Bureau must be done online. The instructions and the portal for registration are posted on the Charities Bureau's website, [www.charitiesnys.com](http://www.charitiesnys.com).

## **GOVERNMENT AGENCY APPROVALS**

If other government agency approvals are required for the proposed transaction (i.e., NYS Department of Health, NYS Public Health and Health Planning Council, NYS Education Department, US Department of Housing and Urban Development, etc.), the Attorney General will require that such approvals be obtained before the Attorney General review is completed. A copy of each government agency approval should be attached as an exhibit to the petition.

## **CONCLUSION**

If you have any questions about the information contained in this booklet or about the procedures for obtaining Attorney General review and Court approval of a transaction, you may contact the Attorney General's Charities Bureau in New York City or Albany or any of the Attorney General's regional offices for assistance. A list of regional offices and their contact information is included in Appendix F.

## **Appendix A - Checklist for Petitions for Approval of Property Transactions**

### **Verified Petition to the Attorney General or the Court**

- \_\_\_ Petition
- \_\_\_ Verification of Petition

### **Attachments to Verified Petition**

- \_\_\_ Copy of the corporation's Certificate of Incorporation and all amendments
- \_\_\_ Copy of the corporation's by-laws or constitution and all amendments
- \_\_\_ Copy of the deed to any real property that is the subject of the transaction
- \_\_\_ Copy of the contract, lease or other disposition
- \_\_\_ If the contract has been or will be assigned, a copy of the assignment agreement
- \_\_\_ If the corporation seeks to use the proceeds to purchase or lease new premises, a copy of the contract or lease
- \_\_\_ If the corporation intends to use any of the proceeds to pay existing commitments or debts, including closing costs, copies of the evidence of the commitments or debts (invoices, executed notes, etc.) and proposed closing statement.
- \_\_\_ Copy of the appraisal
- \_\_\_ Copy of the corporation's most recent financial statement and, if not reflected in the financial statement, a schedule of existing debts and liabilities (amount, owned to whom, if overdue, if secured).
- \_\_\_ Copy of the resolution of the board, certified by the corporation's secretary, authorizing or adopting or recommending the key terms of the proposed transaction and use of proceeds and stating the total number of directors present at the meeting, the number of votes for and against the resolution and the number of board members constituting a quorum.
- \_\_\_ A copy of the resolution of the members of the corporation, certified by the corporation's secretary, approving the key terms of the transaction and the use of the proceeds and stating the total number of members, the number of members present at the meeting, the number of votes for and against the resolution and the number of members constituting a quorum.

- \_\_\_ If approval of any government agencies is required, copies of such approvals
- **Approval of the Attorney General or Order of the Court**
- \_\_\_ If the Court's approval is sought, a proposed Order (see Appendix D)
- \_\_\_ If the Attorney General's approval is sought, a proposed Attorney General Approval (see Appendix E)

**Appendix B - Sample Petition for Court Approval of Sale of Assets**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

-----X

In the Matter of the Application of :  
(NAME OF CORPORATION)

VERIFIED PETITION

For Approval to (type of transaction) :  
pursuant to Sections 510 and 511 of the  
Not-for-Profit Corporation Law

Index No.

-----X

TO: THE SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

Petitioner, (name of corporation) by (name and title of officer) of the corporation for its  
Verified Petition herein respectfully alleges:

TEXT OF THE PETITION (See Appendix A)

WHEREFORE, petitioner requests that the Court approve the (type of transaction) by  
(Name of Corporation), a not-for-profit corporation, pursuant to the Not-for-Profit  
Corporation Law Sections 510 and 511.

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed  
this \_\_\_ day of (Month), 20\_\_\_ by

\_\_\_\_\_  
(Name of Officer and Title)

Name of Attorney  
Address of Attorney  
Telephone Number of Attorney  
Email Address of Attorney

\*\*Include the verification set forth on page 17.  
Verification



**Appendix C - Sample Petition for Attorney General Approval of Sale of Assets**

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

-----X

In the Matter of the Application of :  
(NAME OF CORPORATION) VERIFIED PETITION  
For Approval to (type of transaction) :  
Pursuant to Sections 510 and 511-a of the :  
Not-for-Profit Corporation Law :

-----X

TO: OFFICE OF THE ATTORNEY GENERAL  
\_\_\_\_\_  
(Street Address)  
\_\_\_\_\_  
(City/Town), New York \_\_\_\_\_  
(Zip Code)

Petitioner, (name of corporation) by (name and title of officer) of the corporation for its  
Verified Petition herein respectfully alleges:

TEXT OF THE PETITION (See Appendix A)

WHEREFORE, petitioner requests that the Attorney General approve the (type of  
transaction) by (Name of Corporation), a not-for-profit corporation, pursuant to the Not-  
for-Profit Corporation Law Sections 510 and 511-a.

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed  
this \_\_\_ day of (Month), 20\_\_\_ by

\_\_\_\_\_  
(Name of Officer and Title)

Name of Attorney  
Address of Attorney  
Telephone Number of Attorney  
Email Address of Attorney

\*\*Include the verification set forth on page 19.



**APPENDIX D - Sample Court Order Approving Sale of Assets**

At the Supreme Court of  
the State of New York,  
held in and for the  
the County of \_\_\_\_\_  
on the \_\_ day of (Month), 20\_\_.

P R E S E N T:

HON.

Justice.

-----X

In the Matter of the Application of :  
(NAME OF CORPORATION)

ORDER

For Approval to (type of transaction) :

Index No.

Pursuant to Sections 510 and 511 of the  
Not-for-Profit Corporation Law

-----X

ADD BODY OF ORDER WITH RECITATIONS

AND DECRETAL PARAGRAPHS REGARDING THE TERMS OF THE  
TRANSACTION AND THE USE OF PROCEEDS

E N T E R:

\_\_\_\_\_  
Justice of the Supreme Court

\_\_\_\_\_  
Date

**APPENDIX E - Sample Attorney General's Approval of Transactions**

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

-----X  
In the Matter of the Application of \_\_\_\_\_ :  
(NAME OF CORPORATION) ATTORNEY GENERAL  
for Approval to (type of transaction) : APPROVAL  
Pursuant to Sections 510 and 511-a of the  
Not-for-Profit Corporation Law :  
-----X

1. By Petition verified on  (Date) ,  (Name of Corporation)  applied to the Attorney General pursuant to Sections 510 and 511-a of the Not-for-Profit Corporation Law for approval of an application to (TYPE OF TRANSACTION)

2. The assets that are the subject of the Petition are (DESCRIBE ASSETS)

3. The terms of the transaction and the consideration are as follows:

Note - For sales, include the sale price, the purchaser and the address of the property. For leases, include the amount of rent, the term of the lease, the lessee and the address of the property. For mortgages, include the amount of the loan, the interest rate, the length of the mortgage and the name of the lender.

4. The proceeds will be used for the following purposes:

Note - If all or part of the proceeds is to be placed in escrow, this should be set forth. Funds in escrow may only be released by further approval of the Attorney General.

5. Based on a review of the Petition and the exhibits thereto (and the additional documents and information requested by the Attorney General), and the verification of  (Name of Certifier)  that  (Name of the Corporation)  has complied with the provisions of the Not-for-Profit Corporation Law applicable to the sale or other disposition of all or substantially all of its assets, and neither the Petitioner or any third party having raised with the Attorney General any objections to the proposed transaction, the transaction is approved.

6. Petitioner shall provide written notice to the Attorney General that the transaction has been completed, if it has been abandoned, or if it is still pending 90 days after approval.

Attorney General of the State of New York

By: \_\_\_\_\_  
Assistant Attorney General

Date: \_\_\_\_\_

**Appendix F - Offices of the Attorney General and the counties covered by each:**

**ALBANY** - New York State Attorney General  
Charities Bureau  
The Capitol  
Albany, NY 12224-0341  
518-776-2160

Counties: Albany, Columbia, Fulton, Greene, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren and Washington (note: Sullivan and Ulster for trusts and estates matters only)

**BINGHAMTON**

New York State Attorney General  
Binghamton Regional Office  
44 Hawley Street, 17th Floor  
Binghamton, NY 13901-4433  
607-721-8771

Counties: Broome, Chemung, Chenango, Delaware, Otsego, Schuyler, Tioga and Tompkins

**BUFFALO**

New York State Attorney General  
Buffalo Regional Office  
Main Place Tower - Suite 300A  
Buffalo, NY 14202  
716-853-8400

Counties: Allegheny, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming

**NASSAU** (not for trusts & estates matters)

New York State Attorney General  
Nassau Regional Office  
200 Old Country Road, Suite 240  
Mineola, NY 11501-4241  
516-248-3302

Counties: Nassau (note: trusts and estates matters are handled by NYC)

**NEW YORK CITY**

New York State Attorney General  
Charities Bureau  
Transactions Section  
28 Liberty Street – 19<sup>th</sup> Floor  
New York, NY 10005  
212-416-8401

Counties: Bronx, Kings, New York, Queens and Richmond

(note: NYC also handles Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester – trusts and estates matters)

**PLATTSBURGH**

New York State Attorney General  
Plattsburgh Regional Office  
70 Clinton Street - Suite 700  
Plattsburgh, NY 12901-2818  
518-562-3288

Counties: Clinton, Essex and Franklin

**POUGHKEEPSIE** (not for trusts & estates matters)

New York State Attorney General  
Poughkeepsie Regional Office  
One Civic Center Plaza - Suite 401  
Poughkeepsie, NY 12601-3157  
845-485-3900

Counties: Dutchess, Orange, Sullivan and Ulster (note: Dutchess and Orange County trusts and estates matters are handled by NYC; Sullivan and Ulster County trusts and estates matters are handled by Albany)

**ROCHESTER**

New York State Attorney General  
Rochester Regional Office  
144 Exchange Boulevard  
Rochester, NY 14614-2176  
716-546-7430

Counties: Livingston, Monroe, Ontario, Seneca, Steuben, Wayne and Yates

**SUFFOLK** (not for trusts & estates matters)

New York State Attorney General  
Suffolk Regional Office  
300 Motor Parkway  
Hauppauge, NY 11788-5127  
631-231-2424

Counties: Suffolk (trusts & estates matters - NYC)

**SYRACUSE**

New York State Attorney General  
Syracuse Regional Office  
615 Erie Blvd. West, Suite 102  
Syracuse, NY 13204  
315-448-4800

Counties: Cayuga, Cortland, Madison, Onondaga and Oswego

**UTICA**

New York State Attorney General  
Utica Regional Office  
207 Genesee Street, Room 508  
Utica, NY 13501-2812  
315-793-2225

Counties: Herkimer and Oneida

**WATERTOWN**

New York State Attorney General  
Watertown Regional Office  
Dulles State Office Building  
317 Washington Street  
Watertown, NY 13601-3744  
315-785-2444

Counties: Jefferson, Lewis and St. Lawrence

**WESTCHESTER** (not for trusts & estates matters)

New York State Attorney General  
Westchester Regional Office  
44 South Broadway  
White Plains, NY 10601  
914-422-8755

Counties: Putnam, Rockland and Westchester (note: trusts and estates matters are handled by NYC)



RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
THE NEW YORK BAR FOUNDATION  
PURSUANT TO THE NOT-FOR-PROFIT CORPORATION LAW  
OF THE STATE OF NEW YORK

1. The name of the Corporation is The New York Bar Foundation formerly Foundation of the New York State Bar Association, Inc. (hereinafter referred to as the "Corporation").

2. The date on which the Certificate of Incorporation was filed by the Department of State of New York was June 28, 1950.

3. The Certificate of Incorporation as heretofore amended is restated without further amendment to read in full as follows:

"1. The name of the Corporation is THE NEW YORK BAR FOUNDATION (hereinafter referred to as the "Corporation").

2. The purposes for which the Corporation is formed are:

(a) To take and hold by bequest, devise, gift, grant, purchase, lease, or otherwise, either absolutely or jointly with any other person or persons or corporation, for any of the purposes hereinafter set forth, any property, real, personal or mixed, or any undivided interest therein without limitation as to amount or value, to convey, sell or otherwise dispose of

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such property, and to invest, reinvest, and deal with the same in such manner as in the judgment of the directors will best promote the purpose of the Corporation, subject to such limitations, if any, as are or may be prescribed by statute, but without and free from restrictions applicable to trustees or trust funds.

(b) To apply its income and, if the Corporation so decides, all or any part of its principal for any or all of the following educational and charitable purposes: to advance legal research and education; to improve the administration of justice; to promote professional ethics and responsibility and service to the public; to cultivate the preservation of the history and traditions of the law, the courts and the legal profession; to encourage better public understanding of our legal heritage; to aid in making legal institutions more responsive to the public interest; and to sponsor studies, conferences, publications, and any and all other means of discourse, communication and exchange of ideas appropriate to the foregoing; PROVIDED, HOWEVER, that no part of the net income of the Corporation shall inure to the benefit of any private member or individual and that the Corporation shall not engage, nor shall any of its funds, property or income be used, in carrying on propaganda or otherwise attempting to influence legislation.

(c) The Corporation, in furtherance of its corporate purposes set forth above, shall have all the powers enumerated in Section 202 of the Not-For-Profit Corporation Law, subject to any limitations provided in the Not-For-Profit Corporation Law or any other

statute of the State of New York, and provided that nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Section 404(b), (c) or (e) to (P) of the Not-For-Profit Corporation Law of the State of New York.

3. The existence of the Corporation shall be perpetual.

4. In the event of any merger, consolidation, dissolution or the winding up of the affairs of this Corporation and after the payment of its just debts and liabilities, the remaining assets of this Corporation will be paid over, subject to the written approval of a Justice of the Supreme Court of the State of New York, to one or more organizations which shall then be exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provisions of any subsequent Federal tax laws).

5. The Corporation shall be a Type B Corporation under Section 201 of the Not-For-Profit Corporation Law of the State of New York.

6. The territory in which the operations of the Corporation will principally be conducted is the State of New York.

7. The office of the Corporation is to be located in the City and County of Albany.

8. The post office to which the Secretary of State will mail copy of any Notice required by law is:

The New York Bar Foundation  
One Elk Street  
Albany, New York 12207"

4. The foregoing Restated Certificate of Incorporation was authorized by vote of more than a majority of the Board of Directors at a meeting duly

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