



COMMITTEE ON BYLAWS

ROBERT T. SCHOFIELD, IV
Chair
Whiteman Osterman & Hanna LLP
One Commerce Plaza, 19th Floor
Albany, NY 12260
518-487-7616
rschofield@woh.com

October 27, 2022

To: Members of the House of Delegates

Re: AMENDED Report on Proposed Bylaws Amendments

INTRODUCTION

The stated purpose of the Committee on Bylaws is to examine and report on proposed amendments to the Bylaws of the Association and to observe the activities of the Association under the present Bylaws and, from time to time, report to the Executive Committee and the House of Delegates on such amendments as, in its opinion, will promote the efficiency of the Association.

This report proposes amendments to the Bylaws in three parts. First, as outlined in Part One, to implement the resolution of the Committee on Diversity, Equity, and Inclusion as adopted by the House of Delegates on June 18, 2022, directing the addition of a new Section 2 to Article II and amendments to Article V, Section 3(H) and Article VII, Section 1(F)(1). Second, as outlined in Part Two, to incorporate requests made by the Committee on Membership for amendments to Article III, Section 1(D)(1) and Article III, Section 6. Third, as outlined in Part Three, to correct an internal citation error at Article IV, Section 7.

PART ONE – DIVERSITY, EQUITY, AND INCLUSION AMENDMENTS
Addition of new Section 2 to Article II and proposed amendments to Article V, Section 3(H) and Article VII, Section 1(F)(1).

The Association Bylaws presently provide for the President to appoint twelve members “from a range of racial and ethnic minority groups identified by the National Association for Law Placement” to the House of Delegates each year (Article V, Section 3(H)). The Bylaws also provide that two members-at-large of the Executive Committee shall be selected to further ethnic and racial diversity (Article VII, Section 1(F)(1)). The provisions providing for these positions will expire and be removed from the Bylaws on May 31, 2025 (the “sunset clauses”), without further action by the Association.

At its June 18, 2022, meeting, the House of Delegates adopted a resolution from the Committee on Diversity, Equity, and Inclusion recommending that the sunset clauses be removed from Article V, Section 3(H) and Article VII, Section 1(F)(1), thereby permanently providing for the twelve diversity delegates and two diversity member-at-large positions. The Committee on

Diversity, Equity, and Inclusion’s report and resolution, as adopted by the House of Delegates, is attached as Exhibit “A” to the report.

The Committee on Bylaws was subsequently charged to develop Bylaws amendments to implement this House action. After considering the issues, we have recommended several changes to the Bylaws to express more fully the Association’s commitment to Diversity, Equity, and Inclusion.

First, our committee’s prior communications to the House in June 2022,¹ and the Special Committee on Association Structure and Operations in December 2019, noted that the Association’s Diversity Plan² and the history of the Association’s efforts to grow and sustain diversity within all aspects of its existence, have not been carried into the Bylaws. While the Association has adopted and repeatedly restated a strong policy in favor of diversity, that policy is not adequately reflected in bylaw text. Our committee feels that amending the Bylaws to do so would constitute an important demonstration of the Association’s focus on this critical goal.

An amendment to accomplish this is proposed in the form of a new Section B of Article II, to incorporate a written commitment to diversity in the Bylaws. This new language, proposed to be added to the Purposes Article, is drawn from the current and prior reports of the Committee on Diversity, Equity, and Inclusion and its predecessor, the Committee on Diversity and Inclusion. It adds a clear statement of commitment to diversity directly into one of the first articles a reader confronts when reviewing the Association’s Bylaws.

Second, in accordance with the resolution of the House passed at the June 2022 meeting, it is incumbent upon this committee to propose modifications to remove the sunset provisions of Article V, Section 3(H) and Article VII, Section 1(F)(1). While the goals of both amendments are consistent, the approach to each differs.

Article V, Section 3(H) includes (and has, for many years) a reference to “racial and ethnic minority groups” identified by the National Association for Law Placement in defining who is eligible to hold one of the twelve diversity seats. Since the Bylaws language first made reference to the NALP standard in 2004, the understanding and scope of the concept of diversity has evolved in public discourse. The current NALP definition, last amended in 2021, reads:

“There shall be no barriers to full participation in the Association on the basis of sex, actual or perceived gender, age, race, color, religion, creed, national or ethnic origin, disability, sexual orientation, gender identity and expression, genetic information, parental, marital, domestic partner, civil union, military, or veteran status. Diverse members, for purposes of this policy, shall include, but not be limited to, individuals who identify as Black, Indigenous, and People of Color (BIPOC); LGBTQ+; people with disabilities; neuro-diverse; and active military and veterans.” <https://www.nalp.org/diversitywithinnalp>

¹ Attached as Exhibit “B” to the report.

² Adopted by the House of Delegates on January 31, 2020. Attached as Exhibit “C” to the report.

The committee reviewed the presence of the NALP standard in the Association’s Bylaws. We found its continued use appropriate and concluded that incorporation of the most recent NALP language was consistent with the Association’s current Diversity Plan. We therefore initially recommended adoption of the current NALP definition, updated to reflect this current, broader view of diversity.

After further discussion with the Committee on Diversity, Equity, and Inclusion, caused by our receipt of comments from them in opposition to this aspect of our work, we concluded the use of the current standard was actually inconsistent with the intent of the bylaws language establishing these positions for members of “racial and ethnic minority groups.” Indeed, the broader language was a definition of “diversity,” and not a definition that reflected the Association’s long-standing policy of advancing membership in the House and on the Executive Committee by representatives of racial and ethnic minority groups. Both Committees found that the intent of the House would be better reflected by amending the provision to utilize NALP’s definition of “lawyers of color,” which includes Asian, Black or African American, Latinx, Native American or Alaska Native, Native Hawaiian or other Pacific Islander, and multiracial lawyers.

We believe this definition is consistent with our Association’s long-standing commitment to diversity and the original intent for the inclusion of the diversity seats in the Bylaws. We also recognize that the inclusion of the definition within the Bylaws, in the form of a footnote, serves to remind the reader of this important policy, consistent with the Association’s current Diversity Plan. The remaining portion of the amendment to this section is simply the deletion of the second sentence of the sub-section, which served to sunset the twelve diversity seats on May 31, 2025. By deleting that sentence, the provision creating the diversity seats becomes permanent.

Third, concerning the two diversity member-at-large positions, the committee takes a slightly different approach to its proposed amendment of Article VII, Section 1(F)(1) because the current language of that provision does not contain a definitional reference to the NALP Standard. In the absence of such a reference, our proposed revision is more limited. We merely suggest use of the now defined term Racial and Ethnic Minority Groups and the deletion of the final two sentences of the subsection, which served to sunset the two diversity member-at-large positions on May 31, 2025. By deleting these sentences, the provision creating the two diversity member-at-large positions becomes permanent.

The Bylaws Committee recognizes the evolving nature of the definitions used in the legal community’s on-going efforts to enhance Diversity, Equity, and Inclusion. As such, we recommend that those definitions be reviewed regularly in the future.

Based on the foregoing, the committee proposes the Bylaws amendments set forth below:

Article II:

II. PURPOSES

Section 1. The purposes of the Association are to cultivate the science of jurisprudence; to promote reform in the law; to facilitate the administration of

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

Section 2. The Association holds an unwavering and longstanding commitment to diversity within its membership and leadership ranks based upon its firm belief that diversity, equity, and inclusion must be fostered within the legal community and in society at large. The Association is made stronger and more capable of implementing positive change through the law when its membership reflects the diversity of the individuals and communities served by the legal profession. Accordingly, the Association will promote and advance the full and equal participation of diverse attorneys in the profession and the Association, including diversity based on gender, race, color, ethnic origin, national origin, religion, sexual orientation, gender identity and expression, age, and disability.

Article V, Section 3(H):

V. HOUSE OF DELEGATES

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

* * *

H. Twelve delegates to be appointed by the President then in office from the range of ~~racial and ethnic minority groups~~ Racial and Ethnic Minority Groups identified by the National Association for Law Placement.¹ At least two and no more than four of such delegates shall be appointed from each Judicial Department, and all appointments shall be subject to confirmation by the Executive Committee. ~~This subsection shall expire ten years from the date of amendment (January 31, 2014) and shall be removed from these Bylaws without further action of the Association. Notwithstanding such expiration, the final term authorized under this provision shall be for a full year, concluding May 31, 2025.~~

¹ Following NALP's definition of "lawyers of color," Racial and Ethnic Minority Groups include Asian, Black or African American, Latinx, Native American or Alaska Native, Native Hawaiian or other Pacific Islander, and multiracial lawyers. See, NALP 2021 Report on Diversity in U.S. Law Firms available at: <https://www.nalp.org/reportondiversity> (last accessed on October 27, 2022)

Article VII, Section 1(F)(1):

VII. EXECUTIVE COMMITTEE

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

* * *

F. 1. Eight members-at-large who shall be Active members of the Association. Not less than two of the members-at-large shall be selected from the First Judicial District. Two of the members-at-large shall be selected ~~to further ethnic and racial diversity~~ from Racial and Ethnic Minority Groups and may not be drawn from the same Judicial District. ~~Ten years from the date of amendment (January 31, 2014), the provision for the two members-at-large selected to further ethnic and racial diversity shall expire and be removed from these Bylaws without further action of the Association, and the number of these members-at-large on the Executive Committee shall revert to six. Notwithstanding such expiration, the final term authorized under this provision shall be for a full two-year term, concluding May 31, 2025.~~

PART TWO – MEMBERSHIP

Proposed amendments to Article III

At the request of the Committee on Membership, the Bylaws Committee reviewed several provisions of Article III of the Bylaws on Members and Affiliates. These efforts were driven by a memo, dated September 30, 2021, from the Committee on Membership to the chair and vice-chair of our committee, and an inquiry made regarding the membership termination process resulting from questions initially raised by the Committee on Professional Discipline. The Committee on Membership’s memo, articulating the rationale and scope of its request, is attached as “Exhibit D” to the report.

The Committee on Membership asked for our committee to address three topics within the membership articles of the Bylaws: (1) the transition of law student members into full paying members, (2) a further adjustment to the membership provisions for paralegals as non-attorney affiliate members, and (3) a clarification in the process for termination of membership for nonpayment of dues. Having studied the requests and the existing language closely, our committee has proposed language on the first and third items but declined to recommend any changes in connection with the second item.

With respect to the requested change relating to law student membership transitions, the Committee on Membership wrote:

“Law students typically graduate in December/May and take the Bar Exam in July/February. As law students prepare for the Bar Exam, they require continued membership with NYSBA to access certain member benefits such as Kaplan Bar Prep and Casebriefs, which is an open platform of law school case briefs designed for law students to use to assist with their case analysis and briefing. If NYSBA drops law students as members upon graduation from law school, the Association is dropping them when they need membership the most. It is important for the law students to have continued membership for at least 12 to 18 months post-graduation to allow them to study, pass the Bar Exam, and become admitted to the practice of law.” Memo to Bylaws Committee, September 30, 2021.

Our committee concurred with this rationale, but our examination of the existing Bylaws provision revealed that the Bylaws also contemplate other transitions that could benefit from the extension proposed by the Committee on Membership. Those include service in the armed forces. As such, our committee proposes a different approach to the amendment which addresses these other events, already contemplated by the Bylaws, in a similar manner.

The Membership Committee also proposed revisions to the bylaw provisions on non-attorney affiliates to loosen the definition of paralegals. Having extensively studied this issue in our September 2019 report, we viewed the Committee on Membership's proposed changes as inconsistent with our 2019 findings and recommendations, as well as the action of the House regarding paralegal membership in June 2019. As such, we have declined to recommend additional changes to these bylaw provisions.

Last, the Membership Committee asked us to review the Bylaws and consider new language relating to termination of membership upon the failure of a member to pay dues. The Committee observed:

“The membership renewal season runs from early October through March. Throughout this period, NYSBA assesses renewal results and anticipates the number of additional invoices needed to achieve membership goals for the year. Typically, NYSBA sends 6 print invoices and 6 email invoices to members as part of the renewal membership campaign. Members who have not renewed are dropped from the membership rolls on or around April 1st. Bylaws III.6.A. specifies drops to occur “within one month after receipt of the second dues notice” should dues not be paid during that time. In light of the timeline of the membership campaign season, and the practical consideration of what is “notice” in an era of electronic communications and solicitations, the membership provisions of the Bylaws should be amended to offer flexibility with membership drops given activity in the marketplace.” Memo to Bylaws Committee, September 30, 2021.

We concurred with the Committee on Membership's assessment of the issue with the current bylaw language and, as we studied the matter, concluded that there was an overall weakness in the provisions of the Bylaws relating to membership termination. Our work was also informed by questions raised by the Committee on Professional Discipline that, while not specifically referred to us, drew our attention to the fact that additional clarification of the subsections of Section 6 was needed.

The outcome of this more comprehensive review is a significant rewrite of many of the subsections in Article III, Section 6, which focuses on the various events upon which membership in the Association will be terminated, and how it can be restored.

In Section 6(A), we addressed the issue raised by the Committee on Membership by changing the termination event to one driven by a Notice from the Treasurer. It is no longer specifically a “second” notice, giving staff more flexibility in how they want to engage in dues collection activities before the Treasurer notifies the member that their membership is about to be terminated for non-payment. The new language now provides that membership terminates if

payment is not made within 30 days of the Treasurer's notice. An identical approach is incorporated into Section 6(B), which is the provision dealing with termination of membership for failing to pay an assessment.

Our committee's study of Section 6(C) led to the conclusion that it was addressing two different potential events and could benefit from edits treating those events separately. It was therefore split into subsections (C) and (D), the former dealing with removal of members by the House upon the recommendation of the Committee on Professional Discipline after a hearing held by that committee, and the latter dealing with termination of membership following disbarment or suspension by a disciplinary authority.³ In both places, we further recommended the addition of language to clarify how a membership ended under the provision could be restored, either by a vote of the House (in the case of removals under subsection (C)) or by the end of a suspension/readmission (in the case of a removal under subsection (D)).

Our last revision was to Section E and merely adds that a termination of membership caused by the member's resignation is effective when delivered to the Executive Director or Secretary. This was implied by the existing language, but not expressly stated anywhere.

Based on the foregoing, the committee proposes the Bylaws amendments set forth below:

Article III, Section 1(D)(1):

III. MEMBERS AND AFFILIATES

* * *

D. Law Student Members.

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

³ The Committee identified, but did not address, the circumstance of an attorney that is admitted in more than one jurisdiction, and, therefore, may be entitled to hold membership in another category under Article III even after their removal from Active Membership upon disciplinary action in New York. Under the Bylaws as written and proposed, an attorney suspended or disbarred in New York remains ineligible for Association membership until readmitted in New York.

in the Armed Forces of the United States or in any statutory substitute for such service, provided that the individual shall be eligible to continue as a Law Student Member if the individual again becomes a law student and meets all qualifications for becoming a Law Student Member; (c) such time as the individual becomes eligible for membership in the Association as an Active or Associate Member; or (d) such time as the law student ceases to be enrolled in good standing in an approved law school and does not continue to qualify as a Law Student member under (a) or (b) above. A Law Student member shall be exempt from dues while in service of the Armed Forces of the United States or in any statutory substitute for such service.

Article III, Section 6:

III. MEMBERS AND AFFILIATES

* * *

Section 6. Termination of Membership.

A. ~~If any member fails to pay yearly dues within one month after receipt of the second dues notice~~ the period designated by the Association for payment of dues, it shall be the duty of the Treasurer to send a ~~letter and~~ notice to the member stating that unless said dues are paid, ~~within one month thereafter~~ the member shall cease to be a member of the Association ~~and forfeit all rights in respect thereof.~~ If the dues are not paid by the member within 30 days of the date of the Treasurer's notice, the member's membership shall thereupon terminate.

B. ~~If any member fails to pay any assessment within one month after receipt of the second notice~~ the period designated by the Association for payment of such assessment, it shall be the duty of the Treasurer to send a ~~letter and~~ notice to the member stating that unless said assessment is paid ~~within one month thereafter,~~ the member shall cease to be a member of the Association ~~and shall forfeit all rights in respect thereof.~~ If the assessment is not paid by the member within 30 days of the date of the Treasurer's notice, the member's membership shall thereupon terminate.

C. The House of Delegates may suspend or expel any member for misconduct in the member's relations to the Association, or to the profession, upon the recommendation of the Committee on Professional Discipline after a hearing held by that committee upon reasonable notice to such member to appear and present a defense. Any member suspended or expelled from membership under the terms of this paragraph may be reinstated as a member only by vote of the House of Delegates.

D. Any member shall automatically be removed from membership in the event of a final court order of disbarment or suspension of the member from the practice of law in New York State. ~~Any member suspended or expelled from~~

~~membership under terms of this paragraph may be reinstated as a member by vote of the House of Delegates, without any adjustment of dues. Any member suspended or expelled from membership under the terms of this paragraph may not be reinstated to any class of membership until the end of such suspension or upon their readmission to the practice of law in New York.~~

DE. Any member may resign from membership in the Association by submitting a resignation in writing to the Executive Director or Secretary of the Association, without any adjustment of dues. The resignation shall be effective upon receipt by the Executive Director or Secretary.

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

PART THREE – ERRATA

Correction to Article IV, Section 7

An internal citation error was discovered by staff at Article IV, Section 7 in reference to the House of Delegates’ role in the election of officers and vice-presidents should be there a vacancy in those positions. Specifically, Article IV, Section 7 currently references Article V, Section 3(K), which reads “Each member of the House of Delegates must be a member of the New York State Bar Association in good standing.” A reading of the provision strongly suggests that the reference was intended to be to Article V, Section 3(L), which governs the filling of vacancies in the positions of elected delegates, the President-Elect, Vice-Presidents, Secretary, Treasurer, and the members-at-large of the Executive Committee.

To correct this internal citation error, a correction to Article IV, Section 7 of the Association’s Bylaws is proposed as follows:

Article IV, Section 7:

IV. OFFICERS

* * *

Section 7. Death, Disability or Resignation. In the event of the death, resignation or total disability of the President, the President-Elect shall automatically succeed to the office of President for the unexpired term and the term next following. In the event of the death, resignation or total disability of the President-Elect, or in the event the President-Elect succeeds to the presidency as provided in this section, the President shall serve as Acting Chair of the House of Delegates until the vacancy in the office of President-Elect shall be filled by election of the House of Delegates following nomination of a candidate by the Nominating Committee. In advance of making such nomination, the Nominating Committee shall give appropriate notice of the vacancy and of the House of Delegates meeting at which the election is to be

held. The Nominating Committee shall file its report of a nominee with the Secretary at least 30 days in advance of the House of Delegates meeting at which the election is to be held, and the report shall be open to inspection by any member of the Association. Any 50 members of the Association may also nominate candidates for President-Elect by filing a petition signed by such members with the Secretary not later than ten days before the meeting at which the election is to take place. Nominations not made by the Nominating Committee or the membership in the manner prescribed shall not be considered or voted upon. The determination of total disability of the President or President-Elect shall be made by the House of Delegates and its decision thereon shall be final. Except as provided in Article V, ~~Section 3(K)~~ Article V, Section 3(L), a vacancy in any other office shall be filled by appointment of the House of Delegates.

CONCLUSION

Our committee proposes the foregoing amendments to the Association to implement the changes previously requested by the House of Delegates and the Committee on Diversity, Equity, and Inclusion, and to address other matters identified by the Membership Committee and this committee. We commend them to you for your consideration and subscription at the November 5, 2022, meeting of the House of Delegates. If subscribed, the above amendments will be presented for discussion and adoption at the 2023 Annual Meeting of the Association.

Respectfully submitted,

COMMITTEE ON BYLAWS

Robert T. Schofield, IV, Chair

Anita L. Pelletier, Vice Chair

Eileen E. Buholtz

David A. Goldstein

LaMarr J. Jackson

Steven G. Leventhal

A. Thomas Levin*

Joshua Charles Nathan

David M. Schraever

Justin S. Teff

Dena J. Wurman

Oliver C. Young

Executive Committee liaison: Richard C. Lewis

Staff liaison: Thomas J. Richards

*A. Thomas Levin dissented from that portion of the report implementing removal of the sunset clauses from the diversity seat provisions.

Exhibit A - Resolution and Report of the Committee on
Diversity, Equity, and Inclusion - Adopted by the House
of Delegates on June 18, 2022



NEW YORK STATE BAR ASSOCIATION

One Elk Street, Albany, New York 12207 ☉ PH 518.463.3200 ☉ www.nysba.org

COMMITTEE ON DIVERSITY, EQUITY & INCLUSION

Mirna M. Santiago

Co-Chair, Committee on Diversity, Equity & Inclusion

Violet E. Samuels

Co-Chair, Committee on Diversity, Equity & Inclusion

May 19, 2022

T. Andrew Brown, Esq., President
New York State Bar Association
1 Elk Street
Albany, NY 12207

Dear President Brown and members of the Executive Committee:

Committee on Diversity, Equity and Inclusion

Bylaws Resolution and Report

Bylaws V. House of Delegates. Section 3. Composition. H. Twelve delegates to be appointed by the President then in office from a range of racial and ethnic minority groups identified by the National Association for Law Placement. At least two and no more than four of such delegates shall be appointed from each Judicial Department, and all appointments shall be subject to confirmation by the Executive Committee. This subsection shall expire ten years from the date of amendment (January 31, 2014) and shall be removed from these Bylaws without further action of the Association. Notwithstanding such expiration, the final term authorized under this provision shall be for a full year, concluding May 31, 2025.

Bylaws VII. Executive Committee. Section 1. Composition. F. 1. Eight members-at-large who shall be Active members of the Association. Not less than two of the members-at-large shall be selected from the First Judicial District. Two of the members-at-large shall be selected to further ethnic and racial diversity and may not be drawn from the same Judicial District. Ten years from the date of amendment (January 31, 2014), the provision for the two members-at-large selected to further ethnic and racial diversity shall expire and be removed from these Bylaws without further action of the Association, and the number of these members-at-large on the Executive Committee shall revert to six. Notwithstanding such expiration, the final term authorized under this provision shall be for a full two-year term, concluding May 31, 2025.

NOW THEREFORE, IT IS

RESOLVED, that the New York State Bar Association reaffirms its unwavering and longstanding commitment to increase racial and ethnic diversity within its leadership ranks based upon its firm belief that diversity, equity, and inclusion must be fostered within the legal community and in society at large.

FURTHER RESOLVED, that the mission of the New York State Bar Association's Committee on Diversity, Equity and Inclusion is to promote the full and equal participation of attorneys of color and other diverse attorneys in the Association and in all sectors and at every level of the legal profession.

FURTHER RESOLVED, that the Association is made stronger and more capable of implementing change through the law when its membership reflects the diversity of the individuals and communities served by the legal profession.

FURTHER RESOLVED, that the subject bylaws provisions institutes a deliberate and thoughtful process to identify and recruit diverse members whose perspectives help inform and strengthen the Association's decisions and policies.

FURTHER RESOLVED, that the increased participation of attorneys of color in leadership positions also helps foster a welcoming environment for and serves as an incentive to diverse lawyers considering membership within the Association.

FURTHER RESOLVED, that the subject bylaws provisions promote the objectives approved by the Association in its adoption of the 2020 Diversity Plan which commits the Association to require diversity as an emphasis in all leadership nomination processes, including diversity among the decision-makers on the Nominating Committee.

RESOLVED, that consistent with these stated principles and commitments, the Association hereby approves the continuation of the bylaws provisions, without any sunset clause, to ensure that at least 12 members of the Association will be appointed by the President from underrepresented racial and ethnic groups to serve in the House of Delegates and that two

members-at-large of the Executive Committee of the Association shall be selected to further ethnic and racial diversity.

The mission of the New York State Bar Association's Committee on Diversity, Equity and Inclusion is to promote the full and equal participation of attorneys of color and other diverse attorneys in the Association and in all sectors and at every level of the legal profession. This resolution presented is consistent with the New York State Bar Association's unwavering and longstanding commitment to increase diversity within its membership and leadership ranks. Specifically, as stated in this Association's [Diversity Plan](#) adopted by the House of Delegates in January 2020, the NYSBA aims to "promote and advance the full and equal participation of attorneys of color and other diverse attorneys (including diversity based on gender, race, color, ethnic origin, national origin, religion, sexual orientation, gender identity and expression, age, and disability) in NYSBA."

The Diversity Plan specifically commits this Association to promote diversity within its leadership positions and its leadership development processes. Our Association made the commitment to require diversity as an emphasis in all leadership nomination processes, including diversity among the decision-makers on the Nominating Committee. The Association also committed to following the Mansfield Rule to ensure that at least 30% of leadership roles be filled by women and people of color.

The Association is made stronger and more capable of implementing change through law when its membership reflects the diversity of the individuals and communities served by the legal profession. The subject bylaws provisions have enabled the Association to successfully create pathways to increase the number of members from underrepresented racial and ethnic groups serving in leadership positions, which is consistent with this Association's firm belief that diversity, equity, and inclusion must be fostered within the legal community and in society at large.

The bylaws provisions promote a deliberate and thoughtful process to identify and recruit diverse members whose perspectives help inform and strengthen the Association's decisions and policies. Permanently ensuring the increased participation of attorneys of color in leadership positions also helps foster a welcoming environment for and serves as an incentive to diverse lawyers considering membership within the Association.

The New York State Bar Association's commitment and hard work in the area of increasing diversity within its leadership ranks has strengthened our Association's decision-making processes and is responsive to the needs of our membership and the clients we serve. We have miles to go to truly embody the diversity principles that the Association stands for and to honor our commitment to ensure an equitable legal system. The continuation and permanency of these bylaws provisions is a necessary step to meet these objectives and to promote the future viability of our Association.

Respectfully Submitted,

Mirna M. Santiago & Violet E. Samuels

Mirna M. Santiago and Violet E. Samuels
Co-Chairs, Committee on Diversity, Equity,
and Inclusion

On behalf of the Committee

cc: Lillian M. Moy, Committee on Diversity, Equity and Inclusion
Hon. Helena Heath, Committee on Diversity, Equity and Inclusion
Duane G. Frankson, Committee on Diversity, Equity and Inclusion
Richard J. Washington, Committee on Diversity, Equity and Inclusion
Randy Bernfeld, Committee on Diversity, Equity and Inclusion
Peter John Herne, Committee on Diversity, Equity and Inclusion
Ernesto Guerrero, NYSBA Staff Liaison

Exhibit B - Committee on Bylaws - Comments on Resolution Proposed by the
Committee on Diversity, Equity, and Inclusion - June 14, 2022



COMMITTEE ON BYLAWS

ROBERT T. SCHOFIELD, IV

Chair
Whiteman Osterman & Hanna LLP
One Commerce Plaza, 19th Floor
Albany, NY 12260
518/487-7616
FAX 518/487-7777
rschofield@woh.com

June 14, 2022

Richard Lewis, Esq., Chair
House of Delegates
Hinman, Howard & Kattell, LLP
80 Exchange Street, PO Box 5250
Binghamton, New York 13902-5250

*Re: Comments on Resolution Proposed by the Committee on
Diversity, Equity, and Inclusion*

Dear Dick:

On behalf of the Committee on Bylaws, I commend the efforts of the Committee on Diversity, Equity, and Inclusion in preparing a comprehensive report on this issue of paramount importance to the Association.

In reviewing the proposed resolution of being recommended to the House, our committee wishes to confirm the process that will be followed should the Resolution proposed by the Committee on Diversity, Equity and Inclusion be adopted. In the ordinary course, if the House of Delegates approves the final resolved paragraph of the resolution as presented by the Committee, our committee would undertake efforts to prepare the language of a proposed bylaws amendment to be presented to the House for subscription at its November meeting. Should that amendment be subscribed by a majority of the members of the House, the proposed amendment would be presented to the Membership of the Association at the Annual Meeting in January. We offer this summary to confirm that: (1) action on the resolution before the House in June does not, in and of itself, constitute an amendment of the bylaws, and (2) our committee may suggest other and/or additional language in consideration of this effort as part of its process.

For example, our committee previously shared its view, with the Special Committee on Association Structure and Operations, that a review of the Association's Diversity Plan and the history of the Association's efforts to grow and sustain diversity within all aspects of its existence shows that, while the Association has adopted and later restated a strong policy in favor of diversity, that policy is not adequately reflected in the bylaws. We feel that amending the bylaws to do so is an important recognition of the Association's focus on this critical goal. An amendment

Letter to R. Lewis

Re: Comments from Bylaws Committee

June 14, 2022 – Page 2

to accomplish this would be relatively simple¹ and could be included as part of or in tandem with any revisions to the bylaws that the House recommends.

In conclusion, our committee stands ready to perform its role to study and propose amendments to the Bylaws should the proposed Resolution of the Committee on Diversity, Equity and Inclusion be adopted by the House. Our committee's work would then be presented to the House for the November meeting.

Very truly yours,

Robert Schofield

Robert T. Schofield
Chair

cc: Committee on Diversity, Equity, and Inclusion

¹ Although the Bylaws Committee has not yet fully studied the issue, the inclusion of a clearly stated commitment to diversity in Article II Purposes, perhaps as a second, standalone paragraph, would be one suggestion for a potential amendment.

Exhibit C - NYSBA Diversity Plan - Adopted by the House of Delegates on January 31, 2020

New York State Bar Association

Diversity Plan

Approved by the New York State Bar
Association House of Delegates on Jan 31, 2020

Commitment

The New York State Bar Association continues its commitment to enhancing diversity at every level of participation. The Association strives to reflect the diversity of our profession and our society within its membership, leadership, program involvement and outreach to the community at large.

History

The Association's House of Delegates adopted a diversity policy on November 8, 2003, which was amended by passage at the House of Delegates on January 31, 2020, to read:

The New York State Bar Association is committed to diversity in its membership, officers, staff, House of Delegates, Executive Committee, Sections and Committees and their respective leaders. Diversity is an inclusive concept, encompassing gender, race, color, ethnic origin, national origin, religion, sexual orientation, gender identity and expression, age and disability. We are a richer and more effective Association because of diversity, as it increases our Association's strengths, capabilities and adaptability. Through increased diversity, our organization can more effectively address societal and member needs with the varied perspectives experiences, knowledge, information and understanding inherent in a diverse relationship.

The Committee on Diversity and Leadership Development in 2005 conducted a seminal Section Diversity Survey. The survey was designed to evaluate the level of diversity in Section leadership, membership and activities, and to inform the Association of ongoing Section initiatives to enhance diversity. The Committee transposed the results of that survey into a Diversity Report Card, which the Executive Committee considered as an informational item at its June 23 and 24, 2005 meeting. Since that first survey and report in 2005, subsequent data-gathering efforts and resulting reports have been issued, with project oversight moved to the Committee on Diversity and Inclusion in 2011. With each report, more detailed data have allowed a more comprehensive analysis of how far the Association has come in raising the awareness of diversity issues within its own organization and the profession. After publication of the 2011 report, committee leadership agreed that that year's format would serve as a benchmark for subsequent reports, with only minimal references to earlier editions of the report as needed. This agreement was made to coincide with the start of the presidential Section Diversity Challenge in 2011 – 2012, followed by a second yearlong challenge in 2012 – 2013. We recognize the leadership of Presidents Vincent E. Doyle III and Seymour W. James Jr. in issuing the Diversity Challenges.

The summary below provides a brief history of the Diversity Report Card's development and its expanding scope – it initially covered only Sections but now includes NYSBA executive voluntary leadership, including governance and its Nominating Committee. The report continues to highlight the need for raising the level of diversity awareness within the profession and increase opportunities for attorneys to serve in leadership positions.

2005 (First Edition) Diversity data reported gender, ethnicity/race and disability status. Nearly half of all Sections appointed a diversity chair and/or formed a diversity committee and developed a diversity plan.

2007 (Second Edition) The report was circulated at the Section Leaders Conference to foster increased diversity awareness. It was also posted on the Association's Web site and the report narrative published in the *State Bar News*. The report recommended developing a strategic plan, with the aid of the Association's Office of Bar Services, to encourage collaboration between Sections and minority bar associations as a way to enhance Section diversity; and convening a joint conference of all Section diversity committees and/or leaders for the purpose of fostering collaboration among the Sections themselves.

2009 (Third Edition) Sexual orientation status was added to diversity data reporting. The report recommended collecting diversity data from Section publications editors, CLE program chairs and faculty, with plans to promote increased self-reporting from Section members. It also requested additional administrative staff support (in the form of an intern or law student).

2011 (Fourth Edition) Diversity data on House of Delegates and membership of NYSBA's Executive and Nomination Committee added. The report recommended the Association promote enhanced communications and relationship building with its members and Section leaders and governance leaders regarding the importance of accurate self-reporting for purposes of collecting diversity data.

2013 (Fifth Edition) Diversity data in NYSBA governance, broken down by Judicial District, added.

2015 (Sixth Edition) Age data of overall Association membership added.

2017 (Seventh Edition) The report spotlights eight Sections of the Association in order to highlight improvements and provide specific recommendations.

To date, some but not all, of the recommendations presented within the reports have been carried out. For example, expanding coverage of diversity data to governance groups and continued self-reporting of diversity status has taken place. However, significant resistance to diversity data collectibles continues. Fully one third of the Association's House of Delegates fails to provide their data; 54 % of all NYSBA members decline to answer all demographic questions. The survey is being updated to make it easier to answer all questions, but we need to encourage response and timely data analysis and visualization.

Purpose and Goals

Purpose

For the purposes of the Diversity Plan (the “Plan”), the term “diversity” generally represents both diversity and inclusion. Diversity often pertains to the numbers – ensuring sufficient numbers of targeted populations are represented. Inclusion addresses how well the diverse individuals are included in all aspects of the organization. Diversity is often associated with recruitment; inclusion plays a pivotal role in retention. As such, this Plan is designed to achieve not just diversity – the presence of lawyers and law students from all backgrounds – but inclusion as well – their full and equal participation in the Association.

Goals

The Plan will promote and advance the full and equal participation of attorneys of color and other diverse attorneys (including diversity based on gender, race, color, ethnic origin, national origin, religion, sexual orientation, gender identity and expression, age and disability) in the New York State Bar Association and in all sectors and at every level of the legal profession through research, education, fostering involvement and leadership development in NYSBA and other professional activities, and to promote knowledge of and respect for the profession in communities that historically have been excluded from the practice of law. The Committee shall also foster the development of, monitor progress of and report on diversity initiatives of the Association, as well as partner with the Sections to continue to pursue enhanced diversity and inclusion in the Association, including among the leadership of the Association.

The Diversity Plan sets forth numerous objectives and broad goals. In addition, certain implementation recommendations are set forth as specific actions the New York State Bar Association is urged to undertake in the immediate future.

- A. Require wide dissemination of the Diversity Plan within the New York State Bar Association, and public availability of the Diversity Plan, including:
 - 1. Membership-wide dissemination of the Diversity Plan after adoption, with a cover letter or email from the NYSBA President.
 - 2. Continuous availability of the Diversity Plan through pertinent pages on the NYSBA website.
 - 3. Distribution of the Diversity Plan, or emailing a link to the Diversity Plan, to all new NYSBA members.
 - 4. Reference to the Diversity Plan in member solicitation materials.
 - 5. Ensuring accessibility of the Diversity Plan to members with visual or other disabilities.

- B. Promote and track diversity within the NYSBA’s leadership, including:
 - 1. The Association’s Officers (President, President-Elect, etc.);
 - 2. Executive Committee;
 - 3. Standing Committees, Administrative Committees, Special Committees, Task Forces, Commissions, and other presidentially appointed positions;
 - 4. House of Delegates;
 - 5. Practice Sections, including top leaders, their executive committees and committee chairs;

6. Special emphasis on diversity among the Nominating Committee membership (see item “C” below).
- C. Promote and track diversity in the NYSBA’s leadership nominations and leadership development processes.
1. Require diversity as an emphasis in all leadership nominations processes, including diversity among the decision-makers on the Nominating Committee.
 2. Require diversity as an emphasis in the Presidential appointments process, including diversity among the appointments committee members (such diversity to be measured, at least in part, by consideration of data that indicates the diversity of Association membership).
 3. Urge Sections to emphasize diversity in leadership training and development programs.
 4. Build diversity-related sessions into the annual Section Leaders Conference and all leadership training efforts.
- D. Urge adoption by all entities within the NYSBA of entity-specific diversity plans that are consistent with the objectives of this Diversity Plan, or their review and appropriate modification of existing diversity plans.
1. Strongly encourage periodic review and updating of entity diversity plans.
 2. Recommend designation of an officer or other entity leader with responsibility for ensuring implementation of diversity plans.
 3. Advocate wide dissemination of entity diversity plans, as with the NYSBA Diversity Plan.
 4. Urge the compiling of uniform statistics and information on diversity participation by each entity and member. Association leadership shall encourage each leader and member to update their demographics here:
<https://members.nysba.org/MyNYSBA/Profile/Profile.aspx?ProfileCCO=6#/ProfileCCO>.
- E. Promote diversity in NYSBA membership. Marketing and membership solicitation materials should be welcoming to diverse populations, including showing adequate representation of diverse populations in such materials
1. The NYSBA should compile and disseminate uniform statistics and other information on lawyers and law students – both NYSBA members and non-members – for each of the major diversity categories and target non-NYSBA members for membership solicitations. The membership committee shall consider introductory joint memberships with diverse specialty associations.
 2. With assistance from the Association’s Office of Bar Services, NYSBA entities are urged to engage in active marketing, recruitment and outreach efforts to affinity bars and other professional organizations, legal communities, and law schools to promote diversity.
 3. NYSBA entities shall have liaison relationships with the diversity-focused entities of the Association (such as the Standing Committee on Diversity and Inclusion) and appoint persons who will be active liaisons.

- F. Promote diversity in CLE and other programming, both live and virtual.
1. Implement strategic actions to improve diversity among program chairs, speakers, moderators, and attendees.
 2. Ensure program content appeals to diverse communities, consistent with the sponsoring entities' subject matter specialties, if any.
 3. Urge NYSBA entities to explore partnering or co-sponsoring opportunities with affinity bars and other organizations that can contribute to diversity.
 4. Ensure program venues and materials are accessible to participants with disabilities.
 5. Urge NYSBA entities to use program locations and venues, as well as social media, to enhance opportunities for participation by diverse lawyers and law students (e.g., locations that may minimize cost barriers; venues that may increase diverse community participation, like law schools with a diverse student body, affinity bar association locations; and social networking sites that may increase marketing efforts to diverse communities).
- G. Promote diversity in NYSBA publications (hard copy and electronic).
1. Implement strategic actions to increase diversity in NYSBA members responsible for editorial policy and content of publications.
 2. Ensure content of publications appeals to diverse communities, consistent with the sponsoring entities' subject matter specialties, if any.
 3. Ensure content of publications is accessible to persons with disabilities.
- H. Promote diversity in NYSBA entities' "marquee" events (e.g., annual awards dinners, luncheons, receptions), including diversity of:
1. Speakers,
 2. Award recipients,
 3. Planning and award nominations committees.
 4. Report in Section and Committee success in diversity of speakers annually to the Executive Committee.
- I. Enhance the current tracking and reporting of progress in diversity efforts, including:
1. Enhanced and accurate reporting of NYSBA diversity members in leadership roles in the biennial Diversity Report Card, which will urge more robust participation and tracking by NYSBA entities; encourage greater promotion of the reporting process by NYSBA leadership and accountability for entities that require significant improvement in their diversity efforts.
 2. Ensure widespread dissemination of the biennial Diversity Report Card among NYSBA leadership and throughout NYSBA entities, providing accessible formats for persons with disabilities and through posting on the NYSBA website.
- J. Urge NYSBA entities to develop or enhance mentoring programs that target young lawyers and law students and are designed to advance diversity within the Association.

- K. Urge NYSBA entities to develop, encourage and participate in “pipeline” events and organizations, designed to introduce young and/or diverse students (other than law students) to the law and increase diversity within the profession.

- L. Promote NYSBA’s diversity accomplishments, including the following:
 - 1. Develop and prominently post on the NYSBA website information about successful diversity programs and activities of the Association and its entities.
 - 2. Invest in a regular presence in pertinent legal and diversity publications to showcase NYSBA diversity accomplishments.
 - 3. Urge NYSBA members and staff with an expertise in diversity areas to regularly write and speak on behalf of the NYSBA.

- M. Create a Diverse Speakers Bureau/Database, in conjunction with the standing Committee on Diversity and Inclusion.

- N. Follow the Mansfield Rule (see <https://www.diversitylab.com/pilot-projects/mansfield-rule/>) with respect to leadership positions in all NYSBA entities, e.g. consider at least 50% diversity candidates for all positions, with the goal of ultimately reaching 30% diversity in leadership across the board.

Recommendations

Implementation Recommendation 1: *That the Association designate a principal staff person to provide oversight of the implementation of this Diversity Plan. Each year, that person will develop and secure approval of specific annual implementation steps with a corresponding timeline, budget and assessment procedure.*

The Association should also consider a presidentially appointed member on its Executive Committee as a diversity liaison on behalf of the Committee.

The Association shall take action as discussed above to improve submission of all demographic information by 10% more members and 25% more Association leaders at every level (section, committee, HOD, Executive committee) by January 31, 2021.

Implementation Recommendation 2: *That the NYSBA review the composition of the House of Delegates and its Nominating Committee, including the number of positions reserved for women, minorities, lesbian, gay, bisexual and transgender individuals, and persons with disabilities, and the manner of selecting the individuals for those positions, to ensure that the purpose of this Diversity Plan is being served in the nominations process.*

Implementation Recommendation 3: *That the NYSBA consider creating an event, award or other form of recognition to honor on an annual basis the NYSBA entity that has shown outstanding leadership in diversity-related membership initiatives and other diversity efforts.*

Implementation Recommendation 4: *That the NYSBA present at least one Presidential Showcase CLE program focused on diversity at each Annual Meeting.*

Implementation Recommendation 5: *That the NYSBA prepare a Diversity Impact Statement as recommended in the 2010 ABA Presidential “Next Steps” Report (recommendation E.2. for Bar Associations) for every Executive Committee action item.*

Implementation Recommendation 6: *That the NYSBA coordinate a centralized and accessible data collection and reporting center for diversity information that can be readily used to assess diversity data with stated goals. See above re: our goals for improved data collection.*

Implementation Recommendation 7: *That NYSBA leadership and Sections Caucus leadership express to Sections the necessity of incepting Diversity Committees for all sections and appointing liaisons to the standing NYSBA Committee on Diversity and Inclusion.*

Implementation Recommendation 8: *That all NYSBA entities create and submit personalized diversity plans by January 31, 2021.*

Exhibit D - Letter from Committee on Membership to Committee on Bylaws -
September 30, 2021



FROM: The Membership Committee
TO: Robert T. Schofield, IV, Esq., Chair
Anita L. Pelletier, Esq., Vice Chair
CC: Kathy Baxter
RE: Membership Bylaws Updates
DATE: September 30, 2021

The Committee on Membership met on July 15, 2021, to review and discuss the membership provisions of the Bylaws. With a unanimous vote, the Committee identified certain provisions of the Bylaws which warrant review and amendment given current Association operating practices. The reviewed provisions and recommendations are as follows:

III. Members and Affiliates - Section 1.D. - Law Student Members (page 2)

Law students typically graduate in December/May and take the Bar Exam in July/February. As law students prepare for the Bar Exam, they require continued membership with NYSBA to access certain member benefits such as Kaplan Bar Prep and Casebriefs, which is an open platform of law school case briefs designed for law students to use to assist with their case analysis and briefing. If NYSBA drops law students as members upon graduation from law school, the Association is dropping them when they need membership the most. It is important for the law students to have continued membership for at least 12 to 18 months post-graduation to allow them to study, pass the Bar Exam, and become admitted to the practice of law. The Membership Committee proposes the following change in Bylaws text:

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

Section 2. A. 2. - Non-attorney Affiliates (page 3)

Beginning in 2022, NYSBA will recruit paralegal members. Amendment of the Bylaws is necessary to allow NYSBA to recruit paralegal members with ease and efficiency. Additionally, NYSBA will assess paralegal membership dues, which fall under the Affiliate dues category, to ensure we are pricing membership appropriately to increase NYSBA's membership numbers and overall dues revenue. The Membership Committee proposes the following amendment to better clarify the parameters of paralegal membership:



A. Any person:

1. *holding a law degree but not admitted to practice in any state, territory or possession of the United States or another country who is employed by a law school approved under the rules of the Court of Appeals or who is employed by a bar association, or*

2. *who is a legal assistant or paralegal, qualified by education, training or work experience, and who performs specifically delegated substantive legal work for which an attorney is responsible.*

May become a Non-attorney Affiliate of the Association by submitting any required application form and supporting documentation to the Executive Director. Upon payment of the applicable dues following such submission, the applicant shall immediately be entitled to all of the rights and subject to all of the responsibilities as if such person were a member, except those of voting, being an officer of the Association, being a member of the House of Delegates or Executive Committee, or being Chair of a Section or Committee. Non-attorney Affiliates are not entitled to hold themselves out as members and their status as Non-attorney Affiliate does not authorize them to practice law unless they otherwise have standing to do so.

Section 6. A. and B. - Termination of Membership (page 4)

The membership renewal season runs from early October through March. Throughout this period, NYSBA assesses renewal results and anticipates the number of additional invoices needed to achieve membership goals for the year. Typically, NYSBA sends 6 print invoices and 6 email invoices to members as part of the renewal membership campaign. Members who have not renewed are dropped from the membership rolls on or around April 1st. Bylaws III.6.A. specifies drops to occur “within one month after receipt of the second dues notice” should dues not be paid during that time. In light of the timeline of the membership campaign season, and the practical consideration of what is “notice” in an era of electronic communications and solicitations, the membership provisions of the Bylaws should be amended to offer flexibility with membership drops given activity in the marketplace. The Membership Committee proposes the following amendment in Bylaws text:

Section 6. Termination of Membership.

A. If any member fails to pay yearly dues by the end of the designated renewal period, they will receive notice that their membership has been terminated, and they will forfeit all rights in respect thereof.

B. If any member fails to pay any assessment within the designated renewal period, they will receive notice that their membership has been terminated, and they will forfeit all rights in respect thereof.

The Committee on Membership requests that the Committee on Bylaws review and amend the provisions of the Bylaws identified above to better reflect current Association operating practices.
