

**ENVIRONMENTAL & ENERGY LAW SECTION
EXECUTIVE COMMITTEE AGENDA
TUESDAY OCTOBER 18, 2022
3:00 p.m. - 4:30 p.m.
LIVE AT MARRIOTT COURTYARD, 11 Excelsior Avenue, Saratoga Springs, NY
Schuyler Room
Via Zoom: <https://nysba.zoom.us/j/5184875682>
Audio Only: Dial 1-888-475-4499 US Toll Free / Meeting ID 518 487 5682**

1. Welcome by the Chair James Rigano
2. Welcome NYSBA President Sherry Levin Wallach
3. Approval of Minutes from May 25, 2022 Executive Committee Meeting (page 3-7)
4. Budget Report (Julia O’Sullivan, Budget Director)
5. House of Delegates & Section Caucus Meeting Report - (Alfred Sargente) (pages 8-20)
6. Fall Meeting Update – (Yvonne Hennessey) (pages 21 - 25)
7. Annual Meeting Update – (Michael Hecker) (page 26)
8. Awards Committee
9. Diversity & Inclusion Fellowship and Committee Update (C. Leas/ S. Lobe/G. Robbins)(page 27-28)
10. Podcast (James Rigano)
11. DEC Rulemaking – Part 624, Part 375, Part 360, SEQRA
12. Climate Leadership Community Protection Act Status (K. Healey or V. Robbins)
13. CLE/Law Student Plans (Larry Schnapf)
14. Future programming (Y. Hennessey)
 - Energy Webinar
 - Legislative Forum 2023
 - Petroleum Seminar

- Brownfield Conference – December 7, 2022 Webinar (page 29-32)

14. 2022 Essay Contest (page 33-34)

15. PFAS Committee (J. Rigano)

16. Adirondack Park Agency: a 50 Year Review (Jan Kublick)

17. Nomination Committee (A. Kendall)

18. New Business

19. Adjourn

Environmental & Energy Law Section
EXECUTIVE COMMITTEE MEETING [Virtual]
MAY 25, 2022
NOON – 1:30 PM

In Attendance: Please see Attached Attendance List

Welcome by the Chair (L. Shaw)

- General welcome and overview.

Approval of February 9, 2022 Executive Committee Minutes

- Motion to approve by Jim Rigano, seconded by Amy Kendall. Approved with one abstention, Mindy Zoghlin, who was not present at the prior meeting.

Budget Report (Julia O’Sullivan, Budget Report)

- \$89,000.00 budget surplus, up from approximately \$62,000.00 at the same time during the prior year.
- NYCELLI grant was paid as budgeted.
- The Section continues to seek additional members, which will further assist in budgetary considerations moving forward.

Fall Meeting (J. Rigano)

- To be held on Sunday, September 18 – Monday, September 19, 2022. Three current locations under consideration: Mohonok; Mirbeau in Rhinebeck; and, Saratoga Casino.
- Executive Committee meetings would be held as of 3 pm on Sunday, with the substantive conference held on Monday morning through lunch, with afternoon activities.
- If we know of an issue around Labor Day, we would be able to shift to a remote conference, though there would be a significant financial loss under such a circumstance.

Diversity and Inclusion Fellowship and Committee Update (C. Leas)

- 2 Fellowships this year – students at Pace Law School and St. John’s Law School
- 2022 is the 30th Anniversary of the Fellowship. An article is in process for the Section publication.
- As a reminder, the Section has a Diversity and Inclusion policy for CLEs, which should be consulted during planning.

Newsletter/Social Media/Webpage (D. Gamils)

- Social media involvement has been successful, including during live events, which is particularly active.

- A new co-chair will be needed, along with additional committee members. All are welcome.

Awards Committee (N. Ward-Willis)

- Annual Meeting awards will be presented at either the Earth Day or the Legislative CLE.

DEC Rulemaking – Part 624, Part 375, Part 360, SEQRA new Disadvantaged Community Language (L. Shaw and Task Force Chairs)

- Part 624
 - M. Hecker provided a summary of the process with the Department and the Task Force, as well as the overarching nature of the comments and related background. The Task Force has held 2 meetings with the Department representatives, with one debrief still left to occur.
 - The Part 621 regulations are being revised on a parallel path.
- Part 375
 - L. Shaw continues outreach to J. Andaloro regarding the status of the Section's comments. The Department continues to review the comments and categorize them based on the substance. It appears the Department has not reviewed the Section comments yet. A call will be scheduled once the Department has completed its initial review.
 - It appears that by mid-June 2022 the Department is expecting to have completed an initial review of the comments.
- Part 360
 - M. Bogin is reviewing in conjunction with E. Kraminger and S. Russo. The revisions appear to have some major changes to the regulations, though there is no specific redline available.
 - A. Guida indicated she assisted the Department on the revised regulations.
 - L. Shaw conveyed that the committee should start consider the scope and nature of comments to be considered by the Section.
- SEQRA new Disadvantaged Community Language
 - L. Shaw raised that the Section is being asked to provide comment on this language. The NY Business Council has made a formal request regarding the development of more detailed language.
 - A. Storolow has agreed to coordinate a review, including with J. Almanzar on the Environmental Justice impacts.

Climate Leadership Community Protection Act Comment Memo (V. Robbins)

- V. Robbins provided feedback on the draft Scoping Plan that was circulated as of January 1, 2022. A large group of commenters was put together for review through the Section-based compilation.
- A 75-page comment document has been compiled. A final draft is expected to be available for Cabinet and Executive Committee review as of May 26, 2022. June 10, 2022 is the extended deadline for submission of all comments.

May 18, 2022 Legislative Forum (J. Parker)

- There was a bit of last minute replacements for this year's programming, unfortunately.
- The panel program had a commitment to diversity in active involvement.
- For future year's planning, it would be helpful to have more committee members, as well as involvement of the NYSBA lobbying arm to help solicit speakers.

Future Programming (Y. Hennessey)

- The Fall Meeting will involve energy topics.
- June 14, 2022 – a virtual presentation on Hot Topics on Environmental Insurance.
- July 2022 – A virtual presentation on West Virginia vs. EPA decision will be held.
- December 7, 2022 – the annual Brownfields and Superfund CLE. This is currently planned to be virtual.
- The next Legislative Forum will be in May 2023.

Nomination Committee (M. Hecker)

- A. Sargente has agreed to replace A. Kendall as the House of Delegates representative for the Section.
- M. Hecker to coordinate with A. Kendall on the Nominations Committee.

New Business

- T. Putsavage provided an update on the new Cannabis Section. He will chair an Environmental sub-committee.

Motion to Adjourn

- Motion to adjourn R. Nichols, seconded by K. Bernstein. Unanimously approved.

PARTICIPANTS BY ZOOM
MAY 25, 2022
EXECUTIVE COMMITTEE MEETING

Linda Shaw
James Rigano
Yvonne Hennessey
Howard Tollin
Amy Jasiewicz - NYSBA
Kevin Bernstein
Claudia Braymer
Michael Hecker
Katrina Kuh
Matthew Sinkman
Julia O'Sullivan
Telisport Putsavage
Amy Kendall
Rosemary Nichols
Adam Stolorow
Drew Gamils
Daniel Krainin
Aliza Cinamon
Maggie MacDonald
Gail Port
George Pond
Christine Leas
Kathy Bennett
Joseph Endres
Zackary Knaub
Carl Howard
Alita Guida
Alan Knauf
John Parker
Mackenzie Schooman
Chris Saporita
Karen Mintzer
Mindy Zoghlin
David Freeman
Julia Martin
Martin Baker
Jose Almanzar
Virginia Robbins
Michael Bogin

James Simpson
David Riesel
Cheryl Vollweiler

TO: James Rigano

FROM: Alfred Sargente

DATE: September 7, 2022

RE: Summary of NYSBA HOD Meeting at The Otesaga in Cooperstown, NY on 6/18/22

This will serve to summarize the NYSBA House of Delegates meeting I attended (virtually) on June 18, 2022:

1. Call to order, Pledge of Allegiance, and introduction of new members by M. Richard C. Lewis: Following the call to order and Pledge of Allegiance, President-Elect Dick Lewis recognized and welcomed new members
2. Approval of minutes of April 2, 2002 meeting: The minutes of the meeting were approved.
3. Installation and inauguration of Sherry Levin Wallach as President: The Hon. Cheryl E. Chambers administered the oath of office to Sherry Levin Wallach as the new president of NYSBA.
4. Report of the President – Ms. Sherry Levin Wallach: Ms. Wallach then offered her remarks. She stressed the importance of working “to do the public good.” She also noted the importance of “investing in and growing membership,” and the need to be “relevant and change to meet the challenges before us.” She promised to continue to work with the Chief judge to improve the justice system, which will demonstrate the value of membership and engage new members. She acknowledged T. Andrew Brown’s leadership through the challenges of Covid and for reckoning with racism. She introduced Dick Lewis as President-Elect, Secretary Taa Grays, and Treasurer Dominick Napolitano. Acknowledged the executive committee and thanked the Honorable Jenny Rivera and her family.

Ms. Wallach indicated that she would examine policies on guns and continue NYSBA’s mission to have a voice on this and other issues. **Of particular significance to the EELS section, Ms. Wallach mentioned supporting various bills including those regarding brownfields.** She acknowledged that there was more work to do on various issues and noted that NYSBA has launched five task forces: (1) modernization of criminal practice; (2) emerging digital financing currency (Bitcoin/NFTs); (3) mental health and trauma; (4) diversity, equity and inclusion of U.S. Territories; and (5) local public sector lawyering ethical issues.

Finally, Ms. Wallach noted that fewer young attorneys were joining NYSBA. She added, however, that the 13th annual trial academy at Syracuse University was one of the ways that NYSBA was working to get young attorneys engaged.

5. Videoconference Address by Hon. Jenny Rivera – Associate Judge, NYS Court of Appeals: Judge Rivera thanked Ms. Wallach for her commitment to diversity, inclusion and equity. She noted, however, that equal treatment may not be enough. She went on to discuss NYSBA’s task force work to end inequality of the Territories’ relationship with the U.S. She emphasized the need for diverse leadership and broad participation of communities. She encouraged support of independence of the judiciary. She noted that a judge’s views may evolve over time and the need to “depoliticize” the judiciary. She suggested that changes were necessary to move toward “justice for all.” Finally, she underscored the importance of the NYSBA’s voice in bringing about and ensuring change with regard to the Territories, and said that it was “time to move forward.”

6. Report of Treasurer – Mr. Dominick Napoletano: Mr. Napoletano reported that NYSBA does “have some problems” but that it was “not all that bad.” He stated that as of 4/30/22, revenue was down and expenses were up for the first two months of 2022. He noted that NYSBA’s operating surplus was down \$2.1 million and that membership dues collections were down. Net income from CLE was down \$254k; section revenue was down \$113k; dues were down \$82k; and expenses were up \$192k. He further reported that expenses through April 2022 were up from 2021 and that investment accounts lost \$4.5 million from December 2021 to April 2022. He summed up by characterizing the numbers as “challenging, but not “dire.”

7. Report of Task Force on Racism, Social Equity, and the Law by Taa Grays and Lilliam Moy: Ms. Grays and Ms. Moy noted that the report is not scheduled for a formal vote and that their presentation was for informational purposes only. They then provided an overview of the report; work completed to date; next steps; and encouraged a dialogue concerning members’ thoughts regarding the reports’ recommendations.

I. Overview of report:

Structural racism “is a system of laws, policies, and institutional practices that produce and perpetuate racial inequities and inequalities in the U.S.” The impact of structural racism can operate in discrete, interconnected and synergistic ways.

Housing insecurity can be compounded by limited economic opportunity, inadequate educational opportunities, and overrepresentation in the criminal justice system; which in turn can cause or exacerbate deleterious health consequences in communities of color.

The law has always had an integral role in addressing issues of race and inequity. To address those issues that remain, we must look to the law. This understanding has been the focus of the work of the Task Force. The report sets forth 22 recommendations for changes to existing laws or the enactment of new laws.

II. Work completed to date (since April presentation) and recommendations:

- a. Gathering and using data to root out bias in underwriting, education, health care, and criminal justice.
- b. Mandating education (bias training) for licensed professionals and facilities.
- c. Advocate for establishing a commission to minimize the wealth gap in the U.S. Explore remedies including restitution/reparations, and whether they will be

effective. Shift the wealth gap between the dominant race in the State and people of color.

- III. Next steps
 - a. Revising report – reviewing feedback from informational sessions, incorporating feedback and copyeditor review.
 - b. Socialization of report – circulate report to sections/committees by 8/22/22 and hold informational sessions in September/October of 2022.
 - c. Issue report on 11/4/22
- IV. Dialogue regarding thoughts about recommendations
 - a. Want feedback and observations
 - b. Assume positive intent in comments made and questions asked.
 - i. Mark Alcott – Report on racism is important, powerful and impactful. Thoroughly researched. Racism in government housing programs not well known. After emancipation, government paid reparations to slave owners. Substantive parts of report need further work. Focus report more closely on areas where we have expertise and weed out extraneous matters.
 - ii. Vincent Buzzard – Criminal justice section is very good. Abolishing mandatory sentences is “sweet spot” for where bar is. However, some of the issues recommended in the report (e.g., providing 2500 solar panels to NYC; congestive pricing; child care for towns) we don’t have expertise in. Getting involved in these areas would diminish our credibility with legislature and members. Apparent conflict with summary and report. Report says we support specific bills for reparations but does not say we support closing wealth gap. Proposed bills and references in footnotes should be appended/linked to report. Ms. Moy replied that they have always recommended a commission to minimize the wealth gap, and are trying to keep the report short.

Strategic Planning Committee Update:

To guide our activities for next 3-5 years

1. Creating our “North Star”
2. Flexing our Brand
3. Building a stronger more inclusive bar

Determine your strategic position; Prioritize your objectives; Develop a strategic plan; Execute and manage your plan; and Review and revise the plan.

Team is trying to answer the following questions:

Who are we? Who do we see ourselves being? What is the future of the NYSBA?

How do we position ourselves with other entities that we work with or sometimes compete with?

What would our key priorities be?

What does the lawyer of today need?

8. Report and recommendations of Task Force on Voting Rights and Democracy by Jerry Goldfeder:

Mr. Goldfeder presented an amended motion to ensure NY has a fair and efficient voting rights structure. Diverse and bipartisan group. Not advocating to change entire structure of Board of Elections. More strategic and realistic. Boards are structured to have two major parties. See need for improvement. Recommendations are: Professionalize hiring and training of people who work at board and ensure they're governed by ethics rules. Make access to information easier, up to date and intelligible. Appoint IG to monitor boards. Urge both Board and Legislature to implement it as they see fit.

Motion to approve: 84% aye. 12% nay.

Discussion:

Steve: 9 different entities have authority to oversee Board. Wants to delete IG recommendation.

Jerry: Need IG because there have been real issues regarding how ballots have/have not been counted. Purges of voters. Not much has been done by those with oversight. Hasn't really worked. IG will monitor these kinds of problems in a way DAs do not have time/resources to do.

9. Report and recommendations of Committee on Diversity, Equity, and Inclusion by Mirna Martinez Santiago:

Report recommends removing sunset provision in Bylaws. 12/300 seats are set aside in HOD. 2/30 seats are set aside on the Executive Committee. The sunset provision provides that these designated seats would "go away" in 10 years. President Brown noted that the sunset provision goes to the end of 2024. He noted that we have lost diversity on the EC and in the HOD, and that there was no indication that the need for set asides will go away. He wants to make the seats permanent and noted that, if they're no longer needed, they can then be removed.

Q&A:

Isn't this a technical issue that should be referred to the Bylaws committee? It is appropriate to bring this before HOD. While Bylaws committee can speak to technical aspects, DEI committee can speak to need for seats. The need is still there. This is not affirmative action or quotas.

Why can't we wait? Why are we designating seats only for people of color - what about other types of diversity? Absolutely, need to make tent bigger. Talking about expanding diversity. Not a zero sum game. Need to have new sunset provision to keep it at the forefront of NYSBA's mind so that it's discussed every 10 years. If sunset provision is removed, nominating committee still has to make sure seats are filled. In 2019, President Greenberg wanted a robust diversity plan. Mansfield Rule requires 30% of candidates to be diverse. Want to go beyond Mansfield Rule - 50% of candidates need to be diverse. Asks that seats remain set aside.

Discussion:

Michael Getnick – Doesn't see how By-Laws committee is an issue.

Sharon Gerston – Idea was to take a snapshot every 10 years to see how we're doing. Should be more than 2 people of color on EC. The question is what is the best way to do it. Problem is ensuring people of color get a regular seat. Still need it as a gauge. Urges consideration of new sunset.

Tom Levin – Nominating committee picks officers and at-large members each year. 14 members picked by districts. Seats were designated as diversity seats to ensure they would get at least 2 people of color. Problem is they never got enough candidates. Applicants of color applied for diversity seats but not at large seats. Opposition is based on making 2 seats on EC permanent because it would be an admission of defeat if compelled to do it. Suggests staying on the path and doing a better job.

Diana San (former diversity delegate - now working with NYC bar) - Important to have diversity seats.

Mark Berretti – Motion to amend in line with Tom Levin's memo. Admission of impossibility and pessimism to say it has to be made permanent – institutionalized quota. Highlights and brings to our attention this important issue.

Percentage of black lawyers remains the same despite increase in overall numbers of lawyers.

Diversity appointee of HOD. SS is not inappropriate commitment.

Michael Miller – In favor of amendment. Work needs to be done at the grass roots. Commitment is there and have delivered.

Andrew Brown – why not make seat permanent? Opposes amendment to keep sunset.

TICL delegate – opposes amendment.

Delegate from 3rd dept – diversity struggles

Winnie (delegate from 13th JD) - opposes amendment and support original motion.

Claire Gutenkunst – Supports original motion and against amendment.

Mirna – Opposes amendment. Seats should stay until no longer needed.

Original motion – approved

10. Report and recommendations of Committee on Standards of Attorney Conduct – Messrs. Kobak, Minkoff and Walker.

Rue 1.4 - Approved by 96%.

Rule 5.6 – Notice period must be “reasonable” and can't restrict lawyer's practice during notice period unless needed to protect firm or clients. **Approved by 98%.**

11. Report of The New York Bar Foundation by Judge Cheryl E. Chambers - VP of NY Bar Foundation.

12. Administrative Items by Dick Lewis:

- A) Confirmation of Tenth District representatives to Nominating Committee- **carried.**
- B) Ratification of appointment to Audit Committee – **carried.**
- C) Ratification of appointments to Finance Committee – **carried.**

13. New business: Should be statutory provision to provide for succession of governor.

14. **Next meeting will take place on 11/5/22 at Bar Center in Albany.**

HOD NOTES – April 2, 2022 – via Zoom

Napoletano – Treasurer’s report

A general caveat: The ability to provide historic year over year reporting, and forecasts, is compromised by the events of the last couple of years and the resulting significant changes. Similarly, need to recognize that estimates of likely end of year fiscal condition is particularly tentative given that the current report is based on only two months’ data.

With those caveats:

Revenue

- CLE, payments from affiliated partner USI (NYSBA insurance program administrator), and membership are the major sources of revenue.
- membership dues are down c. \$570K from prior year. That decline is more concerning than CLE revenue, given that the bulk of the CLE year is still ahead
- CLE revenue down c. \$243K from prior year. Given time remaining in the year, this is of less concern
- section program revenue down c. \$184K, section dues revenue down c. \$81K, and section sponsorship income for the 2022 Annual Meeting down c. \$100K, from prior year
- total revenue is down c. \$91K from prior year

- Leadership staff and executive committee plan to provide regular updates, and have created a strategic planning commission to address issues impacting membership

Expenses -

- program expenses in total are up c. from prior year, including increases from last year of c. \$10k for investment fees, \$43K for professional fees related to One Elk, \$80K for IT licensing fees, \$23K for marketing, changes to timing of USI payments resulting in a year over year decrease of \$19K, and payment of \$60K to terminate the print shop lease for the Green Island facility.

- The lease agreement for the Green Island print shop had approximately two years to run, so terminating that lease and moving to new space is expected to save c. \$230K annually and c. \$500K+ over the next two years.

- Net revenue for 2021 annual meeting was c. \$449K. The Association was able to get a credit for 2022
- Annual Meeting expenses so it suffered no losses due to shift to virtual format. Net revenue for the 2022 (virtual) annual meeting was \$402K.

- Virtual meetings in 2022 cost c. \$401K

- Investments up by c. \$1M

- President’s comments re issues raised by Treasurer’s report
 - membership is key to the NYSBA. Overall revenue decreased, and expenses increased. However, in some ways we did better during the virtual phase, as we had increased engagement by full membership, including global participation. We should learn from that in considering ways to increase participation.

President’s report (printed version of remarks in mtg packet) –

- noted it was his last HOD as president
- NYSBA has a unique ability to lead, and must continue to evolve and adopt
 - Int' section Ukrainian task force (in consult with NYSBA Ukrainian chapter) to support Ukrainian attys and to support int'l rule of law. Members were encouraged to participate in and support the effort, including pro bono services to Ukrainian refugee applications for temporary residency status in US
 - emphasized our ability as attorney's to improve lives, and to serve.
 - NYSBA as a global presence
- a pleasure to see people in person, but acknowledged pandemic experience, which resulted in loss but also provided opportunities for transformation from which NYSBA must learn.
- We've don't know what the "new normal" is, but it won't be the old normal, and we need to think about what will be the best way of serving moving forward, including the role of technology, future of legal education, etc. A report from task forces on future direction of NYSBA is due later this year.
- noted NYSBA efforts in identifying ways to reform law, encourage justice, etc., referencing several task forces, supporting action as well as study, such as NYSBA support for the clean slate act, which will facilitate the automatic sealing of certain conviction records, as well as lobbying at the state and federal level for legislative priorities, including increase of 18B rates, repeal of Judiciary Law sec. 470, the development of sensible gun control legislation, enactment of a right to counsel in immigration proceedings, and implementation of the Chief Justice's court simplification plan.
- noted formation of a new strategic planning committee charged with developing actionable goals to grow the NYSBA and to retain and better serve its members. Taa Grays, Christopher Riano will go-chair the committee, with members selected from across the Association. The last plan was developed ten years ago, and it is time for an update.
- recent successes include a successful launch of the virtual bar center, the pivot to virtual webinars and hybrid programming, revamped communications strategy, and focused advocacy on public policy initiatives. However, moving forward, NYSBA must ensure full participation of members in the activities, benefits, interests, and successes of the NYSBA to ensure it remains relevant, adaptive, nimble, and strong moving forward, with a focus on diversity and generational change.
- virtual/hybrid events will be a key means of ensuring broad participation moving forward
- recognition of other officers and staff, section leadership, etc. as key to his ability to serve as president

Nominating committee (Michael Miller)

- slate for district representatives and alternates, including delegates to the ABA House of Delegates, accepted

Ruth Bader Ginsberg Memorial Scholarship Award

- Pres. Brown announced Ms. Sierra Sanchez as the initial recipient of the Ginsberg scholarship

Address by Hon. Hector D. LaSalle, Presiding Justice, A.D., 2d Dept. - Developments in Second Dept.

- 2d Dept is largest in state, w/ c. 50% of population and filings
- acknowledged shared effort, including from lawyers, to continue functioning during pandemic
- 18 of the 22 justices in place; he has been working with the Gov's office to fill the four vacancies, which he is confident will be filled by May
- seeking to resolve existing backlog, which had grown to 3 years. By June, expect to have overwhelming number of cases perfected in 2019 calendared
- expanding special master's program to facilitate settlement in cases showing promise for settlement
- seeking to shorten time between case argument and decision, with goal of generating decision within 60 days where possible

- emphasized partnership with bar

- Bar Foundation Report (Carla Palumbo)

- NYSBA member support is crucial to Foundation

- 98 grants (\$600K) approved in February to not for profit legal services organizations in every judicial district from which grants were submitted, for projects involving a broad number of initiatives, including consumer debt, domestic violence, immigration, elder law, housing, human trafficking, COVID, veteran's assistance, family law, re-entry, and small business assistance. \$162K went to the NYSBA for pro bono unemployment assistance, lawyer assistance and lawyer well-being

- foundation continues to support the mock trial program, and the 3d/4th Dept pro bono appeals program, as well as the Catalyst public service program, which supports law students in doing public interest work that otherwise couldn't afford it w/ \$5K grant to support internship work. 285 fellows have been placed during the program's seven year history.

- Foundation had a successful virtual annual meeting, electing James Barnes as chair, Don Doerr and Loren Wachtler as vice-chairs, Susan Lindenauer as secretary, and gave lifetime achievement award to Dean John Feurach

- encouraged submission of nominations for additional foundation fellows

Task Force on Racism, Social Equity and the Law (Taa Grays and Lillian Moy) (information only) -

- scope of charge – examine how structural racism¹ permeates and influences facets of daily life leading to injustice and inequality among New Yorkers

- explore changes in the law and public policy and recommend actions NYSBA can take to attack structural racism and effectuate meaningful societal transformation

- task force comprised of following committees: housing, environmental justice, health, criminal justice, education, and economic opportunity

- examples of structural bias – Artificial Intelligence (ex. - insurance - NYS Dept. of Financial Services (DFS) issued a circular opinion in 2019 prohibiting the use of algorithms in underwriting unless they can show the underlying data isn't skewed by bias)

- consider difference between equality (everyone gets the same size box to see over the fence) v equity (get the size box you need to see over the fence)

- c. 40 recommendations, with six highlighted -

- DFS should change training to increase diversity in the appraisal profession;

- education – NYS Education Department (SED) should support the design and development of healing centered/trauma sensitive schools in all school districts statewide;

- health - implement bias training w/ facility and individual licensure for health professionals

- criminal justice - modify sentencing structure aimed to lower the period of incarceration;

sentences should be shorter, parole revisited, and support for passage of Elder Parole Bill and the Fair and Timely Parole Act

- environmental justice - state/municipalities should utilize federal Infrastructure Act funds to improve drinking water infrastructure and mass transit systems statewide

- economic opportunity – support S7215/A2619A to create commission to STUDY and examine harm and possible plan to deliver reparations for slavery – where it lands is open – just want to open the conversation.

¹ “Structural racism” is a system of laws, policies, and institutional practices that produce and perpetuate racial inequities and inequality in this state.”

- draft recommendations will be reviewed, and then circulated to sections and committees by mid-April, and meet with Sections/Committees for questions and feedback. A revised draft incorporating that feedback will be drafted in May and submitted to the EC/HOD in June.

Comments -

- Vince Bazar – supportive, but requested time beyond June for HOD vote, given need to study final document, esp. given mixed questions of law and fact
- Sharon Gerstman suggested expanding to encompass gender as well as racial bias. In response, Lillian noted charge limited to racism; Taa noted that report notes intersectionality where appropriate, but will not expand its scope given the charge. Gerstman countered perhaps inquiry could be made to expand the charge.
- six add'l comments encouraging support for the report

Committee on Families and the Law, report on Racial Justice and Child welfare (Angela Burton, Linda Gehron, Susan Lindenauer, Janet Fink) (information only) –

- Committee offered resolution addressing systemic racism in NY child welfare system for HOD action, and report for information only

- most child protective investigations focus on Black parents, and most reports arise from situations arising from poverty; physical or emotional abuse account for about 25% of complaints
- 53% of black kids have contact w/ child welfare v 28% white
- federal gov't imposed mandatory reporting requirements as part of prior reforms
- black parents generally have less access to supportive service to address basic needs of their children, which would lessen the risk of being the subject of a report
- globally many child welfare systems are based on US. As NY is a major player, the NYSBA report here can have substantial impact
- current system doesn't support families in community, and effectively criminalizes poverty
- the system impacts all families in negative ways, but black families are more likely to be affected, and more likely to be impacted harshly, including family separation, placement in institutional facilities and/or termination of parental rights
- over-representation of black children in foster care documented in 35 NY counties plus NYC
- those who 'age out' of foster care fare poorly in terms of education, employment, housing and criminal justice involvement
- NY efforts to promote racial justice and improve parental and child representation include:
 - NYS Office of Indigent Legal Services and NYSBA have attorney performance standards
 - Commission on Parental Legal Representation established by NYC CJ DiFiore
 - 2020 independent Chief Judge Comm'r equal justice review
 - reform efforts underway in court system and legislature
 - litigation to address disproportionate prohibition against certain relatives from being foster parents, and seeking increase in compensation for assigned counsel
- recommendations focusing on addressing mitigating negative impact of system; resources help but need to look at changing the system, such as by amending the original federal legislation
- EC endorsed resolution for passage the day before; HOD approved proffered resolution

Committee on Law, Youth, and Citizenship (Hon. Jonah Tiebwasser) (information only)

- report addressed by EC the prior day, w/ request for an updated informational presentation at today's HOD

- rooted in Constitution Day, first observed in 2005. The US Dept of Education mandates that schools receiving federal funds hold a program for students honoring Constitution Day on an annual basis, an obligation not honored regularly.
- Committee working on several ideas, including publication of three articles in the NYSBA journal providing an overview of Constitution day, a historical perspective on the ratification of the Constitution in NY, and an interview with an immigrant NYSBA member about what the constitution means to her. The Committee is also hosting a naturalization ceremony in Poughkeepsie in September, is encouraging participation by attorneys in their local school systems to provide presentations, coach mock trial, etc.. Additional ideas include court trips, screenings of law-themed movies, etc., and publicity through NYSBA, contacts at SED, etc.

Administrative items

- approved designation of delegates filed by local/county bar associations for 2022/2023
- approved roster of House members for next year
- encouraged members to renew association dues for next year, and to encourage colleagues to do so

New business

- Mark Berman, co-chair w/ John Gross of Task Force on Post-Pandemic Future of the Profession, provided update on task force work, which was centered on five areas, including technology, attorney-client relations, access to justice, and young lawyers/students. They collected concerns/desires based on a survey, to which they got approximately 2,000 responses. They plan to generate five focus groups around the state, to meet in May seeking “in the weeds” input. The focus groups will be done virtually and will take about two hours. Seeking volunteer participants.
- Ms. Wallach thanked officers and staff, w/ special thanks for efforts during this unusual time, and encouraged in-person activity as much as possible, particularly by presenters.

Next meeting 6/16-19, with HOD meeting on 6/19 in Cooperstown. In-person participation encouraged, but will try to arrange for a hybrid option.

Gavel passed to Richard Lewis as incoming HOD chair.

adjourned – 11:56

Section caucus meeting – via Zoom – April 1, 2022

Commenced at 3PM

- discussion of decline in membership, which will be presented as an issue at HOD tomorrow
- reasons given in survey of those not renewing were financial, change in practice (retirement), finding bar not relevant, and disagreement with positions taken by the association (viewing them as political)
- drops average around 7 years of membership
- plug from Jean Gerbini for committee on civics/youth, and encouraging sections to participate by working with high school students on state moot court and presentations in high schools on Constitution Day. Also encouraged work with local and affiliation bar associations as a way of coming into contact with younger lawyers as possible members.
- Ms. Gerbini also noted that there was a dearth of substantive reports from Sections to the caucus – she encouraged sections to provide reports in the next quarter
- Arenson noted that revenues down \$1.3M at the end of the quarter; Annual meeting attendance was much higher, but net surplus still lower than last year; CLE and dues also down

Baum - dues, investment income, and CLE are main three sources of income. Dues c. 40% of revenue. The EC report didn't really address meetings. Report went through ways to address member drop (reporter offered observations from ABA experience).

- suggested approaching law firms to pay for membership for their associates (might reverse trend over past years away from paying bar membership)
- Jaglom noted that since we can't have meetings, and CLE is still happening, CLE revenue is up, absorbing some of the prior revenue from meetings. But, since things are virtual, the associated expenses are also less than they used to be for the programs.

Aleece Burgio – reported that transition from Cannabis committee to a section is in process. The committee is expected to be popular, and a likely source of membership growth given the number of lawyers expected to have some involvement with cannabis, or clients doing business with, or wanting to do business, with cannabis businesses (esp. banks). A cannabis seminar will be offered in the summer.

- Baum encouraged Aleece to consider joint meetings and collaborations w/ other sections, given the intersectionality of legal issues involved.
- Hack – Business Law article from awhile back was a good overview

Edward Lenci – got about 80 volunteers on Ukrainian TPS project. As tensions were building with Russia, the Ukraine Bar Association reached out, through their international section, and got involved through a broad-based group under the NYSBA umbrella (incl ABA and others). Has been involved in responding to statement from the Russian bar. Have a series of projects, incl. TPS, and looking for volunteers. They developed a video to assist those who want to do TPS work. Party to MOU w/ other bar associations, generally nation-based.

Gerbini noted that EC recommended simplifying the dues structure.

- extensive discussion of section dues. There was objection to the idea of uniform section dues, and to the idea of having the big bar set section dues. It was also observed that each section has different

benefits, cost structures, resources, etc., and opportunities/connections for sponsors, which might leave room to have lower dues.

Baum has reached out to see about ensuring that section caucus was on the big bar's strategic planning committee. Also noted that some are saying modernization should encourage moving towards a virtual bar association. Did the fact that things have been virtual and in-person events have lagged contribute to membership drop?

Considerable discussion of virtual v in-person.

SECTION CAUCUS MEETING – ZOOM – April 2, 2022, 7:30am

- cont'd discussion of big bar failure to involve sections in discussions, such as current strategic planning committee meeting. Jaglom and Baum will reach out to Business Law section liaison to further section involvement in strategic committee planning. The absence of section involvement in such committees is a chronic problem – when big bar is confronted with it, they concede and something happens, but we go through this cycle repeatedly, which is a problem.

Baum corrected – big bar wants to enhance virtual, but sees benefit of in-person.

Jaglom – issue is big bar isn't section-focused

- discussion of regularly involving big bar folks in section caucus esp. president, past, and elect. Should routinely send them invitations to attend caucus meeting ex officio.

Cont'd discussion of mtgs – aside from convenience, there may be reasons (medical, etc.) why someone would prefer in-person or virtual (meetings or CLE). May want to drill down and see the basis for the preference. Could make increasing use of social events to address larger social connection issues. Hybrid meetings are problematic at hotels, both due to cost and logistics (quality of video, etc.). The per-person cost for the in-person part, however, could become very expensive. The decision should also consider inclusion issues – disability, or other reasons that virtual, or in person, may not work so well. Extended discussion of how to approach personal limitations and impact that could have on participation, whether they consider themselves as having a disability or not – limitations don't always cause someone to consider themselves as having a disability. Can encourage the bar association to engage in a larger discussion.

Task force on social equity and the law is addressing housing, education, health, economic opportunity, law, health etc. Will be providing more detailed discussion at HOD. Even if systems look facially unbiased, the larger context still results in operational inequity. Approach was to question where impacts are seen, and then to ask where we as the state bar could provide recommendations and have an impact to minimize disparate impact, as lawyers/bar associations. HOD presentation is informational, with expectation that it will move towards being something to be voted upon. Report expected to be out by end of May. 20-22 members of the task force, with additional non-task force members participating.


ENDED 8:43am



**Environmental & Energy
Law Section**

Environmental & Energy Law Section 2022 Fall Meeting

 **Tuesday, October 18 – 19, 2022**

 Excelsior Springs Event Center, (Adjacent to Courtyard by Marriott),
47 Excelsior Avenue,
Saratoga Springs, NY

nysba.org/environmental

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Tuesday, October 18

3:00 p.m. – 4:30 p.m.

Executive Committee Meeting

Environmental & Energy Law Section
Courtyard By Marriott Hotel, Schuyler Room, Lobby Level

5:00 p.m. – 6:00 p.m.

Conference Check-In / Registration

Conference Foyer, Excelsior Springs Event Center

6:00 p.m. – 7:00 p.m.

Reception

Excelsior Springs Event Center

7:00 p.m. – 9:00 p.m.

Dinner

Excelsior Springs Event Center

Wednesday, October 19

7:45 a.m. – 8:30 a.m.

Registration/CLE Sign

Continental breakfast
Excelsior Springs Event Center

8:30 a.m. – 8:45 a.m.

Welcome and Introductions

Section Chair

James P. Rigano, Esq.

Rigano, LLC
Melville, NY

NYSBA President

Sherry Levin Wallach, Esq.

Deputy Executive Director
The Legal Aid Society of Westchester County
White Plains, NY

Program Chair

Yvonne Hennessey, Esq.

Barclay Damon LLP
Albany, NY

8:45 a.m. – 10:00 a.m.

Implementation of the CLCPA – Climate Leadership and Community Protection Act

Moderator:

Yvonne E. Hennessey, Esq.

Barclay Damon LLP
Albany, NY

Speakers:

Jonathan A. Binder, Esq.

Chief, Bureau of Climate, Air, and Energy
NYSDEC Office of General Counsel
Albany, NY

Alicia Legland, Esq.

Associate, Hodgson Russ LLP
Albany, NY

Hayley Carlock, Esq.

Director of Advocacy and Legal Affairs, Scenic Hudson
William F. Kellermeyer, Esq.
Associate, Knauf Shaw LLP
Rochester, NY

1.5 MCLE Credits Areas of Professional Practice

AGENDA

10:00 a.m. – 10:20 a.m.

Coffee Break

10:20 a.m. – 11:10 a.m.

Office of Renewable Energy Siting (ORES) Update and Environmental Siting Issues

Moderator:

Amy Kendall, Esq.

Partner, Knauf Shaw LLP
Rochester, NY

Speakers:

Thomas Paul, Esq.

Counsel, Barclay Damon LLP
Syracuse, NY

Laura Bomyea Darling, Esq.

Associate, Young Sommer LLC
Albany, NY

Janine Whitken

Assistant Vice-President Earth & Environment
WSP USA
Glenelg, MD

Carl Sadowski, AICP

Senior Environmental Planner
WSP USA
Washington, DC

1.0 MCLE Credit Areas of Professional Practice

11:10 a.m. – 12:25 p.m.

The Clean Energy Standard

Moderator:

Michael Hecker, Esq.

Partner, Hodgson Russ LLP
Buffalo, NY

Speakers:

Thomas A. King, Esq.

Senior Counsel, NYS Energy Research and Development Authority
Albany, NY

Alex Stein, Esq.

Senior Counsel, NYS Energy Research and Development Authority
New York, NY

Nathaniel Chumley, Esq.

Counsel, NYS Energy Research and Development Authority
Albany, NY

F. Thomas Dwyer, Esq.

Assistant Counsel, New York State Department of Public Service
Albany, NY

1.5 MCLE Credits Areas of Professional Practice

Environmental & Energy Law Section 2022 Fall Meeting

12:30 p.m. – 1:30 p.m.

Luncheon
Focus on Energy Developments in New York

Keynote Speaker:
Robert Rosenthal, Esq.
General Counsel, NYS Department of Public Service
Albany, NY

Adjournment

Annual
MEETING 2023



Environmental & Energy Law Section

Save the Dates!

IN PERSON | Hilton Midtown NYC

Wednesday, Jan. 18

Committee Meetings | 2:30 – 3:30 p.m.

Agency Update | 4:30 – 5:30 p.m.

Reception | 5:30 p.m. – 7:30 p.m.

Thursday, Jan. 19

CLE | 8:30 a.m. – 12:30 p.m.

Off-Site Luncheon | 1:00 – 2:30 p.m.



2023 Diversity, Equity & Inclusion Fellowship

The Fellowship

- > \$7,500 stipend to spend the summer of 2023 (8 weeks minimum) working on legal matters for a government environmental or energy agency or public interest environmental organization in New York State. (The applicant need not have identified a summer internship prior to applying for the fellowship. After a 2023 fellowship awardee has been selected, members of the Section can assist the awardee in searching for a summer internship placement.)
- > Invitation to a meeting of the NYSBA's Environmental & Energy Law Section
- > Assignment of a mentor from the environmental or energy bar

Eligibility

First-year, second-year, and third-year (night students only) underrepresented group members who: 1) are enrolled in a law school in New York State; or 2) are permanent New York State residents, and enrolled in a law school in the United States; and 3) will not graduate from law school before December 2023. Underrepresented group members are persons who are: African American, Latinx, Native American, Alaskan native, Asian, Pacific Islander, LGBTQ+.

Fellowship Criteria

Interest in environmental and/or energy issues; strong academic record (undergraduate and/or law school); outstanding personal qualities; and leadership abilities. (A law school course in environmental or energy law is **not** a prerequisite.)

All applicants must be a member of NYSBA and the Environmental & Energy Law Section. Membership is free for law students.

Application Requirements

- > Completed application form
- > Resume
- > Undergraduate Transcript
- > Law school transcript
- > Essay describing applicant's interest in environmental or energy issues
- > Reasons for wanting to participate in the Fellowship
- > Two letters of recommendation



Application Deadline

February 6, 2023

Email completed application form and required supporting documents to Amy Jasiewicz at: ajasiewicz@nysba.org

Detailed information, and application forms, may be obtained by contacting ajasiewicz@nysba.org or online at [NYSBA.ORG/ENV DIVERSITY FELLOWSHIP](https://www.nysba.org/envdiversityfellowship)



2023 Diversity, Equity & Inclusion Fellowship



Application Deadline

February 6, 2023

Application Form

Name: _____

Permanent Address: _____

Email Address: _____ Phone Number: _____

School Address (if different): _____

Law School Attending: _____

- Day student Evening student First year Second year Third year (evening only)
- African American
- Latinx – person of Mexican, Puerto Rican, Dominican, Cuban, Central or South American origin
- Native American or Alaskan native – person having origins in any of the original peoples of America
- Asian or Pacific Islander – person having origins in any of the Countries located in East, South or Southeast Asia, or the Pacific Islands
- LGBTQ+ – person who does not identify exclusively as heterosexual and/or cisgender
- Confirm that the following statement is true by checking this box: I will not graduate from law school before December 2023.

Prior Education

College Name	Address	Major	Dates Attended	Degree

Attach the following supporting materials to this application:

1. A resume describing your prior employment and other relevant activities and qualifications.
2. An undergraduate transcript, and a law school transcript. (Transcripts need not be certified; finalists may be asked to provide certified transcripts.)
3. An essay (maximum: two double-spaced typewritten pages) describing your interest in environmental or energy issues, your personal qualities and leadership ability, and reasons for wanting to participate in the Fellowship.
4. Two letters of recommendation. (These may be the same as used for law school applications. If these letters are confidential, they may be sent directly to the Fellowship Committee at address below.)

Certification

I hereby certify that all the statements contained and information provided in this application, and in the attachments hereto, are truthful, to the best of my knowledge and that I meet the eligibility requirements for the Diversity, Equity & Inclusion Fellowship in Environmental Law.

I further certify that I am a member of the NYSBA and the Environmental & Energy Law Section or that my application for free membership is attached.

Applicant's Signature: _____ Date: _____

Email completed application form and required supporting documents to Amy Jasiewicz at: ajasiewicz@nysba.org

**New York State Bar Association
Environmental & Energy Law Section
Superfund/Brownfield Program Update 2022**

Wednesday, December 7, 2022

9:00 a.m. – 3:00 p.m. | Webinar

4.5 MCLE Credits
4.5 Areas of Professional Practice

<https://nysba.org/events/superfund-brownfield-program-update-2022/>

This program is transitional and is suitable for all attorneys including those newly admitted.

Agenda

9:00 a.m. – 9:10 a.m.

Welcoming Remarks

Program Co-Chairs:

David J. Freeman, Esq.
Gibbons P.C.
New York, NY

Lawrence P. Schnapf, Esq
Schnapf LLC
New York, NY

Amy L. Reichhart, Esq.
Nixon Peabody LLP
Rochester, NY

9:10 a.m. – 10:10 a.m.

Update on New York State Brownfield Cleanup Program

Panel Chair:

Amy L. Reichhart, Esq.
Nixon Peabody LLP
Rochester, NY

Speakers:

Jennifer Andaloro, Esq.
New York State Department of Environmental

Conservation
Albany, NY

Andrew Guglielmi, Esq.
New York State Department of Environmental
Conservation
Albany, NY

Joseph N. Endres, Esq.
Hodgson Russ LLP
Buffalo, NY

Ezgi Karayel
Vector Consultants
New York, NY

1.0 MCLE Credit in Areas of Professional Practice

10:10 a.m. – 11:10 a.m.

Superfund Update

Panel Chair:

David J. Freeman, Esq.
Gibbons P.C.
New York, NY

Speakers:

Marla E. Wieder, Esq.
United State Environmental Protection Agency
Region #2
New York, NY

Yueh-Ru Chu, Esq.
New York State Office of the Attorney General
New York, NY

Elizabeth Knauer, Esq.
Sive Paget & Riesel PC
New York, NY

1.0 MCLE Credit in Areas of Professional Practice

11:10 a.m. – 11:20 a.m.

Break

11:20 a.m. – 12:20 p.m.

Renewable Energy Issues

Panel Chair:

Matthew J. Sinkman, Esq.
Gibbons P.C.
New York, NY

Speakers:

Michael Hecker, Esq.
Hodgson Russ LLP
Buffalo, NY

Annika Colston
AC Power LLC
New York, NY

Michael Lesakowski
Benchmark Environmental Engineering and Science
PLLC and Turnkey Environmental Restoration LLC
Buffalo, NY

1.0 MCLE Credit in Areas of Professional Practice

12:20 p.m. – 1:30 p.m.

Lunch

Keynote Speaker:

Julie Tighe
President, New York League of Conservation Voters
and NYLCV Education Fund

**The 2022 Election Results: What They Mean for
New York's Environmental Agenda**

1:30 p.m. – 2:30 p.m.

Affordable Housing Issues

Panel Chair:

Lawrence P. Schnapf, Esq.
Schnapf LLC
New York, NY

Speakers:

James M. Lloyd
Director of Policy
New York State Association for Affordable Housing
New York, NY

1.0 MCLE Credit in Areas of Professional Practice

2:30 p.m. – 3:00 p.m.

Case Law Update

Speaker:

Molly Parlin, Esq.
Whiteman Osterman & Hanna LLP
Albany, NY

0.5 MCLE Credits Areas of Professional Practice

Adjournment

2022 Professor William R Ginsberg Memorial Essay Contest (34th annual essay contest)

10 entries – 8 Columbia, 1 Pace, 1 CUNY

1st place tied winners will share the \$1000 prize and their essays will appear in *TNYEL*;

2nd place winner will receive the \$500 prize; and

3rd place winner will receive the \$250 prize.

The 2nd and 3rd place essays will be considered for publication in *TNYEL*.

First Place:

Tal Avrhami (Columbia) for “The Clothes (Un)Make the Man: How the Textile Quota Phase-out Wears Out the Planet”

And

Jared Gilmour (Columbia) for “45Q in 2022: Toward a Stronger Carbon Capture Tax Credit”

Second Place:

MacKenzie Thurman (Columbia) for “Agricultural Land is a Primary Driver of Climate Change”

Third Place:

Liam Fine (Columbia) for “Watt About It? Climate Resilience in the Electric Utility Sector”

Thank you to the judges:

Howard Tollin

Drew Gamils

Aliza Cinamon

Matt Sinkman

and

Rob Stout

Thank you to Amy Jasiewicz at NYSBA for her support and assistance.

Notes for Executive Meeting:

1. Last year we discussed the possibility of adjusting the budget so that tied essay contest winners would not have to share a prize. Two first-place winners would each receive a \$1,000 prize; two second-place winners would each receive a \$500 prize; and two third-place winners would each receive a \$250 prize. I'd like to make a motion to formalize that plan.
2. Special thanks to Mike Gerrard for almost single-handedly keeping the essay contest alive. An effort will be made to uncover Mike's secrets so they can be applied at the other schools around the state.