



June 6, 2018

To: Executive Committee, New York State Bar Association

From: Susan L. Harper, Chair of the Committee on Women in the Law (CWIL)

Re: Proposed Section Status for CWIL

The Committee on Women in the Law (“CWIL” or the “Committee”) respectfully requests that the Executive Committee authorize CWIL to conduct a survey to assess interest in establishing a Section on Women in the Law. Since its inception 30 years ago, CWIL has helped further NYSBA’s mission and serves as a critical voice for professional women and all women in New York State.

Established in 1986, CWIL is the only NYSBA committee committed to exclusively addressing professional, legal, policy, and legislative issues impacting women. NSYBA has over 17,116 women members. However, only 53 people -- **less** than 1% of the total female members -- are directly involved in CWIL. Recent national and state developments like the #MeToo movement and the legal profession’s focus on diversity and inclusion make now the ideal time to convert CWIL from a trailblazing Committee to a much-needed and influential NYSBA Section.

CWIL is charged with identifying, studying, and making recommendations to address gender bias and law-related issues affecting women. The Committee proposes legislation, the adoption and implementation of policy by the Executive Committee and House of Delegates, and other actions to ensure the fair treatment of women under law and the full participation of women in the administration of justice and as equal members of the legal community. Seven subcommittees carry out our work: Annual Meeting, Awards, Best Practices, Legislative Affairs, Women on the Move, Programming, and Publicity.

Approximately 70% of the Committee is focused on programming. We organize the Women on the Move MCLE program, CWIL’s Annual Meeting, two Awards Programs (the Ruth Shapiro Memorial Award and Kay Crawford Murray Award and Luncheon), and several additional programs, most recently “#MeToo: How to Navigate Sexual Harassment in the Workplace,” “Running for Political Office,” “Wine and Chocolate Networking Event,” and “CWIL’s 30th Anniversary Celebration.” We also manage several publicity channels. Over the past few years, our Annual Meeting Program, Kay Crawford Murray Award Luncheon, and post-Annual Meeting networking reception have drawn record registration.

The other 30% of CWIL (around 12+ members) annually respond to NYSBA reports and at least one proposed piece of legislation introduced by the NYS Governor, the NYS Legislature and, when warranted, the U.S. Congress. We also work on special initiatives, such as the recent Centennial Anniversary of Suffrage and Trailblazer Exhibits and produced CWIL’s May 2017 NYSBA *Journal* issue. Through these efforts, CWIL has been in the forefront of issues impacting women, including pay equity, paid family leave, salary disclosures, women’s

healthcare, childcare, legal representation, sexual harassment, sexual assault and violence, and female prisoners' rights.

CWIL enjoys an excellent relationship with our fellow Sections and with members of the judiciary. This past year, we supported the Commercial and Federal Litigation Section's Task Force on Women's Initiatives Report on Women in the Courts and ADR, and incorporated the Report's findings in both of our capstone programs. We also routinely host events featuring the leading state and federal judges.

As a result of the changing demographics of women in the workforce and the push to expand women's rights, there are many more issues impacting women that we would like to address through reports, surveys, training, and education, but the truth is we need more members in order to take on this important work. NYSBA is looked to as the leading legal voice in New York State and our country. To stay relevant, NYSBA and CWIL must be at the table to discuss and influence critical issues impacting women's personal and professional rights. With Section status, greater resources, and increased CWIL membership, we can accomplish much more.

Women in Law: Numbers and Progress

The ABA estimates that the total national lawyer population in 1986 (when CWIL was established) was approximately 676,584. Today, in 2018, the current total national population of lawyers is 1,338,678 – a nearly 100% increase in the attorney population in 30 years. The ABA reports that women currently make up 36% of the profession.

There are 177,005 attorneys in New York. The Office of Court Administration does not keep statistics on the number of licensed female attorneys in New York State. However, NYSBA estimates that women make up approximately 40% of the attorneys in New York State, or around 70,802 female attorneys.

For nearly two decades, approximately 50% of law school students nationwide have been women, and women have been hired in nearly equal numbers as men at the associate level in law firms. But women are still the minority of both equity partners (19%) – up a mere 3% in ten years – and non-equity partners (30%) in law firms. Gender disparity also exists in other aspects of private law firms. At least one study estimates that compensation of male partners on average is 44% higher than that of female partners.

According to the ABA, women comprise 24% of general counsels for Fortune 500 companies and 19.8% of the Fortune 501-1000 companies. On average, women make up 35% of federal court judges and 31% of state court judges. In our nation's law schools, the ABA reports that 183 women (31%) are law school deans and comprise 38% of Law Review's Editor-in-Chiefs at the top 50 law schools.

The gender gap persists in the courtroom and in ADR – women are underrepresented in lead counsel positions and in the role of trial attorney in both civil and criminal litigation. As chronicled in the 2017 Commercial and Federal Litigation Section's Task Force on Women's Initiatives Report, "If Not Now, When?," female attorneys comprise just 25.2% of the attorneys appearing in commercial and criminal cases in state and federal courtrooms in New York State. That number drops to 19.5% in cases involving complex commercial litigation. The gender disparity is even greater in ADR – 82% of neutrals and 89% of arbitrators are men, and women

arbitrators are involved in just 4% of the ADR cases involving one billion dollars or more. This gender disparity persists in virtually all areas of legal practice. Many of the 17,116 women NYSBA members face the very gender disparity outlined above.

Despite slow progress, women currently have a more active role in the legal profession and more political capital than in 1986 when CWIL was formed. NYSBA, together with a CWIL Section, has a unique opportunity to expand its support for women's advancement and growth, to address gender disparity, inclusion, and leadership in our profession, and to strive for equality for women under the law.

The Cap on CWIL's Membership

Women constitute approximately 17,116 NYSBA members (and possibly up to 20,000 members when factoring in paid and non-paid NYSBA members), which means that as many as 24% of the total New York State licensed female attorneys are likely NYSBA members (even if they do not reside in New York). However, due to the cap placed on the number of women who can join CWIL each year, only 53 women – less than 1% – are directly involved in CWIL.

According to NYSBA, due to the cap on our Committee's size, we are one of a few committees that repeatedly turns down numerous prospective members and regularly rotates members off the Committee to make way for new members. Many CWIL members are interested in remaining on the Committee and have contributed significant value to NYSBA and to the advancement of women through CWIL. A number of these women are disappointed about being rotated off the Committee and feel rejected. They have invested a great deal of time in the Committee and its subcommittees as advocates for women and would like to continue this work. Several CWIL leaders have also articulated displeasure that they have spent time training members for future leadership and are frustrated to have them rotated off the Committee. These women are valuable NYSBA members and volunteers and feel a strong sense of sisterhood and belonging that is both empowering and a tremendous asset to NYSBA and CWIL. We should work to retain all of these women.

CWIL's Limited Resources

CWIL's annual budget is approximately \$30,000. Of this amount, over the years on average \$28,000 is spent on the Annual Meeting (which includes a heavily subsidized Awards luncheon and reception). This budget is not enough to cover our expenses, let alone allow CWIL to take on more issues. On its own initiative, the Committee has undertaken fundraising efforts for the Annual Meeting for several years, raising \$11,500 in 2017 and \$10,500 in 2018 to offset our expenses. Because the Annual Meeting occurs in the beginning of the year, we use our remaining funds quickly and operate on a very low budget for the other 11 months of the year. Our committee always actively seeks in-kind support for programs (including space, food, and receptions).

Because NYSBA's committees are not income generating, revenue from the Women on the Move and Annual Meeting programs do not go back into the Committee budget to offset expenses. Even if we have funds left over at the end of the year, we are not permitted to roll them over to the next year – we are in a “use it or lose it” situation. But for our fundraising efforts, we would be operating in the red. Our Committee is under a great deal of pressure to ask for donations and secure sponsors in order to provide top-flight programs. Last year, during our

30th Anniversary, this did not sit well with many of the Committee members. We had no budget to hold a 30th Anniversary event featuring the Lieutenant Governor of the State of New York and celebrating CWIL's NYSBA *Journal* devoted to women's issues. Many CWIL members complained and did not understand why some NYSBA sections were sitting on large budget surpluses while our Committee – a very active group – did not have money to even honor our work.

A CWIL Section Is Timely

As more women attend law school, join NYSBA, seek leadership positions and career support, and demand greater equality in the law and parity in the workforce, CWIL's size and lack of resources have given us pause to re-evaluate our Committee of today and consider the possibilities for a Section of tomorrow.

From a pure membership perspective, if women are asking to be part of a group, then why would NYSBA turn them away? With a Section, women can remain members and continue to be part of the ranks of attorneys advancing women. NYSBA and the Committee would not lose members, as they would not have to be rotated off the Committee. We could expand our work in a more meaningful way by creating new committees devoted to specific subjects and by expanding the number of women working on various issues. Becoming a Section should increase our resources so that we could do more and be more – the opportunity is there for us to seize.

Furthermore, diversity and inclusion (“D&I”) and gender issues are in the forefront of our profession. New York now requires that all attorneys satisfy a D&I CLE requirement. Many General Counsels require outside counsel to have D&I policies. Additionally, companies and major law firms are seeking ways to improve inclusion and retain and promote female talent. Now is the time for NYSBA to take a greater role in the efforts to advance women.¹

On May 15, 2018, CWIL, after much discussion concerning converting to a Section, voted unanimously and enthusiastically to conduct a Section feasibility survey. CWIL already conducts itself much like a Section. We have an executive committee, treasurer, secretary, and seven subcommittees that carry out CWIL's mission. We conduct fundraising and have recruited a number of repeat sponsors for our Annual Meeting.

We appreciate a concern raised as to how a NYSBA Women's Section would impact other groups outside of NYSBA, in particular the Women's Bar Association of New York (WBASNY). However, we believe these concerns to be unfounded. Many women attorneys belong to multiple bar associations and their respective women's sections or committees. WBASNY has over 4,400 members statewide and has 19 chapters across the state. We are not seeking to replicate WBASNY and expect to continue to enjoy our close relationship with that association.

¹ Note that neighboring New Jersey and Connecticut, both with much smaller attorney populations, have Women's Sections in their state bar associations.

We would like to do what is **best for women NYSBA members**, who have been asking us to expand our NYSBA footprint to better serve our 17,116 female members and our capabilities so that NYSBA has a greater voice and presence in the conversations impacting women, and to ensure our members' seat at the table. For example, if we recruited 500 Section members (around 2.9% of NYSBA's female members) this would provide greater inclusion opportunities and value to NYSBA women.

Some recent encounters I have had highlight the need to create a Section on Women in the Law and the value it will bring to NYSBA. Recently, I spoke with a very qualified CWIL candidate whose children just graduated from college; she now has more time to "give back." She wanted to join NSYBA, and CWIL, in particular. When I advised her that we were not accepting new applicants, she expressed dissatisfaction, since she wanted to work on women's issues. A judge also approached me about joining the committee recently and I had to respond the same. I understand this feeling of wanting to devote your free time to an area and issues about which you feel strongly and passionately. I have experienced it myself as a volunteer. At the same time, during the CLE program about sexual harassment we held last month, a woman told me that she rejoined NYSBA because of this program. Providing greater value and opportunities to women will help attract and retain NYSBA women members.

Conclusion

For the foregoing reasons, CWIL respectfully requests that NYSBA's Executive Committee consent to having CWIL conduct a survey to assess if there is adequate interest in a Section. Our intent is to have NYSBA administer the survey within the next three months. Upon completion, CWIL will report back the findings and proposed next steps, which we anticipate would occur by or before the November 2018 House of Delegates Meeting.

Thank you for your consideration.

Very truly yours,

Susan L. Harper, Chair
Committee on Women in the Law