

# NYSBA Fall Meeting - Debate on Pro Bono

By Scott M. Karson

The annual fall meeting of the 77,000 member New York State Bar Association was held from Oct. 31 – Nov. 2, 2013 at the Bar Center in Albany, New York. The Association's policy-making body, the House of Delegates, met on Saturday, Nov. 2, 2013, with NYSBA President Elect Glenn Lau-Kee of New York City presiding as Chair of the House.

The meeting of the House featured a lively debate, which focused on recent amendments made by the Appellate Divisions to Rule 6.1 of the *New York Rules of Professional Conduct*, effective on May 1, 2013. Those amendments increased the aspirational number of pro bono hours to be provided annually by all lawyers from 20 to 50, and provided that lawyers should aspire to make annual financial contributions to organizations that provide legal services to poor persons in an amount at least equivalent to, *inter alia*, the amount typically billed by the lawyer (or the firm with which the lawyer is associated) for one hour of time.

Although the 50-hour goal and the billable hour financial contribution goal are aspirational, a concurrent amendment to section 118.1(e)(14) of the Rules of the Chief Administrator was enacted, requiring lawyers to report on their biennial registration forms: (a) the number of hours that the lawyer voluntarily spent providing unpaid legal services to poor and underserved clients during the previous biennial registration period; and (b) the amount of voluntary financial contributions the lawyer made to organizations primarily or substantially engaged in providing legal services to the poor and underserved during the previous biennial registration period.

The debate was triggered by a seemingly innocuous proposal by the NYSBA Committee on Standards of Attorney Conduct to amend the commentary to Rule 6.1 to reflect the change in the aspirational

goal from 20 to 50 hours (although the rules themselves are the exclusive province of the Appellate Divisions, the commentary is provided by NYSBA). However, former NYSBA President Robert Ostertag of Poughkeepsie rose in opposition, emphatically noting that the rules changes were contrary to established NYSBA policy opposing mandatory pro bono reporting, and had been imposed without consultation with NYSBA. Former President Ostertag opined that the public dissemination of highly-personal information about contributions of time and money by attorneys is patently intrusive, particular to solo and small firm practitioners in smaller cities and towns and rural areas of the state.

Although most of the speakers were critical of the new rules and urged NYSBA to take action against them, at least one, Susan Lindenauer of the New York County Lawyer's Association and former general counsel to the Legal Aid Society of New York City, argued that pro bono is not charity but a professional obligation, and that 50 hours is not too much to ask.

Ultimately, the motion to approve the revised commentary to Rule 6.1 was tabled, making it likely that the matter will be revisited at the next meeting of the House of Delegates in January 2014 during the NYSBA Annual Meeting in New York City.

The House also approved the Report of the NYSBA Special Committee on Human Trafficking. This authoritative and exhaustive report focuses on three types of trafficking: labor trafficking, sex trafficking and child trafficking.

Regarding labor trafficking, the report calls for the creation of a civil private right of action; enactment of an enterprise disclosure law requiring businesses with annual revenues exceeding \$100,000,000



Scott M. Karson

to file an oath of non-involvement with trafficking with the New York State Department of Labor; and providing monetary rewards and whistleblower immunity to employees of entities engaged in trafficking activities and citizens who report suspected trafficking which results in the prosecution of those responsible.

With respect to sex trafficking, the report recommends that section 70.02(1)(a) of the Penal Law be amended to classify sex trafficking as a class B violent felony; that prostitution in the third degree be included as a "designated offense" for purposes of expanding eavesdropping and video surveillance authority pursuant to CPL 700.05(8)(h); creating an affirmative defense for trafficking victims charged with offenses; amending the Vacating Convictions Law by expanding it to include non-prostitution offenses, eliminating the due diligence requirements and developing uniform court rules to protect the identities of trafficking victims; and expanding the victim referral process to the New York State Office of Temporary and Disability Assistance for services to include providers of social or legal services who are well positioned to identify victims of sex trafficking.

As to child trafficking, the report calls for the elimination of coercion as an element of sex trafficking when a person who is 19 years of age or older intentionally advances or profits from the prostitution of a person under the age of 18; the elimination of criminal prosecution of minor victims of sex trafficking by raising the age of criminal responsibility for such crimes to 18; making Family Court orders of protection available to victims of sex trafficking and sexual exploitation; amending the child protective provisions of the Family Court Act and Social Services Law to explicitly include child

victims of human trafficking; improving training for Family Court professionals; and amending mandated reporter requirements under the Social Services Law to include human trafficking.

The House overwhelmingly approved the report and recommendations, with the exception of that portion of the report dealing with orders of protection in Family Court, which was withdrawn by the Special Committee for further consideration.

Finally, the NYSBA Nominating Committee report to the House was delivered by Former NYSBA President and current Nominating Committee Chair Stephen P. Younger of New York City. Mr. Younger announced that David P. Miranda of Albany had been nominated as President Elect; Ellen G. Makofsky of Garden City had been nominated as Secretary; and Sharon Stern Gerstman of Buffalo had been nominated for Treasurer. Nominees for the office of Vice President for each judicial district, for members at large of the Executive Committee, and for delegates to the American Bar Association were also announced by Mr. Younger. These nominees will stand for election at the January 31, 2014 meeting of the House in New York City and, if elected, will assume office on June 1, 2014.

*Note: Scott M. Karson is the Vice President of the NYSBA for the Tenth Judicial District and serves on the NYSBA Executive Committee and in the NYSBA House of Delegates. He is a sustaining member and former President of the SCBA, a member of the ABA House of Delegates, a member of the ABA Judicial Division Council of Appellate Lawyers, a Life Fellow of the New York Bar Foundation, a Fellow of the American Bar Foundation and Vice-Chair of the Board of Directors of Nassau Suffolk Law Services Committee. He is a partner at Lamb & Barnosky, LLP in Melville.*