

NYSBA Continues to Grapple With Mandatory Pro Bono Reporting

By Scott M. Karson

The annual summer meeting of the New York State Bar Association was held from June 19-21, 2014 in Cooperstown, New York. The meeting featured yet another spirited debate within the Association's policy-making body, the House of Delegates, concerning mandatory pro bono reporting.

By way of background, in 2013, the courts amended Rule 6.1 of the *New York Rules of Professional Conduct* by establishing an aspirational goal of 50 hours of pro bono service annually for New York lawyers, and an annual aspirational financial contribution by New York lawyers to organizations providing legal services to poor persons in an amount at least equivalent to one billable hour (the rule also prescribes certain alternative aspirational financial goals for lawyers who are not compensated on the basis of a billable hour). However, in conjunction with these aspirational provisions of the *Rules of Professional Conduct*, the courts also enacted section 118.1(e)(14) of the Rules of the Chief Administrator of the Courts, which requires lawyers to state under oath in their biennial registration forms the number of hours spent providing voluntary legal services to poor and underserved clients during the previous registration period, as well as the amount of voluntary financial contributions made to organizations primarily or substantially engaged in providing in providing legal services to the poor and underserved during the previous registration period. This rule was imposed without consultation with the New York State Bar Association and is contrary to established Association policy against mandatory pro bono reporting.

At the Association's annual meeting in New York City in January 2013, the House was asked to approve a resolution sponsored by the NYSBA Executive Committee



Photo courtesy of Scott M. Karson
Scott M. Karson speaking at the NYSBA meeting in Cooperstown.

providing, in pertinent part, "that the Association reiterates and reaffirms its opposition to mandatory reporting of pro bono services and mandatory reporting of financial contributions to organizations engaged in providing legal services to the poor and underserved. . . [and] shall continue to express its opposition to such mandatory reporting . . . and shall pursue such other and further actions as may be appropriate for the purpose of achieving the repeal of Rule 118.1(e)(14) of the Rules of the Chief Administrator." However, after much debate from a broad spectrum of delegates, including those who believe that mandatory reporting is justified and, on the other hand, those who believe that the Executive Committee resolution is too weak, the resolution was postponed to the June 21, 2014 summer meeting.

At the June 21 meeting, the resolution was re-presented to the House, but further debate on the merits of the resolution was curtailed when NYSBA President Glenn Lau-Kee moved to postpone consideration of the resolution to the next meeting of the House on November 1, 2014, citing on-going negotiations with Chief Judge Jonathan Lippman and Chief Administrative Judge A. Gail Prudenti aimed at resolving the parties' dif-

ferences. After further debate on the motion to postpone, President Lau-Kee's motion was granted.

In connection with the debate on mandatory pro bono reporting, an informational report was presented to the House by the NYSBA Committee on Legal Aid and the NYSBA President's Committee on Access to Justice. The report supports mandatory reporting because, based on the experience in other states in which lawyers are required to report their hours of pro bono service and financial contributions, it leads to an increase in pro bono service and contributions, and provides useful data regarding the extent to which voluntary pro bono service and contributions are meeting the needs of poor and underserved populations. However, in order to address some of the concerns of attorneys opposing the current rule, the report suggests that the information be collected and made available to the public only on an aggregate – rather than on an individual lawyer – basis. The report also recommends that while the core definition of pro bono should continue to be limited to the provision of legal services to the poor, a separate category encompassing a broader definition of pro bono should be established as well.

On the question of defining pro bono service, one distinguished member of the House, Michael Miller of New York County, noted that he had served as an Election Supervisor in war-torn Bosnia shortly after the Dayton Accords in 1996 and, in 1999, under the auspices of the U.S. Department of Justice, in association with the Central and East European Law Initiative, he interviewed Kosovo refugees for evidence of war crimes and crimes against humanity – evidence to aid in prosecutions at the International War Crimes Tribunal in the Hague. Further, in the aftermath of the Sept. 11 attacks, he led efforts to provide legal relief efforts in New York City, for which he

received the American Bar Association's *Pro Bono Publico* Award and other awards in recognition of his work. Mr. Miller pointed out, however, that none of his remarkable efforts would have qualified as reportable pro bono under the current New York rule.

On a less controversial note, the meeting of the House featured the formal installation of Glenn Lau-Kee as the 117th President – and the first Asian-American President – of the Association. The oath of office was administered to the new President by Senior Associate Judge Victoria A. Graffeo of the New York Court of Appeals, and was witnessed by the Lau-Kee family, including the President's father, with whom he practices law. Mr. Lau-Kee succeeds David Schraver of Rochester.

Other highlights of the House meeting included the introduction of the Association's new Executive Director, David R. Watson, and an address by Robert M. Carlson of Montana, the Chair of the American Bar Association House of Delegates.

The House also approved amendments to its bylaws and related policies in order to be in compliance with the Nonprofit Revitalization Act of 2013.

The next meeting of the House of Delegates will be held on Saturday, November 1, 2014, at the State Bar Center in Albany, New York.

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 also serves as Chair of the NYSBA Audit Committee. He is a former President of the SCBA, a member of the ABA House of Delegates, a member of the ABA Judicial Division Council of Appellate Lawyers and a partner at Lamb & Barnosky, LLP in Melville.