

# NYSBA House of Delegates Approves Resolutions Addressing Gun Violence and Standards of Attorney Conduct at Spring 2015 Meeting in Albany

By **Scott M. Karson**

On Saturday, March 28, 2015, the 250-member New York State Bar Association House of Delegates – the State Bar’s governing body – took a number of significant actions at its meeting in Albany. Among them, the House approved the report and recommendations of the NYSBA Task Force on Gun Violence; approved certain amendments to the *New York Rules of Professional Conduct* proposed by the NYSBA Committee on Standards of Attorney Conduct (“COSAC”); approved certain amendments to the 2013 Revised Standards for Mandated Representation proposed by the NYSBA Committee to Ensure Quality of Mandated Representation; and approved the report and recommendation of the NYSBA Committee to Study the Court Advocates Proposal.

The report and recommendations of the Task Force on Gun Violence, which was approved by the House, contains a public education component, which includes a comprehensive review of the history of the Second Amendment through the 2008 decision of the United States Supreme Court in *District of Columbia v. Heller*. The report and recommendations also addresses the absence of data about gun violence and proposes actions to gather pertinent data so as to enable legislators to make informed judgments on the subject.

The amendments to the *New York Rules of Professional Conduct*, which were recommended by COSAC and approved by the House included: amendments to the black letter Rules,



**Scott Karson**

which shall not become effective unless approved by the Appellate Divisions; amendments to the Comments accompanying proposed amendments to the Rules, which shall become effective only if the Appellate Divisions approve the amendments to the Rules related to the Comments; and Comments independent of the black letter Rules, which are the sole province of NYSBA and became effective upon approval by the House.

The House approved an amendment to Rule 1.1, Comment [6], to provide that among the factors to be considered in determining whether to retain or contract with other lawyers outside the lawyer’s own firm shall be the needs of the client. The House also approved an amendment to Rule 1.1, Comments [7] and [7A], which clarify the roles and allocation of responsibilities where lawyers from more than one firm are representing a single client on a particular matter.

The House also approved new Comments [18A] through [18F] to

Rule 1.6 and new Comments [10] and [11] to Rule 1.10 clarifying client confidentiality concerns when lawyers contemplate lateral moves or law firm mergers.

Among the other amendments to the *Rules of Professional Conduct* approved by the House were: approval of an amendment to Rule 5.3, Comment [3] addressing a lawyer’s responsibility for conduct of nonlawyers; and an amendment to Rule 7.2, Comment [1], providing that search engine optimization techniques that do nothing but rank order search results do not constitute referrals or recommendations within the meaning of Rule 7.2.

As noted, the House approved certain amendments to the 2013 Revised Standards for Mandated Representation proposed by the NYSBA Committee to Ensure Quality Mandated Representation: requiring trial counsel to protect the record by making timely and effective objections; requiring trial counsel to properly maintain the case file and to deliver it to successor counsel; requiring trial counsel to facilitate the appointment of appellate counsel; requiring appellate counsel to protect

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the client's interests if the case is remanded for additional proceedings during or after the appeal; prescribing the responsibilities of appellate counsel where there is a credible claim of actual innocence; and setting forth appellate counsel's responsibilities when requested by the trial court to represent a *pro se* defendant in a post-conviction proceeding.

The House also approved the report and recommendations of the NYSBA Committee to Study the Court Advocates Proposal. Pursuant to the

proposal, indigent clients will be represented in certain matters in Housing Court and in consumer debt cases by non-lawyer Court Advocates who will receive special training and will act under the supervision of attorneys.

In his final report to the House as NYSBA President, Glenn Lau-Kee reported that the amended version of Rule 118.1 of the Rules of the Chief Administrator is scheduled to be issued by the Administrative Board of the Courts on May 1, 2015. The amended rule, which is the product of

negotiations between NYSBA and the Chief Judge, will provide for reporting of pro bono hours and financial contributions by attorneys on an anonymous basis only; (b) provide for reporting of pro bono hours and financial contributions by attorneys to the public on an aggregate basis only; and (c) provide for additional categories of reportable hours and financial contributions given by attorneys towards pro bono work and other public service.

This meeting also marked the "changing of the gavel" as NYSBA President Elect David P. Miranda served as Chair of the House for the last time. On June 1, 2015, Mr. Miranda will succeed Mr. Lau-Kee as President of the Association, and Claire P. Gutekunst will succeed Mr. Miranda as President Elect and Chair of the House.

The House elected the members of the 2015-2016 NYSBA Nominating Committee. From the Tenth Judicial District, the members of the Nominating Committee will be: Steven G. Leventhal, A. Thomas Levin, A. Craig Purcell, Richard A. Weinblatt, Rosemarie Tully (first alternate) and Marian C. Rice (second alternate).

It was announced that John Gross, former President of the Suffolk County Bar Association and former NYSBA Vice President for the Tenth District, will succeed Cristine Cioffi as President of the New York Bar

Foundation.

On Friday, March 27, 2015, the members of the NYSBA Executive Committee were privileged to attend the Investiture of Leslie Stein and Eugene Fahey as Associate Judges of the New York Court of Appeals. Chief Judge Jonathan Lippman presided over the investiture ceremony before an overflow crowd in the magnificent Court of Appeals Courtroom.

The next meeting of the House will be held on Saturday, June 20, 2015 in Cooperstown, 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 member and former Chair of the NYSBA Committee on Courts of Appellate Jurisdiction, and a current member of the NYSBA Committee to Review Judicial Nominations, the NYSBA Committee on Leadership Development and the NYSBA President's Committee on Access to Justice. He is also a former President of the SCBA, a member of the ABA House of Delegates, a member of the ABA Judicial Division Council of the ABA Appellate Lawyers and Vice Chair of the Board of Directors of Nassau Suffolk Law Services Committee, Inc. He is a partner at Lamb & Barnosky, LLP in Melville.*