



NEW YORK STATE
BAR ASSOCIATION

STATE LEGISLATIVE PRIORITIES 2022



NEW YORK STATE BAR ASSOCIATION

We appreciate the opportunity to present the New York State Bar Association's legislative priorities for 2022. We respectfully request our Executive and Legislature to consider the provisions we believe will be imperative to ensure access to justice and the integrity of our justice system.

The New York State Bar Association (NYSBA) has been the voice of the legal profession in New York for more than 140 years. Our mission is to shape the development of law, educate and inform the public, and respond to the demands of our diverse and ever-changing legal profession. NYSBA advocates for state and federal legislation and works tirelessly to promote equal access to justice for all.

As we have experienced over the past year and a half, we live in a fast-changing world with the State Legislature and Congress having to act quickly to respond to health, safety and political events. This document is intended to serve as a blueprint for NYSBA action for 2022, but we recognize the Association will need to be responsive to events and adjust priorities as necessary throughout the year. Flexibility may be critical. However, the year develops, the Association will continue to be a staunch advocate for policies that promote our core values and mission to promote equal access to justice for all.

We welcome the opportunity to discuss these priorities with you.

Specific Policy Recommendations:

COVID-19 Pandemic Public Health:

NYSBA recommends:

- Reforms to public health law to strengthen capacities of the state to respond to public health emergencies.
- Legal reforms that address issues of equity and the disproportionate impact of the pandemic on disadvantaged and vulnerable populations and sub-populations, including communities of color, and as applicable to a public health emergency response in specific settings.
- Legislation that: (1) requires COVID-19 vaccinations for employees to the fullest extent provided for by law, (2) mandates mask requirements as necessary to protect New York's vulnerable populations, and (3) pursues multi-faceted campaigns to encourage vaccine education and acceptance.
- Adoption of the crisis standards of care developed by the Institute of Medicine, which address gaps in existing laws in New York.
- Advance legislation to confirm that the suspension by Executive Order 202 of the statutes of limitation and various other time limits under the procedural laws of the state in response to the COVID-19 public health crisis constitutes a toll of such time limits.

Additional information can be found here:

<https://nysba.org/app/uploads/2021/08/EC-Approved-Final-Report-on-Emergency-Task-Force-on-Mandatory-Vaccination-and-Safeguarding-the-Publics-Health.-with-appendix-a.pdf>

Permission for NY Admitted Attorneys to Practice without Residency or Office within NYS:

New York State Judiciary Law section 470 provides: *"A person, regularly admitted to practice as an attorney and counsellor, in the courts of record of this state, whose office for the transaction of law business is within the state, may practice as such attorney or counsellor, although he resides in an adjoining state."* Originally enacted in 1862, and then updated in 1909, the statute is no longer needed. The concerns that led to the adoption of this section more than a century ago no longer exist, and the current statutory prohibition serves no purpose in today's global environment. As this past year and a half has demonstrated, the need for a physical office is no longer the norm as remote work has become standard operating procedure. NYSBA convened a task force to examine the issue of requirements on non-resident attorneys to practice in New York including service of process and jurisdiction. They concluded that repeal of section 470 would not create any significant difficulties arising from the lack of an attorney's physical office within the state. More importantly, NYSBA's Task Force on Rural Justice also found a shortage of attorneys in rural areas poses serious access to justice concerns.

Additional information can be found here:

<https://nysba.org/app/uploads/2020/04/Report-Task-Force-on-Rural-Justice-April-2020-.pdf>

Reorganize the State Court System:

The state court system is comprised of 11 different trial courts – a structure that has been described as "the most archaic and bizarrely convoluted" in the nation. New York's Chief Judge Janet DiFiore has proposed that antiquated provisions in our state constitution be amended to modernize the system. NYSBA's policy is consistent with the Chief Judge's proposals, including the following: The Surrogate's Court, County Court, Family Court, and the Court of Claims would all be merged into the Supreme Court and would no longer exist as separate courts. Successors to the former judges of those courts would serve terms that would be the length of current terms. The limitation of no more than one Supreme Court judge per 50,000 residents would be repealed and the Legislature would be given the power to create a 5th judicial department.

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Legal Representation Issues:

- **Increase the rate of compensation for attorneys who provide mandated representation.** The last increase in assigned-counsel rates was in 2004, when they were increased to \$75 per hour, in and out of court, for all matters under County Law Section 722. That is, felonies, violation of probation in connection with a felony conviction, appeals, parole representation, family court representation, and post-judgment motions. Fees of \$60 per hour, in and out of court, are paid for representation of a person charged with a misdemeanor or lesser offence and no felony. Rates for Attorneys for the children under the judiciary law have also remained at \$75 per hour for nearly two decades. Rates of compensation to assigned counsel must be increased to stop the exodus of practitioners from panels across the state. The resulting shortage of lawyers to represent indigent defendants and minors undermines access to justice in New York State.
- **Legal representation for persons in immigration matters.** New York State should establish a right to counsel for immigrants facing deportation. In the face of increased and indiscriminate immigration enforcement by the federal government, and given the complexities of our current immigration system, guaranteeing access to counsel is the only way to ensure that all New Yorkers have access to justice, equal protection, and due process under the law.
- **Right to Counsel in Housing Proceedings.** New York State should establish a right to counsel for low-income tenants involved in housing defense proceedings. Housing law is widely acknowledged to be complex and almost impossible to successfully navigate without a lawyer. Unfortunately, most tenants cannot afford to hire an attorney and the free legal services available do not match the scale of need.

Modernizing Policing at Key Stages:

We are at a crisis point with policing in New York. Harmful policing practices are resulting in misconduct that disproportionately impacts Black people and a culture that allows these practices to continue unchecked. Policing needs to be brought into the 21st century by improving policing at every stage, from hiring to discipline. The Association recommends:

1. Aligning police professionals with other professions in terms of education, licensing, and continuous substantive legal training.
2. Fostering police culture that supports peer intervention when misconduct arises, and enacting duty to intervene legislation.
3. Holding police departments accountable for misconduct through inclusive and empowered community engagement.
4. Increasing transparency between police departments and communities through statewide, mandated use of body cameras and providing enforcement mechanisms for those who fail to abide.
5. Modifying criminal law procedures that hinder holding police officers accountable for misconduct as well as increasing diversity and diversity training for police, district attorneys, public defenders, and courts.
6. Leveraging technology to obtain data, which will improve monitoring and oversight and strengthen accountability.
7. Reforming qualified immunity and creating a civil remedy for violations of a person's rights under the federal and state law.

Additional information can be found here:

<https://nysba.org/app/uploads/2021/06/Report-by-the-Task-Force-for-Racial-Injustice-and-Police-Reform-FINAL-with-HOD-wording-on-cover.pdf>

General Policy Position:

Integrity of New York's Justice System and Support for the Profession:

The New York State Bar Association adheres to the settled principle that the courts are a co-equal branch of our government. An independent, well-functioning judicial system, accessible to all, is a bedrock component of our democracy. The courts, including town and village courts, more than any other arm of government, are the bulwark of liberty. As practitioners, we have a strong interest in the impact that the Judiciary Budget has on the operation of the court system. In order to ensure that the court system retains its status as a co-equal branch of government, the Governor and Legislature must appropriate adequate resources, which should be wisely and clearly administered by the courts, to ensure that they fulfill their essential role, especially during the coronavirus pandemic. A core mission of the New York State Bar Association is to represent the interests of the legal profession. In that regard, the Association will work to protect the independence of the judiciary, enhance access to the courts, and promote affirmative legislative proposals that benefit the profession. It is just as important to oppose those proposals that would burden the profession. The Association will work to ensure that attorneys are able to protect their clients' interests and effectively engage in the practice of law.

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