

From the NYS Assembly Judiciary Committee



Carl E. Heastie, Speaker • Helene E. Weinstein, Chair • Summer 2016
Legislative Office Building, Room 831, Albany, NY 12248

Letter from the Chair



The Judiciary Committee has jurisdiction over virtually all legislation affecting the state judicial system and civil practice in the courts. The Committee reviews and drafts legislation concerning domestic relations and child support, protection of domestic violence victims, trusts and estates, guardians for incapacitated persons, real property and landlord-tenant law, lien law, debtor-creditor law, and the uniform commercial code. In addition, all proposed amendments to the New York State Constitution are considered by the Judiciary Committee.

The Committee also shares budgetary oversight of the Office of Court Administration and the Department of Law with the Assembly Ways and Means Committee. A top priority of the Committee each year is ensuring that funding is provided in the state budget for civil legal services for low-income New Yorkers. Once again, this year, in light of the lasting impact of the economic crisis on already scarce funding resources for civil legal services and on the rising and unmet demand for these services, the Judiciary Committee was a strong advocate for providing civil legal services to those in need.

In 2016, the Judiciary Committee tackled many high profile issues including protections for domestic violence victims and children, protections for homeowners and consumers, free speech safeguards, and protections for the elderly and disabled.

The highlights that follow demonstrate the diversity and importance of the Judiciary Committee's work in 2016.

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Sincerely,

Helene E. Weinstein, Chair
New York State Assembly Judiciary Committee

Protecting Homeowners and Keeping Neighborhoods Safe

New York State's neighborhoods have been devastated by the dramatic increase in foreclosures since the 2008 financial crisis. Many New Yorkers are working to keep their homes, but are faced with a mortgage servicing system that is moving too slowly. Neighborhoods across the state are struggling to cope with vacant and abandoned ("Zombie") residential properties, blight, and underwater mortgages that banks refuse to modify. In 2016, the Assembly Judiciary Committee worked on and helped enact a comprehensive package to protect New York's homeowners and neighborhoods.

Combating Zombie properties. This measure expands the maintenance requirements for Zombie properties by allowing earlier detection and maintenance of these properties and authorizes municipalities to enforce the maintenance provisions of the law. This law will help homeowners by keeping them in their homes with proper information about their rights. It also provides for a toll free hotline (1-800-342-3736) for community residents to report suspected Zombie properties to the Department of Financial Services. L. 2016, c. 73, A.10741 – Farrell.

Mandatory settlement conference reform. This year's law ensures compliance with New York State's settlement conference law by clearly authorizing the court to impose financial sanctions against lenders who do not make good faith efforts to resolve mortgage foreclosure actions. L. 2016, c. 73, A.10741 – Farrell.



The creation of the Community Restoration Fund is intended to preserve homeownership and to promote neighborhood stabilization in all parts of New York State that are hard hit by foreclosures. This Fund will provide home-saving solutions, and alternative affordable housing solutions for homeowners who are either delinquent on their mortgage payments, or are in danger of going into default because of economic hardship. L. 2016, c. 72, A.10730 – Weinstein.

Administration of Justice

The Committee worked on reforms to make our justice system more responsive, fair and efficient.

Extending the statute of limitations for claims relating to superfund sites. This measure extends the time within which a victim may bring a legal action due to harm caused by exposure to substances found in an area designated as a Superfund site. L. 2016, c. 128, A.9568A – McDonald.

Expanding Jury Pools in Federal Court. To enable litigants to be judged by a “jury of their peers” in Federal Court, and to increase diversity in our jury pools, this legislation broadens the lists of state citizens which the Federal Courts can use to summon for jury duty. L. 2016, c. 284, A.9273 – Morelle.

Improving Judicial Health and Wellness. This measure permits bar associations to offer counseling and assistance to judges who may have substance or mental health issues, in a similar manner as is presently provided for lawyers. A.10071 – Weinstein (Awaiting Executive Action).

Pension Forfeiture Reform. This proposed constitutional amendment requires that certain state and local public officers convicted of a felony involving breach of public trust are subject to forfeiture of pension benefits. A.10739A – Buchwald (Passed Both Houses – First Passage).

Strategic Lawsuits Against Public Participation (Anti-SLAPP). This measure protects citizens from litigation designed to silence their exercise of the rights of free speech and petition about matters of public concern. A.258 – Weinstein. (Passed Assembly).

Protecting workers from employers who illegally withhold wages. This Act, ensures that assets of the employer will be available to compensate wage theft victims who obtain judgments against their employers, increasing the likelihood of recovery. A.5501D – Rosenthal (Passed Assembly and then recalled for amendment).

Public Forum on Commission on Prosecutorial Conduct

In June, the Assembly and the Senate held a Joint Public Forum on a bill to create a new prosecutorial conduct commission to investigate misconduct by district attorneys and their offices. (A.1131B - Perry). Testimony was offered by Barry Scheck from the Innocence Project, Bennett Gershman of Pace Law School, Steven W. Downs formerly of the Commission on Judicial Conduct, members of the District Attorney Association, and several exonerated victims of wrongful prosecution.

Protecting Consumers in Arbitration



In February, the Judiciary Committee co-sponsored a hearing along with the Assembly’s Consumer Affairs and Protection Committee on the subject of mandatory arbitration of consumer disputes. The testimony confirmed that consumers are being forced to arbitrate disputes, instead of using our courts, with the sellers of consumer goods and services due to boilerplate language in consumer contracts. This has resulted in injustices to consumers and employees. In response, the Committee worked on, and the Assembly passed some measures designed to protect consumers and employees from manifestly unjust arbitration requirements.

Consumer contract formation. This measure would give the Courts the ability to reform consumer and employment contracts in order to better meet the reasonable expectations of the parties to the contract. A.9991 – Simotas (Passed Assembly).

Requiring arbitrators to follow the law. Existing law does not require arbitrators to follow the law when rendering arbitration decisions. This measure would allow a participant in an arbitration to have an arbitration award vacated in court if the arbitrator demonstrated a manifest disregard of the law. A.9993 – Weinstein (Passed Assembly).

Allowing consumers a reasonably convenient place of trial. Consumer contracts frequently require consumers to arbitrate or litigate disputes in a far flung venue. This bill gives consumers the ability to arbitrate or litigate in the county of their residence, notwithstanding any boilerplate contract language to the contrary. A.9995 – Weinstein (Passed Assembly).

Requiring arbitrators to set forth a basis for their decisions. Under current law, arbitrators typically are not obliged to explain why they reached a decision favoring one party or the other. This measure would require arbitrators to do so, thereby better informing parties about their rights to challenge the decision. A.10090A – Titone (Passed Assembly).

Comprehensive Arbitration Reform. This measure would, among other things, set requirements designed to ensure consumer and employment arbitrator impartiality and neutrality. A.8191A – Titone (Advanced to Third Reading).

Additional arbitration reform measures that the Committee worked on with the Consumer Affairs Committee include: A.9544 – Dinowitz (Passed Assembly); A.9545 – Dinowitz (Passed Assembly); A.9956A – Dinowitz (Advanced to Third Reading); A.10065 – Steck (Reported to rules).



Protecting Domestic Violence Victims and Families

The Committee worked on legislation in response to the needs of domestic violence victims and families.

Enforcement of child support and spousal support orders in Supreme Court. This measure would enable more timely collection of support orders in divorce actions in Supreme Court. It removes the hurdle of exhausting all other enforcement remedies before filing for contempt in Supreme Court- a hurdle that prolongs a parties' path to economic stability. This is particularly important for victims of domestic violence. A.7253 – Weinstein (Awaiting Executive Action).

Extending the authority of court attorney referees and Judicial Hearing Officers to issue orders of protection in family court. This law extends the current ability of referees and Judicial Hearing Officers to hear and determine orders of protection in family court to provide more access to the courts for victims of domestic violence. L. 2016, c. 48, A.9686 – Bronson.

Protecting due process rights of parents in custody cases. By providing uniform access to court ordered forensic mental health evaluation reports and underlying data by litigants, their counsels and the attorney for the child in child custody and visitation cases, this measure addresses

due process concerns with limited access to information that has significant bearing on parental rights to their children. A.290 – Weinstein (Passed Assembly).

Issuance of an order of spousal support in family offense proceeding. In recognition of the financial barriers to fleeing domestic violence, this measure authorizes the family court to order spousal support when issuing an order of protection. A.7032A – Mayer (Passed Assembly).

Protecting victims from having to choose between safety and housing. This bill prevents local nuisance ordinances from directly or indirectly jeopardizing the housing of victims of domestic violence simply for accessing police or emergency assistance. A.1322 – Lavine (Passed Assembly).

Safeguarding and expanding legal remedies for victims of domestic violence. This measure would recognize the unique nature of acts of domestic violence upon victims and allow additional time to press their claims in court. In most cases, this measure would expand the statute of limitation from one to two years. A.7037 – Zebrowski (Passed Assembly).

Protecting Elderly and Disabled

The Committee advanced legislation to protect New York's elderly and disabled citizens.

Updating disability reference terms in family and guardianship law. Two measures discontinue the use of demeaning terms that cause confusion in family court proceedings and guardianship proceedings in Surrogates Court. One measure substitutes the term "intellectual disability" for the term "mental retardation" in the domestic relations law, the family court act, the executive law and the social services law. L. 2016, c. 37, A.9518 – Simon. Another measure replaces all references to "mentally retard-

ed" in the guardianship law with "a person who is intellectually disabled". L. 2016, c. 198, A.2125 – Abinanti.

Protecting against the isolation and abuse of disabled individuals. This legislation requires the Order appointing a guardian to identify people entitled to receive notice of the ward's death and authorizes the court to identify persons entitled to receive notice of the incapacitated person's transfer to a medical facility and persons entitled to visit that person. L. 2016, c. 98, A.3461C – Magnarelli.

Combating Deed Fraud

The Committee proposed legislation to address disturbing trends involving deed theft and mortgage fraud by strengthening consumer protections, enhancing disclosures, and creating an amplified record of real estate transactions. We will continue to work toward enacting these measures in the upcoming session.

Strengthening the law related to good faith home purchasers. This measure closes a loophole in the current law that allows deed scammers to hide behind the excuse that they had no notice that the property they purchased was fraudulently transferred to them. A.10424 – Mosley (Advanced to third reading).

Notary accountability in cases involving residential real property conveyance. This measure would prevent fraudulent deed transfers by increasing the ac-

countability of notaries in certain situations. A.10425A – Walker (Advanced to third reading).

Increased protections for homeowners with distressed home loans. This bill closes existing loopholes in the law to prevent deed fraud and mortgage scams. It increases the likelihood that a victim will have the opportunity to seek recovery in court. It also gives the District Attorney civil remedies for fraudulent deed transfers. A.10423A – Weinstein (Reported to Rules).

Trusts and Estates

The Committee advanced and clarified trust and estates laws to better meet the needs of New Yorkers.

Managing digital assets while honoring and protecting an individual's privacy and choices. The wide use of digital assets such as electronic documents, photographs, email, and social media accounts, has created an urgent need for legislation to address the administration of these assets upon death or incapacity of the user. This measure allows users to specify the disposition of digital assets and provides legal authority for fiduciaries to manage these assets in accordance with the user's estate plan, while protecting a user's private communications from unwarranted disclosure. A.9910A – Weinstein (Awaiting Executive Action).

Protects non-citizen spouses from meaningless effort and expense. This law extends for an additional

three years Chapter 538 of the Laws of 2013 to simplify the procedure for obtaining a marital deduction for a dis-position to a surviving spouse who is not a United States citizen. L. 2016, c. 80, A.10121 – Quart.

Bringing parity and transparency to revocable trusts. In the interests of resolving estate planning disputes, this measure provides that with respect to revocable trusts, which are often used in place of a will, the attorney-client privilege does not apply to shield information from disclosure, in the same manner that the privilege does not apply to wills. L. 2016, c. 262, A.10357 – Simotas.



In January, the Assembly Standing Committee on Judiciary and the Assembly Subcommittee on Diversity in Law jointly held a Roundtable on the issue of diversity in the legal profession. Legislative officials, judges, and counsels of corporate, government, nonprofit and legal organizations discussed the current state of the legal profession and strategies for promoting increased diversity.

NEWS

From the NYS Assembly Judiciary Committee

Access to Justice and Funding for Legal Services

Civil Legal Services

This year, the Assembly supported an increased appropriation for civil legal services through the Judiciary budget by \$15 million for a total of \$100 million to help bridge the rising gap between the needs of low-income New Yorkers and the availability of legal services to meet these needs (approximately 1.8 million litigants in civil matters remain unrepresented across New York State). In the SFY 2016-17 budget, the Assembly also restored its funding of \$2.83 million for civil legal services and \$609,000 for domestic violence programs.

Indigent Defense

With the help of advocacy from the Assembly Judiciary Committee, the SFY 2016-17 enacted budget appropriated \$99.4 million for the Office of Indigent Legal Services, which is an increase of \$12.4 million from last year to continue to implement the *Hurrell-Harring* settlement agreement. In addition, before the end of session this year, both houses passed a measure that would require the state to gradually take over full funding of indigent legal services programs by 2023. (A.10706 – Fahy).