

# From the NYS Assembly Judiciary Committee



Winter 2018

**Carl E. Heastie, Speaker • Jeffrey Dinowitz, Chair**  
Legislative Office Building, Room 831, Albany, NY 12248 • [www.nyassembly.gov](http://www.nyassembly.gov)



## Welcome Message From The Chair

Dear Friend,

I write to you with news from the New York State Assembly Judiciary Committee. The 2019 legislative session is rapidly approaching and the Judiciary Committee has been busy holding a number of hearings on pertinent issues facing New Yorkers. Enclosed in this newsletter you'll find some information on those hearings as well as updates on legislation that was passed by the Assembly in 2018.

We now will turn to working to enact a new budget for the State and our courts. In this budget I plan to fight to ensure adequate funding for civil legal services, foreclosure prevention funding, and other vital funding needs to ensure equal and fair access to justice for all.

It is my hope that this newsletter will offer some good insight into the workings of the committee and what we plan to address in the coming months. Please be sure to note the contact information that may be of use to you.

Lastly, I want to wish you and yours a happy and healthy New Year and hope you have a wonderful holiday season.

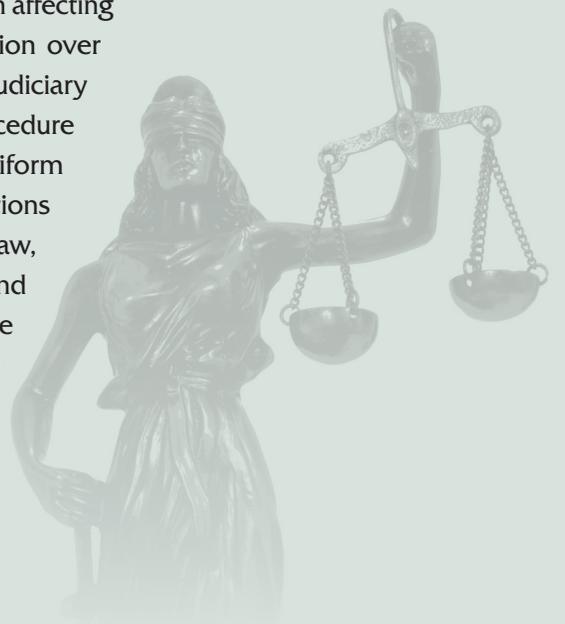
Sincerely,

Jeffrey Dinowitz  
Chair, New York State Assembly Judiciary Committee

## COMMITTEE JURISDICTION

The Assembly Committee on Judiciary has jurisdiction over legislation affecting all aspects of both state and local courts. It has primary jurisdiction over amendments to the State Constitution, Civil Practice Law and Rules, Judiciary Law, Uniform Court Acts, Family Court Act, Surrogate's Court and Procedure Act, Domestic Relations Law, Estates Powers and Trusts Law, Uniform Commercial Code, Lien Law, Debtor-Creditor Law, General Obligations Law, Real Property Law, Real Property Actions and Proceedings Law, Civil Rights Law, Partnership Law, Eminent Domain Procedure Law and Indian Law. The Committee also shares budgetary oversight of the Office of Court Administration and the Department of Law with the Assembly Ways and Means Committee. In addition, all proposed amendments to the New York State Constitution are considered by the Judiciary Committee.

The highlights that follow demonstrate the breadth, diversity, and importance of the Judiciary Committee's work in 2018.



## PUBLIC HEARING ON ELECTRONIC FILING



**Chairman Dinowitz, Assemblyman David Buchwald, and Assemblyman David Weprin listen to witness testimony on the state of electronic filing of court papers at a November 16, 2018 hearing.**

In 1999, New York State authorized the use of electronic filing of court papers for certain cases. Since then, more than 100,000 users have registered with the New York State Courts Electronic Filing System (“NYSCEF”) to e-file more than 1.6 million cases. The hearing examined the current status of the electronic filing system in New York, from the standpoint of legal aid

providers, pro se individuals, attorneys and the Office of Court Administration. The committee received testimony about the use of electronic filing and how any such expansion of the program may impact the court system and access to justice for New Yorkers seeking redress in the courts.

## PUBLIC HEARING ON WAGE THEFT



**Chairman Dinowitz and Assembly Labor Committee Chair Michelle Titus along with Judiciary Committee Members Latoya Joyner and Jo Anne Simon listen to witness testimony at a recent hearing on wage theft in New York.**

The New York State Assembly Standing Committee on Labor and the Assembly Standing Committee on Judiciary conducted a public hearing examining the challenges in the prevention and adjudication of wage theft in New York State.

The Wage Theft Prevention Act was enacted in 2010, and amended in 2014, to help empower employees in New York State to recover wages that have been withheld by unscrupulous employers. Despite this progress, many employees still remain vulnerable to wage theft, particularly those in low-wage occupations. The Committees received testimony about the implementation of the Wage Theft Prevention Act and the barriers that remain with regard to recovering employees’ lost wages and holding employers accountable for wage theft.

## GOVERNOR SIGNS LEGISLATION TO ESTABLISH A COMMISSION ON PROSECUTORIAL CONDUCT

On August 21st, the Governor signed legislation to create the State Commission on Prosecutorial Conduct (Chapter 202 of 2018). The creation of this new Commission is an important step in ensuring that New York has a fair and equitable criminal justice system. The law creates an 11-member Commission appointed by the governor, legislature and chief judge to investigate and recommend sanctions when appropriate for prosecutors found to have engaged in misconduct in the performance of their official duties. The legislation also provides important due process protections for prosecutors including discovery, advance notice of hearings and the ability to present evidence and cross-examine witnesses.

Every day, prosecutors make decisions that impact peoples’ lives and liberty and it is therefore crucial that they be held to the highest standards of accountability. The Judiciary Committee, in coordination with the Codes Committee, has worked hard to craft and promote policies that ensure every New Yorker is treated with fairness in our courts, and the establishment of this new commission builds on our criminal justice successes. Just last year, we made Raise the Age the law of the land, delivering a justice system that recognizes the differences between children and adults.

## PROTECTING CONSUMERS IN ARBITRATION

**An act to amend the civil practice law and rules, in relation to grounds for vacating an arbitration award on the basis of partiality of the arbitrator – A.6637 (Titone) / S.8710 (Sepúlveda)**

Currently, a party must prove, either during the course of misconduct by the arbitrator or after an award by an arbitrator is perceived to be unfair, that the arbitrator was biased even if the arbitrator clearly

has an economic stake in the outcome of the dispute. This outcome is in direct opposition to the reasons (efficiency and fairness) why arbitration is favored. Arbitration is commonly thought to be a dispute resolution procedure that occurs in front of a neutral third party. This legislation supports and clarifies the original intent of the law. **(Passed Assembly)**

# PROTECTING TENANTS AND HOMEOWNERS

## **Relates to the presence of a companion animal when executing a warrant for eviction or dispossession of property – A.8684B (Rosenthal) / S.7388-B (Tedisco)**

When a marshal executes an eviction order and takes legal possession of the property located within the evictee's premises, the marshal is required to prepare a written inventory of all items inside, store the items for a specified amount of time, and allow the evicted tenant to later retrieve their belongings. Since animals are considered property under the law, there is no distinction between how a couch and an animal is treated. Unlike couches, animals are living sentient beings, and need food, water, air and affection to survive. This bill would ensure that the safety and wellbeing of an animal is not compromised when a tenant is evicted. **(Chapter 205 of the Laws of 2018)**

## **Prohibits commercial leases from including a waiver of the right to a declaratory judgment action – A.10414 (Otis)**

This legislation seeks to enact such a provision as a matter of public policy and restore the right of commercial tenants to cure under a declaratory judgment action as has been the practice since 1968. The

ability to cure through this process protects commercial tenants from landlords seeking to remove tenants in the middle of a lease period without appropriate ability to cure or judicial review. To allow waiver clauses of the Yellowstone injunction will be disruptive of commerce, unfair to commercial tenants and allow landlords to use minor lease issues as a method to remove and replace tenants in the middle of lease terms. Without this legislation, commercial landlords would be able to prematurely terminate leases whenever they wanted to force a tenant out, whether the default was legitimate or not, and the tenant who agreed to a waiver would have no recourse. **(Assembly Third Reading)**

## **Relates to prohibiting pre-payment penalties for mortgages secured by real property owned in a cooperative form of ownership – A.10727 (Dinowitz)**

This bill will forbid prepayment penalties and fees from being charged or collected on a loan or forbearance secured by real property owned in a cooperative form ownership where over fifty percent of the units are shareholder occupied and will make such prepayment penalties unenforceable. **(Assembly Third Reading)**

# PROTECTING DOMESTIC VIOLENCE VICTIMS, CHILDREN AND FAMILIES

## **Relates to codifying the Court Appointed Special Advocates program (CASA) – A.1050-A (Stirpe) / S.2059-A (Bonacic)**

The bill establishes the Court Appointed Special Advocates program (CASA) in statute and codifies existing Office of Court Administration (OCA) rules pertaining to CASA. The CASA program was established by the Office of Court Administration in 1991 under the Task Force on Permanency Planning to promote and support trained community volunteer advocacy programs. **(Chapter 291 of the Laws of 2018)**

## **Relates to allowing a person having a lawful order of custody of a child to make medical decisions for such child – A.7928 (Jaffee) / S.6015-A (Avella)**

This bill includes non-parents with lawful orders of custody as persons who can make medical decisions for minors in their care,

and to include non-parents with lawful orders of custody as parents whose consent is not needed for the provision of medical, dental, health and hospital services when in the judgment of a physician, emergency medical care is needed. **(Passed Assembly)**

## **Relates to the date of the adjustment of the spousal maintenance cap – A.9919 (Joyner) / S.7675 (Bonacic)**

This bill updates the spousal maintenance cap from one hundred and seventy five thousand to one hundred and eighty four thousand and updates the adjustment date to match with the date of adjustment under Social Services Law reducing unnecessary litigation and court costs over any confusion as to what date applies. **(Passed Assembly)**

# ADMINISTRATION OF JUSTICE

## **Authorizes county clerks to establish a system to receive and retain maps utilizing electronic means – A.4127 (Magee) / S.7751 (Marchione)**

The bill amends real property law authorizing county clerks to adopt systems to receive and retain maps using electronic means, saving time and money for county taxpayers. **(Passed both houses)**

## **Relates to a referee's compensation – A.5837 (Lentol) / S.8351 (Golden)**

Generally, a referee is entitled, for each day spent in the business of reference, to fifty dollars unless a different compensation is fixed by the courts or by consent in writing of all parties not in default for failure to appear or plead. It has been increasingly difficult to attract lawyers to take on such appointments because of the low payment. **(Passed both houses)**

## **Provides that the attorney - client privilege shall apply to communications between a lawyer referral service and a client – A.9029 (Dinowitz) / S05845 (Bonacic)**

This bill, which passed both houses, provides that communications between a consumer of legal services and a legal referral service be deemed to be privileged on the same basis as those provided by law for communications between attorney and client. **(Chapter 235 of the Laws of 2018)**

## **Extends provisions of law relating to the use of electronic means for the commencement and filing of papers in certain actions or proceedings – A.10647 (Dinowitz) / S.8416 (Bonacic)**

This measure would extend, from September 1, 2018 to September 1, 2019, a sunset established by chapter 237 of the laws of 2015 as amended by chapter 99 of the laws of 2017 authorizing deployment of mandatory e-filing. **(Chapter 168 of the Laws of 2018)**

## **Relates to allowing judicial notice of Google Maps and other web mapping or global imaging websites – A.11191 (Dinowitz) / S.9061 (Gianaris)**

Judicial notice is taken of Google Maps in federal court, as a source that "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned" pursuant to Rule 201 of the Federal Rules of Evidence. Federal courts have taken judicial notice of images, as well as general locations and distances, provided by Google Maps and Google Earth. There is extensive use of Google Maps to determine distances between two locations, as well as an estimate of walking or driving time between such points provided by Google Maps. This bill will further the interests of justice by allowing litigation to proceed in a timelier manner and will help both plaintiff and defendant to resolve litigation as soon as possible. **(Passed both houses)**

## WORKERS AND CONSUMER PROTECTIONS

**Establishes the right of privacy and the right of publicity for both living and deceased individuals – A.8155B (Morelle) / S.5857-B (Savino)**

The purpose of this bill is to create a right of publicity for deceased and living individuals and a registry to publicly post such interests upon after death thereby giving notice to people who may seek to use an individual's right of publicity in New York State for advertising purposes, or for the purposes of trade. In addition this bill addresses the ability of technology to create digital avatars and makes regulations regarding their use. **(Passed Assembly)**

## RESOLUTIONS REPORTED BY THE COMMITTEE

**Calling for ratification of the Equal Rights Amendment – K.168 (Seawright) (Adopted by the Assembly 05/01/2017)**

This resolution calls for the ratification of the Equal Rights Amendment by members of the U.S. Senate and House of Representatives and asks the Assembly to affirm strong support of the Equal Rights Amendment and a commitment to put the ERA into the Constitution. **(Adopted by the Assembly)**

## TRUSTS AND ESTATES AND GUARDIANSHIPS

**Relates to limitations on powers and immunities of executors and testamentary trustees – A.10100 (Dinowitz) / S.6138 (Bonacic)**

This legislation amends the Estates Powers and Trusts Law to add inter vivos trusts to current law to prohibit inter vivos trustees from having exoneration clauses for failure to exercise reasonable care. **(Chapter 245 of the Laws of 2018)**

**Relates to the disqualification of a surviving spouse – A.8325 (Braunstein) / S.6640 (Bonacic)**

The purpose of the bill is to prevent a disqualified spouse from taking a share of a decedent's estate if there has been an annulment of the marriage before or after the death of the decedent. Recently, several recent court decisions have highlighted a specific type of elder abuse where a person takes unfair advantage of an individual who lacks the capacity to enter into a marriage or otherwise utilizes fraud and undue influence to secretly marry the individual for the purpose of obtaining a portion of his or her estate at the expense of the intended heirs. This bill will close a loophole in the law that allows for the exploitation of a vulnerable elderly individual. **(Passed Assembly)**

New York State Assembly, Albany, New York 12248

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**NEWS**  
**From the  
NYS Assembly  
Judiciary  
Committee**  
**Winter 2018**

## IMPORTANT CONTACTS

- **New York State Unified Court System**  
Office of Court Administration, 25 Beaver Street - Rm. 852, New York, NY 10004
- **NYS Unified Court System**  
Office of Court Administration, 4 ESP, Suite 2001, Empire State Plaza, Albany, NY 12223-1450
- **NYC Office: 212-428-2700**
- **Albany Office: 518-453-8650 • [www.nycourts.gov/](http://www.nycourts.gov/)**  
The New York State Unified Court System is the official name of the judicial branch of New York State government. The Court hears on average over 3 million cases per year on a wide array of issues. Such matters involve civil and criminal complaints, family matters, landlord-tenant cases, and trust and estate issues, among many others.
- **NYS Attorney General**  
**The Capitol • Albany, NY 12224 • 1-800-771-7755 • [www.ag.ny.gov](http://www.ag.ny.gov)**  
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