

**NEW YORK CITY BAR ASSOCIATION**

**NEW YORK  
CITY BAR**

# **NEW YORK STATE LEGISLATIVE AGENDA**

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**2023**

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## 2023 NEW YORK STATE LEGISLATIVE AGENDA

The City Bar’s **2023 New York State Legislative Agenda** is rooted in our mission to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest. The agenda focuses on positions relevant to the current legislative debate or of particular importance to the City Bar, as well as legislative proposals drafted by our committees.<sup>1</sup> The City Bar’s committees generate dozens of reports over the course of each legislative session and this agenda represents only a portion of those positions. For a full directory of City Bar reports, including positions on regulatory changes and our federal and international work, please visit our website.<sup>2</sup>

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<sup>1</sup> To further explore the agenda, please visit <http://www.nycbar.org/issue-policy/issue/new-york-statelegislative-agenda>.

<sup>2</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports>.

### About the Association

*The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.*

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## THE JUDICIARY, THE PROFESSION & THE FAIR, EFFECTIVE ADMINISTRATION OF JUSTICE

### SUPPORT ADEQUATE FUNDING FOR CIVIL LEGAL SERVICES IN THE JUDICIARY BUDGET

The City Bar is deeply committed to increasing access to justice and ensuring adequate resources for our justice system.<sup>3</sup> Robust civil legal services funding remains critically important for rebuilding a post-pandemic New York. We support the civil legal services funding proposed by the Judiciary in its FY 2024 budget.<sup>4</sup> The Judiciary's commitment to stable funding for civil legal services has been and will continue to be vital for civil justice providers in New York. The need for this funding has only become more apparent as New York continues to address the COVID-19 pandemic and its devastating impact. This devastation has manifested in even greater need for civil legal assistance addressing unemployment and other public benefits; small business dislocation; landlord/tenant and other housing issues, including the unique challenges faced by those who are homeless or at risk of becoming homeless; and consumer credit problems. In short, the pandemic confirmed both the need for nonprofit civil legal services like those provided by the City Bar Justice Center and other providers – as well as the importance of cross-leveraging subject matter expertise to creatively address new and emerging needs, such as those created by a deepening digital divide, an immigration crisis, and a fast-growing senior population facing increased poverty. The Judiciary's commitment to funding civil legal services translates into healthier and more stable communities, homes and families, a reduction in the number of unrepresented parties in court, and in some instances keeps cases out of court altogether, and enhances access to federal benefits. We urge the Legislature and Governor to maintain support of adequate funding for civil legal services in the budget.

### INCREASE THE RATES PAID TO 18-B ATTORNEYS

The City Bar continues to endorse the statutory changes required to sustainably provide reasonable and equitable compensation for the 18-b attorneys representing the parents and children who come before the Family Courts of our state, in addition to those assigned counsel who represent indigent clients in Surrogate's Court and Criminal Court.<sup>5</sup> Nonprofit offices representing parents and children in the Family Courts must also have funding enhanced. Failure to adequately fund the services of these attorneys has resulted in further marginalization of the thousands of Black and brown families who depend on court appointed legal counsel to represent them in matters of the utmost fundamental importance. We believe that past funding cuts for these nonprofit offices must not only be restored but also enhanced even to begin to achieve the race equity required for the fair administration of justice in New York City and State.

*– New for 2023 –*

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<sup>3</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/civil-legal-services-hearing-2022-nys-chief-judge>.

<sup>4</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/judiciary-budget-nys-2024-support>.

<sup>5</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/funding-for-family-court-representation-in-fy-2023-nys-budget>.

## SIMPLIFY NEW YORK STATE'S COURTS THROUGH RESTRUCTURING

The City Bar has long supported proposals to simplify the state's major trial courts, in the firm belief that a truly unified court system will be more efficient and will result in justice that is more equitable, swifter and less expensive than that which is dispensed via the current patchwork of courts. We see restructuring as an essential reform for the benefit of both the court system and the public. It will eliminate confusion and waste and create a much more nimble, efficient and user-friendly system. Immediately prior to the start of the COVID pandemic, former City Bar President Roger Juan Maldonado delivered testimony in support of restructuring before the New York State Senate and Assembly Judiciary Committees that focused primarily on two issues: how court restructuring would benefit, in particular, low-income litigants in New York City Housing Court and how lawyers, judges, court administrators and bar associations need to work together in order to enhance the diversity pipeline into the profession (and, by extension, onto the bench).<sup>6</sup>

## REFORM AND MODERNIZE THE ADMINISTRATION OF CLASS ACTIONS IN NEW YORK'S COURTS

The City Bar supports amending Article 9 of the Civil Practice Law and Rules to reform and modernize the administration of class actions in New York's courts.<sup>7</sup> In 1975, New York enacted its current Article 9 for class actions, and the statute has not been materially changed since. Generally, the amendments would: (1) permit class certification for actions demanding a statutory penalty or minimum measure of recovery; (2) amend language which disfavors class actions against governmental entities; (3) adopt language stating that motions for class certification be made "at an early practicable time" rather than within 60-days of a responsive pleading; (4) provide guidance with specified factors to be considered in appointing class counsel; and (5) provide a more flexible notice provision concerning discontinuance, dismissal or compromise of the class action. ***\*City Bar Proposal\****

## PERMIT NONRESIDENT ATTORNEYS TO PRACTICE IN NEW YORK WITHOUT MAINTAINING A PHYSICAL OFFICE IN STATE

The City Bar supports the repeal of Judiciary Law § 470 to permit attorneys to be licensed to practice in New York without maintaining New York residency or office space.<sup>8</sup> Under Judiciary Law § 470, an attorney licensed in New York who maintains an office in state may practice in New York even if they are out-of-state residents. The New York Court of Appeals has explicitly interpreted this rule to mean that a nonresident attorney who wishes to practice in New York must be both licensed to practice in New York and have a physical office in New York. At the time of its enactment, the logic behind the rule was that it helped ensure personal service on a nonresident attorney. However, the Court of Appeals has acknowledged there are enough measures already in place outside of Judiciary Law § 470 to ensure proper service on a nonresident attorney, thus rendering Judiciary Law § 470 obsolete. The New York Court of

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<sup>6</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/court-restructuring-in-ny-joint-public-hearing-testimony>.

<sup>7</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/report-in-support-of-legislation-to-reform-and-modernize-the-administration-of-class-actions-in-new-yorks-courts>.

<sup>8</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/judiciary-law-470-repeal-nonresident-attorneys>.

Appeals' interpretation has also spawned new motion practice gamesmanship, costing litigants needless legal expense, wasted time, and no tactical advantage. Moreover, compliance with the current law is financially burdensome for nonresident attorneys and thus, again, increases clients' legal expenses without providing any clear benefit. With modern technology, the presence of a physical office address is not a determining factor of successful or professional representation.

## GOOD GOVERNMENT

### RAISE AND RESET EXPECTATIONS ABOUT STATE ETHICS ENFORCEMENT IN NEW YORK

The creation of the new Commission on Ethics and Lobbying in Government (the Commission) as a replacement to the Joint Commission on Public Ethics (JCOPE) provides the opportunity to “reset” public and state officers’ and employees’ expectations about state ethics oversight.<sup>9</sup> We urge the Legislature to continue to look critically at ethics oversight in New York and consider additional reforms as needed to ensure the Commission is operating in a way that is effective and transparent. Additional reforms could include prohibiting *ex parte* communications between Commissioners and the elected officials (or their representatives) who appointed them; requiring additional reporting on the campaign activity of lobbyists; and releasing financial disclosure statements as open data.<sup>10</sup>

- *New for 2023* -

### ELECTION LAW ENFORCEMENT REFORM

We encourage the Legislature to adopt comprehensive civil penalties for all Election Law violations, to streamline administrative enforcement procedures, as well as to provide more transparency in the reporting of enforcement activity.<sup>11</sup> Moreover, the current state Board of Elections (BOE) consists of four members, two Democrats and two Republicans, and most Board employees involved in the registration and election process are chosen by those two parties. As a result of this governance structure, the BOE is virtually always at an impasse and, therefore, unable to act effectively. The two-party system for Board members and employees should be abolished and the Board should become a five-member, non-partisan board.

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<sup>9</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/ethics-enforcement-in-nys-resetting-expectations-celg>.

<sup>10</sup> See <https://reinventalbany.org/wp-content/uploads/2022/03/Memo-to-Legislature-on-Ethics-Commission-Appointment-March-23-2022.pdf#page=5>.

<sup>11</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/safeguarding-new-yorks-elections-post-moreland-commission>.



## CRIMINAL JUSTICE REFORM

### ENACT THE SECOND CHANCE AMENDMENT

The Second Chance Amendment would make certain applicants eligible for modification of their prison sentences.<sup>12</sup> Criminal Procedure Law § 440.20 permits defendants to petition the court to set aside a sentence on the grounds that it was invalid as a matter of law. The Amendment would allow for defendants to make a motion to have their sentences reduced or modified on the grounds that it is excessive, or “greater than necessary to achieve the purposes of sentencing.” Defendants would be permitted to offer evidence such as medical condition, confinement record, and age. By providing an outlet by which indicators of rehabilitation could justify release, the Amendment would incentivize good behavior and participation in rehabilitative programming. ***\*City Bar Proposal\****

### ENACT THE CLEAN SLATE ACT

The Clean Slate Act would automatically seal criminal conviction records for civil purposes after reasonable waiting periods: misdemeanor conviction records would be automatically sealed three years after sentencing and felony records seven years after sentencing. Sealing would not take effect until community supervision is complete, and records would be sealed only for civil purposes, remaining available for criminal justice purposes and for gun licensing. Having a conviction history can mean a lifetime of perpetual punishment that continues long after any criminal systems involvement has ended. Existing avenues to sealing relief are cumbersome and inefficient, so enacting broad-based, automatic records sealing is necessary for real change. The City Bar supports the Clean Slate Act because it will allow individuals with conviction histories to move forward, achieve financial and housing security for themselves and their families, and become vital participants in New York’s recovering economy.<sup>13</sup>

- ***New for 2023*** -

### ENACT THE RAP MUSIC ON TRIAL BILL

In courtrooms across the nation, and here in New York, rap music has been increasingly used as evidence in criminal prosecutions. Rap music has been used to “prove” a wide variety of factual issues, and these tactics threaten to chill the creative expression of ordinary New Yorkers. Rap lyrics have even been used as purported confessions. These practices have not been limited to cases where the accused himself created the lyrics at issue—courts have gone so far as to admit evidence that a defendant merely listened to a song. Because rap music is the only genre of music consistently used as evidence in this way, the practice threatens to invite racial discrimination and stereotyping into criminal prosecutions. The Rap Music on Trial Bill would protect free expression by imposing sensible limitations on the Government’s use of creative expression as evidence in criminal trials. The bill would make the introduction of a defendant’s “creative artistic expression” presumptively inadmissible. The bill does not, however, completely bar the introduction of such evidence, creating reasonable requirements for prosecutors and the court to meet. The City Bar supports the Rap Music on Trial Bill as necessary to supplement the

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<sup>12</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/the-second-chance-amendment-legislative-proposal>.

<sup>13</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/support-for-clean-slate-act>.

traditional evidentiary principles requiring that the probative value of proffered evidence outweigh its potential for prejudice.<sup>14</sup>

- *New for 2023* -

## CLARIFY REGISTRATION REQUIREMENTS FOR INDIVIDUALS CONVICTED OF LEVEL ONE SEX OFFENSES FROM OUT OF STATE

The duration of the registration requirements for individuals convicted of sex offenses is established in Correction Law § 168-h. For a person who is classified as being at low risk to reoffend, the duration of the registration requirement is 20 years, measured from “the initial date of registration.” However, the phrase “initial date of registration” has been interpreted inconsistently with respect to individuals who first registered in another state before moving to New York. The purpose of the proposed amendment is to bring fairness and uniformity to the time a person must spend on the registry, regardless of the state where they may have initially registered.<sup>15</sup> With this amendment – which will impact only level one offenders - 20 years will mean 20 years, with the clock starting when the person first registers in any jurisdiction. This change is consistent with how judges have ruled on the issue when the individual is fortunate enough to have counsel. ***\*City Bar Proposal\****

## HOUSING & HOMELESSNESS

### EXPAND THE RIGHT TO COUNSEL FOR TENANTS FACING EVICTION STATEWIDE

Legal representation is a critical part of the solution to an eviction crisis. For the same reasons we supported the New York City law,<sup>16</sup> the City Bar supports the extension of the right to counsel (RTC) in housing court proceedings statewide.<sup>17</sup> If done right, and if robustly funded so that tenants are provided with meaningful legal representation, RTC can preserve low-income housing, stabilize communities, promote stability in the households of thousands of children, and reduce the incidence of homelessness and its concomitant human and governmental costs. With respect to New York City’s RTC law, we are currently seeing far too many tenants in New York City having to proceed without counsel. Any state level funding should also include sufficient funds necessary to fully carry out New York City’s law.

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<sup>14</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/rap-music-on-trial-bill>.

<sup>15</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/clarify-registration-requirements-for-individuals-convicted-of-level-one-sex-offenses-from-out-of-state>.

<sup>16</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/office-of-civil-justice-rtc-testimony>.

<sup>17</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/right-to-counsel-new-york-state>.



## PROVIDE INTERNET ACCESS TO INDIVIDUALS LIVING IN TEMPORARY HOUSING THROUGHOUT NEW YORK STATE

We support legislation that would provide internet access to individuals residing in temporary housing throughout New York State.<sup>18</sup> Since May 2020, with the release of the City Bar Justice Center’s report, “Homeless Need Internet Access To Find a Home: How Access to Internet and Technology Resources can Support Homeless Families Transition out of Homeless Shelters,” the City Bar and the Justice Center have issued multiple reports and advocated for reliable internet access to be available to shelter residents.<sup>19</sup> New York’s shelters are overwhelmingly lacking internet access, an essential service which could reduce the length of residents’ stays and facilitate their exit into permanent housing. This digital divide is not a new problem, but it has only grown more severe since the COVID-19 pandemic. The legislation would cover State-funded temporary housing, including but not limited to family shelters, shelters for adults, domestic violence shelters, runaway and homeless youth shelters, and safe houses for refugees. This legislation would represent a significant step forward by ensuring that all shelter residents across New York State are guaranteed reliable internet access.

## INCREASE PUBLIC ASSISTANCE BENEFITS

While the need for food and cash assistance has only grown since the onset of the COVID-19 pandemic, the amount of the personal and special needs allowances for New Yorkers in shelters that provide meals and the Cash Assistance (non-rent) grant levels have remained static and not kept pace with rising costs and inflation.<sup>20</sup> At least since 1997, the State has set the “needs” allowance for New Yorkers in shelters that provide meals annually at \$45 per month for a single individual and \$63 per month per household member for families with children. In other words, a mother and child living in a meal-providing shelter today must survive on a cash grant of only \$126 per month. In addition, those receiving Cash Assistance who reside in apartments or shelters where they can cook for themselves, also receive far too little cash assistance to meet their basic needs. The cash assistance (non-rent) grant for this population was last changed in 2012 and remains at \$291.50 for a parent and child. Nor do the Supplemental Nutrition Assistance Program (SNAP) benefits these households receive make up for the shortfall in cash because SNAP is limited to the purchase of food. We support desperately needed increases in these public assistance benefits for this vulnerable population.<sup>21</sup>

**- New for 2023 -**

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<sup>18</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/digital-divide-free-wifi-for-homeless-shelter-residents>.

<sup>19</sup> See <https://www.citybarjusticecenter.org/wp-content/uploads/2020/05/Homeless-Need-Internet-Access-to-Find-a-Home-2020-Report.pdf>.

<sup>20</sup> Emilie Munson, “Demand for food and cash assistance in New York at highest levels in years,” Times Union, Nov. 30, 2022, <https://www.timesunion.com/news/article/Demand-for-food-and-cash-assistance-in-New-York-17604998.php?IPID=Times-Union-state-spotlight>.

<sup>21</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/increasing-public-assistance-benefits-in-nys-testimony>.

## CIVIL RIGHTS & EQUAL PROTECTION

### APPLAUDING SECOND PASSAGE OF THE NEW YORK EQUALITY AMENDMENT

The New York Equality Amendment would amend the State Constitution to declare that equal rights may not be denied on account of race, color, ethnicity, national origin, disability and sex, including pregnancy and pregnancy outcomes, sexual orientation, gender identity and gender expression. The City Bar supports the Equality Amendment because it would significantly advance equality for all New Yorkers by protecting the diverse subgroups that make up the people of New York State.<sup>22</sup> In particular, we support and applaud the inclusion of “pregnancy and pregnancy outcomes” among the Amendment’s protected classes. Existing statutory protection for this class in New York State is not enough, and there is an urgent need for robust, enduring New York constitutional protections for pregnancy and pregnancy outcomes given the current air of hostility towards such protections on the federal level and in other states. Adopting the amendment would meaningfully protect pregnant people from their longstanding vulnerability to discrimination and outside control of their bodies; and prevent New York State from intervening in health care decisions of pregnant people in ways that would interfere with medical decision-making.

### REFORM “QUALIFIED IMMUNITY” TO ENSURE ACCOUNTABILITY FOR CIVIL RIGHTS VIOLATIONS

The City Bar supports legislation which would create a remedy for violation of New Yorkers’ rights protected by the State and Federal Constitution, and help ensure accountability for public employees who violate those rights.<sup>23</sup> The bill brings state civil rights law more in line with existing federal law, and creates important reforms—especially to the doctrine of qualified immunity—that the City Bar has already endorsed on the federal level.<sup>24</sup> Qualified immunity reform is necessary because, under existing qualified immunity doctrine, it is practically impossible to hold a law enforcement officer accountable for violating the individual rights of a citizen unless a court has previously ruled that the specific actions in question were unconstitutional. If a court has not so ruled, the defense of qualified immunity often protects the law enforcement officer by default, even in some plainly egregious circumstances. Eliminating the nearly impermeable defense of qualified immunity is therefore essential to addressing police misconduct and holding officers accountable for civil rights violations. It is also important to note that even without the blanket defense of qualified immunity, defendants can still invoke the procedural and substantive defenses available to them.

- *New for 2023* -

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<sup>22</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/new-york-equality-amendment-for-pregnancy-discrimination>.

<sup>23</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/ending-qualified-immunity-in-new-york-state>.

<sup>24</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/george-floyd-justice-in-policing-act-federal-police-reform>.

## PROTECT CHILDREN DURING CUSTODIAL POLICE INTERROGATION

The City Bar supports legislation to protect children during custodial police interrogation. Youth are uniquely vulnerable to making an unknowing, unintelligent, or involuntary waiver of their Miranda rights and of providing unreliable confessions.<sup>25</sup> The proposed legislative amendment defines key terms in the current law and provides additional safeguards to protect the Constitutional rights of children. The amendment defines when the police must contact the youth's parent or guardian and requires that a youth subjected to custodial interrogation first consult an attorney. New York's current interrogation law fails to protect children, despite their well-known vulnerabilities, as recognized by passage of recent legislative reforms, such as Raise the Age, that center on where a young person is in their development in approaches to public safety. The effect of New York's current approach is disproportionately visited upon Black and Latinx youth subject to custodial interrogations. New York's youth justice system continues to be marked by deep racial and ethnic disparities from arrest to case resolution. An attorney can assist youth in understanding their legal rights and the potential consequences of waiving those rights.

*- New for 2023 -*

## ENACT THE ANTI-HARASSMENT IN REPORTING BILL

Under current state law, anyone may call the child maltreatment hotline, for any reason, and anonymously lodge a report of abuse or neglect. Because members of the public are not required to provide any identifying information, this results in many false and malicious reports of child maltreatment. The Anti-Harassment in Reporting Bill (also known as the Confidential Reporting Bill) would benefit children and families by ending the anonymous reporting of alleged child maltreatment and requiring all reporters to identify themselves, thereby deterring false and malicious reporting. The bill provides that reports will continue to remain confidential, except for the investigating child protective specialists. Reports of child abuse and neglect, and the resulting investigations, cause varied and long-lasting harms to children and their families. Reports show that the majority of calls to child abuse hotlines result in no findings of child maltreatment, and many are made for the purpose of harassment. False allegations of child abuse or neglect have a particularly detrimental impact on families of color, who have a history of overrepresentation and disparate treatment within family court and child protective service systems. Families of color are more likely to be reported to and investigated by child protective services, and have higher rates of family separation and foster care placement once involved with the child protective system. The City Bar argues this bill would improve our system for reporting and investigating child maltreatment, and would represent an important step toward reducing the disparate impact of the child welfare system on Black, brown and Indigenous families.<sup>26</sup>

*- New for 2023 -*

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<sup>25</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/protecting-children-during-custodial-police-interrogation>.

<sup>26</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/bill-to-reduce-false-child-maltreatment-reports>.

## BUSINESS & CONSUMER AFFAIRS

### REQUIRE A PERSONAL FINANCIAL LITERACY COURSE IN STATE HIGH SCHOOLS

The City Bar supports legislation to require successful completion of a personal financial literacy course for all New York State high school students in order to graduate from high school in the state.<sup>27</sup> Such a course should include, among other topics, instruction in automobile, homeowner/renters, health and life insurance, banking, borrowing, credit, and responsible retirement investing. Only a few of these topics are consistently taught in New York despite the fact they provide essential education needed in order to be productive individuals in a complex world. Without a required, separate course in personal financial literacy, virtually no high school graduates in New York will know, for example, that a standard homeowners insurance policy will not cover damage from flooding, or that a standard auto policy will not cover them if they have an accident while driving for Uber, or how to improve their credit score, or how to prudently borrow for college, or how to economically purchase or lease a car, or how to profitably save for retirement. Many internet-based educational tools already exist to comprehensively teach financial literacy, so it should not be onerous or expensive for educational leaders and stakeholders to vet and implement a personal financial literacy curriculum. We believe that as lawyers we have a responsibility to promote greater understanding by consumers of financial services, which a panoply of federal and state laws extensively regulate.

- *New for 2023* -

### REGULATE THE USE OF NONCOMPETE AGREEMENTS FOR LOWER-SALARY EMPLOYEES

New York now stands alone as an outlier in trade secrets law. Federal law under the Defend Trade Secrets Act and the laws of 49 states under their versions of the Uniform Trade Secrets Act impose statutory requirements and restrictions on trade secrets issues—except in New York, the lone remaining common law jurisdiction in the country. New York has no statutory law generally concerning trade secrets or noncompete agreements. The City Bar proposes a limited—but important—change to New York’s unique status as a common law jurisdiction—namely, enactment of a statute to regulate the use of noncompete agreements as applied to lower-salary employees in order to ensure equity and fairness in employment markets while preserving New York’s traditional role as the nation’s commercial leader.<sup>28</sup> More formal guidelines and standards are necessary to ensure fairness in the application of noncompete agreements that can have profound consequences for employees and for regulation of the employment market. ***\*City Bar Proposal\****

### SUPPORT LONG-ESTABLISHED PRACTICES OF BUSINESS-TO-BUSINESS ARBITRATION PROCEEDINGS

The City Bar recommends amendments to pending legislation that would change New York’s regulation of business-to-business arbitration proceedings in a way which would disrupt long-established arbitration practices and could introduce considerable uncertainty in the resolution of numerous business-to-

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<sup>27</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/financial-literacy-course-nys-students>.

<sup>28</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/regulating-the-use-of-noncompete-agreements-for-lower-salary-employees>.

business disputes in New York.<sup>29</sup> In particular, we urge the Legislature to support a central pillar of New York arbitration law, i.e., that parties get to decide the contours of their own arbitration process. To the extent policymakers seek to address concerns regarding disparate bargaining power in arbitration, such as in the context of adhesion contracts between companies and consumers, or employment matters, those situations can and should be addressed in a way that does not disrupt decades of New York jurisprudence promoting party autonomy in business-to-business arbitration.

#### RECOMMENDED MODIFICATIONS TO THE TWENTY-FIRST CENTURY ANTI-TRUST ACT

The City Bar proposed modifications to the Twenty-First Century Anti-Trust Act.<sup>30</sup> The Act would revise current law by introducing a prohibition against anticompetitive single-firm conduct and a premerger notification regime. The City Bar supports the proposed prohibition against anticompetitive single-firm conduct to the extent that the provision tracks Section 2 of the Sherman Act and fills a gap in the current law. We recommend that the New York attorney general be authorized to study and issue guidelines on the interpretation and enforcement of the single-firm conduct provision and consider the Constitutional limits to the state's exercise of jurisdiction. However, we recommend that the proposed provisions regarding "abuse of a dominant position" be deleted, as they diverge substantially from current U.S. antitrust jurisprudence, and also recommend deleting the provisions relating to creation of a premerger notification regime because it would likely capture many transactions with little or no connection to New York and unnecessarily burden the New York attorney general with notifications of transactions unlikely to raise any concerns.

*- New for 2023 -*

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<sup>29</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/legislative-recommendations-on-business-to-business-arbitration-proceedings>.

<sup>30</sup> See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/twenty-first-century-anti-trust-act>.