

# NY LAW JOURNAL

Tuesday, Mar. 16, 2010

p. 1, col. 3

## **18-B Attorneys Build War Chest, Gain Support Against City Plan**

By Daniel Wise

New York City's 18-B lawyers have reached into their own pockets to raise nearly \$100,000 to battle Mayor Michael R. Bloomberg's plan to give much of their work to institutional providers, such as the Legal Aid Society.

Also, a joint resolution issued by five county bar associations last week raised legal issues that could provide ammunition to 18-B lawyers should they sue to block the plan and raised the possibility that the bar groups themselves might sue.

The resolution expressed sympathy for the plight of the city's 1,100 18-B lawyers, saying the proposed change would make "an immediate and far reaching overhaul" in the system for representing indigent criminal defendants by "virtually eliminating" the work of 18-B lawyers.

The resolution was approved by the New York County Lawyers' Association and the Bronx County, Brooklyn, Queens County and Richmond County bar associations.

Responses were due yesterday to the city's February request for proposals (RFP) from organizations seeking to handle conflict cases at the trial level (NYLJ, Feb. 10).

Until now, private defense attorneys, working under the 18-B program, have handled most of the roughly 34,000 cases per year in which seven groups that contract with the city to represent indigent defendants have conflicts of interest.

A spokesperson for the city, Jason Post, said the city is barred from publicly disclosing the number of proposals that have been filed. Three of the groups with existing contracts confirmed that they have submitted proposals but said city law bars them from talking about the contents until contracts are awarded.

Attorneys working under the 18-B program, which is named after Article 18-B of the state County Law, are paid \$75 an hour for handling felonies and \$60 an hour for misdemeanors.

In the current fiscal year, the seven groups, of which the Legal Aid Society is by far the largest, are being paid \$128.5 million to pick up cases in the city's 76 arraignment parts. The most recently available comparable figure for 18-B lawyers was \$47.8 million in calendar year 2008.

In the fiscal year that ended last June 30, the seven groups handled about 324,000 cases and 18-B lawyers about 34,000.

Ann Lesk, the president of the New York County Lawyers' Association, said the city needs to formulate a plan to meet its constitutional mandate to provide an effective defense for indigent clients, "not just how much money it can save on its budget."

The city failed to speak to either 18-B lawyers or the bar associations that signed the plan developed in 1966 for the defense of the poor within New York City, said Ms. Lesk, a partner at Fried, Frank, Harris, Shriver & Jacobson.

That left the five bar associations with "grave concerns," according to the joint resolution. Alan Rothstein, the general counsel of the New York City Bar, said his group is "still studying" the issue.

Christopher M. DiLorenzo, the first vice president of the Bronx County Bar Association, said that each 18-B lawyer has been asked to contribute \$500 toward a war chest that has so far reached \$100,000 to hire lobbyists and, if necessary, to bring a lawsuit.

Mr. DiLorenzo said 18-B lawyers in Queens and in the Bronx have each hired the Parkside Group, a Manhattan-based political consulting firm, to lobby members of the City Council from their boroughs. According to its Web site, the firm has represented numerous successful state and local officeholders, including 14 former and current council members.

Mr. DiLorenzo said 18-B lawyers also have been in contact with two law firms about the possibility of representing them pro bono in a lawsuit to block the plan.

If no volunteer firm can be found, Joseph F. DeFelice, the secretary of the Queens Bar Association, said his organization is willing to contribute money to fund a lawsuit if the other county bar groups agree to do likewise.

A lawsuit would most likely focus on claims that the city's plan fails to conform to the requirements of County Law §722, which specifies that the plan must take one of four forms: a public defender, a private legal aid society, a plan of a county bar association approved by the courts' chief administrator or a combination of those three.

In 1965, Mayor Robert F. Wagner issued an executive order providing for a hybrid plan consisting of the Legal Aid Society as the primary defender, with 18-B lawyers taking conflict cases under a pact between the city and six bar associations (the five county groups and the city bar).

In 2008, Mr. Bloomberg issued an executive order revoking Mr. Wagner's 1965 executive order. Mr. Bloomberg issued a second executive order related to the defense plan two weeks ago on March 2. The RFP was issued on Feb. 3.

There are legal questions related to the city's revocation of the prior plan without consulting with the bar groups, which have "assumed important roles as stakeholders in the system for 45 years," Ms. Lesk said.

Because the bar associations are "not dependent upon government funds," she said, "we have more freedom to speak our minds than do others who are a part of the budget process."