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**NEW YORK STATE BAR ASSOCIATION PROPOSES STATE AND LOCAL
GOVERNMENT ETHICS REFORM**

Calls on state Legislature to enact 22-item agenda

ALBANY--The New York State Bar Association today proposed a sweeping array of government ethics proposals, including: a single ethics commission to oversee employees of state agencies and the Legislature as well as lobbyists; tougher laws to combat "honest services fraud"; expanded disclosure by public officials of outside income; and the first comprehensive overhaul of the law governing municipal ethics in 50 years. "Sadly, government scandals in recent years have eroded New Yorkers' confidence in their state and local governments. To regain their trust, the State Bar Association offers 22 recommendations for ethics reform aimed at enhancing enforcement and government transparency," said NYSBA President Stephen P. Younger (Patterson Belknap Webb & Tyler LLP). "This has changed the reputation of our governmental institutions and the thousands of honest and hard-working public servants in our state." He created the Task Force on Government Ethics in June 2010. "We are eager to work with Governor Andrew Cuomo, state legislators and others who share our goal of enacting robust and effective government ethics legislation," he added. "It is time to restore the public's trust in our governmental institutions."

The Association's House of Delegates approved the ethics recommendations Friday at the Association's annual meeting in New York City. The task force was co-chaired by Patricia E. Salkin, associate dean and director of the Government Law Center (Albany Law School), and Michael J. Garcia (Kirkland & Ellis LLP), former U.S. Attorney for the Southern District of New York.

Among the New York State Bar Association's recommendations for the Governor and Legislature:

- Create a single ethics commission to oversee both the Executive and Legislative branches of government. It also would have jurisdiction over the Lobbying Act. The restructured Commission on Public Integrity would consist of up to nine members, serving staggered five-year terms.
- Give the state Inspector General (a gubernatorial appointee subject to Senate confirmation) a five-year term and provide for direct reporting to the Governor, instead of the Secretary to the Governor, unless the Governor is under investigation.
- Amend existing law, so that in addition to financial penalties, public officials found to have violated ethics laws could be suspended from office, or in the most serious cases, expelled from office and barred from holding future public office. • Impose penalties against public officials who violate confidentiality of ethics investigations. • Prohibit

the receipt of gifts of a fixed monetary amount rather than of nominal value. • In the wake of the U.S. Supreme Court's 2010 ruling narrowing the scope of a federal law used to prosecute government corruption, enact tougher laws to give state and local prosecutors more tools for fighting "honest services fraud". They include: making the giving and receiving of a gift above a fixed amount a felony if given or received "because of that person's official position"; making a receipt of an undisclosed benefit a crime when the benefit exceeds \$5,000 and involves a government contract or grant; and amending the bribery statute to make it more effective.

- Require political campaign contributors to reveal the names of their employers. • Require elected officials to disclose if they do business with a lobbyist.
- Require disclosure of indirect sources of income above a \$10,000 threshold. In such cases, attorneys must disclose their clients, except when disclosure of an attorney's clients would harm the client or be detrimental to representation. • Enact a comprehensive conflicts of interest law for municipalities and school districts and require them to create independent ethics boards.

The 77,000-member New York State Bar Association is the official statewide organization of lawyers in New York and the largest voluntary state bar association in the nation. Founded in 1876, the State Bar's programs and activities have continuously served the public and improved the justice system for 135 years.

Below is the Executive Summary of the report of the Task Force on Government Ethics, which was approved by the House of Delegates.

New York State Bar Association Task Force of Government Ethics

Executive Summary

The Task Force on Government Ethics was created by President Stephen P. Younger in June 2010 in the face of the public's increasing loss of confidence in state government due to numerous scandals and incidents of corruption involving state officials. The Task Force was asked to propose recommendations for reforming public sector ethics laws, focusing on four areas: (1) improving the structure of the state's enforcement mechanisms in the area of ethics, consistent with our notions of fairness and due process; (2) enhancing the ability of state prosecutors to bring criminal charges where a public official failed in his or her obligation to provide honest services to the public; (3) enhancing requirements of public disclosure where needed to increase transparency and the public's knowledge of potential conflicts; and (4) modernizing the ethics laws applicable to municipal and local governments. The Task Force was organized into four subcommittees, one to address each topic.

In this report, the Task Force presents its recommendations for bolstering the ethics climate in New York State, which should help enhance the public's view of State government. The Task Force believes that adoption of these recommendations would

bring substantial benefit by creating an environment in which public officials could effectively carry out their responsibilities while restoring citizens' confidence that these officials are acting solely in the public interest.

The recommendations are as follows:

Enforcement and Due Process

1. Restructure the Commission on Public Integrity. The Commission would have expanded jurisdiction to include oversight of the Legislature, and would consist of up to nine members, each serving a five-year term, with the terms to be staggered. The Chair would be appointed by the Governor and require Senate confirmation. The Governor would appoint two additional members, who could not be of the same political party, the Attorney General and Comptroller would each appoint one member, and the legislative leaders would each have one appointment.
2. The commission would have jurisdiction over the ethics provisions of the Public Officers Law, the Lobbying Act, and Legislative Law.
3. The commission's staff would consist of two separate bureaus to assure that enforcement is separated from the other work of the commission - the Bureau for Advice and Education and the Bureau for Enforcement. Each would report to the Executive Director.
4. & 5. The Inspector General should be appointed by the Governor, subject to Senate confirmation, for a five-year term, removable only upon good cause. The Inspector General should report to the Governor, rather than to the Secretary to the Governor, except when the Governor is under investigation.
6. Where multiple agencies have jurisdiction over the same matter, the Ethics Commission and the Inspector General should both be subject to a stay when there is an ongoing criminal investigation.
7. Public officials found to have violated the ethics laws should be subject to penalties in addition to monetary penalties, including suspension from office or, in the most serious cases, expulsion from office and a bar from holding a public position in the future.
8. Amend the current gifts restriction from prohibiting the receipt of gifts of nominal value to prohibiting gifts of a fixed monetary amount, such as ten dollars.
9. Require that all opinions issued by the commission, whether formal or informal, are binding on the commission.
10. Amend the statute governing the Inspector General to assure due process rights to those subject to investigation, including the rights to receive notice of an investigation, to respond to allegations, to review certain testimony and to have a response included in a

final report.

11. Create penalties to be imposed on an official of an investigative agency who violates the confidentiality provisions applicable to that agency.

Theft of Honest Services

1. Amend the Penal Law to make both the giving and receiving of a gift above a fixed amount a class E felony where the gift is given or received "because of that person's official position." The recommended amount to trigger this provision is \$3,000.
2. Amend the Penal Law to make self dealing a crime when a public servant receives an undisclosed benefit in excess of \$5,000 when engaged in conduct in connection with the award of a contract, grant or other effort on the part of the person giving the benefit to obtain public business.
3. Amend the bribery statutes to make clear that it is sufficient if there is an intent to influence in offering or receiving the bribe, thereby overturning a Court of Appeals decision that requires more.

Disclosure

1. For political contributions, the name of the employer of a contributor should be added to the information that is publicly disclosed.
2. An elected public official should be required to disclose when he or she does business with a lobbyist. A non-elected official should be required to make similar disclosure when he or she has been lobbied by a lobbyist, or when the agency for which the official works has been lobbied, if the official knows of that lobbying.
3. Require that indirect sources of income above a threshold amount be disclosed, and that professionals, including attorneys, disclose their clients when this threshold is reached, except that attorneys need not disclose when disclosure would cause the client harm or be detrimental to the representation.

Local Government Ethics

1. Replace Article 18 of the General Municipal Law with a comprehensive conflicts of interest law addressing specific areas where conflicts may arise and providing for disclosure and effective administration and enforcement.
2. Require that every city, town, village and school district create an independent board of ethics to interpret and administer Article 18 and any local code of ethics. Each board should be required to issue opinions, provide training for officers and employees under its jurisdiction, administer financial disclosure and, in municipalities with a population of 10,000 or more, have enforcement powers.

3. Confidentiality requirements should be imposed on local ethics boards to encourage officers and employees to seek advice and bring possible wrongdoing to the attention of the board, as well as to protect public officers and employees accused of having violated the law, but who are found not to have violated the law. The application of the Open Meetings Law and the Freedom of Information Law should be limited so as to achieve the same objectives.
4. The State should be required to provide guidance to local boards to assist them in conducting internal investigations.
5. The Commission on Public Integrity should offer training to municipal officials on the State's Lobbying Act, which is applicable to municipalities with a population in excess of 50,000.