

Office of General Counsel

ANNUAL REPORT

2024

**The Niagara Frontier Transportation Authority and
Niagara Frontier Transit Metro System, Inc.**



Niagara Frontier Transportation Authority
Serving Buffalo Niagara



Introduction

I am not sure why music is on my mind again as I write this report, but I am thinking of all the great transportation songs and lyrics that make me think of the NFTA and how fortunate and proud I am to say that I work here. We surveyed the staff for some of our favorites:

*“Call me the Breeze” – Lynyrd Skynyrd;
“I’ve been Everywhere” – Johnny Cash;
“Leaving on a Jet Plane” – John Denver;
“10,000 Miles – Mary Chapin Carpenter;
“Big wheel keep on turnin’ from Proud Mary – Creedance
Clearwater Revival;
“Bus Stop”- The Hollies;
“Jet Airliner”- Steve Miller Band;
“Inner City Travellin’ Man”- Yasiin Gaye;
“Getaway Car”- Taylor Swift;
“Magic Bus”- The Who,
“Crazy Train” – Ozzy Osbourne.*



In the end, NFTA Metro Rail/Bus and Aviation moves people, and we do it better than anyone else. That is our public service mission. And we will keep “rollin, rollin, rollin” down the river.

As detailed in this report, 2024 has been an incredible year.

The activities described in this report reflect the diligent work of the professionals in the Office of the General Counsel who serve the public by providing high quality legal services to support the NFTA’s mission of providing safe, efficient, and professional transportation services that enhance the quality of life throughout the Buffalo Niagara region. I want to thank Kimberley Minkel, the NFTA’s Executive Director, and the NFTA Board of Commissioners for their support and for allowing our office to serve the public. Special appreciation for the extra work on this report goes to Jodie Zolnowski (Assistant to General Counsel/Paralegal and Manager of Administrative Services).

General Counsel

David J. State (December 31, 2024)



I. Overview of the Office

The Office of General Counsel provides and/or administers all legal services for the Niagara Frontier Transportation Authority (“NFTA”) and Niagara Frontier Transit Metro, Inc. (“NFTM”) on civil and administrative matters. The NFTA is a multi-modal entity (Aviation, Surface and Property) providing efficient and professional transportation services that enhance the quality of life in the Buffalo Niagara region. NFTM is a subsidiary of the NFTA and provides bus and rail transportation services within Erie and Niagara Counties.

These legal services include representation of the NFTA and NFTM in negligence claims, negotiations with state and federal agencies, arbitrations involving collective bargaining agreements or employee grievances, professional negligence, tort and contract claims, condemnation and relocation proceedings, negotiation of collective bargaining agreements, preparation of leases, releases, use and operating agreements, settlements and memoranda of understanding.

The Office of General Counsel provides advice, opinions and counsel to the Board of Commissioners, the Executive Director, business center managers and staff on matters concerning labor and employment relations, environmental compliance and litigation, landlord-tenant and real property transactions, procurement and contracting issues, suretyship, risk management and insurance, municipal bonds and finance, secured transactions, commercial relationships and corporate and legislative concerns.

Under the direction of the General Counsel, staff attorneys appear in state and federal trial and appellate courts and before arbitration panels and administrative agencies such as the New York State Department of Labor, the U.S. Environmental Protection Agency, the New York State Department of Transportation, the Federal Aviation Administration and the Federal Transit Administration. General Counsel attorneys draft proposed agency rules and administrative procedures and pursue enforcement and collection of judgments for fare evasions and parking violations. Staff personnel manage the board agenda, prepare resolutions for consideration by the Board of Commissioners and assist and provide guidance to user departments and business centers on procurement and various other matters impacting the day-to-day and long-range operations of NFTA and NFTM.

The Office also oversees the NFTA’s Procurement Department. This combination has strengthened the Procurement Department’s exceptional performance in procurement compliance and ethics and facilitates continued focus on those areas so that Procurement can continue to successfully perform their mission to “procure high-quality materials and services which provide safe and reliable transportation, transportation services and facilities for our customers.”

II. People

The strength of any organization is reflected in its people. The Office of General Counsel has a full complement of high caliber professionals who serve the public with honor and integrity.

Staff members are dedicated and hard-working professionals who provide selfless service to the public.

In 2024, we added litigator “Pete” Vincent to the litigation division to support an already strong litigation team under the leadership of Vicky-Marie Brunette. We lost a labor attorney due to retirement but brought in Ben Leonard to handle the monumental task of dealing with the employment law work that comes out of a 1500-person organization with 13 unions. Finally, John Fenz was promoted to Chief of the transactional division in recognition of his added responsibilities and value to the NFTA.

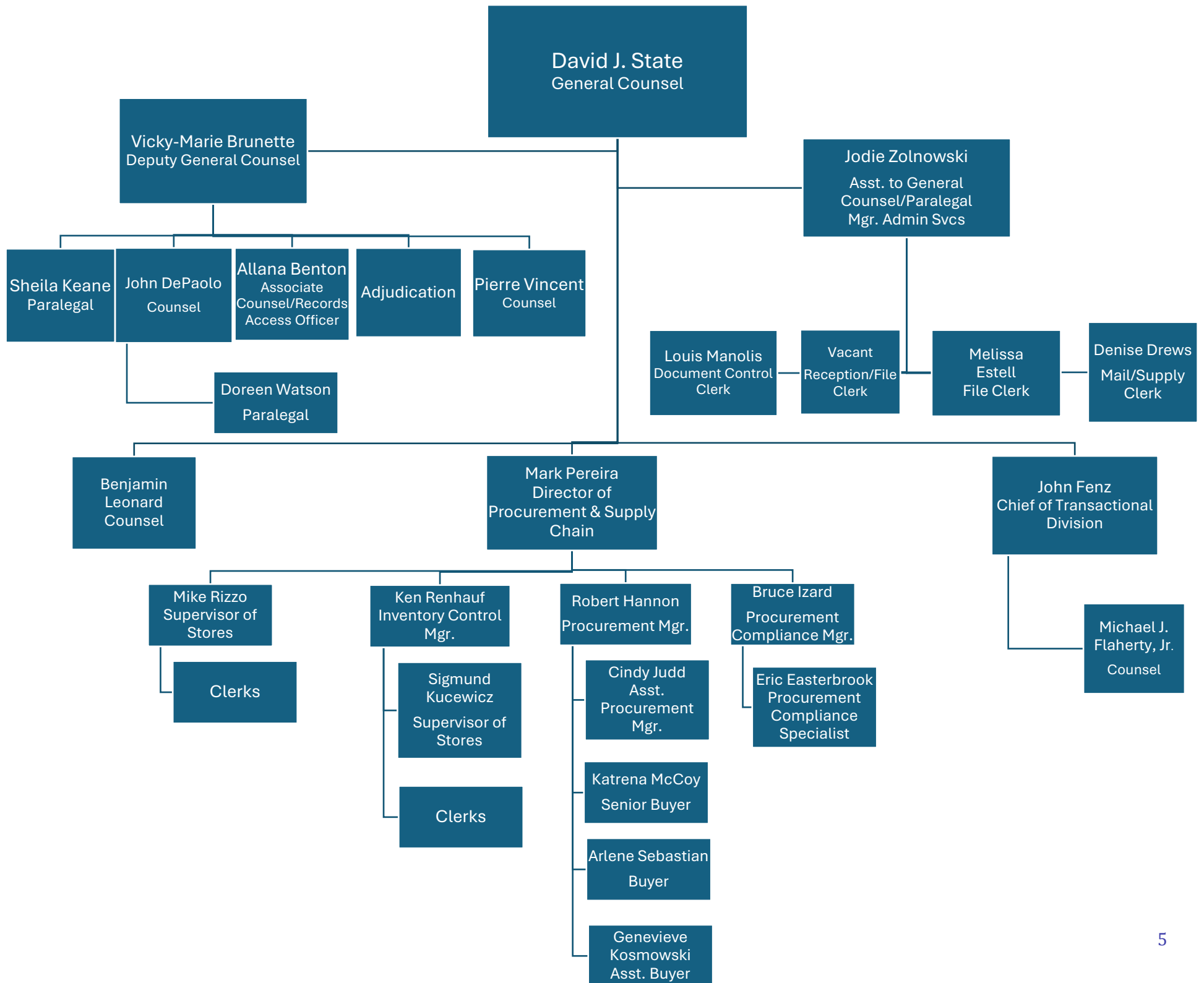
A. Personnel and Location

The Office of General Counsel consists of a General Counsel, a Deputy General Counsel, four Counsels, an Associate Counsel/Records Access Officer, two Paralegals, one Assistant to General Counsel/Paralegal and Manager of Administrative Services. The majority of the Legal Staff is located on the 6th Floor of the Metropolitan Transportation Center (“MTC”) at 181 Ellicott Street in downtown Buffalo, New York. John Fenz is located at the Buffalo Niagara International Airport to efficiently serve the Aviation Group.

The Office of General Counsel also oversees the Procurement Department. The Procurement Department is led by Mark Pereira, the Director of Procurement & Supply Chain, a Procurement Manager, a Manager of Procurement Compliance, an Assistant Procurement Manager, Senior Buyer, Buyer, Assistant Buyer, Procurement Compliance Specialist, Inventory Control Manager, and other direct reports.

The Office of Administrative Services is led by Jodie Zolnowski as the Assistant to General Counsel/Paralegal and Manager of Administrative Services.

A graphical description of all current staff members is depicted below:



B. Professional Training, Development and Outside Activities

1. Professional Training and Development

We pride ourselves on obtaining and maintaining professional certifications and skills to better serve our clients.

In 2024, Vicky-Marie Brunette earned 12 hours of Continuing Legal Education (CLE) credits and professional development instruction in a variety of topics, including: 1) 2024 CPLR Update; 2) Behave Yourself: Ethics Rule 8.4; 3) Effectively Using Biomechanical Experts Throughout Litigation and Trial; 4) Section 1983 Civil Rights Litigation: An Overview of Recent Caselaw Developments; 5) Cross Boss: Effective Techniques for Cross-Examination; 6) Smart Strategies for Email Protection; 7) Mysteries of Medicaid: Clarity for Client Long Term Care; 8) Protrusion Conclusion: Acute or Preexisting; 9) Second Circuit Surge: Powering Up Your Appellate Practice; and 10) A Guide to Disclaimers of Coverage in NY State.

Vicky also received 16 hours of Executive Leadership Training through the Authority in the areas of 1) Leadership Strengths; 2) Increasing Productivity by Leveraging Artificial Intelligence and Time Management Tools; 3) Communicating Effectively; 4) Employee Engagement and Emotional Intelligence; 5) Creating Accountability with KPIs & Strategic Initiatives; and 6) Coaching for Performance. Earlier this year, Vicky was highlighted as part of NFTA's Women's History Celebration for her advocacy for diversity and inclusion and her commitment to mentoring and supporting others along their career path at the Authority.

In 2024, John earned over 26 credit hours of CLE instruction through the New York State Academy of Trial Lawyers, Defense Research Institute and other legal education providers. Topics included 1) Protrusion Conclusion: Acute or Pre-Existing; 2) Turn Appellate Rules into Trial Tools; 3) Artificial Intelligence at Work: Employment Law and Trade Secret Considerations; 4) Effectively Utilizing Biomechanical Experts Throughout Litigation and at Trial; 5) Section 1983 Civil Rights Litigation: An Overview of Recent Caselaw Developments; 6) Intelligent Application of AI: Risks and Rewards; 7) Turf Wars: Premises Liability Litigation Strategies; 8) Swift Civil Justice: Expedited Summary Jury Trials; 9) Relevant Recent Cases and Pitfalls to Avoid; 10) Inflated Settlements and Verdicts – The Pushback; 11) Risk Management for Lawyers; 12) Behave Yourself: Ethics Rule 8.4; 13) 2024 CPLR Update.

John attended the Defense Research Institute (DRI) Litigation Skills Seminar during February 2024 in Miami, Florida covering strategies to combat and understand how jury verdicts skyrocket, explored in the context of jury selection and observed a mock impartial jury consider a mock case summation, and demonstration of defense push back to counter plaintiff's tactics toward inflated valuations seeking inflated verdicts. This seminar afforded 8 CLE credits.

John also attended the DRI Automotive Seminar in September 2024 in Chicago, Illinois. The seminar featured a human factors expert with a specialization in driver behavior, along with a senior accident reconstruction expert, who presented on investigation of motor vehicle collisions when liability is contested, such as pedestrian collisions and high-speed intersection collisions; facial

injury biomechanics of airbag deployment; and strategies to address post-pandemic changes in juror attitudes toward damages. This seminar afforded 7 CLE credits.

As a Defense Trial Lawyers Association Board Member and Education Chair, John arranged numerous CLE seminars to the membership during 2024 including “How to Transfer Risk: Contracts & Policies” in March; “Injury Causation Biomechanics” in July; “Artificial Intelligence at Work: Employment Law and Trade Secret Considerations” in October.

John continues to be an active member of the Charles S. Desmond American Inn of Court, Buffalo, New York.

Michael Flaherty, Jr. attended the APTA Legal Affairs Seminar in New Orleans, Louisiana from February 11 through February 13. The seminar covered a wide range of topics including Diversity, Equity, and Inclusion, Balancing Work Relationships and Best Practices, Build America, Buy America and what it means, Trends in FTA Compliance, Current Court Cases on ADA, Navigating the Technology Landscape, Bipartisan Infrastructure Law, and Ethical Considerations Involving the Use of Artificial Intelligence in Legal Practice.

Benjamin Leonard attended and presented at the 49th Annual New York State Public Employer Relations Association (NYSPELRA) Training Conference from July 8 through the 10th. Topics included presentations on Navigating the State of Marijuana in Public Sector Workplaces, Practicing Before the New York State Division of Human Rights and EEOC, Discipling Public Sector Employees, and Mediation Under the Taylor Law. Ben’s presentation called Combinations and Conspiracies discussed the early American industrial landscape as well as the development and evolution of the legal frameworks using examples of cases and conflicts between 1800-1877.

In September of 2024, we welcomed seasoned litigation counsel, Pierre (“Pete”) Vincent, to the NFTA team. Pete has 25+ years of litigation experience, including 20 years as a trial attorney, both at a private defense firms and as in-house counsel. His experience includes motor vehicle accidents; premises liability; construction accidents; contractual indemnification and coverage analysis; business contract disputes; municipal liability; and labor and employment law. Pete hit the ground running and will focus primarily on personal injury litigation.

Earlier this year, Allana gave a presentation to the Authority’s Board of Directors. This presentation detailed what FOIL was, how it is handled within the Authority and what it would look like moving forward. In March she implemented a new system to process FOIL requests. GovQA, a platform provided to us by the State, allows the Authority to better streamline the FOIL process. This year Allana has processed approximately two-hundred and fifteen (215) FOIL request— a record for the Authority. Additionally, this is the second year in a row without any appeals against a FOIL decision.

As Associate Counsel Allana has been broadening her skills with different opportunities within the Legal Department. She has attended two (2) Airports Council International meetings, completed research assignments, collected and closed out a debt owed, worked on the NFTA website, represented the Authority in a pre-trial conference, gave Ethics training and wrote policies. Furthermore, Allana filed her first case(s) in Buffalo City Court where she will be the attorney representing the Authority.

In 2024, Doreen Watson completed 8.5 hours of CLE and attended the following professional development webinars: 1) Don't Get Twisted: Trying Spinal Fusion and Herniated Disc Cases; 2) 2024 CPLR Update; 3) New York Liability Insurance Coverage Primer; 4) Social Media: Discovery, Ethics, Evidence and Sanctions; 5) Understanding the Risks, Rewards, and Regulation of AI in the Legal Industry; 6) From Paper to Pixels: The Evolution of Deposition Testimony; and 7) Take That: Service of Process Update.

Sheila Keane attended the following professional development webinars: 1) Unified Differences, Appeals in New York State's Four Departments Under the Statewide Rules; 2) New York Coverages Protocols; 3) New York Liability Insurance Coverage Primer; and 4) Take That: Service of Process Update. She volunteered for the NFTA Corporate Challenge Team committee and participated in the Pride Parade with NFTA.

Jodie Zolnowski attended OpenText World 2024 virtually from November 18 to 21. The focus of the conference was on transforming information chaos into knowledge using OpenText solutions. She also attended webinars on 2024 Election Outcomes: Public Transportation Impacts, The Basics of Records Management, Introduction to Digitization, Introduction to Electronic Records Management, Establishing Records Management Policies and Procedures, and Conducting an Inventory of Paper Records. Jodie was also on the Pride Parade Committee and participated in the parade.

2. Outside Activities

Professionally, in 2024 Vicky-Marie Brunette was selected again to serve on the Bar Association of Erie County's Judiciary Committee. Vicky continued her service on a Jury Diversification Panel and Focus Group hosted by the Eighth Judicial District and the Western District of New York. She served another term as Co-Chair of the Social Committee of the Defense Trial Lawyers Association of WNY. In March, Vicky presented as a panelist in a Women in Transit leadership event hosted by Regional Transit Service in Rochester, New York. Vicky also volunteers as a 1L mentor for the Cleveland State University College of Law.



In her community life, Vicky served the second year of a three-year term on the Board of Directors of the Ovarian Cancer Project (OCP) and was elevated to Board President. In September, OCP hosted its first Empowering Steps Walk to fundraise for education, awareness, and peer to peer counseling and support for individuals suffering from all forms of gynecologic cancer. She rejoined the St. Mary's School for the Deaf Board of Trustees in June of 2024, where she was appointed to serve a three-year term. Vicky completed a fifth term as the Delaware Women's Golf Club's Marketing and Publicity Chair in 2024, as well.



John DePaolo is active with the Rotary Club of the Buffalo and serves on the Community Grants Committee. John is also active with the Rotary District (7090), involving 68 service clubs in the Niagara Frontier and Southern Ontario region.

In 2024, John has guided the Community Grants committee awarding: Home Space's Supervised Individual Living Program a grant to install a new boiler in one of many buildings; a grant for CPR mannequins to Childcare Resource Networks in May, 2024; a grant to St. Mary's School for the Deaf to refurbish and equip E-sports Lounge/Lab; a grant to Big Table Community Café for a defibrillator and ADA bathroom upgrades; and a grant to the Darwin Martin House to replace 7 existing outdoor benches for the visitors area.

John has continued to support the Matt Urban Hope Center which organization responds to the needs of the community by hosting family-focused events, informative workshops, free tax preparation, benefits screening, housing and job assistance and assists individuals who are homeless and those at risk for becoming homeless.

Pete is on the Board of the Defense Trial Lawyers of Western New York, is the Treasurer of the Western New York Trial Lawyers Association, and is a member of the Erie County Bar

Association. He is admitted to practice law in New York and Massachusetts and is also admitted to the U.S. District Court for the Western District of New York. A native New Englander, Pete is an avid Red Sox fan; however, he is a converted Buffalo Bills and Sabres fan. In his spare time, Pete enjoys performing stand-up comedy.



Outside of her day-to-day tasks Allana likes to be involved in other areas. As a part of the African American Heritage Committee, she assisted with planning the Black History Month art contest and the Authority's Juneteenth Parade participation. She was also on the Pride planning committee for the third year in a row. Allana participates in the yearly Reddy Bike ride.



This year Allana was appointed to a position on the Minority Bar Association where she served as the Corresponding Secretary. As the Corresponding Secretary, she attended meetings, planned and hosted events for the legal community, and kept the Association's membership up to date on events and job openings. Recently, she was elected for a Director position beginning next year (Directors sit on the Board for two years). Allana has also taken advantage of the opportunity to become a BNP Young Professional. As a member, Allana will be provided with different opportunities aimed at helping her grow as a professional and network with peers.



Doreen Watson was elected to the West Seneca Town Band Board as Secretary in 2024. She continues to play the flute and joined the Boston Town Band. Her son, Lucas, studied abroad in London, England for the Fall 2024 semester and Doreen and her husband were able to visit him for the holidays. Doreen will be traveling to Europe again in 2025.



Outside of the NFTA, Sheila continued her annual volunteer day at FeedMore WNY. This year they packaged bags of food that were sent home with young students in underserved communities. Sheila organizes and participates in this event with her cousins in honor of their late grandmother.



Sheila continued her quest to climb all the little mountains in the Adirondacks. This summer she climbed Rocky Mountain in Inlet New York, a steep half mile climb to the summit with an elevation of 2,205 feet. This was Sheila's second hike in the Fulton Chain Trifecta Hiking Challenge.



Outside the office, Michael is a Board member of the Buffalo Therapeutic Riding Center, President of the Community Council of the Newman Center at Buffalo State College, and Treasurer of the Notre Dame Club of Buffalo & WNY.

Dave State continued his service as a policy committee member of the Erie County Industrial Development Agency, and board member of the Buffalo Municipal Housing Authority. Dave continued to work on his fledgling acoustic guitar skills and had his first “gig” during a wedding at Babeville (Asbury Hall) in August 2024.



III. Commitment to Diversity, Equity, and Inclusion

The NFTA has a strong commitment to diversity, equity and inclusion as demonstrated by our adoption of the NFTA’s Diversity and Inclusion Strategic Plan. To achieve the objectives of that Plan, the Office of General Counsel developed and implemented two programs to ensure that we are using our resources to enhance professional opportunities and development for underrepresented populations.

Externship Program for UB Law Students. In collaboration with members of the Minority Bar Association of Western New York and UB Law School's Externship and Judicial Clerkship Program, the Office of General Counsel established an externship program. Externships provide law students with unique legal and public service experience as they work in a variety of government and non-profit organizations and get academic credit for doing so. The NFTA receives the benefit of having a law student available to accomplish research and writing tasks and other duties. In order to qualify, the NFTA had to meet specific curricular, substantive and administrative requirements established by the Law School and the American Bar Association to ensure that the externship would be academically appropriate and in compliance with all other

accreditation requirements. This program is open and available to all UB Law students; however, we place particular emphasis on attracting interested students from underrepresented populations.

Diversity and Inclusion Mentoring Program (Paid Legal Internship). Research indicates that to establish a successful workplace diversity program, creating more opportunities for continued engagement is critical. These engagement opportunities can come in many forms, one of which being mentorship programs. Mentoring is a vital component when trying to recruit diverse talent. Women and minorities were more likely to say that mentoring was an important aspect of their career, one study found. Given the findings that indicate that mentors play such an instrumental role in the career progression of diverse talent, it is imperative that organizations, like the NFTA understand how to effectively establish mentorship programs when trying to recruit diverse talent. It is also important for employees from underrepresented backgrounds to understand how to seek out mentors effectively and strategically. To meet these objectives, the NFTA established a paid legal internship program. A tremendous amount of credit and thanks is given to Vicky-Marie Brunette and Helen Tederous (the NFTA’s Director of Public Affairs) for establishing this program.

In June 2024, UB Law Student Elizabeth (Ellie) Higgins joined our staff, and she has been a wonderful addition. Ellie has conducted research and writing assignment on numerous topics including the direct threat defense under the Americans with Disabilities Act and New York Human Rights Law; allowable content on Union bulletin boards; email signature blocks; data sharing agreements; ice and snow pattern jury instructions; 1st Amendment issues at the airport; bankruptcy; and by-law drafting for the Accessibility Advisory Committee, to name but a few.

- **MWBE Efforts.** As later detailed in this report, our Procurement Department has had an outstanding year promoting DEI initiatives through their procurement work. The NFTA has achieved ongoing “A+” grades on MWBE Program Performance Report Cards from New York State. The New York State Aspirational Goal of 30% MWBE Participation was first reached by NFTA in FY 2019/20 as an even 30% was achieved. FY2023/2024 came in at 31.91%. In FY 2023/2024, NFTA’s MWBE program has benefitted 71 different MWBE Firms including marketing firms, architecture, engineering, building supplies, background checks, janitorial, paper, consulting, shipping, fuel, welding supplies and office supplies. The MWBE program generated \$10,886,000 dollars of spending for MWBE’s this past fiscal year.

IV. Outreach and Preventive Law

The Office of General Counsel has a commitment to reducing the risk of legal problems by proactively providing legal advice before problems occur. The staff is strongly encouraged to be problem solvers and to identify appropriate courses of action to our clients, rather than identifying legal roadblocks without any solutions. In 2024 we greatly expanded our ethics training initiative and provided “live” ethics training to all of our employees.

A. Ethics Training.

We successfully implemented and completed Operation METAL (i.e., Mandatory Ethics Training for All) by delivering live training to all employees and Commissioners in 2024. We did the

training anywhere they would have us including at the garages and on the NFTA training bus (see photo of John Fenz below). This was a monumental effort with involved live training for approximately 1500 people. The training was performed by the entire legal department, and we also want to thank Karen Novo and AnnMarie Kopf for assisting with this effort. The topics covered by this training include a description of the New York entities having jurisdiction over ethics; the NFTA's Code of Conduct; the NFTA's Code of Ethics; financial disclosure; negotiation of future employment; gifts; conflicts of interest; outside employment and activities; nepotism restrictions; honorarium; official activity expense payments; public service announcements; post-employment restrictions, and restrictions on political activities. For 2025, the focus will be on developing and implementing an on-demand video product.



V. Administrative Services

Administrative Services has continued to provide outstanding service to our customers, employees and visitors along with the many departments across the NFTA. In 2024, Administrative Services implemented an auto-attendant and queue to better direct callers in need of assistance. We continue to make great strides in our paperless initiative, Operation Digitize and Destroy (DAD). This year, we added an Administrative Document Control Clerk who will be responsible for the management of all NFTA/Metro records in Document Storage along with assisting in the digitization of paper documents throughout the Authority. As of today's date, the Administrative Services team has scanned records for HSEQ, Engineering, Claims, Workers Comp., Rail, Faculties, Legal and Human Resources and recycled 26,831 pounds of paper from Document Storage this year. We are also actively pursuing the implementation of an Electronic Document Management System (EDMS). Four departments, consisting of the Executive Office, Grant Management, Legal and the Metro Executive Department have been selected to participate in a pilot program designed to improve document management processes using an EDMS.

VI. Contracts/Negotiations/Opinions/Policies and Procedures/Regulatory Compliance

The Office of General Counsel maintains an active transactional practice in the negotiation and drafting of contracts to procure goods, services and to acquire and dispose of real property for the NFTA. We are also frequently called upon to assist in negotiation of outstanding debts, contractual matters, policy drafting and revisions, preparation of opinions and to ensure compliance with laws, rules, and regulations. 2024 was a busy year for the transactional group. This work is primarily handled by John Fenz (who handles the aviation work) and Michael Flaherty (who handles the surface and property work). In addition, Allana Benton is starting to work on some transactional matters to strengthen our coverage in this important area, and Ben Leonard had some notable contributions to drafting and revising various policies and procedures. Here are some of the highlights:

Inappropriate Workplace Relationship Policy

- Allana Benton and Ben Leonard were instrumental in drafting a new policy covering inappropriate workplace relationships. The policy reaffirmed that the NFTA is committed to a work environment that is collegial, respectful, and productive. The purpose of the policy is to promote a positive work environment that is free from relationships that cause a real or perceived conflict of interest, and to define acceptable standards of appropriate behavior for individuals in personal relationships (including but not limited to romantic and/or intimate and/or sexual relationships) at the NFTA.

Revisions to the Harassment/Sexual Harassment Policy

- Ben Leonard did a complete rewrite of the NFTA's harassment/sexual harassment to strengthen the policy and ensure compliance with existing and ever-changing law in this area. The purpose of the NFTA's policy is to ensure that all employees are treated professionally and with dignity and to maintain a workplace free from harassment and discrimination. Among other things, the new policy provides an updated list of protected categories and new standards and updates consistent with New York State Human Rights Law. In addition the new policy, includes employees working remotely, and expands the class of potential victims to include harassment based on gender expression, gender identity, the status of being transgender, and gender role stereotyping and recognizes that "[h]arassment does not need to be severe or pervasive to be illegal" and "[e]very instance of harassment is unique to those experiencing it, and there is no single boundary between petty slights and harassing behavior."

Veteran's Kiosk at Buffalo Niagara International Airport

- John Fenz was instrumental in negotiating an agreement with the New York State Department of Veterans' Services today announced the installation of a new digital Veterans Welcome Center Kiosk inside Buffalo Niagara International Airport, providing an interactive and user-friendly resource for Veterans, Service Members, and Military Families to learn about the benefits earned by their service.

Drug and Alcohol Policy

- Allana Benton and Ben Leonard were instrumental in revising the NFTA's Drug and Alcohol Policy to ensure that safety sensitive and non-safety sensitive employees are being tested for the proper substances.

Procurement Guidelines Revision

- The entirety came forward and contributed to revisions to the NFTA's procurement guidelines. Among other things, we increased our focus on the introduction of the general category of non-competitive procurements and their various subcategories; added a definition for Airport Concession Disadvantaged Business Enterprise (ACDBE) and including ACDBE with the development of DBE goals to ensure compliance with federal rules; increased the limit of the Executive Director's approval authority for procurements from One Hundred Thousand Dollars (\$100,000.00) to One Hundred Fifty Thousand Dollars (\$150,000.00); and amending the "Criteria and Standards Governing Commercial Advertising" to comply with current First Amendment Law. Special thanks to John Fenz, Jodie Zolnowski, Michael Flaherty and Allana Benton.

Resolving Bonding Issues on Construction Projects

- National economic conditions and large-scale construction projects in the region have created a complicated environment for the bonding of construction projects. These project bonds protect payment to subcontractors and ensure that the work is completed. John Fenz advised various business centers regarding bonding issues presented by contractors and generated creative solutions to assure that NFTA projects and their subcontractors are afforded proper assurances of payment and performance. This also included an analysis of a funds-controlled bonding scheme and its compatibility with various state and federal funding requirements.

Vending Machines with the NY State Offices of Child and Family Services, Commission for the Blind

- New York State's version of the Randolph-Sheppard Act provides that blind persons licensed by New York State Office of Children and Family Services (NYSOCFS), Commission for the Blind shall be authorized to operate vending facilities on any airport located in the state of New York, to the extent that any such facility or facilities would not adversely affect the interests of the State. John Fenz advised BNIA Management with respect to entering into a new agreement with NYSOCFS to provide four (4) vending machines in the baggage claim area of BNIA Vending Machines in Bus Garages.

CLEAR Addition of TSA PreCheck Enrollment Services

- The NFTA previously entered into an agreement with CLEAR to provide Registered Traveler Services. In April 2024, the Department of Homeland Security announced that it expanded its TSA PreCheck services to permit CLEAR to offer TSA PreCheck enrollment services. CLEAR approached BNIA to add these services and John Fenz negotiated an

agreement with CLEAR to commence these operations at BNIA in August 2024. CLEAR's TSA PreCheck enrollment services will provide another means to reduce congestion at the TSA screening checkpoints.

GSE Building Leases

- In 2023, an 8,400 square foot ground support equipment and services building reverted to the NFTA by virtue of a ground lease with American Airlines. John Fenz worked with the Property Business Center to prepare an RFP seeking ground support operators' interest in leasing space at the facility and prepared the standard lease agreement for potential tenants. At full occupancy, the building will yield a far greater financial return to the NFTA than under the terms of the previous ground lease.

Amended Code of Ethics

- Ben Leonard and Dave worked on an amended code of ethics which among other things, broadened the definition of "relative" for purposes of assessing a conflict of interest; addressed the topic of "interested sources" to comply with the NY Public Officer's Law and added more specific examples to illustrate what it means for a commissioner, officer or employee to use or attempt to use their position to secure unwarranted privileges or exemptions in violation of ethics laws, rules and regulations.

Service Animals on Escalators Policy

- Vicky Brunette has taken on the task of researching and writing a policy to address the safety concerns regarding taking service animals on conveyances. A draft has been circulated and we anticipate promulgating something in 2025 along with signage updates.

Police Accreditation

- We are proud that The Niagara Frontier Transportation Authority Police Department (TAPD) has officially achieved initial Law Enforcement Accreditation from the New York State Division of Criminal Justice Services (DCJS) Accreditation Council. Several of our attorneys worked on this important initiative including Vicky Brunette, Michael Flaherty and former employee Diane Noshay.

VII. Litigation

With approximately 1,500 employees and diverse operations from bus to light rail to aviation to property management, the Office of General Counsel handles a large volume and wide variety of litigated matters ranging from personal injury to commercial cases. Unlike many large corporations who routinely refer litigation to outside counsel, the NFTA's litigators are in court, arguing motions, picking juries, trying cases and getting verdicts. Vicky-Marie J. Brunette, John P. DePaolo, Pete Vincent, Doreen Watson, and Sheila Keane continue to make an excellent team resulting in aggressive representation of the NFTA's interests in court. The success of this team was proven again in 2024 with skillful, favorable resolution of numerous cases that resulted in little or no monetary contribution from the Authority.

As of December 1, 2024, the Office of General Counsel retained a litigated caseload of 152 personal injury files, including automobile negligence, premises liability, wrongful death, civil rights litigation, and police professional liability files, with a total self-insured reserve of approximately \$4,111,110. The breakdown was 137 active litigated personal injury cases against NFTM, with a self-insured reserve retention of approximately \$3,906,910 and 15 active litigated personal injury cases against the NFTA, with a self-insured reserve retention of approximately \$204,200.

Of the 152 files, 149 are handled in-house by the Litigation team. One (1) litigated case is being handled by outside counsel, pursuant to an indemnity agreement. Two (2) litigated matters are being handled by outside counsel due to a conflict. The proper handling of a caseload this large requires significant work. The NFTA and NFTM are self-insured up to \$5,000,000 for each litigated matter; therefore, the potential exposure on any given case is enormous.

In 2024, Vicky continued to manage the Litigation Team, the Adjudication Department, and the Records Access Officer/Associate Counsel. She actively participated on NFTA's Management Team, Senior Leadership Team, and the Executive Safety Committee. She continued in her role as a member of the Pride Committee and Diversity, Equity and Inclusion Committee. On the litigation side of the house, Vicky appeared at approximately 40 pre-trial conferences; drafted and argued approximately 10 pre-trial/dispositive motions; handled two appeals; conducted approximately 15 depositions; and conducted 8 mediations. She favorably negotiated resolution of approximately 18 cases short of trial, either by settlement or dismissal.

John continues to handle a litigated caseload that includes motor vehicle negligence, premises liability, police professional liability matters and no-fault medical provider suits. In 2024, it is estimated that John participated in over 100 pre-trial conferences, conducted approximately 40 depositions, drafted and argued numerous motions to dismiss/compel, some of which resulted in cases or certain causes of action being dismissed, while others resulted in the Plaintiffs complying with long overdue discovery. When necessary, John has initiated Third-Party actions in the best interests of the Authority. Procedural Notices and Motions are used to gain admissions, preclude evidence and to acquire expert and medical examinations as necessary. Selection of experts necessary to support the defense positions include medical experts, engineers, and vocational experts. John has appeared virtually for 18 mediations. John has favorably negotiated resolution of approximately 12 cases short of trial.

Whenever appropriate, the defense of the NFTA and NFT Metro is tendered to adverse carriers consistent with contractual language. Presently, tenders of defense and indemnification are pending in litigation matters to the insurer for Southwest Airlines, American Airlines, Inc. and Pike.

Of the 30 matters the Litigation team resolved, 5 involved no monetary contribution at all from NFTA or NFT Metro.

Vicky is primarily assisted by Paralegal, Sheila Keane. Sheila has transitioned their caseload to a completely electronic format, with an eye to using as little paper as possible. Sheila excels at reviewing medical records and developing medical chronologies, as well as conducting social media searches. This skill set has been instrumental in providing evidence used to mitigate damages in many matters.

John works on his files closely with Paralegal, Doreen Watson. In her three years at the NFTA, Doreen has been proactive with identifying efficiencies within the Legal Department and streamlining processes. Doreen is particularly adept with technology and utilizing various video platforms and software.

Pete Vincent splits his time and caseload with both Doreen and Sheila.

In 2024, there were 22 new cases filed against the Authority. Vicky, John, Pete, Doreen, and Sheila had an outstanding year as demonstrated by the following highlights in 2024.

A. Moore v. NFTA, et al.

On October 27, 2021, the *pro se* Plaintiff filed a Federal Court Complaint asserting claims under the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. Section §1983, and New York State law. The claims were brought against the NFTA and three officials and employees. The Plaintiff was a Paratransit Access Line (PAL) customer who used the PAL services more than 200 times between June 2017 and April 2022. The Complaint alleges inadequate and discriminatory service on four (4) occasions during that period. Factually, the Complaint seeks to raise equal protection, access to courts and service issues.

On May 5, 2022, the NFTA Defendants moved to dismiss the Complaint and for Summary Judgment on the basis that the allegations were deficient and, further, that there was no discrimination or violation of Plaintiff’s civil rights. On December 18, 2023, the Federal District Court Judge ordered that the motion for Summary Judgment would be granted unless the Plaintiff files an Amended Complaint correcting the deficiencies within thirty (30) days.

Plaintiff filed an Amended Complaint and the NFTA Defendants, again, moved to dismiss the Complaint. In a Decision and Order dated June 6, 2024, the Federal District Court granted Defendants’ motion, and the Complaint was dismissed with prejudice. The Plaintiff applied to proceed *in forma pauperis* on a potential appeal to the United State Court of Appeals for the Second Circuit. John P. DePaolo handled the matter and was recently admitted to the Second Circuit to argue the appeal.

B. Allstate a/s/o Olivieri v. NFTA, et al.

The above-entitled action was brought under a negligence theory wherein the Plaintiff alleged property damage sustained as a result of a motor vehicle accident that occurred on I90 East before the Walden Avenue East exit on November 23, 2022, at approximately 7:00 a.m. Road conditions were icy, and all vehicles were in the right lane of travel. A 2008 Lexus slid and struck a guardrail, which was then impacted by a 2016 Ford Explorer insured by Allstate. A Metro bus attempted to stop but was unable to do so and subsequently contacted the 2016 Ford Explorer.

This matter was initiated by the filing of a Summons and Complaint with the New York State Court Electronic Filing system on June 12, 2024. The NFTA is a public benefit corporation created by and under Title 11-A, §1299-c of the Public Authorities Law. Actions against the NFTA are governed by the one-year and ninety-day statute of limitations set forth in its enabling legislation.

The statute of limitations ran on February 21, 2024. The instant Complaint was filed on June 12, 2024, one hundred twelve (112) days after the one-year and ninety-day statute of limitations had expired. As such, the underlying cause of action could not be maintained against Defendants as it was time-barred.

Defendants successfully moved to dismiss the Complaint on Statute of Limitations grounds. Vicky-Marie J. Brunette handled the matter.

C. Meservey v. NFTA, et al.

The Claimant alleged injuries sustained to her right foot and ankle when she fell due to a hole in a jetway, while attempting to board an airplane on September 15, 2023, while traversing through the Buffalo Niagara International Airport (“BNIA”).

New York Public Authorities Law §1299-p(2) requires that an “action against the authority founded on tort, except an action for wrongful death, shall not be commenced more than one year and ninety days after the cause of action therefore shall have accrued, nor unless a notice of claim shall have been served on the authority within the time limited by and compliance with all the requirements of section fifty-e of the general municipal law.”

Respondents did not have knowledge of the essential facts constituting the claim and the alleged injuries and damages within ninety days of the alleged incident or within a reasonable period thereafter. Respondents’ first and only notice of Claimant’s intention to file a claim against the NFTA was receipt of an Order to Show Cause with a Proposed Notice of Claim on June 17, 2024. The motion was served nine (9) months (or 276 days) after the alleged incident of September 15, 2023, well beyond the ninety (90) day requirement set forth in NY General Municipal Law 50-e(1)(a).

Respondents successfully opposed Claimant’s Motion Seeking Leave to File a Late Notice of Claim and argued Claimant failed to provide a reasonable excuse for failing to serve timely notice of claim; the Respondents had no actual knowledge of the essential facts constituting the claim and the injuries and damages alleged; and the delay would substantially prejudice the Respondents in maintaining a defense on the merits. Vicky-Marie J. Brunette handled the matter.

D. Almashiakhv v. Wray, et al.

In this Federal Court action, Transit Authority Police were contacted by the Federal Bureau of Investigation (FBI) and notified that the Plaintiff was attempting to fly out of the Buffalo Niagara International Airport on June 4, 2023. Officers were dispatched to the United Airlines ticket counter and advised Plaintiff he was unable to fly due to being on the U.S. Government’s No Fly list. The Plaintiff left the airport terminal without incident.

Plaintiff commenced action on September 18, 2023, and the Complaint identified the nature of the case, among other things, as an alleged violation of his rights under the U.S. Constitution for the FBI’s and Transit Security Administration’s (TSA) involvement in the deprivation of his rights to travel freely, violation of his freedom of religion, violation of his right of privacy, violation of due process and

otherwise being subjected to numerous interrogations. Upon information and belief, the Department of Homeland Security placed the Plaintiff on the U.S. Government's No Fly list because he was identified as an individual who "may be a threat to civil aviation or national security." 49 U.S.C. 114(h)(3)(A). Plaintiff alleged that Transit Police Officers schemed with the FBI and TSA to violate his rights.

NFTA Defendants moved to dismiss in lieu of an Answer and argued Plaintiff failed to properly effectuate service on the Transit Police Officers under either the applicable Federal or State rules of civil procedure. In a Decision and Order dated November 12, 2024, the Federal District Court accepted the Report and Recommendation of the Magistrate and dismissed the Complaint against the Transit Police Officers without prejudice. Vicky-Marie J. Brunette handled the matter.

VIII. Labor and Employment

Providing legal support to NFTA managers who work with the NFTA's 13 unions is no easy task and presents a significant challenge. Ben Leonard has hit the ground running and handles grievances, arbitrations and assists in contract negotiations with these unions. In addition, Ben also provides the NFTA/NFTM with advice regarding employee dismissals and discipline and discrimination and other Equal Employment Opportunity matters, including claims by passengers as well as representation in Federal and New York State courts and before administrative agencies such as the EEOC and New York State Division of Human Rights.

On March 4, 2024, Ben was admitted to practice in Federal Court for the Western District of New York. He put this admission to good use and immediately appeared in a case about the second filed, or duplicative action doctrine, and the impact of an arbitration decision on a subsequently federal lawsuit based among other cases.

Some of the significant cases and matters Ben handled in 2024 are listed below. Success in all these actions reflects the Authority's commitment to non-discriminatory and fair terms and conditions of employment to all employees.

Court imposed stay of arbitration

- A stay of arbitration was obtained against a grievance which sought to challenge the termination of an operator who was discharged after deviating from her run a person errand. The union files a grievance but did not make a timely objection to the company's answer. The Court granted the company's petition to stay because the union failed to satisfy the conditions precedent to an arbitration.

Improved Coordination between General Counsel Office and Risk Management

- Ben Leonard was instrumental in identifying and analyzing ways to improve communication and coordination between the General Counsel Office and the Risk Management department as to assessing procedures to handle dual claims brought employees for workers' compensation as well as administrative forum complaints.

IX. Procurement:

In 2024, the NFTA Procurement team successfully procured all the normal and necessary goods and services to support NFTA/NFTM operations. The Procurement team is led by Mark Pereira and consists of Robert Hannon, Cindy Judd, Bruce Izard, Arlene Sebastian, Katrena McCoy, Kenneth Reukauf,

Michael Rizzo, Sigmund Kucewicz, Genevieve Kosmowski, and Eric Easterbrook. The NFTA Procurement Team group had an outstanding year in 2024 as detailed below:

- **MWBE Performance:** The NFTA achieved an ongoing “A+” grade on the MWBE Performance Quarterly Report Cards from New York State. MWBE Utilization averaged over 30% per quarter in Calendar Year 2024. SDVOB Utilization averaged over 6% per quarter in Calendar Year 2024.
- The New York State Aspirational Goal of 30% MWBE Participation was first reached by NFTA in FY 2019/20 as an even 30% was achieved. FY2023/2024 came in at 31.91%. This brings the 5-year average to 32.78%
- In FY 2023/2024, NFTA’s MWBE program has benefitted 71 Different MWBE Firms including marketing firms, architecture, engineering, building supplies, background checks, janitorial, paper, consulting, shipping, fuel, welding supplies and office supplies. The MWBE program generated \$10,886,000 dollars of spending for MWBE’s this past fiscal year.
- Procurement collaborated with the NFTA Legal Team to update the NFTA Procurement Guidelines. The major focus was on Delegation of Authority (dollar approval thresholds) and defining categories of non-competitive procurements.
- The Procurement Team hosted Procurement Training at the Airport early in 2024.
- **Tactical Procurement:** Established a Past Due Purchase Order process/report and achieved a 30% reduction in past due purchase orders. Also, Procurement and Inventory Control implemented a First Article Process to establish supply schedules dependent on price and lead time.
- Procurement provided data to facilitate new NYS Reporting Requirements (Green Initiatives and Food Purchases).
- Robert Hannon, Bruce Izard, and Mark Pereira attended the NFTA Management Training Series.
- We attended 13 MWBE/SDVOB Events and connected with over 800 New York Certified Vendors we haven’t done business with yet.

X. Goals for 2025 and beyond:

Our goals for 2025 included supporting initiatives of the Executive Director and the Board; continuing to implement ethics training for the entire NFTA workforce including the development of an on-demand video training product; research and study ways to use Artificial Intelligence into the legal department; and continuation of a strong litigation posture to defend any claims asserted against the NFTA

END OF REPORT

