



REPORT & RECOMMENDATIONS OF THE TASK FORCE ON RURAL JUSTICE



INTERVENTIONS TO AMELIORATE THE ACCESS-TO-JUSTICE CRISIS IN RURAL NEW YORK

APRIL 2020

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INTRODUCTION

Despite New York State having more licensed attorneys than any other jurisdiction in the United States, many New Yorkers do not have access to attorneys to assist with their legal problems. This lack of access is acutely felt within New York's rural communities, where the delivery of legal services presents both distinctive challenges and rewards that are largely uninvestigated by our metro-centric bar.

This metro-centrism is a symptom of the following reality: the great majority of New York's licensed attorneys practice in or around urban centers. According to the data, roughly 96% of attorneys practice in metropolitan areas, with the remaining 4% presumably serving New York's mostly rural geography. Compounding this inequitable distribution of attorneys, recent research has brought to light that nearly 75% of current rural practitioners will be retiring from practice in the next 10–30 years, with little to no new attorneys taking their stead. This alarming legal trend is exacerbating the access-to-justice gaps already faced by rural communities.

The Task Force on Rural Justice was formed to investigate these legal trends and to propose creative interventions to combat this imminent crisis.¹ We have taken insight from the other jurisdictions that have already been addressing their rural access-to-justice challenges, and now, as a united Task Force, endeavor to advance solutions crafted for New York's own unique jurisdictional needs. The report and recommendations that follow are the culmination of our collective effort to spotlight alarming legal trends, ameliorate the plight of New York's rural attorneys, encourage new attorneys to consider rural practice, and ensure greater access-to-justice for all New Yorkers.

We hope this Report inspires all invested stakeholders to take the necessary action required to avert the rural access-to-justice crisis upon us.

Co-Chairs

Honorable Stan L. Pritzker
Supreme Court, Appellate Division
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¹ A detailed description and background on the Task Force can be found in Appendix A.

ACKNOWLEDGEMENTS

The Task Force on Rural Justice acknowledges Hank Greenberg, President of the New York State Bar Association (NYSBA), for his vision in spearheading the creation of this Task Force and assembling its diverse and knowledgeable members. Staying true to NYSBA's commitment to ensure access-to-justice for all New Yorkers, he created this task force to respond to the shrinking pool of attorneys serving rural communities across the state. Further, our work would not have been possible without our NYSBA Liaisons—Katherine Suchocki and Tom Richards—who supported us with great dedication to the cause, from start to finish. We would also like to thank the Honorable Elizabeth Garry, the Presiding Justice of the New York State Supreme Court, Appellate Division, Third Department, for her support of this initiative, and for championing the rural-justice cause long before this Task Force formed.

This report builds on an empirical study of lawyers in rural New York spearheaded by Taier Perlman for the Government Law Center at Albany Law School. The Task Force thanks the Government Law Center for sharing the underlying data on which its published study, [*Rural Law Practice in New York State*](#), was based.

The Rural Justice Task Force also acknowledges the many invested stakeholders across the state who graciously and generously shared their time and insights. Special thanks goes to David Kay and Robin Blakely-Armitage from the [Cornell Community & Regional Development Institute](#) (CaRDI) who offered expertise in data science, rural demographic trends, and preliminary map-making. The Task Force also thanks [ZevRoss Spatial Analysis](#) for creation of the maps, infographics, and tables.

Finally, we acknowledge the many hard-working and dedicated rural practitioners from across the state that reached out to share their stories, comments, and proposals to support the Task Force. Without their tireless self-sacrifice, rural access to justice would just be a concept. These rural practitioners creatively maneuver through myriad challenges to deliver urgently needed legal services. They are justice warriors at the frontlines of the accelerating access-to-justice crisis affecting rural New York.

CONCEPTUAL FRAMEWORK—A PACKAGE OF PROPOSALS

It must be clarified at the onset, that the rural access-to-justice challenges this Task Force was formed to address are largely due to forces beyond the scope of our work. The social, economic, and political circumstances that have brought about the decline of rural communities in New York and other states will not be addressed herein. Further, given that the diverse and complex challenges rural communities face implicate multiple stakeholders, including local and state governments, the Task Force had to take a creative approach when developing our recommendations.

Our recommended interventions fall under five categories—Rural Law Practice, Funding, Broadband and Technology, Law Schools and New Attorneys, and Law and Policy—which in totality make up a package of targeted proposals. These category specific interventions address the diverse and complex challenges rural communities face. Only through such a diversified approach can we meaningfully avert the justice gap crisis that will occur when nearly 75% of present-day rural practitioners retire.

This package of proposals is an invitation to any and all stakeholders invested in rural well-being and access to justice. Our diverse interventions call on the State Bar, the State Legislature, the New York Unified Court System, law schools, and others to take action where action is due. The interventions we discuss in this Report are not mutually exclusive. They each make up a piece of the bigger rural justice puzzle, and advancement of any one of them will make a difference for the rural access-to-justice problems our Task Force set out to address. In laying out these diverse recommendations, we invite the full panoply of stakeholders to help bring them to fruition. It will take the proverbial village to activate all of our recommendations. The more recommendations we can advance, the better for all.

BACKGROUND & RESEARCH

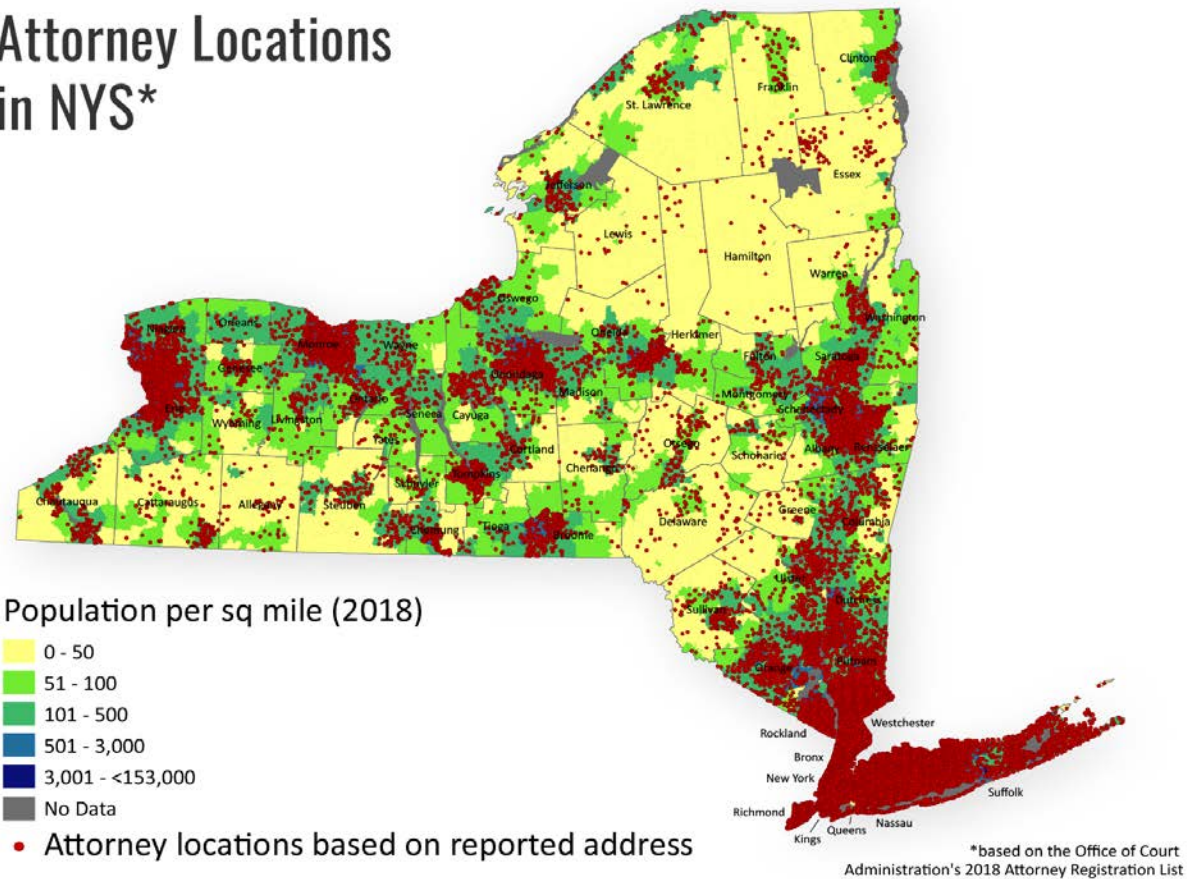
Readers familiar with the access-to-justice challenges experienced in rural New York may wish to skip this section and begin reading the Task Force recommendations which start at page 15.

I. New York State Attorneys: Where Are They?

According to the *ABA National Lawyer Population Survey: Lawyer Population by State*, New York is home to the largest concentration of registered attorneys of any jurisdiction in the United States. As of 2018, New York had 179,600 registered attorneys, 155,369 of whom had in-state addresses. The majority of these registered attorneys are based in non-rural counties, so naturally, the organized bar focuses on meeting the needs of this great majority of practitioners. Accordingly, the needs of rural attorneys and access-to-justice challenges are not prioritized. This is documented across all jurisdictions.

The urban clustering of New York attorneys is readily apparent when projected on a map:

Attorney Locations in NYS*



Each dot represents a single attorney based on addresses reported to the Office of Court Administration.² The vast majority of New York State attorneys are located in urban centers of the state—Buffalo, Rochester, Syracuse, Utica, Albany (Capital Region), and the New York City metropolitan areas. Geographically, however, New York is primarily rural. Of the state’s 62 counties, 44 are considered rural under [New York State Executive Law § 481](#).

It should be briefly noted that defining “rural” is no simple task.³ The definition shifts depending on the specific data sets being used, and what demographic factors or data units are being analyzed. State and federal agencies define rural differently from each other, and which definition of rural to use in a particular study depends on the context and purpose of the research. In a presentation to the Task Force, Robin Blakely-Armitage, Senior Extension Associate and Program Manager at

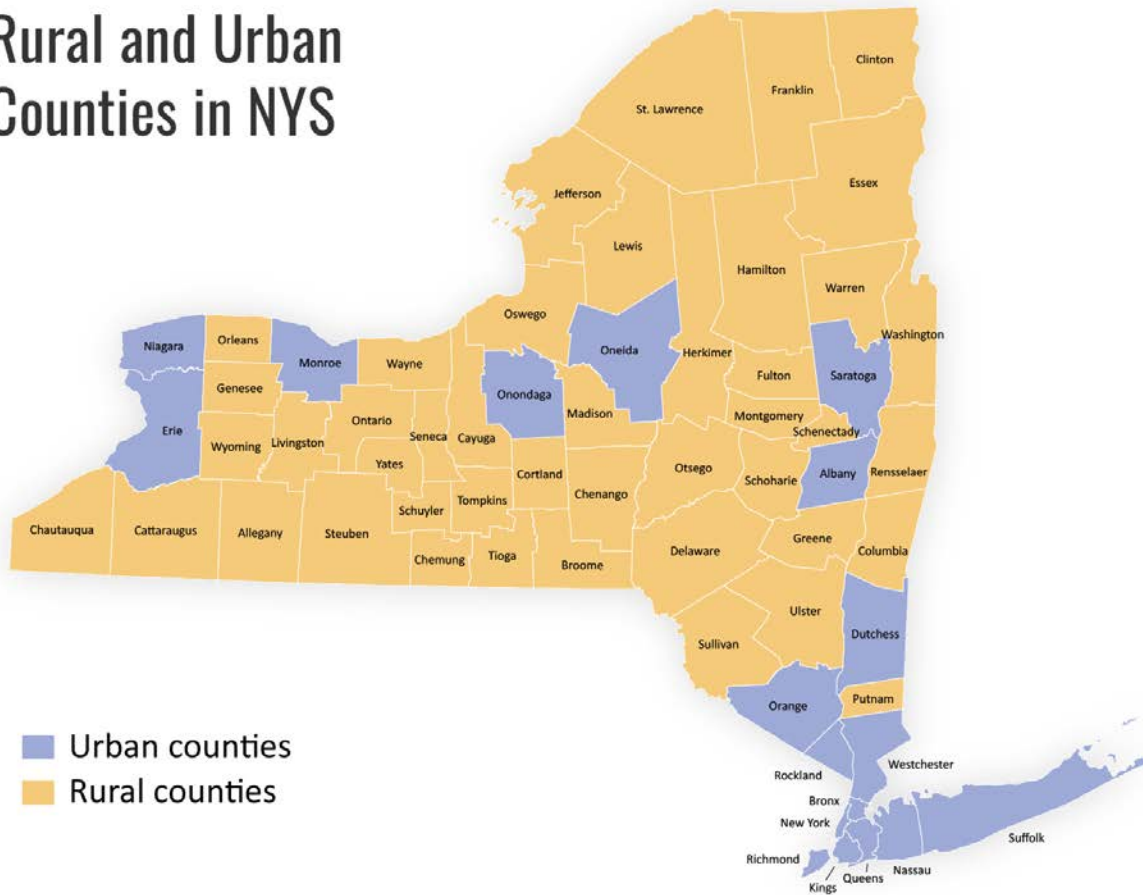
² The attorney registration list maintained by the Office of Court Administration’s Attorney Registration Unit only publicly releases an attorney’s work addresses, not their home addresses. Accordingly, attorneys that only report a home address, without including a work address, are not projected on this map. Additionally, attorneys in suspended status are not shown on this map.

³ See Ruth Igielnik Wieder, Pew Research Center, “Evaluating what makes a U.S. community urban, suburban or rural” (Nov. 22, 2019), <https://medium.com/pew-research-center-decoded/evaluating-what-makes-a-u-s-community-urban-suburban-or-rural-159f9d082842>.

Cornell’s Community and Regional Development Institute, explained that defining rural is largely contextual, and shifts depending on what you are studying. She said that the best general definition of rural is lower population density and limited proximity to a population center.

The Task Force deliberately decided not to get bogged down by the nuance involved in crafting a specific definition of “rural.” For our purposes, we relied on the definition of “rural” in [Executive Law § 481](#), which identifies a county as rural if its population is below 200,000 people. Relying on this definition, the following map visualizes just how rural New York State is:

Rural and Urban Counties in NYS



Rural New York makes up approximately 80% of New York’s land mass, and is home to approximately 17% of New Yorkers, or 3,260,008 people.⁴ According to attorney-registration data, there are only 6,176 attorneys serving these vast rural territories. In reality, the number of rural attorneys that actually offer legal services to individual members of the public is much smaller than that statistic indicates, since it is unrealistic to presume that all 6,176 attorneys work in private law practices or legal services organizations. A sizable proportion of these attorneys are district attorneys, government lawyers, members of the judiciary, or employees of private

⁴ This statistic was computed from the population data contained in the Table found in Appendix [\[redacted\]](#). This Table, created by [ZevRoss Spatial Analysis](#), used 2018 US Census population estimates.

businesses, government or public institutions, none of which offer legal services to the general public. This is corroborated by data from rural county bars. For example, the Delaware County Bar Association has a total of 71 members. However only 26 of them maintain a primary solo practice office in the county. Seventeen members are employed by the government, and the other 28 members are not offering legal services to the general public.⁵ It is safe to conclude that less than 4% of New York licensed attorneys actually serve the access-to-justice gaps that exist in rural communities.⁶

Without a doubt, there are far fewer attorneys serving rural counties than urban ones. But are there too few? The uneven distribution of attorneys across New York State does not necessarily demonstrate an attorney shortage, particularly when we would expect there to be less attorneys in areas where there are less people. The question is whether there are enough attorneys per resident to meet the need, and in rural New York, there usually are not, as the following section shows.

II. Evidence of Rural Attorney Shortages

Not Just a New York Problem

Research across jurisdictions documents the growing shortage of attorneys throughout rural America. For instance, a recent publication titled *Legal Deserts: A Multi-State Perspective on Rural Access to Justice* summarized research on rural attorney shortages across five states—California, Georgia, Maine, Minnesota, South Dakota, and Wisconsin.⁷ Data studies of rural attorney shortages have also been done in other jurisdictions including Arkansas, Montana, and Utah.⁸

⁵ The Delaware County Bar Association statistics were shared with us by Task Force Member Gary A. Rosa on August 2, 2019. Similar figures come from other rural county bar associations. For example, the Madison County Bar Association has 86 members. 27 are court staff, agency attorneys, or lawyers who are members but do not practice law in the county. Of the 59 remaining, 5 are employed half time as government attorneys. Also, only 3 attorneys are under the age of 40. These figures were reported to us by Gemma Rossi Corbin on July 22, 2019. Corbin served as Madison County Bar Association President from 2016 to 2017.

⁶ The facial inadequacy of the numbers in illuminating just how many rural practitioners actually serve rural legal needs was demonstrated in a rural practitioner survey that was conducted from August to October 2018 by Albany Law School's Government Law Center. Hundreds of survey responses had to be dropped from the analyzed data set because they were completed by rural practitioners who did not offer legal services to the general public. See Taier Perlman, *Rural Law Practice in New York State*, endnote 5 (Gov't Law Center, Apr. 16, 2019), available at <https://www.albanylaw.edu/centers/government-law-center/the-rural-law-initiative/Documents/rural-law-practice-in-new-york-state.pdf>.

⁷ Lisa R. Pruitt, et al., *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 Harv. L. & Pol'y Rev. 15 (2018). <https://harvardlpr.com/wp-content/uploads/sites/20/2019/04/4.-Legal-Deserts.pdf>.

⁸ Arkansas study: Lisa R. Pruitt, et al., *Justice in the Hinterlands: Arkansas as a Case Study of the Rural Lawyer Shortage and Evidence Based Solutions to Alleviate It*, 37 U. Ark. Little Rock L. Rev. 573 (2015); Montana study: Hilary A. Wandler, *Spreading Justice to Rural Montana: Expanding Local Legal Services in Underserved Rural Communities*, 77 Mont. L. Rev. 235 (Summer 2016); Utah study: David McNeill, *Measuring the Legal Services Market in Utah*, Vol. 30 No. 5 Utah Bar J. 22 (Sept/Oct 2017).

The California studies are especially relevant, because California is similar to New York. It has the largest population of any state; it has the second highest count of registered attorneys; and its attorneys practice mostly in large metro-areas, even though the state is predominately rural. The California Commission on Access to Justice published a report in July 2019 spotlighting attorney shortages in California’s rural territories.⁹ That study documented the same attorney distribution trends as New York, including the problematic attorney deserts that exist in rural communities.

The New York Problem

While many studies have been done examining workforce shortages across rural New York, no one entity has specifically studied legal workforce shortages until the Government Law Center at Albany Law School published its seminal *Rural Law Practice in New York State Report* in April 2019.¹⁰ This detailed report, based on a three-month survey of rural practitioners, revealed a number of telling legal trends affecting rural communities. The report provided qualitative and quantitative data about what rural practice is like as well as the rewards and challenges of rural practice. Most significantly, it documented the growing shortage of rural attorneys based on several indicators—difficulties rural attorneys have making referrals in their geographic region, feeling overwhelmed by the volume of cases they are handling, and the greying of the rural bar due to a shortage of new attorneys. The below section focuses on the later indicator, which is what has prompted many jurisdictions to action.

A. The Greying Rural Bar

The Government Law Center’s survey reported an alarming figure: 74.3% of respondents were 45 years or older, with 54% at or near retirement age. This means that within 10 to 30 years, the majority of current rural attorneys will be fully retired. The gravity of these figures was colored by comments from the respondents:

“I am the only lawyer handling complex business transactions. I am 69 years old and cannot retire because too many people rely on me.”

“While there are currently enough attorneys to go around, most are in their 60s, which means many will probably retire in 10-20 years. There may be a crisis in the future, just look at the age of the attorneys.”

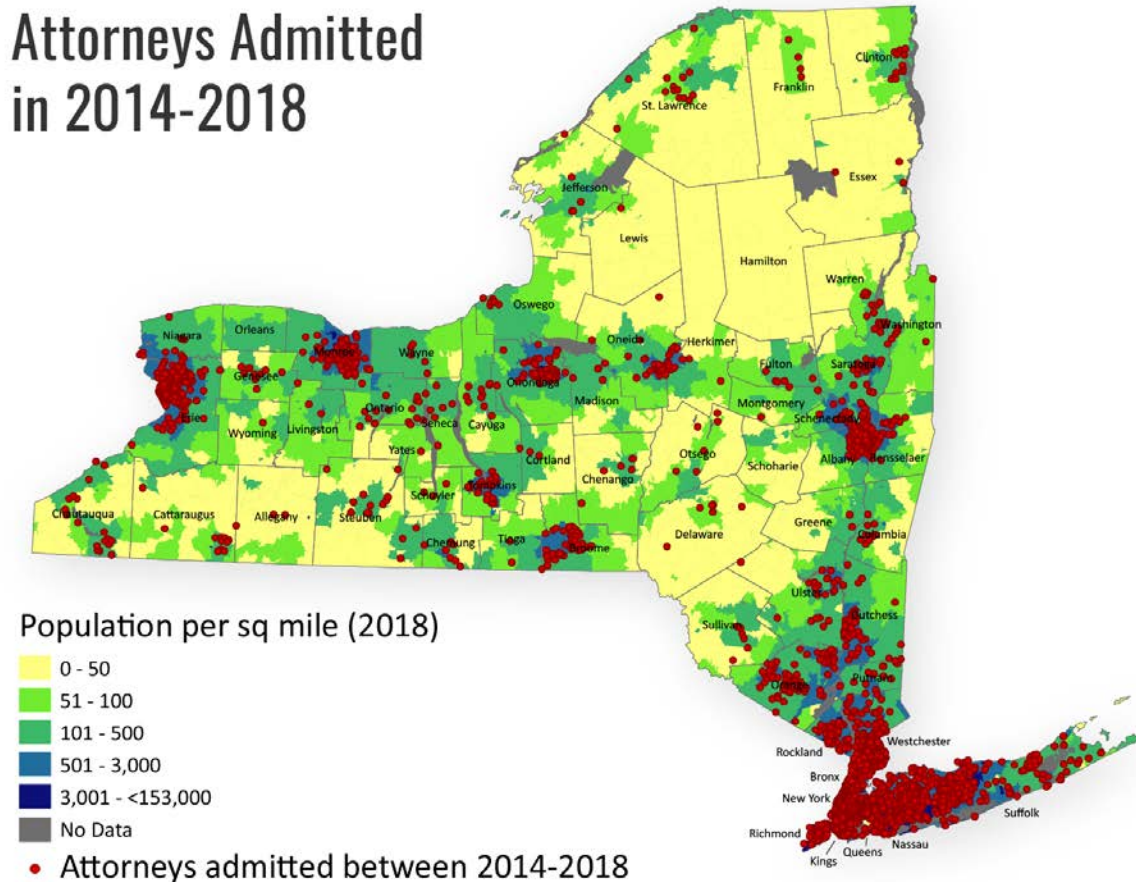
“We are running out of lawyers! Something needs to be done to attract young attorneys to the rural areas . . . Our county is literally running out of lawyers.”

⁹ CA Commission on Access to Justice, CALIFORNIA’S ATTORNEY DESERTS: ACCESS TO JUSTICE IMPLICATIONS OF THE RURAL LAWYER SHORTAGE (July 2019).

¹⁰ See Perlman, *Rural Law Practice*, at <https://www.albanylaw.edu/centers/government-law-center/the-rural-law-initiative/Documents/rural-law-practice-in-new-york-state.pdf>.

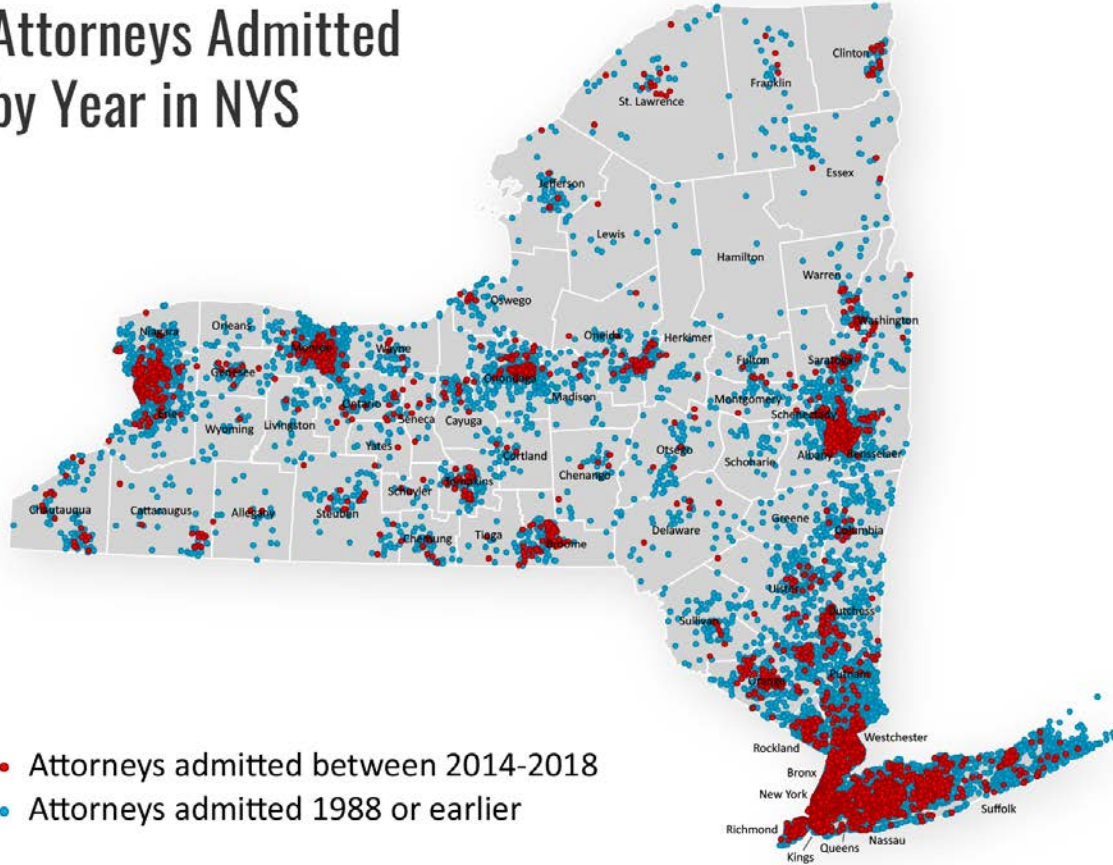
Based on these findings, the Task Force took a deeper look at the composition of rural practitioners. Using attorney registration data, we worked with data scientists to compare how many rural attorneys are newly admitted compared to those that have been in practice for quite some time.

The following map shows each attorney that was admitted to the bar between 2014 and 2018:



Like attorneys generally, newly admitted attorneys are heavily concentrated in New York’s urban counties. An overlay of attorneys that have been admitted since 1988 or before—representing attorneys that have been in practice for 30 plus years—shows a remarkable effect:

Attorneys Admitted by Year in NYS



The older generation of attorneys are much more numerous and spread out across New York’s rural territories. They also clearly outnumber the newly admitted attorneys that are settling in rural areas. This attorney age imbalance was also documented in the Government Law Center’s survey, albeit qualitatively:

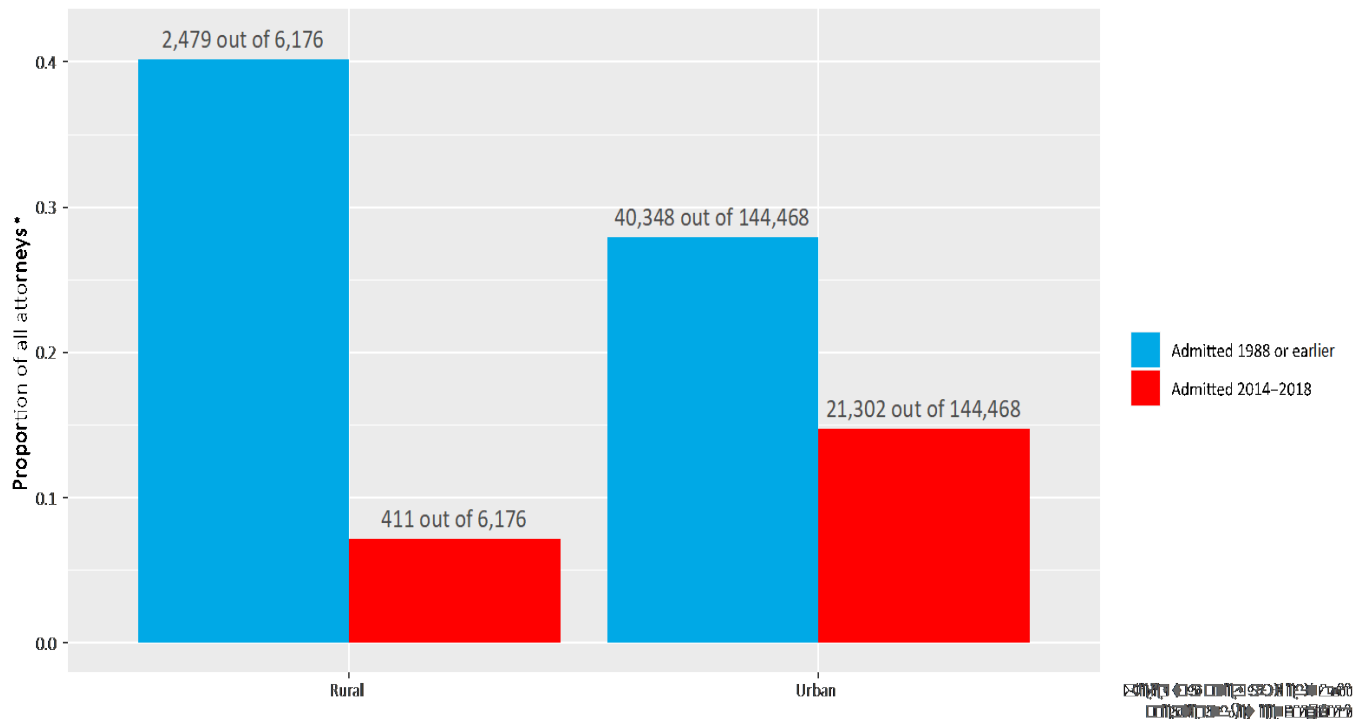
“This county has no public defender office; all indigent legal defense is 18-b. We are running out of defense attorneys who are willing/able to take cases because more attorneys are retiring or leaving the area than those coming in to replace them.”

“I get the impression sometimes that young attorneys are coming out of law school with so much debt that they do not feel they can come to our small villages.”

“Attracting and retaining young lawyers to work in rural areas is one of the biggest challenges I face as a rural practitioner.”

Many more commenters likewise expressed concern about the shortage of newer attorneys and the dim prospects once currently practicing attorneys retire.

The following graph compares the proportions of older and newer attorneys in urban and rural counties and corroborates the anecdotal knowledge:

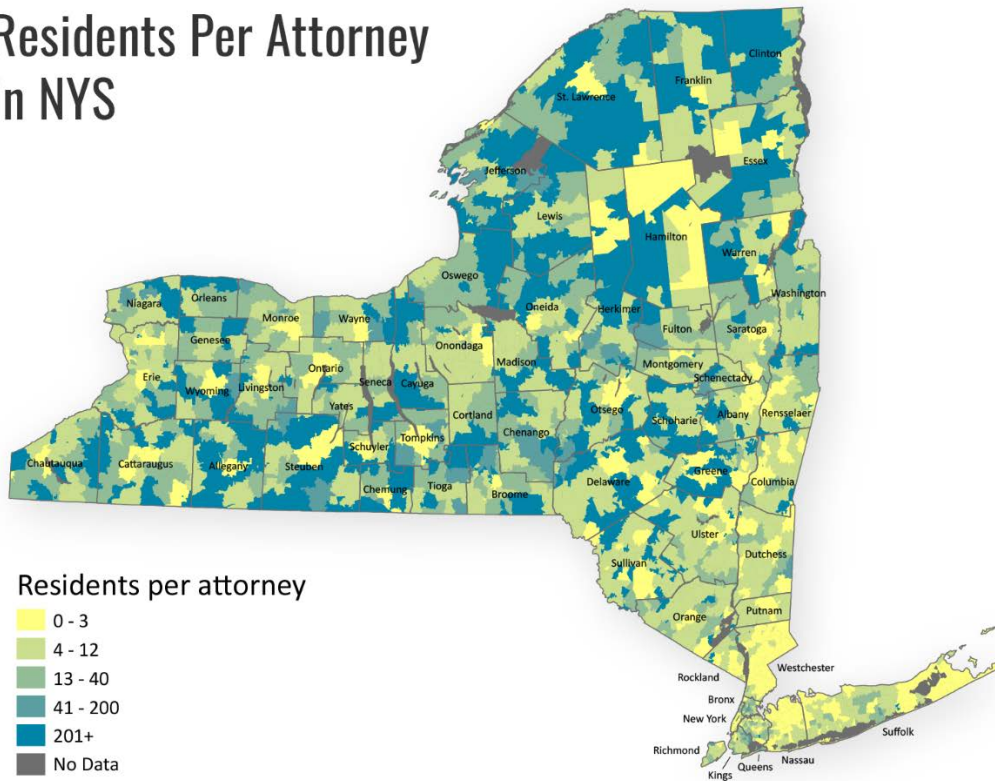


As the chart make clear, newer attorneys in rural areas are much more heavily outnumbered by late-career attorneys than newer attorneys in urban areas.

B. Attorney-to-Resident Ratios

When we compare resident-to-attorney ratios across the state, we see a significant imbalance of attorneys in rural areas compared to urban or suburban areas as measured on a per capita basis. The below map uses population data and attorney-registration data to compute the resident-to-attorney ratio, giving an average of how many people there are for each attorney in that area. The darker areas are where there are more residents per attorney.

Residents Per Attorney in NYS



As the map shows, rural areas across the state have higher resident-per-attorney ratios. This is in stark contrast to more urban areas of the state which have much better ratios—for each attorney there are 1 to 40 residents. In many rural areas, however, for each attorney there are 201+ residents. This explains the challenges rural practitioners reported from overwhelming volume of cases and difficulties making referrals to legal experts in their geographic region.¹¹

C. Challenges in Rural Practice

As noted above, rural law practice presents unique challenges (and rewards).¹² The rural-practitioner survey conducted by the Government Law Center at Albany Law School illuminated the following eight themes which make rural law practice difficult¹³:

¹¹ The disparity in the rural and urban attorney-to-resident ratios is perhaps more clearly visualized by the infographic in Appendix [\[redacted\]](#), which plots the attorney-to-resident ratios by county.

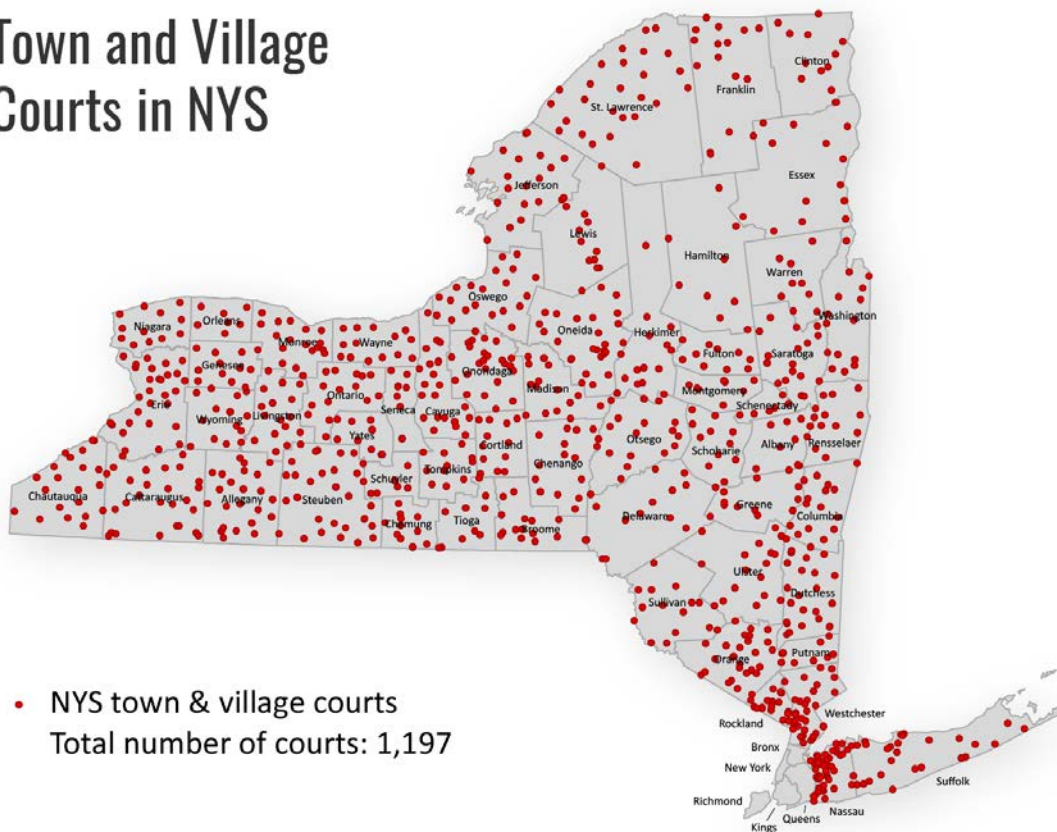
¹² The Government Law Center's survey also revealed a number of rewards to rural practice, which are important to appreciate for full understanding of rural law practice. The rewards survey respondents discussed include: love for an impact on their community; reward of helping their clients in meaningful ways; reward of helping underserved poor clients; quality of life in rural communities; and appreciation for type of practice, the local bar community, and relationships with the courts.

¹³ *Id.* at 6. Readers are encouraged to refer to Government Law Center's report, which is available at <https://www.albanylaw.edu/centers/government-law-center/the-rural-law-initiative>, for more details.

1. Prevalence of indigent clients
2. Financial stress on lawyers
3. Professional isolation
4. Overwhelming caseload/not enough attorneys to assist
5. Systemic inefficiencies
6. Distance burdens
7. Technology issues
8. Conflicts of interest/knowing too many people in small communities

The Task Force considered these difficulties in devising its interventions, and several of our recommendations address these difficulties from multiple angles. For instance, one of the bigger challenges faced by rural practitioners relates to the non-uniform and scattered nature of the town and village court system in New York State, also known as justice courts. There are presently 1,197 active justice courts in New York State:¹⁴

Town and Village Courts in NYS



¹⁴ Data provided by the New York State Office of Justice Court Support. The Office of Justice Court Support was formed in 2007 as part of an initiative to improve the efficiency and quality of local town and village courts. The Office supports the work of the justice courts by delivering legal assistance, training, equipment, and services to the justices and court clerks.

Active rural practitioners have to travel tremendous distances to appear in these scattered courts, which typically only hold court during night hours one-to-several times a month. Steuben County in western New York, for example, has 34 justice courts, and Franklin County in northern New York has 20. *See* maps in Appendix [\[redacted\]](#). The tally of justice courts in Steuben County does not account for the county's five state-run courts, which sit in three different cities, or the federal district court that has jurisdiction over Steuben County, which has its courthouse two counties away, in Rochester.¹⁵ This overwhelming tapestry of courts, no doubt adds to the challenges that rural practitioners experience.

The Rural Justice Task Force did not go further in studying justice courts, especially since several NYSBA task forces have already done so.¹⁶ However, the impact of this court system on rural practice could not be ignored, and accordingly, several of the proposed interventions address the challenges of practicing in these courts.

We now move on to the recommended interventions of the Task Force which begins on the following page.

¹⁵ For a list of courts in Steuben County run by the state, see New York State Unified Court System, "Steuben County," <http://ww2.nycourts.gov/courts/7jd/steuben/index.shtml>. For information on the jurisdiction of the United States District Court for the Western District of New York, see <https://www.nywd.uscourts.gov/accessing-court>.

¹⁶ Town & Village Courts Report, Report & Recommendations of the NYSBA Criminal Justice Section (2018), <https://www.nysba.org/tvcourtsreport/>.

RECOMMENDATIONS OF THE NYSBA TASK FORCE ON RURAL JUSTICE

I. FUNDING-RELATED INTERVENTIONS

A. Funding Is Crucial to Attract Rural Practitioners

As this report shows, the serious shortage of lawyers in rural New York is amply demonstrated not only through metrics, but also anecdotally. Therefore, one focus of this Task Force has been on ways to incentivize new attorneys to practice their skills in these underserved areas.

One concrete approach involves providing financial assistance in exchange for a certain time commitment to practice in a targeted rural area. There are a number of possible models, discussed below, to achieve this. The student-debt crisis is not only real, but growing. “Economists project an accumulated student loan debt of \$2 trillion by 2021, and, at a growth rate of 7% a year, as much as \$3 trillion or more by the end of the next decade.”¹⁷ Of course, this crisis has caused a wide range of pernicious impacts. “Studies show that many of those struggling to repay these mountainous student loans are also experiencing serious mental health problems, caused in large part by the crushing weight of these loans.”¹⁸ Indeed, this crisis has profoundly impacted the choice of where one chooses to practice law, as the benefits of rural practice are often far outweighed by financial concerns as urban practice is often far more lucrative. It is within this vexing context that we have considered and now recommend the following ameliorative economic strategies.

We turn first to loan forgiveness. Here, the Task Force considered several different programs before endorsing the following approaches, ranked in order from most to least preferred.

B. Establish a Direct Pay Model

Our first proposal is that New York State adopt a program similar to the South Dakota Legal Education for Public Service and Rural Practice Loan Repayment Assistance Program.¹⁹ The general idea of this model is to provide money to certain attorneys, making rural practice feasible and more appealing by removing, or at least diminishing, the specter of student-loan debt when establishing a practice or entering into governmental service in a rural area.

Direct-pay models are a preferred method to incentivize rural practice because, compared to other interventions such as tax relief and law school scholarships, the direct pay model affords the following benefits:

- By allowing flexibility, it is scalable and provides a tangible benefit.

¹⁷ See Daniel Johnson, *What Will It Take to Solve the Student Loan Crisis?*, Harvard Business Review (Sept. 23, 2019).

¹⁸ *Id.*

¹⁹ See *Rural Attorney Recruitment Program*, <https://ujis.sd.gov/uploads/RuralAttorneyRecruitmentProgram.pdf>

- The ability to operate as a pilot program for a limited number of years.
- The ability to direct the benefit to the rural areas that are the focus of this report.
- Avoiding the criticism that tax policy is not the best place to implement social policy.

The South Dakota program provides direct payment to attorneys in certain defined rural communities. The attorneys are paid \$12,500 per year for 5 years. The funding is provided as follows: 50% from the court system, 35% from the county (or the county and city combined) and 15% from the South Dakota Bar Association (a mandatory bar association).

The following proposals are based upon the South Dakota model but are somewhat different as the demographic landscape in New York differs significantly from South Dakota. Thus, the Task Force has modified the South Dakota model in significant ways to fit our needs in New York. Some of the details of our plan, which are highly flexible, are as follows:

1. New York State Direct Pay Model

Eligible Areas: Counties with population densities less than 100 per square mile and outside of the corporate boundaries of a city.²⁰

This would include the following counties, listed in order of decreasing population density: Cortland, Tioga, Columbia, Oswego, Cayuga, Seneca, Chautauqua, Sullivan, Washington, Greene, Clinton, Steuben, Warren, Wyoming, Yates, Wayne, Jefferson, Otsego, Cattaraugus, Chenango, Schuyler, Orleans, Schoharie, Allegany, Herkimer, St. Lawrence, Delaware, Franklin, Lewis, Essex, and Hamilton.

Alternate Eligible Areas: Counties with lawyer densities less than two lawyers per 1,000 population and outside the corporate boundaries of a city.²¹

This would include all of the counties described above, with the exception of Hamilton, Warren, Columbia, and Sullivan counties, and adding Oneida, Ontario, Genesee, Chemung, Montgomery, Livingston, Madison, and Fulton counties.

Amount of annual benefit: An amount equal to the average published annual in-state tuition rate and mandatory fees for the accredited SUNY law schools, CUNY School of Law, and School of Law at the University at Buffalo. Currently, that average is \$22,148.

Benefit Period: We recommend a five-year benefit period and justify that period, as it is longer than a traditional three-year law school program, because this time period allows the attorney to:

- Become firmly established in the community.
- Helps to repay tuition of more expensive schools.

²⁰ *New York Population Density County Rank*, <http://www.usa.com/rank/new-york-state--population-density--county-rank.htm>.

²¹ *New York Lawyer Report: How many lawyers per resident in each county in New York State?*, Press Connects (May 14, 2018), <https://www.pressconnects.com/story/news/local/2018/05/14/new-york-lawyer-report-how-many-lawyers-per-resident-each-county-new-york-state/545197002/>.

- Helps to repay room and board.
- Helps to repay interest.

Eligible Applicant: We propose an Eligible Applicant would be any person not currently employed in an Eligible Area, who has not previously participated in the Direct Pay Model Program and who:

- Is admitted to practice law in the State of New York.
- Has never been disbarred, suspended, or publicly censured from the practice of law in any jurisdiction.
- Is willing to sign a contract to practice in the selected Eligible Area for the length of the Benefit Period.
- Will carry malpractice insurance during their involvement in the program and provide proof thereof.
- Has in excess of \$100,000 in combined debt, including debt incurred in undergraduate and graduate programs.

Method of Selection: The application process will be designed, coordinated, and overseen by the New York State Bar Association (NYSBA). Applicants are to apply based upon their intended Eligible Area and selections per Eligible Area are to be made by way of a lottery. Final selections will be limited to the number of authorized awards each year. These awards will be made in rolling order from lowest population density/lawyer density (depending on definition of Eligible Area) to highest.

Number of Annual Awards: Seven awards annually over five years would potentially put 35 attorneys into the underserved rural counties, which we believe is enough to begin to make a significant difference.

Funding: State funding. To be made annually in a lump sum after the completion of each contract year.

2. Direct Pay Loan Repayment Assistance for the Rural Lawyer

We recommend this program as an alternative to the above, which is similar in scope and eligibility to the Direct Pay Model, but differs in that assistance would be directed to the attorneys' student loan payments, which would either be abated in whole or in part during the award period.

C. Student Loan Repayment Programs

We recommend that NYSBA promote existing loan-repayment-assistance programs. First, the College Cost Reduction Act of 2007 created a federal program, administered by the U.S. Department of Education through subcontractors, which was designated to benefit both attorneys and non-attorneys in urban and rural areas. It provides for income-based repayment plans. And, for those with high debts and low incomes, federal loans qualifying for income-based repayments are structured so that payments are capped at a certain percentage of the borrower's income, with the remainder forgiven after 25 years.

The same Act created a program known as Public Service Loan Forgiveness, a more accelerated loan-forgiveness program for those who work in public service for a cumulative ten-year period. At the end of ten years, or after having made 120 qualifying payments while working in public service, the remainder of a federal direct-consolidation loan is forgiven.

There are significant problems with the administration of this program, and upwards of 90% of those applying for loan forgiveness following the ten-year period have had their applications for loan forgiveness denied. On April 3, 2019, six U.S. senators wrote to the Consumer Financial Protection Bureau and outlined problematic areas regarding the administration of the program. On October 28, 2019, 22 U.S. senators wrote to the Consumer Financial Protection Bureau requesting that it immediately open an enforcement investigation into the Pennsylvania Higher Education Assistance Agency's management of this program. The Pennsylvania agency is a U.S. Department of Education subcontractor.

In addition, in July 2019, the American Federation of Teachers (AFT) and individual plaintiffs filed a lawsuit in the United States District Court for the District of Columbia, *Weingarten v DeVos*, which challenges practices by the United States Department of Education that are contributing to the low rates of forgiveness currently being granted. These include claims of due process violations including the lack of notice regarding denials and processes for appealing denials.

Given this scenario, we further recommend that NYSBA engage in advocacy efforts to ensure proper administration of this program. NYSBA should do so through its Committee on Legal Aid and President's Committee on Access to Justice, both of which have subcommittees working on loan repayment issues and both of which have in the past recommended that this program be a federal legislative priority for NYSBA.

Second, the New York State District Attorney and Indigent Legal Services Attorney Loan Forgiveness Program is administered by the New York State Higher Education Services Corporation and is designed to retain experienced attorneys employed as district attorneys, assistant district attorneys, or indigent legal services attorneys throughout New York State. Again, attorneys may apply for this program from both urban and rural areas of the state. This is a retention program designed to keep people in these positions longer term. To be eligible, attorneys must have worked in these positions for at least four years, but no more than nine years. Awards are in the amount of \$3,400 each year with a cap of \$20,400 for each attorney. We recommend that the amount of the award be raised to \$5,500 per year and that the wait time to access this program be decreased from three years to two years, and that NYSBA advocate for pending bills on topic.²² We further recommend that the program be more widely publicized by NYSBA.

Third, we also recommend that NYSBA publicize the Legal Services Corporation's Herbert S. Garten Loan Repayment Assistance Program which provides loan repayment assistance to select attorneys who work full time for Legal Services Corporation (hereinafter LSC) grantees

²² See pending Senate Bill S6668, which expands the eligibility period for indigent legal service attorneys to receive certain loan forgiveness and increases loan reimbursement for certain attorneys who work in legal services with indigent clients. <https://www.nysenate.gov/legislation/bills/2019/s6668>

throughout the United States, regardless of whether a program serves urban or rural areas. Six LSC grantees serve the counties outside of the five New York City boroughs and are headquartered in Albany, Buffalo, Geneva, Hempstead, Utica, and White Plains. Selected attorneys receive up to \$5,600 annually for a maximum period of three years.

C. Tuition Assistance Programs

The Task Force also recommends that the Excelsior Program administered by the Higher Education Services Corporation be expanded to cover eligible students who wish to practice law in rural areas.

The Excelsior program, in combination with other student-financial-aid programs, allows students to attend a SUNY or CUNY college tuition-free, if they agree to work in New York State upon graduation. We recommend that consideration be given to establishing a similar program to develop a pipeline from high school to college to law school for rural high-school students who commit to return to their rural locations to work upon graduation from law school.

A model similar to this one has been established in Nebraska. In that program, students from certain Nebraska areas study at one of three Nebraska state colleges or universities, obtain their legal education at Nebraska College of Law, and then practice in rural areas throughout the state. Program benefits include full-tuition scholarships for undergraduate education, automatic acceptance into the law school, and eligibility for loan forgiveness after completion of law school. The high-school students must come from a rural section of Nebraska and must agree to return to that same rural area to practice law. Additionally, academic requirements must be met and maintained throughout college and law school. We envision that the establishment of a model such as this in New York would require partnership with University at Buffalo Law School and/or CUNY School of Law.

II. LAW SCHOOLS AND NEW ATTORNEYS INTERVENTIONS

Law schools play an important role in ensuring access to legal services in rural communities. This section of the report identifies several strategies for law schools seeking to do more.

Law schools help rural communities obtain access to justice in two ways: directly, when law-school students, faculty, and staff provide legal services to people in rural communities; and indirectly, when law schools train the attorneys who will serve those communities. This section of the report recommends that law schools assess their programs in both areas in terms of their impact on rural justice.

A. Assessment of Existing and Potential Programs

The first strategy available to law schools is to undertake an assessment of existing and potential programs in terms of their prospects for helping to promote rural access to justice. We recommend that law schools assess how their current programs serve the interests of people in rural communities and students who might choose to practice in rural communities.

Such assessment could be done on a schoolwide basis, but could also be done program-by-program. For example, a specific clinic could assess how many of their clients live in rural communities and whether a future expansion could make more services available to those communities. A law-school office that hosts panel discussions about careers could assess how many of its guest speakers practice in rural communities.

Assessments of this kind could be built into other strategic-planning processes. For example, if a school is undertaking an institution-wide strategic-planning process, one committee or planning group could be tasked with focusing on rural justice. The same task could be assigned within a department that is undertaking a strategic-planning process. Law schools or departments within law schools can identify specific goals for programs that serve rural communities and/or students who are interested in rural practice.

There are also less formal opportunities to incorporate rural justice into strategic planning. For example, job vacancies can be an opportunity for thinking about priorities; hiring a new admissions director is an opportunity to ask candidates about how they would reach out to prospective students from rural communities.

It should be emphasized that assessments of this kind should not be aimed at ensuring “balance” between rural communities and urban or suburban communities. Some law schools, depending on factors like whether they are located near rural communities, have good reason to emphasize rural practice to a greater extent than other schools. Moreover, all communities have access-to-justice needs, and every law school has students who have the potential to do great things in rural, urban, and suburban communities. The goal of assessment and strategic planning, then, should be to identify opportunities for growing schools’ capacity to serve rural communities and the students who might wish to serve them, not to take focus away from the needs of other communities.

Assessments of the kind recommended above depend on information, but at this point little information is available about the impact of law-school programs on rural communities and students who might wish to serve them. Thus, gathering data is an important part of the assessment process.

Again, departments within law schools can gather data separately or together: admissions offices can collect data about their own recruitment efforts in rural areas, and the outcome of those efforts; careers offices can collect data about employers and students to learn more about where jobs are located and how attitudes toward rural practice affect students’ career choices; alumni offices can survey alums in rural communities about the skills needed to prepare for practice in those areas and schools’ outreach to people in their communities; and so on. Gathering information about the impact of programs on rural communities and students who are interested in serving them is an important precursor to meaningful strategic planning.

B. Law Schools’ Role in Providing Services

The simplest way for law schools to address the shortage of legal services—although not necessarily the most effective in the long term—is for the law schools to provide legal services

themselves. Every law school supports numerous programs in which students, sometimes with the help of significant faculty and school resources, directly provide services to people in their communities. These services fall into a number of overlapping categories.

One major category is services that students receive academic credit for providing. The rise in experiential education over the last few decades has created numerous ways for law students to provide services to their communities, including clinics, externships, internships, and other curricular options. One example of a rural-focused program of this kind is the Drake Agricultural Law Center.²³

In addition, students participate in pro bono programs. Albany Law School students, for example, provided a total of 42,000 hours of pro bono work in 2018, with some students providing more than 750 hours, or nearly 19 weeks of full-time service.²⁴ (No data is available on how much of that service was provided to rural communities.)

Pro bono work is not optional in New York; the state court system requires that all students complete 50 hours of pro bono service before they are admitted to the bar.²⁵ The regulation defines “pro bono service” as “assist[ing] in the provision of legal services without charge,” which allows students to count work for which they receive academic credit (such as clinical work) as pro bono service. Work that counts as pro bono service can thus be provided either as part of a curricular program, like a clinic, or as an extracurricular activity or part of an outside job.

Direct-services programs take many forms. Many law schools provide institutional support for students’ pro bono work. Not all student pro bono work involves direct services; a different kind of service is provided by the Legislative Research Service of the Rural Law Center at the University of Wyoming College of Law, which involves student volunteers providing free legislative research and drafting services.

Another creative program is the Justice Bus program in Buffalo. This program is an initiative of Neighborhood Legal Services, joined by community partners including Volunteer Lawyers Project, the Western New York Law Center, and the University at Buffalo School of Law. The project is a 12-passenger van that transports lawyers and law students to rural areas of Western New York to provide services to poor and disabled people.²⁶

²³ See Drake University, *Agricultural Law Center*, <https://www.drake.edu/law/clinics-centers/aglaw/>.

²⁴ Albany Law School, *Students Commit to Pro Bono Work, Exceed 42,000 Hours* (Apr. 26, 2018), <https://www.albanylaw.edu/about/news/2018/Pages/Graduating-Class-Drives-Public-Interest-Work-Far-Beyond-the-States-50-Hour-Requirement.aspx>.

²⁵ Rule 520.16 of the Rules of the Court of Appeals, available at <http://www.nycourts.gov/ctapps/520rules10.htm#B16>. FAQs make clear that qualifying work includes clinical work, work under the supervision of a faculty member, and externships and internships. See http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/FAQsBarAdmission_0.pdf, page 9.

²⁶ See UBNOW, *Justice Bus to offer on-site legal help to poor, disabled*, (Aug. 21, 2019), <http://www.buffalo.edu/ubnow/stories/2019/08/justice-bus.html>; see also Neighborhood Legal Services, *Beep Beep! The Justice Bus Is Coming to Western New York*, <https://nls.org/justicebus/>.

While some programs are supervised by law school staff and faculty—which is costly for the law schools—others involve outside placement of students. These programs are variously known as internships, externships, or field placements, and all of them involve primary supervision of the students providing services by attorneys in practice, rather than law school faculty or staff. There appear to be more programs of this kind supporting rural areas than faculty or staff-run programs.

Are law schools' direct-services programs an important way to address the shortage of legal services in rural communities? It is clear that service providers within law schools can become important resources within their communities. For example, the Farmworkers Clinic at Cornell and the Immigration Law Clinic at Albany Law School serve not only as significant providers of legal services but as hubs through which people in need of legal services are put in contact with attorneys who can provide those services. But their scope is limited in several ways: students spend longer on cases than experienced attorneys, and require supervision; clinics generally pick one kind of case (like immigration) and serve only clients with needs relating to that subject; and clinics are geographically limited because there are only four law schools in upstate New York (above Westchester County): Albany, Buffalo, Cornell, and Syracuse. Also, clinics are by far the most expensive educational program run by law schools, which makes it challenging to expand them.

One potential benefit of law students' direct-service work is that, in addition to helping the recipients of the services, it also exposes students to practice in rural communities. But there is good reason to be skeptical of experiential education's potential for motivating students to work in rural communities. Students' experiences in clinics involve working with very specific clienteles in narrow legal areas. This is very different from most rural law practice, in which a majority of lawyers are general practitioners working in solo practice or small firms. A farmworkers' clinic may give students excellent exposure to the life of farmworkers, but it will give them little insight into the life of rural lawyers. In this sense, direct-services programs' primary benefit is the services themselves.

One important consideration for programs that provide direct services is their relationship to other service providers. Ideally, the programs will complement and cooperate with existing service providers, rather than displacing them or competing for funding.

In sum, it is important for law schools to assess their direct-services programs with an open mind. While they have the potential to contribute significantly to the needs of their communities, law schools' role in producing future lawyers affects rural communities on a much greater scale.

C. Law Schools' Role in Providing Attorneys

Although law schools can usefully serve their communities by providing direct services, their greater impact is training the lawyers who will go on to serve rural communities.

Without wading into complex questions of curriculum design, the Task Force recommends that schools assess their curricula with an eye towards the needs of lawyers who will practice in rural communities. In the substantive legal training that law schools provide—that is, the courses they teach—the schools can (and many do) make an effort to give students the skills and training they need to succeed in rural practice. This includes both substantive courses and skills-based courses

like practice management. And although there is much debate within law schools about the idea that graduates should be “practice-ready”—given the diversity of legal practices—there is a growing movement to teach classes on practice management and other classes that will be particularly useful for rural lawyers.²⁷

It is also worth noting that law schools nationally are expanding online education.²⁸ This presents a potential opportunity for students who might consider rural practice, because prospective students in rural communities, especially those with limited resources, might find distance learning more manageable. Law schools considering such programs should assess their capacity for making law school more accessible to people in rural areas.

Outside of the curriculum training law schools provide, there are several important strategies for supporting students who might wish to practice in rural communities. Three of them include: increasing students’ access to information about rural practice; working to challenge the prestige hierarchy which devalues rural practice; and growing the pipeline to rural practice by recruiting more students from rural communities.

1. Increasing students’ access to information about rural practice

One important way law schools can support students who might wish to practice in rural communities is by helping them learn more about rural practice through mentoring, informational, and connection-building programs. Lack of information should not be a barrier to serving communities that need legal services.

Ideally, law students would never miss out on a possible career choice because they are unable to obtain information about it. But information about rural careers can be scarce. Every law school has an office responsible for helping students learn about careers, and those offices are increasingly conceiving of their function in a broader way—hence the phrase “professional development” increasingly being incorporated into the names of those offices. As these offices help students build their professional identity and their career goals, they have an opportunity to introduce them to the significant opportunities that may exist in rural communities—or to reinforce the unfortunate message that such opportunities are not worth pursuing.

Professional Development offices can bring in guest speakers or organize informational sessions to help students learn about rural practice. They can engage in outreach to rural employers, who (lacking large human-resources offices) may be less knowledgeable about how to make their job openings known to law schools. One innovative program is the [Iroquois “Take a Look” program](#)

²⁷ See Robert J. Condlin, “*Practice Ready Graduates*”: A Millennialist Fantasy, 31 *Touro L. Rev.* 75 (2014); Martha Kanter and Grace Dodie, *Discarding the Fiction of The Practice-Ready Law Graduate to Reclaim Law As A Profession*, 17 *W. Mich. Cooley J. Prac. & Clinical L.* 265 (2015); Jason G. Dykstra, *Beyond The “Practice Ready” Buzz: Sifting Through The Disruption Of The Legal Industry To Divine The Skills Needed By New Attorneys*, 11 *Drexel L. Rev.* 149 (2018).

²⁸ See Mark Lieberman, *States Limit Spread of Online Legal Education*, Inside Higher Ed (Jan. 23, 2019), <https://www.insidehighered.com/digital-learning/article/2019/01/23/new-york-maintains-restrictions-around-online-programs-amid>

—a healthcare-related program which takes downstate doctors on tours of upstate areas to entice them to move and work upstate.²⁹ To the extent that lack of information about upstate living is an obstacle to choosing rural practice, simple exposure can be very powerful.

Professional Development offices can also encourage students, during mentoring sessions, to consider rural options. Of course, many offices do just this; the Task Force’s recommendation is simply that such offices assess their work to see whether their students are missing opportunities.

Professional Development offices are not the only offices within a law school that can help students learn more about rural practice. Alumni offices, for example, may sponsor mentoring programs that connect law students to attorneys in practice, and those offices can make sure to reach out to attorneys in rural communities for mentoring programs. Likewise, student-services offices can encourage students to form affinity groups on campus. Every office that works directly with students can assess their programs to determine whether they are serving students who might wish to practice in rural communities.

For each program in this category, questions for assessment should include:

- Whether the program helps eliminate informational barriers to rural practice (in other words, make sure that students do not eschew rural practice because of a lack of accurate information);
- Whether it makes it easier for students interested in rural practice to overcome the cultural devaluing of rural practice within law schools;
- Whether it helps students make connections with attorneys in rural practice who can help them establish a practice there.

2. Perceived Prestige of Rural Jobs

One important way law schools can make a long-term difference is by working to change the way rural practice is perceived by students. There is a perceived prestige hierarchy of jobs in law schools, and rural practice, because it involves small towns and small firms, can be seen as low in that hierarchy. Law schools could do more to change the cultural perception of rural work, to spread the understanding that—as Professor Hannah Haksgaard has written—“Private practice legal work in rural areas is public interest work.”³⁰

Law professors and law-school staff frequently send implicit messages about the legal profession when they talk about successful lawyers (and identify certain lawyers as successful); when they talk about jobs (and identify certain jobs as desirable); and when they talk about the rewards they themselves find in their own work.

²⁹ It is not clear there will be continued funding for this program.

³⁰ Hannah Haksgaard, *Rural Practice as Public Interest Work*, 71 Me. L. Rev. 209, 210 (2019).

As many scholars have noted, prestige in the legal profession tends to be associated with urban practice, large firms, male lawyers, and representation of institutions rather than individuals.³¹ It is important for professors and staff at law schools to challenge this prestige hierarchy and speak about the value of small-town and small-firm practice. The Government Law Center's data clearly shows that many lawyers thrive in rural practice because of benefits that are simply unavailable in large firms and large metropolitan practices, such as deep connections with close-knit communities. Professors and staff should endeavor to make clear to students that practice of this kind has more value than traditional prestige hierarchies acknowledge.

3. Growing the Pipeline to Rural Communities

Finally, one of the most important ways law schools can help rural communities is by recruiting applicants from those communities. As the Task Force spoke to rural lawyers, we heard a strong consensus that the new lawyers most likely to stay in rural communities were those who had connections to those communities, particularly those who had grown up in them. That being the case, it is extremely important to make sure that college students in rural communities—and even high-school students—are fully aware of the availability of legal careers.

One exemplary program in this regard is Washburn School of Law's Rural Legal Practice Initiative, a partnership with undergraduate schools that helps pre-law students learn about legal career opportunities in rural communities.³² Albany Law School, too, is reaching out to undergraduate students in rural communities through its partnership with SUNY Cobleskill. Many students who attend rural schools do not have family members who practice law and may never consider law school unless they encounter outreach or role models.

While there is no doubt that law schools in today's climate are aggressively recruiting students from all geographic regions, admissions offices can nonetheless usefully assess their own outreach efforts in rural communities. Faculty, too, can contribute to awareness of the possibility of legal careers by guest-teaching classes at rural schools, including high schools. Students in rural communities should not miss out on the possibility of a legal career simply because they are not exposed to that possibility.

³¹ See, e.g., John Heinz & Edward Laumann, *CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR* (rev. ed. 1994).

³² Washburn School of Law, *Rural Legal Practice Initiative*, <http://washburnlaw.edu/news/2016/10/RuralInitiative.html>.

III. RURAL-LAW-PRACTICE INTERVENTIONS

A. Introduction

The great majority of rural lawyers in New York are solo practitioners or members of small firms, are over age 45, and serve clients of modest means, and there are not nearly enough lawyers in rural areas to meet residents' needs.³³ To achieve rural justice, the bar must find creative ways to lure lawyers and judges to come to, or remain in, rural communities. To this end, the Task Force makes six recommendations: (1) to relax residency requirements that compromise the ability of rural employers to find talent and of rural lawyers to thrive; (2) to increase rates for assigned counsel to fairly compensate attorneys; (3) to raise the low jurisdictional limits in small claims court, which can undermine the ability of rural New Yorkers to achieve justice; (4) to consider law school loan forgiveness programs that could enable more attorneys to settle in rural communities; (5) to eliminate will filing fees; and (6) for NYSBA to offer discounted CLE rates to rural attorneys and free consultations and/or expanded programming to support lawyers in transition.

B. Legislative Action

1. Raise 18-B rates

Extensive advocacy has occurred around stagnant hourly rates paid to assigned counsel in criminal and Family Court cases. The Task Force does not recommend further study, but instead discusses the particular impact of the assigned counsel rates on rural attorneys, rural New Yorkers entitled to mandated representation, and rural justice. In 2018, the State Bar embraced a report of the Criminal Justice Section and Committee on Mandated Representation, calling for a rate increase. Most recently, this goal has been declared a 2020 legislative priority of the Association.³⁴

An Interim Report to Chief Judge Janet DiFiore, issued by the Commission on Parental Legal Representation in February 2019, recommended that the rates for parental representation increase to \$150 an hour.³⁵ In her State of the Judiciary Message in 2019, the Chief Judge advocated for an increase in assigned counsel rates for criminal defendants, parents, and children, and stated that she had transmitted a letter to Governor Cuomo and leaders of the Legislature urging action. She further explained:

New York State has made great progress to strengthen its criminal indigent defense system thanks to the creation of the Office of Indigent Legal Services...and to increased state funding...However, our state continues to rely on the hundreds of

³³ Taier Perlman, *Rural Law Practice in New York State*, Albany Law School Gov't Law Center (April 2019), at 2, 4, 6, 8.

³⁴ The last increase in assigned counsel rates was in 2004, when rates went to \$75 per hour regarding felonies and \$60 per hour for representation of a person charged with a misdemeanor or lesser offense. After 16 years, these rates should be increased to prevent the further exodus of practitioners from the assigned counsel program across the state.

³⁵ See http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR_Commission-Report.pdf.

private attorneys or assigned counsel who provide legal representation to indigent criminal defendants and family court litigants in many areas of the state. Without fair and adequate compensation for these attorneys, a vital component of the system is at risk.³⁶

The success of the criminal defense reforms contemplated by the Legislature depends on the availability of enough qualified attorneys. A survey of assigned counsel plan administrators conducted by the Committee on Mandated Representation revealed that a significant number of programs do not have enough attorneys because the fees are too low. The impact of inadequate rates—and a resulting shortage of qualified private attorneys willing to accept assigned cases—is felt acutely in rural counties. In such areas, fewer institutional offices exist to handle mandated representation cases. Thus, assigned counsel attorneys play a particularly significant role in protecting the rights of New Yorkers accused of crimes, as well as Family Court litigants and children. Increased rates are vital to sustaining such representation. The key role played by assigned counsel in rural criminal defense was underscored by a report of the NYSBA Criminal Justice Section on Town and Village Justice Courts.³⁷

A survey of rural attorneys revealed the importance of raising rates, as exemplified by these comments:

“My clients cannot afford my services, and I cannot sustain a practice on only 18-B representation, as those fees are too low.”

“Clients cannot afford lawyers for the criminal and family cases...and therefore lawyers often take on assigned cases to supplement income, but assigned cases do not pay well, and it is easy to become overloaded with assignments. We need to encourage more young people to move into rural counties, and mentors in diverse areas of law to dedicate time to teaching [these young lawyers]... We also need to increase pay for assigned counsel and allow practitioners to decline assignments once they’ve maxed out their caseload.”

“Clients are very poor, as this is an economically depressed area. It is rare to have private-pay clients, and unless attorneys are being appropriately compensated, we will not be able to attract qualified attorneys to serve our needs. I made my money doing other types of cases and can only afford to represent indigent clients because I am toward the end of my career and don’t have the financial obligations most young lawyers do...[T]he hourly rate for assigned counsel needs to be increased in order to have attorneys available to handle these matters.”

³⁶ http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/19_SOJ-Speech.pdf.

³⁷ See <https://www.nysba.org/tvcourtsreport/>.

2. Relax residency requirements for public positions

Attorneys

The idea that public employees who live where they work are more invested in the community appears to underlie residency requirements set forth in State law. *See Matter of Dehond v Nyquist*, 65 Misc 2d 526 (Sup Ct, Albany Co 1971) (residency requirement aims to hire public officials who are knowledgeable and concerned about affairs of unit of government they seek to serve). Since 1829, New York has required public officers to be residents of the State, and local governments have required public officials to be residents of the locality by which they are employed. *See Winkler v Spinnato*, 72 NY2d 402, 405 (1988), *cert denied* 490 US 1005 (1989). Many things have changed in the last two centuries. Workers commute significant distances, and many work remotely. The notion that public officials will be less dedicated to their jobs absent residency mandates seems outdated and questionable.

Instead, rural communities are hurt by residency provisions. Rural justice is eroded by residency requirements, as communities cannot attract qualified talent due to such restrictions. The pool of attorneys to draw from locally is far too small in rural areas of the State. The vast majority (96% according to data from the Office of Court Administration) of New York attorneys live and/or work in urban areas. For all these reasons, to advance rural justice, the concept of “community” should be broadened to encompass rural regions, and residency requirements found in State law and other relevant laws should be relaxed.

The primary residency statute for “public officers,” is found in Public Officers Law § 3 (1), which provides that “[n]o person shall be capable of holding a civil office who shall not***[be] a resident of the political subdivision***of the state for which he shall be chosen.” Section 30 (1) (d) further provides that “[e]very office shall be vacant upon***[the incumbent’s] ceasing to be an inhabitant***of the political subdivision***of which he is required to be a resident when chosen.” The terms “resident” and “inhabitant” are understood to be synonymous with “domicile.” *See Matter of Hosley v Curry*, 85 NY2d 447, 451 (1995).

Section 3 contains a patchwork of numerous special laws that provide for more flexible residency requirements as to certain attorney or judge positions in individual villages, towns, cities, or counties. *See e.g.* subdivisions (37), (38), (40), (44), (46), (64), (69). Typical exceptions declare that a specified town or city official need only reside in the county in which the city is located, or the specified county official may reside in an adjoining county. Specific positions covered include Town and Village Court Justices, City Court Judges, Assistant District Attorneys, Assistant Public Defenders, Deputy County Attorneys, and City Attorneys. Some exceptions are broad, such as subdivision (28), providing that all public officers employed in Westchester County may reside anywhere in the State of New York. Other State laws that impose residency mandates on officials, and thus are implicated by this analysis and recommendation, include Town Law § 23 (1) and Village Law § 3-300.

Insight into why some localities sought special residency laws can be gleaned from one Memorandum of Support of an Assembly bill that resulted in such a special law—Public Officers

Law § 3 (64) (Wyoming County Assistant District Attorneys, except the Chief or First ADA, may reside in adjoining county). The justification in the memo explained:

The Assistant District Attorney position requires a set of unique skills and specialized experiences...This bill has been introduced at the request of the Wyoming County District Attorney. It is essential that predominantly rural counties...have the same ability as...[other] counties with a higher population to recruit practitioners with the necessary skills and experience...Exceptions for the residency requirement...have typically been granted to counties with smaller populations...Adoption of this legislation will provide the Wyoming District Attorney with a more flexible recruiting process by allowing the District Attorney to hire from adjoining rural counties...[that] share many of the same characteristics as Wyoming County, ensuring that the interests of Wyoming County are adequately represented.

As the memo indicates, strict residency requirements work against localities' ability to find skilled attorneys to fill public positions; and since adjoining rural counties share many of the same characteristics, nothing is lost by imposing a less parochial approach to hiring talent.

In addition to the state law, some local laws impose residency mandates. As to some positions, localities have the authority to enact local laws providing for stricter or more liberal residency requirements than Public Officers Law § 3, and many have exercised that authority. *See generally Matter of Ricket v Mahan*, 97 AD3d 1062 (3rd Dept 2012) (discussing Public Officers Law residency provisions and localities' home-rule powers). The result of the current State requirements and exemptions and the local laws is an inconsistent mélange of residency provisions that do not serve New York well and that undermine the consistent administration of rural justice. To overcome the challenges faced by under-resourced municipalities and to attract qualified employees, the State law on residency requirements should be reformed. Further, rural localities should be discouraged from enacting local provisions providing for stricter requirements.

Relaxing state law residency requirements for the public positions set forth above, as well as for attorney officials at County Departments of Social Services, would make it more practicable for a larger pool of attorneys to work in rural areas. Opportunities regarding where attorneys may hold public office, while also engaging in private practice, would be broadened. The desired flexibility could be achieved as to county positions by removing any residency requirement, except for requiring New York state residence, or by providing that the officials could reside in a county adjacent to the county in which the positions are held.

In the area of public defense, flexibility as to residency could have a particularly profound impact. The case of *Hurrell-Harring v State of NY* brought attention to the State's failure to provide for effective representation to criminal defendants. A settlement in that case resulted in significant State funding to the five named counties to improve the quality of criminal defense by public defenders and assigned private attorneys.³⁸ The reforms embodied in the settlement are now being

³⁸ See New York State Office of Indigent Legal Services, *Hurrell-Harring Settlement and Implementation Information*, <https://www.ils.ny.gov/content/hurrell-harring-settlement-and-implementation-information>.

implemented throughout the State, pursuant to Executive Law § 832 (4) and State Legislature budget plans for incremental implementation of the State funding of public defense.

Hundreds of public defense positions have been added in rural counties across New York. Moreover, assigned counsel programs are expanding, becoming more structured,³⁹ and receiving significant resources. To recruit qualified applicants to serve in rural public defender offices and as administrators and supervising attorneys at assigned counsel programs, greater flexibility in State laws as to the county of residence will be needed. Further, by allowing private attorneys from adjoining counties to participate on assigned counsel panels, counties will be able to attract more talent. These attorneys can help deliver quality representation to criminal defendants and Family Court litigants, while achieving professional growth via the mentoring, second-chair, training, and other resources that are being provided, or will soon be provided, to such programs via State funding. The importance of also increasing assigned counsel rates to achieve the public defense reforms contemplated by the Legislature was already discussed above.

3. Raise small-claims-court caps

Small-claims courts are special parts in justice, city, and district courts where litigants can sue for money damages. Uniform Justice Court Act § 202 provides that, where justice courts handle small claims actions for money damages, the amount sought to be recovered, or the value of the property at issue, must not exceed \$3,000. The statute was last amended more than four decades ago (L 1977, ch 685, § 2). Uniform City Court Act § 1801 and Uniform District Court Act § 1801 have a cap of \$5,000—an amount set in 2003 (L 2003, ch 601, § 3).⁴⁰

The decades-old jurisdictional limits are too low, and the RLP Committee recommends that they be raised to a uniform amount of at least \$7,500 for all Town, Village, City, and District Courts. This change could close a justice gap and allow for proper representation of rural clients, while bolstering the practices of rural attorneys and advancing judicial economy. Often litigants with disputes involving relatively small matters cannot afford the attorney fees and court expenses, multiple appearances, and delays associated with initiating a civil case in Supreme Court. In contrast, small claims in rural areas can be brought in front of an appropriate Town or Village Court.⁴¹ While litigants can represent themselves in these small claims courts, many are reluctant to do so and, in fact, cannot do so effectively. Increasing the monetary maximum will mean that more cases could be handled in small claims courts, where the filing fees are nominal. Rural practitioners could potentially expand their practice by obtaining fees in a large volume of such matters, while helping their neighbors favorably resolve their disputes.

³⁹ See <https://www.ils.ny.gov/files/ACP/ACP%20Standards%20with%20Commentary%20070119.pdf>.

⁴⁰ Under Chief Judge Janet DiFiore's proposal to consolidate New York's trial courts, District Courts and upstate City Courts would be abolished and would become part of a new statewide municipal court. See https://ww2.nycourts.gov/sites/default/files/document/files/2019-09/PR19_22.pdf.

⁴¹ <http://www.rurallawcenter.org/docs/Guide%20to%20Small%20Claims%20Court.pdf>.

4. Eliminate will-filing fees

SCPA 2402 (9) (v) regarding Surrogate’s Court filing fees states that a \$45 fee applies as to “a will for safekeeping pursuant to section 2507 of this act except that the court in any county may reduce or dispense with such fee.” The fees are discretionary, but should be eliminated entirely. This could benefit rural solo lawyers whose practices includes estate planning and administration and the filing of a large volume of wills. Such an amendment would also benefit the estates by encouraging the best practice of filing of wills with the court. Given the prevalence of indigent clients in rural communities and the tremendous amount of pro bono or low bono services offered by rural lawyers, this filing fee is unnecessarily cost-prohibitive.

C. NYSBA Action

Offer assistance and consultation for lawyers in transition

NYSBA’s 2020 legislative priorities declare that a core mission of the Association is to represent the interests of the legal profession, and that the Association thus works to ensure that attorneys are able to protect their clients’ interests and effectively engage in the practice of law.⁴² The creation of the Rural Justice Task Force was an important step toward helping attorneys to engage in the practice of law in rural New York.

In this regard, the NYSBA Law Practice Management Committee has published an invaluable Planning Ahead Guide, including information regarding succession planning and the sale of a law practice. Further, the State Bar’s Committee on Lawyers in Transition provides excellent, free programs to members regarding transitioning or retiring.⁴³ The RLP Committee suggests that an additional service be offered by the State Bar: free, individualized consultations on succession planning and the sale of a law practice. Such a service is provided by the North Carolina Bar Association Transitioning Lawyers Commission.⁴⁴ As many rural New York attorneys are approaching retirement age, they could benefit greatly from particularized, expert guidance and assistance regarding transition plans.

Further, services could be expanded to include a mentoring program to connect transitioning attorneys with new attorneys interested in taking over an established practice. Also, rural attorneys could be encouraged to use www.lawyerexchange.com to post announcements regarding the sale of their practices. This could serve two purposes: first, it could facilitate the sale of the practices to the advantage of the selling attorneys; and second, it could help draw more attorneys to rural communities by making them aware of the attractive opportunities that exist.

⁴² See n 2, *supra*.

⁴³ See <https://www.nysba.org/SellingYourPractice/>.

⁴⁴ See <https://www.ncbar.org/members/committees/transitioning-lawyers-commission/>.

IV. BROADBAND & TECHNOLOGY INTERVENTIONS

The practice of law has transformed over time, given the rise in technology. Many solo and small-firm practitioners adopt technology in order to streamline their practice, as well as to handle firm business outside of a standard office space. However, such technology adoption is reliant on the infrastructure available in their office, home, business, or courthouse. A number of rural attorneys who responded to the Government Law Center’s survey complained about technological shortcomings.⁴⁵ We have discovered in our research that such technological shortcomings arise from the lack of technology infrastructure in many instances. In fact, the American Bar Association has recognized that lack of access to highspeed broadband is a hurdle for access-to-justice efforts. Recognizing this, the American Bar Association passed a resolution in August 2019 urging “federal, state, local, territorial, and tribal legislatures to enact legislation and appropriate adequate funding to ensure equal access to justice for Americans living in rural communities by deploying, to at least 98% of the population, broadband infrastructure with a download speed of at least 100 megabits per second [Mbps], and an upload speed of at least 30 Mbps.”⁴⁶

To that end, New York State has a program in place presently called “Broadband for All”⁴⁷ which calls for investment in the state’s broadband capacity with the ultimate goal of 99.9 percent of New Yorkers having access to broadband. This plan was created in 2015, to be handled in three phases. The last phase, “Round III,” awarded 43 projects \$209.7 million dollars to handle “last mile” connectivity.⁴⁸ However, that last round was announced on January 31, 2018, with the effect of it being the end of this multi-year program. As is well understood, such connectivity is hindered by geography, distances between connection points, tower placements, as well as costs involved with laying miles of cabling, whether fiber optic or otherwise. To put it in perspective, one CEO of a broadband company that we spoke with quoted a basic cost of \$20,000-\$25,000 per mile for infrastructure. This does not include the cost to connect from the pole to the individual home(s), which is dependent upon pole location. Depending on the distance from the closest pole, that cost may double. So, by whom should the costs be borne, and will the end users be able to afford the service if finally made available?

Satellite internet is often the only other option you have available should you be too far away from a pole for broadband to be economically feasible. There are only two residential satellite internet providers available in the entire United States, Viasat and HughesNet.⁴⁹ HughesNet download speeds top out at 25Mbps⁵⁰, or a quarter of what’s considered standard broadband speeds, and

⁴⁵ Taier Perlman, *Rural Law Practice in New York State*, Albany Law School Gov’t Law Center (April 2019), at 11.

⁴⁶ ABA House of Delegates Resolution 10B, Adopted August 12–13, 2019.

⁴⁷ <https://www.ny.gov/programs/broadband-all>.

⁴⁸ <https://www.governor.ny.gov/news/governor-cuomo-announces-round-iii-nation-leading-new-ny-broadband-program-bring-high-speed>.

⁴⁹ <https://www.satelliteinternet.com/>.

⁵⁰ <https://www.satelliteinternet.com/providers/hughesnet/internet/>.

Viasat offers speeds of “up to 25Mbps.”⁵¹ In the case of HughesNet, they throttle the speed once users reach 50GB of usage in a month, meaning that it will be considerably slower for the remainder of the period. Both plans cost between \$60 and \$150 a month. By comparison, nationwide average download speed of a Verizon cellphone on their LTE network is 53.3 Mbps.⁵²

In effect you have two issues, not just one. If you have broadband service at your home or office, you may be able to do work and service clients. But if you leave your home or office, what then? The instant always-on connectivity that so many of us take for granted may end once you are out of the radius of your router. That is because your cellphone, probably the most important article in an attorney’s bag, becomes a worthless brick without a cell phone signal to back it up. Travel through upstate New York with some of your colleagues to find out how important that fickle signal can be.

“Providing colleagues or family members with name and address of court along with the route you will be traveling in the event something was to happen to you i.e. car breaking down or getting lost because you are traveling in areas where there is no cell phone reception and often times the GPS signal on direction apps gets lost.”

“Serving process on someone in the middle of nowhere with no ability to access public safety without reception.”

“Trying to broker a stipulation when you are trying and failing to get a signal in a courthouse to call an out-of-area client, and hoping you don’t have to ask for the judge’s landline in order to do so.”

At the same time, technology has changed and will continue to change during the rollout of these plans. In the newest iteration of cellular technology, 5G, the fastest signals are created with many small cell sites, which need to be much closer together than today’s standard technologies. Even so, each cell site must be connected to a network backbone, whether through a wired or wireless connection.⁵³ That implies that a network backbone is present, which in many rural areas it is not.

While this is certainly problematic for legal providers, it is also troublesome for legal clients. Trying to contact and do work with clients who also live rurally can be abnormally challenging. Distance and technology combine to be a strong issue when it comes to getting documents to and from clients, getting those documents filed with courts, and service of process are just some of the challenges faced by rural practitioners. Many upstate county courts, not including town and village courts, have been slow to implement e-filing, if they have at all. As of December 2019, 52 of 62

⁵¹ <https://www.viasatspecials.com/lp/internet>.

⁵² <https://www.tomsguide.com/us/best-mobile-network.review-2942.html>.

⁵³ <https://www.pcmag.com/news/what-is-5g>.

counties have some sort of e-filing, but current legislation does not authorize town and village courts to do so. If you have no internet, you cannot e-file or implement any technology at all into the court system. Given the distances involved in the larger counties, it makes sense to offer such opportunities to file even at the basic county level. Some of these counties have no cities, which makes the county courthouse the only point of service for purposes of any civil actions. To that end, the lack of scanned documents in real time can make for additional travel for practitioners. By either e-filing or at least providing real time access to non-electronic documents would allow attorneys to access the documents without bothering the court staff and not have to rely upon clients to transport copies of these documents to them. Many of these clients have lack of transportation issues, lack of access to scanners or fax machines, forcing actual paper copies to become the only viable record available for review.

Currently, Monroe County has a Justice for All Initiative which is present in Monroe County Village and Justice Courts, where they are collecting data on the number of filings, defaults, representations, and dispositions as well as surveying litigants about their experiences. Part of the initiative may be further expanded into working on transportation issues. Litigants have been found to have a lack of transportation in far-flung areas, making physical access to justice an ongoing issue, given the requirements for in-person appearances and lack of telephonic/video conference opportunities.

To this end, we make the following recommendations:

1. NYSBA should adopt a resolution that urges New York State to enact further legislation and adequate funding to expand and continue the Broadband for All program with a Phase 4 round of funding. The goal of Phase 4 should be further deployment of reliable broadband infrastructure with a download speed of at least 100 megabits per second and an upload speed of at least 30 megabits per second for 100% of New Yorkers with a specific focus on the rural areas that were not served by Phase 3 of the program. We recommend the following steps:
 - a. New York State should require the creation of a granular database of all broadband serviceable locations at the completion of Phase 3 to “map the gap” which will allow policymakers to target where funds should be allocated. (Using the same methods as was used in the US Telecom broadband initiative pilot project in Virginia and Missouri or those suggested by the FCC granular mapping initiative).
 - b. Specifically target additional funding to those “gap” areas where the Broadband for All program did not extend access to broadband at speeds of 100/30.
2. Monitor and track the Monroe County Justice for All pilot project. This project includes initiatives around real-time access to filings in civil matters, transportation to court in civil matters, uniform data collection and a court monitoring project in the town and village justice courts. Assuming that this program will be successful in breaking down these

particular barriers to accessing justice, NYSBA should advocate for its expansion throughout the state.

3. The Office of Court Administration should promulgate guidelines to encourage and promote remote video conference appearances in town and village justice courts (and across all New York courts) by attorneys and litigants for civil matters using the available SKYPE technology already provided to town and village courts, or other similar technology.
4. The Office of Court Administration should continue to expand e-filing initiatives across the state as these important initiatives provide easier access to the courts for both practitioners and litigants alike. Legislation should be passed to authorize e-filing expansion into town and village justice courts.
5. NYSBA should again recommend the repeal of Judiciary Law §470 requiring a physical office in New York State. (This recommendation was previously adopted by the NYSBA Working Group on Judiciary Law §470, October 8, 2018.)

V. LAW AND POLICY INTERVENTION

The Committee on Law and Policy examined other laws and rules that affected rural practice. In particular, the Committee examined New York Court Rule §100.6(B)(2), which provides:

(B) **Part-Time Judge.** A part-time judge:

(2) shall not practice law in the court on which the judge serves, or in any other court in the county in which his or her court is located, before a judge who is permitted to practice law, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto;

The Committee examined this rule particularly in light of the longstanding NYSBA policy against non-lawyer judges. In 2009, the House of Delegates adopted the Report of the Committee on Court Structure and Judicial Selection, which was charged with reviewing the 2008 Report of the Chief Judge's Commission on the Future of the State Courts. The Commission Report had concluded that lawyer judges were desirable, but because of claims of feasibility, it had stopped short of seeking a constitutional amendment to require that all justices be lawyers. The NYSBA report in response reiterated the NYSBA position that all justices should be lawyers. The report also included the history of the NYSBA position, noting that such a position had been taken on numerous occasions going back to 1979.

The part-time judge rule in §100.6(B)(2) has been in effect for many decades, previously as Rule 100.5(f), and before that as Rule 33.5(f). There are three different extra-judicial activities prohibited: (1) The practice of law by the part-time judge in his/her own court, (2) the practice of law by the part-time judge in another court within the same county, if that judge is also permitted to practice law, and (3) the participation as a lawyer in any proceeding in which the judge has acted

as a judge, or in any proceeding related to one in which the judge acted as judge. The Committee recommends maintaining the first and third of these prohibitions in their current form, and removing the second prohibition.

The rationale for the second prohibition has been stated in several opinions and disciplinary proceedings as to avoid the appearance of impropriety in the nature of a quid pro quo between part-time lawyer judges. Interestingly, where discipline is sought for violation of 100.6(B)(2), there are usually other provisions violated, particularly where the judge has participated in a case that truly creates a conflict or other improper activity. In the one reported case where the lawyer judge was subject to the disciplinary commission, the commission unanimously imposed an admonition only.⁵⁴

The rule has produced several opinions allowing the part-time lawyer judge to appear before an OCA employee who is a part-time judge,⁵⁵ a lawyer licensed to practice only in another state,⁵⁶ and a lawyer who is retired from the practice of law.⁵⁷ There have also been opinions regarding engineering the part-time judge's client cases before full-time, rather than part-time, judges in city, town and village courts. This is not permitted by transferring cases assigned to part-time judges to full-time judges⁵⁸, but it is permitted in a prospective way by an administrative judge,⁵⁹ and is permitted upon transfer down from Supreme Court by CPLR 325.⁶⁰ In addition, because Rule 100.6(B)(3) provides that the prohibition of practice of a part-time judge before other part-time judges does not extend to the judge's associates and partners (although the prohibition of practice in the judge's own court does extend to any lawyer associated in any way with the judge), there have also been opinions allowing the associates to use a letterhead which includes the lawyer/judge's name as long as there is no indication on the letterhead that the lawyer is a judge.⁶¹

The Committee concluded that the rule has a limited benefit. This is because the lawyer judge is governed by both the Rules of Judicial Conduct and the Rules of Professional Conduct which would otherwise prohibit any sort of quid pro quo between part-time lawyer judges. In addition, where an associate of a part-time judge appears before a part-time judge of another court in the same county, that associate may use a law firm name and stationery which uses the name of the part-time judge. Thus, the judge who the associate appears before may know full well that the associate has a relationship with the part-time judge. It should be noted that non-lawyer judges are not subject to Rules of Professional Conduct and have no specific rule regarding conflicts akin to

⁵⁴ *In re Brian D. Mercy* (N.Y.S. Comm'n on Jud. Conduct, June 22, 2012), 2012 WL 2786179, available at <http://cjc.ny.gov/Determinations/M/Mercy.Brian.D.2012.06.22.DET.pdf>.

⁵⁵ NY Jud. Adv. Op. 10-73, 10-167.

⁵⁶ NY Jud Adv. Op. 10-100.

⁵⁷ NY Jud. Adv. Op. 90-199.

⁵⁸ NY Jud. Adv. Op. 02-87 and opinions cited therein.

⁵⁹ NY Jud. Adv. Op. 08-132.

⁶⁰ NY Jud. Adv. Op. 08-96.

⁶¹ NY Jud. Adv. Op 08-210.

Rule 100.6(B)(2). Accordingly, this rule effects only attorney part-time judges, and creates an unfair chilling effect on them, while part-time non-attorney judges continue to serve on the bench freely, even where appearances of impropriety exist. For instance, where a non-attorney part-time judge works in law enforcement within the county, but presides over criminal cases with county prosecutors appearing before them.

The presence of the rule is a considerable deterrent to lawyers in rural areas to seek positions as part-time judges. While there may be a substantial number of part-time judges who are lawyers in suburban settings, there are relatively few in rural areas. For example, in the 20 justice courts in Franklin County there is only one practicing lawyer and one retired lawyer; all of the rest are non-lawyers.

The Task Force believes that the elimination of this rule will result in more lawyer judges, in furtherance of the longstanding NYSBA policy that justices should be lawyers, and recommends that the Chief Administrative Judge amend the rule to eliminate the second prohibition as follows:

(B) Part-Time Judge. A part-time judge:

(2) shall not practice law in the court on which the judge serves, ~~or in any other court in the county in which his or her court is located, before a judge who is permitted to practice law,~~ and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto;

A minority of the Task Force did not support the amendment, concluding that lawyer judges often have substantial practices and can appear before full-time judges and part-time non-lawyer judges. This is true only because presently there are so few part-time lawyer judges in rural settings. If NYSBA's policy to have all attorney justices were to come to fruition, this rule would have a significant effect on a lawyer judge's practice, and is, in fact, a deterrent to fulfilling this NYSBA policy.

CONCLUSION

As amply demonstrated in this Report, we face formidable challenges in ensuring that rural legal services are adequately delivered and administered with a fair and even hand. To be sure, a great society - a just society - is judged not on the success of the successful, but upon its response to those in need. The time has come to recognize that those in need include the many families and individuals who reside in rural New York. We hope that our diverse proposed interventions ameliorate some of these critical issues and that the full panoply of stakeholders who need to be involved to initiate these interventions step up, as we must do something about the imminent crisis before us. Thank you for your careful consideration.