



Report

OF THE
NEW YORK STATE BAR ASSOCIATION'S
Special Committee on Solo and Small Firm Practice

June 20, 2009

TABLE OF CONTENTS

I.	Executive Summary	1
	A. History: The General Practice Section	3
	B. The Mission of the Special Committee on Solo and Small Firm Practice.....	4
	C. The Committee Process	4
II.	Review of the Report of Chief Judge Judith S. Kaye’s Commission to Examine Solo/Small Firm Practice.....	5
	A. Introduction.....	5
	B. The Role of NYSBA in Implementing Recommendations	14
III.	NYSBA Activities and Resource Center	15
	A. NYSBA Solo and Small Firm Resources	15
	B. Challenges Ahead.....	21
IV.	Survey of Solos and Small Firms in New York	22
	A. Key Findings and Implications	22
	B. Other Research.....	25
V.	Subcommittee to Review the Activities of Other Bar Associations.....	26
	A. Bar Association Centers	27
	B. Online Legal Research Services.....	27
	C. Listserves, Discussion Boards, Blogs.....	28
	D. Law Office Auditing Services	29
VI.	Conclusion	29
	A. Short-term Recommendations.....	29
	B. Mid-term Recommendations	30
	C. Long-term Recommendations.....	31

APPENDICES

Appendix A

**Report of the Commission to Examine Solo and Small Firm Practice,
February 2006**

Appendix B

**Interim Report on the Implementation of the Report of the Commission on Solo and
Small Firm Practice Issued by the New York Unified Court System and its Office of
Court Administration, March 2009**

Appendix C

**Solo and Small Firm Materials
www.nysba.org/solosmallcomm**

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Report of the Special Committee on Solo and Small Firm Practice

I. Executive Summary

On August 6, 2008, NYSBA President Bernice K. Leber appointed Past President Robert L. Ostertag to Chair a Special Committee on Solo and Small Firm Practice (the “Committee”) to research, consider and report on this important area of concern. Mr. Ostertag has extensive experience and involvement at state and national levels with issues of particular concern to solo and small firm practice. His committee comprised a select representative group from solo and small firm, academic and judicial settings, all well acquainted in one way or another with the unique problems that confront solos and small firms.

Of the Association’s approximately 74,000 members from all areas of New York, every state in the nation and 108 countries, the majority of them—some 55%—practice in solo or small firms of fewer than 10 attorneys. If firms of up to 20 attorneys are included, that figure increases to 64%.¹ The concerns, interests and everyday challenges faced by this significant portion of our membership are of primary importance to this Association; their needs must comprehensively be addressed.

A thorough consideration of NYSBA’s role in providing support to solo and small firm practitioners raises important questions: For example, what programs and services does NYSBA offer to its members? What programs and services does NYSBA offer that may not be familiar to its members? What initiatives can we undertake to improve NYSBA’s direct services? How can we better coordinate our activities and resources with other associations and the courts of our state, and perhaps other entities as well, to enhance the practice environment for solo and small firm practitioners?

The mission of the Committee created by President Leber was to recommend ways by which NYSBA, alone or in collaboration with local bar associations, courts and other relevant entities, might better assist solo and small firm attorneys in meeting the practice and lifestyle challenges they face. To do so, the Committee was charged with making a comprehensive study of the particular issues and challenges that confront solo practitioners and small firms in New York State from whatever source; to review the quality, accessibility and level of awareness of existing NYSBA programs that are designed to assist solo practitioners and small firms; and to recommend new

¹ NYSBA Membership Profile Report November 2008. These figures are consistent with research conducted by the American Bar Foundation, which finds that approximately 56% of the lawyers in private practice are solos (38% of all lawyers). See Clara Carson, 2004 Lawyers Statistical Report (“ABF”).

programs, benefits, resources and services that should be developed to help such practitioners and their firms.

Further, the Committee was charged with evaluating the Unified Court System's implementation of recommendations proposed in 2006 by then Chief Judge Judith Kaye's Commission on Solo and Small Firm Practice in New York, and with recommending further measures appropriate to the achievement of particular goals set forth therein. That assignment, together with a general assessment of current litigation issues affecting solo and small firms, was delegated to the first of our Committee's four subcommittees. While the subcommittee undertook to address all such litigation issues, the Unified Court System's Office of Court Administration ("OCA") was preparing its own status report on the same issues. That Interim Report became available to us in late March 2009. Included in this Report are our comments responsive to those issues appearing in OCA's Interim Report that we believe are most appropriate to problems of our constituency.

A second subcommittee was charged with surveying a random sampling of solo and small firm practitioners (both NYSBA members and non-members) in New York State to identify their greatest challenges and concerns. Problems relating to finances or cash flow were reported as the most significant issues these practitioners face. Other important concerns expressed in the survey responses included marketing, time management, human resources and staffing.

A third subcommittee focused its attention specifically on the level of NYSBA's current support for solo and small firms. The subcommittee divided its efforts into five subject categories, viz., educational programs, publications, internet resources, member benefits and networking opportunities. It concluded that NYSBA currently offers a number of programs, resources or activities that should be better marketed or promoted successfully to reach a greater number of our solo and small firm practitioner members.

A fourth subcommittee focused its attention on the activities and resources of other bar associations. The subcommittee found that NYSBA fares well when compared to many other state, local or national bar associations. However, several important resources were identified that are not currently offered by NYSBA, but that deserve review and consideration as they may provide useful benefits to solo and small firm practitioners. Further, its review of other bar associations revealed the need for NYSBA to create a focal point, such as within an existing section or committee of NYSBA, or a NYSBA staff-driven initiative, to address solo and small firm needs on an ongoing basis.

As detailed in the concluding section of this Report, our Committee has identified a number of action items recommended either for direct action by the Executive Committee or for adoption by the House of Delegates. The Committee divided these recommendations into short-term, mid-term and long-term objectives.

Short-term recommendations of the Committee focused on creating greater awareness of the issues detailed in this Report and permitting the Committee to continue its work in order to see through to completion many of the recommendations proposed herein. During this period the Committee also envisions the enhancement of the NYSBA web site to provide a wider range of, and greater access to, resources for solo and small firm practitioners; the creation of a permanent institutional home for the needs of these attorneys within the Association; and further development

of a variety of resources that will aid solo and small firm practitioners in their practices, including an annual symposium dedicated to this constituency and these issues.

The Committee recommends implementing a number of mid-range initiatives, including the development of a membership plan that will significantly increase small firm membership over the next five years, and the coordination of better relationships with other bar associations with the goal of identifying opportunities for joint efforts to serve solo and small firm needs. Increased and improved educational programs and publications are envisioned, as well as the creation of greater access to high quality online legal research services for these lawyers.

Long-term goals recommended by the Committee in this Report include a carefully considered strategic plan for supporting solo and small firm practitioners in 2014, together with a similar review and analysis each five years thereafter. These goals also include improved coordination of efforts between NYSBA and OCA in order to improve access to the courts for solo and small firm practitioners, both through technology resources as well as better designs for case management.

The analysis of the Committee contained in this Report, and the recommendations that follow, are based on the recognition that the largest and fastest growing segment of NYSBA membership is that of solo and small firm practitioners. The Committee believes that its recommendations will enhance the professional and personal lives of these attorneys as well as ensure that NYSBA continues to be viewed as a vital, valuable, and necessary resource for the majority of practitioners.

A. History: The General Practice Section

Some thirty years ago, NYSBA's then President, Anthony Palermo, authorized the appointment of a special committee to consider the creation of a General Practice Section to serve the particular interests of general practitioners. Then, as now, general practitioners composed a substantial majority of all private practitioners in New York State. American Bar Association surveys had found that general practitioners made up the majority of private practitioners even across the nation, and our own committee's research disclosed that general practitioners practiced for the most part in solo or small firm settings of one to five attorneys.

The American Bar Association and some state and local bars throughout the nation had already created sections or committees for similar purposes. In 1980 our own new General Practice Section was established and enthusiastically received, and in very short order it became one of the Association's largest.

In 1991, the Association conducted a very successful forum on small firm general practice. One hundred and seven very broadly selected solo and small firm general practitioners were invited, and from that meeting we learned much about their problems and concerns. In attendance was a representative of the American Bar Association. He urged the ABA to follow our lead, and within a year the ABA conducted its own solo and small firm forum in St. Louis. Thereafter a number of similar conferences were conducted throughout the nation at both state and local bar levels and from these emerged a consensus as to the nature of solo and small firm general practice and its unique place in our profession. Since then, the organized bar at virtually every level throughout the nation

has paid closer attention and made greater efforts toward meeting the needs of solo and small firm practitioners. Certainly that is so here in New York, where work on their issues is ongoing.

In 2004, Chief Judge Judith S. Kaye created a Commission to Examine Solo and Small Firm Practice in New York. After extensive work the Commission issued a report in 2006 (the “Kaye Commission Report”²) that called on the courts, bar associations and other groups to address a variety of issues facing solo and small firm lawyers. Our Special Committee on Solo and Small Firm Practice was created to address not only those issues raised in the Kaye Commission Report, but additional issues confronting solo and small firm lawyers.

B. The Mission of the Special Committee on Solo and Small Firm Practice

As previously mentioned, the Committee’s charge was to undertake a comprehensive study of the particular issues and challenges that confront solo practitioners and small firms in New York State from whatever source, and to recommend ways in which the bar associations, the courts, and other relevant entities can assist attorneys in meeting those challenges and in achieving successful practices and balanced lives. The Committee was to review programs already undertaken by the New York State Bar Association to assist solo and small firms, to recommend ways by which those programs might be expanded or improved, and to recommend new programs, benefits, resources and services that should be developed to help such practitioners and their firms.

C. The Committee’s Process

In order to carry out these tasks, the Committee divided itself into four subcommittees, each assigned to focus on a particular area of the overall mission. The subcommittees and their respective missions were as follows.

1. Subcommittee on the Report of the Kaye Commission to Examine Solo and Small Firm Practice

Mission: In order more adequately to evaluate the United Court System’s implementation of systemic improvements proposed by the Kaye Commission’s 2006 Report on Solo and Small Firm Practice in New York this Subcommittee further undertook independently to examine the problems solo and small firm practitioners encounter today in relation to litigation practice, with special emphasis on judicial procedures and courthouse characteristics and practices. The goal was to make more economical and efficient the future use of practitioners’ time while at the courthouse and to provide a setting more conducive to service to clients and the dignified and private conduct of necessary litigation-related business outside the courtroom. The Subcommittee was chaired by David W. Meyers, Esq.

2. Subcommittee on NYSBA Activities and Resource Center

Mission: To review programs already undertaken by the New York State Bar Association to assist solos and small firms in their practices, including the resources already available at its Solo and Small Firms Resource Center and through its Law Practice Management Committee; to recommend ways by which those programs might be expanded or improved; and to recommend new

² The Kaye Commission Report is at www.nysba.org/solosmallcomm. See Appendix C for a listing of the materials contained on the website.

programs, benefits, resources and services that should be developed to help such practitioners and their firms. This Subcommittee was chaired by Prof. Gary A. Munneke.

3. Subcommittee to Survey Solos and Small Firms in New York

Mission: To design, conduct and report on the results of a survey of solo and small firm practitioners in New York aimed at ascertaining the particular issues and challenges which confront them, and proposing ways by which NYSBA, other bar associations, the courts and other entities might better assist solo and small firm practitioners in meeting those challenges and in achieving successful practices and balanced lives. Edgar De Leon, Esq., chaired the Subcommittee.

4. Subcommittee to Study the Activities of Other Bar Associations

Mission: To gather information about the activities of other bar associations and related entities in New York and across the country having to do with the subject matter of our Committee; to gather from such sources any reports or studies on the subject; to catalog and summarize programs, services, and resources provided by such entities; and from the foregoing, to recommend ways by which NYSBA, the courts and other entities might adopt or adapt such programs, services or resources to assist solo and small firm practitioners in our state. David Rosenberg, Esq., was the Subcommittee's chair.

II. Review of the Report of Chief Judge Judith S. Kaye's Commission to Examine Solo/Small Firm Practice

A. Introduction

To accomplish its mission, and after carefully reviewing the Kaye Commission's Report, our Commission Report Review Subcommittee met with various judges and judicial and OCA staff personnel, including, among others, Hon. Jonathan Lippman, then-Presiding Justice of The Appellate Division, First Judicial Department, now Chief Judge of the Court of Appeals; Hon. Ann Pfau, New York's Chief Administrative Judge; Hon. Abraham G. Gerges, Second Judicial District Interim Administrative Judge; Hon. George B. Ceresia, Jr., Third Judicial District Administrative Judge; Hon. Vito C. Caruso, Fourth Judicial District Administrative Judge; Hon. Francis A. Nicolai, Ninth Judicial District Administrative Judge; Hon. Anthony F. Marano, Tenth Judicial District Administrative Judge; Thomas R. Kilfoyle, Chief Clerk of the Supreme Court, Civil Term, Kings County; Joanne B. Haelen, Law Clerk to Hon. Vito C. Caruso; Ronald P. Younkens, Esq., OCA's Chief of Operations; and Jeffrey Carucci, OCA's Statewide Coordinator for Electronic Filing.

The Subcommittee also drew upon the commentary of solo and small firm litigators, and it carefully reviewed the reports of others of our subcommittees to capture as complete an overall picture of the subject matter as possible.

The Kaye Commission Report included a number of recommendations that the judiciary, OCA, the New York State Legislature, and bar associations might well adopt to help improve solo and small-firm practitioners' law practices. (See Appendix A.) These recommendations are discussed in the following sections.

1. Streamlining Court Practice

The Kaye Commission Report recites as its purpose an effort to address how the Judiciary "... can support solo and small firm lawyers in the practice of law. . . ." It states that solo and small

firm practitioners “. . . face daily challenges distinct from those of their larger firm colleagues and [that they] have developed valuable perspectives on how to improve the courts, the practice of law, and lawyer professionalism.” Clearly, Judge Kaye’s purpose was to draw insight from the unique experiences of solo and small firm practitioners and to direct or redirect the judiciary’s support for them. While we genuinely appreciate Judge Kaye’s attentiveness to the needs of that segment of the practicing bar, we also recognize that rule making cannot exclusively address each and all of its particular needs and preferences. We thus believe that the Kaye Commission struck a moderate balance in its treatment of the subject and we are in general harmony with its conclusions and recommendations.

Among the subjects addressed in the Kaye Commission Report are those involving court conferencing and staggered calendar calls. This segment of our report concerns itself with those subject areas.

In March 2009, OCA issued an Interim Report on the Implementation of the 2006 Kaye Commission Report. The interim Streamlining Court Practice report discusses in mostly general terms the various improvements OCA has initiated in response to the three-year-old Kaye Commission Report. Among the issues not directly discussed in OCA’s recent interim report, or discussed at all, are those involving court conferencing and “Staggered Calendar Calls.” The Kaye Commission report devoted the equivalent of almost eight pages to those subject areas alone, including some 4½ pages to staggered calendar calls, the longest single-subject treatment in the entire report.

The Kaye Commission’s own observations about preliminary conferences included the burgeoning weight of their numbers, particularly downstate, their random scheduling, their ineffectiveness, their frequent adjournment due to scheduling conflicts, the time counsel must invest to appear and to participate in them, the frequent late arrival of counsel resulting in “second call” forgiveness of such tardiness, the participation of inexperienced attorneys who lack knowledge of the underlying facts and legal issues of cases as substitutes for senior and knowledgeable counsel, and the resulting failure in most cases to achieve realistic and worthwhile benefits. The Kaye Commission’s pointed observation was that preliminary conferences commonly amount to nothing more than an unnecessary exercise in the scheduling of discovery dates. Against that backdrop, the Kaye Commission recommended thirteen specific reforms, none of which appear to have been responsively addressed in OCA’s 2009 interim report. The Kaye Commission Report also described substantially the same general problem areas at the pre-trial conference stage in response to which it recommended additional specific reforms. They, too, are not addressed in OCA’s 2009 interim report.

We recognize the reality that the practice of law varies somewhat throughout the state requiring in some instances varied solutions to unique procedural problems. There appears almost universal agreement, however, on what is perhaps the most long-standing and painful irritant to solo and small firm litigators in New York, viz., the loss of their, and frequently their clients’ time in courthouses throughout the state resulting primarily from the scheduling of preliminary, pre-trial and other conferences with the courts in multiple numbers at identical times. It is a constant problem; it has been with us for decades, and it is widespread. (A litigator once was heard to suggest that law schools ought to provide a course entitled “Hangin’ Around 101”—the hallways, the lobbies, chambers, lounges, adjacent sidewalks and similar locations within and without our courthouses.)

Currently, the problem appears particularly pronounced in our Family Courts. This is a serious and systemic problem that goes back a number of decades. Clearly, it needs to be addressed and resolved.

It is Abraham Lincoln who is credited with having observed, two centuries ago, that a lawyer's time and advice are his stock in trade. The message still resounds. The loss of significant periods of time spent waiting in courthouses is costly—for attorneys if they do not bill their clients out of sheer good conscience, or for their clients when their attorneys bill for those non-productive hours. Throughout the state, this waste is widely reported to be enormous—perhaps hundreds or thousands of hours daily adding up to thousands or perhaps tens of thousands of dollars or more. For attorneys, their clients and others, it is an imposition and a burden on their time and resources.

We are aware of some judges' desire, sometimes even regularly, to meet with counsel face-to-face for, among other things, possible settlement discussions or the elimination of issues in controversy. Given the advances of modern communication, however, we believe such practices could and should be limited to necessary cases only, and that the courts and their staffs could make greater individual efforts to learn and utilize existing technology and thereby eliminate the waste of old methods wherever possible.

Today, more specifically, most conferences involving the courts and counsel could readily be conducted by telephonic conference calls at pre-scheduled staggered intervals, or, if really necessary, in person but also at staggered intervals. Defaulting or late arriving counsel, without adequate excuses, could be warned of the prospect of automatic sanctions. Recidivists could summarily be monetarily or otherwise sanctioned by rules appropriately adopted. In person conferences could frequently be streamlined even if only by written or oral pre-conference agenda notices. We believe such efforts would drastically limit the problems or practices that result in such loss of time and money. We believe that some or all of the thirteen specific reforms proposed by Judge Kaye's own Commission should be addressed and seriously considered. We strongly urge OCA to finally address this burdensome problem. We are hopeful that specific systemic improvements will appear in OCA's next interim or final report or before.

Finally, the Kaye Commission examined the subject of discovery management and recommended that discovery plans and schedules be agreed upon by counsel as soon as possible after commencement of an action, which agreements should be reduced to written form as between or among counsel, ultimately to be "so ordered" by the Court. That is a system adopted for use in the New York City Civil Court and, we understand, in some other courts around the state as well. The adoption of a uniform statewide rule would tend to eliminate the need for court appearances for discovery scheduling purposes except where requested by counsel. The Kaye Commission offered eight specific recommendations for improvement in the discovery management process, none of which, except for the adoption of statewide scheduling forms, teleconferencing and video conferencing, appear to have been put into widespread practice. We request that uniform implementation throughout the state be considered.

2. Special Concerns in Litigation-Related Matters

The recommendations of the Kaye Commission Report addressing various forms of alternative dispute resolution ("ADR") are being implemented throughout the state both by OCA and the District Administrative Justices. The ADR programs highlighted by that report remain active

and have been expanded, particularly in the field of matrimonial and family law.³ For example, the New York State Parent Education and Awareness Program (“PEAP”), used in contested custody matters, has been expanded to cover every county in the state.⁴ In addition, a Model Custody Part and pilot mediation programs in family law have been implemented in various counties, including Nassau County Family and Supreme Courts.

The ADR process is non-binding on the parties. Therefore, certain practitioners with clients of limited resources have expressed their concern that the ADR process merely adds another level of cost to the litigant. However, those practitioners also do not favor mandatory or binding ADR.

The expansion of ADR programs within the court system will depend upon the continued efforts of OCA and/or the Departmental Administrative Justices. Where implemented, however, such programs often draw from the resources of the local bar associations either to provide qualified personnel to implement them (such as lawyer/mediators or lawyer/neutral evaluators) or to promote acceptance of such programs by local practitioners through newsletters or informational seminars.

In 2008, NYSBA created the Dispute Resolution Section. The section recognizes the importance of negotiation, collaboration, mediation, neutral evaluation, arbitration and new and hybrid forms of dispute resolution in all areas of legal practice. The section is a forum for improving these processes and the understanding of dispute resolution alternatives, for enhancing the proficiency of practitioners and neutrals, and for increasing the knowledge and availability of party-selected solutions. This section will be providing continuing legal education and training for practitioners and neutrals.

Two other matters raised in OCA’s response to the Kaye Commission Report are summary jury trials and awards of counsel fees for non-monied spouses in matrimonial matters. OCA points out that summary jury trials not only reduce the cost of litigation by expediting the trial process itself, but can significantly reduce the time from note of issue to trial. OCA has made efforts to support the recommendations contained in the Kaye Commission’s Report. Specifically, they have provided training to the judges assigned to matrimonial cases, sought a legislative amendment to reverse a presumption in these cases (making it easier for the non-monied spouse to get an award) and developed a model order that has been shared with all matrimonial judges statewide, which sets out a number of days for counsel fees to be paid before a money judgment in favor of counsel is made.

Both summary jury trials and awards of counsel fees for non-monied spouses would benefit solo practitioners and small firms. Summary jury trials would tend to reduce scheduling issues and allow cases to be resolved in a more timely way. This would help solo and small firm lawyers to manage their calendars more efficiently, and assure timely payment for legal work. The provision for interim and final awards of counsel fees for non-monied spouses would allow solo practitioners and small firms to take cases knowing that they will be compensated for their work in representing these clients. Our Committee encourages the judiciary to investigate other administrative reforms designed to streamline the litigation process, because we believe that a more efficient judicial system benefits not only litigants, but lawyers, judges and the public as well.

3 Kaye Commission Report at p. 40.

4 Part 144 of the Rules of the Chief Administrative Judge. PEAP was established in 2005, prior to the issuance of the Kaye Commission Report.

3. Uniform Court Rules

Most (but not all) of the individuals with whom the Commission Review Subcommittee met were opposed to the general notion of “uniform court rules.” The reasons varied. First, it was pointed out that the nature of the practice of law differs throughout the state. Most of the Administrative Judges interviewed were averse to mandating additional rules upon their judicial colleagues (and noted that some of their judicial colleagues would be very resistant to imposition of additional rules, because they are elected officials answerable to their constituents, not to OCA). Many felt that judges should be free to exercise their discretion in appropriate circumstances.⁵

Some individuals with whom the Commission Review Subcommittee met also pointed out that while the Kaye Commission recommended that the Chief Judge appoint a commission to determine whether local rules should be converted, incorporated or subsumed into one uniform set of rules (or eliminated entirely), if a uniform set of rules were put in place, it would likely have a disproportionately negative effect on the very portion of the bar it would seek to help, which has the least amount of time and ability to become familiar with new rules.⁶

Most members of the judiciary were sensitive to the effect that rule-making has on the solo and small firm practitioner. To the extent that rules are proposed by the Office of Chief Administrative Judge, there should be a mechanism by which such proposals are made available to solo and small firm practitioners for their comment.⁷ Notwithstanding the fact that solo and small firm practitioners may be disproportionately impacted by rule-making, most of the judiciary interviewed noted that some rules, as unpopular or cumbersome as they may be, are nonetheless absolutely necessary to protect the clients we serve and to elevate the profession (such as retainer agreements and fee arbitration).

4. Expanded Use of the eFiling Program

With an estimated 100 million pieces of paper being filed in the courts of New York each year, a similar amount being moved about the state in order to effect service on opposing parties,⁸ and the resulting costs placed upon the court system, the case for broader implementation of the state’s electronic filing system (“eFiling” or the “eFiling Program”) is compelling. According to OCA, since the eFiling program was authorized in 1999 more than 8,500 attorneys have registered as users; more than 40,000 cases were expected to be filed electronically in 2008.⁹

Participation in the eFiling program is voluntary and is statutorily authorized in specified case types in 18 counties and in the Court of Claims. Notably, some counties limit the program to

5 That said, there was some belief that some rules, such as discovery management, could be more uniformly implemented, if not state-wide, then perhaps on a district-wide basis.

6 To the extent that individual judges had their own rules, the general consensus was that they should be made available on OCA’s Web site.

7 Rule-making by the Office of the Chief Administrative Judge typically involves public feedback. On the other hand, rule-making by the Presiding Justices of the Appellate Divisions typically does not.

8 *Green Justice, An Environmental Action Plan for the New York State Court System*, at <http://www.nycourts.gov/whatsnew/pdf/NYCourts-GreenJustice11.2008.pdf>.

9 *Id.*

certain types of cases or those designated by the Administrative Judge. For example, in Erie County, eFiling is statutorily permitted for Surrogate's Court filings, while any other case type must be designated by the Administrative Judge. In several counties, but by no means all, eFiling is available for commercial, tort and tax certiorari cases.

While eFiling has undoubtedly become more widely used, there is clearly enormous potential to broaden its use. Consider that the eFiling of 40,000 cases still represents only about 1% of the estimated four million cases filed each year. Some of the reasons the program has not produced a greater volume of filings are clear. One reason is that this is a deliberate and intentional result of the fact that the program is not currently available for all types of filings in all counties, as noted above. OCA has itself observed that:

The transition to a system-wide eFiling must be carefully planned, will take time, and should be the product of a close collaboration between the courts, county clerks and the bar.¹⁰

The system is deliberately constrained for the time being. But our examination of the reasons eFiling has not been wholeheartedly embraced by practitioners reveals other issues as well.¹¹ First, because eFiling is not universally available to all attorneys for all case types, if a practitioner decides to use eFiling, he or she is often required to set up different office procedures for the management of some cases versus others, which, in a high-volume practice, becomes burdensome and may increase the risk of error. Likewise, because eFiling is only available in limited circumstances, many practitioners are simply unaware or unsure whether eFiling may be available in a given case. It would certainly be easier for practitioners if *every* case could be filed electronically. Thus, absent a mandatory eFiling requirement, it may simply be easier for many attorneys to stick with the tried-and-true methods of filing by hard copy and remaining within their comfort zone. Moreover, high-speed Internet access is not as readily available, if at all, to solo and small firm practitioners in some parts of the state as it is in others.

On its face, for some practice areas at least, eFiling would appear to present a tremendous benefit to both practitioners and County Clerks, but the system has largely failed to be embraced. Tax certiorari was among the early pilot practice areas for which eFiling was thought to offer significant advantages, and it provides a useful example. This practice area is characterized by an extremely high volume of cases—hundreds of thousands of filings each year. These are filed at pre-defined periods during the year, generally by small firms and solo practitioners, with respondents that do not ordinarily present service of process issues (local governments and school districts). Yet, many tax certiorari practitioners throughout the state, and particularly those outside the City of New York, refuse to use the eFiling program for a variety of reasons. Based on the information collected in interviews by the Subcommittee, the most significant is statutory. While the Legislature saw fit to amend the Civil Practice Law and Rules (CPLR) to accommodate filing and service by way of eFiling for other types of actions and proceedings, tax certiorari filing and service is largely governed by the Real Property Tax Law, which has not been amended to allow for eFiling. Many practitioners are unwilling to e-File—and then await the outcome of a motion to dismiss on technical grounds. Several other equally problematic obstacles, both legal and technological, have sharply

¹⁰ *Id.* (footnote omitted).

¹¹ Some reasons are, admittedly, supported more by anecdotal information than empirical data.

limited the use of eFiling in the field of tax certiorari, which was, as noted, a pilot area for this program.

Beyond those specific obstacles, the Subcommittee found other concerns with the program and its wider implementation. OCA has suggested that a move toward mandatory eFiling could be made.

The Judiciary will present to the Legislature a plan for expanding e-Filing, including a pilot program of mandatory e-Filing in limited case types in a limited geographic area, with an eye toward the eventual transition to mandatory system-wide eFiling.¹²

However, while many share the notion that an effective solution would be to make eFiling mandatory, there is also a strong sense that some members of the state Legislature would try to prevent it—perhaps for parochial reasons or because a mandatory program would have the unintended effect of forcing into (early) retirement many of our older solo and perhaps small firm practitioners.¹³ Some also expressed concern that the eFiling system, both with respect to administration and technology, is not equipped to accommodate a mandatory program.

While there seemed to be a general consensus that eFiling may never become mandatory, there also was the sense that the New York State Bar Association could, in conjunction with OCA, be a leader in educating the bar in the use of eFiling and promoting its wider adoption among practitioners. The State Bar Association's Law Practice Management Committee has worked with OCA to promote the broader use of the program through offerings at the Bar Association's Annual Meeting as well as providing free space for the eFiling program to promote itself at the Annual Meeting. The Law Practice Management Committee has taken the initiative of spearheading efforts to create a webcast eFiling tutorial in conjunction with OCA.

5. Technology

In addition to the issues described above with regard to eFiling, the Kaye Commission Report addressed a number of other technology-related initiatives. These were addressed both by our Committee and OCA, which commented on the recommendations of the Kaye Commission Report. These included:

- On line calendar and case information;
- On line forms;
- Availability of court files on the Internet;
- Improving navigation, search and accessibility of Uniform Court System Web site;
- Wi-Fi access and digital evidence presentation;
- Use of e-mail and facsimile to communicate with the courts;
- Teleconferencing and videoconferencing.

¹² *Id.*

¹³ It may be fair to assume, what with enforced retirement rules as prevalent as they are in large firms, that most aging lawyers in New York are long-term or recent solo or small firm practitioners at a ratio higher than the 55% attributable to all private practitioners of all ages in New York.

There seemed to be little opposition to the general concept of expanded use of technology in communications between attorneys and the judiciary. However, there remain a number of practical issues, which are discussed below:

- There may be a generational hesitation among older practitioners and judges to the use of technology, so initiatives in this area should recognize these limitations;
- If the technology is available, there should be no reason why signed Orders to Show Cause in New York cannot be faxed by Court personnel to counsel for the litigant bringing the Order to Show Cause (as opposed to the current practice of making counsel pick up the signed Order);¹⁴
- Videoconferencing and teleconferencing should be implemented (or, at the very least, a pilot program set up to test its viability statewide). If there are any impediments, they are similar to those discussed in relation to eFiling and the availability of technology in our rural counties;
- Although navigability of the Web site has increased and the number of forms available on the site has increased, the forms remain difficult to use. Anecdotally, the Special Committee heard that many forms were poorly scanned or unreadable;
- Court files are not generally available on line, despite the fact that OCA has initiated pilot programs in New York and Broome County, and these programs will be evaluated later this year; and
- Throughout the state technology is not consistently available from county to county and court to court, making it hard for small firm lawyers to know what support is available to them.

Our Committee believes that significant progress has been made, and appreciates the efforts of OCA to enhance technology in the court system. Yet, much remains to be done, and New York lags behind other states in this area. Inasmuch as technology provides significant assistance to solo and small firm practitioners, our Committee urges OCA to continue these efforts.

6. Pro Bono

While no one disputed the need and desire for attorneys to provide voluntary *pro bono* legal services, few felt it will become mandatory given the intense pressure by the bar to avoid it. Also, to the extent the Kaye Commission noted there was “effectively” mandatory *pro bono* in some areas of the state,¹⁵ this is now being reviewed by the Chief Administrative Judge. We also must note that most, if not all, practitioners perform more involuntary *pro bono* service than OCA has ever suggested they do voluntarily, including much of it in courthouse hallways awaiting the call of their cases.

¹⁴ Anecdotally, at least one subcommittee member expressed frustration that he had to travel to New York City on one day to have an Order to Show Cause filed, and had to travel back the very next day to argue it and pick it up.

¹⁵ See Appendix A, Kaye Commission Report, at note 156.

7. Continuity of Practice

In the 2006 Kaye Commission Report there are recommendations under Part IV.B. concerning the need for attorneys, particularly sole practitioners, to make plans for the continuation of their practices in case of their sudden temporary or permanent absence from practice. There is no mention of progress on this front in OCA's 2009 Interim Report. Years prior to the issuance of the Kaye Commission Report, NYSBA had taken action on the matter. In April of 2002, NYSBA's Special Committee on Law Practice Continuity was appointed to address the need to ensure that clients whose solo practitioner lawyer dies, becomes disabled or disappears, can continue receiving legal counsel on pending and urgent matters, and that the affairs of that law practice can be taken care of in a proper fashion, recognizing that an attorney has an ethical obligation to ensure that his clients' interests will be protected, even if the attorney becomes unable to represent them by reason of death, disability or other cause. Recently, in an effort to consolidate and reduce the overall number of NYSBA Committees, that Committee has become a subcommittee of NYSBA's Law Practice Management Committee.

Prior to that, however, the Law Practice Continuity Committee completed two important phases of its work: (1) the creation of a "Planning Ahead Guide" for sole practitioners who wish to prepare for the contingency of their sudden absence from practice, and (2) the preparation of a proposed rule for the appointment of a caretaker attorney to serve when a sole practitioner is suddenly absent from practice and has made no provisions for the handling of his/her clients' needs.

The "Planning Ahead Guide," prepared by the Law Practice Continuity Committee, is available in print form and on the Web. The Guide contains checklists and sample forms to assist caretaker attorneys in such situations whether they are managing an absent attorney's practice temporarily, or closing the practice because the absence is of a permanent nature. It also contains suggestions for attorneys in their estate planning, and in establishing their firm's procedures, to make it easier for a caretaker attorney to effectively accomplish the tasks required.

The proposed caretaker rule was presented at the summer meetings of the Executive Committee and House of Delegates in Cooperstown on June 24–25, 2005. There was a slight change to the proposed rule suggested at the Executive Committee meeting. That change pertained to postponing appellate proceedings, as well as trial proceedings, in the event of the sudden and unplanned absence of a sole practitioner from practice. The House of Delegates responded very favorably to the report and proposals and adopted a resolution to that effect. The proposal has been presented to the Administrative Board of the Courts, and their response has been to refer the proposal to the various Appellate Divisions for their respective consideration. We urge them to adopt a uniform rule. Currently, each Appellate Division has a different rule providing for the appointment of a receiver when a lawyer is disbarred or suspended for professional misconduct or, in some cases, when a lawyer is suspended for medical or mental incapacity.

A uniform rule, or at least a similar rule in each Department, would provide a much needed mechanism for attorneys to help a fellow attorney—a sole practitioner—in such circumstances. There may be no allegations of professional misconduct, yet a caretaker attorney is often needed. For example, if a sole practitioner dies, another lawyer should be able to step in, with proper authorization, to wind down or sell that lawyer's practice, collect outstanding fees, notify clients and disburse funds from an escrow account. Presently, no court rule permits appointment of another attorney for such purposes. Appointment of a caretaker attorney in a non-disciplinary setting, such as

when a sole practitioner becomes incapacitated, temporarily or permanently, will protect clients more effectively and will also better protect the disabled lawyer's practice. This is important if the practice can be sold and also if the disabled lawyer is likely to return to practice after a recovery.

B. The Role of NYSBA in Implementing Recommendations

In our meetings with the Administrative Law Judges, they all stressed the importance of, and their reliance upon, input from local bar associations for feedback on the issues and recommendations set forth in the Kaye Commission Report. While none of the Judges rejected the idea of having State Bar input as well, it was clear that the State Bar would have to show how it would augment the Judges' reliance on the local bar process.

To become part of this discussion and feedback, therefore, the State Bar must improve its contact and involvement with local bar associations. Such contact should focus on ways by which the broad scope of its resources may best assist local practitioners, while not circumventing the benefits of local bar association membership. No doubt this will be a difficult line to walk.

Currently, there is little formal structure to communications between the state and local bar associations. Although the President of the State Bar Association does meet annually with local bar leaders, there appears to be no process that provides for consistent contact thereafter. At least with respect to the mission of our Committee to promote the State Bar's involvement in implementing the Kaye Commission Report recommendations, we must create a more effective and useful line of communication between the State Bar and local bar associations.

We recommend, therefore, that State Bar representatives already assigned to particular judicial districts be assigned as point persons for facilitating such communications. That would require that each representative maintain contact with the various county bar associations within his or her particular district. Should that prove too difficult or time consuming for a single person, the State Bar might attempt to recruit a representative from each county in some locales to take on the responsibility of communicating with local bar leaders on the concerns of its solo and small firm practitioners. From our interviews with court administrators, it appears likely that input from local practitioners that is centrally coordinated, such as through NYSBA, would help advance consideration of many proposals that would otherwise receive insufficient attention from already overburdened Administrative Law Judges.

Assuming that appropriate lines of communication could be established, it then would become incumbent upon the State Bar to set up a process whereby it could determine how State Bar resources could best be used to address local concerns without undermining the autonomy of local bars. In order to effectuate that process, it probably would be necessary for the State Bar to establish a standing Committee to coordinate the flow of communication between the state and local bars and to facilitate the delivery of State Bar resources at the local levels where appropriate.

One of the most important functions of the State Bar is our ability to reach practitioners statewide with information that is collected by us from local, state and national resources. This is certainly invaluable at the local level. Indeed, when certain Subcommittee members were arranging meetings with the various Administrative Law Judges and other court personnel, they found that many in these courts were unaware of the Kaye Commission Report and its recommendations. When offered the opportunity to review the Report and its recommendations and meet with State Bar

representatives, the response was overwhelmingly positive. This type of informational exchange should be the hallmark of our outreach to local bar associations and the judiciary.

An important part of the State Bar's contact with the judiciary must include input into the decision-making process of both OCA and the Administrative Law Judges. It has become increasingly apparent that "rule making" by the Chief Administrative Judges and the Presiding Justices of the Appellate Divisions has become the preferred method of dealing with many issues which previously had been the domain of the Legislature. To the extent that this trend continues, it is imperative that the State Bar be heard in the formative stages on a consistent basis.

III. NYSBA Activities and Resource Center

The mission of the Subcommittee on NYSBA Activities and Resource Center was to (1) review programs already undertaken by the New York State Bar Association to assist solos and small firms, including resources available at its Solo and Small Firms Resource Center and through its Law Practice Management Committee; (2) recommend ways in which those programs can be expanded or improved; and (3) recommend new programs, benefits, resources and services that should be developed to help such practitioners and their firms.

Because solos and small firms constitute a significant segment of NYSBA membership, the Association has for years provided a variety of programs and services aimed at these members. Any assessment of what further needs to be done should start with an examination of what is being done already. Recommendations for the future should address how to strengthen existing programs and eliminate ineffective programs, as well as suggesting new programs we might undertake.

A. NYSBA Solo and Small Firm Resources

NYSBA's support for solos and small firms can be divided into five distinct categories: (1) educational programs (CLE); (2) publications; (3) Internet resources; (4) member benefits and services; and (5) networking opportunities. This section of the report addresses each of these areas.

1. Educational Programs

NYSBA currently offers continuing legal education programming in various formats. Discounts given to NYSBA members and current CLE pricing make it financially beneficial to join NYSBA. Lawyers who obtain the majority of their CLE credits through NYSBA's live or recorded programs effectively receive free membership, as the cumulative discount applied to every program is more than the cost of membership during a twenty-four month period (the MCLE reporting cycle).

Many programs offered through State Bar sections and committees are attended by solo and small firm lawyers. In addition, the Law Practice Management Committee produces programs specifically targeted to solos and small firms. These programs are offered at different geographic locations in the state, at live programs and through lunchtime teleconferences.

Many of the programs are recorded, stored digitally, and made available online for download. These recorded CLE programs make it easier for solo and small firm practitioners to get their MCLE credits when it is convenient for them. The recorded programs currently include:

- Avoiding and Defending Legal Malpractice Actions (2005)—4.0 Total MCLE Credits;

- Closing or Selling a Law Practice (2005)—4.0 Total MCLE Credits;
- Lawyer as Employer (2007)—3.5 Total MCLE Credits;
- Legal Malpractice Litigation and Risk Management (2007)—4.0 Total MCLE Credits;
- Out the Door, But Not Over the Hill (2008)—2.5 Total MCLE Credits;
- Quest for a Balanced Life (2005)—3.5 Total MCLE Credits;
- Risk Management for Attorneys (2006)—3.5 Total MCLE Credits;
- Starting Your Own Practice (2007)—7.5 Total MCLE Credits.

The 2008 LPM Committee telephone seminars were specially designed to assist solo and small firm lawyers. Because of its success, the series is being expanded in 2009. The seminars are offered at lunchtime and are typically two hours in duration. This allows practitioners to get MCLE credits from the convenience of their desks; the brevity of the programs permits practitioners to participate without having to take a half or full day away from the office. The audience evaluation forms for last year's programs emphasized how valuable and convenient participants found this format of CLE to be. While participants did comment on the quality of speakers and the topics, they reserved their overwhelming praise for the convenience of the forum and how much it saved them on gas and travel time. This format should be expanded for future CLE programs.

2. Publications

NYSBA provides a wealth of publications for its members, including the New York State Bar Association *Journal*; *State Bar News*; Section newsletters; books; printed CLE program materials; a commercial newsletter, *The Complete Lawyer*; and other resources. The Bar Association publishes more than seventy Section newsletters and journals each year which are written and edited by experts in their fields. They are provided as an exclusive benefit of Section membership. Over 35 NYSBA books and supplements are produced each year. These include reference books, supplements, formbooks, and document assembly products. The primary markets for NYSBA publications are solo and small law firms. More than seventy titles are available to NYSBA members at exclusive discounts. In addition, a variety of other materials, such as committee reports and ethics opinions, are available to NYSBA members.

Solos and small firms have access to NYSBA and committee materials generally, and to section materials if they are members of one or more sections. Even though many of these publications are not produced specifically for solos, to the extent that they provide information to practitioners in discrete practice areas, solos and small firms benefit from them.

The Law Practice Management Committee is unique in having produced publications targeted to the specific needs of lawyers in solo practice and small firms. These publications include books and CLE materials. NYSBA offers the following books and CLE materials that address issues and needs of solo and small firm practitioners:

- *Model Partnership Agreements*, by Peter Giuliani;
- *Attorney Escrow Accounts*, edited by Peter V. Coffey and Anne Reynolds Copps;
- *Basic Technology Resource Guide*, NYSBA staff;

- *Marketing for Lawyers*, by Christine Filip;
- Starting Your Own Law Practice, CLE materials;
- Risk Management for Solos and Small Firms, CLE materials;
- Escrow Accounts, CLE materials;
- *New York Lawyer's Deskbook and Formbook*.

The ABA permits state bars to market books produced by the ABA for the benefit of state bar members. The ABA pays a 40% royalty to state bars for each ABA book sold and handles all order fulfillment for purchases. Between the ABA's Law Practice Management Section and General Practice, Solo and Small Firm Division, the ABA offers scores of titles that could benefit NYSBA solos and small firm members. The NYSBA Law Practice Management Committee is also developing New York-oriented materials to supplement some of the ABA books which tend to be more generic, that is, national in scope. Potential revenue from the sale of ABA publications could be used to provide more resources to solos and small firms. For example, if NYSBA generated 1,000 sales of ABA publications @ \$50 per book, this would generate \$50,000, of which NYSBA would retain \$20,000. ABA books of potential value to solos and small firms include:

- *How to Start and Build a Law Practice*, by Jay Foonberg;
- *Flying Solo*, edited by Mark Robertson and James Calloway;
- *The Lawyer's Guide to Creating a Business Plan*, by Linda Pinson;
- *The 2008 Solo and Small Firm Technology Guide*, by Sharon D. Nelson, John W. Simek, and Michael C. Maschke;
- *The Business of Law*, by Edward Poll.

3. Internet Resources

NYSBA put forth a major initiative in 2008 to become more relevant to solo/small firm practitioners. The Bar Association created an online Resource Center for Solo/Small Firms at www.nysba.org/solo. All of the resources useful to the solo/small firm practitioner that NYSBA presently offers were consolidated and put in one location in the State Bar's Web site. As a result of this effort, NYSBA recognized that it already offered many resources and other materials for the solo/small firm practitioner, although these had not previously been available in one, easily found, location.

Review by the Subcommittee and user feedback, however, suggest that many members still have difficulty locating the NYSBA's solo/small firm resource webpage or find it inaccessible. Users have complained that the Web site is cumbersome and non-intuitive despite a recent redesign, and location of the solo pages further complicates the situation.

The Solo and Small Firm Resource Center is located on NYSBA's Web site; it is accessed by clicking on the "For Attorneys" link on the left-hand side of the home page and then clicking on the Law Practice Management link or the Solo/Small Firm Resource Center link. It takes several steps to reach the Resource Center (as well as the LPM Web site), which may make it difficult for practitioners to locate; neither seems to come up when typing the phrases into the search engine on NYSBA's home page. Considering the relevancy of this material to the majority of the NYSBA

membership, it would be beneficial to create a prominent link on the homepage that would take the user directly to this material.

NYSBA's online Solo/Small Firm Resource Center contains a number of specific tools for lawyers, including:

- Tools You Can Use—A compilation of forms that are located on the LPM Web site (Risk Management Section). These forms include sample intake sheets, sample e-mail policy, sample engagement letters, sample non-engagement letters, a sample termination letter and a checklist for solo/small firms to use when purchasing professional liability insurance. These forms are a practical resource that all practitioners might use or consider using in their practice. Development of more forms that practitioners can download would be useful (i.e., creating a repository).
- Law Practice Management Information—The Law Practice Management Web site was created in 2005 by the Law Practice Management Committee. The LPM Committee serves lawyers through a variety of delivery mechanisms. The Web site and electronic communications are among the primary resources provided and are cost-effective ways to communicate with members. The Web pages cover three distinct areas:
 1. Managing a law firm (whatever the size);
 2. Delivering legal work to clients in an efficient, timely and cost-effective way; and
 3. Developing personal management skills that enhance competence and professionalism.

The LPM Committee recognizes that many attorneys in larger firms may have resources internally available to them to assist in their practices, whereas solos and small firm practitioners do not. The LPM Committee has devoted a significant amount of time to creating materials and other resources for the solo and small firm practitioner, as follows:

- Law Practice Management Committee quarterly *E-Newsletter*, with law practice news and interim updates, such as the recent warning about online scams that were victimizing New York lawyers;
- Forms for Solo and Small Firm Practitioners—the site includes downloadable forms for solos and small firms that they can use in their practices;
- Document Assembly Products—NYSBA offers members online access to document assembly products. Small firm lawyers are the most likely beneficiaries of this service;
- Reference Books;
- Solo and Small Firm Marketing Tips;
- Solo and Small Firm Connections—These connections include some valuable resources that members should be made aware of. Solo and small firm practitioners may have some sense of isolation and need networking and information sharing

opportunities. Electronic or virtual forums to exchange ideas, share problems or get a question answered quickly are useful tools for solo and small firm practitioners. NYSBA has many listserves associated with particular Sections or committees. The General Practice Section listserv, which is promoted on the Solo/Small Resource Guide, has a variety of experts on tap and a practitioner can ask a question about any area of law or about practice in general and get several responses from such experts;

- Professional Ethics—Members can ask an ethics question or law practice management question via e-mail. The site also mentions that a Solo/Small Firm Blog is under consideration and may later be established;
- Free Downloadable Publications;
 1. Business Continuity Guide;
 2. Computer Guide for Lawyers;
 3. Planning Ahead: Establishing an Advance Exit Plan;
- Links of Interest to Web Sites of other organizations (see Section V, *infra*, on resources available through other professional associations which can supplement the resources available directly through the State Bar Association).

Through NYSBA's partnership with Loislaw, NYSBA offers members free access to legal research in the following libraries:

- New York Court of Appeals;
- Appellate Division Reports;
- Miscellaneous Reports;
- U.S. Supreme Court;
- 2nd Circuit Opinions;
- NYSBA Ethics Opinions.

These libraries are fully searchable, but include only the last several years' opinions. Although these libraries do not provide an alternative to Lexis and Westlaw, Loislaw is a useful member benefit which needs increased marketing to make more of our members aware of its availability. NYSBA currently has an agreement with Loislaw that offers a 20% discount for NYSBA members. Loislaw also provides NYSBA with royalties on the sale of the online NYSBA books and the sale of primary law; NYSBA receives approximately \$100,000–\$125,000 each year in such royalties. When considering potential relationships with other electronic legal research providers, the substantial amount of content provided by, as well as the royalty income received from, Loislaw should be taken into account.

NYSBA does not have a discount program with LexisNexis; however, NYSBA does publish four document assembly products on HotDocs, which is owned by LexisNexis. Sales of HotDoc products bring in substantial revenue to the Association (over \$400,000 per year).

Also available to NYSBA members are:

- NYSBA/Loislaw CaseAlert Service—A service which provides members with e-mail notices (and links) of new cases that fit the search criteria for a particular practice area;
- CasePrepPlus—a weekly e-mail advance sheet summarizing cases of significance in New York (with links to the full opinions);
- For Section members, their respective newsletters and journals are available online, and a searchable index is provided. Past issues are available in PDF and in a searchable format with links to citations. The latter format is provided by Loislaw;
- NYSBA *Journal*—Past issues of the NYSBA *Journal* are indexed and are available to all members. The *Journal*, starting in 2008, is also being e-mailed to NYSBA members. Through an agreement with HeinOnline, past issues of the NYSBA *Journal* from 1928 to the present are online and “searchable”; they are available to NYSBA members;
- The *State Bar News* is also available online;
- The *NYS Law Digest*, produced by Prof. Siegel, is e-mailed to NYSBA members.

In one sense, it is apparent that the State Bar is devoting significant resources to its Web site. This is consistent with the trend of lawyers generally toward using online resources in preference to print resources. This trend is especially prevalent among younger lawyers, who have grown up with computer technology. The subject of what other bar and professional associations are doing to exploit this trend is covered in another section of this report, but it appears that NYSBA has more work to do if it wishes to be on the cutting edge in its use of available technology to deliver Internet services to its members, including solos and small firms.

4. Member Services

Health and Dental Insurance Benefits / Malpractice Benefits: In spring of 2008, the New York State Bar Association began offering health insurance to its members by partnering with USI Affinity (formerly Bertholon-Rowland) and MVP Health Care, a benefits provider throughout New York State. Solo and small firm practitioners need affordable health insurance. Many solo and small firm practitioners were forced to join other organizations to get a group discount rate on health insurance.

The three comprehensive plan designs now available to New York State Bar Association members offer comprehensive group medical and prescription drug coverage at competitive rates. All three plan designs are available to both solo practitioners and small to mid-size firms; larger firms (50+) have increased options for plan customization. For a number of years, the most requested insurance benefit sought by Association members in solo and small to mid-sized firms has been group health insurance for themselves and their associates and staff.¹⁶ Additionally dental benefits have been made available.

¹⁶ 2005 NYSBA Member and Lapsed Member Research Project: Phase One Focus Groups—Final Report (May 11, 2005).

USI Affinity has been an affinity partner of NYSBA for over 40 years. NYSBA members are able to purchase malpractice, life and disability insurance products from USI Affinity at a discounted group rate.

Marketing: The majority of the above referenced resources would benefit substantially from additional marketing. The majority of practitioners are looking online to find the resources in a quick and easy-to-find format. Our resources could be bundled and packaged in a way that makes them attractive to solo and small firm practitioners.

5. Networking Opportunities

One of the most important resources for solo and small firm practitioners is the opportunity to develop contacts with other similarly situated lawyers, not only because they develop professional contacts, but also to build ties that promote collaboration, mentoring and open discussion about legal issues. NYSBA offers opportunities to do this through continuing legal education, the annual meeting, section meetings and activities, as well as online discussions and services. This is likely to be an important value-driven component to NYSBA services for solo and small firm practitioners which should be nurtured in the coming years because solo and small firm practitioners will continue to need this support.

B. Challenges Ahead

For at least eighteen years, NYSBA has consistently articulated a commitment to serving solo and small firm lawyers who make up a majority of its membership. Yet many solos and small firm practitioners in the state choose not to join the New York State Bar, but instead seek practice assistance from other organizations. To the extent that NYSBA does not reach this non-member audience or reaches its member audience with less than effective services, the Association does not fulfill its commitment to solo and small firm lawyers.

Some solutions, like targeting more publications and CLE toward the needs of solo and small firm practitioners, or improving access to the NYSBA Web site, are theoretically easy to accomplish. The Law Practice Management Committee and some other NYSBA entities currently serve the solo and small firm practitioner niche on a regular basis, while other groups within the Association serve solos and small firms less directly. In order to provide more programs, publications, internet services, and other services and resources to solos and small firms, NYSBA must better coordinate its efforts in this area, make this a higher priority for the organization, and perhaps dedicate additional resources. With greater resources targeted to meet the needs of solos and small firms, NYSBA can significantly expand its products and services to this important segment of the bar. In the long term, better services should translate into more members, which will help to offset the cost of devoting more resources to solo issues, but in the short term, NYSBA leadership must view the expenditure of funds as an investment, while it grows both dues and non-dues revenue over time

NYSBA staff, who have varying degrees of contact, and who are engaged in various existing activities concerning solo and small firm issues, might be pulled together synergistically. They consist of the following:

- Law Practice Management Department;
- Lawyers in Transition Committee and Women and the Law;

- Lawyer Assistance Program;
- Continuing Legal Education Department;
- Membership;
- Staff Liaison from the General Practice Section;
- Marketing.

For example, a working group of staff at the Bar Center could be established to meet regularly and coordinate their efforts to more effectively serve solos and small firms. Recognizing that resources may be scarce at this point in time, these are measures the Association might consider that do not produce additional costs.

IV. Survey of Solos and Small Firms in New York

The mission of the Subcommittee to Survey Solo and Small Firm Practitioners in New York was to design, conduct and report on the results of a survey of representative sampling of those practitioners to determine the particular issues and challenges that confront them. One objective was to ascertain ways by which NYSBA, other bar associations, the courts and other entities can assist solo and small firm practitioners in meeting those challenges and in achieving successful practices and balanced lives.

The Subcommittee prepared an electronic survey that was e-mailed on November 12, 2008, to a random sampling of 10,000 NYSBA members and non-members in solo or small firms. Responses were collected until December 15, 2008. The complete survey is at www.nysba.org/solosmallcomm.

A majority of respondents identified problems relating to running a business as the primary concern of the survey's respondents. They requested assistance with issues of time management, cash flow, the cost of association membership and continuing legal education requirements. The respondents overwhelmingly indicated that they needed daily help—with easy and quick access to forms and practical advice from other attorneys in real time via a listserv or mentoring bank.

This report contains a detailed statistical analysis of the results of the survey titled 2008 NYSBA Solo and Small Firm Survey. The analysis includes answers from all attorneys (some litigators, some not) who responded to the survey in the 33-day period from Wednesday, November 12, 2008 to Monday, December 15, 2008. Out of 10,000 surveys sent, only 221 completed responses (i.e., 2%) were timely received—a disappointing number.

The following section on Key Findings provides an overview of the survey results. It is important to point out that there is additional quantitative data in the main body of the report and there is much to be gained by reading the individual comments in the full survey.

A. Key Findings and Implications

1. What are some of the biggest issues/challenges you have as a solo/small firm member?

Survey respondents report that finance—problems related to cash flow and finances—is the area of greatest concern. Marketing and acquiring new clients make up the second most mentioned

category, followed by time management, human resources/staffing, and staying current with information

We received more than two hundred responses to this question. Cash flow and financing issues appeared in more than eighty responses. Specific comments referenced escrow accounts, rising costs, controlling expenses, financial resources, overhead and unpredictable income. Marketing—from client acquisition, advertising, client retention, to business expansion—was the second most-prevalent topic. Time management in all of its variations, including day-to-day scheduling, court calendaring, time for administrative duties and time off followed closely with more than fifty mentions. Human resources concerns were noted by more than 45 survey participants. Comments included the inability to hire a professional management firm, lack of qualified staff, problems retaining competent staff and managing staff, and employee benefits. Number 5 in the top five challenges faced by solo/small firm attorneys is the need for up-to-date information. This was referenced in more than 35 comments. Staying abreast of new developments in the law was a common theme. Other notable topics included health care/health insurance issues, CLE requirements, practice management, networking needs, communications with the courts and collection of fees.

2. How can the Bar Association assist you in facing those issues or challenges you mentioned above?

As the introduction to this report has pointed out, solo and small firm members are looking for practical solutions to the day-to-day challenges of operating a solo or small firm practice. This suggests that for solo practitioners and small firm managing partners, the Association should focus on practical benefits—those that save time and/or money, and that assist with the management of the practice. This focus is in contrast to some of the more typical, run-of-the-mill association offerings such as discounts on rental cars, flowers and clothing.

One hundred eighty-five comments were received in response to this question. While respondents found it easier to express their concerns or challenges in response to the first question, many found it harder to offer solutions. Twenty-seven comments indicated “don’t know” in some form or other. Those suggestions that were offered are in sync with the overall need for practical solutions. The most frequent comments focused on discounts—for dues, CLE, products, research, insurance—even the annual meeting. Participants are looking to the Association to bring some cost relief, either by reducing its own fees for solo and small firm practitioners or by negotiating special discounts.

Many comments made reference to CLE, often coupled with the words “discount” or “free.” A few respondents suggested more CLE focused on the specific needs of solo/small firm members; they indicated that many CLE programs are presented from the perspective of larger firms. The terms “networking” and “mentoring” appeared in twenty responses in the context of the need for a resource for asking and answering questions or sharing joint problems. Approximately sixteen responses suggested law practice management programs and resources targeted to the specific needs of solo and small firm practitioners. Finally, ten respondents asked for help in the area of insurance, most often in terms of lower costs.

One respondent put considerable thought into his/her comments and they are worth including here.

The Bar Association has provided a wide ranging and extraordinary array of services (on the web and publications) not only to the solo [practitioner] but to the bar at large. The reasonably diligent solo practitioner/small firm is aided greatly to the extent that he/she avails oneself of the many services available. Since the practice of law in whatever area and degree, rarely affords sufficient time to do what one should do to be successful in one's profession and private life, including the time to discover and USE the many services provided by the Association, I believe that a simple [publication] in a loose-leaf style format designed for the solo/small firm which synthesizes the broad range of material and how it might be used, might more readily fit the available time available to the solo/small firm member. Something, akin to the Nut Shell series of the ABA whereby specific areas of substantive law is set forth in a simple, condensed format, although not with elaborate discussion and length. Such a format as a desk type book (not the size of the Desk/Forms books) might be more readily accessed for guidance rather than the need to immediately go online. In addition to material made available in this fashion, the format could direct the attorney to the Assoc. Web sight for additional in depth assistance and current matter. As I draft this suggestion, I was reminded of my recent renewal of my membership where I renewed my Elder Law, Gen.Prac.Sect., Trusts & Ests. section memberships. A quick review of the One on One General Practice Section quarterly could be an ideal publication for this suggestion. However, One on One is only for those who join that section. Perhaps a strong push by the Assoc. and that Section could be made to those identified as solo/small firm practitioners to join that section, so long as that Section undertakes the task of implementing this suggestion.

3. Which of the products, services or activities that NYSBA currently offers do you find valuable? Respondents were asked to rate each of fifteen products or services.

The most valuable product or service as listed by 48.8% of the respondents was live CLE programming, followed by section newsletters at 31.7%. Three categories, "Malpractice Insurance," "Recorded CLE Programs" and "Reference Books," were tied for third, with mentions by 28% of the respondents. "Legislative Reports," the New York Bar *Journal* and "Web Site Information" tied for fourth, with mentions in the 26% range. The Dental Insurance Program was deemed the least helpful product, with only 6.3% of survey participants rating it "Very Valuable." The Annual Meeting received a score of 9.2% and Health Insurance received a score of 13.6%.

4. Please describe how the Bar Association can improve its Solo and Small Firm services to better assist you in managing your practice.

Once again, responses reflect the need for practical assistance, although at least twenty responses indicated "not sure," "don't know" or offered no opinion. A few comments complimented the Association on doing a good job for solo and small firm practitioners.

Law Practice Management suggestions occurred most often with 23 mentions, including requests for consultants, software evaluations, practice evaluation forms, practice tips, escrow account tips and information on law firm transitioning. References to costs or discounts as they

relate to Association fees, insurance, CLE and software are found in nineteen responses. Recommendations specific to CLE—more programs, different times, speakers that follow the materials and allowance for self-study—were found in seventeen responses. Several responses suggested that the Association should more aggressively promote the services and products it offers to solo and small firm practices. Other responses included suggestions for better reference resources, sample forms, access to official court forms and computerized forms and smaller, more localized events.

5. What does another bar association/entity offer to solo/small firm attorneys that you would like to see NYSBA offer?

One hundred sixteen survey participants provided responses to this question, although more than forty responses were of the “unaware,” “don’t know” or “?” type of answers. Responses were consistent with earlier comments in that many made reference to discounted or free products and services. Also mentioned were access to libraries, more localized networking events, and various forms of support.

This question seeks examples of notable bar association products or services, and on this basis a number of comments are worth highlighting. One respondent stated that the “Massachusetts Bar Assoc has vastly superior CLE offerings—more practical, more focused on non-big Law issues . . .” Other comments related to CLE include, “Higher quality more specialized CLE is offered by the ABCNY,” “Combining live CLE with vacation/cruise opportunities . . .,” “Other CLE providers offer attorneys other than the one purchasing the CLE to use pre-recorded programs, pay a SMALL fee (\$10), and get the CLE credits as well.” The Los Angeles County Bar Association offers CLE in a box. It consists of recorded CDs of CLE courses that took place within the year. “The box contains your entire CLE required hours. By completing all of the disks in the box you will complete our CLE requirements for the reporting period.” Other comments include “practical nuts and bolts information,” “lobby for electronic appearances across the state to reduce travel expense,” “placement service but a meaningful one,” “free conference room in NYC,” and “more practice books.”

B. Other Research

The Subcommittee reviewed two other items: (1) NYSBA’s 2005 Member and Lapsed Member Survey; and (2) a Research Report on Lawyers in Solo Practice presented to the American Bar Association Membership and Marketing Division and General Practice, Solo and Small Firm Division in January of 2007.

1. 2005 NYSBA Member and Lapsed Member Survey

The 2005 NYSBA Member and Lapsed Member Survey consisted of 251 phone interviews and 374 online responders for a total of 625 responses, drawn from current members. (This is available at www.nysba.org/solosmallcomm.) The Lapsed Member Survey consisted of 76 phone interviews and 115 online interviews for a total of 191 responses. The survey responses were broken down by the number of attorneys in the office, so it is a useful tool for the Subcommittee to see the responses of attorneys in solo or small firms (from two to nine attorneys). One portion of the survey particularly useful to the Subcommittee was the *importance rating of NYSBA services*. Attorneys were asked to rate each service listed as extremely/very important; reasonably important; or not too/not at all. Updates on the profession and law, resources for CLE, help for attorneys to improve

their professional skills and Web site access to legal resources were all rated as areas of importance for NYSBA members and lapsed members.

2. ABA Lawyers in Solo Practice Report

The ABA Lawyers in Solo Practice Report (at www.nysba.org/solosmallcomm) was presented to the American Bar Association Membership and Marketing Division and General Practice, Solo and Small Firm Division in January of 2007 and reflects many of the same findings as the New York surveys mentioned above.

Professional Research, Inc., from Bethesda, Maryland, was retained to prepare an extensive report on solo practitioners for the American Bar Association. The research objectives were to understand how solos operate their practices; what tools and resources solos use to run their practices; perceptions of association membership practices in general, and perceptions of the American Bar Association; interest in possible products/services of the ABA; who solos turn to for assistance operating their practices and to answer their questions; and sources of professional satisfaction. This is helpful to NYSBA as many of the services the ABA offers to members are the same as or similar to NYSBA's services.

V. Subcommittee to Review the Activities of Other Bar Associations

The Committee's examination of the New York State Bar Association's existing programs and resources to assist solos and small firms, as described in detail at Section II of this report, might suggest to the reader that the Association's current efforts to serve its members in this regard are comprehensive and offer little room for augmentation. Since many members depend heavily on such resources, the Committee's comprehensive approach demanded further research to discover additional opportunities to serve small law offices in New York.

Moreover, a substantial number of solo and small firm practitioners who are not members of NYSBA might consider membership based on the enhancement of existing resources or the addition of other resources, particularly those that could help reduce overhead costs or build their practices.

For these reasons, the Committee created a Subcommittee to look beyond our own organization, to the many other bar associations and related entities both in New York State and around the country that provide resources to solo attorneys and small firms. Given that mission, the Subcommittee examined the offerings of a great many of these organizations with the objective of creating a compendium of the programs, services and resources offered by other bar associations and, from that, discovering, evaluating and recommending ways in which NYSBA might better serve solo and small firm practitioners.

In scanning New York State and our nation with these objectives in mind, it was heartening to observe that in a variety of ways, NYSBA is a national leader in the resources it offers to the lawyers who are the focus of this report. Nevertheless, the Subcommittee did discover ways that NYSBA might reshape certain existing programs and add new benefits and resources to ease some of the burdens and costs associated with running a small law office.

A. Bar Association Centers

A number of bar associations maintain solo and small firm centers within their association buildings. The City Bar (formerly the Association of the Bar of the City of New York) maintains such a facility—the Small Law Firm Center—at its headquarters building at 42 West 44th Street in Midtown Manhattan,

The City Bar’s Center offers members free legal research at the City Bar’s library, with limited free legal research accessible from members’ homes or offices. In addition, the Center provides free workspace and conference rooms.

The Center also offers a luncheon series with discussions on topics such as: recruiting and hiring staff; effective use of technology; stress management; succession planning; and retirement programs.

Other county, city and similar local associations offer some or more of these services, although they tend to be impractical for statewide bar associations, especially for states as large as New York.

B. Online Legal Research Services

A significant number of solo and small firm practitioners rely daily upon online legal services such as Westlaw, Lexis/Nexis and Loislaw. While the technologically savvy lawyer today may be able to locate much research material on the Internet at no cost, such material is in many cases unreliable or the sources providing the material do not offer the full functionality and depth available from paid services such as Westlaw and Lexis/Nexis. The result is that solo and small firm practitioners who cannot afford subscription services practice at a disadvantage to other lawyers, such as those at larger firms, who can.

Currently, NYSBA offers its members the use of Loislaw. Loislaw provides free legal research to NYSBA members. Members have access to recent cases in five libraries: New York Court of Appeals Reports, New York Appellate Division Reports, New York Miscellaneous Reports, U.S. Supreme Court Reports, and U.S. 2nd Circuit Court of Appeals Reports, as well as links to NYSBA Ethics Opinions. The service also provides Loislaw CaseAlerts to members in their selected areas of practice. Loislaw provides an indirect source of revenue to NYSBA in excess of \$100,000 for royalty payments and subscriptions to NYSBA’s law library and primary law library. Loislaw, while attractive in cost, fails to offer essential research tools such as the ability to Shepardize case law.

Both Westlaw and Lexis/Nexis are generally agreed to provide far greater functionality and depth of research than Loislaw, but are prohibitive in cost for many solo and small firm practitioners. As of this writing, NYSBA maintains no contractual relationship with either Westlaw or Lexis/ Nexis, though each are willing to offer discounted rates to NYSBA members. These discount programs appear to be very competitive and would be attractive to solo/small firm practitioners if offered to NYSBA members.

However, the opportunity exists for NYSBA to take a far more proactive role in providing essential benefits to lawyers who require online services and, in so doing, to significantly increase the level of overall membership. The Pennsylvania Bar Association currently offers its members a free and substantial online Lexis/Nexis library as a major benefit of membership. A one-time annual

fee is paid by the Pennsylvania Bar Association to Lexis/Nexis and, in turn, a portion of each member's annual dues are used to fund this contract so that members can obtain an otherwise free subscription to the service. Lexis/Nexis has offered a similar proposal to NYSBA. A lump-sum annual charge of \$2.5 million (about \$32 from each member's current dues) would allow NYSBA members to have free use of Lexis/Nexis. It is likely that this offering would be of such significant benefit relative to cost that (a) current members would be far less likely to allow their membership to lapse, and (b) it would create a large incentive to the large proportion of non-member attorneys in New York. It is estimated that an increase of 10,000 members (out of the total 97,490 current non-member New York attorneys) would completely cover the cost of this service. This figure assumes a NYSBA membership dues rate of approximately \$250 per member. The current membership rate ranges from \$50 to \$250.

The Interim Report of this Committee was submitted to the Executive Committee and the House of Delegates in April of 2009 and since that time the Executive Committee has appointed a member of the NYSBA's Finance Committee to chair a committee to research the online legal research options available to NYSBA members.

C. Listserves, Discussions Boards, Blogs

The ABA and most state bar associations maintain listserves, discussions boards or blogs dedicated to small firm and solo practitioners. While many practitioners find them useful, others complain that they are burdensome, difficult to employ and less useful if they do not have a full-time editor (volunteer or paid) to sort through and categorize the issues.

Separate small firm and solo practitioner sites, such as those dedicated to insurance issues, succession plans and the like, tend to be more useful, but obviously require greater effort to maintain.

To the extent that many of the same issues confront small firm and solo practitioners throughout the country, it may be useful to offer such practitioners links to specific subject matter sites of interest.

The California Bar Association, and some others, offer a "lawyer to lawyer network" in which experienced attorneys volunteer to answer specific questions raised by small firm and solo practitioners.

A number of bar associations offer free downloadable forms for common, relatively simple transactions such as residential, store and office leases, real property contracts of sale, simple wills and similar agreements. Westlaw advertises that solo practitioners and attorneys in firms of fewer than 25 persons may access a database of Westlaw forms from their home or office computers.

Some associations offer free or discounted online CLE programs and a number offer monthly or quarterly newsletters dedicated to topics of interest to small firm and solo practitioners, often including presentations or articles by representatives of companies providing service targeted to such attorneys.

Some association small firm and solo practitioner Web sites offer free posting of: employment opportunities; attorneys seeking employment or affiliation; offices to rent or share; research; per diem coverage; equipment for sale and similar information.

D. Law Office Auditing Services

In many states a Practice Management Advisor (“PMA”) goes to law offices that need help, conducts management audits and makes recommendations to the firm. These services, while paid for by users, cost less than commercial consultants, and the services of PMAs are generally targeted to solos and small firms. NYSBA considered creating such a PMA a number of years ago, but decided not to do so because of the large number of lawyers in New York and the difficulty servicing such a large population. Since that time, about half the states in the United States have established a PMA office, including some large states like Florida and Texas. New York can learn from the experiences of these other states in order to build a program based on the needs of New York lawyers and the unique legal landscape of New York State.

VI. Conclusion

As a result of its work, our Committee has identified a number of action items, which follow, as recommendations either for direct action by the Executive Committee or adoption by the House of Delegates. These recommendations are divided into short-term (1-2 years), mid-term (3-5 years) and long-term (beyond 5 years), in order to capture the sequence of new programs and services for solo and small firm practitioners.

A. Short-term Recommendations

- This Report should be circulated widely within the state, and should be delivered electronically to all New York solo and small firm practitioners.
- Our Committee should continue to work for another year, in order to implement the recommendations in this Report in accordance with the direction of NYSBA leadership and to fully respond to the comments by OCA regarding those recommendations concerning court procedures and practices.
- The NYSBA Web site should be redesigned to provide greater and easier access to solo and small firm users, to offer a richer mix of information to assist these users, and to enhance networking and communication opportunities for users. This recommendation contemplates a greater use of listserves, blogs, social networking opportunities, and online continuing legal education offerings.
- NYSBA should create a permanent institutional home for solo and small firm practitioners within the Association. This entity should be funded through NYSBA, as opposed to through dues, and should take the form of a coordinating council. This council should include representation in key areas: the General Practice Section, the Executive Committee, the Law Practice Management Committee, the Membership Committee, the Continuing Legal Education Committee, the Publications Department, as well as other NYSBA sections and committees offering programs and services for solos and small firms. Rather than creating a redundant set of programs and services, the solo and small firm coordinating council should work through existing NYSBA entities charged with carrying out programs beneficial to solo and small firm lawyers. This council should be funded to meet at least twice each year to provide oversight of solo and small firm programs and activities. Working closely in support of and in tandem with this council, there should be a working group or team of staff from the association representing such departments

as; Law Practice Management Department, CLE, Publications, Lawyers in Transition, Lawyer Assistance, Membership and Marketing, and a Liaison to the General Practice Section. who would work on developing programs and resources for solo and small firm practitioners.

- The council should work with the Law Practice Management Committee to assemble an online bank of forms and checklists designed to assist solo and small firm practitioners in their daily practice. This should be done in a manner that does not conflict with or frustrate our efforts to market forms and other publications and probably should focus on solo and small firm practice management.
- The council should work with the Law Practice Management Committee to develop and maintain a comprehensive database of print and online resources relevant to solo and small firm practice. These resources should be made available on an affordable basis or for free to solo and small firm practitioners, and archived to support future research into solo and small firm practice.
- The council should work with the Law Practice Management Committee, to develop specific services to assist solo and small firm practitioners, including more robust practice risk management assessment services, technology support, and assistance in overall law practice efficiency. Over the course of the next year, the Committee should investigate and make recommendations regarding the need for a practice management assistance program, the alternative models available to provide such services, and funding options, including direct payment by users for such services.
- The Council, should work with the Law Practice Management Committee to sponsor an annual two day Solo/Small Firm Practice Symposium, beginning in June 2010 and each June thereafter. This Symposium should not only provide a showcase for educational programs for solos and small firms, but it should provide networking opportunities for these practitioners, and showcase the benefits of NYSBA membership to solo and small firm lawyers.

B. Mid-term Recommendations

- NYSBA should develop a membership plan, which increases solo and small firm membership. Such a plan should address ways to attract new members, ways to retain current members, and ways to maintain a dues structure that is attractive to solo and small firm practitioners
- NYSBA should work with other bar associations, including local bars, specialty bars and the American Bar Association to identify opportunities for joint efforts to serve the needs of solo and small firm members. NYSBA should assume a leadership role in building mutually supportive relationships with these other organizations.
- Over the next three to five years, NYSBA should increase the volume of educational programs and publications targeted to solo and small firm practitioners, in print, live CLE and online formats.
- NYSBA should continue to investigate opportunities for discounted or free electronic research resources for solo and small firm practitioners. The current Loislaw program provides some assistance, but its limited features reduce its utility for users.

In addition to the libraries provided by Loislaw we should create a cafeteria of research services giving solo and small firm lawyers affordable access to the same resources that lawyers in larger firms have.

C. Long-term Recommendations

- The Executive Director should explore the opportunity to enhance staff support and other resources of the Association providing assistance to solo and small firm lawyers, in order to increase the level of support for this important segment of bar membership.
- NYSBA should develop a long-term strategic plan for supporting solo and small firm practitioners. This strategic analysis should occur in 2014, following implementation of the foregoing short and mid term recommendations in this plan, in order to review the progress and assess the needs of solo and small firm practitioners at that time, and to make new recommendations, then and every five years thereafter.
- NYSBA should adopt as a core institutional goal support for and assistance to solo and small firm practitioners. The Association should provide sufficient resources to permit this goal to be achieved.
- OCA should continue to work with NYSBA to improve access to the courts for solo and small firm practitioners by enhancing online systems for e-Filing, calendar information, case tracking, forms and access to court files. In addition, the NYSBA should cooperate with OCA to enhance its Web site, Wi-Fi access, e-filing and fax communications with the courts, teleconferences and videoconferences, summary jury trials, effective alternative dispute resolution programs and other recommendations of the Kay Commission Report discussed above.

These recommendations contemplate a major shift in the quantity and quality of NYSBA programs and services to solo and small firm practitioners. The recommendations are not intended to diminish the value of existing programs and services. Rather, our Committee finds that given the number of solo and small firm practitioners and their critical importance to the long-term health of NYSBA, greater emphasis on this group's needs should be provided. Our Committee notes that many of the recommendations require the allocation of resources in order to accomplish the identified objectives. Our Committee also notes that many of the problems solo and small firm lawyers face relate to the burdens they encounter in their dealings with the court system. Resolution of these problems will involve ongoing dialogue with the Office of Court Administration, as well as collaborative effort with local bar associations and courts.

We thank President Bernice Leber for creating this Committee and providing it the opportunity to serve the New York State Bar Association to improve the lot of solo and small firm practitioners. We view this Report not as an ending, but as a renewal and redoubling of efforts to assist the solo and small firm lawyers of this state.

Appendix A

Report of The Commission to Examine Solo and Small Firm Practice February 2006

APPENDIX

RECOMMENDATIONS

PART I

STREAMLINE COURT PRACTICES TO FACILITATE SOLO AND SMALL FIRM PRACTICE

A. Preliminary Conferences

The Commission recommends that the court system implement the following reforms to make the preliminary conference process more productive:

- Allow attorneys to download the preliminary conference form, complete it out of court, and fax or e-mail it to a central preliminary conference clerk in lieu of an appearance
- Establish statewide uniform and simple procedures for the adjournment of a preliminary conference, such as by e-mail or fax
- Establish uniform procedures whereby the preliminary conference is adjourned *sua sponte* when a dispositive motion has been made until after a decision has been rendered
- Establish statewide uniform and simple procedures for conducting preliminary conferences
- When appearances are required, implement procedures to assess monetary penalties against counsel who appear late without good cause
- When appearances are required, schedule preliminary conferences later in the day to reduce the possibility of scheduling conflicts with the morning calendars or other tasks
- Where appearances are required, implement staggered calendars
- Reassess the sufficiency of the preliminary conference form and determine whether other material should be included on the form which would make the form more meaningful
- Determine whether appearances should only be required when counsel cannot resolve an issue on the preliminary conference form
- Study whether preliminary conferences are needed in each county, especially upstate

B. Pre-Trial Conferences

The Commission recommends that the court system:

- Explore ways to enhance and improve the scheduling and conduct of pre-trial conferences to enable attorneys to achieve quicker and more meaningful settlements
- Establish uniform and simple procedures for conducting pre-trial conferences.

C. Pre-Argument Appellate Conferences

The Commission recommends that the Appellate Divisions revise their rules to permit counsel to opt out of a pre-argument conference without prejudice to the appeal.

D. Staggered Calendar Calls

The Commission recommends that:

- Courts set motion return dates at staggered, fixed times.
- Courts stagger preliminary conferences, if not conducted by telephone, or disposed of by mail or e-mail
- Courts stagger pre-trial conferences with realistic estimates for conference lengths and adhere to publicized schedules
- Family Courts schedule cases throughout the day, i.e., at 9:30 a.m., 10:30 a.m., 11:30 a.m., 2:00 p.m., 3:00 p.m., and 4:00 p.m.
- Courts stagger criminal arraignments
- Town and Village Justice Courts stagger appearance times in accordance with the number of cases on the calendar.
- Supreme and Surrogate Courts establish separate calendars for *pro se* litigants and heirs
- Courts and judges retain some discretion to deviate from any staggered calendaring rule
- The court system implement a pilot project in a large urban area to test staggered calendars by tasks, as well as courts, prior to establishing any new statewide rules on staggered calendars
- Courts stagger motion argument times in Oral Argument Parts
- Courts discontinue the practice of scheduling multiple tasks on any one case on motion term calendars in larger cities
- Courts reassess and revise Central Part systems
- Courts publish dockets for attorneys through e-mail and on the court website well in advance of hearing dates.

E. Discovery Management

The Commission recommends that the courts:

- Require parties to attempt to agree on a discovery plan as soon as possible following commencement of litigation and submit the plan to the court to be "so ordered" and accepted by fax or e-mail. If parties and the court are all in agreement, the court should not require an in-person preliminary conference.
- Encourage early court intervention to manage and streamline a discovery plan to the extent that parties cannot otherwise agree.
- If discovery management conferences remain mandatory, utilize such conferences as opportunities to explore and encourage early settlement/resolution.
- Issue scheduling orders, which provide for, at a minimum, discovery cutoff dates, pretrial/status conferences, disclosure of experts, and dates for filing the note of issue.
- Adopt a form scheduling order for statewide use and make the form available to attorneys on the OCA website.
- Insist upon compliance with scheduling orders absent good cause.
- To avoid delay and expense, permit the use of teleconferences and electronic communications to address discovery problems, without the necessity of formal motion practice and personal appearances.
- Explore the use of JHOs and nonjudicial staff to meet (or teleconference) with parties to attempt to resolve disputes.

F. Uniform Statewide Rules, Forms, and Practice

The Commission recommends that:

- The Chief Judge appoint a commission to determine whether local rules should be converted, incorporated, or subsumed into one uniform set of rules; or eliminated entirely.
- OCA improve its website to create a comprehensive on-line database of downloadable common litigation and estate documents, available in Word and WordPerfect format and in English and Spanish, so that attorneys can easily download and copy forms. Such forms would include retainer agreements for commercial and matrimonial proceedings, notice of appearance, notice of motion, notice of appeal and order to show cause (and other forms to supplement the forms currently available on the OCA website such as the Statement of Rights and Responsibilities, Request for Judicial Intervention, Request for Appellate Division Intervention ("RADP"), and uncontested matrimonial forms).

- The court system post rules and downloadable forms which exist in a specific locality on its website and create an on-line database of all uniform rules to assist attorneys in identifying particular local rules
- The court system creates an on-line database of county by county filing procedures to assist attorneys in determining the precise rules which apply to the documents they wish to file
- The court system establishes uniform statewide procedures for the conduct of preliminary conferences

G. Technology As a Tool to Connect the Solo and Small Firm Practitioner with the Court System

1. *The Need for Wider Use of Facsimile Transmissions*

The Commission recommends that the court system adopt rules which:

- Permit the transmission of stipulations of adjournments, preliminary conference orders, and correspondence by facsimile.
- Require that courts provide copies of signed or declined orders to show cause to counsel by facsimile
- Require courts to provide copies of decisions, orders, and judgments to counsel by facsimile
- Expand the pilot program for filing by facsimile to all types of claims and actions and widely publicize same
- Consider allowing service by fax, but restrict such service to certain procedural *pro forma* matters

2. *Retest Teleconferencing and Introduce Videoconferencing*

The Commission recommends that the court system:

- Select several judicial districts in which to retest teleconferencing
- Solicit bids from different companies to provide teleconferencing services for conferences involving multiple parties.
- Assess teleconferencing by making it available to particular judges within each court and within each judicial district
- Implement a pilot videoconferencing program and widely publicize it through different channels, including the UCS Website, the New York Law Journal, and local bar associations
- Promote the use of videoconferencing in the courts, particularly for complex motion practice and appellate arguments
- Establish centrally located videoconferencing centers in courthouses throughout the State

3. *Filing by Electronic Means Will Lead to Greater Efficiency for the Solo and Small Firm Practitioner But Only if Introduced Slowly and with Support*

The Commission makes the following recommendations with respect to e-filing:

- The legislature should expand the voluntary use of FBEM to other types of cases and to other counties
- At a minimum, FBEM should be extended to pretrial conference orders, stipulations, orders to show cause, and other specified filings in all types of actions and proceedings
- Courts should generate and file orders, judgments, notices and other documents electronically
- Since education and training are essential to the success of FBEM, the court system should provide and advertise appropriate, accessible, and frequent training on FBEM
- The court system should provide additional and centrally located technology centers throughout the state that solo and small firm practitioners may use to e-file and reap the benefits of FBEM without purchasing equipment which are staffed by court personnel to provide in person assistance for troubleshooting
- The court system should enhance its online tutorial, the FBEM Practice System, by providing a help option and should regularly review the content of its downloadable user manual, website and other reference tools to ensure their effectiveness in facilitating FBEM training
- The court system should review the FBEM process and implement improvements and changes through feedback from the Administrative Judges, the trial bench, and the bar
- The court system should adopt uniform statewide standards and guidelines for FBEM
- The court system should develop a public relations or marketing campaign to encourage the use of FBEM

4. *The Availability of Court Files on the Internet*

The Commission recommends as follows:

- The court system should ensure that the recommendations of the Commission on Public Access to Court Records are implemented to the fullest extent possible
- The court system should provide a system for public access to case documents which is easily searchable and in which a user can view a document filed with the court by a single click of the mouse on a docket entry, rather than be required to manually launch a separate application for document viewing

- Court staff should continue to maintain control over access to cases deemed confidential by statute or order
- Attorneys should safeguard confidential and proprietary information, including but not limited to, social security numbers, financial account numbers, and the names and birth dates of minor children
- In providing public access, the court system should continue to ensure the confidentiality of case files in family court, matrimonial, certain guardianship, criminal, and other matters as provided by applicable law

5. *The Unified Court System Website*

The Commission recommends that the court system enhance and improve its website by including:

- A button labeled "Site Table of Contents" rather than "Search" to access the webmap or Site Table of Contents simply by clicking on the button
- Under the category of judges, the complete address, including the room, telephone, and fax numbers for chambers and courtrooms, specifically identified; the names of the part clerks and judges' law clerks or court attorneys and other staff, including their particular responsibilities, current e-mail addresses, fax numbers, and current telephone numbers; judges' rules, part rules and preferences, including information as to whether the part has a second call and if so, at what time; and the procedures for adjournments, conferences, discovery schedules, and time frames
- A statewide directory of all court personnel linked to the various local court web pages
- The names and telephone numbers of the clerks for each department on the local court web pages
- Online answers to frequently asked questions
- Information about filing requirements for particular forms and a list of court forms
- Uniform forms which can be completed and submitted either electronically or in hard copy which are compatible with *Word* and/or *WordPerfect* word-processing software programs, in both English and Spanish
- Access to the status of filings and other matters
- Sample pleadings and other widely used or required documents such as retainer agreements
- A search function for the decision database in addition to listing decisions simply by date

- Information regarding future court appearances which is uniformly available for each court by party name, index number, or firm name.

6. *Availability of Wireless Internet Service and Other Technological Advances Recently Implemented*

The Commission recommends that:

- The court system make Wireless Internet Service available in every court in which service is geographically available
- The court system provide more plug-in availability in courtrooms and in the courthouses generally
- Courthouses set aside at least one room equipped with computers, wireless internet access and plug-in availability, for attorneys to sit and work (and even hang their coats)
- The court system provide training in the technological presentation of evidence, which would increase the visibility of such technology to the bar.

7. *Use of E-mail to Communicate with the Courts*

The Commission recommends that:

- Courts use e-mail to give counsel notice of the date and time of appearances
- Courts permit practitioners to check on the status of orders to show cause and other applications by e-mail
- The court system explore implementing a process to encourage increased communication with the courts through e-mail

PART II

HOLDING DOWN THE COSTS OF PRACTICE FOR THE SOLO AND SMALL FIRM PRACTITIONER

A. The Costs of Litigation

The Commission recommends that:

- Since the "Non Jury Initiative" and the "Summary Jury Trial" used in some jurisdictions are both practical methods of resolving cases without incurring exorbitant expert fees and litigation expenses, the court system should implement such programs on a statewide basis as alternatives to regular trials in a process established as follows:
 - 1 At the time a note of issue or notice of trial is filed, the plaintiff should be given the option to elect an "expedited trial" in the form of a Non Jury Initiative or a Summary Jury Trial
 - 2 Within twenty days of the plaintiff requesting a Non Jury Initiative or a Summary Jury Trial, the defendant should have the right to serve and file an objection to the plaintiff's request, and state the reasons why said request is being objected to
 - 3 In the event the plaintiff does not request the Non Jury Initiative or the Summary Jury Trial, the defendant should have the right to make a request for a Non Jury Initiative or a Summary Jury Trial within twenty days of the plaintiff filing and serving a note of issue
 - 4 All cases which are placed on a Non Jury Initiative or a Summary Jury Trial track should be scheduled for a trial date, no later than 120 days after the filing of a note of issue
 - 5 For good cause shown, parties should be permitted to opt out of the Non Jury Initiative or a Summary Jury Trial track and have their case restored to the general trial calendar in the same position commensurate with the initial filing date of the note of issue. A judge in his/her discretion may advance the case on the general calendar
- In order for the above processes to serve as effective methods of saving or reducing expert fees and litigation expenses, the applicable rules (*see* CPLR § 3101 (d); 22 NYCRR §202.17) regarding expert retention and disclosure should be examined and amended as necessary.

- The New York State Legislature should increase the \$50 00 financial penalty set forth in CPLR § 2308 to foster greater compliance with judicial subpoenas

B. Alternative Dispute Resolution as an Alternative to Litigation

The Commission recommends that:

- The court system establish a task force to study ADR programs and issue a comparative analysis to define the landscape of such programs in the courts in the years ahead
- The court system establish statewide programs, regulations, and evaluation processes to ensure best practices in ADR
- The court system establish enhanced standards whereby neutrals such as mediators undergo extensive negotiation and settlement training and are subject to periodic evaluation; these standards should include provisions that neutral volunteers should be experienced attorneys, chosen with the assistance of the local bar associations and administrative judges
- The court system review and evaluate the mandatory mediation programs currently in effect in the various Judicial Departments in New York State to determine if mandatory mediation should be required, particularly in cases with ad damnum clauses of less than \$100,000
- The court system examine whether participation in neutral evaluation programs should be mandated
- ADR programs should require parties to be present. With respect to defendants represented by insurance carriers, insurance adjusters or someone with authority to settle on behalf of defendants should be present or available by telephone
- With respect to those counties where mediation is required prior to trial, Court Scheduling Orders should be revised to include dates and times for mediation in mediation parts with attorneys required to be present at scheduled times; mediation should be held at the outset of the case after filing of the pleadings, and again after the note of issue has been filed

C. Support the Award of Counsel Fees for Non-Monied Spouses

The Commission believes that the judiciary should be more pro-active in ordering and enforcing awards of counsel fees and costs to non-monied spouses and recommends the following:

- Judges assigned to matrimonial parts receive specific training relating to awards to non monied spouses to ensure the proper issuance and expeditious enforcement of such awards as may be appropriate
- The court system should explore implementing streamlined procedures for securing and enforcing counsel fee awards ¹⁶¹

D. Attorney Malpractice Insurance and the Impact on Solo and Small Firm Practitioners

The Commission recommends that:

- All attorneys practicing law in the State of New York voluntarily carry minimum levels of professional malpractice insurance
- The court system create a task force to review the availability and affordability of malpractice insurance in New York State

161. Where appropriate, courts may consider whether an order should designate the counsel fee award as a form of spousal support and/or child support to avoid discharge in bankruptcy (see 11 USC §523(a)(5) and 11 USC §101 (14A))

PART III

REDUCING REGULATORY BURDENS ON THE SOLO AND SMALL FIRM PRACTITIONER

A. Rule-Making and its Effect on Attorneys

The Commission recommends that rule-making authorities adopt (or continue) the following steps as part of a regular course of rule-making practices to benefit solo and small firm practitioners:

- Before any rule-making authority establishes any new rule and/or regulation that would affect the day-to-day practice of law by attorneys within the State of New York, the rule making authority should submit a notice of the proposed rule/regulation to the various bar associations throughout the state - local, speciality, and state associations - as well as cause the same to be posted prominently in the courthouses throughout the State of New York and on the UCS website at least ninety (90) days before the implementation date of the rule/regulation
- Bar associations and/or individual attorneys admitted to practice in the State of New York should be afforded the opportunity to submit written comments on the proposed rule at any time within 45 days of the date of receipt of the aforesaid notice of proposed rule and/or regulation from the rule making authority
- When a rule-making authority determines that a proposed rule change will have a substantial economic impact on the profession, it should consider holding a public hearing within each of the four departments at a date, time and location convenient for members of the bar in order to entertain oral comment on the proposed rule and/or regulation. The public hearing should be conducted no later than sixty (60) days after the publication of the notice set forth above
- If a rule-making authority decides to adopt a proposed rule/regulation, it should consider utilizing approaches designed to avoid undue deleterious economic effects or overly burdensome impacts of the rule or regulation upon attorneys throughout the State
- Upon publishing a proposed rule or regulation, a rule-making authority should set forth in writing the projected costs for the implementation of and compliance with the rule upon attorneys. If such an estimate of costs cannot be established, through court system data the rule-making authority should include a reason or reasons why the estimate is not provided
- Upon publishing a proposed rule or regulation, a rule making authority should set forth in writing the necessity and benefits to be derived from the rule

- Upon publishing a proposed rule or regulation, a rule-making authority should publish a statement detailing what, if any, reporting requirements, forms or other paperwork attorneys will be required to prepare as a result of the rule being proposed
- Upon publishing a proposed rule or regulation, a rule-making authority should set forth in writing any other considerations that led to the proposed rule-making
- After completion of the above procedures, and after due consideration of the comments received, a rule-making authority may (a) withdraw the proposed rule, (b) proceed to adopt the proposed rule, or (c) modify the proposal and seek written comments on the said modification

B. Mandatory Continuing Legal Education and Assigned Counsel Cases

The Commission recommends that:

- The CLE Board review the panoply and quality of course offerings as part of the mandatory re-certification of MCLE providers
- The court system publicize that attorneys may receive MCLE credits for technology courses as part of their MCLE requirements
- Assigned counsel receive one MCLE credit for every 12 hours of assigned counsel work, with a maximum of four MCLE credits per reporting period
- Volunteer neutrals who participate in court annexed alternative dispute resolution programs receive MCLE credits for their work

C. Disciplinary Grievance Procedures

In order to create a uniform system, the Commission recommends that:

- The New York State Legislature amend the Judiciary Law to vest in the Administrative Board of the Courts the responsibility to establish uniform rules and procedures for the attorney disciplinary process in all four appellate divisions
- Absent such legislation, the Appellate Divisions adopt statewide uniform rules

D. Procedures for Resolving Fee Disputes

The Commission recommends that the Part 137 Rules and Guidelines be revised as follows:

- If the client initiates a fee dispute, the client must specify prior to the arbitration which charge or part of the bill or legal service the client disputes and provide such notice to the attorney. The arbitrator(s) must specifically limit the hearing to those items in the bills or performed as services specified by the client.
- If a client does not object to billings received on a regular basis through the course of representation, the burden should shift to the client to provide a meritorious explanation as to why he or she did not object to the attorney's fees within the time prescribed by the retainer agreement, and to prove that the attorney's fee was not fair or reasonable.
- Training curricula for arbitrators should be uniform statewide and specify how arbitration decisions are made, explain the significance of the signed retainer agreement or engagement letter, and explain that the role of the arbitrator is to decide whether the attorney's fees are "fair and reasonable" by applying the terms of the engagement letter or retainer agreement, unless the fees charged are illegal, excessive, or otherwise prohibited by law.
- Establish a uniform approach to appoint arbitrators and structure panels. On any panel where only one arbitrator sits, that arbitrator should be experienced in the area of law in which the arbitrating attorney provided representation to the complaining client. On panels of three, the panel should consist of at least two attorney arbitrators, one of whom has some practical experience in the area of law in which the arbitrating attorney provided representation to the complaining client.
- Amend the rules to provide that the arbitration award is final subject only to review under CPLR article 78. Neither the attorney nor the client may request a *de novo* hearing.

E. Matrimonial Regulatory Issues Affecting Solo and Small Firm Practitioners

1. *The Process for Obtaining Security Interests From a Client to an Attorney*

The Commission recommends that:

- The process for obtaining a security interest should be reviewed, and if appropriate, streamlined, simplified, expedited, or eliminated as overly burdensome requirements.

- Amendments to the regulations should explore ways to protect the client's rights, weighed against the expense and need for qualified counsel
- Where there is an agreement between the client and the attorney consenting to a security interest, the issue should be addressed and presented at the preliminary conference, thus permitting speedy judicial review, and approval as appropriate

2. *The Ability to Withdraw as Attorney for Non Payment or the Failure by the Client to Honor the Terms of Retainer Agreement*

The Commission recommends that:

- Judges consider the economics of practice when balancing the state's need to protect the interests of litigants
- Courts should grant requests for withdrawal for nonpayment of fees except in extenuating circumstances in order to avoid a repugnant situation for attorneys

3. *Increase the Annual Cap on Awarded Fees for Privately Paid Law Guardians and Push for Enforcement of Such Awards*

The Commission recommends that:

- Part 36 should be amended to raise the cap on compensation for law guardians to \$75,000. The cap should be computed on awards actually paid from the date collected.
- To secure the payment of orders awarding law guardian fees, judges should consider including a provision in their orders that those fees are in the nature of child support and are not dischargeable in bankruptcy
- To facilitate the enforcement of law guardian fees, final orders should specify that in the event of a default in payment by a set date, the award can be reduced to a judgment without further proceedings based on the law guardian's affirmation of non compliance

PART IV

STRENGTHENING THE PROFESSION

A. Lawyer Advertising

The Commission makes the following recommendations concerning lawyer advertising:

- The code format of the existing Code of Professional Responsibility should be revised to embrace the rule format as set forth in the ABA Model Rules of Professional Conduct.
- The revised rules should make the code commentaries that relate to lawyer advertising part of the new rules to be approved by the appellate divisions
- Prior to enactment of any major disciplinary rule changes involving lawyer advertising, a statewide survey should be sponsored by the Office of Court Administration to determine if "saturation advertising" is viewed by the New York public as an intrusion on privacy that reflects poorly upon the profession.
- A statewide Commission on Advertising should be established by the Chief Judge on a district or departmental basis with appropriate regulations that include the following provisions:
 - (a) All attorneys must maintain copies of their advertising material for a period to be established by the Commission on Advertising ("CA") and file copies of the advertising materials with the CA within a prescribed time period
 - (b) Attorneys must pay a fee to the CA for the required filing to defray the cost of the CA's operation
 - (c) The CA shall randomly monitor all forms of advertising that the CA determines to be "false, deceptive or misleading," and advise the advertiser of its decision in writing
 - (d) Upon the specific voluntary request of an advertiser to the CA, render an opinion whether certain proposed advertising is "false, deceptive or misleading" to the proposed advertiser
 - (e) If the CA makes a negative determination and the advertiser proceeds with its use, the CA shall so inform the appropriate Grievance Committee

B. Attorneys Must Make a Plan for the Continuity of Their Practice

The Commission recommends that:

- Solo and small firm practitioners who find themselves unable to practice, for whatever reason, have an advance exit plan already in place
- Through proper education, most solo and small firms are likely to implement an appropriate advance exit plan and designate people they know and trust to implement such a plan
- Local and state bar associations should develop committees to educate their members about Advance Exit Plans and monitor their implementation
- Local and state bar association committees should provide a panel of qualified attorneys to step in for solo and small firm practitioners when their practice is interrupted
- OCA should encourage attorneys to develop advance exit plans through educational efforts and postings on the UCS website
- Efforts should be made to monitor the effectiveness of the various planning initiatives. It is important to look at the voluntary versus involuntary process and to evaluate the effectiveness of any proposed regulation from various points of view including protecting the client interest, protecting the attorney whose practice is interrupted, and, certainly, protecting the attorney's family who will undoubtedly experience financial hardship if the practice is interrupted

C. Diversity within the Legal System for the Solo and Small Firm Practitioner

The Commission makes the following recommendations:

- Encourage bar associations to educate solo and small firm practitioners as to the benefits of supporting diversity in their own organizations and elsewhere in the legal system
- Promote diversity in the pool of practitioners qualified for court appointments as fiduciaries and assigned counsel through training programs
- Continue and expand diversity awareness and sensitivity programs for all judicial and nonjudicial court employees
- Encourage bar associations to develop and maintain mentoring programs and networking opportunities for solo and small firm practitioners of diverse backgrounds
- Strengthen interpreter services for non-English speaking litigants in the courts

D. Pro Bono Services

In the face of great need and apparent stagnant participation by roughly half of the Bar, the Commission recommends that:

- The provision of pro bono services to the poor must remain voluntary. In those areas where it is effectively mandatory, it should revert to voluntary.
- All attorneys should commit to provide a minimum of 20 hours per year of pro bono services. This amounts to less than two hours per month. Where possible, attorneys should aspire to exceed the goal set by the NYSBA. Attorneys in larger firms should perform a proportionate share of pro bono services. All firms should have policies that encourage, recognize, and reward attorneys to participate in pro bono activities.
- The courts should provide incentives to attorneys who participate in pro bono activities. This should include more CLE credit for pro bono work and specific public recognition of attorneys who do the public good. Attorneys should voluntarily keep track of the time they spend on pro bono matters.
- OCA and local bar associations should provide free CLE and training for attorneys who agree to perform a specified number of hours or cases of pro bono services. Mentors should be assigned to these attorneys to assist them. Training should include a broad series of topics including but not limited to public benefits law, real estate law, landlord and tenant issues, predatory lending, divorce, custody, grandparents' rights, foreclosure, and other issues faced by the poor.
- The New York State Legislature should enact legislation which provides an exemption from malpractice claims in pro bono cases or establishes a public fund to cover such claims (currently Private Attorney Involvement (PAI) coverage is provided by some legal services programs).
- Programs which match attorneys and pro bono clients should provide training for the clients. The training should include instruction designed to ensure clients have reasonable expectations, understand that there are no guaranteed outcomes in litigation, recognize the benefits of settlement, and maintain appropriate interactions with attorneys.
- Bar Associations at all levels should organize more programs to do the public good locally. It should also be noted that there are ways to perform pro bono in a limited fashion such as at legal clinics.
- Bar Associations should more widely publicize the means to participate in pro bono activities, including on their websites.
- The New York State Legislature and the United States Congress should provide more funding to legal services corporations to represent the poor since the needs of the poor cannot be met by pro bono attorneys alone.

- Bar Associations, legal services corporations, and larger law firms should provide secretarial, library, and technology assistance to lawyers in connection with their pro bono services
- Legal publishers should provide free online research time for pro bono cases
- Law students should begin doing the public good by volunteering to do legal research and assist with drafting documents under the supervision of private attorneys, legal services corporations, and clinics
- Those attorneys who are prohibited from outside work by the nature of their employment should be encouraged to donate funds equivalent to 20 hours of pro bono work to support legal services corporations
- Local bar associations should sponsor frequent *pro se* divorce clinics. County Clerk and court personnel should participate in training the attorneys who will voluntarily staff these clinics
- The District Attorneys and Attorney General should prosecute non-lawyer businesses which are engaged in the unlawful practice of law. Fines should be imposed which can be used to support the work of legal services corporations (These businesses also exact large fees from poor consumers by claiming that they can do what an attorney does for less money. Often they are more expensive and the work product is unusable)
- The organized bar should publicly recognize lawyers who do the public good on a frequent basis. This will encourage attorneys to participate and help bolster the reputation of lawyers generally
- Courts should give attorneys who serve pro bono greater consideration in scheduling and hearing court appearances in these cases by providing expedited or more immediate access, or by establishing separate calendars for pro bono cases or staggering calendars to expedite the hearing of pro bono cases
- OCA should publicize that probono.net/ny provides a comprehensive resource on pro bono opportunities. OCA should place the link to probono.net/ny in a more prominent place on its website.
- Bar Associations should maintain referral lists which consistently include attorneys who will take pro bono and modest means cases.

Appendix B

Interim Report on Implementation of the Report of the Commission on Solo and Small Firm Practice

**INTERIM REPORT ON IMPLEMENTATION
OF THE
REPORT OF THE COMMISSION ON SOLO AND SMALL FIRM PRACTICE**

March 2009

TABLE OF CONTENTS

A. Filing by Electronic Means

- Expansion of Authorized Jurisdictions and Case Types
- Training and Support
- Revised E-Filing Rules
- Updated User Manual and Redesigned Web Site

B. Online Calendar and Case Information

C. eTrack -- Free Online Case Tracking Service

D. Online Forms

E. Availability of Court Files on the Internet

F. UCS Web Site

- Navigation and Search Functions
- Accessibility

G. Wireless Internet and other Technological Advances

- Wi-Fi Access
- Digital Evidence Presentation

H. Use of Email and Facsimile Transmissions to Communicate to the Courts

I. Teleconferencing and Videoconferencing

J. Summary Jury Trials

K. Alternative Dispute Resolution

- Assessment and expansion
- Qualification and training of neutrals

L. Support the Award of Counsel Fees for Non-Monied Spouses

- Training
- Award and Enforcement of Counsel Fees
- Streamlining enforcement

M. Rule-Making

N. Continuing Legal Education

- Provider Certification and Quality Review
- CLE Credit

O. Procedures for Resolving Fee Disputes

P. Increase the Annual Cap on Awarded Fees for Privately Paid Law Guardians

Q. Lawyer Advertising

R. Diversity within the Legal System

- Training for Fiduciaries and Assigned Counsel
- Diversity Awareness and Sensitivity
- Court Interpreters

S. Pro Bono Services

- ProBonoNY
- Other Pro Bono Programs
- Publicizing ProBono Information

**INTERIM REPORT ON IMPLEMENTATION
OF THE
REPORT OF THE COMMISSION ON SOLO AND SMALL FIRM PRACTICE**

In February 2006, the Commission to Examine Solo and Small Firm Practice issued a report recommending a series of initiatives for the Judiciary, the Legislature and bar associations to consider. The Commission recommended reforms to better support solo and small-firm practitioners by such means as increasing reliance on technology, streamlining court procedures, and reducing the direct costs of litigations

In the three years since the Commission report, the Judiciary has been steadily addressing many of the Commission's recommendations. This update provides a status report on these ongoing efforts

A. Filing by Electronic Means

E-filing represents perhaps the single most powerful tools for leveling the playing field between the large firm and the solo and small firm practitioner.

Despite the statutory requirement of consent of all parties, continued progress is being made in expanding the use and acceptance of e-filing. Since 2000, close to 129,000 cases have been e-filed. As of December, 2008, there were 9,230 attorneys registered to use the system.

Recent developments, responsive to Commission recommendations, in support of expanded e-filing include:

- Expansion of Authorized Jurisdictions and Case Types Over the past several years, OCA has sought legislative authorization to expand e-filing to new counties and to new case types, in large part, based on recommendations from the State Bar Association and other bar groups. As of the most recent amendment to the legislation (2008), e-filing is now available in 17 counties for use in commercial, tort and tax certiorari cases,¹ and in two of those counties—Broome and Erie—in any type of case that the Supreme Court determines. E filing is also authorized for Surrogate's Court in five counties -- Chautauqua, Erie, Monroe, Queens and Suffolk, as well as in the Court of Claims, and in New York City Civil

¹Those counties are: Albany, Bronx, Broome, Erie, Essex, Kings, Livingston, Monroe, Nassau, Niagara, New York, Onondaga, Queens, Richmond, Suffolk, Sullivan and Westchester

Court, for no-fault claims filed under section 5102 of the Insurance Law

- Training and Support OCA has expanded its e-filing training and support program. OCA also maintains the E-Filing Resource Center, which is staffed by experienced clerks fully familiar with the e-filing system, who are available by telephone and email to answer questions from attorneys, as well as Judges, court personnel, and County Clerk staff. This January, representatives from the Resource Center again attended the State Bar Association's annual meeting, providing information, demonstrations, and registering attorneys for the e-filing program. In addition, the Resource Center publishes a newsletter, to report on the latest developments in e-filing and encourage increased use of the system.

In addition, in May, 2006, Jeffrey Carucci was appointed to the newly-created position of Statewide Coordinator for E-Filing. Mr. Carucci and representatives of the E-Filing Resource Center have conducted scores of training sessions across the state, and hundreds of attorneys have taken advantage of this program, for which CLE credits are awarded at no cost.

- Revised E-Filing Rules In May 2008, the Chief Administrative Judge issued revised e-filing rules for Supreme Court, as well as new rules for e-filing in New York City Civil Court and Surrogate's Courts. The rule changes reflect comments and suggestions by attorneys and other e-filing users. Among the changes are simplification of the procedures for the electronic service of interlocutory papers through the e-filing system, and authorization for use of a "filing agent," such as a paralegal or service company, to file on behalf of an attorney (Uniform Rule § 202.5-b).
- Updated User Manual and Redesigned Web Site The online E-Filing User Manual has been completely revised, as have the online FAQs. In addition, a redesigned E-filing web site will be introduced within the coming months.

B. Online Calendar and Case Information

OCA continues to expand online access to calendar and case status information (e.g., the next scheduled court appearance, the filing of a decision). Currently online case and calendar information is available on the eCourts page of the UCS web site for the following courts:

- Supreme Civil, all 62 counties
- Local Civil, all New York City counties and three cities outside of NYC

- Criminal, all New York City counties and eight counties outside of NYC
- Family (with redactions to ensure privacy, including names of litigants), all 62 counties
- Housing, all New York City Counties and the Buffalo City Court

Additional counties and cities will be added to the eCourts site as those courts transition to new automated case management systems that are now under development²

C. eTrack – Free Online Case Tracking Service

The Commission noted that the UCS web site included a feature called "CaseTrac," which provided subscribers with case tracking and email notification services for a small monthly fee for each case tracked. This feature has been renamed eTrack, and is now available at no cost.

This service covers Civil Supreme in all 62 counties and local civil cases in New York City and three upstate cities. Subscribers to this free service sign up online for email notifications of case activities in as many cases as the subscriber chooses. Notifications include email notice of upcoming appearances, at the subscriber's option, either 1, 7, 15 or 30 days prior to the scheduled appearance. As of December 2008, eTrack has almost 13,000 user accounts tracking 225,000 cases.

D. Online Forms

Over the past several years, there has been a significant increase in the number of forms and documents available on the court system's web site. Many of these forms are downloadable in several formats (Word, WordPerfect, PDF, and Omniform). Particular attention is being paid to the development of statewide, fillable forms.

E. Availability of Court Files on the Internet

The Commission recommended that the court system expand availability of court documents on the Internet, with adequate protection for confidential and private information.

In addition to the increased number of decisions and to the growing volume of information about court calendars and case status available online, there are two pilot

²For example, by March 2010, every city court in the State will be on the new local civil automated case management system, and therefore calendar and case information about these courts will be added to the eCourts site.

projects making case file documents (summons, complaints, answers, notices of motions, etc), available online, one in New York County and the other in Broome County. The New York County project provides online access to scanned images of court documents in Supreme Court Civil cases, while the Broome County project covers Supreme Civil and criminal cases in County Court. In both pilots, the courts have published guidelines to protect the confidentiality of certain information (such as social security numbers, financial and health information)

Later in 2009, both of these pilots will be evaluated, to determine how best to expand the Internet posting of court files to other counties

F. UCS Web Site

The UCS web site – which receives more than 500,000 visits each month – continuously grows and improves. At the time of the Commission's report in February 2006, the web site had 39,000 static web pages and 7,000 PDF files. Today the site includes more than 53,000 web pages and almost 150,000 PDFs

The Commission recognized that the UCS web site is "a great source of information and valuable tool for the solo and small firm practitioner," and made a number of recommendations designed to enhance the usability and usefulness of the web site, including improved search and navigation functions

- Navigation and Search Functions In light of the vast amount of information found on the site, constant attention is paid to improving navigation, to ensure that the content can be easily found by users. In March 2009, the UCS web site will be redesigned to add new navigation tools (including a topical list of Frequently Asked Questions, and a list of Most Requested Pages) and to make all navigation aids easier to find and use, by placing them prominently on the home page of the site
- Accessibility The Commission also highlighted the importance of ensuring that the web site is accessible to the disabled. This issue is an ongoing priority, and OCA seeks to comply with the accessibility standards of the World Wide Web Consortium and the NY State Department of Technology. OCA is also working with consultants from the National Federation of the Blind, who are reviewing pages of the web site and making recommendations for upgrading accessibility³

³The Commission also commented on the availability of foreign language content on the web site. Over the past several years, there has been significant progress in this area. For materials in five of the most common foreign languages (Spanish, French, Chinese, Korean and Russian) there are links from the homepage of the UCS web site

G. Wireless Internet and other Technological Advances

Other Commission recommendations with respect to technology included installation of Wireless Internet (Wi-Fi) service in all in courthouses, as well as expanded availability of digital evidence presentation systems. The status of these initiatives are:

- Wi-Fi Access As of December, 2008, Wi-Fi access is available in more than 100 courthouses. Service is available in 60 Jury Assembly rooms and in 31 public access law libraries. Installation of Wi-Fi service has become a standard feature in new courthouse design, and OCA will continue to implement its plan to expand service in existing courthouses, with the goal of Wi-Fi access in every courthouse in the State.
- Digital Evidence Presentation OCA continues to expand the availability of digital evidence presentation systems in its courthouses. This deployment has been aided by two developments: a reduction in the cost and an increase in the portability of the systems.

H. Use of Email and Facsimile Transmissions to Communicate to the Courts

The Commission recommended that courts make greater use of email and faxes to communication with the bar (e.g., notices of dates and times of appearances, and submission of stipulations of adjournments, preliminary conference orders).

With respect to the recommendation that notice of appearance dates and time be given by email or fax, note that the no-cost eTrack service discussed above provides automatic email notification of the next appearance in an case Supreme Civil cases statewide and local civil cases in certain counties.

Over the past several years, OCA has encouraged the use of email and faxes for communication between the courts and counsel by ensuring that the courts are adequately equipped with fax and scanning machines. Expanding the use of faxing and emailing will continue, as part of the court system's recently announced Green Justice Initiative.

In New York City, the Civil and Family Courts have posted a vast amount of information in other languages. Civil Court has parallel sites in Spanish and Chinese, with bilingual forms (which must be submitted in English). Family Court has a duplicate site in Spanish. NYC Criminal Court has frequently asked questions available in French. The CourtHelp site (designed for self-represented individuals, but an excellent resource for all attorneys, as well), has a mirror site in Spanish. The addition of foreign language material continues as a priority.

In addition, OCA is developing online forms that can be filled out and submitted electronically, both for court proceedings (e.g., the preliminary conference form), and for administrative purposes (e.g., attorney registration and SecurePass applications)

I. Teleconferencing and Videoconferencing

The Commission recommended that the court system promote the use of teleconferences and videoconferences so that attorneys do not have to travel to the courthouse for short conferences and other appearances. OCA has encouraged the use of teleconferencing and videoconferencing, and has attempted to ensure that the courts have the necessary equipment. In conjunction with the recently-announced Green Justice initiative, OCA will continue to expand teleconferencing and videoconferencing for both court proceedings and administrative functions.

J. Summary Jury Trials

The Commission found that the summary jury trial is a practical means "of resolving cases without incurring exorbitant expert fees and litigation expenses," and recommended its use throughout the State.⁴

Summary jury trials, which were first introduced in Chautauqua County in 1998, are adversarial proceedings in which jurors render a verdict after an expedited trial, typically lasting one day. In March, 2006, realizing their potential for speeding up the resolution process and reducing costs, the Chief Administrative Judge appointed Judge Lucindo Suarez to the newly-created position of Statewide Coordinator for Summary Jury Trials. Since then, the use of summary jury trials has expanded to all Judicial Districts in the State, with summary jury trials now in use in more than 20 counties.

Summary jury trials not only reduce the cost of litigation by expediting the trial process itself, but can also significantly reduce the time from note of issue to trial. In Bronx County, where summary jury trials have become increasingly common, the wait for a trial date has been reduced from three years to ten months since summary jury trials were first introduced.

K. Alternative Dispute Resolution

The Commission found that the court system's ADR programs have "demonstrated success," and that when these program "work, they work well." The

⁴The Commission's recommendations also applied to the non-jury initiative. While at one time was used by a number of judges in the Bronx, the non-jury initiative has fallen into disuse and over the last two years, no requests have been made to use the process. Accordingly, going forward, the emphasis will be on increasing the availability and use of the summary jury trial.

Commission found, however, that the "availability and use of such program vary tremendously throughout the state " Report at 40, 41 The Commission therefore recommended that the court system examine these programs "to assess which methods work best and why, and implement those programs on a statewide basis " Report at 41. The Commission also recommended that OCA establish standards for the training and evaluation of neutrals and require neutrals to be experienced attorneys.

- Assessment and expansion Since court-referred ADR programs were first introduced in the courts more than ten years ago, the number and variety of programs have increased substantially. The Office of Alternative Dispute Resolution Programs continuously assesses these programs, both to improve their effectiveness and to identify which programs work best, with the goal of expanding the successful models.⁵ Based on these assessments, the number and scope of ADR initiatives across the State have increased dramatically with particular successes achieved in the area of community, commercial and family related matters. Among the key areas of ADR expansion are:
 - ▶ Community Dispute Resolution Centers are a public and private partnership that provide mediation for thousands of cases that would otherwise end up in court. Each year, nearly 40,000 cases are handled by the CDRCs serving over 96,000 individuals. Cases average roughly 6 weeks from time to disposition when handled through the CDRC at minimal cost to the State compared with the more traditional court process. Annual exit surveys of parties who went through CDRC mediation show satisfaction rates as high as 96% including parties whose cases did not result in an agreement. Overall, resolution rates for CDRC matters typically reach 80% each year.
 - ▶ Commercial Mediation has been another area of great expansion in recent years. The first mediation program for commercial cases in New York was launched by New York County in 1995. Today, mediation is available or new programs are in the final stages of implementation in New York, Nassau, Suffolk, Westchester, Kings, Queens and Erie Counties. These Commercial Division courts have their own rosters of highly-trained and experienced mediators,

⁵The Office of Alternative Dispute Resolution Programs has, over time, been assisted by a number of advisory groups that have included representatives of the bar, including, a number of years ago, an ADR Task Force that made a number of which significant recommendations that were adopted. Presently, there is an Ethics Advisory Committee that provides advisory opinions on ethical issues that are raised through mediation.

many of whom are specialists in particular areas of commercial litigation. The success rate of these mediations has been high - for example, in New York County in 2007, 318 cases were referred to mediation, and of those, fifty six percent settled.

- ▶ Matrimonial and Family ADR has also been an area of significant growth, with thousands of family related disputes successfully resolved through mediation each year. For example, custody and visitation mediation is available statewide at little or no cost to litigants in Family Court. Mediation is also available for parent-teen/PINS cases, child permanency cases and soon mediation services will be expanded to juvenile delinquency cases as well.
- Qualification and training of neutrals Recently, the qualifications, appointment and training of neutrals was addressed comprehensively. In June 2008, Part 146 of the Rules of the Chief Administrative Judge was adopted, establishing The Guidelines for Qualifications and Training of ADR Neutrals Serving on Court Rosters, which set forth the qualifications and training requirements for neutrals serving in the court on all court rosters. Pursuant to these rules, all neutral evaluators on court rosters must be attorneys with at least five years experience, and with at least five years of experience in the area of law being referred (or have served five years as a judge, with substantial experience in the particular area) and meet specified training and continued training requirements. Appointments to a roster are for a period of two years and then individuals are eligible for re-designation. This new rule will provide a level of consistency necessary to ensure quality mediation throughout the courts' programs.

L. Support the Award of Counsel Fees for Non-Monied Spouses

The Commission recommended that judges assigned to matrimonial parts receive specific training relating to awards to non-monied spouses to ensure proper issuance and expeditious enforcement of such awards, and that the court system explore implementing streamlined procedures for securing and enforcing counsel fee awards.

- Training OCA, through the Judicial Institute, provides specific training to judges assigned to matrimonial part relating to award of counsel fees to the non-monied spouse to enable that spouse to continue or to defend the matrimonial action.
- Award and Enforcement of Counsel Fees OCA has sought legislative amendment of Domestic Relations Law § 237, which governs the award of counsel fees in matrimonial actions. The proposed amendment would

reverse a presumption – under current law the burden is on the party seeking a pendente lite award to show why the interests of justice require it, while under the amendment there would be a presumption in favor of an award in appropriate cases, and in those cases where relief is either denied or deferred, the judge would be required to set forth the reasons for the decision.

- Streamlining enforcement To further streamline enforcement of counsel fee awards, the Office of the Deputy Chief Administrative Judge for Matrimonial Matters developed a model order that has been shared with all matrimonial judges statewide, which provides, in part, that "If the counsel fees are not paid with xx days the clerk is directed to enter a money judgement in favor of counsel upon written affirmation. No further notice is required."

M. Rule-Making

The Commission recommended that notice be given before any new rule affecting attorneys is adopted, along with the opportunity to comment, that if a proposed rule will have a substantial economic impact on attorneys, consideration should be given to holding a public hearing, and the announcement of a proposed rule should include cost factors, reporting or other paperwork requirements, as well as an explanation of the purpose of the rule.

Although there is no legal mandate that the court system publish rules for comment before they are adopted, the court system often seeks public comments on proposed rules, especially those that could have a significant effect on the bar or public. For example, prior to the adoption of the amendments to the Disciplinary Rules of the Code of Professional Responsibility governing advertising by attorneys, those proposed rules were made public and comments invited. In response to comments received a number of changes to the proposed rules were adopted.

N. Continuing Legal Education

The Commission recommended that the CLE Board review the variety and quality of provider course offerings as part of recertification. The Commission also made a number of recommendations with respect to CLE credit, including that OCA and bar associations provide free CLE for attorneys who agree to perform a specified number of hours of pro bono service.

- Provider Certification and Quality Review New York State has one of the most rigorous accreditation standards of the 43 states with mandatory CLE. The CLE Rules require that written materials accompany every program and that a lawyer be present at all CLE courses. In addition, every new and renewal application for certification as a CLE provider is

reviewed by a OCA attorney. In evaluating providers for recertification, the Board considers a variety of factors, including the list of courses that are being offered, whether attendance recordkeeping has been properly performed, feedback from the individuals who have taken the courses, as well as a detailed review of a representative sample of the courses offered. In addition, CLE staff periodically attend programs to ensure providers are complying with our rules. All complaints received about the quality of courses are investigated and appropriate action is taken to correct problems found.

- CLE Credit OCA regularly offers programs that provide free CLE credit to members of the bar (e.g., e-filing training, program on how attorneys can effectively use the mediation process), and many UCS judges and nonjudicial employees participate, without charge, in bar association and other CLE programs. In addition, OCA and the Appellate Divisions provide free training, with CLE credit, for assigned counsel.

O. Procedures for Resolving Fee Disputes

The Commission recommended that training for arbitrators be uniform statewide, that there be a uniform approach to appointing arbitrators, that at least one arbitrator should be experienced in the particular area of the law, and that the rules provide that the arbitration award is final, subject only to review under CPLR Article 75.

The Attorney-Client Fee Dispute Program is overseen by a Board of Governors and is covered by the Part 137 Rules and Guidelines. Arbitrators throughout the State receive uniform training provided by court system instructors. The training focuses on local procedures, the arbitrator's role, as well as the significance of the signed retainer agreement, or letter of engagement, in reaching a decision. The Part 137 Rules specifically provide that attorneys "with appropriate experience for the proceeding in question" are to be appointed. The Board of Governors is currently reviewing the rule regarding the right to a de novo hearing.

P. Increase the Annual Cap on Awarded Fees for Privately Paid Law Guardians

The Commission recommended that the Part 36 cap on the yearly compensation paid to law guardians be increased. Effective January, 2007, the yearly cap for Attorneys for the Child (formerly Law Guardians) was raised from \$50,000 to \$75,000.

Q. Lawyer Advertising

The Commission found that, in large part because of the high cost of television

advertising, it is more difficult for solo and small firm practitioners to compete with attorneys who can afford such advertising, and that the much of the televised "saturation advertising" by attorneys is "unseemly and demeans the legal profession in the eyes of the public and the bar " Report at 63. In response to these and other concerns about attorney advertising, the Commission made a number of recommendations with respect to lawyer advertising and to the revision of the Code of Professional Responsibility

The Administrative Board of the Courts adopted new rules governing attorney advertising effective February 1, 2007. The new rules address many of the issues raised in the Commission's Report, as well as issues and concerns separately raised by the State Bar Association. The final rules also reflect consideration of comments received by bar associations and members of the bar during the comment period. Among the highlights of the new rules are clearer definitions of what constitutes an advertisement and solicitation, updated regulations concerning web advertising, restricting both plaintiff and defendant law firms from solicitation for 30 days in personal injury/wrongful death cases and an expanded certification for court pleadings. The rules are subject of pending litigation.

R. Diversity within the Legal System

This Commission recommended that OCA promote diversity in the pool of those qualified for court appointments as fiduciaries and assigned counsel through training programs. The Commission further recommended that OCA continue and expand diversity awareness and sensitivity programs for all judicial and nonjudicial court employees, and strengthen interpreter services for non-English speaking litigants.

- Training for Fiduciaries and Assigned Counsel Training programs for fiduciaries are presented by local bar associations, with Judges and UCS nonjudicial personnel often serving as presenters in these programs. In addition, the court system itself provides no cost training (with CLE credit) to assigned counsel.
- Diversity Awareness and Sensitivity OCA and the entire court system have addressed diversity awareness and sensitivity through a variety of means, including training, committees, recruitment outreach and personnel procedures, and the new Chief Judge has stated that these issues will continue as matters of high priority.
- Court Interpreters In April, 2006, the Court System issued an Action Plan on Court Interpreting, which set forth a comprehensive program for improving the efficient and effective delivery of interpreting services in the courts. Key accomplishments under the Action Plan include:
 - ▶ The testing and assessment of interpreters has been strengthened

- ▶ Increased mandatory training for both court interpreters has been implemented
- ▶ Increased recruiting of and outreach to prospective interpreters has been undertaken, and the compensation of voucher-paid interpreters has been increased
- ▶ An e-scheduling program has been implemented to make better use of interpreters' time and to facilitate assignments, as well as to ensure that only interpreters who have passed all required tests and taken the required training are used
- ▶ Judges and nonjudicial personnel have received additional training on the need for and use of court interpreters
- ▶ Greater use is being made of remote interpreting, to provide interpreters to areas where an interpreter in the particular language is not available, including a pilot program to test the viability of providing such services in the justice courts

In addition, the Chief Administrative Judge issued a new Part 217 to the Uniform Rules for the Trial Courts mandating the appointment of a court interpreter in those cases in which a party or witness is unable to understand and communicate in English. This rule codified what had been the practice in New York, which provides interpreting services in a broader range of cases and circumstances than any other state.

S. Pro Bono Services

The Commission recommended further steps to encourage and support pro bono activities, including providing free CLE and training for attorneys who perform pro bono services, using staggered or separate calendars for pro bono cases, and publicizing pro bono opportunities.

- ProBonoNY Since 2005, the court system has been an active proponent of ProBonoNY, which was established as a collaborative effort among the courts, the bar and legal services, to promote pro bono activities. Currently, there are six active committees (in the Fifth, Sixth, Seventh, Eighth and Ninth Judicial Districts and Suffolk County—with committees in the works in Nassau and the Third J.D., and others in the planning stages) with a diverse, representative composition, which work to identify and address local needs. The court system has provided funds for Pro Bono Coordinators to work with these groups and organize these programs. Under the auspices of ProBonoNY, there are CLE programs that address specific topics (such as family law, matrimonials), offered at

no cost to attorneys who agree to accept pro bono assignments
Mentoring is also available and yearly recognition ceremonies are held
One of the issues still under consideration by the committees is whether
special calendars should be established for pro bono cases.

- Other Pro Bono Programs The court system has undertaken a variety of pro bono projects with the bar, most of which provide free CLE credit for training. Among the joint court system-bar pro bono initiatives are:
 - ▶ The New York City Civil Court has at least four different Volunteer Lawyers Projects (in Housing and Civil, as well as a Volunteer Lawyer for the Day Project and a Guardian Ad Litem program, both in Housing) that combine free CLE training as well as additional CLE credits for service.
 - ▶ Under New York City Family Court's "Lawyer for a Day" program attorney provide free legal advice (not representation) to litigants in child support and paternity cases. Attorney volunteer to spend a day in court helping self-represented litigants prepare pleadings, determine when evidence they need to present their case, and help interpret orders after a case is completed. Attorneys attend a full-day training program provided by the court and each attorney receives six hours of CLE from the NYS Judicial Institute.
 - ▶ In response to the growing foreclosure crisis, the court system has been working closely with bar associations to establish pro bono programs to assist homeowners in settlement conferences with lenders. To date, more than 1,000 attorneys have been trained.
- Publicizing Pro Bono Information Information for attorneys about the ProBonoNY initiative, probono.net, and the many Civil Court programs are available in several locations on the court system's web site. A new web site for the ProBonoNY initiative, itself, is also under development.

Appendix C

Table of Contents **Solo and Small Firm Materials** **www.nysba.org/solosmallcomm**

**The Commission to Examine Solo and Small Firm Practice-
Kaye Commission Report- February 2006**

2008 NYSBA Solo and Small Firm Survey

2005 NYSBA Member and Lapsed Member Survey- October 15, 2005

**Research Report: Lawyers in Solo Practice by Professions Research,
Inc.- January 30, 2007**

Solo and Small Firm Practice resources- other state's online resources

