



FINAL REPORT

NEW YORK STATE BAR ASSOCIATION

SPECIAL COMMITTEE ON BALANCED LIVES IN THE LAW

MARCH 7, 2008



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The New York State Bar Association

**New York State Bar Association
Special Committee on Balanced Lives in the Law**

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A. Background

Quality of life issues were a priority for State Bar President Kenneth G. Standard during his tenure. President Standard appointed the Special Committee on Balanced Lives in the Law, chaired by former NYSBA President M. Catherine Richardson of Syracuse. The Committee was asked to submit a report and recommendations to the Executive Committee and House of Delegates resulting from the study of how attorneys in various work settings and comprising diverse demographics meet their professional, societal and personal demands. The Mission Statement for the Committee was as follows:

The committee is charged with conducting a study of the work lives and expectations of members of the legal profession and the challenges that Association members in various work settings confront in striving for a balance of professional and personal responsibilities, given the changed societal and professional needs and demands.

This examination shall include the effect of perceived increased time pressures and client demands on attorneys, difficult economic conditions, a highly competitive marketplace for legal services, advances in communication tools and other technology, law firm client development and billing practices, work expectations and procedures in attorney hiring, retention and advancement. The committee also shall consider the impact of changes in the demographics of the profession. Issues for review shall include the opportunity to participate in pro bono service, bar association work and other volunteer activities in the community and profession, and to attend to childcare, eldercare and other family and personal needs.

The study shall encompass the factors particular to work settings in the private, public and corporate sectors, offices of various sizes and fields of concentration. In so doing, the committee shall seek information and perspectives from members of the profession at different stages of their careers, leaders of law firms and legal departments, representatives of the court system, and law school administrators and educators, among others. The committee also shall seek the input of relevant sections, committees and other entities.

The committee shall prepare a report and recommendations for submission to the Executive Committee and House of Delegates. The report shall identify ways to promote discussion and increase awareness of these issues and possible actions that can be taken by individuals, law offices, bar associations, law schools and other entities to promote balanced professional and personal lives among members of the profession.

From the outset, it was anticipated that the Committee would pursue its mission by conducting meetings with practitioners from around the state, to learn first-hand of the pressures and problems they confront as they struggle to balance professional life with private life. When we refer to a balanced life in the law in this Report, we mean to encompass the concept of balancing one's professional life with one's personal life, including not only time spent with family and friends, rest and relaxation, exercise and recreation, hobbies and personal pursuits, but also time spent "being a good citizen"—volunteering to participate in community and civic activities, donating time and effort to religious organizations, coaching Little League, and the like, and involvement in bar association activities. Attorneys have, by virtue of their training and expertise, something unique to contribute to the community—that sort of involvement benefits society, our profession, and the volunteering attorney as well. It is an important part of achieving a well-rounded life.

B. Thoughts and observations gleaned from the Committee's forums and meetings

Work of the Committee

In addition to a number of meetings of the full Committee, The Special Committee on Balanced Lives conducted several forums around the state. The forums were held to discuss "balanced lives issues" with local practitioners. On average, 12 participants were present at each forum. The participants were interviewed by members of the Committee and there was open discussion as well. In order to achieve a fair representation of the legal community, the participants were specifically invited and included attorneys of different ages, genders and races. The participants included attorneys at different stages of their careers as well as from large, medium and small law firms. Both the private and public sector were represented. Participants were selected to provide a variety of perspectives on the subjects for discussion.

A majority of the forums were held at local bar associations. The Committee sincerely thanks the New York City Bar, the Broome County Bar Association, the Monroe County Bar Association, and the Onondaga County Bar Association, for their hospitality and cooperation in hosting our forums, publicizing the events, and helping to secure local participants. The Committee also thanks the Westchester County Supreme Court staff for their kind consideration in making one of their court rooms available for use during our forum in that county. The locales and facilitators of the forums were as follows:

Location	Facilitator(s)
Albany— New York State Bar Center	Catherine Richardson, James Lytle and Joan Leary Matthews
Syracuse— Onondaga County Bar Association	M. Catherine Richardson and Jeffrey M. Fetter
Rochester— Monroe County Bar Association	David M. Schraver
White Plains—Westchester County Supreme Court Bldg.	Angela M. Giannini and Joey Silberfein
Binghamton— Broome County Bar Association	Kathryn Grant Madigan
NYC—The New York City Bar Meeting for Chairs of Associates Committees (from large firms in Manhattan)	Evan A. Davis and Deborah Epstein Henry
The Poughkeepsie Grand Hotel	Robert L. Ostertag
NYC—The New York Marriott Marquise (during the Annual Meeting of the New York State Bar Association) Open forum	M. Catherine Richardson and Joey Silberfein
Huntington Hilton, Melville, NY	John P. Bracken and Gary Roth

Candid Observations and Perceptions from the Forums

The following are the thoughts and observations gleaned from the Committee's forums and meetings. It must be recognized that these are neither the opinions of the Committee nor based upon empirical data. Rather, they represent the Committee's categorization and bullet summary of the thoughts, experiences and observations of the participants at the forums.

1. Involvement in Volunteer Activities

- In earlier generations, attorneys had more time to devote to public service and civic activities.
- Presently, attorneys feel they do not have as much time to devote to such activities, especially younger attorneys in firms that demand a high number of billable hours.
- Unfortunately, both the profession and the civic institutions have lost valuable participation by volunteer attorneys.
- Involvement in civic matters enriches and helps to balance the attorney's life and civic organizations benefit from the input of attorneys who are active in these organizations.
- Volunteer work, for example, in the form of bar association activities, exposes one to new views, ideas, and information one would not obtain in the office setting.

2. Child-rearing and Care for Elderly Parents—Family Care Issues

- The demands of parenting have increased and become more complex.
- Child-rearing responsibilities are no longer only a women's issue, but are a concern for men as well.
- In earlier generations the norm was one parent working outside the home. Today's trend is for both parents to be employed, making child-rearing more challenging.
- There is the "sandwich generation" effect: working parents are caught in the middle between demands on their time to raise their own children and assist their elderly parents.
- Due to busy schedules, attorneys are not able to attend to the ordinary everyday chores of private life as well as they would like.
- "Powerlessness" over one's schedule results in only "doing the next thing."

3. Issues for Female Attorneys

- Female attorneys, in general, have been more vocal about their discontent with the long-hours, out of necessity—many of them have more responsibility for their children and face challenges balancing the requirements of professional, civic and family roles.
- In the past, if a female attorney had children, it was perceived as a sign that she would be abandoning her career or would be less committed to her job at the firm.
- Women attorneys are more scrutinized than their male counterparts, because of child-bearing and child-rearing issues.
- Females fear that working less than fulltime will impede their success within a firm and as a result, some think that to succeed, everything needs to become secondary to their law careers.
- Few role models in firms demonstrate that a reduced-time attorney can be as well respected as full-time attorneys.
- Both husband and wife working creates an issue as to who holds the dominant job within the family—one may be relegated to secondary status, often the female.
- Female attorneys feel they need an effective support system to balance trial work and family duties.
- Women feel they may need to select areas of practice and law firms that will permit a more flexible schedule.
- Top law school status doesn't necessarily translate into the same status for women in the profession.
- Male and female attorneys may have different expectations regarding their legal careers—many female attorneys expect to have a life outside of their work, while male attorneys may not place as much emphasis on personal life.
- The legal profession needs to place greater value on caregivers, and adjust attitudes and policies in the workplace accordingly.
- While many firms have written policies, there is not the commitment from the "top" to encourage lawyers to use the policies.

4. Attorneys in Public Sector or Corporate Positions

- Unique issues face an attorney in public service, such as lower salaries, but usually there is more flexibility and time off.
- Some courts and hearing officers do not show much flexibility in recognizing the need to deal with personal scheduling emergencies.
- In both the public and private sector, it helps to have others in your office who can cover for you when emergencies arise or when you want to take vacation.

5. Law Firm Policies, Attitudes and Practices

- Law firms are conflicted about flexible and reduced-hour work arrangements because an increase in partner and associate hours goes directly to an increase in the bottom line, but the need to recruit and retain high-quality attorneys creates a need for flexibility. Also, the attrition cost of losing a talented attorney is significantly greater than the loss if that same attorney bills fewer hours per year.
- Attorneys are conflicted because they value high compensation but are hurt in the non-work aspects of their life by excessive billable hour or “commitment” expectations.
- Many attorneys at all levels would accept some decrease in compensation for a significant improvement in their quality of life.
- By and large, attorneys at law firms support in principle allowing some work to be done at home instead of in the office.
- There is also considerable support in principle for flex-time and reduced hour arrangements to balance personal interests and concerns, but utilization rates are low due to lack of active encouragement and the inability to convincingly reassure attorneys that career prospects will not be damaged.
- There are different standards regarding flexible and reduced-hour arrangements for attorneys as opposed to administrative and other support staff.
- Flex-time, reduced-hour and work-at-home arrangements are sometimes offered as a reward to the better attorneys whose retention is more highly valued.
- Firms limit attorneys’ use of flex-time, reduced-hour and work-at-home arrangements based on perceived constraints of practice area demands, travel or “face time” work. Firms also typically believe that a substantial amount of in-office interaction is desirable to facilitate attorney training, mentoring, case and matter management, collegiality and firm/practice area cohesion.
- Law firms should examine the root causes of attorney dissatisfaction by concrete means such as creating firm committees dedicated to balanced lives issues.
- Law firms should correlate balanced lives to attorney performance, attorney retention and attorney recruitment, client satisfaction and overall firm health and profitability.
- Law firm management should offer genuine support and education about the benefits of reduced hour arrangements as they relate to the overall health of law firms.
- Law firms should evaluate the benefits to their firms and attorneys of policies allowing some work to regularly be performed from home.
- Law firms should hire exceptional assistants and support staff to facilitate attorneys taking advantage of flex and reduced-hour opportunities.
- Law firms should promote a team approach within the firm where attorneys are encouraged to respect the personal needs of their colleagues and provide coverage when those needs arise.

- Law firms should provide training for junior partners, senior associates and firm managers with respect to effectively managing, administering and supporting the appropriate use of flexible and reduced-hour arrangements.
- The leadership of law firms should provide "top-down" support for flexible and reduced-hour arrangements, and ensure that the firm's policies on these subjects are readily utilized by attorneys rather than existing only on paper, and thus not having a practical, regular benefit for their attorneys.

6. *Technology Issues*

- Present times demand instant responses to questions, but still require a carefully thought-out, researched response.
- Technology offers efficiencies and capabilities not formerly available. These tools, however, sometimes put more pressure on attorneys.
- There is a demand for more rapid response, e.g., via electronic communications.
- These tools can impede an attorney's free time and vacation (voicemail, e-mail). Some firms have established policies requiring attorneys to give their cell phone numbers and e-mail addresses to clients, and to return client calls within three hours. This may make for happier clients, but it puts more pressure on attorneys and sometimes intrudes into the attorney's personal time off.
- These tools also allow us to do work outside the office (home).
- This faster method of communicating and getting things done, requires less formality than, for example, correspondence sent through regular mail; but does it result in better advice?
- BlackBerry is complex – it can be intrusive, yet so helpful in an emergency.
- With more efficiency, billing issues are raised, such as what is the proper billing when using technology modes?
- It is difficult to bill for time spent reading e-mails, yet it can take a substantial amount of time.
- Sometimes, because technology permits changes up until the last minute, it can result in a longer, more stressful process.

7. *Clients—Their Role in Creating Issues*

- It seems that law practice is a very personal service—the client wants his or her attorney available 24/7/365.
- Law practice has become more of a competitive business enterprise than it was years ago.
- Demands for business require attorneys try to compete and out-bid each other on fees.
- The legal profession doesn't operate in a vacuum—we are busier because our clients are busier—everybody is living in a more demanding and stressful work environment.

8. *Personal Attributes and Solutions—Within Your Own Control*

- It helps to have a good sense of humor if you hope to have a balanced life in the law, e.g., sometimes, when you are extremely busy, it is better to laugh about it than cry.
- Achieving a balanced life is one of those things you have to take care of for yourself.
- No one else is going to do it for you or really care if your life is balanced.
- Many attorneys are "Type-A" personalities, perfectionists, very compulsive by nature, and are workaholics. To the extent this is true, we are part of the problem.

- We tend to bring our work home with us and continue thinking about our client's case when we should be relaxing, paying attention to relationships with family, sleeping, etc.
- We need to develop the self-discipline of leaving our work at the office, of carving out and protecting time for family and time for self.
- We need to establish boundaries between professional life and private life, and educate those with whom we deal (clients, opposing counsel, judges, our own office, etc.) about where we draw those lines.
- Some attorneys need to carefully consider career choices and should be willing to change job settings if the demands of their job cannot be brought into balance with the needs of their private lives.
- A major factor which causes stress and imbalance in one's life is the sense that we do not have control over our time. This can lead to frustration, stress, and depression about our situation. This leads some to seriously consider leaving the profession, or wish they had pursued a different profession.
- It also seems that this pressure is inherent to the job: we are a profession, not just a trade, and a professional is dedicated to taking care of the needs of the client first, and tending to his or her own needs afterwards.
- If we manage our own expectations better from the outset, knowing what sort of work situation we were entering when we chose this profession, it may be easier to have a more balanced life.
- One promising observation from a very senior attorney: It does get better toward the end of one's career, when you have more control over your schedule and more free time.

9. Law Students, Associates and Younger Attorneys

- Law students and more junior attorneys reasonably question whether it is acceptable or even possible to achieve balanced lives while pursuing successful careers as attorneys.
- There is a scarcity of mentors readily available to students and junior attorneys for consultation on issues relating to balanced lives. There is also a hesitation to broach the subject for fear of losing respect in the eyes of colleagues, superiors and employers.
- Law students and junior attorneys reasonably assume that accepting flexible or reduced-hour arrangements to the extent they may be available will inure to their detriment professionally.
- Most law students and junior attorneys are saddled with considerable debt which requires them to forgo options which might provide for a more balanced lifestyle. These students and junior attorneys often make job choices without a genuine understanding of the costs and benefits—professionally and personally—of taking advantage of flexible and reduced-hour arrangements and the opportunities for extended leave or even regular vacation time.
- Law schools do not adequately prepare students for many of the basic professional and personal challenges they can expect to face once they enter the practice of law.
- Law students and junior attorneys are not adequately trained to appropriately and effectively manage and interact with support staff.
- There is a generational gap among attorneys and a lack of understanding and appreciation for differences in values and priorities which makes integration of junior attorneys into established law firms more challenging than ever before.
- There is ever-increasing competition among attorneys for the most attractive legal jobs which requires more junior attorneys to make more personal sacrifices than were required of more senior attorneys to achieve professional respect and success.
- There are ever-increasing demands made upon junior attorneys at law firms with respect to billable and non-billable hours and for other personal sacrifices such as delaying or even

forgoing family; meeting these demands is generally perceived as significant to determining professional success or failure.

- Law students and junior associates have generally no expectation or even desire of becoming partners at firms as a result of heightened competition and overly burdensome demands and necessary compromises and sacrifices.
- Always-improving technology decreases the necessity for personal interaction among attorneys, which creates additional obstacles to junior attorneys seeking to benefit from the knowledge and experience of their superiors.
- Law students and junior attorneys are woefully uninformed of differences among legal employers and employment options available to them.
- Law schools should offer courses and seminars on the legal market which explore the differences among law firms, the public interest and other legal employers and paths to achieving professional and personal satisfaction as attorneys and members of society.
- Law school placement directors play (or should play) a critical role in the process—they must ask difficult questions about policies that students can't reasonably be expected to ask on their own, such as:
 - How many use flexible or reduced-hour arrangements? (This information is usually indicated on the NALP form)
 - What is the average number of billable and pro bono hours of those actually promoted to senior positions?
 - What is the average length of stay of associates?
 - What is the average retirement age of partners?
- Firm policy regarding flexible and reduced-hour arrangements, vacations and extended leaves as well as pro bono and public and community service should be clearly and effectively communicated to incoming and junior attorneys.
- Firms should make heightened efforts to maximize face-to-face interactions with incoming and junior attorneys, and junior attorneys should be provided with regular, scheduled opportunities to discuss their strengths and deficiencies with respect to the firm, their prospects for advancement, and any problems or dilemmas they are confronting with respect to achieving professional success and balanced lives.

10. Changes in the Profession

- Collegiality within the profession overall is on the wane; the “more courtly and collegial manner of the old days is gone.”
- No more closed courts in August.
- Present law practice seems to be plagued by pursuit of the billable hour (this produces great pressure on associates and may motivate some to pad their hours, in order to achieve their quotas).
- Attorneys need to be more supportive of scheduling flexibility, as well as practicing a higher degree of civility.
- At odds with this approach is the adversarial nature of law practice, where “the client wants to win at almost any cost” and expects very zealous representation.
- Society, in general, is more litigious and wants instant responses and solutions to every problem.
- Legal services are viewed as commodities (there is little or no client loyalty).
- Earlier generations of attorneys had the luxury of time; now practices seem to have sped up to a frantic pace, with clients demanding immediate responses.

- In 1927, the legal profession was the highest paid profession. Many attorneys today are working more hours than those in earlier generations and are making only a modest middle-class living.
- For a small firm practitioner upstate, who serves individual rather than corporate clients, he or she has to serve many clients (some of whom will not pay their bills), in order to get the same income he or she could have received from serving just one large institutional client in earlier years (and probably would have been able to give that one client a better quality of legal service).
- In some courts, attorneys are often forced to sit in the hallways for hours, waiting for their case to be called. This runs up the bill for the client, and it is a cost the client is not eager to pay.
- Some judges are using summary judgment too liberally, in an effort to cull their calendar. The result is more motion practice.
- Variations in forms required in courts in the different departments create procedural problems.
- Local judges' rules vary and are difficult to find.
- Attorneys contribute to the level of stress within the profession by making their work more combative, more complicated, and more time-consuming.
- Young attorneys are more determined than their predecessors to achieve a balanced life and are not willing to work a high number of hours.
- Middle-aged attorneys may feel like an "intermediate generation," existing in between their preceding generation, which felt that long days and work on weekends should be the norm for all attorneys in the firm, and the younger generation, which cherishes time off and is not willing to adopt the pattern of long days and weekend work.
- This "intermediate generation" fell into the pattern of its predecessors, in working the long hours, but is not entirely content with that lifestyle.
- It seems that attorneys have always worked very demanding schedules, but that work these days seems more stressful and less collegial than it was in the past.
- Cases today seem to be more complex, and yet, are subject to a compressed time frame.
- We are dealing with issues that bring into play more jurisdictions, more time zones, and larger teams working on a project.
- Recollections of the working environment in earlier times: work was done at a more leisurely pace and the attorney felt that he or she was actually learning something while handling a case.
- Today, work proceeds so quickly and is so compartmentalized that there is less of a sense that the attorney is learning something while handling a case.
- Ironically, today's litigation is drawn out for a longer period of time than was typical in the past.
- Associates may spend years as part of a team on only one case, and therefore may feel that their learning experience at the firm has been very limited.

C. Best Practices for Law Firms—some things to consider and sample policies

1. Flexible Work Policies

Evolved law firms recognize that in order to attract and retain the best and the brightest, they will have to offer flexibility in their work environment. Professional satisfaction among attorneys is currently at an all-time low. Increasing numbers of practitioners are struggling to maintain the delicate balance between their personal and professional lives.

Flexible work policies should be implemented when they are mutually beneficial to the law firm and to the attorney. Different terms are used to refer to flexibility. For purpose of this Report, “flex-time” refers to attorneys working full-time hours with regular flexibility built into their schedule, e.g., regularly working one day a week from home. “Reduced hours” is being used to refer to attorneys who work fewer hours than full-time. This term is being used rather than “part-time” which is a misnomer. “Flexible work policies” is being used to encompass both “flex-time” and “reduced hours.” One of the purposes of this Report is to assist law firms in crafting flexible work policies.

Not just the “working mom”

For years, flexible work policies have been identified with attorney/mothers who wanted to have reduced or flex-time hours. Now a firm must recognize that an individual attorney of either gender may desire flex-time or reduced hours for a variety of reasons, not just parenting issues. For instance, the attorney may have other interests he or she wishes to pursue such as writing, teaching, or volunteering. An individual may be struggling with a personal illness or injury, or that of family members. An attorney may desire flex time or reduced hours to segue into retirement.

An attorney may also find he or she is consistently working at a reduced pace and the firm may wish to offer reduced hours to match the reality of the attorney’s work. Law firms need to recognize that although an attorney may be strongly committed to the profession, there are many valid reasons he or she may seek a more flexible or reduced work schedule. The law firm should strive to be creative and responsive to attorneys’ needs while ensuring the firm’s business needs are being met.

Establish guidelines

Firms should adopt written policies, providing guidance to their attorneys about their expectations of hours and schedules. Some factors for firms to consider include:

a) Numbers of hours and types of schedules that meet the attorneys’ and law firms’ needs
Deborah Epstein Henry, founder and president of Flex-Time Lawyers LLC, created a new way to manipulate the traditional billable hour to meet different attorneys’ work/life needs and the business needs of law firms. Her methodology, called “FACTS,” enables attorneys to meet law firm demands while offering them choices about the way they work. FACTS is an acronym for Fixed, Annualized, Core, Targeted, and Shared – the five different hours configurations from which attorneys can choose to balance their career/life needs. FACTS focuses on capitalizing on the flexibility of billable hours to enhance attorney satisfaction while meeting firms’ economic needs. FACTS permits an attorney to optimize the billable hour in a way that benefits all parties – the firm, the attorney, and the client.¹

¹ “The unrealized benefit of the billable hour is its flexibility – a firm makes the same amount of money on an attorney billing at home or in the office.” Deborah Epstein Henry, “Facing the FACTS: Introducing Work/Life Choices for All Firm Lawyers Within the Billable Hour Model,” *Diversity & the Bar* (Nov./Dec. 2007).

As detailed in Henry's "Facing the FACTS" article, under FACTS, the stigmatizing and inaccurate terms "full-time" and "part-time" are replaced with "**Target**" hours. Annually, at their reviews, attorneys would set their billable and non-billable anticipated hours with their department chairs, based on the attorneys' average hours for the prior two years as well as the average hours for their department and seniority level. For attorneys also seeking flexibility in the way they work, they would discuss the other four prongs of FACTS with their department chairs to match their individual needs with the demands of the firm and its clients. The other prongs of FACTS:

- **Fixed** hours are the temporary or permanent exchange of high-quality and less-exciting work for more predictability and control. This schedule permits an attorney to temporarily or permanently set a regular number of hours per week or month, based on a firm's availability of this type of work.
- **Annualized** hours are for attorneys who want fewer hours over the course of a year, with erratic 24/7 availability on high-intensity deals or matters, followed by more frequent or longer reprieves in between.
- **Core** hours are blocks of key hours in most or all workdays when attorneys work or are available that are less conventional than regular law firm hours. Typically, attorneys who work core hours telecommute, work a compressed day, go home earlier or come in later during the workday.
- **Shared** hours are designed for two attorneys who share the same position and work on a preset rotating basis to cover for each other.

b) Eligibility

A firm's eligibility determination for a flex-time or reduced-hours schedule should include: the needs of the firm, the clients, and the attorney's department; the attorney's general performance; and the type of arrangement, including the degree of flexibility requested by the attorney. The attorney's professional development should not be sacrificed while working flexible or reduced hours.

c) Attorney proposal

The attorney's proposed flex-time or reduced-hours schedule must meet the financial needs of the firm. The firm should also regularly review the success of the flexible and reduced-hour arrangements.

d) Making flexibility work with technology

Technological advances have been a mixed blessing for attorneys. Never before have attorneys been so accessible to firms and clients. BlackBerrys, Treos, cell phones, and laptop computers have made it easier for attorneys to work from almost anywhere. These advances have also raised the expectations of clients, who anticipate speedy responses. Firms should support their attorneys' use of these devices to maximize responsiveness, while setting clear guidelines and expectations regarding response time, privacy concerns, acceptable uses of the technology, effective billing practices, and client confidentiality.

Role of the flexibility advisor

Some larger firms have appointed flexibility advisors to oversee attorneys working flexible or reduced hours. This is an approach that may be feasible and advisable for medium-size firms and law departments, as well. The advisor plays a key role in a flexible work policy's success by serving as a liaison between the attorneys seeking or working flex-time or reduced hours and supervising partners. The advisor is the person to contact for requests and makes recommendations regarding approval, denial or modification of flex-time or reduced hour proposals. The advisor should also regularly monitor assignments, hours and opportunities for professional development and exposure.

Examples of flexible policies

Attached in Appendix C is a comprehensive partner flex-time policy from Holland & Hart, in Denver, Colorado. The plan is designed for partners, but could easily be tailored to include associates. This plan includes their flex-time policy, an economic profitability analysis for flex-time partners (Appendix C-1), a model flex-time plan for partners (Appendix C-2), and procedures for retroactive compensation for flex-time partners (Appendix C-3). Attached at Appendix D is a Model Policy for Flexible Work Arrangements created by The Law Society of British Columbia in September of 1992 and updated in June of 2006.

2. Vacation and Leave Time Policies

a) Vacation and Sabbaticals

1) Vacation

We know that being an attorney can be a high-stress job. Burnout is a common issue. Vacation time plays a key part in stress management. The anticipation of vacation and the process of planning a vacation can itself be helpful. The time on vacation is necessary for rest, reflection and recreation. Vacations are often taken with family and/or friends and can be important to those relationships. Spouses, significant others and children all can benefit from the chance to spend time together on vacation. Vacation is a key example of quality time.

The benefit of vacation time can be significantly impaired by intrusion of work demands on that time. Intrusion makes it harder to feel away from work. Intrusion can make it difficult to plan joint activities with family and friends. Intrusion can even make it necessary to change the plan for a particular day that others had been counting on. Intrusion can cause resentment on the part of attorneys and their families. Family support is important to making more tolerable the work-related strain on family life that can occur outside of vacation time.

Technology has tended to increase the incidence of work intruding on vacation. People are somewhat reluctant to call a person on vacation and before cell phones it was often not easy to call. Now it is easy to send an e-mail even though composing a response to an e-mail may be more intrusive than responding to a telephone inquiry. Before the fax machine it was difficult to expect someone to review documents while on vacation. Now they can be sent by fax or e-mail.

Technology has also increased the negative consequences of not maintaining regular contact with work while on vacation. Because e-mails are easier to send than letters, more of

them pile up in an in-box than letters used to do. Technology has also increased turnaround capability and expectations. Both these factors encourage people to read their e-mails while on vacation. Once read, there is a pressure to respond that arises both because of not wanting to read and think about it twice and the desire to get it out of the way so it won't add to the daunting task of responding to many e-mails on return from vacation.

It is not a reasonable response to these issues to say attorneys should never work while on vacation. First, it can be poor judgment for an attorney not to interrupt a vacation to deal with client work. There is always another doctor who can deal with a patient emergency, but the attorney's unique knowledge of the matter can make him or her uniquely able to deal with a client emergency. (When the head of the New York National Guard decided not to interrupt his vacation to deal with Hurricane Gloria, he was fired.) Second, some people are happier working while on vacation. Some may feel satisfaction that others do not want to proceed without their input. It would be counterproductive and not conducive to stress management to make it hard for them to do what they want to do.

It should be the goal of law firm management to assure that the attorney who wants or needs a relatively complete vacation not be viewed as uncommitted. The expectation should be that an attorney can be a good citizen and not want to be interrupted on vacation except in exigent circumstances. Those whose routine is to work a lot while on vacation should not be seen as better citizens. Those who want to have the right to treat vacation as a period of telecommuting to work but they should not be rewarded for that attitude.

At the same time the possible need to interrupt the vacation should be recognized. Attorneys need to stay in touch so that they can be called on if needed. It is not unreasonable to expect attorneys on vacation to check e-mails and voicemails daily. They may have scheduled the vacation knowing that conference calls or filings in which they need to participate will intervene. They have made the decision to take a vacation at a particular time subject to that commitment and therefore should meet it.

To achieve these goals, the following should be considered when formulating firm policy:

- a. Attorneys should be encouraged to set their e-mail on out-of-office auto reply while on vacation. They will still be able to check their e-mails but should feel less pressure to respond.
- b. When work has sufficiently intruded on a vacation day to make it not a vacation day, it should not be counted as a vacation day, if the firm tracks the number of vacation days—some do not, but instead operate on the basis of billable hours per year.
- c. Again, if the firm sets and tracks the number of vacation days, attorneys should be encouraged to use vacation time by not being allowed to roll it over indefinitely. On the other hand some latitude should be allowed to take unused vacation during a period in the following year.
- d. An attorney who incurs expense for canceling a vacation or returning early from one should be compensated for that expense. If family members or significant-other traveling companions incur such expense, they should be reimbursed as well.

2) Sabbaticals

While a sabbatical can be a more extended opportunity for rest and recreation, it can also be a chance to do something of specific importance that the attorney cannot fit within a normal two-or three-week vacation. For example a sabbatical might be used to engage in political activity, write, volunteer, learn a language through intensive training or teach a course. Stimulation of the mind through a new kind of experience promotes freshness of thought and reduces the risk of burnout.

a. Partners/Senior Members

There are more firms that have sabbatical programs for attorneys who have a long-term position with the firm than there are firms that have a sabbatical program for associates who may or may not stay with the firm. Programs for attorneys with a long-term position generally provide for a sabbatical period every 5, 7 or 10 years. The duration of the sabbatical is typically between three and six months. Generally participation in the program must be specifically approved based on the needs of the firm and the demands on the practice area in question. Sometimes eligibility is restricted to those who are not close to retirement or other planned departure.

b. Associates

Firms that have a sabbatical program for associates may provide a sabbatical of four weeks after five years at the firm. Combining this time with vacation may or may not be allowed.

It is more common for firms to allow associates to take unpaid leaves of absence to pursue the kind of activities that might be the focus of a sabbatical. Unlike sabbaticals that may be used for any purpose, requests for unpaid leaves of absence are sometimes evaluated based on the planned use of the time for something more than mere rest and recreation.

As with a vacation, the utility of a sabbatical depends on the likelihood that it will not be unduly interrupted. Sabbaticals may fare better in this regard than vacations because it is anticipated that the alternate activity pursued while on sabbatical may preclude availability more than mere rest and recreation.

Firms should consider adopting or expanding a sabbatical program. An associate who takes a four-week sabbatical after five years will be a more effective attorney if occupying a long-term position or an outside attorney, one with better memories of the firm and his or her experience there. While four weeks is not sufficient time for certain sabbatical activity, it is enough time to do many things that cannot be done on a shorter vacation. If associates can combine it with a three week vacation, all the better. Recruits who plan to stay for more than five years will particularly value this employment benefit. Given the high cost of recruiting an attorney (the cost of the total recruiting program divided by the number of recruits) this appeal to attorneys with a relatively strong commitment to staying is a plus.

b) Family Leave

Expecting a child (through birth or adoption) gives a whole new meaning to the concept of a balance life. As if practicing law in this day and age wasn't hard enough. Will employers look at

one's pregnancy or impending adoption with the same enthusiasm that the expecting parent does? Or, will an employer view it as an inconvenience or interruption to its ability to do business? Will an attorney be able to take the time needed to recover from childbirth or adoption and adjust to life with a new child? Will the new parent be viewed as less committed to the practice of law than colleagues who aren't having children? New parents are no longer simply balancing their own personal demands with that of their profession, now they have children, with their wants and needs to consider. New parents face trying to figure out how to adjust to a new family life while also trying to find a balance in their lives, all the while wondering what status and effect this life altering event is going to have on their career.

These, and countless other questions cause stress for many attorneys when they find out they are expecting a child. Often, women return to work too soon, sometimes for fear that their absence on maternity leave will adversely affect their career. Whether it be because the child is still breastfeeding and the logistics are too hard, or the mother is simply not physically or emotionally ready, or adequate child care has yet to be lined up, attorneys returning to work before they are ready creates unnecessary stress for them and can affect their productivity.

In addition, Baby Boomers and Generation X'ers make up a large percentage of the legal workforce and therefore many attorneys find themselves dealing with the pressures of taking care of their parents or taking care of their children or both. Family leave policies which address the needs of today's "sandwich generation" acknowledge the balanced life tension felt by these attorneys and will go a long way to assist in alleviating unnecessary stresses and unhappiness at work.

The legal profession can and should ease this stress by creating and implementing family leave policies that show a real concern for the attorney. Doing so would also benefit the firm. Policies that address these areas have a positive impact on recruitment, productivity, retention and loyalty.

While there are laws that protect the rights of pregnant women and expectant parents (e.g., the Pregnancy Discrimination Act and the Family Medical Leave Act), addressing balanced life concerns requires more than simply complying with the letter of the law. Firms should be seeking ways to enhance their family leave policies and ensure that they implement them with goal of producing a supportive professional environment.

Considerations when creating/implementing Family Leave Policies:

- How much time will the employer provide?
- Will the attorney be paid during leave?
- How, if at all, will an attorney's bonus be affected by leave?
- What health and other benefits, if any, will continue to be provided?
- Will the employer allow the attorney returning from leave to "phase back" gradually?
- Will the employer offer flex-time and reduced-hour arrangements before childbirth/adoption, upon return or both?
- Who will be eligible? Will fathers receive the same leave options as mothers? Adoptive parents? Attorneys caring for elderly parents or disabled family members?
- What additional services, if any, will the employer offer?
- Will the attorney be working while on leave?

Suggestions for creating/implementing a Family Leave Policy:

- If financially feasible, provide more time than is legally mandated (e.g., child care leave in addition to any disability or FMLA leave). Employers not covered by FMLA should offer

leave that mirrors the requirements of FMLA. Don't view family leave as a vacation for the attorney and don't require attorneys to exhaust personal/sick days before being eligible for family leave.

- If financially feasible, provide paid family leave for all births, adoptions and other family leave situations that are not ordinarily covered by disability insurance.
- If financially feasible, continue to provide health and other benefits to attorneys during their leave.
- Allow new parents to "phase back" gradually from a leave.
- Offer flexible work arrangements before childbirth/adoption, upon return or both. (See Section C.1., above).
- Ensure that all attorneys are eligible (e.g., mother and fathers).
- To the extent possible, offer other benefits such as lactation rooms, onsite child care, nearby child care facilities, subsidized child care facilities, Flexible Spending Accounts, emergency back-up corporate child care, at-home back-up care, emotional support services.
- Be in contact with attorneys during their leave to keep them abreast of developments at work. Before an attorney's leave begins, discuss with the attorney how much, if any, work the attorney is willing and able to do while on leave.
- Establish policies for attorneys who have responsibility for elderly or disabled family members.
- Ensure buy-in from firm management and partners. Encourage partners and senior management to take the leave themselves to set the right tone. Train directors and managers on all of the policies and the firm's "attitude" toward the policies. The message needs to be consistent and positive. Family leave policies are only as good as their implementation.

D. Perspectives of Various Segments of the Profession

1. The Perspective of the Small Firm and Solo Practice

One of the many challenges of being a solo or small firm practitioner is how to manage the practice and the time commitments in a manner so that the attorney can take (and enjoy) much needed vacation and free time on a regular basis. What is more challenging is how to be prepared for the unexpected need to be away from the practice because of illness, injury or even the occasional family emergency such as funerals, tending to a family member's needs, etc. Although it is not necessarily true that large firm counterparts can simply say "so long" for a period of time and head to the Islands without a care about what's happening in the office, it is true that having a solid support base back at the office can make time away easier to manage. Therefore, it is important for the solo and small firm practitioner to develop his or her own support base that can be relied upon for these events. To ignore the need to take time off leads only to frustration, and other problems.

It is just as important for the small firm attorney to have a vacation "policy" as it is for the large firm or government/corporate attorney. Time away needs to be scheduled and the schedule needs to be adhered to as much as possible. In other words, a mandatory vacation policy is a must. For the most part, all practitioners have had the occasion to have to cancel a trip, weekend away or other event because of an emergency or uncontrollable situation that arises in the office, but for the solo and small firm practitioner it is critical that this is the exception and not the norm.

How can this be accomplished? There is, of course, no specific policy that would be applicable to everyone. Depending on the nature of an attorney's practice, time will need to be

scheduled around the demands of the office, the family and the attorney's individual needs and desires. Further discussion of the solo/small firm perspective is attached at Appendix F.

For the unexpected times when a solo or small firm practitioner needs to be away for personal reasons, we encourage the attorney establish an Advance Plan following the guidance established by the New York State Bar Association's Special Committee on Law Practice Continuity in its "Planning Ahead Guide" which is available through the New York State Bar Association's Web site www.nysba.org/planningahead. The Guide is designed to help solo and small firm practitioners prepare in the event that they are unable to practice because of an unexpected illness or injury or because of a planned retirement or other event. The Guide has been designed to help an attorney to plan in advance how his or her practice and clients would be taken care of in such events, through the appointment of "caretaker" attorneys who would act in the attorney's absence.

2. The Perspective of In-House Counsel

Although in-house counsel are less susceptible to many of the issues that plague private practitioners, the culture of the corporation plays a large part in the balance of an in-house attorney's professional and personal life.

Primarily, the General Counsel's work ethic often drives the legal department's attitude on balanced life issues. Some GCs would expect to see their subordinates who work full-time always in the office. This creates a "face-time" culture that makes it difficult to leave the office during the normal workday to attend to personal and professional matters, lest the attorney incur the wrath of his or her superior. In those cases, the attorney may need to devote lunchtime or time before or after normal business hours to engage in professional or personal activities that others may be able to participate in during the workday because their superiors who are more amenable to an off-premises activity.

Although many in-house attorneys work 50 or more hours per week, the amount of time that the attorney is expected to be in the office is much less than that required of attorneys in law firms. Except when the corporate culture is one of "face time" equaling full-time, most in-house attorneys do have the flexibility to be away from the office for both personal and professional reasons as long as they fulfill their work responsibilities. Laptops, cell phones and PDAs allow corporate counsel to keep in touch with the office and with their work matters while they are away. Moreover, the fact that essentially every attorney on the legal staff is representing the same client (the company) allows for delegation of specific legal matters to colleagues and subordinates, giving the in-house attorney who wants to leave the office the peace of mind to know an urgent matter is being attended to in his or her absence.

Although many in-house attorneys may impose upon themselves a greater need to be in the office so as not to be left out of business consultations, on balance, in-house attorneys generally are happy with the work/life balance that their jobs allow.

Some of the practices that can be encouraged to assure that a balanced life program exists in a company include:

- Assure that the corporation devotes a section of the company's employment handbook to corporate embrace of flexible work policies. Because the company handbook essentially is the manual of expectations between the company and its employees, having a statement of the company's commitment to flexibility will serve both the in-house counsel and the company well in setting forth the culture and the rights and obligations in this area from the beginning of employment.
- Similar to vacation policy, a balanced life program that includes sabbaticals should be made available to in-house counsel based upon seniority, and in addition to their accrued vacation time. As with private attorneys, most in-house counsel are too busy to schedule more than a week, and on rare occasions two, to be away from the office. The backlog upon returning is too severe. However, if a formalized sabbatical program were in place and encouraged, necessary things such as delegation and deadlines could be coordinated long in advance, allowing the attorney to take a large block of time off to do something especially fulfilling that a week or two alone would not allow.
- Attorneys requesting regular flexibility should work with superiors to make sure office duties are covered by other attorneys in the company.
- Attorneys who need flexibility should be afforded technological equipment (laptops, software, cell phones, and PDAs) to be used off premises. Since most companies pride themselves on being technologically proficient, that culture should extend to the legal staff so as to allow them to keep in touch regularly while being involved in professional and personal matters outside of the office.
- A leave of absence policy should be detailed and available, with job seniority maintained upon return.

3. The Perspective of Law Schools, Counsel at Not-for-Profit Organizations and Government Attorneys

Many balanced life issues that arise in the law school, non-profit and government attorney contexts are similar to those that occur in the law firm or corporate law office. In all of these practice areas written flextime, vacation and leave time policies that take into account both the realities of the practice area (law schools function on a school calendar year; non-profits and government are often constrained by limited funding) and the needs and expectations of the attorneys employed by the organization are critical.

Law Schools

In Section B.9. of this Report, and in the Section on Conclusions and Recommendations, we urge law schools to play a more open role to assist law students by asking hard questions of potential employers about work/life balance. Law schools must also set an appropriate example by adopting supportive balanced life policies for members of their faculty and administration.

Attorneys in Non-Profit Settings

Non-profit organizations that provide legal services to poor clients unable to pay for legal assistance operate in many respects like law firms. However, since these legal services organizations, whether they are providing civil legal services, indigent defense, juvenile representation or a combination of these services, are generally under-funded and under-staffed, the attorneys and other staff are often overwhelmed by the numbers of clients seeking their services. The pressures that result

from under-funding and unending client need for services make it difficult to focus on staff balanced-life issues. As a result many attorneys and other staff complain about "burnout," which contributes to excessive personnel turnover.

Notwithstanding the pressures of limited budgets, it is essential that these non-profit programs and other smaller non-profit organizations facing similar client demands have written and implemented balanced life policies that require staff to take annual vacation and that support family leave and other leave time as well as the availability of flextime, job-sharing and sabbaticals.

Government Attorneys

There is a critical need for written policies supporting sound balanced-life practices for attorneys and legal departments in all levels of government. As with the non-profit arena, budgetary constraints often appear to present obstacles to achieving balanced-life goals for government employees. Government agencies should recognize the importance of providing access to a variety of types of balanced-life programs to enhance recruitment and to improve agency morale and reduce turnover. The existence of civil service employee organizations and other types of collective bargaining arrangements provide avenues to negotiate a variety of balanced-life programs.

D. Conclusions and Recommendations

In the course of our work, we met with lawyers across the state, from Rochester to Long Island, at our forums on balanced lives in the law. We were careful to invite a diverse group, old and young; large firm, small firm, solo practice; corporate, government; and academia. We had a mix of men and women at these forums, and made efforts to ensure racial and ethnic diversity. Other than in Manhattan, where we facilitated a discussion among partners in charge of associate issues, at the other forums, we dealt essentially with just a few questions: (1) Are you able to achieve a balanced life in the law (a balance between your professional life and your personal life)? (2) If not, what factors make it difficult for you to achieve a balance; if so, what factors help you to achieve that balance? (3) What can law firms, law schools, and the organized bar do to help attorneys achieve balanced lives? These three questions provided plenty of grist for a very informative and meaningful discussion at each forum. Each meeting lasted about three hours, but probably could easily have gone on for another hour or so.

What struck us as we reviewed the results of these forums was that the attorneys' responses—regardless of their number of years in practice, size of firm, practice setting, etc.—were consistent on one central point: They all were having a very difficult time achieving a balanced life in the law. Again, we wish to emphasize that when we refer to a balanced professional and personal life, we embrace within the concept of personal life not only attention to private interests, family and friends, but also involvement in bar association, civic, and community activities, all of which contribute to achieving a well-balanced life. Most felt that their life was not balanced (work dominates their time and attention, at the expense of their personal life). Most felt that, at the time they decided to go to law school, they didn't fully appreciate the extent of the demands a legal career would place on them (the number of hours required to be worked each week, the extent to which work would intrude on their private life, etc.). The law is indeed a jealous mistress, and they underestimated how jealous she would be. That said, with very few exceptions we found that most of those with whom we spoke would still choose a career in law, if they had it to do over again. Many of them love practicing law, but they are distressed with the inordinate demands it places on their time and the extent to which it intrudes in their private lives.

What we learned at our forums is consistent with the many articles, books, and reports on this subject (see the bibliography included with this Report). It seems to be a pattern consistent across the country—many lawyers (not all) find it difficult or impossible to balance professional life with personal life; there just aren't enough hours in the day. Not every lawyer feels stressed in this way, but a sufficiently large portion of the profession do, which makes it a problem that demands attention and calls upon us to help find solutions.

What, then, can be done to improve the lot of busy and stressed lawyers? There are a number of suggestions contained in the foregoing sections of this Report, and we hope they will be given serious consideration as possible ways in which to address the problem. We reiterate some of those in the following summary of our recommendations, which are arranged according to three major components of the profession: (1) law schools (and pre-law); (2) the organized bar; and (3) law firms. Here, in concise terms, is what we think each could do:

Law schools need to do a better job of involving practicing lawyers as guest speakers in their orientation programs, in courses on the profession, or other appropriate contexts, to share with students a realistic description of the demands one should expect in the legal profession, and in different job settings within that profession. Indeed, the same should be done by undergraduate colleges and universities, when advising their students as to choices of legal studies and careers in the law. The organized bar and law firms/departments should step forward and offer their help to law schools, universities and colleges in this endeavor. Placement directors at law schools have been somewhat effective in pressing law firms to provide information about their diversity and pro bono policies, for example, so law schools can make such information available to their students, as those students make decisions about where they might like to work after graduation. A better job could be done by these placement directors in pressing law firms to provide similar information about the average number of hours required of associates and partners at the firm, and other aspects of the policies at the firm that bear on the subject matter of our Report. Law students need that sort of information as well, to make informed decisions about jobs they might pursue.

Bar associations need to pay more attention to this subject in their CLE programs, publications, and periodicals, and offer lawyers advice, education and resources on such topics as:

- time management
- stress management
- mastering technology to our advantage (saving time, making our lives easier), rather than letting technology master us and intrude into our personal lives
- practice management techniques and practice-related resources that enable us to save time without sacrificing quality
- law office procedures and policies aimed at creating an environment within the firm which facilitates, rather than impedes, the ability of attorneys to achieve a balanced life

Bar associations need to encourage law firms to adopt more flexible policies and practices along these lines, and associations should give favorable public recognition to law firms that adopt more enlightened policies and practices in this area. There is a current initiative by the New York State Bar Association to find more ways it can be helpful to solo practitioners. We applaud that effort and encourage the Association to expand its effort to include small firms, as well. One of the most pressing needs solo practitioners and small firms have, relating to the subject matter of our Committee, is finding attorneys with whom they can network for such purposes as covering for one another in case of emergency, or seeking guidance on how to handle a new matter in their office. Unlike a large law firm where there are other partners to rely on, if a solo practitioner has an emergency and needs some help from another attorney to cover his or her clients' needs, in many

instances no backup is available. If the organized bar could facilitate such networking among solos and small firms, that would be a valuable service.

When bar association leaders meet with law school deans, they should encourage them to undertake the efforts mentioned in the preceding portion of this Report, on what law schools can do to help address the challenges at hand. The New York State Bar Association should share this Report with law school deans, and it should convey the Report to the leadership and staff directors of local bar associations, encouraging them to help implement its recommendations and suggesting that they open a dialog with their members, perhaps through forums such as those conducted by our Committee and described in this Report.

Law firms are the arena, however, where the most significant steps could be taken to help lawyers lead more balanced lives. As we have moved from the Greatest Generation, to the Baby Boomers, to the X, Y, and present generation, we have managed, as a profession, to become our own worst enemy—the high-pressure, highly competitive, high-number-of-billable-hours-expected culture we create within our law firms and the stresses that result for the attorneys in our firms. Firms need to adopt **and implement** policies that provide flexible options for lawyers and the firms in deciding on work hours and work setting. Ideally, such policies should address a wide variety of circumstances, around, for example, reduced hours—whether occasioned by maternity or child-rearing issues, care for elderly parents, the need for reduced hours at any point in one’s career, including senior lawyers who may wish to scale back their practice load as they approach the twilight of their careers. Job sharing, telecommuting, and compensatory time (an attorney may have a very heavy work schedule in connection with a major trial, and then look forward to “taking it easy” for a while thereafter). Vacation time and occasional respites from the rigors of practice (sabbaticals and the like) should be encouraged within the firm’s culture. Firms need to re-examine the number of billable hours they require, and should also review their policies concerning the recognition of such activities as pro bono work, participation in a volunteer capacity in civic activities, and professional association involvement, as the equivalent of billable hours. Firms should also establish policies and practices that draw boundaries to the extent to which work is permitted to intrude on a lawyer’s personal life. Firms must recognize that predictability and control over one’s schedule is of paramount importance in an attorney’s effort to achieve a balance life. Rules should be set up and followed to limit the extent to which the firm and its clients demand access to an attorney, through e-mail, BlackBerrys, cell phones, or other means, during that attorney’s personal time away from the office. Law firms need to encourage and support a healthier lifestyle for their lawyers, including regular exercise, adequate rest and relaxation, and other stress-relieving factors. In sum, law firms need to create an atmosphere and culture within the firm that recognizes the importance of maintaining a well-rounded existence where work and private life are in good balance.

Our final recommendations are that this Report be made readily available to NYSBA’s members and beyond by various means, including placement on the Association’s Web site, and that work in this area be continued under the auspices of our Committee on Law Practice Management, and with the cooperation of the Committee on Continuing Legal Education, the Committee on Legal Education and Admission to the Bar, the General Practice Section’s Committee on Solo and Small Firm Practice, the Lawyer Assistance Committee, the Committee on Law Practice Continuity, and other entities within the organization that might have an interest. It will take a team effort, not only within our organization but also in concert with other bar associations, law schools, and law firms, if we want to meaningfully address the problems described herein. We hope that the information and suggestions we have gathered over the course of the past few years, as reflected in this Report, will be helpful to the profession in addressing the challenges of an ever-more demanding and stressful life, as we all strive to achieve balanced lives in the law.

Appendix A

The Top Twelve Factors Adversely Affecting Balanced Lives for Attorneys (The Dirty Dozen)

During the course of its work, as the Committee had an opportunity to conduct forums and to read detailed minutes of the forums and hear reports on what transpired at each, and as the members had an opportunity to read articles and books on the subject, discussion during the Committee meetings began to coalesce around a set of common problems and challenges which make it difficult for attorneys to lead balanced lives. A list was made of these common problems or factors, and was informally dubbed “The Dirty Dozen,” as there appeared to be about twelve major items which could be included. They are, arranged in no particular order or priority:

1. Pursuit of the billable hour—the endless rat race (particularly in large firms)
 - a. not enough time for a life (outside the work environment)
 - b. not enough time for non-billable work, e.g., professional development, business development, pro bono, bar activities, mentoring, training
2. The effects of economic conditions and increased competition
 - a. the legal marketplace is more competitive—with expanded technology, the world is much smaller and there is often national or global competition in situations that used to be handled locally
 - b. too many attorneys chasing a limited number of jobs in the profession
 - c. clients no longer loyal to one firm
 - d. competition from other firms and other professions, e.g., former dot-com lure
 - competition with firms for a limited number of cases in particular areas of law (due to statutory and/or law changes)
 - e. changing demographics of the clients, with more women going in-house and in-house attorneys working longer hours, as there is more competition for these positions
3. Inadequate flex-time and reduced-hour arrangements for both associates and partners (and the effects of changing demographics in the profession)
 - a. attorneys and spouses both working, with children at home to raise
 - b. unsuccessful results of work/life programs, including: stigma; challenges to advancement; inferior work assignments; colleague resentment; unfair compensation; continued unpredictable hours
 - c. a new generation graduating from law school prioritizing work/life balance and favoring the exchange of lower pay for more time off
 - d. sandwich generation facing childcare as well as elder care responsibilities
 - e. about 50% of graduating law school classes are women, yet employers are slow to face the changes in demographics
4. Break-down in professional values
 - a. too much emphasis on making money; not enough on traditional values
 - b. decline of the mentoring system—lawyering skills and traditional professional values are not being passed along to new generations of attorneys as well as they were in earlier times

5. Depersonalization of the employer
 - a. firm does not recognize or properly value pro bono work, involvement in bar association activities, or other volunteer activities
 - b. some firms are becoming so large that colleagues no longer know each other and the culture, environment and personality of the firms are getting lost in anonymity
 - c. It is no longer the norm that attorneys stay with a firm throughout their entire career—neither firms nor the attorneys they employ seem to have the same loyalty toward each other as was typical in earlier generations
6. The negative effects of changes in law office technology (granted, there are many positive effects)
 - a. the tyranny of e-mail, cell phones, and voicemail
 - b. trying to afford, learn, and apply new technology
 - c. the expectation of immediate response and accessibility
 - d. the ethical implications resulting from the pressures to respond to client queries without time to research or reflect
7. The need for better stress management and time management skills for busy attorneys
 - a. the lack of control over one's schedule and time
 - (1) acceptance of multitasking as a way of life
 - (2) idea that attorneys must be available at all times for clients
 - b. the lack of predictability
 - (1) the nature of the practice sometimes prevents planning, e.g. being kept waiting for long periods of time at some courts for cases to be called
 - (2) some employers' cultures and macho atmosphere prioritize "face time" and long hours
8. Instances of incivility and discourtesy from some fellow attorneys and some judges
9. Insufficient emphasis in the media on the many examples of highly ethical, highly professional attorneys and the many good deeds they do. More needs to be done by bar associations and other groups to counteract the effects of attorney bashing—a more balanced view of the profession must be presented and more needs to be done to promote a positive image of attorneys and the system of justice.
10. Rising costs of the business of a law practice
 - a. health-care costs for employees
 - b. keeping up with technological changes
 - c. malpractice insurance costs
 - d. liability risks due to the ease and informality of e-mail despite it still being a written communication
11. The costs involved in becoming an attorney have risen sharply in recent decades and place a heavy burden on new practitioners. Some feel compelled to take jobs in large firms and to suffer through the rigors of a few years as a heavily worked associate in order to pay off their law school debt.

12. Lack of passion and excitement for the profession and certain career paths
 - a. going to law school for the wrong reasons, e.g., it's the safe thing to do, parents pressure you to, what else were you going to do, etc.
 - b. taking a law firm job right out of law school even though that is not what you want to do with your career, for the financial reasons mentioned in 11. above, or the idea that the law firm job is a necessary experience to get you to your next job

Appendix B

Resources and Reports on this and Related Subjects Gathered from Other States and Organizations

Several comprehensive studies relative to quality of life issues for the attorney have been conducted in recent years by other state bar associations, as well as, other associations within New York State. Those studies deal with attorney retention, economics of law practice, diversity and changing social demands. In September 2004, the State Bar Committee on Women in the Law held a series of programs focusing on issues affecting the entire legal profession.

We also reviewed the February 2006, Report of the Commission to Examine Solo and Small Firm Practice. This Commission was appointed in May of 2004, by Chief Judge Judith S. Kaye, and was assigned the task of reporting on how the judiciary can support of solo and small firm attorneys in the practice of law. In gathering relevant data, the Commission obtained views and comments from a variety of sources. The Commission held three public hearings—in New York City, Albany, and Rochester—to listen to colleagues and exchange ideas. To solicit ideas and recommendations, the Commission disseminated a survey directed to solo and small firm practitioners through the assistance of bar associations, including NYSBA. The Commission's report may be found online at <http://www.nycourts.gov/reports/ssfreport.pdf>. NYSBA President Mark H. Alcott has appointed a Special Committee on Solo and Small Firm Practice, chaired by former NYSBA President Joshua M. Pruzansky, to draft a response to the Commission's report and to look more broadly at the subject matter of solo and small firm practice, and what NYSBA can do to assist attorneys in these practice settings.

On February 2, 2006, the Committee on Women in the Profession of the New York City Bar issued a report entitled "Best Practices for the Hiring, Training, Retention, and Advancement of Women Attorneys." The link to the report is <http://www.abcnyc.org/pdf/report/BestPractices4WomenAttorneys.pdf>. According to the report, despite the fact that current percentages of men and women in law firms are nearly equivalent at the entry level, women attorneys comprise only 17% of partners in law firms across the country. The Committee endeavored to provide concrete best practices and a list of practical suggestions that would encourage immediate remediation to the existing obstacles to the retention and advancement of women in the legal profession. The Committee discovered that the legal profession fared especially poorly when compared to other fields, such as the accounting industry, in ensuring that the hiring, training, retention and advancement of women are monitored consistently and effectively. The Committee conducted an extensive review of published studies, research, surveys and articles addressing the issues faced by women in the legal profession and developed practical solutions and suggestions with respect to hiring, training, retaining and advancing women attorneys. The Committee reviewed a variety of quantitative and qualitative data and drew upon its members' own experiences.

The Women's Bar Association of the District of Columbia issued a report in May 2006 entitled "Creating Pathways to Success – Advancing and Retaining Women in Today's Law Firms" to inspire continuous efforts to increase retention and advancement of women attorneys. The Initiative began with an examination of why women leave the profession, what kind of careers they want, what it is about the profession, the style or practice, or the culture that makes retention and advancement a constant issue. Law firms leaders and women attorneys shared experiences and beliefs about the causes of attrition. The central finding supported by the research is that women leave the profession

when their capabilities are not valued, or their contributions are not acknowledged or recognized. The report identifies strategies to retain *and* advance women attorneys. The full report is available at <http://www.wbadc.org/index.cfm>

Appendix C
PARTNER FLEX TIME POLICY
(applies to all partners)

Approved 4/11/2002
Revised 9/27/02
Revised 11/17/05

The Holland & Hart Statement of Principles provides that we are an organization that allows individuals to fulfill their professional and personal goals. The managers of the firm are charged by the Statement of Principles with the responsibilities of displaying innovation and flexibility in adapting to changing conditions and operating the firm on a profitable basis.

The firm recognizes that, despite a strong commitment to the practice of law and excellent client service, an individual attorney may find that other concerns necessitate requesting a work arrangement that reduces the amount of time devoted to legal work. An increasing number of our attorneys are faced with a difficult choice of priorities between maintaining a full time law practice, and assuming and fulfilling time consuming family responsibilities, whether raising children, caring for aging parents, or assisting other family members or loved ones in times of need. Others may find themselves consistently working at a reduced pace. There are many reasons why our lawyers may wish to work on a flex time basis, including teaching or studies, community service, writing a book, personal injury or illness. The firm believes that partners can and will remain committed professionals while working on a reduced schedule, and that such a schedule should not suspend partners' opportunities for professional growth, experience, and career advancement. No one should become so discouraged trying to satisfy the demands noted above that he or she feels compelled to withdraw completely from the practice of law or from Holland & Hart.

This Policy is also intended to assist those attorneys who may wish to reduce the amount of time devoted to legal work in anticipation of retirement. The firm recognizes the importance of providing a procedure for those who choose to transition from full time to working on a reduced basis for the years leading to retirement.

The firm's commitment to excellent service to clients requires that a partner working on a flex time basis accommodate, when required for client needs, work on an irregular schedule, work involving travel, and occasional highly concentrated periods of work. In keeping with the responsibilities of the firm's management to be innovative, flexible, and family friendly, but also to maintain an acceptable level of overall firm profitability, the following guidelines are adopted by MCOM:

2. Initial Request and Approval

If an H&H partner wishes to reduce his or her time commitment to the firm for the reasons stated above or for other reasons, he or she may seek to be approved for flex time status. A written plan shall be submitted that includes the following:

a. The percentage of a full time commitment the partner desires to work and the schedule proposed. A full time commitment shall be presumed to be at the level of the firm's then existing generally applicable performance expectancy, which currently is a chargeable hour commitment of 1700 hours, and a total hour commitment in the range of 2000 to 2500 hours. Partners 55 years of age and older currently are subject to a separate chargeable hour expectancy of 1500 hours. For purposes of this policy, the full time expectancy number used for such partners [those 55 and older] will generally be presumed to be 1700 chargeable hours. A different chargeable hour expectancy than either of the presumptive levels described above may be approved as the appropriate expectancy number against which a flex time commitment is measured, depending upon the partner's client responsibilities, administrative responsibilities, the amount of work in the practice group and in the firm generally, the partner's business development efforts and results, and total hours, among other things. The partner proposing the plan should identify the full time commitment hours he or she believes to be appropriate under the circumstances. Except in special circumstances, time commitments of less than 50% are not favored because it is difficult to maintain profitability at this level of work. This is necessary because, depending upon the attorney's compensation level and hourly rate, 50% may not be sufficient to maintain profitability, taking into account overhead and other factors. Note that some employee benefits may not be available at certain reduced levels of time commitment.

b. The areas of practice in which the requesting partner will work during the ensuing one-year period.

c. The proposed compensation arrangement and an analysis of profitability (see section III below).

d. Any special arrangements proposed to reduce overhead or make the arrangement profitable (e.g., office sharing, secretarial arrangements, reduction in benefits, special hourly rate, etc.).

e. The plan should also deal with sabbatical leave if that issue is likely to arise during the flex time commitment period and, if applicable, withdrawal, pre-retirement and retirement benefits.

The plan should demonstrate that it creates a reasonable opportunity for the continued professional development of the requesting partner, and that the partner will generate or obtain meaningful work in quantity and quality sufficient to allow continued professional development.

The written plan and request for approval shall initially be presented by partners in the downtown Denver office to the appropriate Department Chair and by partners in regional offices to the Administrative Partner of the regional office in which the partner practices. The Flex Time Advisor, as described in Section II below, or the Managing Partner, shall be involved in the approval process. If the Department Chair/Administrative Partner and the Flex Time Advisor or Managing Partner determine that a proposed plan has a reasonable likelihood of success based on the expected level of work and service to clients, the plan shall be submitted to the Management Committee, or its delegate, which will consider both that issue and whether the plan is consistent with acceptable overall firm profitability and goals. Upon approval by the Management Committee, or its delegate, the requesting partner may commence the practice of law on a flex time basis, pursuant to the approved plan.

3. Flex Time Advisor

MCOM shall appoint a Flex Time Advisor who shall be available to work with partners seeking to be approved for flex time status or who wish to remain on that status. This Flex Time Advisor shall assist partners seeking approval or renewal of this status in preparing their plans, including asking other attorneys to cooperate and participate in making such plans successful, and may, if requested by the attorney seeking a flex time commitment arrangement, serve as a liaison with the Department Chair, Administrative Partners, MCOM, or its delegee. The Advisor shall also develop suggestions for ways in which overhead expenses can be reduced and shall share those suggestions with attorneys seeking approval or renewal of this status. The Advisor may assist in performing the economic analysis described below and shall maintain model or example forms of reduced time commitment plans for use and information.

4. Economies, Overhead and Compensation

The widespread acceptance and support of flex time arrangements is dependent upon recognition that partners working pursuant to such arrangements are not being subsidized by the firm, absent unique and particular circumstances. Flex time arrangements can be and are profitable to the firm. Both the firm managers and the partners seeking such arrangements should be willing to discuss openly and honestly the economic effects of the proposed arrangement.

Administrative support and, therefore, overhead costs in law firms are designed for full time work by full time attorneys. Most overhead expenses do not reduce proportionally with a reduced quantity of work by attorneys. Accordingly, each partner who wishes to work flex time must be prepared to accept limitations in the areas of secretarial or administrative support, office location and compensation. The greater the reduction from full time in time commitment, the greater the modifications that may need to be considered. It is also possible that it may be necessary to limit the number of partners practicing law on a flex time commitment basis in order to maintain acceptable levels of overall firm profitability.

The partner requesting flex time status shall perform and describe an economic analysis of the proposal, based on proposed chargeable hours commitment, hourly rate, realization rate, overhead, and compensation, together with an analysis of any additional contributions to be made for the benefit of the firm. The Flex Time Advisor or the Managing Partner shall make available the formulas used by the firm to calculate profitability.

5. Annual Reporting and Review

All approved plans shall be reviewed not less than annually by MCOM or its delegee. Such review shall be conducted based on the same criteria as initial requests. . Failure to achieve an acceptable level of performance in the past year may be grounds for disapproval of any request for continued flex time commitment status, or modification of the approved Plan. A negative change in overall firmwide profitability or in the relative profitability of a particular requesting partner's situation may necessitate changes in the plan or, in some cases, discontinuance of the flex time commitment arrangement. The continuation of a flex time arrangement shall be based on continued acceptable levels of profitability and overall contribution to the firm.

6. Division of Time Commitment

The Statement of Principles calls for H&H attorneys to divide fairly their time between the legal, administrative, and public service tasks necessary to assure the firm's economic well being and professional reputation and to serve our clients. A partner on flex time status is expected to abide by this fill bucket standard.

7. Management Responsibilities

In the event a flex time partner is asked to accept a management responsibility which because of its magnitude justifies different chargeable hour expectancy than 1700 hours, the partner may ask the Management Committee to approve a different expectancy. The partner and the Management Committee shall review that expectancy every six months, at the time the partner is entitled to adjust the percentage of full time commitment. The revised expectancy shall be taken into account by the Management Committee at compensation time and for purposes of determining upward retroactive adjustments.

For example, a flex time partner is asked to become the Chair of the Litigation Department. The partner has been on an 80% commitment, meaning that her chargeable hour expectancy is 1360 and her total hour expectancy is 1600-2000 hours. The partner and MCOM agree that this commitment cannot be fulfilled in the 240-640 nonchargeable hour expectancy, given other commitments for that time, such as marketing and CLE. They agree that the partner may be on an 80% expectancy with a 1260 chargeable expectancy. The partner will be paid at 80% of her unit value. If her chargeable hours for this period are 1260, it will be grossed up to 1600 for compensation purposes. If her chargeable hours exceed 1260, the Management Committee shall determine whether her contribution met expectations in terms of time commitment. If so, she shall be entitled to an upward retroactive adjustment.

8. Upward Retroactive Pay Adjustments

Flex time compensation may be subject to upward retroactive adjustment if the percentage of full time actually worked is materially greater than the percentage anticipated and upon which actual compensation has been based. MCOM, or its delegee, shall review flex time partners' actual hours to determine if an upward retroactive adjustment is appropriate.

9. Unit Assignments and Compensation

Unit assignments by MCOM to partners on flex time status shall be determined using the same criteria applicable to full time partners. Accordingly, higher or lower unit assignments may be made by MCOM, in its discretion, in accordance with the Partnership Agreement.

10. No Absolutes

The use of this Flex Time Policy is not intended to create entitlements or rights in anyone. Although the firm is dedicated to allowing flexibility in work schedules, firmwide profitability or other firmwide considerations may require disapprovals in some instances, or from time to time require that approvals be given only sparingly.

11. Conclusion

The opportunity to work on a flex time basis is intended to allow fellow professionals to continue to practice law together over an extended period of time while recognizing that not all partners work on a full time basis for various reasons. These partners can and will remain committed professionals dedicated to the practice of law at Holland & Hart and to excellent client service.

Appendix C-1

ECONOMIC PROFITABILITY ANALYSIS FOR FLEX TIME PARTNERS

An economic profitability analysis begins with the amount of revenue expected to be produced by the partner on a flex time arrangement, then subtracts compensation and overhead to arrive at an expected net profit for the arrangement.

The amount of revenue expected is based on hours anticipated to be worked, multiplied by the individual's billing rate, and then reduced by expected writedowns and writeoffs which we incorporated into a realization rate. Unless circumstances otherwise dictate, the hours anticipated to be worked should be based on the percentage of full time intended to be worked multiplied by the appropriate full time equivalent performance expectancy. The realization rate used may be the individual's own realization rate or the overall firm average, as appropriate. Both rates are available from Jim Davidson at any time.

Overhead includes all of the expenses of the firm other than timekeeper compensation and related fringe benefits. A large part of total overhead is fixed, and thus will not change for an individual despite a commitment to work less than full time. The amount of fixed and variable overhead varies by office and from year to year, with the fixed component ranging from 45% to 65% of the budgeted total overhead for each year. These figures are available from Jim Davidson.

An example of a profitability analysis is given below for a Denver partner who wishes to work at '75% of full time, with a billing rate of' \$295 and with an assigned full time unit level of 6 units, with a budgeted value of \$40,000. For purposes of the example, we have assumed 92% realization rate. This example is not intended to define the parameters for any given situation, or to suggest a level of profitability that is either required or sufficient to obtain approval of a flex time arrangement. It merely provides an example of how such an analysis is performed. The firm must reserve the right to determine what level of profitability is acceptable for each individual flex time arrangement.

1,700 hours times 75% = 1275 hours at \$295 per hour times 92% realization equals \$346,035 gross revenue.

Compensation (6 units times \$40,000) equals \$240,000, times 75% equals \$180,000

Fixed overhead of \$52,693 plus 75% of variable overhead of \$56,223 equals \$94,860. (These are 2001 Denver office overhead figures.)

\$346,035 (gross revenue) minus \$180,000 (total compensation) minus \$94,860 (adjusted overhead) equals a profit of \$71,175.

This analysis shows an expected profit of approximately \$71,175 per year.

Appendix C-2

A MODEL FLEX TIME PLAN FOR PARTNERS

The plan should demonstrate that it creates a reasonable opportunity for the continued professional development of the requesting attorney, and that the attorney will generate or obtain meaningful work in quantity and quality sufficient to allow continued professional development.

A. Introduction

Include the reasons for your proposal to practice law less than full time, the name of your Department Chair; Practice Group Manager and/or Office Administrative Partner, if appropriate.

B. Proposed Percentage of Full Time Commitment and Schedule

Include the proposed percentage of full time commitment (based upon the Firm's then existing performance expectancy for both chargeable and non-chargeable hours) and the proposed schedule.

C. Areas of Practice

Include the areas of practice in which you expect to work and the attorneys and clients with whom your work is likely to be done.

D. Proposed Compensation Arrangement

Include the proposed compensation arrangement and an economic analysis, in substantially the form attached to the Policy, showing the anticipated profitability of the flex time arrangement.

E. Special Arrangements

Include any special arrangements proposed to reduce overhead or make the arrangement profitable (e.g. office sharing, secretarial arrangements, reduction in benefits, special hourly rate, etc.).

F. Sabbatical Leave

Include suggestions for sabbatical leave if the issue is likely to arise during the part time commitment period, and if applicable, withdrawal, pre-retirement and retirement benefits.

Appendix C-3

PROCEDURES FOR RETROACTIVE COMPENSATION OF FLEX TIME PARTNERS

The full time equivalent chargeable hour expectancy used to measure the flex time commitment is 1700². Partners in the flex time program choose a percentage of 1700 billable hours and 2100 total hours, as their target. For example, if they choose 75% they are expected to work a minimum of 1275 billable hours and 1575 total hours. Their monthly draws reflect that percentage of their unit value if both standards are met. Twice a year, the Flex Time Coordinator and the managing partner review flex time partners' hours in detail.³ If he/she is "on target" for the year; no changes are made. If the partner has been working at least 5% more than their percentage, they can ask for a retroactive adjustment (a check) or they can "let it ride" and wait for a year-end adjustment, which should reflect actual percentages worked. If he/she has worked less than the percentage of payment received for the first 6 months, then the partner should consider adjusting to a lower percentage going forward. Partners are encouraged to realistically predict their workload (to the extent possible at mid-year so that that compensation reflects actual hours worked. At year-end, the January special may be used for upward compensation to ensure that the partner receives payment for the full percentage of time worked that year. If a partner has worked less than the percentage of payment received for the year he/she has the option to waive all or part of his January special to reflect actual hours worked.

Flex time partners may adjust prospectively their flex time percentages two times a year.

Adjustments in percentage commitments are effective July 1 and January 1. Consistent with the period of review (12/1 through 12/31), partners wishing to adjust their percentage going forward are to give notice to the Director of Finance, the Flex Time Coordinator and the Managing Partner by the 15th of December and the 15th of June.

² The firm's performance expectancy for partners is a chargeable hour commitment in the range of 1700 to 2000 hours, and a total hour commitment in the range of 2100 to 2500 hours.

³ To facilitate year-end closure of the firm's books and records, year-end flex time reviews are done at November 30, rather than December 31. The year-end review includes hours from December 1 of one year through November 30 of the following year. Mid year reviews take place at May 1, and include hours from December 1 of one year through April 30th of the following year.

Appendix D

— MODEL POLICY —

FLEXIBLE WORK ARRANGEMENTS

*Preface*⁴

The Law Society of BC recognizes that individuals committed to the practice of law may, for reasons including work-life balance, family responsibility, or other interests, prefer flexible work arrangements which restructure or reduce the time devoted to work or which allow the individual to work from locations other than the office of the firm. This model policy on flexible work arrangements is made available to encourage and support lawyers of BC to develop best practices that increase productivity and enhance a law firm's ability to recruit and retain lawyers with diverse perspectives.

Flexible work arrangements take many forms. Advances in both telecommunications and computerization technology, make it feasible for many lawyers to practice from locations other than the law firm's offices. Law firms are implementing full-time, flex-time arrangements and various types of reduced-hour schedules, including job sharing.

This Model Policy recognizes that different firms will have different goals and may choose different approaches to promote flexible work arrangements. Therefore, some firms may choose to implement a detailed policy while others may adopt broad statements of commitment and purpose (as is set out at the beginning of the Model Policy) and deal with individual requests on a case-by-case basis.

This Model Policy addresses flexible work arrangements generally. The Pregnancy and Parenting Leave Model Policy contains specific provisions for returning to work after the birth or adoption of a child.

This policy has drawn upon a number of policies and publications including: the publication of the Commission on Women in the Profession of the American Bar Association and published in *Lawyers and Balanced Lives: A Guide to Drafting and Implementing Workplace Policies for Lawyers* (First edition 1990: ABA, Chicago) and *Lawyers and Balanced Lives* by the ABA Commission.⁵

⁴ This policy does not contemplate the duty to accommodate for reasons of disability. Please see the Model Policy titled "Accommodation for Persons with Disabilities."

⁵ See also: Women's Bar Association of the District of Columbia's *Guidelines on Family and Medical Leave and Alternative Work Arrangements* and *Flexible Working Arrangements* published by the Ontario Women's Directorate and Camco Inc.

Model Policy

1. Statement of Commitment

[Name of firm] recognizes that individuals committed to the practice of law may for reasons including work-life balance, family responsibility, or other interests prefer flexible work arrangements which restructure or reduce the time devoted to work or which allow the individual to work from locations other than the office of the firm. The firm believes that attorneys can and will remain committed professionals while working in a flexible work arrangement, and that such arrangements should not affect attorneys' opportunities for professional growth, experience, and career advancement.

2. Purpose

The firm's primary purpose in providing flexible work arrangements is to attract and retain attorneys who we value while promoting and supporting excellence in the practice of law by including attorneys who choose flexible work arrangements. Therefore, the firm will make every effort to accommodate reasonable requests for flexible work arrangements from attorneys be they associates or partners.

Attorneys will respect the availability of the flexible arrangement attorney. It is equally important that the flexible arrangement attorney be willing to accommodate, when required, work on an irregular schedule, work involving travel, and occasionally work in highly concentrated periods of time. Progress toward partnership, increasing responsibility in the firm and continued inclusion in the partnership may depend on the ability of the flexible arrangement attorney to demonstrate a reasonable amount of accommodation in regard to unforeseeable needs of the firm in light of the specific work arrangements.

3. Definition

"Flexible arrangement attorney" means an attorney who has negotiated a flexible work arrangement with the firm.

4. Eligibility and Duration

Partners and associates are eligible to use this policy. [Associates must have been employed by the firm for _____ before becoming eligible for an flexible work arrangement.]

In considering proposals, the firm will be guided not only by the attorney making the request, but also by the overall size of the firm and needs of its clients. There is no predetermined limit to the number of attorneys who will be permitted to work under a flexible arrangement at the same time, nor is there a predetermined minimum or maximum period which an attorney may spend on flexible arrangement status.

Approval and termination of a flexible arrangement is at the sole discretion of the firm.

The firm, when terminating any flexible work arrangement will give sufficient notice to the flexible arrangement attorney to enable that attorney to make appropriate alternative arrangements.

4. Flexible work arrangements

4.1 Types of arrangements

Flexible work arrangements that may be considered by the firm include the following:

Full-time arrangements:

Flex-time — Flex-time is a rearrangement but not a reduction of office hours. It includes compressed time in which an attorney handles a full workload in fewer, longer workdays, instead of a normal work day. The attorney remains responsible for a full workload and is entitled to full compensation.

Flex-place — Flex-place is an arrangement under which the employer agrees that some or all of the attorney's responsibilities may be handled at home or some other agreed-upon location. The attorney remains responsible for a full workload and is entitled to full compensation.

Reduced hour arrangements:

Reduced work schedule — A reduced work schedule is a work arrangement in which the attorney works reduced hours. The arrangement may be structured in any number of ways, including specifying a reduced number of hours, days in a week, weeks in a month, or months in a year that an attorney will work, or specifying the size of the attorney's case-load.

Job sharing — Job sharing is an arrangement in which two or more attorneys share a position and are paid proportionately for their share of the work.

4.2 Parameters

There is wide latitude in designing a flexible arrangement, which may include any of the above, providing the attorney agrees

- (a) to maintain fairly regular or predictable core office hours or core hours of work and to communicate these days/ hours and any changes to his or her colleagues;
- (b) to remain in contact with his or her assistant or to be reachable on a reasonable basis during off hours in case of an emergency;
- (c) to remain reasonably willing to accommodate unusual work demands; and
- (d) to agree to strive for continuous improvement and to participate in non-billable professional and business development activities of the firm.

The firm will expect an attorney with flexible work arrangements to be available outside the flexible arrangement only when reasonably necessary.

5. Associates' compensation and benefits

5.1 Salary

The flexible arrangement attorney will be paid a salary that is calculated on a pro-rated basis.

The flexible arrangement attorney's basic salary may be adjusted to reflect the result of a careful analysis of the increase or reduction of overhead costs resulting from the flexible work arrangement.

5.2 Benefits

Where possible, the firm will continue to provide an adjusted benefits package while the flexible work arrangement is in effect. It is the responsibility of the flexible arrangement attorney to determine his or her eligibility for benefits when working reduced hours.

The flexible arrangement attorney's expense allowance will be adjusted as necessary.

6. Partners' compensation and benefits

6.1 Partnership Compensation

Equity and Non-Equity Partners are equally eligible to use this policy.

Partnership compensation for flexible arrangement partners will be determined in the same manner as for other partners, taking into consideration the same factors that apply to other partners and making reasonable adjustments to reflect the flexible work arrangement.

6.2 Benefits

Where possible, the firm will continue to provide an adjusted benefits package while the flexible arrangement is in effect. It is the responsibility of the flexible arrangement partner to determine his or her eligibility for benefits when working reduced hours.

7. Career advancement and eligibility of associates for partnership

The firm has a keen interest in the long-term career development of all attorneys. Therefore, to the extent reasonably possible, there should be no difference in the quality of work given to flexible arrangement attorneys and no difference in the firm's attitude toward their professional development.

The firm will make available to the flexible arrangement attorney opportunities for professional enrichment and advancement and the flexible arrangement attorney will recognize that such opportunities may, at times, interfere with the flexible work arrangement.

The fact of participation in a flexible work arrangement will not, in itself, influence the decision of whether or not the associate is to be admitted to partnership.

Timing of consideration for partnership shall be determined through the evaluation process on a case-by-case basis. All Associates, whether full-time or flexible arrangement, must possess the attributes of a Partner.

Admission to partnership will be determined through the normal process.

8. Requests for flexible arrangement status

When necessary, the firm may appoint a partner as an advisor to work with attorneys seeking to be approved for, or who wish to remain on, a flexible work arrangement. The advisor's role may include developing suggestions for ways in which overhead expenses can be reduced, if appropriate, and sharing those suggestions with attorneys seeking approval or renewal of a flexible work arrangement. The advisor may also assist attorneys seeking approval or renewal of such arrangements in preparing their requests, and may, together with [the designated authority in the firm, usually the managing partner or the department head], ask other attorneys to cooperate and participate in making the flexible work arrangement program successful.

All requests for changes in work arrangements (whether onto, or off of a flexible arrangement) should be submitted in writing to [the designated authority in the firm, usually the managing partner or the department head]. Requests should be made as far in advance as is reasonably possible and should state the anticipated billable and non-billable hours, the office schedule the attorney expects to maintain while on a flexible work arrangement, the duration of the arrangement, and a possible compensation proposal.

When an attorney chooses to return to a standard work arrangement, the firm will make every reasonable effort to accommodate this transition.

9. Review of flexible work arrangement and performance

The performance of a flexible arrangement attorney will be assessed on the same basis as is used for full-time attorneys.

In addition, there will be a periodic review of the flexible work arrangement to evaluate whether the flexible arrangement is working for both the firm and the attorney and to assess the impact on clients' needs. If as part of the review, it is determined that the hours worked by that attorney are substantially in excess of or below the agreed-upon percentage, or if the flexible arrangement attorney's professional development is being materially impeded, the review will include a discussion of hours, compensation or other adjustments required to address these concerns.

10. Period of Review

The firm will review this policy bi-annually. All attorneys at the firm are invited to contribute to the review. Inquiries regarding flexible work arrangements can be directed to [the designated authority in the firm, usually the managing partner or the department head].

Appendix E

CHECKLISTS FOR BEST PRACTICES/POLICIES FOR LAW FIRMS

1. Checklist of parameters for reduced hours program
 - Is program “as of right” to all attorneys in good standing including associates?
 - Percentage reduction allowed
 - Percent of what (even firms that don’t have targeted hours need to make clear)
 - Availability of firm fixed work hour schedule (e.g. guaranteed 9 to 5)
 - Can all or part of reduced schedule be done at home?
 - Rules for salary makeup or deduction if hours vary from target.
 -
 - Impact on partnership (or other senior position) consideration
2. Checklist for vacation policy
 - Number of days
 - Usage rates by partners, as well as associates and counsel
 - Rules for availability during vacation
 - How many hours must be billed before it is no longer a vacation day?
 - Carry over and compensation for unused vacation time (related to incentive not to cause attorneys to bill time on vacation)
 - Cancellation or interruption of vacation and need to return to work
3. Checklist for uncompensated leave of absence policy
 - How many years?
 - What bases or leaves of absence are acceptable?
 - Is job guaranteed absolutely or presumptively (e.g. if need) on return?
 - Is there a program for maintaining basic competence during leave?
 - Is there a formal reentry program?
 - Payment by firm of bar and CLE fees while attorneys are away
 - Assignment of a mentor during time attorneys are away
 - Invite attorneys to firm functions, alumni events, training, CLE training and bar association programs while away
4. Checklist for parental leave
 - Usage rates and length of time taken by men and women
 - Usage rates of partners, as well as associates and counsel
 - Amount of work performed during leave
 - Interruption of leave and need to return to work early

Appendix F

ADDITIONAL SUGGESTIONS FROM SOLO/SMALL FIRM PERSPECTIVE

For busy litigators

If a practice is litigation-based, there may be a “policy” that for at least one or two specific weeks per year an attorney will be out of the office, and this time will be scheduled in advance around the court’s calendar. Other time away may be scheduled on short notice, but should still be taken as mandatory time. It is much easier to take time away if the attorney has plane tickets in hand rather than a tee time. A tee time can be easily canceled if the person is just too busy at the moment, but there is generally more reluctance to cancel a long-distance trip—making a “long distance” trip can have another advantage: the attorney is not able to simply “drop in” to the office to see what’s going on. As noted below, technology allows attorneys to be away while keeping involved in the office, but this too must be managed.

For transactional, office-based practitioners

If your practice is office-based, vacation time should be scheduled as far in advance as possible. Although such a practice can be as demanding on the busy attorney’s time as a litigation practice, it may be easier to set aside a definite period of time off. In doing so, the attorney should take care in properly scheduling the week leading up to the vacation and the week after return. The week before should be devoted to “winding down, tying up loose ends, and making arrangements for someone to cover the work” so that when the attorney departs, things are under control. For the week after returning from vacation (or other absence), it is critical to have the first few days devoted to catching up with paperwork, status of cases, etc. The “vacation block” should be set aside as far in advance as possible and respected not only by office colleagues but by clients as well.

Technology—use and misuse

Technology, in the form of Internet access, BlackBerrys, cell phones, etc., can be a constant nuisance in that it has created within our profession a perceived need to have constant access to those with whom an attorney transacts and to be subject to constant access and accountability by others, whether clients, other attorneys, judges, or members of the same firm. If properly used, the tools modern technology provides can not only make “getting away” possible, they can also be used to ensure that when the attorney returns, things are reasonably under control. E-mail has proven to be a very mixed blessing—it is not uncommon in today’s practice for a client, opposing counsel, or others to expect an immediate reply to an e-mail. Gone are the days when one could give calm, deliberate thought to a piece of correspondence prior to crafting a response. One wonders what potential adverse effects this change may have on the quality of the responses. On the other hand, remote access to clients and/or the office via e-mail allows the attorney to keep in touch to the extent necessary, while otherwise trying to enjoy time away from the office. Away messages on phones and e-mails, when used effectively, let the client know that an absent attorney may not be able to respond quickly, and offer instead assistance from others at the firm. One technique that may be effective while on vacation is to allot a certain time each day to review voicemail and e-mail. It may be first thing in the morning, or after the day is done, but the vacationing attorney who decides to keep in touch with the

office should avoid the temptation to “check in regularly.” At the same time, it is usually a very good idea to have a system set up for emergency contact when absolutely necessary.

Client relations—drawing some boundaries

One would hope that clients generally understand that their professional advisors, including attorneys, need to occasionally recharge their batteries in order to be effective advisors and advocates. The reality, based on the extent to which clients tend to demand immediate responses from their attorneys, would suggest otherwise. Therefore, having a clear, written policy on the subject that can be shared with clients may help clients to be more understanding about the boundaries that have been drawn and about working with other attorneys and staff at the firm until their primary attorney returns to the office. It is important from the outset to impress upon the client that the firm handles its work with a team approach, and that the client is a client of the firm, not just the client of a particular attorney in the firm.

Of course, this approach may not apply very well to the situation of the solo practitioner, who has no partners to cover the client’s needs. This is where the larger firm and even the small firm practitioners have an advantage over the solo practitioners. Solo practitioners might alleviate some of this problem by establishing a mutual arrangement with a colleague under which the attorneys agree to cover for each other when necessary to attend to the needs of one another’s clients. Such an arrangement requires a certain degree of advance planning with the standby and the absent solo practitioner's office staff. The New York State Bar Association has a very helpful publication on this topic: *Planning Ahead: A Guide For Solo Practitioners*. This publication is available free of charge at the State Bar’s Web site, www.nysba.org/planningahead.

Appendix G

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