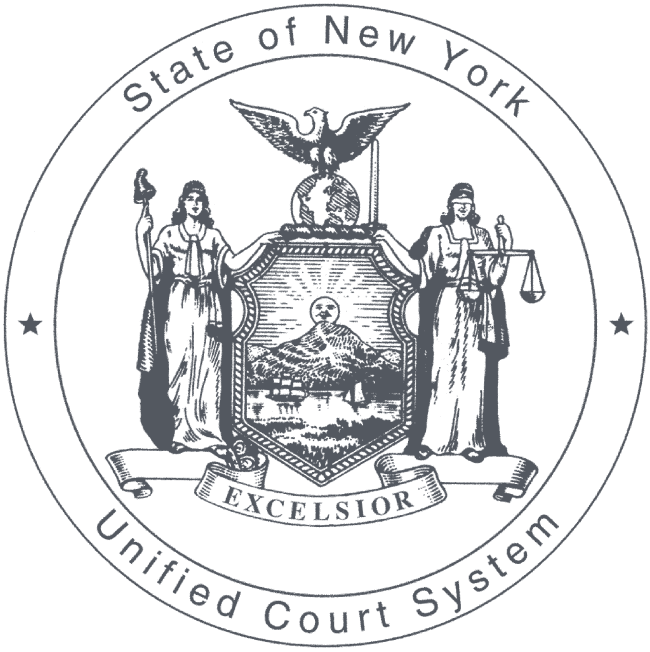
The Task Force to Expand Access to Civil Legal Services in New York

REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK



NOVEMBER 2012

TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK

November 30, 2012

Honorable Jonathan Lippman
Chief Judge of the State of New York
230 Park Avenue, Suite 826
New York, NY 10169

Dear Chief Judge Lippman:

On behalf of the Task Force to Expand Access to Civil Legal Services in New York, I am pleased to forward our third year's Report for your consideration. The Task Force once again assisted in the preparation for your four public hearings on civil legal services held to assess the extent and nature of the current unmet civil legal needs of low-income New Yorkers throughout the State and identify the level of resources necessary to meet that need. Our Report includes the Task Force's findings on the continuing unmet need based on the hearing testimony, provided both orally and in writing, and our recommendation for additional funding. In addition, the Task Force engaged in substantial study, research and analysis leading to six non-monetary recommendations that provide a multi-faceted strategy for helping to close the justice gap. The Task Force also convened a major conference this year involving representatives from the fifteen New York law schools, the private bar, legal services providers, and the courts.

The members of the Task Force are unanimous in supporting this Report. They represent many diverse perspectives and bring to the Task Force a breadth of experience, special insights and a commitment to creative solutions. They have made especially significant contributions of time and energy to our work this year. The Task Force was ably assisted by its Counsel Jessica Klein and Lara Loyd, both from Sullivan & Cromwell, as well as by Mary Mone and Lauren Kanfer from your office.

We continue to be inspired in our work by your unequivocal commitment to the need to provide civil legal assistance to the most vulnerable low-income New Yorkers in matters that involve the very basic necessities of life and by your determination to bring us closer to the ideal of ensuring equal access to justice.

We look forward to continuing our work in the coming year to fulfill our broad mission, including developing recommendations to improve the efficiency and effectiveness of the delivery of civil legal services.

Respectfully submitted,

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Chair, Task Force to Expand Access to Civil Legal Services in New York

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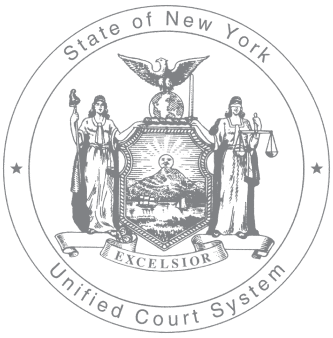

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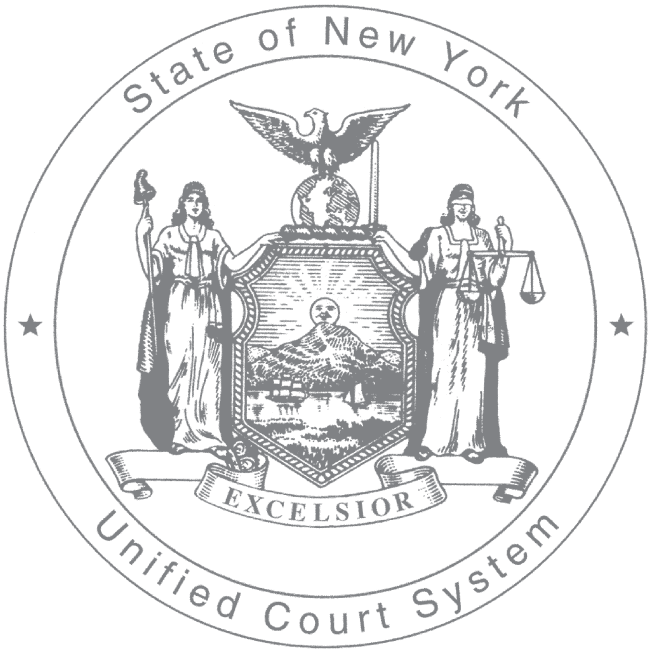
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EXECUTIVE SUMMARY

THIS IS THE THIRD REPORT of Chief Judge Jonathan Lippman's Task Force to Expand Access to Civil Legal Services. In its 2010 and 2011 Reports, the Task Force found that there is an unacceptable crisis of the unrepresented in the courts of New York State. Each year, more than 2.3 million low-income New Yorkers must navigate the complexities of the State's civil justice system without the assistance of counsel in disputes over the most basic necessities of life. This crisis burdens our courts and represented parties by requiring Judges and other court personnel to devote greater time to cases involving unrepresented New Yorkers than would be necessary if currently unrepresented parties were assisted by counsel. It prevents unrepresented parties from receiving full access to justice. And it hurts our State by reducing the amount of federal assistance for New Yorkers and by increasing other costs arising from poverty.

THE CONTINUING CRISIS: In the wake of the worst economic downturn since the Great Depression, with too many New Yorkers still living in poverty all across our State, the Task Force concludes that this crisis of the unrepresented has continued unabated over the past year. Indeed, even before the most recent natural disaster in the form of Hurricane Sandy, the Task Force determined that at best only 20 percent of the legal needs of low-income New Yorkers are currently being met. This access-to-justice gap continues to be exacerbated by the dramatic decline in revenue available from the Interest on Lawyer Account Fund of New York State ("IOLA"), which provides funding for legal assistance for low-income New Yorkers. As a result of the decline in interest rates during the past five years, annual IOLA revenue available for civil legal services providers has plummeted from $32 million annually in 2008 to only $7 million in the past year.

During the past year, including at the Chief Judge's civil legal services hearings, the Task Force has obtained substantial evidence showing that when New Yorkers appear in civil matters in court without representation, litigation and other costs are higher and the opportunity to resolve disputes without litigation or settle cases expeditiously is lost. Likewise, as front-line Judges have continued to describe, when substantial numbers of unrepresented New Yorkers appear in court, the overall quality of justice for all litigants suffers because courts are less efficient when resources must be diverted from matters involving represented parties to try to assist unrepresented parties — and the results for unrepresented parties clearly differ from what can be achieved with counsel.

By contrast, the assistance of counsel can have a life-changing impact for vulnerable low-income families and individuals who can remain in their homes, escape from domestic violence, stabilize their families, maintain or obtain subsistence income, or gain access to health care or an education — all of which are truly the essentials of life.

JUDICIARY CIVIL LEGAL SERVICES FUNDING: In its initial 2010 Report, to try to bridge this substantial access-to-justice gap, the Task Force proposed a multi-year plan to allocate funding within the Judiciary's budget for civil legal services for New Yorkers in all areas of the State living at or below 200 percent of the federal poverty level ($46,100 in annual income for a family of four in 2012). At the Chief Judge's direction, the Task Force has prioritized civil legal problems involving the "essentials of life"— housing, family matters, access to health care and education, and subsistence income. With the

support of the Governor and the Legislature, the Chief Judge allocated $25 million for this critical initiative in the current Judiciary budget.

In keeping with its multi-year plan, this year the Task Force recommends that the current allocation for civil legal services in the Judiciary budget be increased by an additional $15 million for the coming State fiscal year. As a result of grants awarded from the Judiciary's budget for civil legal services throughout the State, more low-income New Yorkers have received civil legal assistance. Although there have been some gains, the Task Force finds that there is still a substantial gap to be bridged in access to justice in core civil legal matters involving the "essentials of life."

NON-MONETARY INITIATIVES: In addition to making this funding recommendation, the Task Force, based on its work over the past year, is making significant non-monetary recommendations to help address the gap in access to justice. These recommendations include:

- concrete steps that the 15 law schools in New York State can take — and are taking — to help meet the increasing need for civil legal assistance for low-income families and individuals;
- enhanced efforts to increase the level of *pro bono* assistance provided by private lawyers to low-income clients;
- a new initiative to increase the contributions that non-lawyers can make to bridge the access-to-justice gap;
- efforts to improve the ability of Town and Village courts to address the needs of low-income and other unrepresented litigants in summary proceedings;
- increased efforts to collaborate among legal services providers; and
- a special initiative to increase the involvement of the business community and the private sector in addressing the needs of the New York State courts, including the crisis of the unrepresented.

As detailed in this Report, these initiatives, while not a substitute for additional civil legal services funding within the Judiciary's budget, can help promote access to justice in our State and thereby help address the unmet need for civil legal assistance.

INVESTING IN CIVIL LEGAL SERVICES PROVIDES A SIX-TO-ONE RATE OF RETURN FOR NEW YORK: Independent evaluations by nationally recognized experts, commissioned by the Task Force on a *pro bono* basis this year and last year, show that investing in civil legal services provides substantial economic benefits to New York State — specifically, a return of approximately six dollars for every one dollar of funding for civil legal services.

Last year, Navigant Consulting reported a conservative estimate that investing in civil legal services to prevent domestic violence in New York State can achieve $85 million in savings in the costs otherwise incurred to assist survivors of domestic violence. Likewise, Cornerstone Consulting concluded that anti-eviction legal services programs funded by IOLA have saved approximately $116 million annually in averted shelter costs.

This year, NERA Economic Consulting expanded this inquiry into new areas and found that, as a result of the efforts of the civil legal services providers:

- In 2011 alone, direct recipients and their families received at least $378 million from several specific federal programs (the federal Supplemental Security Income and the federal Social Security Disability programs).
- Over the past five years, low-income New Yorkers have become eligible for as much as $682 million from federal programs.
- The positive financial effect in 2011 and long-term future effects together could be as high as $1.06 billion.
- Multiplier effects for the inflow of these financial resources to New York State result in estimated economic benefits to the State in 2011 of $561 million and the estimated creation of about 5,600 jobs. If these multiplier effects remain stable, the inflow of funds in 2011, together with the future value created, result in overall economic benefits to New York State of $1.56 billion.
- These economic benefits effectively reduce by approximately 2 percent per year the current net outflow of taxes paid by New Yorkers to the federal government of approximately $20 billion per year.

PART A. OVERVIEW:

The Chief Judge's Civil Legal Services Initiative

> Equal justice is our reason for being in the Judiciary and the profession, and if we don't have equal justice in these beautiful courtrooms and courthouses then we might as well close the courthouse doors. It doesn't mean anything.
>
> If what happens inside this courthouse or any courthouse around the State is anything short, even by the smallest amount, of promoting equal justice, the economy is hurt. The most vulnerable in our society, they're the ones who have suffered the most. . . .
>
> Well, the point is that when the economy is at its worst, [that] is when this need is so fundamental and so basic . . . so it is now more than ever . . . . I mean equal justice is fundamental to our society, to our way of life and everything that we're supposed to be all about.
>
> Every civilized society going back to Biblical times is judged by how it treats its most vulnerable citizens and we are no different. And you know, the Old Testament tells us that it is our obligation to pursue justice, rich or poor . . . or high or low alike. That's what we have to do. Not that the rich can have one kind of justice and everybody else gets something else.
>
> — **Chief Judge Jonathan Lippman,**
> Fourth Department Hearing on Civil Legal Services, October 2, 2012[1]

THE CHIEF JUDGE ANNOUNCED THE CREATION OF THIS TASK FORCE on Law Day in May 2010 as a key element of his groundbreaking initiative to establish a comprehensive approach to providing legal assistance to low-income New Yorkers in civil legal matters involving the "essentials of life."

Both houses of the New York State Legislature passed a resolution in June 2010 commending the Chief Judge on his civil legal services initiative and resolved that "[t]he fair administration of justice requires that every person who must use the courts have access to adequate legal representation." To further that goal, the Assembly and the Senate requested that the Chief Judge report annually to the Governor and the Legislature concerning the findings of the Statewide hearings that the Chief Judge announced he would hold each year and the work of the Task Force he had established. In particular, the Legislature asked the Chief Judge to submit recommendations to address gaps in available resources to meet the need for civil legal services in the State of New York.[2]

Accordingly, the Chief Judge charged the Task Force with assisting him in organizing annual Judiciary hearings in all four Judicial Departments of the State to assess the unmet need for civil legal assistance and identify the necessary resources to meet that need. The Chief Judge further charged the Task Force with preparing an annual report and recommending immediate steps to address access to justice in civil legal matters, especially in these difficult economic times.

The Task Force is headed by Helaine M. Barnett, the former President of the federal Legal Services Corporation and the former Attorney-in-Charge of the Civil Practice of The Legal Aid Society in New

York City. Working closely with the Hon. Fern A. Fisher, the Deputy Chief Administrative Judge for New York City Courts and the Statewide Director of the Unified Court System's Access to Justice Program, and the Hon. Michael V. Coccoma, the Deputy Chief Administrative Judge for the Courts Outside New York City, the Task Force includes Statewide representatives from the courts, the business community, government, private law firms, bar associations, civil legal services and *pro bono* providers, law schools, and civil legal services funders.[3]

This is the third Report of the Chief Judge's Task Force to Expand Access to Civil Legal Services in New York. The Task Force issued its first Report on November 23, 2010 (the "Task Force 2010 Report" or "2010 Report"), proposing a multi-year plan for Judiciary funding to reduce substantially the unmet need for civil legal assistance for New Yorkers living at or below 200 percent of the federal poverty level (for a family of four, this means an income below $46,100 in 2012). The 2010 Report can be found at **http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf**.

The Task Force issued its second Report on December 1, 2011 (the "Task Force 2011 Report" or "2011 Report"). In its second-year Report, the Task Force adhered to its multi-year plan and recommended both additional funding and targeted non-monetary initiatives to address the access-to-justice gap in New York State. The 2011 Report can be found at **http://nycourts.gov/ip/access-civil-legal-services/PDF/CLS-2011TaskForceREPORT_web.pdf.**

THE ALLOCATION OF JUDICIARY FUNDS TO EXPAND ACCESS TO CIVIL LEGAL SERVICES FOR YEAR TWO OF THE CHIEF JUDGE'S CIVIL LEGAL SERVICES INITIATIVE: With the support of the Governor and the Legislature, the Chief Judge allocated $25 million in the Judiciary's budget for April 1, 2012-March 31, 2013 for dedicated funding for civil legal assistance in matters involving the "essentials of life", to expand access to civil legal services in accordance with the Task Force's recommendations in its first-year Report. These recommendations: 1) prioritized civil legal assistance in the core "essentials of life" areas of housing, family matters, access to health care and education, and subsistence income; 2) emphasized the provision of preventive legal assistance to avert or reduce the need for litigation; 3) targeted assistance for New Yorkers living at or below 200 percent of the federal poverty level in all counties of the State; and 4) highlighted the need for a seasoned, well-trained civil legal services staff able to provide comprehensive service in often complex, interrelated legal matters. As recommended by the Task Force, the Chief Judge continued to allocate $15 million to IOLA as rescue funding to address in part the loss of IOLA revenue — from $32 million annually to $7 million during this past year — due to the drop in interest rates caused by the economic downturn. In combination, this Judiciary funding for civil legal assistance for low-income New Yorkers represents a major commitment by the Judiciary to provide access to justice to struggling families and individuals in every county of the State.

As recommended by the Task Force, the Chief Judge established an Oversight Board to oversee the issuance of a Request for Proposals (RFP), review the grant proposals, and determine the allocation of this additional funding targeted for the provision of civil legal assistance to address matters involving the "essentials of life" across the State. The Oversight Board consists of the Hon. A. Gail Prudenti as the Chief Administrative Judge of the Courts, Helaine M. Barnett as the Chair of the Task Force, and Benito Romano as the Chair of the IOLA Board.

To allocate funding for the April 1, 2012-March 31, 2013 State fiscal year, the Oversight Board issued and distributed an RFP, published notice of its issuance of the RFP on March 27, 2012 in the State

Contract Reporter, and posted notice on the Office of Court Administration's website. IOLA also distributed the notice to its grantees.

Organizations submitting proposals were asked to specify the "essentials of life" legal assistance and the level of client services they planned to provide to New Yorkers living at or below 200 percent of the poverty level in each of the four Judicial Departments in the State.[4] Because the existing staff of the Office of Court Administration received the proposals and reviewed them for completeness on behalf of the Oversight Board, implementation of this additional funding required no new administrative expenses.

The Oversight Board has informed the Task Force that it received and considered 66 proposals for second-year funding, decided which to fund, and determined the allocations. The Oversight Board issued its second-year grant decisions on June 1, 2012 and the Office of Court Administration assumed responsibility for the contracting process for distribution of the Judiciary Civil Legal Services funds. The Oversight Board awarded 60 grants to organizations providing civil legal assistance to low-income families and individuals in every county of the State. The Oversight Board's grants ranged in size from $24,000 to $3,124,463.[5]

The Oversight Board has also informed the Task Force that, in accordance with the priorities articulated by the Chief Judge and set forth in the Task Force's 2010 and 2011 Reports, the Oversight Board's grant awards targeted matters involving the "essentials of life" — legal problems in the areas of housing (including evictions, foreclosures, and homelessness), family matters (including domestic violence, children, and family stability), access to health care and education, and subsistence income (including wages, disability and other benefits, and consumer debts). The Oversight Board further advised the Task Force that it treated as a priority the provision of preventive and early intervention legal assistance, including expanded community legal education initiatives, as part of the array of client services that are needed. As recommended by the Task Force, the Oversight Board allocated the new funding throughout the State — in rural, suburban, and urban areas — in accordance with the distribution of persons living at or below 200 percent of the federal poverty level in each of the four Judicial Departments.

THE CHIEF JUDGE'S THIRD-YEAR HEARINGS IN EACH JUDICIAL DEPARTMENT: As in the first and second years, the Chief Judge presided over Judiciary public hearings on civil legal services in all four Judicial Departments in September and October 2012.

Joining the Chief Judge in conducting these four hearings were Chief Administrative Judge A. Gail Prudenti and the Presiding Justice of the Department in which each hearing was held: Presiding Justice Luis A. Gonzalez in the First Department, Presiding Justice Karen K. Peters in the Third Department, and Presiding Justice Henry J. Scudder in the Fourth Department; in the Second Department, the newly appointed Presiding Justice was unavailable at the time of the hearing. Each panel also included a leader of the New York State Bar Association: President Seymour W. James, President-elect David M. Schraver, or former President Kenneth G. Standard.[6]

These hearings once again represented an unprecedented partnership of the leadership of the Judiciary and the leadership of the legal profession to focus on the urgent problem of the continuing unmet need for civil legal assistance for low-income New Yorkers, which has been exacerbated as a result of the economic downturn.

Notice of the Chief Judge's hearings was published in the *New York Law Journal* and posted on the Unified Court System's website.[7]

The Witnesses Who Testified: Altogether, 48 witnesses testified at the hearings and another 16 witnesses submitted only written testimony. All across the State, witnesses from a broad array of perspectives testified about the critical need for civil legal assistance for low-income families and individuals and supported the Judiciary's allocation of funds in its budget to meet that need.

Compelling testimony about the adverse impact on the courts and on the judicial system resulting from having large numbers of unrepresented litigants was presented by a number of front-line Judges, including the Hon. Craig J. Doran, Administrative Judge for the Seventh Judicial District in Syracuse; the Hon. C. Randall Hinrichs, District Administrative Judge for Suffolk County; the Hon. Arthur M. Diamond, Justice of the Nassau County Supreme Court; the Hon. Scott Fairgrieve, Nassau County District Court Judge; retired Family, Surrogate and County Court Judge Hugh Humphreys; and the Hon. Andrea Phoenix, Nassau County District Court and County Court Judge.[8] The Hon. Nancy Sunukjian, a Town Justice in Saratoga County as well as the Acting Director of the Office of Justice Support and Special Counsel to the Deputy Chief Administrative Judge for the Courts Outside New York City, also testified that Town and Village Courts, which number more than 1,400 across the State, are confronted with a heavy volume of unrepresented litigants in summary eviction proceedings where the stakes — a roof over one's head — are high.[9]

At the Fourth Department hearing, a former front-line Judge, social services providers and *pro bono* programs described the poignant circumstances of military veterans who return home and cannot obtain counsel for a range of civil legal problems.[10] For example, John G. Powers, the Director of the Onondaga County Bar Association's Veterans & Military Service Members *Pro Bono* Clinic, testified:

> [W]e have a great epidemic right now of mental and emotional injuries. Some 40 percent of our returning veterans have some sort of mental health issues. Over 20 percent of our veterans are diagnosed with post-traumatic stress disorder or traumatic brain injury . . . . [T]he legal problems of these individuals with these emotional issues, with these mental health problems, they aren't necessarily specialized military-related legal problems. They're the problems of everyday life. They're the problems of someone who is depressed. They're the problems of someone who is uninterested in managing their own personal affairs. They're the problems of someone with substance abuse and alcohol abuse because they're self-medicating their injuries. They're the problems of foreclosure. They're the problems of divorce, child custody, separation, landlord-tenant. They're everyday legal problems.[11]

Likewise, bar leaders, leaders of programs to prevent domestic violence, education advocates, and law school deans (Dean Hannah Arterian of Syracuse University College of Law, Dean Stewart J. Schwab of Cornell Law School, and Dean Patricia E. Salkin of Touro Law Center) all testified as to impressive efforts to try to address the access-to-justice gap but, at the same time, pointed to the urgent need for additional resources to bridge the gap.[12]

At the Second Department hearing, the critical need for language access for immigrants whose first language is not English was described as a further obstacle to obtaining access to justice for many low-income families and individuals.[13]

Finally, as this Report documents fully below, Dr. Elizabeth Becker, a Senior Vice President of NERA Economic Consulting, reported at the First Department hearing on a detailed new cost-benefit analysis showing that for every one dollar invested in civil legal services, six dollars are returned in terms of

cost-savings and economic activity.[14] Also at that hearing, as detailed below, Professor Gillian K. Hadfield, Kirtland Professor of Law and Economics at the University of Southern California, testified about the potential for increased use of non-lawyers to help close the justice gap.[15]

Significant Testimony From Major Religious, State And Local Leaders: A number of major leaders testified in support of the allocation of funding for civil legal assistance in the Judiciary's budget. Cardinal Timothy Dolan, for example, fully supported the Chief Judge's allocation of Judiciary civil legal services funding in his testimony at the First Department hearing:

> It's obvious that I come hardly as a legal expert or a politician but only as a pastor, to heartily support an endeavor that I'm convinced is going to bring justice to people who, simply put, have nowhere else to go but to the courts, which enflesh the assurance of this great country that there is indeed equal protection under the law.
>
> See, as a pastor, I daily hear from my sheep. For instance, I daily hear from our Catholic Charities about struggling people evicted from their rooms or little apartments without proper notice or a chance of any type of legal recourse. As a pastor, I daily hear from our parish priests who have people at their door hungry. Why? Because, well, they were terminated from jobs, apparently without just cause a few days before with no severance, no back pay or no benefits. As a pastor, I hear from educators. I'm thinking, for instance, of Sister Michelle who tells me of her kids at one of our schools, her school in the Bronx, who had to spend the night on the street because of violence in the home, because their moms don't know where to seek protection and recourse from an abusive situation. As a pastor, I hear from our parishioners who run the daily soup kitchens; they tell me about their guests who have lost lodging, salaries, maybe their immigration documentation, even their kids in a custody battle who cry for somebody to represent them.
>
> As a pastor, I reflect on the assurances to which you hinted, Judge, of the Jewish and Christian scriptures in the Bible that God is a Judge who will guard the rights of His downtrodden people and before whom all have innate rights and dignity. And, as a pastor, I praise that God. Because, through Chief Judge Lippman's proposal, civil – not only criminal – but civil legal services might now be available to those who have no means to afford it otherwise. As a pastor who happens to be proud to be a New Yorker, I want to be able to boast again that this great State so often in the lead on urgent issues of justice and compassion is once more showing the nation the way. And, as a pastor who happens to be an American, I want to be able to claim that our noble values, such as equal protection under the law, that all stand before the bench as equals and that one has inalienable rights based not on bank accounts or stock portfolios but because [one] is made in God's image and likeness, that those promises are real not hollow, they're serious, they're not shams.[16]

Following Cardinal Dolan, the Hon. Christine Quinn, Speaker of the New York City Council, strongly supported the Chief Judge's civil legal services plan as providing essential legal aid for low-income families and individuals in all five boroughs of the City.[17] In particular, she reported that, as a result of the Chief Judge's initiative, "many of our City residents facing eviction, needing food stamps, facing loss of federal benefits, people who are victims of domestic violence who in the past were unrepresented, now because of your work have legal representation, which can make all the difference in the world."[18]

At the Third Department hearing, State Attorney General Eric T. Schneiderman highlighted the need for civil legal assistance for both represented parties and unrepresented parties and to promote respect

for the rule of law.[19] The Attorney General also reported on federal funding for one of the "essentials of life" civil legal services priority areas — foreclosure defense — that he had obtained as part of the national mortgage litigation settlement, and which had just been used to address the lack of funding in the State budget for foreclosure legal services.[20] In addition, he focused on the critical role that legal counsel can play in ensuring that low-income New Yorkers obtain the essentials of life and the resulting benefits for all New Yorkers:

> In our State today, with the complexities of day to day life even for the people of most moderate means, you need an attorney if you want to keep from losing your home or health care or custody of your child, your right to stay in this country or access to public benefits, it allows you to put food on the table. Essentially matters like these hang in the balance in our courts every day. And millions of New Yorkers today cannot meaningfully protect their rights because they can't afford to hire an attorney.
>
> [H]aving legal representation for all New Yorkers . . . will get us more funding for health care and housing and keep more people in their homes and avoid the collateral damage of homelessness and eviction and what happens to children, pulled out of school because their parents have lost their home and there's so many benefits, and there's no bigger bang for the buck than providing people with legal services.[21]

Likewise, Stephen Acquario, the Executive Director of the New York State Association of Counties, testified at the Third Department hearing in support of the Chief Judge's civil legal services initiative in the Judiciary's budget. He concluded that "[i]f civil legal services are not provided and are not properly funded at the State level, there will be real and significant consequences — legal, human and financial — to individuals in need and, ultimately, to the State and the counties."[22] Mr. Acquario added that:

> [Adequate civil legal defense] helps the system work. It helps the law make sure that [it serves] the purpose for which [it was] drafted and enacted . . . . [I]t's good to make sure they get their benefits whether we're paying for that or the federal government or [S]tate government is paying for that. Why? It helps a human being, number one, but number two it helps the local economy and State economy which is an economic return on investment in civil legal services."[23]

At the Second Department hearing, the Hon. Kathleen Rice, the Nassau County District Attorney, testified at length about the critical link between bridging the access-to-justice gap and preventing crime:

> Access and quality representation for all those in front of the court is at the heart of a preventative, front-end public safety strategy. As a [District Attorney], without such a strategy and without such civil court access and representation, I can tell you that our communities will be more dangerous and [we] will be eschewing a sustainable model with a long-term vision, for a theory that will continue to repeat public policy failures at great financial and human cost to New Yorkers. . . .
>
> Foreclosed and abandoned homes erode the cohesion and physical state of safe neighborhoods and provide easy targets for those seeking illegal shelter or to those looking to steal from, or vandalize, these properties. . . . By guaranteeing access and representation to litigants in foreclosure situations, we can better help law-abiding families stay in their homes and we can keep neighborhoods cohesive, inhabited and vibrant. These qualities are frequently the cornerstones of neighborhoods that are also *safe* neighborhoods. . . .

> The public safety price we will pay for eroding access and representation in these courts is steep, and the moral price of such erosion is unaffordable. . . .
>
> I'm proud to support and defend civil court access because it fits in with our commitment to prevention, our need to address the root causes of crime, and our focus on the type of long-term crime reduction strategies that, quite simply, work, and that help us dismantle the revolving door system of decades past.[24]

Similarly, the Suffolk County Executive, Steven Bellone, testified in favor of Judiciary funding for civil legal services, concluding:

> [U]nmet legal needs can impose substantial financial burdens on the local, State and the federal government, and society as a whole. For example, the low-income person who's abused and unable to get a divorce and continues to live with the abuser may need emergency medical care at an emergency room that he or she cannot afford, with the taxpayers ultimately absorbing the cost of the medical expenses associated with that care. Moreover, the County and/or State may have to pay for emergency shelter for a low-income person who is wrongfully evicted from his or her home as a result of having no legal representation and being unaware of his or her legal rights.
>
> Providing legal services to the low-income community not only benefits the low-income community, but also benefits the courts and society as a whole.[25]

Finally, at the Fourth Department hearing, the Hon. Craig J. Doran, Administrative Judge for the Seventh Judicial District in Syracuse, summed up the perspective of front-line Judges across the State when he observed:

> [W]e get a lot of litigants that come through the door. . . . I see this every day in cases I preside over – who unnecessarily file petitions, file the wrong kinds of petitions. If they had a little bit of assistance, that would allow them to have more control in their own destiny to better utilize the court system, to seek the justice that they really need to seek rather than sometimes a misdirected effort.[26]

Judiciary Testimony On The Impact Of The Second Year Of The Judiciary's Civil Legal Services Funding: Deputy Chief Administrative Judges Fisher and Coccoma reported in detail on the continuing critical need for more resources for civil legal services throughout the State and on the progress so far resulting from the second year of the Judiciary's Civil Legal Services funding. Their individual progress reports are included in the appendices to this Task Force Report.[27]

Judge Fisher described the impact of the second-year funding in the First and Second Departments in these direct terms:

> If you ask the individuals who have been assisted by legal services providers if their lives have been changed by the assistance they received from the Civil Legal Services grant money, the answer would be a resounding yes. If you ask the provider organizations if the grants have made a difference in their ability to provide services, each program will uniformly answer yes. Both clients and providers are grateful that the New York State Court System is forward-thinking in understanding the moral imperative to close the justice gap. Our government partners will be happy with the cost savings that legal assistance has produced through these grants.[28]

In the Third and Fourth Departments, Judge Coccoma reported that:

In just the short period of time that Civil Legal Services funding has been made available to the Judiciary, it has begun to make a profound difference in the lives of those who cannot afford legal representation. . . .

The funding provided was awarded to a cross section of providers in order to cover a broad spectrum of need across New York State. Awards were granted to providers in urban locations, as well as our rural areas. You will see the differing needs of these disparate populations and how the awardees used the funding to best meet the needs of their clients. Their needs have ranged from those involved in litigation, health care benefit issues relating to their families, domestic violence matters, unemployment benefits, and discrimination claims. The individuals receiving assistance through Civil Legal Services all have one thing in common. Without this funding, they would have no way to pay for essentially needed legal advice. Not only would they have no way to pay for it, they would have nowhere else to turn.

Outside the City of New York, in the Third and Fourth Departments, Civil Legal Services providers assisted clients in a variety of ways. Some provided direct legal assistance, such as representation in court proceedings. Other providers used the funding to assist clients using a more broad-based methodology – free educational programs, distribution of informational materials at help desks, and by establishing HelpLines, hotlines, or referral services. . . .

These Civil Legal Service providers deserve our praise for their commitment to assisting those in our society who are in most need. Continued Civil Legal Services funding will ensure that those in our society who are most needy, will continue to have a place to turn for help. Next year, I hope to report on the continued success of this much needed funding.[29]

PART B. RECOMMENDATIONS FOR ACTION

BASED ON THE CHIEF JUDGE'S HEARINGS in each of the four Judicial Departments in New York State during September and October 2012 and the work of the Task Force over the past year, the Task Force makes eight key recommendations for action in the following areas:

1) the allocation of additional civil legal services funding to address the continuing access-to-justice gap for low-income New Yorkers;
2) the allocation of additional civil legal services funding to continue to generate approximately six dollars in cost savings and economic activity for every one dollar invested in civil legal assistance, as reported by NERA;
3) concrete steps that the 15 law schools in New York State can take — and are taking — to help meet the increasing need for civil legal assistance for low-income families and individuals;
4) enhanced efforts to increase the level of *pro bono* assistance provided by private lawyers to low-income clients;
5) a new initiative to increase the contributions that non-lawyers can make to bridge the access-to-justice gap;
6) efforts to improve the ability of Town and Village Courts to address the needs of low-income and other unrepresented litigants in summary proceedings;
7) increased efforts to collaborate among legal services providers; and
8) a special initiative to increase the involvement of the business community and the private sector in addressing the needs of the New York State courts, including bridging the access-to-justice gap.

As described below, the combination of the allocation of additional funding to bridge the access- to-justice gap and the six non-monetary initiatives will enable New York State to continue to make progress on the multi-year plan implemented by the Chief Judge in 2011 to address the unprecedented need for civil legal assistance for low-income families and individuals living at or below 200 percent of the federal poverty level in New York State.

I. Additional Funding In The Judiciary Budget Is Essential To Continue To Make Progress On Bridging The Substantial Gap Between The Need For Civil Legal Assistance And Available Resources.

1. ***Additional Judiciary Funding Is Needed To Bridge The Access-To-Justice Gap:*** In its 2010 and 2011 Reports, the Task Force presented data establishing that at best 20 percent of the legal needs of low-income New Yorkers are being met in all areas of the State – rural, suburban, and urban. Evidence also demonstrates that this access-to-justice gap adversely impacts the functioning of the courts and that the large number of unrepresented New Yorkers increases litigation costs for represented parties

such as private businesses and local government. Moreover, independent analyses show that funding civil legal services is a good investment that brings federal benefits into the State, stimulates the State and local economy when low-income families and individuals spend these additional federal benefits on goods and services, and saves government expenditures for State and local public assistance and emergency shelter.[30]

Based on these findings, the Task Force recommended a multi-year plan to allocate Civil Legal Services funding in the Judiciary's budget and a series of non-monetary steps to reduce substantially the access-to-justice gap. Mindful of fiscal realities and budget constraints, in its 2010 and 2011 Reports and in this Report, the Task Force has not recommended an allocation of funding to eliminate the 80 percent gap in access to justice resulting from the fact that, at current funding levels, civil legal services programs are, at best, meeting 20 percent of the civil legal needs of low-income New Yorkers. Such a recommendation would require a five-fold increase in the current $223 million funding level for New York civil legal services providers,[31]which consists of a patchwork of federal, State, local, and private grants and contributions.

In the current fiscal year, with the support of the Governor and the Legislature, as part of the plan to reduce the access-to-justice gap, $25 million in Civil Legal Service funding has been allocated in the Judiciary's budget for this purpose. In keeping with the multi-year plan, the Task Force recommends that the funding for civil legal services included in the Judiciary's budget be increased for the April 1, 2013-March 31, 2014 fiscal year. For all the reasons set forth below, together with the non-monetary recommendations detailed in this Report, the Task Force recommends an additional allocation of $15 million for the Judiciary's Civil Legal Services funding over the current $25 million level so as to continue to make progress to reduce the unacceptable access-to-justice gap in New York State.

In recommending this $15 million increase over the current Judiciary Civil Legal Services funding level, the Task Force adheres to its 2010 and 2011 recommendation of a modest approach to increase by approximately 50 percent civil legal services funding from all available sources for providers in New York State by gradually increasing the annual Judiciary Civil Legal Services funding over several years. The creation of this permanent, stable civil legal services funding stream within the Judiciary's budget will thereby reduce by a significant degree the access-to-justice gap for low-income families and individuals all across the State.

Based on the evidence before it, the Task Force again concludes that the most urgent unmet legal needs for which the proposed funding should be allocated are civil legal services in matters involving "the essentials of life" – housing (including evictions, foreclosures, and homelessness), family matters (including domestic violence, children, and family stability), access to health care and education, and subsistence income (including wages, disability and other benefits, and consumer debts). Moreover, the Task Force continues to recommend that prevention efforts and early intervention be prioritized, and continues to find that well-trained and seasoned experts are necessary to address the complex legal problems that low-income clients frequently face.

The Task Force recommends that the Judiciary Civil Legal Services funding in the next fiscal year be distributed — as in the current and prior fiscal years — throughout the State's urban, suburban, and rural areas in accordance with the distribution of low-income New Yorkers. Further, the most vulnerable families and individuals who receive the funded civil legal assistance should continue to include both those living below the federal poverty level ($23,050 for a family of four in 2012) and the "working

poor" living below 200 percent of the federal poverty level ($46,100 for a family of four in 2012).

In addition, the Task Force recommends that the designated Oversight Board continue to oversee the issuance of a request for proposals, review the grant proposals, and determine the allocation of the Judiciary Civil Legal Services funding. The immediate implementation of this third-year funding will require no new administrative expenses as the Office of Court Administration can again distribute the Oversight Board's RFP for funding, receive the proposals, review them for completeness on behalf of the Oversight Board, and assume responsibility for the contracting process for the distribution of the Judiciary Civil Legal Services funds.

2. ***The Unmet Need For Civil Legal Assistance Is Still Substantial:*** Based on the evidence presented at the Chief Judge's civil legal services hearings in each of the four Judicial Departments in the State and the Task Force's review of other relevant data, even before the most recent natural disaster, there is a continuing substantial unmet need for civil legal assistance for low-income families and individuals living at or below 200 percent of the federal poverty level.

While the evidence shows that the first two years of the Judiciary Civil Legal Services funding has had a significant beneficial impact, this funding has essentially stanched the bleeding and stabilized the current intolerable situation in which the Task Force has found that, at best, 20 percent of the legal needs of low-income New Yorkers involving the essentials of life are being met. Evidence before the Task Force shows that the access-to-justice gap would have widened further in the absence of this funding.[32]

The tragic impact of Hurricane Sandy on Long Island, in Westchester and in the five counties of New York City has also given rise to immediate new legal needs — for housing assistance, emergency federal aid from FEMA, federal food stamp benefits, disaster relief unemployment benefits, and disaster relief health care coverage — thereby illustrating the precarious existence of many of the State's most vulnerable residents. As was the case after Hurricane Katrina hit New Orleans, in addition to these immediate legal needs, new longer-term legal needs will certainly emerge, including an increased need for family law assistance due to increased pressures on family stability, an increased need for employment and retraining assistance, and an increased need for housing and re-housing assistance. As with all natural disasters, civil legal help is an important part of the recovery process.

In its 2010 Report, the Task Force presented the results of the first survey of the legal needs of low-income New Yorkers that had been conducted in more than two decades. Under the auspices of the Fund for Modern Courts, Lake Research Partners, a well-respected independent opinion polling company that uses standard professional sampling methods similar to the seminal 1994 national legal needs study by the American Bar Association, carried out the study in August 2010. By telephone, Lake Research sampled low-income New Yorkers, defined as having a household income at or below 200 percent of the federal poverty level.

In this 2012 Report, the Task Force concludes that the key findings of the Task Force's 2010 legal needs study have not changed. Indeed, the continuing high rates of poverty in New York State validate those findings.

The Lake Research data found that 1.2 million low-income New Yorkers had three or more legal problems over the course of the year and thereby experienced the most pressing need for civil legal help. Meanwhile, recent IOLA data shows that 264,574 cases were closed by IOLA grantees during the last

12-month reporting period of April 1, 2011-March 31, 2012.[33] Comparing the number of closed cases to the number of low-income New Yorkers with multiple legal problems once again shows that, at best, 20 percent of the need for civil legal services is being met.[34]

3. ***Federal Poverty Data And Unemployment Data Document High Need:*** Updated United States census data further confirms the validity of findings in the Task Force's 2010 and 2011 Reports as to the substantial numbers of New Yorkers living at or below 200 percent of poverty. Indeed, whereas the Task Force projected in its 2010 and 2011 Reports that at least 6,328,000 New Yorkers were living at or below 200 percent of the federal poverty level, 2011 federal census data now shows that 6,498,000 New Yorkers are living at or below 200 percent of the poverty level — which is 33.6 percent of the residents of the State.[35] For New York City, the percentage for residents living below 200 percent of the federal poverty level in 2011 was even higher at 41 percent. Moreover, nearly 21 percent of City residents are now living at or below 100 percent of the federal poverty rate.[36]

The federal poverty level and 200 percent of that level for 2012 are as follows:[37]

2012 Poverty Guidelines
for the 48 Contiguous States and the District of Columbia

Family Size	100%	200%
1	$11,170	$22,340
2	$15,130	$30,260
3	$19,090	$38,180
4	$23,050	$46,100

United States Department of Labor data on unemployment in New York State amplifies the continuing needs of these low-income families and individuals. Despite the payroll job growth that New York State has been able to achieve, particularly in comparison to national job growth, the unemployment rate remains high at 8.9 percent.[38]

4. ***There Are Still Large Numbers Of Unrepresented Litigants, Which Adversely Affects The Functioning Of The Courts:*** Based on available data, the Task Force finds that substantial numbers of unrepresented litigants continue to overwhelm the New York courts.

More than 2.3 million litigants still attempt to navigate the complex civil justice system without a lawyer each year. Representation by counsel is still unavailable for all but a very small fraction of tenants in eviction cases in all four Judicial Departments, borrowers in thousands of consumer credit cases filed in New York City, and parents in child support matters in rural, suburban, and urban areas.[39] The impact of the Chief Judge's civil legal services initiatives over the past two years has resulted in an increase in the percentage of New Yorkers represented in foreclosure settlement conferences from 33 percent to 51 percent — but 49 percent of New Yorkers appearing in these court conferences at which they face the loss of their homes still do so without counsel.[40]

At the Chief Judge's hearings in each of the four Judicial Departments in the State, business leaders,

State and local government leaders, representatives of the private bar, and front-line Judges testified to the adverse impact that these large numbers of unrepresented litigants have on the functioning of the courts.

For example, Michael T. Keegan, Regional President of the Albany-Hudson Valley North Division and Senior Vice President of M&T Bank, testified that the provision of legal representation for low-income litigants is a benefit to banks "in terms of resolving matters, and it's a benefit to individuals, who need those services, and it's a benefit to our community."[41]

Attorney General Schneiderman also testified that "I can attest, that eliminating the justice gap is not only a matter of fundamental fairness, it will improve the efficiency and effectiveness of our judicial system and improve the quality of the outcome and will save the [S]tate money."[42]

5. ***Decreased IOLA Funding Has A Continuing Adverse Impact On The Unmet Need For Civil Legal Assistance:*** As the Task Force has found previously, a drop in interest rates due to the economic downturn has dramatically reduced the Interest on Lawyer Account Fund's revenue for civil legal services grant-making, thereby illustrating the need for stable, consistent and permanent State civil legal services funding.

The revenue derived from lawyers' IOLA escrow accounts depends heavily on the often volatile interest rates paid by banks holding those accounts. When a decrease in interest rates is associated with a downturn in the economy, as has been the case in recent years, the problem of uncertain and reliable funding is compounded — as the need for civil legal services and the actual number of indigent New Yorkers increase, IOLA's ability to fund legal services decreases dramatically.

As documented in the Task Force's 2010 and 2011 Reports, interest rates dropped precipitously during the economic crisis in the Fall of 2008. In 2007, the largest financial institutions holding IOLA accounts provided an average interest rate of 2.25 percent. By 2008, the rate had been cut in half to just over 1 percent; in October of 2009, the average rate dropped even further to 0.31 percent. As of August 2010, the rate paid was down to 0.25 percent, representing an overall decline of 88 percent over three years. The average rate has remained at that level through 2011 and 2012. As a result, as described earlier in this Report, annual IOLA revenue available for civil legal services providers has plummeted from $32 million annually in 2008 to only $7 million for this past year.[43]

With the support of the Legislature and the Governor, the Judiciary created a $15 million IOLA rescue fund in the current State fiscal year and in the prior two fiscal years in an effort to address at least part of the effect of this funding reduction. In view of the continuing impact of the economic downturn on IOLA revenue and the continuing substantial unmet need for civil legal aid, the Task Force recommends that this $15 million rescue fund be maintained in the Judiciary's budget for the coming fiscal year.

6. ***The Testimony Of Legal Services Clients Demonstrates The Profound Impact Of The Lack Of Legal Assistance:*** The clients who testified at the hearings in each of the four Judicial Departments highlighted the life-changing impact of the provision of civil legal assistance and the profound consequences of the lack of such assistance.

At the hearing in the Third Department (including Albany, Broome, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Madison, Montgomery, Otsego, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Sullivan, Tioga, Tompkins, Ulster, Warren and Washington Counties), clients described the crucial legal help they received in challenging circumstances:

- Heisily Rojas, the survivor of an emotionally and psychologically abusive husband she believed was sexually abusing her three-year old daughter, needed legal help to obtain a divorce, custody of her children, and protections from abuse for her daughter.[44]
- Holly Ovitt, about to be evicted from her home of 10 years by her ex-fiancé landlord who is the father of their two children, needed legal assistance to fight the eviction and secure an affordable rent to allow the children to complete the school year and enable her to obtain and afford a new apartment.[45]
- Sherry DeShane, living with a disability due to PTSD, anxiety, and depression and relying on public assistance after having been improperly denied her federal Supplemental Security Income benefits, needed civil legal services to restore her SSI benefits, get off public assistance, and obtain a sense of personal security.[46]
- Shari Chireno, a middle-class cancer patient whose family lost all their belongings when Hurricane Irene flooded their home and who was also struggling with medical bills, needed civil legal services to stay an eviction warrant and vacate a judgment for arrears entered against her family while they were unrepresented, enabling them to find a new home.[47]

At the hearing in the First Department (including Bronx and New York Counties), clients testified about the critical legal help they received with respect to the essentials of life:

- Angela D'Arezzo, seriously impaired by muscular dystrophy but whose home-care Medicaid benefits were improperly reduced, needed civil legal services to restore the full-time home care through Medicaid that she so desperately needed to continue living on her own rather than in a nursing home.[48]
- Richard Usera, a veteran who fell behind in his rent after experiencing a drastic drop in his income and was in a homeless shelter after being evicted from his Section 8 housing, needed legal assistance to return to his apartment with a rent adjustment that reflected his reduced income.[49]
- Fredesvinda Vasquez, a grandmother with disabilities living on public assistance, having been improperly evicted from the public housing she shared with her daughter and grandchildren, needed legal services to reopen her rental assistance case with the Housing Authority, and return to appropriate, affordable housing.[50]

In the Fourth Department (including Allegany, Cattaraugus, Cayuga, Chautauqua, Erie, Genesee, Herkimer, Jefferson, Lewis, Livingston, Monroe, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Seneca, Steuben, Wayne, Wyoming, and Yates Counties), where one focus of the hearing was on the legal needs of veterans, one mother described the critical legal assistance she was able to obtain for her son:

- Cheri Caiella, whose son – a combat veteran of the Iraq war who came home with mild traumatic brain injury, severe chronic PTSD and other health issues – was unable to manage his day-to-day affairs and needed legal services to obtain a proper evaluation of his condition and secure his eligibility for Veterans Administration disability benefits.[51]

In the Second Department (including Dutchess, Kings, Nassau, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester Counties), compelling client testimony highlighted the potential harm to those who cannot get the civil legal aid they need to address the essentials of life:

- Felicia Essix, who had difficulty with her application to the Department of Social Services for the child care services she needed so that she could get a job, required civil legal assistance to obtain those services, which in turn enabled her to secure employment.[52]
- Tenzin Choezom, a survivor of domestic violence who had limited knowledge of English, needed civil legal services, including the assistance of an interpreter, to escape from an abusive husband, obtain custody of her daughter, and receive child support.[53]
- Mamie Copeland, a 68-year-old widowed retiree and a 25-year resident of a rent-stabilized apartment who had fallen behind in her rent after a mix-up involving her Social Security checks, needed civil legal services to vacate an improper settlement agreement she signed while representing herself, and to obtain much-needed apartment repairs and a reduction in the amount of back rent that was claimed to be due.[54]

II. Additional Judiciary Civil Legal Services Funding Is Needed Because Investing In Civil Legal Services Provides Substantial Economic Benefits To New York State And A Return Of Approximately Six Dollars For Every One Dollar Of Funding.

LAST YEAR AND THIS YEAR, THE TASK FORCE OBTAINED ASSISTANCE from recognized experts to analyze the cost savings and economic benefits resulting from funding civil legal services programs in New York State, and thereby report on the rate of return on investments in civil legal services.

As documented in the Task Force's 2011 Report, Navigant Consulting conservatively estimated from national data and New York State data that investing in civil legal services to prevent domestic violence in New York State can achieve annual savings of $85 million in the costs associated with assistance for survivors of domestic violence. Likewise, using State and local data on the cost of providing shelter in New York State and IOLA data on eviction prevention cases in which IOLA grantees provided legal assistance, Cornerstone Consulting concluded that anti-eviction legal services programs funded by IOLA are saving approximately $116 million annually in averted shelter costs. Both Navigant and Cornerstone are nationally recognized economic consulting firms which conducted their studies on a *pro bono* basis.[55]

For this Report, the Task Force obtained *pro bono* assistance from NERA Economic Consulting, another nationally known economic consulting firm. NERA analyzed data on the amount and impact of federal funds that the provision of civil legal services brings into New York State. Having based the federal benefits and economic impact analysis in its 2010 and 2011 Reports on IOLA data, the Task Force de-

termined to take a fresh look at this data for this 2012 Report. NERA's independent analysis found that IOLA's analysis underrepresents the federal benefits obtained by civil legal services programs and the resulting economic impact.

As Dr. Elizabeth Becker of NERA reported at the Chief Judge's First Department hearing, NERA's independent research supports the Task Force's earlier finding that the provision of civil legal services brings substantial federal funds into New York State to help support low-income New Yorkers and New Yorkers with disabilities and their families. Specifically, NERA found that:

- The positive financial impact of access to benefits from several specific federal programs (the federal Supplemental Security Income and the federal Social Security Disability programs) on the direct recipients of those benefits and their families is conservatively estimated as $378 million in 2011 alone.
- The long-term positive financial impact on low-income New Yorkers of future eligibility for federal programs arising from civil legal services that were provided in the past five years ranges as high as $682 million, depending upon the expected duration of continued participation in key federal programs.
- The positive financial effect in 2011 and the long-term future effects together could be as high as $1.06 billion.
- Multiplier effects for the inflow of these financial resources to New York State result in estimated economic benefits to the State in 2011 of $561 million and the estimated creation of about 5,600 jobs. If these multiplier effects remain stable, the inflow of funds in 2011, together with the future value created, will result in overall economic benefits to New York State of $1.56 billion.
- These economic benefits effectively reduce by approximately 2 percent per year New York State's excess tax burden to the federal government of approximately $20 billion.[56]

Based on the independent NERA, Navigant, and Cornerstone studies, and taking into consideration the current overall funding of $223 million for IOLA-funded civil legal services programs in New York State, an investment of a single dollar in legal services funding generates approximately six dollars in combined cost-savings, benefits obtained and economic activity for New York State.

NERA's key findings are set forth below:

1. *NERA Concluded That The Provision Of Civil Legal Services Enables Low-Income New Yorkers To Obtain Or Retain Access To Specific Federal Benefits:* Based on its analysis, NERA found that the provision of civil legal services enables low-income New Yorkers to obtain or retain access to benefits under the following key federal programs that are targeted at the neediest families and individuals:

- **Supplemental Security Income:** SSI is a federal program that makes monthly payments to people who have low-income and few resources and are age 65 or older, blind or disabled. Eligibility for SSI depends upon income and certain assets.
- **Social Security Disability Income:** SSD is a federal program that pays monthly benefits to people who cannot work due to a medical condition that is expected to last at least one year or result

in death. Eligibility is determined based on specific rules regarding recent work and duration of work, as well as a determination of disability by doctors and disability specialists.

- **Unemployment compensation provided by the federal government:** The Emergency Unemployment Compensation program is a federal extension of unemployment benefits that provides additional weeks of unemployment benefits after regular State unemployment benefits have been exhausted.
- **Medicaid:** The Medicaid program covers the cost of medical care for qualified low-income persons. While Medicaid benefits are generally funded by the State, the federal government provides partial reimbursement for benefits.
- **Earned Income Tax Credits:** EITCs are a benefit for certain people who work and have low to moderate wages. The benefit reduces the amount of federal tax owed and may result in a tax refund from the federal government.
- **Various other federal benefits:** In addition to these major federal benefit programs, low-income New Yorkers may be eligible for other federal benefits programs such as Veterans' benefits and Medicare.

As NERA found, these federal benefits may be inaccessible to low-income New Yorkers for a number of reasons. They may not be aware of the programs or of their eligibility. Determining eligibility can be complicated and require navigation through a maze of complex rules and regulations. Proof of eligibility may require documents and/or information that are difficult for low-income persons to access or obtain. Benefits may be denied incorrectly or terminated improperly. As a result, provision of civil legal assistance, including administrative advocacy, brief legal services and litigation, may be the only avenue available to low-income New Yorkers to ensure that they receive the federal benefits to which they are entitled. Provision of these federal benefits results in substantial cost savings for the State and local governments to which these needy families would likely turn instead.

2. ***NERA Calculated That The Provision Of Civil Legal Assistance Results In Nearly $1 Billion In Federal Benefits Coming Into New York State:*** Using data from IOLA and other sources, NERA calculated the value of these federal benefits that are brought into New York State by the provision of civil legal services.

A. The Value Of Federal Disability Benefits Obtained: The largest category of federal funds brought into New York State by the provision of civil legal services for low-income New Yorkers is SSI and SSD income. These amounts may include back awards as well as ongoing monthly benefits for cases closed in 2011. As calculated by NERA, these amounts are reported in columns (1) and (2) of rows (B) and (C) in Table 1 below. Federal funds also may be received in 2011 as ongoing benefits for cases closed in recent years. Ongoing receipt of benefits under these programs occurs because the duration of participation, once a person is qualified and enrolled, is quite lengthy. The estimated duration of participation prior to the retirement age of 65 is 9.7 years for SSD and 10.5 years for SSI.[57] Benefits received in 2011 from cases closed between 2007 and 2011 are reported in columns (3) through (6) of rows (B) and (C) of Table 1 below.

TABLE 1. Value of SSI/SSD Federal Funds Received

(dollars in millions)

	Cases Completed in 2011		Benefits Received in 2011 From Past Years' Cases				Total Impact in 2011
	Back Awards (1)	Monthly Benefits (2)	2010 (3)	2009 (4)	2008 (5)	2007 (6)	(7)
A. Inflation Rate (2011 Dollars)	0.0%	0.0%	3.1%	4.8%	4.5%	8.5%	
Other Federal Benefits							
B. Other Federal Benefits back awards	7.020						
C. Other Federal Benefits monthly benefits going forward		1.801	1.145	0.914			
D. Annualized Other Federal Benefits going forward		21.607	13.737	10.973			
E. Inflation-adj. Other Federal Benefits (2011 Dollars)	7.020	21.607	14.169	11.504			**54.300**

NERA also evaluated the total economic impact of the receipt of these benefits for 2011 by annualizing the monthly benefits for each year. As benefits under these federal programs are routinely adjusted for inflation, NERA adjusted the monthly benefits received from past case closings upward using the Consumer Price Index (CPI).[58] NERA then added the value of the back awards from 2011 to this total value of monthly benefits. The estimated 2011 value of federal benefits brought into New York under these two programs is approximately $173 million.

This approach to evaluating impact may be viewed as a "flow of funds" approach. NERA noted that it is an extremely conservative estimate of the value of SSI/SSD brought into New York State as a result of the provision of civil legal services. It captures the value of benefits paid only in 2011 and includes benefits received as a result of case closings for only the past five years of completed cases. This understates the financial impact because expected ongoing participation in either program, once enrolled, is expected to be considerably longer than five years. An alternative approach for estimating the value of these closed cases is to consider the economic value of the expected future stream of benefits, given the long expected duration of future participation for low-income New Yorkers who have been enrolled in the programs as a result of the provision of civil legal services. As calculated by NERA, several alternative estimates from this "value created" approach are shown in Table 2 below.

TABLE 2. Economic Value Created from Expected Future Participation in SSI/SSD

(dollars in millions)

	Current Year	Projected Future Benefits								
	2011 (1)	2012 (2)	2013 (3)	2014 (4)	2015 (5)	2016 (6)	2017 (7)	2018 (8)	2019 (9)	2020 (10)
A. Cases Completed in 2011 (Back Awards and Monthly Benefits)	31.283	31.283	31.283	31.283	31.283	31.283	31.283	31.283	31.283	31.283
B. Discounted at Prime Rate (3.25%)		30.299	29.345	28.421	27.527	26.660	25.821	25.008	24.221	23.459
C. Benefit Received in 2011 From Past Years' Cases	116.056	116.056	116.056	116.056	116.056	116.056	91.340	63.521	35.876	0.000
D. Discounted at Prime Rate (3.25%)		112.403	108.865	105.438	102.119	98.905	75.391	50.779	27.777	0.000
E. Current Value of Projected Future Benefits: 5-Year Projection										
F. Cases Completed in 2011	142.252									
G. Benefits from Past Years' Cases	527.729									
H. Current Value of Projected Future Benefits: 10-Year Projection										
I. Cases Completed in 2011	240.761									
J. Benefits from Past Years' Cases	681.675									

In the first approach, NERA estimated the future value of the provision of civil legal services only in cases closed in 2011. NERA then projected over five years the value of the ongoing monthly benefits from cases closed in 2011. These amounts are shown in columns (2) through (6) of row (A). To convert future values to present value, NERA discounted these values using the prime rate of interest at 3.25 percent, with discounted values shown in row (B). The five-year future value of cases closed in 2011 is $142 million. Adding to this amount the value of $57 million in benefits already received for cases closed in 2011 ($26 million in back awards plus $31 million in monthly benefits), the total current and future value of cases closed in 2011 alone would be $199 million. Alternatively, the value of the cases closed in 2011 could be projected to cover a 10-year period, as in columns (2) through (10) of row (A). This would yield a present value of future benefits of about $241 million. Adding to this amount the value of $57 million in benefits already provided for cases closed in 2011, the total current and future value would be $298 million.

In the second approach, NERA estimated the present value of expected ongoing future benefits from all cases closed between 2007 and 2011. These amounts are shown in columns (2) through (6) of row (C) for a five-year projection and columns (2) through (10) of row (C) for a 10-year projection. Again, the values are converted to present value using the prime rate in row (D). The estimated future values are $528 million for the five-year projection and $682 million for the 10-year projection, respectively. The "value created" from recently closed cases far exceeds the more conservative estimate using a "flow of funds" methodology measuring only benefits received in 2011.

B. The Value Of Other Federal Benefits Obtained: The provision of civil legal services also helps low-income New Yorkers secure access to a variety of other federal benefits, such as Veterans' benefits and Medicare. As with SSI/SSD, in 2011 eligible low-income New Yorkers received both back awards and ongoing monthly benefits. Some persons enrolled in these programs in previous years also benefited from the receipt of ongoing benefits in 2011. NERA estimated the value of the cases closed in 2011 and for the prior two years by assuming the average duration of these benefits is three years. Table 3 below reports the conversion of monthly benefits to annual amounts and the adjustment of past benefit amount for inflation using the CPI. The total estimated value of the monthly benefits from cases closed over a three-year period, plus the 2011 back awards, is approximately $54 million.

TABLE 3. Value of Other Federal Benefits Received

(dollars in millions)

	Cases Completed in 2011		Benefits Received in 2011 From Past Years' Cases				Total Impact in 2011
	Back Awards (1)	Monthly Benefits (2)	2010 (3)	2009 (4)	2008 (5)	2007 (6)	(7)
A. Inflation Rate (2011 Dollars)	0.0%	0.0%	3.1%	4.8%	4.5%	8.5%	
Other Federal Benefits							
B. Other Federal Benefits back awards	7.020						
C. Other Federal Benefits monthly benefits going forward		1.801	1.145	0.914			
D. Annualized Other Federal Benefits going forward		21.607	13.737	10.973			
E. Inflation-adj. Other Federal Benefits (2011 Dollars)	7.020	21.607	14.169	11.504			**54.300**

As described above, the Emergency Unemployment Compensation program is a federal extension of unemployment benefits that provides additional weeks of unemployment benefits after regular State unemployment benefits have been exhausted. In New York State, unemployed persons are generally eligible for 26 weeks of benefits. Extended federal benefits may be available from the federal program for 6, 9, 14 or 20 weeks, depending upon the circumstances of the unemployed person. The average of these extension periods is about 12 weeks. IOLA reports that the provision of civil legal services has assisted unemployed New Yorkers in gaining State unemployment compensation benefits totaling $3.49 million in back awards and $790,000 in monthly awards. Assuming that these State unemployment benefits continue for the full 26-week eligibility period, then the federal extension would be worth about half the value of the State benefits. Accordingly, as set forth in Table 4 below, NERA calculated the value of the federal extension of unemployment benefits to be about $6.5 million.

TABLE 4.

Estimated Value of Federal Unemployment Compensation Extensions

(dollars in millions)

		Cases Completed in 2011		Total
		Back Awards (1)	Monthly Benefits (2)	Impact in 2011 (3)
Federal Unemployment Compensation				
A.	State Unemployment Compensation (6 months)	3.490	0.791	
B.	Federal Unemployment Compensation back awards	1.745		
C.	Federal Unemployment Compensation monthly benefits		0.395	
D.	Annualized Federal Unemployment Compensation		4.745	
E.	Inflation-Adj. Federal Unemployment Compensation	1.745	4.745	**6.490**

In addition, many low-income New Yorkers received medical benefits in 2011 from the Medicaid program. Medicaid costs are shared by the State and federal governments. IOLA provided NERA with estimates of the amount of federal reimbursement for Medicaid benefits received in 2011. IOLA also provided NERA with information regarding the value of Earned Income Tax Credits received by low-income New Yorkers as a result of the provision of civil legal services. These amounts are approximately $119 million and $25 million, respectively.

C. The Overall Value Of Federal Benefits Obtained: As calculated by NERA and set forth in Table 5 below, when the value of these benefits is added to the value of the federal funds brought into the State under the other programs discussed above, the total "flow of funds" brought into New York State in 2011 alone is $378 million. Adding the "value created" from expected future benefits (which range from $528 million for a five-year projection to $682 million for a 10-year projection) to this $378 million, the total value of civil legal services provided in recent years would range from $906 million to over $1 billion.

TABLE 5.

Total Value of Federal Funds Brought Into New York State: 2011

(dollars in millions)

		Cases Completed in 2011		Benefits Received in 2011 From Past Years' Cases				Total Impact in 2011
		Back Awards (1)	Monthly Benefits (2)	2010 (3)	2009 (4)	2008 (5)	2007 (6)	(7)
A.	Inflation Rate (2011 Dollars)[1]	0.0%	0.0%	3.1%	4.8%	4.5%	8.5%	
SSI/SSD								
B.	SSI/SSD back awards	26.116						
C.	SSI/SSD monthly benefits		2.607	2.899	2.197	2.218	1.899	
D.	Annualized SSI/SSD monthly benefits going forward		31.283	34.783	26.370	26.622	22.783	
E.	Inflation-adj. SSI/SSD Benefits (2011 Dollars)	26.116	31.283	35.876	27.645	27.819	24.716	**173.455**
Other Federal Benefits								
F.	Other Federal Benefits back awards	7.020						
G.	Other Federal Benefits monthly benefits going forward		1.801	1.145	0.914			
H.	Annualized Other Federal Benefits going forward		21.607	13.737	10.973			
I.	Inflation-adj. Other Federal Benefits (2011 Dollars)	7.020	21.607	14.169	11.504			**54.300**
Federal Unemployment Compensation								
J.	State Unemployment Compensation (6 months)	3.490	0.791					
K.	Federal Unemployment Compensation back awards[2]	1.745						
L.	Federal Unemployment Compensation monthly benefits[2]		0.395					
M.	Annualized Federal Unemployment Compensation		4.745					
N.	Inflation-Adj. Federal Unemployment Compensation	1.745	4.745					**6.490**
Other								
O.	Federal share of Medicaid benefits received in 2011							118.895
P.	Earned Income Tax Credits							25.072
Q.	**Total Federal benefits received in 2011**							**378.213**

Notes and Sources

[1]Year-over-year percent change in average monthly CPI index value. Data from the St. Louis Federal Reserve.

[2]Estimated assuming Federal Unemployment Compensation benefits extend for an additional 3 months.

3. ***NERA Calculated That The Provision Of Civil Legal Assistance Results In An Additional Economic Stimulus For New York State Of $561 Million And The Creation Of 5,600 Jobs:*** Provision of federal benefits to eligible low-income New Yorkers provides benefits not only to them and their families, but to the State as a whole. Beneficiaries are empowered to spend money on housing, food, clothing and other support for their families. Thus, every extra dollar brought into the State results in a stimulus to the State economy overall and benefits all New Yorkers. Accordingly, NERA evaluated the economic impact of the $378 million in incremental federal benefits brought into the New York State economy as a whole in 2011, as well as the long-term value of expected future federal benefits.

The United States Department of Commerce reports that every dollar brought into the New York economy generates an extra 48 cents of value in stimulus to the economy overall.[59] NERA concluded that applying this multiplier of 1.48 to the $378 million in incremental benefits received in 2011 yields an overall positive impact on the State economy of $561 million. NERA further concluded that if the multiplier effect remains stable, then the long-term value of 2011 funds received together with the future value created could be as high as $1.57 billion.

The Department of Commerce also provides a "jobs factor" enabling estimation of overall job creation

due to the stimulus to the economy. The average cost of a job supported by funds brought into the State is $100,224. Thus, as presented in Table 6 below, NERA found that the number of new jobs created by a stimulus of $561 million for funds received in 2011 is approximately 5,600 jobs.[60]

TABLE 6.
Economic Impact on New York State and Jobs Creation
(dollars in millions)

A.	Total Federal Funds Brought Into State	$378,212,636
B.	Multiplier	1.484
C.	**Total Economic Stimulus Effect of Federal Funds**	**$561,116,267**
D.	Jobs Factor	100,224
E.	**Total Jobs**	**5,599**

4. ***NERA Calculated That The Provision Of Civil Legal Services Reduces New York State's Excess Federal Tax Burden By 2 Percent:*** NERA also evaluated the value of the incremental federal benefits brought into New York State by the provision of civil legal services, relative to New York's excess federal tax burden. New York receives only 79 cents for every dollar that it pays in federal tax.[61] New York's total federal tax liability is approximately $95 billion, making this excess tax liability about $20 billion.[62] The $378 million in incremental federal expenditures in New York from access to the federal benefits discussed above is about 2 percent of that excess federal tax liability.

As described below, the Task Force's non-monetary recommendations complement and limit the level of the recommendations for additional funding. In particular, the Task Force's law school involvement and *pro bono* initiatives build upon the Task Force's recommendations for action in its 2011 Report.

III. The 15 Law Schools In New York State Can Take — And Are Taking — Concrete Steps To Help Meet The Increasing Need For Civil Legal Assistance For Low-Income Families And Individuals.

BASED ON ITS 2011 RECOMMENDATIONS[63] and under the leadership of the Chief Judge, the Task Force convened an unprecedented conference on May 22, 2012 that brought together for the first time Deans and law school faculty from the 15 law schools in New York State and representatives of the Judiciary, the private bar, and civil legal services providers. No other State has initiated such an effort.

Convened as a "leadership conversation" focused on access to justice and the role of the law schools, the Task Force's May 22nd conference was held at the Benjamin N. Cardozo School of Law as a full-day program entitled "A Conversation About the Role of Law Schools in Helping to Meet the Essential Civil Legal Needs of Low Income New Yorkers." The program brought together 150 participants, including 91 attendees from all of the State's 15 law schools (Deans, faculty members, administrators, and law students), 23 representatives of legal services providers, 13 members of the Judiciary and the Office of Court Administration, and 23 leaders of the bar. In addition to attendees representing the different geographic regions in the State, a number of national experts and leaders on access-to-justice issues were present.

The Task Force's May 22nd law school program assembled law school administrators and faculty to encourage greater coordination between their programs and existing legal services programs. The goal was to channel the efforts of law schools and law students in ways that make sense to the institutions that deal with the gap in access to justice on a daily basis and in ways that are, therefore, most likely to maximize the contribution that law schools can make to the effort. At the conference, four work groups were formed to focus on the discrete areas of *pro bono* efforts, post-graduate opportunities, clinical and other experiential learning, and curriculum development.

The May 22nd law school initiative took place three weeks after Chief Judge Lippman announced the establishment of a new 50-hour *pro bono* requirement for admission to the bar in New York State. This new rule recognizes the value of engaging future lawyers in meeting the real world needs of vulnerable people in our justice system. Although the conference did not address the way in which this requirement would be defined and implemented, there was broad recognition that the new requirement would place a renewed emphasis on the contributions that law students can make to narrow the justice gap and on the ways in which law schools can support and encourage such work.

Following the May 22nd program, the Task Force's Law School Involvement Working Group — which included Task Force members and faculty representatives of the law schools in New York State — developed recommendations for action based on the sessions at the conference. Drawing on a comprehensive report by the Law School Involvement Working Group,[64] the Task Force makes the following recommendations for action that focus on legal education and the identification of opportunities for law students, law graduates, and law faculty in New York State to apply their skills to help close the justice gap for low-income New Yorkers.

Based on the report of its Law School Involvement Working Group, the Task Force is adopting six key recommendations to:

- Include law schools in regional planning processes that can help guide law students toward areas of greatest need;
- Establish an annual conference to encourage and promote communication and collaboration among the law schools and legal services providers, the courts, and the bar to further efforts to meet the civil legal needs of low-income residents in our State;
- Create on-line systems to match law students with providers, track students' work and hours, gather feedback, and measure outcomes;
- Establish a uniform student practice order to allow law students to perform the same tasks anywhere in New York State (as is the case in the other 49 States);
- Support recent law school graduates who are building new law practices that respond to the justice gap; and
- Provide law students with an understanding of the justice gap and with the knowledge and skills necessary to represent low-income clients effectively in *pro bono* activities as students and throughout their careers as attorneys.

Below are the six steps that the 15 law schools in New York State can take based on the work of the Task Force's Law School Involvement Working Group.

1. ***Law Schools Should Participate In Regional Planning To Respond To The Justice Gap And Establish A Law School Access to Justice Council To Provide Better Cooperation And Collaboration Among Schools And With The Broader Justice Community:*** No regular channels exist through which to coordinate the access-to-justice activities of the State's 15 law schools, dozens of legal services providers, numerous courts, bar associations, and private firms. Law schools should be regular and active participants in State and local planning and coordination initiatives, including those undertaken by regional bar associations, and task forces and other initiatives of the court system.

New York's law schools should establish a Law School Access to Justice Council that would help link the schools with each other and other stakeholder institutions to foster coordination and collaboration in programs that provide access to justice to low-income or vulnerable New Yorkers confronted with legal matters implicating the essentials of life. The Council should consist of a representative from each law school and representatives from major bar associations, the courts and the legal services community. The Council should work to increase the law schools' involvement in responding to the justice gap and to focus law school programs on areas of demonstrated need.

The Council's specific activities should include:

- Coordinating law student initiatives
- Promoting development of programs to involve law students to respond to a) Statewide or regional legal needs, such as foreclosure and domestic violence, and b) short-term or one-time needs, such as the 9/11 Victims' Compensation Fund (enabling victims to file administrative claims on-line) and the Deferred Action Childhood Arrivals program (protecting certain immigrants from deportation)
- Promoting best practices
- Organizing events to promote best practices for law student initiatives
- Promoting curricular innovation
- Creating resources for curricular innovation in substantive law that affects low-income clients and practice skills that are central to the effective representation of low-income clients
- Promoting communication about civil legal needs in specific communities to enable legal services providers, law school officials, law students, the courts and the bar to work jointly to coordinate delivery of critical legal services to vulnerable individuals, maximizing efficiencies and bridging the justice gap.

The Task Force also recommends that each law school take two additional steps to enhance this Statewide coordination:

A. Each Law School Should Create An Access To Justice Committee: Law schools are complex institutions, engaged in dozens of initiatives to improve access to justice in their communities, including public service projects, clinics, externships, centers and institutes. In addition, unique initiatives to meet the civil legal needs of neighboring low-income communities are often pursued by faculty members. While this creates a rich and varied environment for students, it is not always apparent whom to contact or how to access the resources of the law schools. Likewise, the imperatives that inform the development of initiatives at law schools may not correlate with the imperatives of the courts and/or legal services providers. Therefore, the Task Force recommends the creation of an Access to Justice

Committee to improve communication with all justice system stakeholders and to improve access-to-justice planning within each school. Each school's Committee should designate a representative to serve on the New York State Law School Access to Justice Council described above.

B. Each Law School Should Create An Access To Justice Law School Webpage With A Portal On The New York State Law School Access To Justice Council Website: Each school should establish an Access to Justice webpage to inform the public — and the legal community — of the range of activities undertaken by the law school, enabling members of the public and justice system stakeholders to understand how the school is working to bridge the justice gap. By collecting this information on a centralized website maintained by the Access to Justice Council, a Statewide law school network can be established that will improve access to justice.

2. *An Annual Conference Should Be Convened To Continue The Dialogue On The Law Schools' Efforts To Bridge The Justice Gap:* Working in conjunction with the Law School Access to Justice Council and each law school's Access to Justice Committee, the Task Force will host an annual conference for law school Deans, faculty and students, legal services providers, representatives of the courts and members of the bar, to promote regular communication and coordination among the law schools; to identify curricular innovations that address skills and practices unique to the needs of low-income litigants; to highlight programs and projects through which law students can effectively respond to the civil legal needs of low-income people in the community; and to promote greater understanding of the competing interests that impact the delivery of civil legal services.

Each year's Conference can study the impact of the law schools' civil legal services work, compare programs and service models, discuss prospects for expanded collaborations, and exchange ideas and information concerning curriculum relating to the representation of low-income clients. The 2012 Conference demonstrated the need for a forum where the law schools, legal services providers, the courts and the bar can engage in open dialogue on how best to serve the civil legal needs of low-income New Yorkers.

3. *An Online Clearinghouse Should Be Established To Identify* Pro Bono *Opportunities And Enhance Online Services To Track And Support Law Student Pro Bono Work:* An "Online Clearinghouse for *Pro Bono* Opportunities" can serve as a unified conduit for providers and courts to post *pro bono* opportunities open to law students, simplifying the myriad processes and avenues that law students — and law school administrators — must currently navigate to identify appropriate *pro bono* placements. The recent announcement of the rules governing the 50 hours of *pro bono* service, in law school or post-graduation, required for admission to the New York Bar underscores the importance of preparing a database that would serve as a marketplace for *pro bono* opportunities.

A streamlined system can be implemented through enhancements to existing software platforms to enable a systematic matching of students, based on their individual profiles, to appropriate open positions. With increased technological capacity, the courts and providers will be better equipped to integrate large numbers of students into volunteer initiatives that have maximum impact in areas of demonstrated unmet need. The law schools — and other stakeholders — will also be better positioned to gain an accurate understanding of the true breadth and nature of the impact.

Certain features of some of the existing foundational platforms in use by providers can be leveraged to support law student *pro bono* work throughout New York State, including:

- A *Pro Bono* Opportunities Guide: providing a searchable database of *pro bono* providers;
- New Case Summaries: describing individual cases or projects in need of staffing;
- Calendars: presenting a comprehensive Statewide calendar of events and trainings;
- Libraries: aggregating high quality training and best practices resources; and
- Listservs/Message Boards: allowing *pro bono* volunteers and service providers to share questions and expertise.

In addition, online systems can greatly facilitate law student *pro bono* work in other ways, such as enabling students, providers, and law schools to record and track hours of service, providing feedback from students and employers, and gathering information for program assessment.

Maintenance of an online clearinghouse will require dedicated staffing to ensure accuracy of the content and to engage key stakeholders to coordinate content development and dissemination activities among provider organizations and law school *pro bono* leaders.

4. *A New York State Uniform Student Practice Order Should Be Established:* Currently, each Judicial Department issues student practice orders setting forth the terms and conditions under which law students and graduates can represent clients in court. Practice orders are issued in response to applications received from the institutions and programs located within the Department. The orders may vary substantially both across Judicial Departments and from order to order within the Departments. Under this current system, the location of an institution or program may determine whether its law students receive authorization to engage in a broader or narrower range of tasks, and may therefore determine whether educational goals are satisfied and, critically, whether individuals in need of legal representation are able to receive valuable assistance. Student practice orders are not always models of clarity, and the perceived need to obtain a student practice order may, in some instances, have the effect of reducing the number of students who become involved in *pro bono* activities or bar assistance in circumstances in which no student practice order is, in fact, needed.

A Statewide model student practice order applicable to both law students and law school graduates would form the basis for all practice orders, eliminate the discrepancies between and within the Judicial Departments, and take into account the ways in which law students differ from law school graduates. This model uniform order will provide for greater consistency and enable successful programs developed in one part of the State to be replicated in others. It will also enable schools with programs in more than one Judicial Department to offer consistent services and to design their coverage to meet real world needs. Moreover, the additional precision available through Statewide adoption of a model student practice order can help clarify the tasks that students are authorized to perform or prohibited from performing, as well as those that students are free to perform without obtaining a student practice order.

Therefore, the Task Force recommends that the Chief Administrative Judge lead an effort to develop such a model order.

5. ***Law Schools Should Establish Incubator And Related Projects To Help Law Graduates Build Solo or Small Practices In Underserved Areas:*** Incubators and related projects, supported by law schools and staffed by their graduates, have proven to be effective tools that provide practical experience for new graduates committed to starting a law practice that will serve individuals with unmet legal needs. Incubators often work with established legal services programs or volunteer projects through the courts to enable new lawyers to develop practical experience and to match experience to need.

Since the City University of New York School of Law's development of the first law school-based incubator, similar programs have cropped up across the United States and more are on the drawing board. A team of individuals with experience in setting up successful incubators should be convened to serve as mentors for each of the law schools in New York State. The team can create a guide that outlines best practices for incubator development and management that would be disseminated to law schools seeking to create incubators for their graduates. The team can provide technical support and training to law schools committed to designing, sourcing and implementing incubators.

6. ***Law School Curricula Should Prepare Students For Public Service:*** This is a period of transition and innovation in legal education. Many law schools are currently reviewing their curricula in order to take into account major changes in the legal profession, and a number of schools have recently launched major curriculum initiatives. Whether this curriculum review is undertaken by a law school's administration, a faculty committee, a special committee or a task force, it is important that practitioners be included in the discussion. As part of this pattern of curriculum reform, law schools should ensure that students are educated in the systems of providing representation to low-income clients and the distinctive ways in which laws and the legal system affect low-income individuals and communities. While many classes and programs in law schools deal with the legal issues that impact low-income clients, this issue is rarely viewed as a core part of the educational mission of schools, and, as a result, is addressed in *ad hoc* ways. A focus on these issues as part of the process of curriculum reform will ensure that each school has a considered approach with clear objectives, rather than a haphazard set of offerings.

In addition to focusing on substantive law and legal issues that affect low-income clients, law schools should equip students with practice skills and competencies necessary to represent such clients. Because many of these practice skills and competencies overlap with those required for representing clients generally, educating students for public service practice will overlap with other goals of professional practice education. Nonetheless, representation of low-income clients does require distinctive skills and competencies, such as an ability to represent clients whose cultural, social and economic backgrounds may be very different from the lawyer's, and an understanding of how legal issues fit into the context of the lives of low-income clients.

To carry out this recommendation, the Task Force concludes that the following three steps should be taken:

A. There Should Be A Required Class On Access To Justice: As a prerequisite to graduation, law schools in New York State should require students to complete a course, which could be one or more credits, that offers an introduction and orientation to civil legal assistance involving the "essentials of life" areas of housing, family matters, access to health care and education, and provides skills training

and the practical application of doctrinal law in this context. The recommendation is also intended to assure that students gain an understanding of the importance of public service in their careers as lawyers and their responsibilities as members of the profession. New York State can include criteria in its bar exam to evaluate whether students have acquired this knowledge. Subjects covered in the course and on the bar exam can include:

- The problem: causes and consequences of the access-to-justice gap, including numbers of people, categories of cases, systemic problems and funding concerns;
- The response: efforts to assure that the courts, legal services programs, *pro bono* systems, and other resources and strategies address the problem;
- The doctrine: pertinent legal doctrine, including United States Supreme Court and other jurisprudence on the right to counsel in civil proceedings, and the right of access to the civil justice system;
- The role: the nature of civil legal services practice, including the role of lawyers, law students and officials at the organizations that provide assistance, such as legal services agencies, law firm *pro bono* programs, bar associations and the courts; and
- Substantive law that affects low-income clients in unique and distinctive ways, such as government benefits law, housing law, and wage and hour law.

Law schools can develop the course through collaboration with one another and through consultation with each other, the legal services bar, the courts and other justice system stakeholders. This course is not intended to displace other initiatives to integrate access-to-justice issues into classes across the curriculum. Law schools can also determine how a required access-to-justice class would relate to elective classes focused on areas of law specific to low-income clients that also play important roles in the curriculum.

B. Basic Doctrinal Classes Should Include Consideration Of How Law Impacts Low-Income Clients And Communities: Each law school should ensure that basic doctrinal courses include consideration of how the subject matter impacts low-income clients and communities, providing a doctrinal context for *pro bono* and public service work that addresses the justice gap. For example, property law classes can address foreclosure and the warranty of habitability; tax classes can highlight the earned income tax credit; family law classes can study issues presented in domestic violence cases and child custody proceedings; and administrative law classes can include consideration of administrative adjudication systems that low-income clients deal with regularly. Moreover, doctrinal courses can include components that focus on practice skills or link to *pro bono* work in the area. Certainly, some courses cover subjects of particular importance to low-income clients; but, in most schools, it is entirely *ad hoc* as to whether they are included, and a matter of happenstance whether issues relating to low-income clients are presented. The Access to Justice Council that the Task Force is recommending should create a collaborative mechanism by which law schools can work together to create and share relevant and topical teaching materials.

C. Law Schools Should Educate Students In The Skills And Competencies Necessary To Represent And Advise Low-Income Clients: Over the past 30 years, law schools have greatly expanded programs and courses that teach students professional skills in representing and advising clients. These programs include clinics, simulation courses, externships and other forms of experiential learn-

ing. Sparked by the publication of the Carnegie Report and other studies,[65] discussion about the role of experiential learning in legal education has intensified. A focus on professional skills and competencies is important in preparing lawyers to contribute to closing the justice gap. Low-income clients pose distinctive issues with regard to counseling and cultural competencies. Because this representation often requires advocacy before courts and government agencies that are overburdened and under-resourced, it calls for a different set of advocacy skills than those that may be used in other settings. Faculty and administrators who design experiential learning programs should ensure that these issues are addressed, whether through clinical programs, simulation courses, externships, new practice components in doctrinal courses, or a combination of all of these approaches.

Law schools should also explore the creation of opportunities for students to spend a semester working in offices that provide legal services to low-income clients with appropriate classroom components and supervision. The Access to Justice Committee at each law school can facilitate this effort by fostering communication and the exchange of ideas among schools. As law schools further develop curricula relating to professional skills and competencies, it is important that lawyering issues relating to the representation of low-income clients be integrated into the basic law school curriculum.

IV. Attorneys In Private Practice In New York State Are Already Providing A High Level Of *Pro Bono* Legal Assistance For Low-Income Clients And Additional Reporting And Other Initiatives Will Enhance These Efforts.

IN ITS 2011 REPORT, THE TASK FORCE RECOGNIZED the "long-standing tradition of *pro bono* efforts by private attorneys to expand the availability of civil legal assistance for low-income families and individuals."[66] Relying on the strength of that tradition, the Task Force concluded that, in 2012, it would "explore new efforts to increase the already high levels of *pro bono* assistance that the private bar provides."[67]

To carry out this exploration of ways to enhance *pro bono* involvement, the Task Force convened a *Pro Bono* Involvement Working Group. This Working Group studied current trends in *pro bono* participation by the private bar in New York, Statewide average monetary contributions by individual lawyers to legal service providers, and various means to increase private bar support for *pro bono* assistance to low-income families and individuals. Based on the Working Group's findings,[68] the Task Force makes these key recommendations:

- Revise New York Rule of Professional Conduct 6.1 to encourage 50 hours of *pro bono* service per year;
- Revise New York Rule of Professional Conduct 6.1 to include a monetary contribution guideline for donations to legal services organizations that serve low-income clients;
- Revise the Biennial Attorney Registration Form to include a *pro bono* hours reporting requirement for the private bar;
- Revise the Biennial Attorney Registration Form to include a monetary contribution reporting requirement for the private bar for donations to legal services organizations that serve low-income clients;

- Revise Part 522 of the Rules of the Court of Appeals for the Admission of Attorneys and Counselors of Law to allow *pro bono* service by attorneys registered in New York as in-house counsel, and at the same time take steps to make sure that in-house counsel actually register, as currently only a limited number do so;
- Encourage law firm participation in the Attorney Emeritus Program; and
- Consider the advisability of allowing newly admitted, unemployed lawyers to fulfill some portion of the Mandatory Continuing Legal Education requirements for Skills, Law Practice Management and Professional Practice Credits through qualified *pro bono* work.

As documented in the 2011 Task Force Report, while *pro bono* resources "are finite and cannot be expected to meet the extraordinary unmet need for civil legal help,"[69] bar associations across the State are working diligently to stimulate and accelerate *pro bono* assistance. For example, the New York City Bar Association reported that 2,171 volunteers helped alongside the City Bar Justice Center staff to assist nearly 20,000 people in 2012.[70] The Chief Judge's own initiative leading to a new rule requiring 50 hours of *pro bono* work as a condition of admission to the New York bar promises to foster in a new generation of lawyers an understanding of the importance of *pro bono* work.

1. *New ABA Data Documents Pro Bono Participation:* In an effort to obtain a broader picture of the baseline *pro bono* contributions of attorneys in New York, with *pro bono* assistance from Skadden, Arps, Slate, Meagher & Flom LLP, the Task Force coordinated with the American Bar Association in its national study of the *pro bono* participation of America's lawyers.[71] By supplementing the ABA's survey instrument with additional New York-specific interview questions, the Task Force has collected the first Statewide *pro bono* data available since 2002 when such a survey was last conducted.[72] The 2012 ABA Survey indicates that almost three-quarters of New York attorneys performed at least some *pro bono* work in 2012, and that a majority performed more than the 20 hours "strongly encouraged" by Section 6.1.[73] The average attorney performed 66 *pro bono* hours, or 4.7 percent of the average billed hours reported for the year.[74] These are significant improvements from the 2002 survey, which indicated only 46 percent of attorneys performed any *pro bono* work in 2001, and only 27 percent met the 20 hours of *pro bono* that Section 6.1 "strongly encourage[s]" each New York admitted attorney to perform.[75]

The 2012 ABA survey also asked respondents about their 2011 monetary contributions to legal services providers serving low-income clients; however, the respondent could elect not to answer that question and 45 percent of respondents chose not to answer. The 55 percent who did respond reported contributions to legal service providers equal to, on average, $522 per lawyer, despite the fact that 47 percent of the responders reported that they had contributed no money to such organizations in 2011.[76] However, given the limited response rate and the effect of one outlier respondent on the calculation of the average, a more representative figure may be the median contribution of $250 per attorney. Lawyers in practice 20 years or more contributed almost twice as much ($1,271) as those who had not practiced for 20 years ($633).[77] The Task Force believes that the 45 percent of those polled who did not answer this question are quite likely to have contributed less than those who voluntarily responded to the question, thus implying that average giving to civil legal services is considerably lower than the $522 overall average of those who opted to respond.

Another indicator of the level of financial support by the private bar for legal service providers can be

found by examining private bar contributions to IOLA grantees, which totaled more than $12 million in 2011. That data shows that law firms contributed $11,239,251, bar associations contributed $656,514, bar funds and the Campaign for Justice contributions amounted to $56,000, and individual lawyers donated $181,528.[78]

The Task Force is mindful that assistance from the private bar is an "essential mechanism for narrowing the justice gap, *especially where efforts to engage pro bono lawyers are adequately resourced and supported*."[79] Leaders of the private bar have affirmed the importance of *pro bono* work in their testimony during the Chief Judge's hearings on civil legal services.[80] Accordingly, the Task Force concludes that the "strong recommendation" of Section 6.1 has encouraged the contributions being made by the private bar, but clearly more needs to be done.

2. *Recommended Steps To Increase Pro Bono Involvement:* Therefore, the Task Force recommends that the following specific steps be taken to enhance *pro bono* involvement by private attorneys:

A. New York Rule Of Professional Conduct 6.1 Should Be Revised In Two Areas To Encourage *Pro Bono* Participation By Private Attorneys: While the increase in *pro bono* hours over the last decade that is documented in the new ABA data is encouraging, the problem of unrepresented low-income litigants in the New York courts has grown substantially, exceeding two million in 2010 and 2011.[81] Consequently, the Task Force urges that Section 6.1 be amended to increase the requested annual number of *pro bono* hours per attorney from 20 to 50 annually, which, as the new survey shows, is fewer hours than the average New York attorney now performs. A 50-hour level would also be consistent with the new 50-hour standard for bar admission for law school graduates. The Task Force recommends that the goal cited in Section 6.1 remain precatory, at least until results of the change in Section 6.1 upon the number of *pro bono* hours performed can be assessed. While the proposed revision would not add enforcement consequences for failure to meet the increased goal, as described below, the Task Force urges that reporting of those hours be required in the biennial attorney re-registration process.[82]

To foster greater contributions from a larger percentage of attorneys, the Task Force further recommends that a guideline be added to Section 6.1 that quantifies the minimum contribution annually which is urged to be made to legal service providers for low-income clients.[83] The Task Force recommends that attorneys in private practice annually contribute to legal services providers for low-income clients a donation at least equivalent to the amount of the individual attorney's typical billing rate for one hour of time. Lawyers working at for-profit entities are strongly urged to contribute annually an aggregate amount equal to the amount typically paid by their entity for one hour of legal work for attorneys of the seniority of the reporting lawyer, or, if not known to the lawyer, an amount equal to at least one-tenth of one percent of the lawyer's salary. Lawyers who work solely on a contingency basis would be asked to contribute at least the equivalent of the value of an hour of legal work as is typical in their community. For underemployed lawyers, the request would not be expected to exceed one-tenth of one percent of the attorney's fee revenue.

B. The Biennial Attorney Registration Form Should Be Revised In Two Areas To Encourage *Pro Bono* Participation By Private Attorneys: To encourage compliance with these voluntary requests in the revisions to Rule 6.1, the Task Force recommends that the registration rules require that attorneys in private practice or working at for-profit entities report biennially: 1) their *pro bono* hours;

and 2) their aggregate annual contributions to legal service providers for low-income New Yorkers.[84]

In recognition of the positive impact that reporting requirements are anticipated to have on both *pro bono* hours and monetary contributions, the Task Force recommends that the existing Rule of the Chief Administrator of the Courts Part 118.2(a) concerning public access to attorney registration information remain in effect. This rule allows information contained in attorney registration statements to be made available to the public upon submission of a written request, with some limited exceptions.[85] The Task Force expects and intends that the public availability of reported *pro bono* hours and monetary contributions will serve to encourage greater giving and higher participation.

Available data demonstrates that States adopting a rule requiring attorneys to report their *pro bono* service have seen an increase over time in the number of *pro bono* hours contributed by members of their private bar. In Florida, the hours of *pro bono* work contributed by lawyers have increased by about 100 percent since reporting began in 1993 under Rule 4-6.1 of the Rules of Professional Conduct.[86] Increases in annual *pro bono* hours are also reflected in available data from other States, including Illinois,[87] where annual *pro bono* hours have risen about 10 percent since Illinois Supreme Court Rule 751 went into effect in 2007, and Maryland, where reported *pro bono* hours have risen over 18 percent since Maryland Rule 16-903 went into effect in 2002.[88] Whatever the number of hours completed, compliance rates with reporting are generally high, according to data compiled for a 2008 report to the Florida Supreme Court.[89]

While the above recommendations focus on affecting the participation of individual lawyers, the Task Force does, however, urge that law firms be encouraged to monitor their lawyers' *pro bono* participation and to create and support opportunities for their lawyers to meet the 50-hour *pro bono* commitment request.

C. Rule 522.8 Of The New York Court Of Appeals Should Be Revised To Encourage *Pro Bono* Participation By In-House Counsel: The Task Force examined a New York State Bar Association proposal to amend Section 522.8 of the Rules of the Court of Appeals for the Admission of Attorneys and Counselors of Law concerning *pro bono* services by attorneys registered in New York as in-house counsel. The Task Force also reviewed Resolution 11 adopted by the Conference of Chief Judges in July 2012 in support of practice rules enabling in-house counsel to provide *pro bono* services. The potential for in-house counsel to contribute in a meaningful way to addressing the gap in access to justice is compelling.[90] The simplified rule proposed by the New York State Bar Association removes unnecessary obstacles to *pro bono* service by in-house counsel and allows registered in-house counsel to meet their own ethical obligations while still subjecting them to the same ethical and disciplinary rules that apply to attorneys licensed to practice in New York. The Task Force recommends adoption of this revision to Section 522.8 to allow registered in-house counsel to contribute to meeting the unmet legal needs of New Yorkers. However, in order for this recommendation to have the intended beneficial effect on addressing the access-to-justice gap, it is essential that efforts be made to make sure that in-house counsel actually register as currently only a limited number do so.

D. Participation In The Attorney Emeritus Program For Attorneys Who Are At Least 55 Years Old Should Be Encouraged To Enhance *Pro Bono* Efforts: The Task Force further recommends encouragement of law firm participation in the Attorney Emeritus Program ("AEP") by any law firm with a New York office that has 50 or more attorneys in that office. In 2010, as an initiative of the Chief Judge, the New York State Unified Court System established an "Attorney Emeritus" status for

attorneys in good standing who are at least 55 years old, with a minimum of 10 years of legal experience, and who are willing to provide at least 30 hours annually of unpaid legal assistance. The courts, legal services providers, bar associations, and law schools work in partnership to provide emeritus attorney volunteers with opportunities to provide *pro bono* assistance to New Yorkers who cannot afford counsel.

As an indicator of their commitment to supporting *pro bono* work by eligible firm attorneys and retired firm attorneys, law firms should be asked to sign the AEP Statement of Participation and return it to the AEP Program/New York State Access to Justice Programs.[91] The Statement of Participation describes means by which law firms can support experienced volunteer attorneys, including attorneys retired from law firms, by providing work space and professional support, secretarial and technology support, and malpractice insurance coverage, and by ensuring that *pro bono* work under the AEP by a retired lawyer will have no effect on that attorney's compensation or retirement benefits. To date, a number of leading law firms have already signed the Statement of Participation.[92]

E. Consideration Should Be Given To Revising The Continuing Legal Education Requirements For Newly Admitted, Unemployed Lawyers To Encourage *Pro Bono* Participation: Finally, the Task Force is cognizant of the burden that mandatory continuing legal education requirements may place upon newly admitted, unemployed lawyers. These requirements, often referred to as "bridge the gap" or transitional programs, dictate that newly admitted attorneys acquire 16 credits per year within the first two years of admission to the bar as follows: three hours of ethics and professionalism, six hours of skills and seven hours of law practice management and areas of professional practice. While mindful of the importance of the role continuing legal education plays in preparing newly admitted attorneys to become competent to deliver legal services, particularly in developing an understanding of ethical obligations, the Task Force recommends that the Continuing Legal Education Board examine the advisability of allowing newly admitted, unemployed lawyers to fulfill some number of the skills, practice management and professional practice credit requirements (but not the ethics and professionalism credits) with *pro bono* service, provided such service is well supervised and *pro bono* program training is included as part of such service.

V. A New Initiative To Examine The Potential Further Contributions That Non-Lawyers Can Make To Bridge The Access-To-Justice Gap Should Be Implemented.

AS RECOMMENDED IN ITS 2011 REPORT, the Task Force formed a Non-Lawyer Involvement Working Group to examine the role that non-lawyer advocates can play in helping to bridge the access-to-justice gap.[93]

Even without any regulatory or oversight process for non-lawyer advocates in New York, the Task Force's Non-Lawyer Involvement Working Group found that a variety of non-lawyer entities provide advocacy assistance to low-income New Yorkers who have current or potential legal problems. Many of these entities provide help to prevent a problem from developing into a full-blown legal problem in court.

For example, many community-based organizations in the State help low-income New Yorkers with housing problems and difficulties obtaining subsistence benefits to which they are entitled. In fact,

some legal services organizations in the State provide training and backup case consultation services to such non-lawyer organizations, which, in turn, play a role in enabling legal services providers to make triage determinations about which matters need immediate legal intervention and which might be resolved through non-lawyer advocacy. Other examples of non-lawyer entities already helping bridge the access-to-justice gap for low-income families and individuals include: non-lawyer courthouse-based information services that provide useful information to litigants but not individualized assistance, and non-lawyer organizations devoted to preventing domestic violence that help with obtaining orders of protection and with safety planning.

Again, without any regulatory process in New York State for non-lawyer advocates, the Task Force's Non-Lawyer Involvement Working Group found, in addition, that non-lawyer advocates are currently providing assistance in the following areas:

- Within New York, federal and State law currently allow non-lawyer advocates to participate in administrative hearings and proceedings involving certain kinds of public benefits, including: State public assistance benefits such as cash assistance and Medicaid; federal food stamps benefits; federal disability and Medicare benefits; unemployment insurance benefits; and workers' compensation benefits.
- In many areas of the State, non-lawyer advocates provide information and assistance in housing and foreclosure matters but not in-court representation.
- Likewise, non-lawyer advocates provide out-of-court assistance in family law matters such as domestic violence but not in-court representation.
- For immigration matters, federal law allows accreditation of non-lawyer advocates to provide representation in administrative proceedings before the United States Citizenship and Immigration Services and the Executive Office of Immigration Review, if they are employed by a non-profit, religious, charitable, social service or similar organization established in the United States that has been approved for recognition.

At the Chief Judge's First Department hearing, Gillian K. Hadfield, Kirtland Professor of Law and Economics at the University of Southern California, presented extensive testimony concerning the potential role of non-lawyer advocates in helping low-income households in New York who are experiencing problems that are legal in nature.[94] For example, Dr. Hadfield noted:

> Other professions do this in perfectly reasonable ways. Take medicine. Does a full fledged MD have to deliver every service needed to address every medical issue you face in order to receive quality care? No. Medical care is a team sport, provided by a wide variety of medical professionals: nurses, radiologic technologists, pharmacists, nurse practitioners, physical therapists, chiropractors, registered massage therapists, certified nurse midwives, certified registered nurse anesthetists, etc. Many of these providers are licensed and authorized to provide services directly to those with medical problems. They are not limited to working under the direct supervision of MDs. Thank goodness. Because if they were, we'd be paying MD rates for every sore throat and backache.
>
> There is an urgent need for the judiciary to change the landscape of options available to those with legal needs: to exercise your ultimate authority to decide who can provide legal assistance by expanding that list beyond expensive JD-trained and bar-licensed attorneys.

> Of course we want some services delivered only by expensive JD-trained and bar licensed attorneys — we only want surgery performed by surgeons, too. But where are our nurse practitioners? Our legal systems desperately need the equivalent of nurse practitioners and other non-MD health care providers. We need non-JD legal providers who can perform simpler legal work at much lower cost and thereby fill an enormous part of the gaping legal need in this State. . . .
>
> Think about one of the major sources of court burden: misunderstandings about procedures and requirements and forms by pro se litigants in housing or family court, for example. Your Task Force has heard (and surely experienced) the delays and complications created by the flood of people with no alternative but to represent themselves. Yes, it would be nice if every one of these people had a full-fledged JD licensed to practice in New York to represent them. But if we can't do that — and we can't — then think about how much improved the situation would be for all concerned if these people could at least obtain low-cost assistance from people with sufficient expertise to help them navigate the process: to tell the person facing eviction for unpaid rent that if she wants to argue that her apartment has no heating and the ceiling is falling down, then she should bring some pictures and other evidence to court. To help people to understand what a form is asking for and to explain what some of the arcane legal language in a court order or rule means. There is much that can be done that is very helpful here that does not require deep legal expertise.
>
> Authorizing intelligent, trained and well-supported non-JD legal assistants does not involve entering into uncharted waters. The United Kingdom, for example, has a long history of allowing a wide variety of differently trained individuals and organizations to provide legal assistance. And fortunately some very fine legal scholars have studied how well this works. Their key finding: it works very well. . . .
>
> The U.S. unfortunately has little experience with non-JD legal assistance — although that may be changing. Washington State has just this past month embarked on a plan to authorize what they call "limited license legal technicians" to perform carefully defined services for people, without direct supervision by an attorney. . . .
>
> But New York should not wait to see how Washington turns out. It should act now to evaluate its options for expanding the supply of legal assistance to New York's citizens. And it should do so in a firmly policy-oriented and evidence-based way. For too long this issue has been allowed to become buried under the intuition-based objections of existing members of the legal profession. (These are often sincerely held worries about the capacity to help those with legal trouble, although they are also, one must admit, sometimes plainly motivated by protectionist fears of competition.) If we treat this, as we absolutely must, as a matter of serious policy and we put our intuitions to the test of theory and empirical evidence, I guarantee we will find that the traditional fears are unfounded.[95]

As part of its review, the Task Force's Non-Lawyer Involvement Working Group examined the recent rules changes enacted by the Supreme Court in the State of Washington that, as Professor Hadfield testified, created a new Limited Licensed Legal Technician certification that allows certified persons to provide a range of legal services within certain defined practice areas. These licensed individuals will be permitted to set up limited practices, establish fees for their services, operate independently (without attorney supervision) and provide a range of assistance, including individualized information regarding court procedures, reviewing documents and completing forms, performing legal research,

drafting letters and pleadings, advising clients as to necessary documents and explaining how such documents or pleadings may affect the client's case. These licensed technicians may not represent a client in legal negotiations, in court, in formal administrative proceedings or in other formal dispute resolution processes unless specifically permitted. This new non-lawyer licensing system became effective on September 1, 2012.

The new rule in Washington establishes a Limited License Legal Technical Board to oversee implementation of the new rules, recommend practice areas for licensed technicians, administer the new examinations and licensure requirements, determine the continuing legal education requirements, establish and collect licensing fees, and undertake such other activities and functions as needed to establish the new system.[96]

In the Task Force's view, particularly given the level of non-lawyer assistance that is already being provided with limited or no oversight and regulation, further development of the role of non-lawyer advocates can be an important element in helping to address the substantial access-to-justice gap in the State. Based on its own consideration of these matters, the Task Force recommends the implementation of a pilot program to permit appropriately trained non-lawyer advocates to provide out-of-court assistance in a discrete substantive area. Given the extent to which non-lawyer advocates and entities – such as housing counselors in the foreclosure area and credit counselors in the consumer credit area - are already providing help to low-income New Yorkers, the Task Force recommends that the pilot program be in an area such as housing assistance, consumer credit or, possibly, foreclosure.[97]

To move forward, the Task Force recommends that the Chief Judge authorize implementation of such a pilot initiative. The Task Force further recommends that the Chief Judge appoint an Advisory Committee to develop such a pilot initiative and make recommendations for an appropriate system for the expansion of the role of non-lawyer advocates in the delivery of legal services. This Advisory Committee could function like the Advisory Committee on the New York State *Pro Bono* Bar Admission Requirement, which was appointed by the Chief Judge to implement his newly announced 50-hour *pro bono* rule for admission to the New York Bar. At the Chief Judge's direction, that Advisory Committee developed the *pro bono* rule within a three-month period of intensive consultation with all interested parties.

The proposed Advisory Committee to focus on non-lawyer involvement would consist of representatives appointed by the Chief Judge from the various stakeholders involved, including Judges, law school Deans, legal services providers, representatives of the private bar, and other interested parties. The Advisory Committee can seek input from all interested parties and then design a pilot program involving non-lawyer advocates without attorney supervision, provided such non-lawyer advocates do not provide in-court representation. The Committee can evaluate such essential matters as: the regulatory scheme (e.g., licensing, certification and/or registration); the scope of work (what work other than in court representation the non-lawyer advocates will be able to perform); identification of a substantive area of need for the pilot program (taking into consideration the Task Force's recommendation that the pilot program should be in an area such as housing assistance, consumer credit or, possibly, foreclosure where there is a great need and already a substantial level of non-lawyer assistance that is being provided); qualifications (e.g., education, training and/or experience requirements and/or potential law school sponsored diploma programs); consumer protection measures; and administration of the pilot program.

VI. Specific Steps Can Be Taken To Improve The Ability Of Town And Village Courts To Address The Needs Of Low-Income And Other Unrepresented Litigants In Summary Proceedings.

BECAUSE SUBSTANTIAL NUMBERS OF UNREPRESENTED low-income New Yorkers litigate legal matters in Town and Village Courts, the Task Force convened a Town and Village Court Working Group. With *pro bono* assistance provided by the Fund for Modern Courts and the law firm of Davis Polk & Wardwell LLP, the Town and Village Courts Working Group produced an extensive report and recommendations for action.[98] The Working Group's focus has been primarily on issues involving summary eviction proceedings, and it identified six key problem areas affecting unrepresented litigants: insufficient notice of proceedings; lack of access to court records; uneven treatment of litigants; insufficient knowledge of applicable law by non-lawyer Justices; inadequate training opportunities for Justices; and insufficient knowledge of special issues concerning manufactured homes.

As part of its effort to address these problems, the Working Group has developed a reference guide for Town and Village Court Justices. This reference guide is intended to address a pressing need for a clear and accessible statement of the standards governing summary proceedings in the Town and Village Courts. The Task Force therefore recommends the distribution of this plain-language, easy-to-follow reference guide for Justices. This will enable the Town and Village Justices to consult this guide while addressing the often difficult legal issues that can arise during summary proceedings.

The additional proposals that follow represent further steps toward improving the accuracy and fairness of summary proceedings in the Town and Village Courts. Increased training would help Justices understand the statutes governing summary proceedings. Creating specially scheduled days for summary proceedings would make it more likely that legal services providers can be available to assist litigants who need help. A mandatory adjournment rule for unrepresented litigants would afford litigants time to seek counsel and answers to questions.

1. The Need For A Summary Proceedings Reference Guide: Creation and distribution of a reference guide, in the form of a checklist or flowchart, will provide Town and Village Court Justices with a resource to consult in real time during summary proceedings. This reference guide would take Justices through each step of the summary proceeding process, highlighting the major issues that typically arise. It would aim to be accessible, rather than comprehensive, and would not address every conceivable scenario, but those that regularly arise.

The model guide developed by the Working Group incorporates the major substantive and procedural rules governing summary proceedings, from the initial decision to file a petition through the court appearance. Reference guides and checklists are always beneficial in any area involving a repetitive practice. Such devices are most useful if accompanied by a manual that cross-references the checklist and expands on the governing statutory and case law.

Furthermore, this Working Group's guide addresses several areas of concern. A significant portion of the guide is devoted to notice issues, including service requirements. The guide also alerts Justices to the importance of representation by counsel, and encourages Justices to adjourn cases where a party would prefer to retain counsel. Additionally, the guide provides an easy to-follow road map of the summary-proceeding process for Justices who may be unfamiliar with that process. Finally, the guide stresses the importance of affording both sides the opportunity to be heard.

2. ***The Need For Improved Training Relating to Summary Proceedings:*** Most Town and Village Justices are not lawyers, and many Justices lack experience dealing with the complicated legal issues that can sometimes arise during summary proceedings. Because summary proceedings take place relatively infrequently, Justices often do not have the opportunity to build expertise in this area of law. Increased and improved training would help Town and Village Justices obtain a better understanding of the rules governing summary proceedings. Training materials and training would be greatly enhanced by the inclusion, input and review by a selected group of lawyers and Judges with expertise in landlord/tenant law. In addition, Justices themselves have made suggestions to the Working Group to enhance resources and trainings. One Justice recommended that an instructional video be produced on the entire process; another noted that routine emails of developments in case-law would be a useful resource and another stated that "experience is always the best teacher," and should be combined with "our fellow judges' experiences." As one succinctly stated, "there is no substitute for learning the applicable law and having the opportunity to apply it."[99]

The Working Group's research and conversations with practitioners and Justices also revealed that some Town and Village Court clerks do not always understand the rights of litigants in summary proceedings. Because court clerks are gatekeepers to the courts — and provide access to, among other things, critical court records — requiring clerks to participate in regular training would also help litigants in summary proceedings better access justice.

3. ***The Need To Provide Upfront Information On Tenants' Rights At The Clerks' Office:*** Providing unrepresented litigants with a "Bill of Rights" or other information when they go to the Clerk's office or appear before a Justice for the first time can simplify the process for the litigants and the courts. Information on court procedures, the rights of litigants to obtain court records, the telephone number and location of local legal service providers, and other basic information may assist litigants in navigating an otherwise unfamiliar and daunting system. Justices remarked on the value of a handout to give to both parties, similar to the Small Claims Court guide, to familiarize them with the proper forms to fill out and procedures.[100]

4. ***The Need To Increase The Opportunity For Litigants To Be Able To Obtain Counsel:*** Several steps can be taken to increase the opportunity for unrepresented litigants to gain access to counsel, and thereby enhance Town and Village Court operations. For example, because summary proceedings represent a relatively small portion of individual Town and Village Courts' dockets, Justices are often unfamiliar with the substantive and procedural law that applies and, as a result, courts rely heavily on attorneys for knowledge about the process. Many practitioners report that, in cases where one or both parties are unrepresented, the Town and Village Court is significantly more likely to proceed based on an erroneous understanding of the law.[101]

A. The Need For Scheduled Days For Summary Proceedings: To increase access to legal services providers, Town and Village Courts could also consider dedicating certain days each week or month to summary proceedings. Doing so could enable local legal service organizations to have attorneys available in a particular court on a scheduled day to assist additional litigants.

B. The Need For An Adjournment Rule To Obtain Counsel: Unrepresented respondents are often unprepared for trial, do not know how to access legal services, and are unsure what defenses are available. As a result, many practitioners support the idea of a rule requiring a court to adjourn a matter

if a respondent is unrepresented, to provide litigants with time to obtain counsel or guidance. Many Justices who responded to the Modern Courts survey similarly agreed that representation by counsel provides for a better use of courts resources, as the "high volume of cases . . . [and] pro se parties' lack of procedural knowledge" creates challenges for the court.[102]

5. ***The Need For Required Reporting On Summary Proceedings:*** It is important to know how many summary proceedings are taking place in the Town and Village Courts across the State. This information is necessary for legal services providers as well as the courts, advocates, and local, county and State government. Therefore, to assess the number and impact of summary proceedings across the State, the Task Force recommends a change in Town and Village Court reporting requirements.

Currently, the only means of determining the number of summary proceedings commenced in Town and Village Courts is through a reporting requirement with the Office of the New York State Comptroller. Justices report fines, fees, and surcharges to the State Comptroller. These reporting requirements are for the purpose of distributing the revenue derived from these fees; the Comptroller's Office does not require the Justices to report on individual cases, although many Justices do, because a specific filing number is affiliated with summary proceedings. A mechanism is already in place to report summary proceedings separately. Gathering this information in one place could benefit Statewide efforts to understand the scope and volume of eviction proceedings.

VII. Collaboration Among Civil Legal Services Providers Is An Important Initiative To Leverage Limited Resources

THE TASK FORCE CHARGED its Collaborations and Shared Services Working Group with studying current collaborations among providers (to identify effective collaborations and partnerships that merit replication) and initiatives to share costs. The Task Force's 2010 Report anticipated the importance of an ongoing review of collaborations, with a particular focus on recipients of Judiciary Civil Legal Services funds, to avoid duplication of efforts and maximize cost savings.

Based on its work over the past year, including the report of the Collaborations and Shared Services Working Group,[103] the Task Force recommends the following models for collaborative initiatives that can be replicated in other parts of the State:

- An Access to Justice Program Help Center in the Rochester Hall of Justice: In New York State, Help Centers have been established in the courthouses of several counties to provide free legal and procedural information to the public. The staff of the proposed Rochester Help Center will use fliers, computer kiosks, on-site court staff, *pro bono* agency staff, and attorney and non-attorney volunteers to provide unrepresented litigants with information on such matters as referrals to appropriate agencies, court process and procedures, completion of forms and collection of judgments. Help Center employees and volunteers will be prohibited from providing legal advice or representation, and any informational advice offered by the Help Center will not take the place of private counsel. The Help Center will make referrals for legal assistance, when appropriate, to the Telesca Center for Justice's central reception and screening staff. Individuals seeking help can then be referred to the appropriate local civil legal services provider: the Volunteer Legal Services Project (VLSP) of Monroe County, Inc., the Legal Aid Society of Rochester, the Monroe

County Legal Assistance Center, the Empire Justice Center or the Monroe County Bar Association Lawyer Referral Service.

- Enhanced *Pro Bono* Legal Services in Dutchess County: In an effort to enhance *pro bono* legal services in Dutchess County, the Judiciary and the Dutchess County Bar Association have worked with Legal Services of the Hudson Valley to increase the number of low-income households receiving *pro bono* legal services in Dutchess County. The Hon. Albert M. Rosenblatt, a former Associate Judge of the New York Court of Appeals and a resident of Dutchess County, is leading this collaborative effort to support and strengthen the current *pro bono* program with local resources and volunteer efforts. The initiative is aimed at: (1) recruiting more *pro bono* attorneys who can deliver high quality legal services to low-income households with civil legal problems affecting the basic necessities of life; and (2) enhancing the current *pro bono* system to allow the Judiciary, the organized bar, the Marist College Paralegal Program and other non-attorney volunteers to be included in the local legal services provider's screening, tracking and oversight system.
- Partnership Projects Facilitated by a *Pro Bono* Clearinghouse in New York County: A number of New York City organizations maintain referral services that enable unrepresented individuals and nonprofit organizations to obtain legal representation from members of the private bar. Through early intervention with clients, these organizations are able to reduce the number of unrepresented litigants and assist in the settlement of matters before they require court resources for resolution. These New York City organizations arrange for representation by the private bar for individual clients. The organizations then provide training to *pro bono* attorneys from law firms and corporate legal departments, screen and refer clients, monitor progress and provide ongoing mentoring and support to counsel during representation. Many legal and community services organizations, both in New York City and throughout the State, utilize this model to partner with members of the private bar to provide legal representation to unrepresented low-income New Yorkers in a specific area of the law, e.g., domestic violence, housing, foreclosure or immigration.
- Promoting "One Roof" Models: Building on the Telesca Center for Justice model in Rochester, where providers are housed under one roof and share costs, and on similar co-location efforts in Buffalo, a co-location planning effort is underway in Syracuse. For the past several years, a working group, under the leadership of former U.S. Magistrate Judge George Lowe, has been investigating the possibility of co-locating the Syracuse offices of the Hiscock Legal Aid Society, Legal Services of Central NY, the Legal Aid Society of Mid-New York, and the Volunteer Lawyers Project of the Onondaga County Bar Association. To establish the One Roof Legal Services Center in Syracuse, the group is working with architects and real estate lawyers to develop plans for co-location to avoid duplication of efforts and maximize cost savings. Members of the Syracuse "One Roof Committee" include: 1) the president and executive director of the Onondaga County Bar Association, 2) the executive directors for the legal services providers in Syracuse, Onondaga County and Central New York, namely the Hiscock Legal Aid Society, Legal Services of Central New York, and the Legal Aid Society of Mid-New York, 3) the coordinator for the Onondaga County Bar Association's Volunteer Lawyer Project, 4) a representative of the Syracuse University College of Law's clinical programs; and 5) a representative of the Federal Court Bar Association for the Northern District of New York. Recently, the Board of Directors for each legal services organization passed a resolution supporting the "One Roof" concept. Currently, the offices of

Legal Services of Central New York and the Legal Aid Society of Mid-New York are located in the same building. All of the remaining organizations are scattered around the City of Syracuse. With one exception, the "One Roof" Committee has successfully renegotiated a common expiration date of December 31, 2014 in all of the leases of the legal services organizations. The target date for operation under "one roof" is January 1, 2015. The Committee issued a request for proposals to evaluate potential owners of locations that would be suitable for this initiative. The combined organizations would employ approximately 117 individuals and would require approximately 35,000 square feet of office space. Once proposals are received, the "One Roof" Committee will begin to raise money to cover the moving costs for each organization and the build-out costs for the "One Roof" Center.

In addition to these models, the Collaborations and Shared Services Working Group evaluated the following bar association collaborations that have received Judiciary Civil Legal Services funds, and the Task Force recommends these models for replication:

- The City Bar Justice Center provided a central training model for the Brooklyn Bar Association, the Queens County Bar Association, and the New York County Lawyers Association by training and mentoring their *pro bono* volunteers and staff to provide advice and representation to individuals facing foreclosure. The City Bar Justice Center also developed a set of training materials for their Deferred Action Childhood Arrivals (DACA) Clinic, posted the materials online in partnership with Probono.net and provided technical support to other bar associations providing DACA Clinics, including the Monroe County Bar Association.
- The Brooklyn Bar Association Volunteer Lawyers Project (VLP) and other downstate and Westchester programs refer unrepresented consumer debt litigants to CLARO, the Civil Legal Advice and Resource Office. CLARO is a free weekly walk-in clinic at the Kings County Civil Court where consumers can obtain free information about debt collection. CLARO is a joint project of the VLP and Brooklyn Law School, with the collaboration of civil legal services organizations. It was created in cooperation with the Kings County Civil Court. CLARO is open every Thursday at the Kings County Civil Court (141 Livingston Street) from 2:30 to 4:30 p.m. and from 6:00 to 8:00 p.m.
- The Onondaga County Bar Association Say Yes Program works with Say Yes Syracuse, a chapter of Say Yes to Education, Inc., which is a non-profit foundation committed to increasing high school and college graduation rates for urban students. Since 2008, Say Yes Syracuse and a community of caring, committed people have devoted time, money and resources to provide comprehensive, year-round support to students throughout their K-12 years and beyond. The Say Yes Syracuse chapter is unique in that it is the first Say Yes chapter to embrace an entire city school district. The Say Yes Buffalo chapter became the second Say Yes chapter to partner with an entire city school district in 2012. Say Yes Syracuse is a landmark collaboration that brings together *pro bono* attorneys, the Syracuse City School District, Syracuse University, Onondaga Community College, Say Yes Higher Education Compact partner colleges, Say Yes to Education, Inc., the Syracuse Teachers' Association, the Syracuse Association of Administrators and Supervisors, the City of Syracuse, Onondaga County, the American Institutes for Research, and a diverse group of Syracuse area corporations, non-profits, and law firms. Say Yes to Education and its partners take the position that every student can graduate from high school and college when given the proper support, resources and opportunities.

- The Albany County Bar Association/*Pro Bono* Program and the Legal Aid Society of Northeastern New York operate the Wills For Heroes Program through which legal services are provided to active and retired members of the U.S. Armed Forces at the Albany Stratton VA Medical Center. The Wills For Heroes program *pro bono* attorneys prepare wills, powers of attorney and health care proxies for veterans and their spouses or domestic partners. The Wills For Heroes program brings together veterans with *pro bono* attorneys, notaries and witnesses. The program model links veterans to legal services at a location where they are receiving other services.

VIII. The Establishment Of A Council For The New York State Courts Can Enhance Judiciary Initiatives, Including The Civil Legal Services Initiative To Bridge The Access-To-Justice Gap.

DURING THE CIVIL LEGAL SERVICES HEARINGS convened by the Chief Judge in 2010, 2011 and 2012, leaders in the private sector testified about the importance of providing access to justice for low-income New Yorkers to promote respect for the rule of law and a well-functioning Judiciary. Building on this support, the Task Force recommends the creation of a Council for the New York State Courts to enhance and maintain the leading position of the New York State Courts among the courts in the United States.

The Council can support many activities of the New York State Courts, including the Chief Judge's initiatives to increase public and private support for civil legal services, to strengthen New York's position as a preeminent center for commercial litigation in the 21st century and to maintain sufficient levels of funding for the courts.

The Council can also encourage the exchange of ideas between the leadership of the New York State Courts and private sector leaders in New York State.

The Task Force therefore recommends that the Chief Judge create and appoint such a Council consisting of up to 50 representatives of the private sector, including business leaders, prominent New Yorkers, leaders of the bar, former public officials and former members of the Judiciary. The Council could conduct an annual conference on topics of importance to the New York State Courts, to be held at a New York law school, with participation by members of the Judiciary, the Council and leading lawyers and academics.

For the foregoing reasons, the Task Force respectfully requests that the Chief Judge adopt the funding and non-monetary recommendations for action set forth in this Report to continue to implement the multi-year plan to bridge the access-to-justice gap for low-income families and individuals in New York State. As Nassau County District Attorney Kathleen Rice put it so eloquently: "Failing these families and these children in civil court by not guaranteeing their access or their professional representation sows the seeds of future criminality, future criminality that will not only victimize those involved in these [settings], but that will very often cascade down a violent spectrum, possibly even to future generations."[104]

ENDNOTES

[1] *The Chief Judge's Hearing on Legal Services, Fourth Dep't, Oct. 2, 2012 (remarks of Hon. Chief Judge Jonathan Lippman, at 5:06–6:10)*.

[2] *See* Task Force to Expand Access to Civil Legal Services in New York, Report to the Chief Judge of the State of New York: Appendix 3 (2010), *available at* http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-Appendices.pdf.

[3] A list of the members of the Chief Judge's Task Force to Expand Access to Civil Legal Services is set forth at the beginning of this report. In addition, the Task Force received extensive assistance from Jessica Klein, Special Counsel for *Pro Bono* and Director of Professional Development at Sullivan & Cromwell LLP, who served as Counsel to the Task Force; Lara J. Loyd, an Associate at Sullivan & Cromwell LLP; Mary C. Mone, Counsel to the Chief Judge; and Lauren Kanfer, Assistant Deputy Counsel to the Chief Judge. Sullivan & Cromwell LLP, which has a partner serving on the Task Force, hosted the Task Force and provided crucial *pro bono* assistance. Three other leading law firms with partners who serve on the Task Force also provided invaluable *pro bono* assistance: Proskauer Rose LLP; Simpson Thacher & Bartlett LLP; and Skadden, Arps, Slate, Meagher & Flom LLP. Additional assistance was provided by Davis Polk & Wardwell LLP, Brenna K. DeVaney, a *Pro Bono* Counsel at Skadden, and the Fund for Modern Courts. A full listing of those who provided *pro bono* assistance is annexed as Appendix 1.

[4] The Request for Proposals and notice of its issuance are annexed as Appendix 2 and Appendix 3, respectively.

[5] A chart setting forth the Oversight Board's second-year grant allocations is annexed as Appendix 4.

[6] A witness list for each of the Chief Judge's four hearings is annexed as Appendix 5. The transcripts of the oral testimony at the four hearings are annexed as Appendix 6 (for the Third Department Hearing held on September 27, 2012), Appendix 7 (for the First Department Hearing held on October 1, 2012), Appendix 8 (for the Fourth Department Hearing held on October 2, 2012), and Appendix 9 (for the Second Department hearing held on October 4, 2010). Written statements submitted at the four hearings are annexed as Appendix 10 (for the Third Department Hearing), Appendix 11 (for the First Department Hearing), Appendix 12 (for the Fourth Department Hearing), and Appendix 13 (for the Second Department Hearing).

[7] A copy of the notice published on the Unified Court System's website is annexed as Appendix 14.

[8] *The Chief Judge's Hearing on Civil Legal Services, Third Dep't, Sept. 27, 2012; The Chief Judge's Hearing on Civil Legal Services, First Dep't, Oct. 1, 2012; The Chief Judge's Hearing on Civil Legal Services, Fourth Dep't, Oct. 2, 2012*; *The Chief Judge's Hearing on Civil Legal Services, Second Dep't, Oct. 4, 2012.*

[9] *The Chief Judge's Hearing on Civil Legal Services, Third Dep't, Sept. 27, 2012 (statement of Hon. Nancy Sunukjian, Waterford Town Justice, Saratoga County; Acting Director of the Office of Justice Court Support and Special Counsel to the Deputy Chief Administrative Judge for Courts Outside of New York City, at 2).*

[10] *The Chief Judge's Hearing on Civil Legal Services, Fourth Dep't, Oct. 2, 2012 (testimony of Hon. Patricia Marks, Monroe County Court Judge; Presiding Judge of Veterans Treatment Court; Interim Director of Veterans Outreach Center; Board Member; NDCI Faculty Training for Veterans Treatment Courts, at 8:23–19:10); The Chief Judge's Hearing on Civil Legal Services, Fourth Dep't, Oct. 2, 2012 (testimony of John G. Powers, Director, Onondaga County Bar Association Veterans & Military Service Members Pro Bono Clinic; Partner, Hancock Estabrook, LLP, at 20:21–32:08).*

[11] *The Chief Judge's Hearing on Civil Legal Services, Fourth Dep't, Oct. 2, 2012 (testimony of John G. Powers, Director, Onondaga County Bar Association Veterans & Military Service Members Pro Bono Clinic; Partner, Hancock Estabrook, LLP, at 22:17–24:19).*

[12] *See, e.g., The Chief Judge's Hearing on Civil Legal Services, Fourth Dep't, Oct. 2, 2012 (testimony of Jeffrey Unaitis, Executive Director, Onondaga County Bar Association, at 47:14–55:16); The Chief Judge's Hearing on Civil Legal Services, Fourth Dep't, Oct. 2, 2012 (testimony of Sally Fisher Curran, Legal Director, Volunteer Lawyer Project, at 55:20–66:22); The Chief Judge's Hearing on Civil Legal Services, Fourth Dep't, Oct. 2, 2012 (Hannah Arterian,*

Dean, Syracuse University College of Law, at 67:17–77:04); The Chief Judge's Hearing on Civil Legal Services, Fourth Dep't, Oct. 2, 2012 (testimony of Stewart J. Schwab, Dean, Cornell Law School, at 86:16–102:13); The Chief Judge's Hearing on Civil Legal Services, Second Dep't, Oct. 4, 2012 (testimony of Patricia E. Salkin, Dean, Touro College Jacob D. Fuchsberg Law Center, at 90:21–103:10).

[13] *See, e.g., The Chief Judge's Hearing on Civil Legal Services, Second Dep't, Oct. 4, 2012 (testimony of Martha Maffei, Executive Director, Services for Advancement of Women, at 46:01–54:16).*

[14] *See The Chief Judge's Hearing on Civil Legal Services, First Dep't, Oct. 1, 2012 (testimony of Dr. Elizabeth Becker, Senior Vice President, NERA Economic Consulting, at 54:06–60:13).*

[15] *See The Chief Judge's Hearing on Civil Legal Services, First Dep't, Oct. 1, 2012 (testimony of Prof. Gillian K. Hadfield, Kirtland Professor of Law & Economics, University of Southern California Law School, at 65:17–82:12).*

[16] *The Chief Judge's Hearing on Civil Legal Services, First Dep't, Oct. 1, 2012 (testimony of His Eminence Timothy Cardinal Dolan, Archbishop of New York, at 8:02–9:25).*

[17] *The Chief Judge's Hearing on Civil Legal Services, First Dep't, Oct. 1, 2012 (testimony of Hon. Christine Quinn, Speaker, New York City Council, at 20:25–24:19).*

[18] *The Chief Judge's Hearing on Civil Legal Services, First Dep't, Oct. 1, 2012 (testimony of Hon. Christine Quinn, Speaker, New York City Council, at 21:23–22:04).*

[19] *The Chief Judge's Hearing on Civil Legal Services, Third Dep't, Sept. 27, 2012 (testimony of Eric Schneiderman, Attorney General of the State of New York, at 7:04–20:22, 28:16–30:02).*

[20] *The Chief Judge's Hearing on Civil Legal Services, Third Dep't, Sept. 27, 2012 (testimony of Eric Schneiderman, Attorney General of the State of New York, at 16:15–17:12).*

[21] *The Chief Judge's Hearing on Civil Legal Services, Third Dep't, Sept. 27, 2012 (testimony of Eric Schneiderman, Attorney General of the State of New York, at 9:03–15, 29:18–30:02).*

[22] *The Chief Judge's Hearing on Civil Legal Services, Third Dep't, Sept. 27, 2012 (statement of Steven J. Acquario, Executive Director, New York State Association of Counties, at 2).*

[23] *The Chief Judge's Hearing on Civil Legal Services, Third Dep't, Sept. 27, 2012 (testimony of Steven J. Acquario, Executive Director, New York State Association of Counties, at 84:23–85:01, 85:25–86:08).*

[24] *The Chief Judge's Hearing on Civil Legal Services, Second Dep't, Oct. 4, 2012 (testimony of Kathleen Rice, Nassau County District Attorney, at 9:08–17, 10:13–11:16, 12:12–17).*

[25] *The Chief Judge's Hearing on Civil Legal Services, Second Dep't, Oct. 4, 2012 (testimony of Steve Bellone, Suffolk County Executive, at 29:05–29:21).*

[26] *Chief Judge's Hearing on Civil Legal Services, Fourth Dep't, Oct. 2, 2012 (testimony of Hon. Craig J. Doran, Administrative Judge for the Seventh Judicial District in Syracuse, at 132:09–18).*

[27] Deputy Chief Administrative Judge Fisher's full written testimony for the First Department hearing is included in Appendix 11; Deputy Chief Administrative Judge Coccoma's full written testimony for the Third Department hearing is included in Appendix 10.

[28] *The Chief Judge's Hearing on Civil Legal Services, First Dep't, Oct. 1, 2012 (testimony of Hon. Fern Fisher, Deputy Chief Administrative Judge for the New York City Courts and Director of the New York State Courts Access to Justice Program, at 44:04–17).*

[29] *The Chief Judge's Hearing on Civil Legal Services, Third Dep't, Sept. 27, 2012 (statement of Hon. Michael V. Coccoma, Deputy Chief Administrative Judge for Courts Outside New York City, at 1–2, 4).*

[30] *See* Task Force to Expand Access to Civil Legal Services in New York, Report to the Chief Judge of the State of New York (2010) [hereinafter 2010 Task Force Report], *available at* http://www.nycourts.gov/ip/ access-civil-

legal-services/PDF/CLS-TaskForceREPORT.pdf; TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK (2011) [hereinafter 2011 TASK FORCE REPORT], *available at* http://www.nycourts.gov/ip/access-civil-legal-services/PDF /CLS-2011TaskForceREPORT_web.pdf.

[31] 2010 TASK FORCE REPORT, *supra* note 30, at 38; 2011 TASK FORCE REPORT, *supra* note 30, at 38.

[32] *See, e.g.*, *Joint Hearing on IOLA and the Future of Legal Services in New York State, Dec. 9, 2009 (testimony of Benito Romano, Chair, Board of Trustees for the Interest on Lawyer Account Fund of the State of New York)*, *available at* http://www.iola.org/senatetest%20write.pdf; Legal Aid Soc'y, IOLA Grantee Activity Report (2011), *available at* http://www.iola.org/board/Grantee%20Annual%20Report%202011/ Legal%20Aid%20Society%202011.pdf.

[33] *The Chief Judge's Hearing on Civil Legal Services, First Dep't, Oct. 1, 2012 (statement of The Legal Aid Society at 3)*.

[34] Based on figures made available to the Task Force by IOLA. For further information, see generally IOLA FUND OF THE STATE OF NEW YORK, http://www.iola.org (last visited Nov. 26, 2012). To the extent that some of these 264,574 cases closed in State fiscal year 2011–2012 may have taken more than one year to resolve and more than one matter may have been handled for those who have multiple legal problems, an even smaller percentage of the need is currently being met.

[35] *See, e.g.*, *Current Population Survey: Poverty Status by State 2011*, UNITED STATES CENSUS BUREAU, http://www.census.gov/hhes/www/cpstables/032012/pov/POV46_001_185200.htm (last visited Nov. 14, 2012).

[36] *See, e.g.*, ALLIANCE FOR A GREATER NEW YORK, *Poverty in New York City: Borough Analysis of Data from the US Census Bureau's 2011 American Community Survey* (2012), http://www.alignny.org/wp-content/uploads/ 2012/09/NYC-Poverty-Report-2012.pdf.

[37] This chart is based on the Federal Poverty Guidelines for 2012, which can be found at the U.S. Department of Health and Human Services website. *See 2012 HHS Poverty Guidelines: One Version of the [U.S.] Federal Poverty Measure*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, http://aspe.hhs.gov/poverty/12poverty.shtml (last updated Feb. 9, 2012).

[38] Press Release, New York State Department of Labor, NYS Adds 2,900 Private Sector Jobs in September—Job Count Reaches an All-time High (Oct. 18, 2012), *available at* http://labor.ny.gov/stats/pressreleases/pruistat.shtm.

[39] *See, e.g.*, 2010 TASK FORCE REPORT, *supra* note 30, at 1.

[40] Hon. A. Gail Prudenti, *2012 Report of the Chief Administrator of the Courts Pursuant to Chapter 507 of the Laws of 2009, at 5 (2012)*.

[41] *The Chief Judge's Hearing on Civil Legal Services*, *Third Dep't, Sept. 27, 2012 (testimony by Michael T. Keegan, Regional President, Albany-Hudson Valley North Division and Senior Vice President, M&T Bank, at 34:10–13)*.

[42] *The Chief Judge's Hearing on Civil Legal Services, Third Dep't, Sept. 27, 2012 (testimony of Hon. Eric T. Schneiderman, Attorney General of New York, at 20:05–13).*

[43] Based on figures made available to the Task Force by IOLA. For further information, see generally IOLA FUND OF THE STATE OF NEW YORK, http://www.iola.org (last visited Nov. 26, 2012).

[44] *The Chief Judge's Hearing on Civil Legal Services, Third Dep't, Sept. 27, 2012 (testimony of Heisily Rojas, client of The Legal Project, at 107:09–112:01).*

[45] *The Chief Judge's Hearing on Civil Legal Services, Third Dep't, Sept. 27, 2012 (testimony of Holly Ovitt, client of Legal Aid Society of Northeastern New York, at 113:05–116:12).*

[46] *The Chief Judge's Hearing on Civil Legal Services, Third Dep't, Sept. 27, 2012 (testimony of Sherry DeShane, client of Legal Aid Society of Northeastern New York, at 93:18–98:01).*

[47] *The Chief Judge's Hearing on Civil Legal Services, Third Dep't, Sept. 27, 2012 (testimony of Shari Chireno, client of Legal Services of the Hudson Valley, at 99:11–104:06).*

[48] *The Chief Judge's Hearing on Civil Legal Services, First Dep't, Oct. 1, 2012 (testimony of Angela D'Arezzo, client of The Legal Aid Society, at 101:05–104:26).*

[49] *The Chief Judge's Hearing on Civil Legal Services, First Dep't, Oct. 1, 2012 (testimony of Richard Usera, Client of Legal Services NYC, at 105:14–108:02).*

[50] *The Chief Judge's Hearing on Civil Legal Services, First Dep't, Oct. 1, 2012 (testimony of Fredesvinda Vasquez, Client of Make the Road New York, at 108:12–111:02).*

[51] *The Chief Judge's Hearing on Civil Legal Services, Fourth Dep't, Oct. 2, 2012 (testimony of Cheri Caiella, Mother of Client of Pro Bono Legal Clinic for Veterans & Active Military Service Members, at 33:10–37:07).*

[52] *The Chief Judge's Hearing on Civil Legal Services, Second Dep't, Oct. 4, 2012 (testimony of Felicia Essix, Client of Empire Justice Center, at 141:05–143:11).*

[53] *The Chief Judge's Hearing on Civil Legal Services, Second Dep't, Oct. 4, 2012 (testimony of Tenzin Choezom, Client of Queens Legal Services, at 128:19–131:11).*

[54] *The Chief Judge's Hearing on Civil Legal Services, Second Dep't, Oct. 4, 2012 (testimony of Mamie Copeland, Client of The Legal Aid Society, at 136:04–140:16).*

[55] *The Chief Judge's Hearing on Civil Legal Services, First Dep't, Sept. 26, 2011 (testimony of Jeffrey L. Baliban, Managing Director, Navigant Consulting, Inc., at 21:21–24); The Chief Judge's Hearing on Civil Legal Services, First Dep't, Sept. 26, 2011 (testimony of Geeta Singh, Principal, Cornerstone Research, at 47:20–23).*

[56] *The Chief Judge's Hearing on Civil Legal Services, First Dep't, October 1, 2012 (statement of Dr. Elizabeth Becker, Senior Vice President, NERA Economic Consulting, at 2).*

[57] Kalman Rupp and Charles G. Scott, *Trends in the Characteristics of DI and SSI Disability Awardees and Duration of Program Participation*, 59 Soc. Security Bull., no. 1, 1996, at 3, 3.

[58] *See Consumer Price Indexes (CPI and PCE)*, Fed. Reserve Bank of St. Louis, http://research.stlouisfed.org/fred2/categories/9 (last visited Nov. 24, 2012).

[59] *See generally* U. S. Dep't of Commerce, Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II) (3rd ed. 1997), *available at* http://www.bea.gov/scb/pdf/regional/perinc/meth/rims2.pdf. New York State calculations provided by the IOLA Fund of the State of New York. *See also The Chief Judge's Hearing on Civil Legal Services, First Dep't, October 1, 2012 (statement of Dr. Elizabeth Becker, Senior Vice President, NERA Economic Consulting, at 9).*

[60] *The Chief Judge's Hearing on Civil Legal Services, First Dep't, October 1, 2012 (statement of Dr. Elizabeth Becker, Senior Vice President, NERA Economic Consulting, at 10).*

[61] Curtis S. Dubay, *Federal Tax Burdens and Expenditures by State: Which States Gain Most from Federal Fiscal Operations?*, Tax Found. Special Rep., no. 139, Mar. 2006, at 3.

[62] Scott A. Hodge, *States Vary in Distribution of Who Bears the Burden of Federal Income Taxes*, Tax Found. Fiscal Fact, no. 231, June 2, 2010 (unpaginated).

[63] 2011 Task Force Report, *supra* note 30, at 40.

[64] The report of the Task Force's Law School Involvement Working Group is included as Appendix 15.

[65] *See* William M. Sullivan et al., Carnegie Foundation for the Advancement of Teaching, Educating Lawyers: Preparation for the Profession of Law (2007); *see also* N.Y. State Bar Ass'n, Report of the Task Force on the Future of the Legal Profession 35-36 (2011); Roy Stuckey, et al., Best Practices for Legal Education: A Vision and a Road Map 176–78 (2007).

[66] 2011 Task Force Report, *supra* note 30, at 36.

[67] *Id.* at 40.

[68] The report of the Task Force's *Pro Bono* Involvement Working Group is included as Appendix 16.

[69] 2011 Task Force Report, *supra* note 30, at 37.

[70] *The Chief Judge's Hearing on Civil Legal Services, First Dep't, Oct. 1, 2012 (testimony of Carey R. Dunne, President, New York City Bar Association, at 86:19–26).*

[71] The ABA Standing Committee on *Pro Bono* and Public Service contracted with The Research Intelligence Group ("TRIG") to conduct its third national study on *pro bono* participation by America's attorneys. The Task Force submitted additional questions for the New York survey that focused on: 1) the county in which the lawyer conducts the preponderance of legal work, 2) monetary donations to legal service providers, 3) total number of billable hours and 4) the number of hours worked fitting the definition of services provided in Rule 6.1. The resulting TRIG report is annexed as Exhibit 1 to Appendix 16. *See* The Research Intelligence Group, *Pro Bono* Service Provided by New York Attorneys (Sept. 2012) [hereinafter New Survey] (previously unpublished report).

[72] The previous survey was New York State Unified Court Sys., Report on the 2002 *Pro bono* Activities of the New York State Bar (2004) [hereinafter 2002 *Pro Bono* Report].

[73] New Survey, *supra* note 71, at 12.

[74] TRIG reported that the portion of their survey related to New York attorneys' *pro bono* efforts had a 6.5 percent margin of error at the standard 95 percent level of confidence. New Survey, *supra* note 71, at 5, 12.

[75] 2002 *Pro Bono* Report, *supra* note 72, at iii.

[76] New Survey, *supra* note 71, at 12.

[77] *Id.*

[78] Based on figures made available to the Task Force by IOLA. For further information, see generally IOLA Fund of the State of New York, http://www.iola.org (last visited Nov. 26, 2012).

[79] Legal Services Corp., Report of the Pro Bono Task Force 2 (2012) (emphasis added).

[80] 2011 Task Force Report, *supra* note 30, at 10.

[81] 2011 Task Force Report, *supra* note 30, at 16; *The Chief Judge's Hearing on Civil Legal Services, First Dep't, Oct. 1, 2012 (testimony of Carey Dunne, President, New York City Bar Association, at 84:19–22).*

[82] Proposed Biennial Attorney Registration questions related to *pro bono* hours are annexed as Exhibit 2 to Appendix 16. The New York City Bar Association has supported a reporting requirement for *pro bono* hours since 1997. *The Chief Judge's Hearing on Civil Legal Services, First Dep't, Oct. 1, 2012 (testimony of Carey Dunne, President, New York City Bar Association, at 88:15 – 89:10).*

[83] Proposed revisions to New York Rule 6.1(a)(2) concerning suggested monetary contributions are annexed as Exhibit 3 to Appendix 16.

[84] Proposed Biennial Attorney Registration questions related to monetary contributions to legal service providers in New York are annexed as Exhibit 2 to Appendix 16.

[85] The rule requires payment of a production charge.

[86] *Board Issue Paper*—Pro Bono Publico, The Florida Bar, http://www.floridabar.org/DIVCOM/PI/BIPS2001. nsf/1119bd38ae090a748525676f0053b606/a8e811c59073e9f68525669e004d21f6!OpenDocument (last visited Nov. 24, 2012) (data reported by the Standing Committee on *Pro Bono* Services to the Supreme Court of Florida, The Florida Bar and The Florida Bar Foundation). *See also The Chief Judge's Hearing on Civil Legal Services, First Dep't, Oct. 1, 2012 (testimony of Carey R. Dunne, President, New York City Bar Association, at 88:01–90:09)* (reiterating the City Bar's support for *pro bono* reporting, as first proposed by the City Bar in a 1997 report, and noting that "[o]ur report drew on the experience of Florida, which was the first to establish the reporting of pro bono activities and contributions, both of which grew substantially after the reporting requirement was put into place.").

[87] Attorney Registration & Disciplinary Comm'n of the Supreme Court of Illinois, 2011 Annual Report 13 (2012), *available at* http://www.iardc.org/annualreport2011.pdf.

[88] *Compare* Admin. Office of the Courts, Current Status of Pro Bono Service Among Maryland Lawyers, at 12 (2003), *available at* http://www.mdcourts.gov/probono/pdfs/ probonoreport_2002.pdf , *with* Admin. Office of the Courts, Final Report: Current Status of *Pro Bono* Service Among Maryland Lawyers, Year 2010, at 6 (2011), *available at* http://www.mdcourts.gov/probono/pdfs/probonoreport2010.pdf.

[89] Kelly Carmody & Assoc., *Pro Bono*: Looking Back, Moving Forward 10, 38–39, 43 (2008), *available at* http://www.flabarfndn.org/downloads/pdf/pro-bono.pdf . This report, which examined the state of *pro bono* in Florida, found that approximately 17 percent of attorneys in 2006 did not complete the required *pro bono* report. The study recommended revisions to the *pro bono* reporting section of the Florida Bar's annual membership form to simplify it and recommended the creation of a system to send follow-up notices to attorneys who did not complete the form. The report noted that while *pro bono* reporting is required, implementation of a consequence for noncompliance had not been adopted and might be advisable. The report cited to data from other States with reporting requirements, including Nevada, Illinois and Maryland, which reported 99 or 100 percent compliance. In those States, the consequence for noncompliance is a fine or decertification. *See* Nev. R. Prof. Conduct 6.1(b)(1); Sup. Ct. Ill. R. Admission and Discipline of Attorneys 756(g); Md. R. P. 16-903(e).

[90] For further discussion regarding *pro bono* service by in-house counsel, see David S. Rothenberg et al., Right to Practice Reform: Registered In-House Counsel and Pro Bono Service, Report (2012) (report of the Corporate Counsel Section of the New York State Bar Association (June 2012)).

[91] The Attorney Emeritus Program Statement of Participation is annexed as Exhibit 4 to Appendix 16.

[92] As of the date of this Report, the following firms have agreed to Attorney Emeritus Program participation: Davis Polk & Wardwell LLP; Hiscock & Barclay LLP; Proskauer Rose LLP; Simpson Thacher & Bartlett LLP; Skadden, Arps, Slate, Meagher & Flom LLP; Sullivan & Cromwell LLP; and Weil, Gotshal & Manges LLP.

[93] The research memorandum for the Task Force's Non-Lawyer Involvement Working Group is included as Appendix 17. The Working Group gratefully acknowledges the assistance of Daeyna M. Grant and Christopher G. Lee, Associates at Simpson Thacher & Bartlett LLP, in the research and drafting of this memorandum.

[94] *The Chief Judge's Hearing on Civil Legal Services, First Dep't, Oct. 1, 2012 (testimony of Prof. Gillian K. Hadfield, Kirtland Professor of Law & Economics, University of Southern California Law School, at 65:17–78:25).*

[95] *The Chief Judge's Hearing on Civil Legal Services, First Dep't, Oct. 1, 2012 (statement of Prof. Gillian K. Hadfield, Kirtland Professor of Law & Economics, University of Southern California Law School, at 1–6).*

[96] Wash. Admission to Practice R. 28. *See also* In the Matter of the Adoption of New APR 28—Limited Practice Rule for Limited License Legal Technicians (Order No. 25700-A-1005) (Wash. June 15, 2012).

[97] This non-lawyer involvement recommendation does not address current on-line document programs.

[98] The report of the Task Force's Town and Village Courts Working Group is included as Appendix 18.

[99] Amelia T.R. Starr et al., Fund for Modern Courts, Summary Proceedings in New York's Town and Village Courts: Ideas for Improvement 12 (2012).

[100] *Id.* at 14.

[101] *Id.* at 12.

[102] *Id.* at 4.

[103] The report of the Task Force's Collaborations and Shared Services Working Group is included as Appendix 19.

[104] *The Chief Judge's Hearing on Civil Legal Services, Second Dep't, Oct. 4, 2012 (testimony of Kathleen Rice, Nassau County District Attorney, at 10:04-11).*

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