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Chief Administrative Judge

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MEMORANDUM

October 1, 2013

TO: All Interested Persons

FROM: John W. McConnell

RE: Report of the Advisory Committee on Pro Bono Service by In-House Counsel recommending an amendment of Part 522 of the Rules of the Court of Appeals to permit registered in-house counsel to provide pro bono legal services.

The Advisory Committee on Pro Bono Service by In-House Counsel in New York State has issued a report recommending an amendment of Part 522 of the Rules of the Court of Appeals to permit registered in-house counsel to provide pro bono legal services in New York (Exhibit A). Under Part 522, attorneys not admitted to practice law in New York who are employed full-time in this state by a corporation, partnership, association or other legal entity must register as in-house counsel with the Appellate Division in order to lawfully provide legal services to the employer or the employer's affiliates, officers and employees (Exhibit B). Registration as in-house counsel is not the equivalent of obtaining a license to practice law in New York and does not authorize such an attorney to provide legal services to the public, including pro bono legal services, or to appear before any tribunal (Exhibit C).

The Advisory Committee recommends amending Part 522 for the limited purpose of permitting registered in-house counsel to provide pro bono legal services. As proposed, registered in-house counsel would be authorized to appear before any tribunal in the state, in the discretion of such tribunal, without the need to seek *pro hac vice* admission, associate with an approved legal services provider or similar entity, or work under the supervision of a New York-licensed attorney. In lieu of *pro hac* admission, registered in-house counsel appearing before a tribunal would be required to submit a Notice of Pro Bono Representation certifying that he or she is duly registered with the Appellate Division and authorized to appear pro bono under the Rules of the Court of Appeals. Registered in-house counsel would remain prohibited from holding themselves out as admitted to practice law in the state, and from making court appearances other than in pro bono matters.

According to the Advisory Committee, permitting registered in-house counsel to engage in pro bono will help address New York's access to justice crisis by making use of a skilled,

experienced group of lawyers who desire to serve low-income persons and communities. The Advisory Committee's proposed amendment eschews certain conditions – *pro hac vice* admission, association with legal service providers, and supervision by in-state attorneys – on the grounds that they are unnecessary and would unduly limit participation in pro bono. The amendment is consistent with the 2012 report of the Task Force to Expand Access to Civil Legal Services, which recommended removal of unnecessary obstacles to pro bono service by registered in-house counsel (Exhibit D).

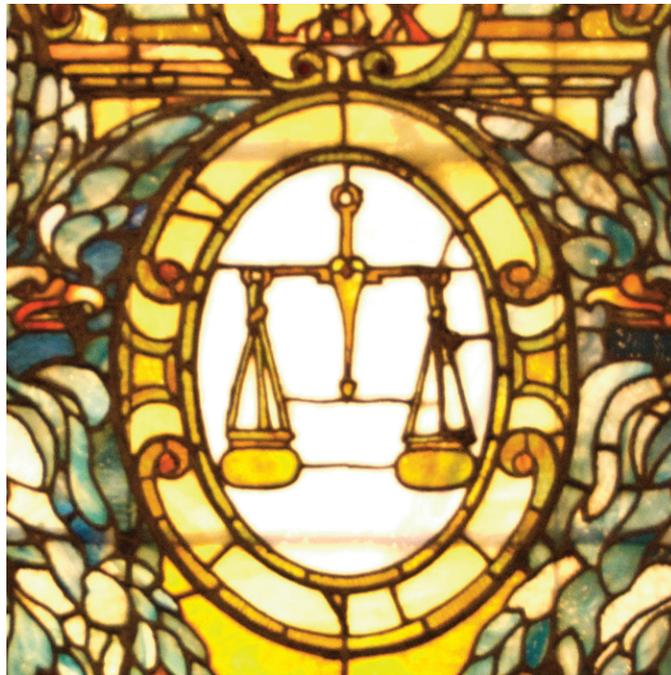
Persons wishing to comment on this proposal should e-mail their submissions to Part522@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than October 31, 2013.**

All public comments will be treated as available for disclosure under the Freedom of Information Law, and are subject to publication by the Office of Court Administration. The issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the court system.

EXHIBIT A

ADVISORY COMMITTEE ON

Pro Bono Service by In-House Counsel in New York State



**Report to the Chief Judge of the State of New York
AND THE
Presiding Justices of the
Four Appellate Division Departments**

SEPTEMBER 2013

ADVISORY COMMITTEE ON
Pro Bono Service by In-House Counsel
in New York State

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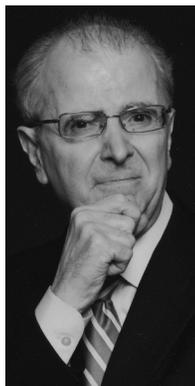
Antonio E. Galvao

Office of Court Administration

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A LETTER FROM THE CHIEF JUDGE



FEW ISSUES COULD BE MORE FUNDAMENTAL TO THE WELL BEING OF OUR SOCIETY than ensuring access to justice for all persons. Regrettably, millions of New Yorkers facing serious legal problems cannot afford the help of a lawyer. It is up to the legal profession to take a leadership role in bridging the access to justice gap and finding new and innovative ways to increase pro bono legal assistance. It was in this spirit that I appointed the Advisory Committee on Pro Bono Service by In-House Counsel — chaired by my esteemed colleague, Senior Associate Judge Victoria A. Graffeo — and charged them with recommending rule changes and strategies designed to leverage an important untapped pro bono resource — the talented cadre of in-house counsel, many of whom presently are not permitted to provide legal services outside their corporate or in-house employment.

I am pleased that the Advisory Committee has proposed an amendment to Part 522 of the Rules of the Court of Appeals to ensure that registered in-house counsel can provide free legal representation to the underserved in our State. As the Advisory Committee's report makes clear, in-house counsel can make a significant contribution in narrowing New York's access to justice gap. As highly skilled, experienced lawyers, many of whom came from law firm backgrounds where they developed a strong commitment to pro bono, registered in-house counsel deserve the opportunity to participate in pro bono work, subject to appropriate ethical rules and disciplinary oversight. I also want to commend the Advisory Committee for taking practical steps to increase the registration of in-house counsel — a prerequisite to engaging in pro bono legal service.

New York's lawyers have a noble history of helping those in need. Every year they provide millions of hours of free legal assistance to vulnerable New Yorkers. The report of the Advisory Committee on Pro Bono Service by In-House Counsel will enable us to expand and strengthen this proud tradition as we move forward to bridge the enormous access to justice gap in our State. On behalf of the entire legal community, I thank Judge Graffeo and the members of the Advisory Committee for their invaluable contributions to this cause.

A handwritten signature in black ink that reads "Jonathan Lippman". The signature is fluid and cursive, with a long, sweeping underline.

Hon. Jonathan Lippman
CHIEF JUDGE OF THE STATE OF NEW YORK

INTRODUCTION

THERE IS A CRISIS IN ACCESS TO JUSTICE IN THE STATE OF NEW YORK. Millions of New Yorkers must navigate the legal system without the assistance of counsel because of the lack of financial resources and available lawyers. Legal service providers and similar organizations are facing increased demand but are able to serve only a fraction of the need and are being forced to turn away more and more eligible low-income clients due to decreased funding and resources. New York's charitable organizations serving the poor face a similar dilemma in obtaining necessary legal services. This gap between the need for legal services and the services available for low-income individuals and organizations that support them has a tremendous impact on the State's judicial system.

In both its 2011 and 2012 reports, the Task Force to Expand Access to Civil Legal Services in New York, convened by the Honorable Jonathan Lippman, Chief Judge of the State of New York, and chaired by Helaine Barnett, listed "[i]ncreasing the available pro bono assistance by private lawyers" as one of its "significant non-monetary recommendations." Currently, the private bar in New York contributes over two million hours of pro bono service annually to low-income individuals and communities and the nonprofits that serve them. Nevertheless, since the gap between unmet legal needs and available legal resources has widened to an unprecedented degree, all resources must be leveraged, including the efforts of in-house attorneys, who are a growing force in pro bono assistance. Yet, hundreds of registered in-house attorneys in New York are unable to fulfill their ethical obligations to serve low income individuals and communities, due to the limitations in New York's rules governing the practice of law.

Effective April 20, 2011, the State of New York implemented Part 522 of the Rules of the Court of Appeals for the Registration of In-House Counsel, which permits an in-house lawyer who is licensed to practice in another jurisdiction in the United States, but not in New York, to provide legal services for his or her company in New York, if he or she registers with the Appellate Division of the New York Supreme Court. As defined by the New York registration rule, an in-house counsel is "an attorney who is employed full time in this State by a non-governmental corporation, partnership, association, or other legal entity, including its subsidiaries and organizational affiliates, that is not itself engaged in the practice of law or the rendering of legal services outside such organization." Once registered, participating attorneys are subject to the New York Rules of Professional Conduct as well as to attorney disciplinary oversight. However, the mandatory in-house registration rule does not expressly permit those lawyers to also engage in providing voluntary pro bono legal services in New York, including appearing before tribunals.

An amendment to New York's in-house registration rule permitting registered in-house counsel to perform pro bono services in addition to performing legal work for their employers would help narrow the access-to-justice gap by utilizing registered in-house attorneys' skills and experience, while simultaneously empowering them to satisfy their ethical obligations to assist underserved individuals and communities and the organizations that support them. It is our goal that in-house counsel be able to provide pro bono legal services without unnecessary restrictions, but subject to the ethical rules and disciplinary oversight applicable to all attorneys licensed to practice in New York. It is important that in-house counsel have the same opportunity as their New York licensed colleagues to represent pro bono clients and provide high-quality representation. Enabling broad participation in pro bono service by in-house counsel presents a tremendous opportunity to help meet the significant civil legal needs of New York's poor and underserved. Encouraging pro bono participation by in-house counsel, as recommended by the Task Force to Expand Access to Civil Legal Services in New York, is a logical continuation of New York's ongoing efforts to increase pro bono assistance in response to the access to justice crisis.

For example, in 2010, Chief Judge Lippman announced the Attorney Emeritus Program, which engages seasoned lawyers in pro bono projects. Attorneys, whether retired or active, may join the Attorney Emeritus Program if they are at least 55 years of age, have practiced law for a minimum of 10 years, and are willing to provide at least 30 hours annually of unpaid legal assistance.

As well, the New York Court of Appeals adopted a new rule in 2012 requiring applicants for admission to the New York bar to demonstrate they have performed 50 hours of law-related pro bono services to low-income clients (or equivalent public service work) under the supervision of admitted attorneys. In addition to addressing the access to justice gap, the pro bono bar admission rule - the first of its kind in the nation - reinforces for new attorneys that pro bono service remains a core value of the legal profession.

More recently, in direct response to a recommendation of the Task Force to Expand Access to Civil Legal Services in New York, the rules governing the biennial registration of attorneys were amended to require attorneys to report the number of hours of pro bono service provided within the last two years as well as financial contributions made to legal service providers during that time frame. Although pro bono work and financial contributions are voluntary in New York, the reporting of such activities is designed to increase the bar's awareness of this critical professional responsibility. The new reporting requirement took effect concurrently with an amendment to Rule 6.1 of the New York Rules of Professional Conduct increasing from 20 to 50 the number of hours of pro bono that lawyers are strongly encouraged to devote to low-income clients, and quantifying the minimal financial contributions that lawyers should aspire to contribute to organizations providing legal services to the poor and underserved.

THE ADVISORY COMMITTEE'S EFFORTS

IN-HOUSE COUNSEL IN NEW YORK

IT IS ESTIMATED THAT THERE ARE THOUSANDS OF IN-HOUSE COUNSEL practicing in New York, and more than 500 have registered as in-house counsel. Some in-house counsel are admitted to practice in New York, in which case they face no barriers to engaging in pro bono service. However, others are restricted. In examining the in-house community in New York, the Advisory Committee has noted a growing willingness and capacity for pro bono service. Many corporate counsel were previously employed by large law firms where pro bono service was a mainstay. And, increasingly, in-house lawyers work in legal departments where supporting low-income communities through pro bono assistance to individuals and to nonprofit organizations is encouraged.

In addition to a strong commitment to pro bono service, in-house counsel offer an impressive array of legal skills and experience that can be utilized to benefit New York's underserved communities. Most in-house counsel have five or more years of legal experience and possess expertise in a variety of practice areas.

Over the past five years, the provision of pro bono legal services by in-house counsel has grown tremendously. According to Corporate Pro Bono (CPBO), a partnership project of the Pro Bono Institute and the Association of Corporate Counsel (ACC), many of the Fortune 500 companies and a majority of the Fortune 100 companies have either set up or are moving to establish formal pro bono programs for the lawyers in their legal departments. In addition, lawyers in smaller companies and legal departments engage in pro bono legal services through opportunities organized by CPBO, bar associations, legal service providers and similar organizations and ACC Chapters. In-house counsel provision of pro bono also influences law firms to enhance their pro bono efforts, often by partnering with corporate legal departments on pro bono matters and deepening their support for legal service providers and similar organizations.

This trend is especially true in New York. Companies such as American International Group, Inc., American Express Company, The Bank of New York Mellon Corporation, CBS Corporation, Citigroup Inc., Deloitte, The Goldman Sachs Group, Inc., International Business Machines Corporation, JPMorgan Chase & Co., MasterCard Incorporated, MetLife, Inc., News Corporation, New York Life Insurance Company, PepsiCo, Inc., Philip Morris International Inc., Pfizer Inc., Time Warner Inc., Verizon Communications Inc., Viacom Inc. and others have supported and established formal pro bono programs within their legal departments. Working with their corporate social responsibility departments, corporate foundations, local legal service providers and similar organizations, outside law firms, community organizations, bar associations, the courts and others,

these legal departments have identified and provided assistance to a broad range of clients, including children and families, veterans, victims of domestic violence, the elderly, nonprofit organizations and more.

RECOMMENDATIONS AND CONCLUSIONS

REGISTRATION OF IN-HOUSE COUNSEL

I T IS IMPERATIVE THAT IN-HOUSE COUNSEL WHO ARE NOT ADMITTED TO PRACTICE LAW in New York register in compliance with Part 522 of the Rules of the Court of Appeals. The initial efforts of this Advisory Committee have been directed to the dissemination of information regarding the mandatory registration rule for lawyers not admitted to practice in New York. In recognition of the need to provide public information about registered in-house counsel, the Advisory Committee worked with representatives of the Office of Court Administration to create a searchable directory of registered in-house counsel that is now available online at <http://iapps.courts.state.ny.us/attorney/IHCSearch>. The directory, which is limited to those attorneys registered as in-house counsel under Part 522, will enable judges and court personnel, General Counsel and members of the public to verify the in-house registration status of an attorney. In-house counsel who are duly admitted to the practice of law in New York are listed separately in the Attorney Registration directory available at <http://iapps.courts.state.ny.us/attorney/AttorneySearch>.

New York prohibits the unauthorized practice of law, which may include legal work performed by out-of-state lawyers as well as by non-lawyers. In New York, Judiciary Law §§ 476-a, 478 and 484 govern the unauthorized practice of law. These provisions prohibit persons from maintaining a law practice or otherwise providing legal services in New York unless they are licensed to practice law in this state or otherwise authorized to render particular legal services in New York (for example, by admission *pro hac vice*). Under Judiciary Law section 478, it is unlawful to render legal services or hold oneself out as being entitled to practice law unless “duly and regularly licensed” and admitted to practice. Judiciary Law section 484 specifies the services that constitute the practice of law, including appearing for another person as an attorney before any court or magistrate; or preparing deeds, mortgages, assignments, discharges, leases, instruments affecting real estate, wills, codicils or instruments affecting disposition of property after death; or preparing pleadings of any kind in any action brought before any court of record in this state.

Judiciary Law §§ 478 and 484 set forth certain categories of persons who are excepted from the unauthorized practice of law prohibitions even though they are not admitted

to the practice of law: (1) officers of societies for the prevention of cruelty to animals; (2) law students (who have completed at least two semesters of law school) or recent law school graduates (who have taken the bar exam and have not been notified of their failure to pass two exams) working under the supervision of a legal aid society in an approved program; (3) law students or recent law school graduates working under the supervision of the state or a subdivision thereof in an approved program; (4) an attorney admitted to the bar in another state, territory or foreign country who has been admitted to practice *pro hac vice* in New York pursuant to rules of the Court of Appeals; and (5) an attorney licensed as a legal consultant under rules adopted by the Court of Appeals. The last two exceptions were added by the Legislature in 2012 and 2013, respectively.

With the adoption of Part 522 by the Court of Appeals in 2011, out-of-state attorneys not admitted to the New York bar who are employed full-time in this state as in-house counsel may now provide legal services to their employers upon registering with the appropriate Appellate Division. In the absence of registration status, not only will in-house counsel be unable to engage in pro bono service but they may be exposed to claims of professional misconduct. Indeed, registration as in-house counsel *is not the equivalent of being admitted or licensed to practice law in New York* and does not permit registered in-house counsel to appear in any court or tribunal or provide legal services to clients other than their employers. Therefore, in order to accomplish the Advisory Committee's goal of encouraging in-house counsel to provide pro bono legal assistance to the state's underserved population, it is necessary to amend existing court rules or statutes for the limited purpose of authorizing registered in-house counsel to provide voluntary legal services to poor and underserved clients.

Rule 6.1 of the New York Rules of Professional Conduct provides that "[l]awyers are strongly encouraged to provide pro bono legal services to benefit poor persons ... Every lawyer should aspire to ... provide at least 50 hours of pro bono legal services each year to poor persons" The Rule also applies to pro bono services provided for the improvement of the administration of justice and to charitable, religious, civic and educational organizations.

As Rule 6.1 makes no distinction between licensed attorneys and registered in-house counsel, we recommend that New York amend its in-house registration rule to grant registered in-house counsel the opportunity to provide pro bono representation to underserved individuals and nonprofit organizations that serve low-income persons and communities. We need to ensure that the private bar is fully supporting the role it can play in addressing the crisis in legal services. The necessary amendments to the in-house registration rule would result in utilizing the talent and expertise of in-house counsel to serve the public interest, while also allowing registered in-house counsel the ability to easily comply with Rule 6.1 in order to satisfy their ethical pro bono obligations.

To maximize the benefits to New York, its citizens and its courts, we stress the need for

broad participation in pro bono service by registered in-house counsel. To achieve that end, the rule should not contain unnecessary limitations on pro bono practice, such as restricting registered in-house counsel to providing pro bono service only in association with an approved legal service provider or similar organization, or under the supervision of an attorney admitted to practice in New York. We also urge that in-house counsel registered in New York not be required to seek *pro hac vice* admission when pro bono service requires appearance before a tribunal in New York. Instead, we propose that in-house counsel be required to provide notice of their registration status to the appropriate judicial body. Furthermore, a broad pro bono practice rule for registered in-house counsel should recognize the high standards to which New York holds all of the lawyers practicing in the State to ensure that pro bono counsel provide competent and diligent assistance.

We believe that a broad in-house pro bono practice rule will allow registered in-house attorneys to best fulfill Chief Judge Lippman's mandate to narrow the access to justice gap in New York. We see the rule as widening the types of services that overtaxed legal service providers and similar organizations are able to offer, such as providing business law assistance to nonprofit organizations and direct legal services to the underserved individuals those organizations aid, while minimizing the burden legal service providers and similar organizations already bear, and expanding the number of low-income individuals and communities served. Tapping into the reserve of registered in-house counsel in New York not only increases the sheer volume of pro bono resources available but also opens a wide range of legal experience and skills to the poor and underserved. We see the utilization of in-house counsel in pro bono service as reducing the burden on the courts by increasing the number of matters resolved without resort to the courts, lessening the number of unrepresented parties in court and bringing efficiencies to the justice system – all of which serve the pursuit of justice.

Additionally, we see an amended pro bono rule having the added value of increasing the number of in-house counsel not admitted to practice in New York who will register under the in-house registration rule. Since registration is a mandatory precondition for in-house counsel to participate in pro bono work in New York, we are persuaded that an in-house pro bono rule would serve to both raise awareness of the registration requirement and provide a valuable incentive for all in-house lawyers to whom the rule applies to comply with the rule.

Involving in-house counsel in New York's efforts to expand access to civil legal services could also help support pro bono initiatives involving law schools. Law students seeking to practice in New York face a mandatory 50-hour pro bono requirement for bar admission after January 1, 2015. We believe that in-house counsel can offer useful guidance and opportunities to law students for pro bono work.

As several states consider following New York's lead in adopting mandatory pro bono requirements for bar admission, we are aware that the rest of the country is looking to New York as a model for pro bono initiatives. We are firmly convinced that a pro bono rule enabling the broadest participation for in-house counsel in New York sets an important and necessary precedent.

SPECIFIC RECOMMENDATIONS

A. THERE SHOULD NOT BE UNNECESSARY OBSTACLES TO PRO BONO PRACTICE.

THE ADVISORY COMMITTEE HAS CLOSELY EXAMINED the in-house pro bono practice rules of other states while considering how to best increase in-house public service in New York. We found that several jurisdictions have adopted practice rules that, while allowing authorized or registered in-house counsel to provide pro bono services to indigent communities, unduly restrict their ability to do so through a number of limitations, such as requiring that pro bono work be done in association with a legal service provider or similar organization. The practice rules of three other states – Colorado, Illinois and Virginia – all allow for broad participation in pro bono legal services by in-house counsel without imposing such limitations. We are convinced that restrictions will decrease the number of competent lawyers able to provide assistance to those in desperate need, reduce the number of clients served and create increased burdens on already overworked legal service providers and similar organizations. We conclude that the result of these unnecessary restrictions is not that the work will get done by licensed attorneys, but that it simply will not get done at all.

We therefore recommend that an in-house pro bono practice rule in New York be promulgated without either of the following restrictions: (1) that registered in-house counsel can only provide pro bono services in association with an approved legal service provider or similar organization, or (2) that such work must be done under the supervision of a New York licensed attorney. Allowing in-house counsel to practice pro bono in New York without unnecessary burdens is consistent with the Task Force to Expand Access to Civil Legal Services in New York's other initiatives designed to increase access to justice in a broad range of practice areas in the most efficient ways.

1. Registered in-house counsel should not be restricted to providing pro bono service only in association with an approved legal service provider or similar organization.

We recognize that many in-house legal departments and corporate counsel are currently working with legal service providers and similar organizations in New York to provide pro bono legal services and will continue to do so. However, we do not be-

lieve that an in-house pro bono practice rule should mandate that legal service providers and similar organizations supervise in-house attorneys. Such a requirement would be detrimental to both in-house pro bono volunteers and legal service providers and similar organizations as well as pro bono clients. Mandated supervision increases the burden on overworked organizations. We are all aware that legal service providers and similar organizations are already stretching their resources, and we appreciate that providing staff and resources to support additional pro bono volunteers requires committing additional resources that legal service providers and similar organizations may not have. Moreover, in a number of communities, legal service providers and similar organizations have reduced staff or have been forced to close offices due to funding cutbacks. This situation limits the ability of volunteers to provide services through those organizations.

It is an unfortunate fact that legal service providers and similar organizations are able to serve only a small segment of the low-income households in need. We observed that mandating supervision by a legal service provider or similar organization restricts potential volunteers from working with other entities that serve low-income communities, including law firms, courts, social service agencies, foundations and community groups, preventing in-house counsel from serving the breadth of low-income families and organizations in need. Also, because some legal service providers and similar organizations exclude certain types of clients, such as nonprofit organizations, micro-entrepreneurs and community economic development groups, or certain types of matters, such as foreclosures and divorce, we see that the role in-house lawyers can play is limited by such restrictions. We found that in-house counsel are often well suited to provide assistance to those individuals and organizations that legal service providers and similar organizations cannot fully serve, nonprofits and social entrepreneurs included, and we are troubled by any restriction that unduly prevents pro bono volunteers from helping those in need.

Heeding Chief Judge Lippman's call to respond to the crisis in legal services for the poor and unrepresented in New York State, we wholly support the development of diverse avenues through which low-income communities can be served. We urge that the in-house pro bono practice rule amendment not limit what registered in-house counsel can do and whom they can help by mandating that registered in-house counsel can only provide services in partnership with an approved legal service provider or similar organization.

2. Registered in-house counsel should not be restricted to providing pro bono service only under the supervision of an attorney licensed to practice in New York.

The Advisory Committee also believes that it is unnecessary to mandate that in-house counsel licensed to practice in another jurisdiction provide pro bono assis-

tance under the supervision of a lawyer licensed to practice in-state. We are concerned that this restriction limits the amount of time competent lawyers are able to provide in direct assistance to clients and reduces the number of clients served. Since lawyers licensed in-state must dedicate time and resources to act as supervisors to lawyers who are licensed to practice and are in good standing in another jurisdiction, the ability of licensed lawyers to serve clients directly is constrained on both ends. We are not persuaded that it is necessary to mandate that two lawyers provide services to one client regardless of whether the matter requires such staffing. We note that, when this Advisory Committee was announced, Chief Judge Lippman recognized the need to “most appropriately and effectively leverage the expertise of the talented cadre of in-house counsel in our aim to broaden the state’s pro bono efforts.” We believe that requiring supervision by a New York licensed attorney unnecessarily duplicates the protections provided by the existing applicable rules of professional conduct requiring competence, hampers the ability of qualified in-house counsel to provide advice and services to communities in need and fails to acknowledge the years of experience and knowledge of in-house lawyers who are trusted to represent their companies. Accordingly, we recommend that no supervision restriction be included in New York’s in-house pro bono practice rule.

B. THE PRO BONO RULE AMENDMENT MUST PROMOTE BROAD PARTICIPATION BY IN-HOUSE COUNSEL.

WE STRONGLY RECOMMEND THAT NEW YORK FOLLOW COLORADO, ILLINOIS AND VIRGINIA in adopting in-house pro bono practice rules that support broad participation by registered in-house counsel and that do not include unnecessary restrictions on in-house pro bono practice. Colorado’s Rule 222 (adopted in 2006), Virginia’s Rule 1A:5 (effective April 15, 2011) and Illinois’s Rule 716 (final order issued April 8, 2013) provide that registered in-house counsel may provide pro bono services and that services must be provided in a manner consistent with state rules of professional conduct. We believe that a similar rule in New York is needed to respond most effectively to the crisis in access to justice. Minimizing the hurdles to pro bono service will go a long way in reducing the strain on overburdened legal service providers and similar organizations and increasing the number of clients served by expanding the number of pro bono volunteers. We are also persuaded that eliminating unnecessary restrictions on the pro bono practice of in-house counsel will allow them to use their legal skills more effectively in support of underserved communities while acknowledging the expertise and experience they can utilize for their pro bono clients. Moreover, by holding in-house counsel to the same high standards of competency and zealous representation that all lawyers practicing in a state must follow, pro bono clients are protected as their volunteer in-house attorneys are subject to the rules of the jurisdiction in which they are admitted as well as to the

New York Rules of Professional Conduct. The Advisory Committee has looked closely at pro bono service in Colorado, Illinois and Virginia, and although the Illinois rule is too new for a full analysis, we know of no issues that have arisen in Colorado or Virginia since they adopted their current rules. We are encouraged that New York, too, will benefit from adopting these states' best practices.

C. THE IN-HOUSE PRO BONO RULE AFFIRMS NEW YORK'S HIGH ETHICAL AND PROFESSIONAL STANDARDS FOR ATTORNEYS.

RULE 522.3(d) OF THE RULES OF THE COURT OF APPEALS for the Registration of In-House Counsel requires registered in-house counsel to "abide by all of the laws and rules that govern attorneys admitted to the practice of law in this State," except as specifically limited in the new rule. We recommend that the in-house pro bono practice rule reiterate that registered in-house counsel are subject to the ethical rules and disciplinary oversight of the State. We believe that a rule enabling lawyers to fulfill their public service duties should also expressly state that the ethics rules that generally apply to the practice of law in New York, including for registered in-house counsel, require attorneys to be competent and zealous advocates. We appreciate the need to adequately protect pro bono clients against malpractice, and we trust that reminding in-house counsel of their commitment to New York's professional conduct rules is appropriate.

D. AVAILABILITY OF MALPRACTICE INSURANCE COVERAGE FOR PRO BONO WORK.

THERE ARE SEVERAL OPTIONS AVAILABLE TO IN-HOUSE COUNSEL to address the risks associated with professional liability concerns. Many legal departments provide in-house counsel coverage for liability arising from pro bono legal services. This coverage may already be a part of a company's insurance policy. It can also be obtained through a rider to a company's policy, purchased as a standalone policy or secured from an outside resource that offers coverage to legal organizations. In addition, some companies self-insure for potential liabilities, including those that may arise from pro bono legal services. Where such coverage is not an option, many legal service providers and similar organizations provide malpractice coverage to all volunteers, including in-house counsel. Therefore, we recommend that malpractice insurance not be a mandated component of pro bono work. Neither licensed attorneys nor lawyers who have just passed the bar in New York and have little or no real experience with the courts and the law are required to carry professional liability insurance. We therefore believe that to place limits on in-house counsel who often have practiced for more than five years and have experience in a variety of practice areas seems to operate counter to the agenda of increasing available pro bono legal assistance in New York State. To realize Chief Judge Lippman's aspirations, we urge that registered in-house counsel seeking to do pro bono work should not face more onerous requirements than any other lawyer licensed in New York.

E. REGISTERED IN-HOUSE COUNSEL SHOULD NOT BE REQUIRED TO SEEK *PRO HAC VICE* ADMISSION FOR PRO BONO SERVICE REQUIRING APPEARANCE BEFORE A TRIBUNAL BUT INSTEAD SHOULD PROVIDE NOTICE TO THAT BODY.

STATE PRACTICE RULES PROVIDE that attorneys not admitted to practice in New York, including registered in-house counsel, must seek and obtain permission to make appearances in New York before a court or tribunal. However, we are persuaded that placing a *pro hac vice* admission requirement on registered in-house counsel providing pro bono services is unnecessary and may interfere with the efficient administration of the courts and the provision of pro bono services.

Pro bono practice often presents unique opportunities for lawyers to appear before a court or tribunal that distinguish it from other representations. Certain pro bono engagements, such as an “Attorney for the Day” program, may require pro bono counsel to appear in court on behalf of several clients in one day. To require registered in-house counsel, in this instance, to seek *pro hac vice* admission before each representation would diminish the value of these types of pro bono programs. Such a requirement would increase court time required to address these matters and may unduly restrict participation by registered in-house counsel.

Registered in-house counsel, through the registration process, have already certified that they are licensed and in good standing in another jurisdiction and possess the good moral character and general fitness required to be a member of the New York bar. In addition, they are subject to the New York Rules of Professional Conduct and the disciplinary jurisdiction of the courts in the State. We believe that holding in-house counsel to the same ethical and professional standards as other licensed lawyers in New York should sufficiently protect pro bono clients from malpractice as well as more effectively address the access to justice crisis.

Accordingly, we recommend against having a *pro hac vice* admission requirement for registered in-house counsel to appear before a tribunal or court in New York in pro bono matters. Instead, we propose that a pro bono practice rule should provide that registered in-house counsel must notify the court or tribunal of their bar status prior to each representation before that body and that, absent a ruling by the relevant court or tribunal to the contrary, the in-house counsel would be allowed to appear. A notice requirement would ease administration by the courts while allowing the courts to exercise their discretion to deny a lawyer permission to appear. We also feel that eliminating unnecessary restrictions will encourage participation in pro bono service by registered in-house counsel.

In order to provide and encourage the greatest involvement by registered in-house counsel in pro bono legal services, the Advisory Committee has outlined several recommendations. We believe these recommendations are tailor made to promote pro bono participation by registered in-house counsel and help narrow the access to justice gap in New York.

THE PROPOSED IN-HOUSE PRO BONO RULE

CONSISTENT WITH THE FOREGOING DISCUSSION, the Advisory Committee recommends the following amendment to Part 522 of the Rules of the Court of Appeals for the Registration of In-House Counsel to authorize the provision of pro bono legal services by registered in-house counsel:

§ 522.8 PRO BONO SERVICES

- (a) Notwithstanding the restrictions on the scope of legal services set forth in section 522.4, an attorney registered as in-house counsel under this Part may provide pro bono legal services in this State as defined in Rule 6.1(b) of the New York Rules of Professional Conduct (22 NYCRR 1200, Rule 6.1) or other comparable definitions of pro bono legal services in New York. In the provision of such services, registered in-house counsel may appear before any tribunal in this State in the discretion of such tribunal and engage in any activity for which pro hac vice admission would otherwise be required.
- (b) An attorney registered as in-house counsel under this Part:
 - (1) shall be admitted to practice and in good standing in another state or territory of the United States or the District of Columbia, and possess the good moral character and general fitness requisite for a member of the bar of this State, as evidenced by the attorney's registration pursuant to section 522.1(b); and
 - (2) agrees pursuant to section 522.2(c)(2) to be subject to the disciplinary authority of this State and to comply with the laws and rules that govern attorneys admitted to the practice of law in this State, including the New York Rules of Professional Conduct (22 NYCRR Part 1200.0) and the rules governing the conduct of attorneys in the judicial department where the attorney's in-house registration is issued.
- (c) An attorney registered as in-house counsel under this Part shall not appear before any tribunal unless he or she submits a notice of pro bono representation to the applicable tribunal. The notice of pro bono representation, which shall be in a form approved by the Appellate Divisions, shall include:
 - (1) the attorney's contact information and current employer; the client's name and contact information; and the title and docket or index number of the matter in which the attorney is appearing; and,
 - (2) the attorney's certification that he or she is currently registered as in-house counsel under section 522.1, is in compliance with the requirements set forth

in sections 522.2 and 522.3, and is providing pro bono legal services to a client solely as provided in this section.

- (d) No attorney registered as in-house counsel and authorized to provide pro bono legal services under this Part may hold oneself out as an attorney admitted to practice in this State, except to the limited extent set forth in section 522.4(d).

NOTICE AFFIDAVIT

ATTACHED, AS AN ADDENDUM, is the suggested Notice of Pro Bono Representation by a Registered In-House Counsel for submission to the New York Courts, administrative agencies or tribunals that would otherwise require that representation be limited to attorneys admitted to the practice of law in New York.

NOTICE OF PRO BONO REPRESENTATION UNDER 22 NYCRR § 522.8

Short Title: _____ Docket/Index No. _____

Name of Pro Bono Attorney (provide contact information for yourself and your employer):

I am Counsel of Record Of Counsel in the above named matter.

If you are Of Counsel, please identify and provide contact information for Counsel of Record:

I am appearing for (provide contact information for client(s)):

I certify that I am an attorney registered as in-house counsel under Part 522 of the Rules of the Court of Appeals and authorized to provide pro bono legal services and appear before any tribunal in this State, in the discretion of such tribunal, while providing pro bono legal services.

I certify that I will not hold myself out as an attorney admitted to practice law in this State, except only as set forth in sections 522.4(d) and 522.8 of the Rules of the Court of Appeals.

I certify that I am admitted to practice and in good standing in another state or territory of the United States or the District of Columbia, and possess the good moral character and general fitness requisite for a member of the bar of this State, as evidenced by registration as in-house counsel with the Appellate Division, ____ Department, under section 522.1 of the Rules of the Court of Appeals.

I certify that I have agreed to be subject to the disciplinary authority of this State and to comply with the laws and rules that govern attorneys admitted to the practice of law in this State, including the New York Rules of Professional Conduct (22 NYCRR Part 1200.0) and the rules governing the conduct of attorneys in the judicial department where I registered as in-house counsel, as required under section 522.2(c)(2) of the Rules of the Court of Appeals.

I certify that I am in compliance with all other requirements set forth in Part 522 of the Rules of the Court of Appeals.

I hereby enter my appearance as pro bono attorney for, and at the request of, the party or parties named above. I have read and understand the statements set forth above concerning my status as registered in-house counsel under Part 522 of the Rules of the Court of Appeals, and I declare them to be true.

Signature of Pro Bono Attorney

Date

EXHIBIT B

Court of Appeals

STATE OF NEW YORK

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Part 522 - Rules for the Registration of In-House Counsel

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§ 522.1 Registration of In-House Counsel

(a) In-House Counsel defined. An in-house counsel is an attorney who is employed full time in this State by a non-governmental corporation, partnership, association, or other legal entity, including its subsidiaries and organizational affiliates, that is not itself engaged in the practice of law or the rendering of legal services outside such organization.

(b) In its discretion, the Appellate Division may register as in-house counsel an applicant who:

- (1) has been admitted to practice in the highest law court in any other state or territory of the United States or in the District of Columbia;
- (2) is currently admitted to the bar as an active member in good standing in at least one other jurisdiction which would similarly permit an attorney admitted to practice in this State to register as in-house counsel; and
- (3) possesses the good moral character and general fitness requisite for a member of the bar of this State.

§ 522.2 Proof required

An applicant under this Part shall file with the Clerk of the Appellate Division of the department in which the applicant resides, is employed or intends to be employed as in-house counsel:

- (a) a certificate of good standing from each jurisdiction in which the applicant is licensed to practice law;
- (b) a letter from each such jurisdiction's grievance committee, or other body entertaining complaints against attorneys, certifying whether charges have been filed with or by such committee or body against the applicant, and, if so, the substance of the charges and the disposition thereof;
- (c) an affidavit certifying that the applicant:
 - (1) performs or will perform legal services in this State solely and exclusively as provided in section 522.4; and
 - (2) agrees to be subject to the disciplinary authority of this State and to comply with the New York Rules of Professional Conduct (22 NYCRR Part 1200) and the rules governing the conduct of attorneys in the judicial department where the attorney's registration will be issued; and

(d) an affidavit or affirmation signed by an officer, director, or general counsel of the applicant's employer, on behalf of said employer, attesting that the applicant is or will be employed as an attorney for the employer and that the nature of the employment conforms to the requirements of this Part.

§ 522.3 Compliance

An attorney registered as in-house counsel under this Part shall:

- (a) remain an active member in good standing in at least one state or territory of the United States or in the District of Columbia;
- (b) promptly notify the appropriate Appellate Division department of a disposition made in a disciplinary proceeding in another jurisdiction;
- (c) register with the Office of Court Administration and comply with the appropriate biennial registration requirements; and
- (d) except as specifically limited herein, abide by all of the laws and rules that govern attorneys admitted to the practice of law in this State.

§ 522.4 Scope of legal services

An attorney registered as in-house counsel under this Part shall:

- (a) provide legal services in this State only to the single employer entity or its organizational affiliates, including entities that control, are controlled by, or are under common control with the employer entity, and to employees, officers and directors of such entities, but only on matters directly related to the attorney's work for the employer entity, and to the extent consistent with the New York Rules of Professional Conduct;
- (b) not make appearances in this State before a tribunal, as that term is defined in the New York Rules of Professional Conduct (22 NYCRR 1200.0 Rule 1.0[w]) or engage in any activity for which *pro hac vice* admission would be required if engaged in by an attorney who is not admitted to the practice of law in this State;
- (c) not provide personal or individual legal services to any customers, shareholders, owners, partners, officers, employees or agents of the identified employer; and
- (d) not hold oneself out as an attorney admitted to practice in this State except on the employer's letterhead with a limiting designation.

§ 522.5 Termination of registration

(a) Registration as in-house counsel under this Part shall terminate when:

(1) the attorney ceases to be an active member in another jurisdiction, as required in section 522.1(b)(2);
or

(2) the attorney ceases to be an employee of the employer listed on the attorney's application, provided, however, that if such attorney, within 30 days of ceasing to be such an employee, becomes employed by another employer for which such attorney shall perform legal services as in-house counsel, such attorney may request continued registration under this Part by filing within said 30-day period with the appropriate Appellate Division department an affidavit to such effect, stating the dates on which the prior employment ceased and the new employment commenced, identifying the new employer and reaffirming that the attorney will provide legal services in this State solely and exclusively as permitted in section 522.4. The attorney shall also file an affidavit or affirmation of the new employer as described in section 522.2(d) and shall file an amended statement within said 30-day period with the Office of Court Administration.

(b) In the event that the employment of an attorney registered under this Part ceases with no subsequent employment by a successor employer, the attorney, within 30 days thereof, shall file with the Appellate Division department where registered a statement to such effect, stating the date that employment ceased. Noncompliance with this provision shall result in the automatic termination of the attorney's registration under this Part;

(c) Noncompliance with the provisions of section 468-a of the Judiciary Law and the rules promulgated thereunder, insofar as pertinent, shall, 30 days following the date set forth therein for compliance, result in the termination of the attorney's rights under this Part.

§ 522.6 Subsequent admission on motion

Where a person registered under this Part subsequently seeks to obtain admission without examination under section 520.10 of the Rules of this Court, the provision of legal services under this Part shall not be deemed to be the practice of law for the purpose of meeting the requirements of section 520.10(a)(2)(i).

§ 522.7 Saving Clause and Noncompliance

(a) An attorney employed as in-house counsel, as that term is defined in section 522.1(a), on the effective date of this Part, shall within 90 days of the date thereof, file an application in accordance with section 522.2. Attorneys employed as in-house counsel after the effective date of this Part shall file such an application within 30 days of the commencement of such employment;

(b) Failure to comply with the provisions of this Part shall be deemed professional misconduct, provided, however, that the Appellate Division may upon application of the attorney grant an extension upon good cause shown.

EXHIBIT C

A PITFALL TO AVOID: IF YOU ARE NOT ADMITTED TO PRACTICE IN NEW YORK AND YOU ARE WORKING AS AN IN-HOUSE COUNSEL, YOU MUST REGISTER AS AN IN-HOUSE COUNSEL

Almost all states require that in-house counsel, who are not licensed to practice law in the jurisdiction where they are working, are required to register to avoid being engaged in the unauthorized practice of law. New York State is no exception. In 2012 and 2013, the New York State Legislature amended Judiciary Law sections 478, 484, 485 and 485-a, effective November 1, 2013, to clarify what activities constitute the unauthorized practice of law and to enhance the criminal penalty for certain violations (see L. 2012, c. 492 as amended by L. 2013 c. 22). Under Part 522 of the Rules of the New York Court of Appeals, in-house counsel who are employed on a full-time basis by a corporation, partnership, association or other legal entity, and are not admitted to practice law in New York State, may apply to register as in-house counsel in New York, which designation allows the attorney to provide legal services in New York to a single employer or its affiliates and to its officers, directors and employees on matters related to the attorney's work for that employer. In-house counsel who are admitted to practice in a "reciprocal" state, and in good standing in such jurisdiction, may seek in-house registration status. A reciprocal jurisdiction is one that would similarly permit an attorney admitted to practice in New York to register as in-house counsel in that state -- New York currently has reciprocity with 44 states.

Under section 522.7 of the rule, the failure to register constitutes professional misconduct. Although in-house counsel registration is not the equivalent of attaining a license to practice law in New York, registration will protect you from professional misconduct charges related to your admission status while performing in-house counsel work.

There is no registration fee currently required in New York.

What does the registration process require?

Registration involves the submission of an application to the Chief Clerk of the Appellate Division in the judicial department where the filer resides or is employed. Certain original documentation must accompany the registration application.

1. Certificate of Good Standing: In order to register, an in-house counsel -- or an attorney planning to become an in-house counsel -- will need to demonstrate admission to practice law in another state or territory of the United States that has been deemed a reciprocal jurisdiction, or in the District of Columbia. An applicant is therefore required to file with the clerk of the appropriate Appellate Division, a certificate of good standing from each jurisdiction where the applicant is licensed to practice law.

2. Letter from Grievance Committee: An applicant must also

submit a letter from the grievance committee or other entity that entertains complaints against attorneys in each of the jurisdictions where the applicant is licensed to practice law, certifying whether or not any charges have been filed against the applicant or by the committee. If charges were filed, the letter must address the nature of any charges and disclose the dispositions.

3. Affidavit of Applicant: The applicant must supply an affidavit attesting that legal services will be performed in New York solely and exclusively for the identified employer, and that the applicant consents to be subject to the disciplinary authority of New York and the rules governing the conduct of attorneys in the judicial department where the registration will be issued.

4. Employer's Affidavit: An affidavit or affirmation by an officer, director or general counsel of the employer or prospective employer is necessary, attesting that the applicant is or will be employed by that employer and that the nature of the employment conforms to the rule.

What are my obligations after registration?

Once registered as an in-house counsel, you are to remain an active member in good standing in at least one state or territory of the United States, or in the District of Columbia. The Office of Court Administration maintains a database of registered in-house counsel and your registration will be subject to biennial renewal. Currently, there is no fee for in-house counsel registration, nor are in-house counsel subject to New York's continuing legal education requirements.

What legal services can I engage in once registered?

Registration allows an in-house counsel who is not admitted to practice law in New York to engage in the provision of legal services to the identified employer, any affiliates under the control of the employer and to the employees, officers and directors of employer, provided that the legal services related to the attorney's work for the employer's entity and to the extent permitted under New York's Rules of Professional Conduct. Because registration does not confer admission to practice law in New York, in-house counsel may not provide personal or individual legal services to any customers, shareholders, owners, partners, officers, employees or agents of the employer. For this reason, registered in-house counsel may not hold themselves out as admitted to practice law in New York, except on the employer's letterhead with a limiting designation.

What happens to my registration if I change employers or my employment is terminated?

Your registration as in-house counsel and its protections are terminated if you no longer are an active member in another jurisdiction or if you cease to be an employee of the employer identified in your registration form. If you will be starting employment as an in-house counsel with a new employer within 30 days, the rule provides for renewal of your registration with an

amended filing and an affidavit by the new employer. In the event that there is no new employer, the Appellate Division where you registered must be notified within 30 days of the termination of employment.

**Where do I find the Application for Registration as
In-House Counsel?**

The application and instructions are available on the Office of Court Administration's website at:

<http://www.nycourts.gov/in-housecounselregistration>.

EXHIBIT D

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

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