

## **V. Structure, Governance and Funding.**

The Subcommittee unanimously recommends that the Chief Judge, with the advice of the Appellate Division Presiding Justices, establish a permanent commission patterned on the various advisory committees previously named to speak to issues concerning women, minorities, and most recently, children. Through the years, the Judicial Committee on Women in the Courts and the Judicial Commission on Minorities have had marked success in achieving fair and equal treatment for women and minorities who come to the courts as employees, lawyers and litigants. By applying the same intensive attention to the issues that face children who come to the courts, the newly created Permanent Judicial Commission on Justice for Children will no doubt achieve similar success. For many reasons, this proposed structure is well suited for nurturing professionalism among members of the bar.

The vast number of lawyers in New York, their very different practice environments and the broad diversity of their practice areas mandate that a permanent center for the advancement of professionalism be structured and governed in a way that will emphasize the common ground that exists among the many disparate members of the bar.

Entities such as The Texas Center for Professionalism have structures and governance models that are predicated upon the integrated nature of that state's bar. As members of a single bar association, participating in the activities and philosophy of that one organization, the Texas lawyers have a common experience that cannot be replicated in New York. In New York, no entity currently serves that function.

One measure of the New York entity's success will be the degree to which it is able to bring together in one forum all the various perspectives that constitute our rich profession. In a

state where geography alone presents a daunting challenge, an institute must make itself pertinent to lawyers in all localities. It also must become integral to the lawyers who practice solo or in small firm settings, who find themselves isolated, financially pressured, and lacking support from the structures that traditionally have supported lawyers.

As the Subcommittee evaluated the merits and weaknesses of various models, one member focused the discussion by asking, "Who will be the masters of this entity? Who will provide this institute with a neutral voice that speaks to all segments of the bar with the authority that grows out of respect?"

Each of the possible structures the Subcommittee considered was subjected to the "masters" analysis. The establishment of an institute affiliated with a consortium of bar associations or law schools would not be sufficiently neutral in perspective. Masters from large well-resourced bar associations, the academy, the judiciary and well-heeled firms tend to dominate the debates they lead to the exclusion of others and certainly to the exclusion of the solo practitioners. Similarly, a free-standing not-for-profit corporation would be excessively dependent upon its funding sources.

A not-for-profit corporation headed by the Chief Judge would impart sufficient authority to the institute. However, this structure has two serious shortcomings. The *Code of Judicial Conduct* proscribes activities by members of the judiciary that potentially can create even the appearance of partiality. In addition, fundraising activities, even on behalf of an organization "devoted to the improvement of the law, the legal system or the administration of justice," are limited. To the extent that the Chief Judge's position embodies the Judiciary, adherence to the spirit as well as to the letter of the *Code* is paramount.

Article VI of the New York State Constitution and the State Finance Law's restrictions upon the receipt and disbursement of monies pose a second constraint upon a not-for-profit corporation headed by the Chief Judge. Unless the Legislature has passed a provision creating a separate fund for a particular purpose, all monies received by a state officer, including the Chief Judge, must be directly paid into the state treasury. Once deposited in the treasury, the Comptroller can disburse those monies only pursuant to legislative appropriation. These restrictions would burden the institute's operation. Viewed together with the provisions of the *Code of Judicial Conduct*, the Subcommittee rejected this structure model.

A judicial commission structured like those that already enjoy considerable success best satisfies the "masters" analysis. Though formed under the umbrella of the Unified Court System, the entities dedicated to women and minorities have a demonstrated history of independent operation that satisfactorily answers our colleague's question.

Establishing as a commission a permanent body to address professionalism will enable it modestly to establish itself among lawyers and in the public's perception. Unlike a more formal corporate body that would be burdened with the obligation to produce results quickly in order to attract funding, a commission will be able to respond nimbly to issues as they arise and adapt more readily over time to the changing roles it might assume.

The composition of the commission can amplify its authority and maximize its potential as a unifier of the bar. Members should be selected from all segments of the bar, with special attention paid to the respect accorded those individuals by the profession and the public.

Since the entity will not independently sponsor programs and other high cost initiatives, minimal funding will be necessary to cover the costs of operation. The Subcommittee suggests

that the Unified Court System request these funds in its budget submission. The fees paid to the attorney registration fund would be an appropriate source of the funding.

In its 1995 "Final Report to the Chief Judge" the Committee on the Profession and Courts found that "the daily work of lawyers in service of their clients, in small towns and big cities, in firms large and small, is generally good, effective and ethical. . . . The professional ideal of service to the public transcending personal self-interest is in fact thriving in New York . . . because New York lawyers, in vast numbers, believe it right."

It is the Subcommittee's belief that the formation of a permanent commission to foster professionalism will support New York's lawyers as they pursue the professional ideal and will further provide one more positive response to contemporary public criticism.