

Current Legal Issues Affecting The Profession 2008: *A briefing and background manual*

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Reader's Note

"Current Legal Issues Affecting the Profession 2008" contains concise summaries of 33 subjects of concern to the legal profession, the organized bar, and the public.

The handbook is divided into two sections, current topics and informational topics. The current topics section addresses issues of immediate concern, while the second grouping examines issues where action may not be imminent, but the subject matter is of sufficient interest to be included in this compendium. The 27th edition of "Current Legal Issues" provides background information, and the relevant activity and policy position of the New York State Bar Association concerning each subject.

Information contained in this volume is current through publication on January 1, 2008. Subsequent events, such as changes in Association position, the introduction of legislation, or initiatives proposed by government agencies, may affect information contained in this book. Questions regarding the current status of any particular issue and requests for additional information should be directed to the staff member-author whose name appears at the end of the topic area.

The full text of *"Current Legal Issues Affecting the Profession"* is also available on our Web site at <http://www.nysba.org>

To request additional hard copies contact Leslie Dunn at the State Bar Center at 518/487-5533.

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Age Discrimination in the Profession

NYSBA Position:

NYSBA's Special Committee on Age Discrimination in the Profession issued a report on this subject, *Report and Recommendations on Mandatory Retirement in the Profession*, in January 2007 and that report was adopted by the NYSBA House of Delegates at its March 2007 meeting. The main conclusion of the report is that mandatory retirement at an arbitrary age is not an acceptable practice. Instead, law firm retirement practices should be governed by flexibility and consideration of the needs of both the firm and the individual partner.

Background:

Recent headlines in the *National Law Journal* and elsewhere attest to the fact that the topic of mandatory retirement of law firm partners at a specific age is on the front burner. The *Sidley Austin* case, which resulted in that firm agreeing to pay a settlement of \$27.5 million to former partners who brought suit claiming age discrimination against them in the firm's retirement policies, is playing a dramatic role in shaping the future practices of law firms.

Further changes in the nation's demographics have prompted a fresh look at age-based retirement policies in all walks of life. One in every eight Americans is age 65 or older — by 2025, it is projected that one in every five Americans will be in that age group. The membership of the legal profession reflects this trend. For example, 26% of the members of the New York State Bar Association are age 56 and over, and 9% are age 66 and over. Many practicing "gray" lawyers are not given a choice; they face mandatory retirement. In its May 2005 issue, the *National Law Journal* reported the results of a study about law firm retirement policies conducted by the consulting firm Altman & Weil for the American Bar Foundation. The study revealed that 37% of law firms surveyed had a mandatory retirement age; 57% of law firms of 100 or more attorneys had a mandatory retirement age; 13% of law firms having fewer than 10 attorneys had a mandatory retirement age. The study revealed that 70 years was the common age when retirement was required; 57 years was the average age at which attorneys started early retirement. Further, 75% of retired male lawyers were 65 years of age or older; and 27% of retired female lawyers were 65 years of age or older.

NYSBA Activity:

In the fall of 2006, against this backdrop of concerns about mandatory age-based retirement policies in law firms and related issues, the New York State Bar Association formed a Special Committee on Age Discrimination in the Profession, to determine whether the forfeiture of seasoned “talent” places an unreasonable, inequitable and unnecessary burden on law firms, the courts and our society. It was the consensus of the Special Committee that mandatory retirement at an arbitrary age is not an acceptable practice. Instead, law firm retirement practices should be governed by flexibility and consideration of the needs of both the firm and the individual partner. The Special Committee adopted a “best practices” template for its report, focusing on practices that might better serve law firms and their individual partners reaching “retirement age.”

The committee issued its report in January 2007, and the House of Delegates adopted the report at its March 2007 meeting. In late May of 2007, a copy of the report was sent to managing partners of the 250 largest law firms in New York, accompanied by a letter urging those firms which have age-based mandatory retirement rules for partners to reconsider their policies. The report was a major focus of attention when, in August of 2007, the ABA House of Delegates adopted a resolution endorsing the principal conclusions of the report.

Terry J. Brooks

Attorney-Client Privilege

NYSBA Position:

In March 2006, the Executive Committee approved the report of the Task Force on Attorney-Client Privilege, calling for the United States Sentencing Commission to remove from the commentary to the Sentencing Guidelines a section relating to requests for waiver of attorney-client privilege and work product protection. In June 2006, the House of Delegates approved a Task Force report on governmental interference with the right to counsel in corporate investigations for submission to the ABA House of Delegates. In October 2007, the Executive Committee approved a Task Force report supporting the Attorney-Client Privilege Act of 2007 in Congress.

Background:

In recent years, law enforcement agencies and regulatory authorities, particularly at the federal level, increasingly have sought waivers of the attorney-client privilege from criminal defendants and entities under investigation as an indication of cooperation with the governmental authority. The rationale for this practice is that it permits the governmental authority to “obtain statements of possible witnesses, subjects, and targets, without having to negotiate individual cooperation or immunity agreements [and] to evaluate the completeness of a corporation’s voluntary disclosure and cooperation.” (Memorandum from Deputy Attorney General Larry Thompson to Heads of Department Components and U.S. Attorneys, Jan. 20, 2003.) Concerns have been expressed that such policies will result in corporations’ failure to confide in counsel because of the potential demand for future disclosure, which would result in otherwise privileged information becoming available to litigants in civil matters.

A related issue, brought to the forefront in 2006 in *United States v. Stein*, is governmental requests for corporate entities to refuse to advance legal fees, provide documents or information to counsel, or to discipline, sanction or terminate individuals for exercising their Fifth Amendment right against self-incrimination. In *Stein*, the District Court concluded that requesting a corporate entity to refuse to advance counsel fees for employees under investigation unconstitutionally interfered with the employees’ right to a fair trial and effective assistance to counsel. Legislation introduced in the House of

Representatives and United States Senate in 2007 would, if enacted, address these practices.

NYSBA Activity:

The Task Force on Attorney-Client Privilege was appointed in 2005 in response to the issues raised by waiver requests. The Task Force was tasked with reviewing the nature and extent of this practice in New York by state and federal authorities, the reasons for the practice, and whether the practice serves the public interest. During 2006, the Task Force issued two reports dealing with the issues outlined above; its March 2006 report, dealing with requests for waivers of privilege, was transmitted to the United States Sentencing Commission. The Commission, in turn, thereafter voted to delete the commentary relating to requests for waivers of privilege. The Task Force's June 2006 report, adopted by the House of Delegates, was presented to the ABA House of Delegates. The ABA Task Force on Attorney-Client Privilege joined in this position, and the ABA condemned the practices outlined in the report as an unconstitutional interference with the right to counsel.

Most recently, the NYSBA Task Force prepared a report on the Attorney-Client Privilege Act of 2007, introduced in the House of Representatives and the United States Senate, which would protect attorney-client privilege, work product, and the constitutional rights of employees. The report was approved by the Executive Committee and communicated to the New York delegation in Congress.

Kathleen R. Mulligan Baxter

Civil Rights Agenda

NYSBA Position:

No position has been taken to date.

Background:

In 1952, the NYSBA formed the Committee on Civil Rights to consider all matters relating to rights guaranteed by the Bill of Rights and to develop recommendations, statements or positions, with the approval of the Executive Committee, as it may deem proper in the advancement of a more effective protection of rights guaranteed by the Bill of Rights.

In 2007, the Committee's role was expanded beyond what may be termed "traditional" areas of civil rights, such as discrimination based on race and ethnic origin, to include discrimination in such areas as gender, sexual orientation, immigrants' rights, privacy and technology, national security, freedom of speech and assembly, and the rights of the poor.

In 2004 the United States celebrated the 50th anniversary of a seminal event in the nation's history - the Supreme Court decision in *Brown v. Board of Education*. That occasion served as a reminder that lawyers have played a key role in advancing the cause of civil rights and breaking down racial barriers and, in 2006, led then NYSBA President Mark H. Alcott to form the Special Committee on the Civil Rights Agenda, stating that: "We must ensure that there will be new triumphs to celebrate 50 years from now, and, indeed, five years from now, and that lawyers will continue to lead the effort to achieve them." Retired Associate Judge of the New York State Court of Appeals, Hon. George Bundy Smith was appointed to chair the Special Committee.

The mission of the Special Committee is to create specific, realizable goals in the continuing effort to break down racial barriers, increase racial diversity in the legal system and the legal profession and advance the cause of civil rights – goals that can be achieved during the next five years.

Its task is to study the issues, consult experts, and prepare a report that lays out these goals and challenges the profession to take a leadership role in achieving them.

NYSBA Activity:

In 2006, the Committee on Civil Rights initiated a comprehensive review of the Military Commissions Act of 2006, titled *Report on the Constitutionality of the Habeas Corpus Stripping Provisions of the Military Commissions Act of 2006*, which it plans to issue in 2008 for comment and review by entities within the Association.

The Special Committee on the Civil Rights Agenda is in the final stages of completing a 200-plus page report that addresses the continuing problem of the denial of civil rights on the basis of race. The report addresses four key areas: Education, Juvenile Justice, Voting Rights Issues, and the Criminal Justice System. In November 2007, Judge Smith made an informational status report to the NYSBA House of Delegates. The final written report with recommendations is anticipated for presentation to the House in early 2008.

Frank J. Ciervo

Code of Professional Responsibility

NYSBA Position:

In November 2007, the NYSBA House of Delegates approved New York Rules of Professional Conduct prepared by the Committee on Standards of Attorney Conduct, contingent upon their adoption by the Appellate Division of State Supreme Court.

Background:

Although many states have adopted ethical standards for the legal profession based on the ABA Model Rules of Professional Conduct, New York has retained the Code of Professional Responsibility, initially adopted in 1970. Since that time, the Code has been periodically revised to take into account changes in the profession and changes in the needs and expectations of both clients and lawyers. New York currently is the only state in the country that retains the Code format.

NYSBA Activity:

The NYSBA Committee on Standards of Attorney Conduct is charged with ongoing review of the rules governing the legal profession in New York State. In 2005, the committee completed a comprehensive review of the New York Code and the ABA Model Rules of Professional Conduct; the Committee's resulting report recommended that New York adopt the format of the Model Rules of Professional Conduct and proposed a set of Rules of Professional Conduct for adoption in New York. Pursuant to a schedule adopted by the House of Delegates in November 2005, the House considered and approved the format change in April 2006. The House then proceeded to consider the individual rules at a series of House meetings commencing in June 2006 and concluding in November 2007, at which time the House approved the rules for submission to the Appellate Division.

Kathleen R. Mulligan Baxter

Ensuring Quality of Mandated Representation and Assigned Counsel Fees for Indigent Representation

NYSBA Position: In 2007 the Association endorsed the recommendations of the Chief Judge's Commission on the Future of Indigent Defense Services and directed that appropriate Association entities be designated to pursue legislation to establish an Indigent Defense Commission.

Background: In 2004, assigned counsel rates were increased for the first time in 17 years. To contain costs, many counties developed alternate means of providing mandated representation. In 2006, the Chief Judge's Commission on the Future of Indigent Defense Services released a report which evaluated New York's system of criminal indigent representation and recommended a complete reform of the system, including the establishment of a statewide, state-funded system centered around an independent public defense commission to oversee the quality and delivery of indigent legal services.

NYSBA Activity: The Special Committee developed statewide standards for the provision of mandated representation that were approved by the House of Delegates in April 2005. During the ensuing three years, the Committee has (1) widely publicized the standards; (2) presented the first award recognizing outstanding mandated representation during June 2007; (3) advocated for the creation of an independent public defense oversight mechanism; (4) sponsored a Summit of the Status of Indigent Defense Services in March 2007; (5) sponsored a free day-long CLE training program for providers of indigent defense services; and (6) made available low-cost CLE training to providers both online and in DVD/CD format.

In June 2007, the Committee released a report containing a review of the Chief Judge's Commission, which recommended the establishment of an independent public defense commission as set forth above. The Committee recommended the Association's endorsement of the Commission's report as well as advocacy for legislation to enact the reforms recommended by the Commission. The Committee's recommendation was approved by the House of Delegates. The establishment of an Independent Indigent Defense Commission, with broad powers to adopt standards, evaluate existing programs and providers, and

generally supervise the indigent defense system, is one of the Association's legislative priorities for 2008.

Kathleen R. Mulligan Baxter
Gloria Herron Arthur

Funding for Civil Legal Services

NYSBA Position: Ensuring access to the justice system by poor persons is a societal responsibility. To meet the legal needs of low-income New Yorkers, governments should increase funding to civil legal services programs, and bar associations should pursue innovative and creative opportunities to obtain additional funding.

Background: Civil legal services funding from the federal and state government has been woefully inadequate to address the needs of poor New Yorkers for legal help in such critical areas as housing, family, income maintenance, and individual rights. In recent years, courts nationwide have made *cy pres* awards to civil legal services programs in the settlement of class actions yielding residual funds. The concept was first used as a method of distributing trust funds to the next best use where the original purpose could not be achieved. Several states have developed statewide *cy pres* programs to provide for awards to civil legal services programs. While many individual legal services programs in New York State have received significant *cy pres* awards, no statewide *cy pres* initiative has ever been created here.

NYSBA Activity: The President's Committee on Access to Justice recommended the study of *cy pres* and other innovative methods of expanding funding for civil legal services, and from such discussion flowed creation of the Special Committee on Funding for Civil Legal Services.

During the January 2007 Annual Meeting, the NYSBA distributed a manual on *Cy Pres* for Legal Services. To date, the manual has been disseminated to judges in the Northern and Western Districts of New York. Efforts are underway to develop training presentations for judges in the Southern and Eastern Districts, as well as programs targeted at the State Judiciary.

The goals of the *cy pres* program remain: (1) to educate the class action bench and bar about the priority that should be given to programs that provide civil legal services to low-income persons; (2) to provide information via its President's Committee on Access to Justice and its Department of Pro Bono Affairs about relevant organizations for *cy pres* awards; and (3) to describe the important role the New York Bar Foundation can play in receiving *cy pres* awards and distributing them to the legal service providers where they are

most urgently needed, as well as in assisting the court and counsel in identifying appropriate recipients and in administering the distribution process.

Gloria Herron Arthur

Health Care Decisions Act and Living Wills

NYSBA Position:

The Association supports legislation to enact the Family Health Care Decisions Act, which would establish procedures for authorizing a surrogate to make medical treatment decisions on behalf of persons who lack the capacity to decide about treatment themselves.

Background:

The New York Court of Appeals has held that living wills and other written or oral evidence of treatment instructions provide a legal basis for withdrawing or withholding life-sustaining measures if the instructions constitute clear and convincing evidence of the patient's wishes.

Clear and convincing evidence of the patient's wishes is difficult to establish in an age of rapid medical advances. Studies also show that many people have not signed a health care proxy or other advance directive. Further, for children and some mentally ill or developmentally disabled adults, neither clear evidence of wishes nor a health care proxy is ever a possibility.

In addition to the above-stated position regarding the Family Health Care Decisions Act, the Association's Trusts and Estates Law Section has partnered with the Elder Law Section to propose legislation that would enact a statute to recognize living wills. The following is an excerpt from the report approved by those Sections:

"New York is one of three states that do not have a statute authorizing Living Wills.... The method to document one's wishes concerning the administration or withholding of life sustaining treatment, including artificial nutrition and hydration, should be statutorily recognized in New York and the requirements explicitly set forth. Living Will Legislation should be adopted in New York as a modification to the current Health Care Proxy legislation contained in Section 29-C of the Public Health Law. The legislation should define a Living Will, set forth the execution requirements of a Living Will and acknowledge that Living Wills are statutorily recognized and valid in New York and constitute evidence of a person's wishes concerning their own health care."

NYSBA Activity:

The Association supports enactment of the Family Health Care Decisions Act.

In addition, in January 2007 the House of Delegates approved a report by the Trusts and Estates Law Section and the Elder Law Section. As a result, Living Will Legislation was introduced in both houses of the state Legislature. The Association will continue efforts to promote this new legislation.

Ronald F. Kennedy

Impact of the *Kelo* Decision on Eminent Domain

NYSBA Position:

The New York State Bar Association will investigate and analyze eminent domain policies and lawmaking at the state level (and also possibly on a municipal level). The Task Force will report to the Executive Committee on recommendations for NYSBA action.

Background:

In a decision reached in June 2005, the U.S. Supreme Court in the case of *Kelo v. City of New London* (545 U.S. 469 [2005]) upheld the goal of economic development as a valid public use/purpose for the exercise of eminent domain. While many believe that the Court was simply upholding existing constitutional and common law jurisprudence, property rights advocates and others launched a successful media campaign criticizing the opinion and creating a public backlash.

In New York State, more than a dozen bills related to eminent domain were introduced for consideration during the 2006 legislative session, while a number of bills were pending in Congress that could also impact New York State. The issue garnered far less attention legislatively in 2007 with no notable action at either the state or federal level.

NYSBA Activity:

In July 2007 the Task Force issued its final report, which was circulated to the Association's Environmental Law, Municipal Law and Real Property Law Sections, as well as to the Committee on Attorneys in Public Service, for their review and comment. The final report provided an additional five recommendations to the eight already made in its March 2006 interim report. These thirteen reform initiatives were supported by lawyers who represent diverse stakeholder interests in the eminent domain arena. The recommended reforms will ensure a more fair environment when governments appropriately exercise the power of eminent domain for redevelopment and economic development purposes.

The final report has been submitted to the Executive Committee and House of Delegates for review and approval at their respective 2008 meetings in New York City.

Mark Wilson

Issues Affecting Same-Sex Couples

NYSBA Position:

In April 2005, the House of Delegates adopted a resolution calling for legislation to afford same-sex couples the ability to obtain the comprehensive set of rights and responsibilities available to opposite sex couples in the form of a domestic partnership registry, civil unions, or an amendment to the statutory definition of marriage.

Background:

In recent years, a number of jurisdictions have begun to address the extension of certain rights and obligations to people in same-sex relationships. Same-sex marriage has been permitted since 2004 in Massachusetts. In 2000, Vermont enacted legislation permitting same-sex couples to enter into civil unions, which provide the same benefits and protections as are afforded to married couples; Connecticut, New Jersey and New Hampshire have since enacted similar measures. California has enacted domestic partnership legislation to permit same-sex couples over age 18 or opposite-sex couples over age 62 to register as domestic partners. A number of local jurisdictions, including New York City, have also adopted domestic partnership registries. At the same time, a number of states have adopted legislation specifically defining marriage as a union of “a man and a woman.” In addition, in 1996 the U.S. Congress passed the Defense of Marriage Act, which grants states the right to refuse to recognize same-sex marriages entered into in other jurisdictions.

In July 2006, the New York Court of Appeals in *Hernandez v. Robles* held that the New York Constitution does not compel recognition of same-sex marriages; rather, such recognition is a question to be addressed by the Legislature. A bill authorizing same-sex marriage passed the State Assembly in 2007, but was not voted upon by the State Senate.

NYSBA Activity:

In November 2004, the NYSBA Special Committee to Study Issues Affecting Same-Sex Couples released a report containing a detailed discussion and analysis of the legal and constitutional issues surrounding same-sex couples, an examination of the steps that have been taken to address these issues, and a series of conclusions about ways in which the New York State Legislature might address this subject. The above-referenced resolution was adopted with respect to these conclusions by the House of Delegates in April 2005, and the report has been transmitted to the Legislature. The enactment of legislation to provide same-sex couples with the ability to obtain the comprehensive rights and responsibilities available

to opposite-sex couples has been designated as one of the Association's legislative priorities for 2008.

Kathleen R. Mulligan Baxter

Judicial Compensation

NYSBA Position:

The New York State Bar Association has endorsed the legislative proposal submitted by the State of New York Unified Court System to create a permanent mechanism for the regular salary review of officials in all three branches of government. This proposal would increase the compensation of judges of the state of New York to restore them to parity with their counterparts, the judges of the federal district courts.

The Association supports the key concept contained in the proposal to establish a Quadrennial Commission on Executive, Legislative and Judicial Compensation, a majority of whose members would be drawn from the general public. This Commission and later Commissions also would prescribe appropriate cost of living adjustments (COLAs) for the four-year period following their deliberations, which would take effect on April 1st of each year unless abrogated or modified by the Legislature. Each Quadrennial Commission would be dissolved after issuing its report.

Background:

New York State judicial salaries were last adjusted in 1999, when they were brought into parity with federal District Court judicial salaries. Since then, New York's judicial salaries have fallen far behind federal judicial salaries and other public servants at all levels of government. It is time to act to both increase judicial salaries and implement a mechanism by which salaries would be adjusted in the future.

Our judges are society's vehicle for delivery of justice in our system of government. Judicial salaries reflect the value that society places on the important work our judges perform. The current judicial salary structure needs reform so as to not impose financial limits upon the field of prospective judges. Such limitations may deter high quality individuals from seeking judicial office. Reform is also needed to ensure that our judges are fairly compensated on a regular and ongoing basis. The importance of this goal is demonstrated by the erosion of judicial salaries by the ever increasing cost of living, which has result in a 26-percent devaluation of judicial salaries since 1999. The federal government and many other states have identified effective mechanisms to provide regular

salary reviews for public leaders. New York and its Judiciary deserve no less.

NYSBA Activity:

This issue has been among the Association's top legislative priorities since 2006. Consequently, the resources of the Association -- including the advocacy activities of NYSBA leadership and general membership, staff and consultants -- have repeatedly been utilized to promote judicial salary reform.

For example, in March, May and June of 2007, NYSBA mobilized its membership to have them contact their state legislators and the Governor and urge enactment of judicial salary reform legislation. That activity was in addition to the action taken in recent years by past presidents of the Association, in the form of numerous letters to state policymakers, letters to newspaper editors and opinion-editorial pieces, testimony before legislative committees, and countless meetings and phone calls with legislators and the Executive Chamber.

In late 2007, President Kathryn Grant Madigan continued this effort and worked tirelessly to persuade the Governor and legislative leaders to agree to raise judicial salaries before the end of the year.

NYSBA will take all appropriate actions and continue to promote judicial salary reform.

Ronald F. Kennedy

Judicial Selection

NYSBA Position:

The Association has long been on record in support of numerous proposals relating to the selection of New York State judges that are designed to enhance public trust and confidence in the legal system. In 1973, the House of Delegates first approved a court reorganization plan which would have reformed the process for selection of judges. The House revisited the issue and reaffirmed its support for reform in 1979. More recently, in 1993 the Association adopted a “Model Plan for Implementing the New York State Bar Association’s Principles for Selecting Judges.”

Background:

Judicial elections and their impact on the public’s perception of the court system have in recent years been the focus of considerable attention by the media, state policymakers, and bar association leaders. In 2003, Chief Judge Judith S. Kaye announced the establishment of the Commission to Promote Public Confidence in Judicial Elections, chaired by former Dean John D. Feerick of the Fordham University School of Law. On June 29, 2004, the “Feerick Commission” issued the second of three reports, proposing a package of reforms, including state-sponsored independent screening commissions for judicial candidates.

In December 2004, the Association approved a report in favor of establishing a judicial election qualification commission in each judicial district to review the qualifications of judicial candidates.

Also in 2004, Judge Margarita Lopez Torres, along with other individual voters and judicial candidates, brought an action in the United States District Court (EDNY) against the New York State Board of Elections for declaratory and injunctive relief under 42 U.S.C. § 1983. The action challenged the constitutionality of New York State’s convention system for the nomination of party candidates for state Supreme Court justice and sought permanent injunctive relief to replace the convention system with a primary system.

On January 27, 2006, the district court granted plaintiffs’ motion for a preliminary injunction, determining that plaintiffs were likely to succeed on the merits of their claim that New York State’s judicial

convention system violates the First Amendment. Within days of the district court's order, the Feerick Commission issued its final report, with proposals intended to reform the delegate-selection process to ensure that political parties nominate well-qualified candidates for the Supreme Court. The Feerick Commission concluded that conventions are preferable to primaries for nominating Supreme Court Justice candidates, because primaries pose a risk of attracting substantial increases in partisan spending on judicial campaigns, which, in turn, would only serve to further undermine public confidence in the judiciary. At its June meeting, the Association's House of Delegates approved a report of our Special Committee on Court Structure and Judicial Selection which by and large supported the recommendations set forth in the Feerick Commission's final report.

In August 2006, the U.S. Court of Appeals for the Second Circuit upheld the district court's decision and remedy in *Lopez Torres, et al v. NYS Board of Elections, et al*, requiring "that nominations [for justice of the Supreme Court] be settled by primary election until the State Legislature enacts corrective legislation."

The U. S. Supreme Court granted certiorari, and the Association joined with the City of New York, the Association of the Bar of the City of New York, and the Fund for Modern Courts to submit a brief as Amici Curiae in support of the Respondents, Margarita Lopez Torres, et al. The Court heard oral arguments in October 2007. At the time that this summary went to press, the Supreme Court had not rendered its opinion.

NYSBA Activity:

Reform of the law to require a commission-based process for the selection of judges is a legislative priority in 2008 and remains the Association's objective. That process, whereby a non-partisan commission would recommend a limited number of candidates for selection by the appointing authority, would eliminate the influence of partisan politics and ensure that competence, temperament and integrity are the primary factors regarding selection of judges. However, until that goal is achieved, the Association recognizes and supports the need for improvements in the operation of judicial conventions to address the practical and constitutional infirmities that exist.

Ronald F. Kennedy

Lawyer Advertising

NYSBA Position:

In January 2006, the NYSBA House of Delegates approved the report and recommendations of the Task Force on Lawyer Advertising. In August 2006, the Executive Committee approved comments for submission to the Appellate Division regarding proposed amendments to the Code of Professional Responsibility. In 2007, the House approved amended Ethical Considerations in the Code of Professional Responsibility to provide greater guidance concerning the amended Disciplinary Rules and the Executive Committee authorized the Association's participation as amicus curiae in *Alexander v. Cahill*.

Background:

In recent years, there has been a significant increase in both the amount and the format of lawyer advertising. Aside from traditional print media, lawyer advertising now appears in broadcasts, on billboards, and electronic media, including the internet, blogs, and electronic bulletin boards. Concerns have been raised that many advertisements do not provide consumers with truthful, non-misleading information to assist in the selection of a lawyer. In 2005, a committee was appointed by the Appellate Division to review the existing rules governing lawyer advertising and to recommend changes. As a result of that review, in June 2006 the Appellate Division released proposed amendments to the Code of Professional Responsibility. Following a comment period, the amendments became effective on February 1, 2007.

In July 2007, the United States District Court for the Northern District of New York issued a decision finding several of the new Code provisions to be unconstitutional, while upholding others, in *Alexander v. Cahill*. Both sides have appealed to the United States Court of Appeals for the Second Circuit, where the appeal is pending.

NYSBA Activity:

The Task Force on Lawyer Advertising was appointed to recommend changes to the rules governing lawyer advertising, changes in enforcement of the rules, and a program for peer review of advertising. The Task Force issued its report in October 2005 and has made a number of recommendations, including the following: (1) amendment of the rules to provide greater guidance and clarity; (2) adoption of voluntary guidelines regarding lawyer advertising; (3) development of programs to educate attorneys as to appropriate advertising and the public as to

selection of a lawyer; and (4) a requirement that advertisements be electronically filed in a central location and that the Administrative Board appoint an entity to conduct random reviews of filed advertisements and refer those found to be non-compliant to the appropriate grievance committee. As noted above, the report was approved by the House of Delegates at its January 2006 meeting. After the Appellate Division released its proposed amendments, the Task Force coordinated with Association sections and committees in preparing comments for submission to the court on behalf of the Association. Most recently, the Task Force prepared an amicus curiae brief for submission to the Second Circuit in connection with the court's consideration of *Alexander v. Cahill*.

Kathleen R. Mulligan Baxter

Mass Disaster Rule

NYSBA Position:

In June 2007, the House of Delegates approved a proposed Court Rule on the Provision of Legal Services Following Determination of Major Disaster for consideration by the court system.

Background:

In February 2007, the American Bar Association adopted a Model Court Rule on Provision of Legal Services Following Determination of Major Disaster. The Rule was developed by the ABA Standing Committee on Client Protection in the wake of the devastating hurricanes along the Gulf Coast in 2005, which crippled the legal systems in several states. The ABA's Model Rule (a) permits out-of-state lawyers to provide pro bono services in an affected jurisdiction and (b) permits lawyers in an affected jurisdiction to practice law on a temporary basis in an unaffected jurisdiction. The ABA then encouraged the states to consider adoption of the Model Rule.

NYSBA Activity:

The Association's Committee on Mass Disaster Response considered the ABA model and, after study, recommended that New York adopt a variant of the ABA Model Rule on the basis that such a rule would strike an appropriate balance in protecting both the public and the legal system. The committee made several changes from the ABA Model Rule to provide that the declaration of a disaster which triggers the application of the rule is to be made by the Executive branch rather than the Judicial branch and to bring the rule in line with New York practice (e.g., disciplinary authority rests with the Appellate Division).

The rule is proposed as Rule 520.11(A) of the Rules of the Court of Appeals. Under the proposal, upon the declaration of a disaster or emergency by the Executive Branch, the Court shall determine whether an emergency exists in the justice system, in this state or another state, requiring the assistance of lawyers from outside New York. In the event of a disaster in New York, a lawyer authorized to practice law in another jurisdiction may provide legal services in New York on a temporary basis, without compensation from the client. Such services are to be supervised through established, designated programs as set forth in the proposed rule.

Under the proposed rule, if a disaster has taken place in another jurisdiction, a lawyer authorized to practice and who principally practices in that jurisdiction may provide legal services in New York on a temporary basis. These services would be limited in scope to representing clients with respect to matters that the lawyer was handling prior to the disaster, or to new matters arising in the area affected by the disaster that the lawyer could have handled but is unable to do so because his or her ability to practice has been affected by the disaster and/or the client has, due to the disaster, temporarily relocated from the disaster area to another jurisdiction. The authority for such practice would end 60 days after a declaration that the conditions caused by the disaster in the other jurisdiction have ended.

The proposed rule does not give authority for court appearances by lawyers from outside New York, except pursuant to the rules governing pro hac vice admission or pursuant to a declaration by the court granting such permission. Out-of-state lawyers providing services pursuant to the rule would be subject to the disciplinary authority of the Appellate Division and would be required to file a registration statement with the Office of Court Administration.

Following the June House meeting, the proposed rule was transmitted to the court system where it is under consideration as of this writing.

John A. Williamson, Jr.

Medicaid Compact for Long Term Care

NYSBA Position:

The current Medicaid system should be reformed to provide a fair and equitable way to finance long-term care for elderly and disabled persons.

Background:

In 2005, in response to the Governor's budget proposal which significantly reduced the Medicaid reimbursement in New York, the Elder Law Section developed an alternative plan for financing long term care, called the "Compact for Long Term Care". The basic purpose of the Compact is to create a private/public partnership between seniors and/or people with disabilities and the government wherein those people would pay a fair share for long term-care services, and the government would provide a subsidy after the individual has fulfilled a pledge to pay that fair share. This subsidy would not require self-improvement or institutional care, which usually occurs under the current Medicaid system with anyone requiring long-care services for an extended period of time. This proposal seeks to address the problem of long-term care financing by providing incentive for the elderly and disabled to maintain responsibility for their own care and still maintain the safety net that Medicaid was intended to provide.

NYSBA Activity:

In April 2005, the Executive Committee endorsed the concept of the Compact for Long Term Care. In November 2006, NYSBA's Executive Committee voted to elevate the Compact as a legislative priority for the Association during the 2007 legislative session. A report and recommendations on the Compact, originally submitted by the Association to the American Bar Association's (ABA's) House of Delegates for consideration and approval, was revised and is scheduled for consideration at the ABA's February 2008 mid-year meeting. The resolution states: "RESOLVED, that the American Bar Association urges all federal, state, territorial and local legislative bodies and governmental agencies to develop and assess innovative long-term care programs such as the 'Compact for Long-term Care,' as a reasonable and fair solution to long-term care financing."

In addition, NYSBA will continue to pursue enactment of this legislation as one of its legislative priorities in New York during the 2008 legislative session.

Lisa J. Bataille

Medical Malpractice Liability

NYSBA Position:

NYSBA has in the past consistently advocated preserving access to the justice system for persons who have been injured due to medical malpractice. No current position has been taken with regard to activity by the recently created New York Medical Malpractice Liability Task Force.

Background:

In July 2007, after the New York State Insurance Department raised medical malpractice insurance premiums by 14%, Governor Eliot Spitzer created the Medical Malpractice Liability Task Force (“Task Force”) to examine issues related to the increasing costs associated with the state’s medical malpractice liability insurance system. The Task Force, which is co-chaired by New York State Insurance Superintendent Eric Dinallo and New York State Health Commissioner Dr. Richard Daines, is comprised of several stakeholders having diverse views on the issue of medical malpractice liability. Among the members of the Task Force are representatives of: the Legislature, doctors, nurses, health plans, hospitals, medical malpractice insurance carriers, patients, the business community, and the legal profession, including the New York State Trial Lawyers Association, the New York State Academy of Trial Lawyers, and the New York State Bar Association. NYSBA’s representative on the Task Force is Lucille A. Fontana, Esq.

The Task Force held its first meeting in September 2007 to create a roadmap of issues that it will consider at future Task Force meetings. These issues include: 1) the financial condition of medical malpractice insurers; 2) the impact of medical malpractice liability on access to and quality of care; 3) adverse medical/health outcomes; and 4) the current functioning of our tort system. The Task Force planned to consider these four issues and then hold meetings to examine data developed by the state Departments of Insurance and Health and data collected from stakeholders. The goal of the Co-Chairs was to discuss, consider, and try to reach a consensus about how to solve the problem of high-cost medical malpractice liability insurance.

Ms. Fontana, who is Co-Chair of the NYSBA Committee on the Tort System, reported on the Task Force’s work at the NYSBA Executive Committee meeting

and the House of Delegates meeting when those bodies met at the Bar Center in November 2007.

It is anticipated that the Task Force Co-Chairs will develop and recommend a legislative package to the Governor that addresses the issue of high medical malpractice insurance premiums. At the time that this summary went to press, the Task Force had not completed its work, and no report had been submitted to the Governor.

NYSBA Activity:

The Association will continue to monitor activity of the state Medical Malpractice Liability Task Force, and the Association will take appropriate action on reports or legislation issued by the Task Force.

Ronald F. Kennedy

Minorities in the Profession

NYSBA Position:

At its November 2007 meeting, the House of Delegates adopted a resolution approving the recommendations set forth by the Committee on Minorities in the Profession in its 2007 report: *“Miles to Go in New York: Measuring Racial and Ethnic Diversity Among New York Lawyers.”* These recommendations included the collection of demographic data of New York’s lawyers by the Office of Court Administration, and increasing the data being collected by the Association.

Background:

In 2004, the American Bar Association issued a seminal report *“Miles to Go: Progress of Minorities in the Legal Profession,”* which found, among other things, that minority representation in the legal profession was less than half of that found in most other professions.

Currently, New York does not keep demographic statistics concerning lawyers in the state or their distribution among various types of employment. In the spring of 2005, the Committee on Minorities in the Profession embarked on an important research project designed to review and assess existing and available data on the number, status and careers of minority attorneys in the state. The Committee’s mission was to produce a comprehensive report and develop recommendations for review by the NYSBA House of Delegates.

NYSBA Activity:

The goals of *Miles to Go in New York*, authored for the Committee by New York Law School Professor Elizabeth Chambliss, were to provide a current and comprehensive picture of the status of minorities in the profession in New York, to measure racial and ethnic diversity among New York lawyers, and to determine where there are gaps and holes in the available statistical data and how best to effectively fill them. The recommendations contained in the *“Miles to Go”* report call on the Office of Court Administration to collect demographic and employment data through the biennial registration required of all lawyers. In addition, the Association is requested to collect and report similar data as part of its efforts to enhance diversity in the profession.

The collection and reporting of demographic data is defined as encompassing gender, race, color, ethnic origin, national origin, sexual orientation, age and disability.

Frank J. Ciervo

NYSBA 2008 Legislative Program

NYSBA Position:

The establishment of clear legislative priorities enhances effective advocacy on behalf of the Association. A specific list of priorities promotes consistency and coordination, and an organized method of involvement of Association entities, members and staff.

Background:

On January 25, 2002, the House of Delegates approved a report by the Special Committee on Legislative Advocacy. A section of that report pertained to the goal of refining the NYSBA's "message" to state policymakers and the establishment of a steering committee to accomplish that goal. Accordingly, the Steering Committee on Legislative Priorities was established to consider issues that should be given the greatest priority regarding advocacy activities for each legislative session. The Steering Committee is comprised of the President, the President-Elect, the Chair of the Committee on Legislative Policy, and the Executive Director.

NYSBA Activity:

On November 2, 2007 the Executive Committee received the recommendations of the Steering Committee on Legislative Priorities and approved the following list of legislative priorities for 2008:

Judicial Salary Reform for Judges of the State of New York. The salaries of New York judges were last adjusted in 1999, when they were brought into parity with salaries of federal district court judges. Since then, New York judicial salaries have fallen far behind those of federal judges, judges in other states and even behind the salaries of first-year associates in many large law firms. Judicial salaries reflect the value that society places on the work of judges, and a recognition of the role of the courts as the vehicle for delivery of justice in our system of government. It is vitally important to have salaries that do not impose financial limits that might deter highly qualified individuals from seeking judicial office, and to ensure that judges are fairly compensated on an ongoing basis.

Court Reform. The implementation of a commission-based process to select judges and the re-organization of New York's overly complex and costly court system are the twin pillars of "court reform" long supported by the Association. These pillars will promote public trust and confidence in the court system. When litigants step into a

courtroom, they must be secure that they will appear before a judge who was selected for office based on competence and judicial temperament, rather than party-based politics, and that the court system will operate as efficiently as possible to render justice and equal treatment according to the law.

Access to the Justice System for Impoverished Persons.

“Access to justice” is a primary focus of the Association’s legislative priorities. That concept helps distinguish and define us as a nation where freedoms flourish under the rule of law. Only in America can an impoverished and possibly unpopular individual invoke the power of the world’s most prestigious legal system to protect his or her rights. That has been, and must continue to be, a source of great pride and strength for all New Yorkers and all Americans. The two items set forth below focus on access to the justice system and adequate legal representation for impoverished persons in civil and criminal matters:

(1) Civil justice for low-income consumers. While the pro bono efforts of New York lawyers help provide needed legal representation for persons of limited means, adequate funding from both the state and federal governments is necessary to ensure access to the justice system for those people who are at the lowest economic strata of our society.

(2) Independent Indigent Defense Commission. The Association has strongly supported previous efforts to implement the right to counsel in criminal defense proceedings, as proclaimed by the U.S. Supreme Court in *Gideon v. Wainwright*. An Independent Indigent Defense Commission should be established, with broad powers to adopt standards, evaluate existing programs and service providers, and generally supervise the operation of New York’s public defense system.

Equal Legal Rights for Same-Sex Couples. Under the Current state law, there are significant differences in the legal treatment of marital relationships and committed same-sex relationships in a wide range of matters such as property rights, financial support, responsibilities to children, health care, social security, long-term care, domestic violence, access to the court system, and other issues. The Association recommends that the state Legislature enact legislation affording same-sex couples the ability to obtain the comprehensive set of rights and

responsibilities now available to opposite-sex couples through a domestic partnership registry, civil unions, or an amendment to the statutory definition of marriage, with the selection of the appropriate option to rest in the discretion of the Legislature.

The Compact for Long-Term Care. The proposal would provide a fair and equitable way to finance long-term care for elderly and disabled persons in New York state, in contrast to the current “all-or-nothing” approach that requires individuals to be impoverished before they qualify for Medicaid. The compact would promote personal responsibility on the part of the elderly and chronically disabled for a fair share of their long-term care costs. After payment of that fair share by the individual, the government would provide a financial subsidy for additional long-term care services, without requiring that the individual be impoverished. This initiative is designed to increase use of private funds for long-term care, but still maintain the safety net that Medicaid was intended to provide.

Support for the Legal Profession. This item relates to the longstanding tradition and policy of the Association to support proposals that promote and benefit New York’s legal profession as a whole. It is vitally important to support legislative proposals that would benefit the profession, assist those in the profession to protect citizens’ rights, and facilitate the lawyer’s role in enhancing our system of justice. It is equally important to oppose legislation that would have a detrimental effect on these principles.

The Association will take the appropriate steps to promote and achieve these legislative priorities during 2008.

Ronald F. Kennedy

Pro Bono

NYSBA Position:

Meeting the legal needs of those who cannot afford counsel is a social obligation. Because government funding for civil legal services is inadequate, every lawyer should render pro bono service.

To advance access to justice, the Association has a President's Committee on Access to Justice, a Committee on Legal Aid, a Pro Bono Coordinators Network, a Committee on Volunteer Lawyers, and a Department of Pro Bono Affairs.

Background:

The Association sponsors many pro bono programs, including annual awards and pro bono conferences and a biannual three-day conference that provides low-cost training for several hundred legal service advocates.

NYSBA Activity:

On June 1, 2006, his first day in office, then Association President Mark H. Alcott launched a new pro bono initiative. His program gives special recognition to members who provide 50 hours of free legal services to the poor in a calendar year. Members who report such voluntary service receive the honorific title "Empire State Counsel," which they can use as a credential. They receive a certificate suitable for framing, a ribbon, and a lapel pin. In addition, their names are listed in the *State Bar News*, on the Association Web site, and in press releases, and they are honored at the "Justice for All" luncheon held during the Association's Annual Meeting week in New York City. More than 460 attorneys qualified for the honorable distinction during the program's first year.

In 2007, President Kathryn Grant Madigan announced the expansion of the program to honor lawyers who donate free legal services to not-for-profit, governmental or public service organizations, provided that the organization's services are primarily designed to address legal and other basic needs of persons of limited financial means.

Sebrina Barrett

Sarbanes-Oxley Legislation

NYSBA Position:

In March 2007, the House of Delegates approved the report and recommendations of the Special Committee on Sarbanes-Oxley Issues, with the exception of a proposed code of conduct for Association leaders, which the Special Committee is reworking in light of comments received from interested sections, committees and House members.

Background:

To address the financial fraud, conflicts of interest, deceptive auditing and lack of effective board oversight connected with corporate failures involving Enron, WorldCom, Global Crossing and Adelphia Communications, Congress in 2002 passed the Sarbanes-Oxley Act to mandate remedial changes and more stringent oversight of public, for-profit companies and their accountants. While geared towards for-profit enterprises, provisions of Sarbanes-Oxley that deal with obstruction of justice through document destruction or retaliation against whistleblowers are also directly applicable to nonprofit corporations such as the Association.

While synonymous with a trend to improve corporate governance by publicly held companies, the Sarbanes-Oxley Act is increasingly being viewed as having implications for nonprofit enterprises, particularly regarding issues such as self-dealing by insiders, conflicts of interest, excessive compensation and personal use of organizational assets by board members or management. In keeping with this trend, New York's Attorney General has drafted legislation to put in place for nonprofits clear obligations and protections covering corporate governance, fiduciary responsibility and transparency. Similarly, California has enacted the Nonprofit Corporate Integrity Act as a comprehensive measure to address nonprofit governance and fiduciary responsibility. In 2004, the Senate Finance Committee in Washington, D.C. drafted legislation to promote financial responsibility and greater board oversight for nonprofits.

Given this trend towards applying Sarbanes-Oxley principles to nonprofit entities, many nonprofits on their own initiative are evaluating the statute for the purpose of voluntarily adopting elements of the reforms as best practices in keeping with the responsibility of the board of directors and senior management to the corporation.

NYSBA Activity:

In the fall of 2005, then Association President A. Vincent Buzard appointed a Special Committee on Sarbanes-Oxley Issues, chaired by James B. Ayers of Albany. The Special Committee was charged with studying the Sarbanes-Oxley Act, as well as other relevant federal and state statutes, rules, and regulations as they might apply to the governance, administration and financial controls of the Association.

The Special Committee then developed a comprehensive report that reviews in detail the reforms brought about by the Sarbanes-Oxley legislation and their impact on nonprofit entities, as well as the nature of various governmental initiatives that would apply Sarbanes-Oxley principles to nonprofit entities. In addition, the report discusses in detail the impact of Sarbanes-Oxley reforms on the Association's governance structure. It also makes recommendations to adopt Sarbanes-Oxley inspired improvements in the following areas: an enhanced role for NYSBA's governing bodies in the ongoing supervision of the Association's financial affairs; the development of internal controls over financial reporting; management certification of financial reports; the establishment of a separate Audit Committee and implementing auditor independence rules; and the adoption of appropriate codes of conduct for Association leaders and staff.

The Special Committee's recommendations were approved at the March 2007 House of Delegates meeting, with the exception of a proposed code of conduct for Association leaders, which the Special Committee is reworking based on comments received from interested groups and individuals. The revised code will be presented to the House for consideration in 2008.

In addition, one of the Special Committee's recommendations to establish an Audit Committee separate from the Finance Committee requires amendment of the Association's Bylaws. As of this writing, the Bylaws amendments necessary to create the committee are scheduled for discussion at the 2008 Annual Meeting.

John A. Williamson, Jr.

Support of Fair and Impartial Judiciary

NYSBA Position:

In June 2005, the NYSBA House of Delegates approved a resolution opposing the adoption of resolutions by the United States Senate and the House of Representatives which express the view that United States courts should not look to foreign law in making judicial determinations.

Background:

On a national level, there have been an increasing number of verbal – and, in some instances, physical – attacks on judges because of their judicial decisions. Notable among these incidents is the Congressional intervention in the Terri Schiavo matter, in which federal courts were given jurisdiction over a matter that was being addressed by state courts, and the murder of members of a federal judge's family by a disgruntled litigant. A number of bar associations across the country have undertaken efforts to address unwarranted attacks on the judiciary by a number of means, including op-ed pieces, public education, and contact with public officials. In August 2005, the ABA adopted a resolution deploring attacks on judicial independence and pledging to accelerate its efforts to educate the public on the justice system and to assist the organized bar in responding to unjustified criticism.

NYSBA Activity:

In June 2005, the NYSBA House of Delegates adopted the above-referenced resolution in response to Congressional efforts to adopt non-binding resolutions expressing the sense of Congress that judicial determinations should not be based in whole or in part on foreign law. The report accompanying the resolution noted that these efforts represented an attempt to shift the authority to interpret the Constitution from the judicial branch to the legislative branch. The Association also has undertaken public education efforts; in June 2005, the Association sponsored radio announcements explaining the importance of an independent judiciary. In 2007, then Association President Mark Alcott made support of a fair and impartial judiciary one of two topics of his Presidential Summit. In addition, NYSBA has submitted op-ed pieces, newspaper articles and letters to the editor to help the public understand the legal system and three co-equal branches of government.

Kathleen R. Mulligan Baxter

Town and Village Justice Courts

NYSBA Position:

The Special Task Force on Town and Village Justice Courts was created for the purpose of developing a set of recommendations for the Bar Association to consider with respect to appropriate next steps in addressing access to justice in the town and village courts across the State. In 2001, the Association's House of Delegates approved a recommendation by the Special Committee on Public Trust and Confidence in the Legal System that judges in the justice courts should be lawyers. In its report, the special committee states that, "It is unfair for litigants in civil or criminal cases to have matters determined by a person who may be unfamiliar with the law."

Background:

Questions surrounding access to justice at the town and village justice court level are not new. Recently, however, based upon seemingly increasing public allegations of unethical conduct on the part of justices, and media accounts of inappropriate conduct by some justices, the substandard condition of many town and village courtroom facilities and the administration of justice in the town and village courts, a number of entities have studied these issues.

NYSBA Activity:

The Task Force met four times—on July 17, August 1, August 22, and August 29, 2007—to review the prior work and currently stated positions of the Association, as well as analyze the Office of Court Administration's Action Plan and the proceedings of the Special Commission on the Future of New York State Courts (Dunne Commission) regarding this issue.

In August 2007 the Task Force issued a Final Report containing its recommendations. That fall, Task Force members undertook additional deliberations with representatives from the New York City and Nassau County Bar Associations, both of which had also recently issued similar reports. A final meeting will be held shortly to determine whether the Final Report should mention these other two similar reports and / or if their recommendations should in some part be included. The Final Report is scheduled to be presented to the Executive Committee and House of Delegates for review and approval at its February 2008 meetings in New York City.

Mark Wilson

E-Filing Task Force

NYSBA Position:

The New York State Bar Association Task Force on E-Filing of Court Documents (the “Task Force”), created by then NYSBA President A. Vincent Buzard in June 2005, was charged with collecting data on e-filing initiatives and programs throughout the United States, analyzing the best practices from each, and making recommendations to the Office of Court Administration (OCA) regarding whether or not e-filing should be implemented within the New York state court system and, if so, how it could best be implemented.

Background:

As the Task Force proceeded with its study, it recognized certain principal issues that it felt had to be addressed, including:

- Dual jurisdiction and lack of uniformity
- Incompatible computer systems
- How to equip the courts and the bar
- How to train the courts and the bar
- How to handle pro se litigants, or any lawyer without equipment
- Problems with the federal filing system
 1. Filing exhibits
 2. Lack of uniformity among districts
 3. E-mail clutter
- E-service
- Availability of e-filed documents to public, etc.

NYSBA Activity:

The Task Force also recognized that in discussing these various e-filing issues with practitioners and with court personnel, there were often strong opinions which did not reveal any consensus. As a result, the Task Force decided to conduct a survey of three constituencies: chief clerks of Surrogate’s Courts, county clerks and attorneys.

The Task Force decided that any recommendations regarding e-filing in federal courts was beyond its charge and scope. Relative to New York state, the Task Force concluded that a mandatory and uniform statewide system would be beneficial. The Task Force determined that the system should be comprehensive in scope, i.e. more than a repository of documents.

The final report presented recommendations applicable to all courts of original jurisdiction, and made

recommendations that were specific to Specialized Courts, Supreme and County Courts, and Appellate Courts. It also set forth minimum suggested guidelines relating to hardware and software, and best practices for attorneys to follow when they participate in e-filing in any courts in which it is available. The Task Force provided a verbal update to the Executive Committee and the House of Delegates during the November 2006 meeting, and presented a written report for discussion at the January 2007 House meeting. The final report and the recommendations of the Task Force were approved by the House of Delegates on March 31, 2007.

The Task Force believed that the report and its recommendations represented a well-reasoned and thorough proposal for consideration by the Office of Court Administration. The final report was mailed to OCA on May 30, 2007.

The work of the Task Force having been completed, it was disbanded as of June 1, 2007.

Richard Martin

Federal Shield Law

NYSBA Position:

The Association is on record supporting legislation to create a Federal Shield Law closely modeled after New York's law, Civil Rights Law. § 79-h, which provides an absolute privilege against the compelled disclosure of a reporter's confidential sources. The adoption of federal legislation would ensure that a free and independent press can continue to investigate and pursue information vital to the functioning of our democracy.

Background:

For many years, federal courts in almost every Circuit had interpreted the First Amendment to recognize a qualified reporters' privilege, requiring balancing of interests when compulsory process is used to obtain testimony and documents from the press. Recently, however, there has been an increase in the number of subpoenas issued to journalists in federal cases, and courts have become more willing to overrule reporters' claims of privilege. Even when the federal courts have recognized a constitutional privilege, its qualified nature has rendered it ineffectual to block contempt citations against reporters.

Concerned over developments in the courts, in 2005 Congressmen Mike Pence (R-IN) and Rick Boucher (D-WVa) and Senator Richard Lugar (R-IN) introduced legislation to create a federal reporters privilege. The Pence/Lugar Bill, also known as the "Free Flow of Information Act," would recognize a qualified federal privilege for reporters. Specifically, Pence/Lugar would allow testimony to be compelled from a journalist in criminal cases only when there is clear and convincing evidence that such testimony is essential to the investigation, and in civil cases only when it is essential to resolving an issue of substantial importance. In all cases the proposed law would impose an "exhaustion" requirement so that the party seeking information from a journalist would need first to show that it has previously attempted and failed to obtain the information from available non-media sources.

Unfortunately, the privilege proposed in Pence/Lugar is only a "qualified" privilege. Unlike the New York law, which provides an absolute protection against the disclosure of confidential sources, the

proposed federal law would allow a court to compel disclosure of a confidential source in any case upon clear and convincing evidence that disclosure would be “in the public interest.” The proposed law also would exempt from the privilege altogether information needed to prevent an “act of terrorism” or to prevent “significant and actual” harm to national security, as well as information needed to prevent “reasonably certain” death or bodily harm.

NYSBA Activity:

The Association is advocating for adoption of a federal privilege providing greater protection to confidential sources. The highly visible recent efforts by federal courts to compel reporters to divulge their sources serves to intimidate sources and inflicts real harm on the ability of the press to function effectively. The current state of federal law also frustrates the States’ prerogative to protect reporters and their sources. Any promise of confidentiality protected by the States is meaningless if the source’s identity could nonetheless be compelled through a federal subpoena.

The position urged by the Association recognizes that the federal courts are out of step with a nationwide consensus that the newsgathering process must be afforded some legal protections. At least 31 states currently have statutes creating a reporters’ privilege; another 17 states have recognized the privilege through judicial decision. Over half of the state shield statutes, like New York, render a reporter’s privilege not to disclose confidential sources *absolute*.

A near-absolute privilege is necessary because the very purpose of the privilege—to foster reporter-source communications—is defeated if the parties cannot be certain whether their conversations are, in fact, protected under the law. “An uncertain privilege, or one which purports to be certain but results in widely varying applications by the courts, is little better than no privilege at all.” *Jaffee v. Redmond*, 518 U.S. 1, 17-18 (1996).

NYSBA has contacted New York’s Congressional delegation, to explain our conclusion that there is a need for a federal shield law to protect journalists from intrusive demands for information and documents obtained in the course of news gathering or reporting. Further, we urged Congress to adopt a federal shield law modeled on the New

York State Shield Law (Section 79-h of New York's Civil Rights Law), with provisions substantially similar to those contained in the New York statute.

David A. Schultz
Ronald F. Kennedy

Gender Equity in the Profession

NYSBA Position:

Gender equity is an important issue facing the legal profession and, as such, the Association has historically promoted various initiatives and projects to ensure that all lawyers are treated equally in the workplace. Key committees and task forces working on these issues include the Committee on Women in the Law, the Gender Equity Task Force and the Special Committee on Lawyers in Transition.

Background:

Committee on Women in the Law and Gender Equity Task Force (GETF): In 2002, the Committee on Women in the Law was tasked with assessing whether attorneys were treated differently because of gender. The Committee surveyed male and female attorneys statewide to determine whether gender inequities existed and to provide the Bar Association with information regarding the quality of life issues facing members. The report found that gender disparity continues to exist within the profession. The report also found disparity in income based on gender at certain levels, and that female attorneys often perceived they had to work harder and were less involved in firm activities that led to increased salary and professional growth. Many female attorneys indicated that they were less likely to remain in law as a career.

In June 2002, the NYSBA House of Delegates adopted the “Gender Equity in the Legal Profession” report and recommendations that had been commissioned by the Committee on Women in the Law. Under the leadership of then-President Lorraine Tharp, the Bar Association appointed the Gender Equity Task Force (GETF) to implement the report’s recommendations, one of them being the development of a completely voluntary self audit tool to be used internally by law firms and employers to assess their status in the areas involving quality of life and gender equity, with the self audit to be accompanied by a compilation of “Best Practices” or model policies that employers can consider implementing to improve gender equity.

Special Committee on Lawyers in Transition: Attorneys, both male and female, are often required to leave the workplace temporarily, for brief or extended periods, on maternity or paternity leave, or because of family or other obligations. For many, time away from the

profession becomes longer than originally intended and the prospect of re-entry becomes a daunting challenge. The Special Committee on Lawyers in Transition was established to develop initiatives to enable lawyers to remain connected to other lawyers and the profession before and during a career interruption, and to help ease the difficulties of re-entering the profession after an absence.

The Special Committee's Web site serves as a clearinghouse of information, articles, links and resources of particular importance to transitioning attorneys. A web-blog was initiated and serves as an interactive live discussion platform for attorneys seeking guidance resuming the practice of law and returning to the profession. Upcoming events of interest are posted on the blog and the Special Committee's Web site.

NYSBA Activity:

In November 2006, the Executive Committee approved the GETF's Self Audit and Principles of Best Practices, which were distributed in February 2007 to more than 16,000 legal employers statewide. In 2007, pursuant to a request by President Kathryn Grant Madigan, the GETF is devising a method to recognize on a statewide level legal employers that put into place family-friendly best practices.

The Special Committee on Lawyers in Transition is in the process of developing outreach, networking and mentoring programs for lawyers who have temporarily left the legal profession. The Special Committee is co-sponsoring a program at the 2008 Annual Meeting program with the Law Practice Management Committee called "Career Transitions 101."

Sebrina Barrett
Kathy Suchocki

Law Practice Continuity

NYSBA Position:

NYSBA encourages solo practitioners to make plans and preparations to cover the contingency of their sudden absence from practice, whether such absence is temporary or permanent. To assist them in such planning, NYSBA's Special Committee on Law Practice Continuity has been charged with the mission of preparing guidelines, sample forms and checklists that would be useful to the solo practitioner in making such plans. When completed and approved, such documents will be made widely available to solo practitioners in New York. Similarly, where the solo practitioner has made no such plans or preparations, NYSBA supports the establishment of an organized system within the state to permit the appointment of caretaker attorneys to review the legal work of the absent solo practitioner's clients and to assist those clients in finding other counsel, or by performing services for such clients if the clients so desire, so that the interests of those clients are protected.

The aforesaid Committee is charged with recommending a structure and procedure for such a system within the state.

Background:

In April of 2002, a special committee was appointed to address the need to ensure that clients whose solo practitioner lawyer dies, becomes disabled or disappears, can continue receiving legal counsel on pending and urgent matters, and that the affairs of that law practice can be taken care of in a proper fashion, recognizing that an attorney has an ethical obligation to ensure that his clients' interests will be protected, even if the attorney becomes unable to represent the client by reason of death, disability or other cause. The Special Committee on Law Practice Continuity was asked to recommend steps that allow for another attorney or attorneys to tend to the legal needs of clients of absent sole practitioners.

While contingency plans and caretaker agreements are widely used in other professions, guidance on the subject for New York lawyers is scant and the Code of Professional Responsibility is largely silent on this issue. Our goal is to provide guidance and recommend such changes to the Code and elsewhere as may be needed for the proper handling of such situations.

The Committee has also undertaken to examine problems associated with the reconstruction of law practices in the aftermath of disasters, such as the World Trade Center collapse. While we all hope that no more disasters of that magnitude will occur, the same problems apply in the case of fire, flood or other natural disaster affecting a law firm's offices.

NYSBA Activity:

This Committee has completed two important phases of its work: 1) the creation of a "Planning Ahead Guide" for sole practitioners who wish to prepare for the contingency of their sudden absence from practice; and 2) the preparation of a proposed rule for the appointment of a caretaker attorney to serve when a sole practitioner is suddenly absent from practice and has made no provisions for the handling of clients' needs. The proposed caretaker rule was presented at the 2005 summer meetings of the Executive Committee and House of Delegates. A slight change to the proposed rule was suggested at the Executive Committee meeting. That change pertained to postponing appellate proceedings, as well as trial proceedings, in the event of the sudden and unplanned absence of a sole practitioner from practice.

The House of Delegates responded very favorably to the report and proposals, and adopted a resolution to that effect. The proposal has been presented to the Administrative Board of the Courts, which advised the Committee to direct the proposal to the various Appellate Divisions for their respective consideration. Work has been completed on the "Planning Ahead Guide," which is now available in print form, on CD, and on the Web. The Guide contains checklists and sample forms to assist caretaker attorneys in such situations, whether they are managing an absent attorney's practice temporarily, or closing the practice because the absence is of a permanent nature. It also contains suggestions for attorneys in their estate planning and in establishing their firm's procedures, to make it easier for a caretaker attorney to effectively accomplish the tasks required. In addition, the Committee has been involved in several CLE programs around the state on this subject.

Terry J. Brooks

Law Practice Management/ Solo and Small Firm Practice

NYSBA Position:

The mission of the Committee on Law Practice Management (LPM) is to investigate, evaluate, develop and promote the use of techniques that will assist lawyers in the management of their practices to help them excel in a competitive marketplace.

Background:

The Committee was completely rejuvenated in 2005 and now has more than 40 members. The Committee has five active subcommittees on the following topics: Technology; Management and Finance; Human Resources; Marketing; and Risk Management. The subcommittees have been working on continuing legal education programs, NYSBA Journal articles, the LPM Web site, publications and electronic media initiatives. The Committee also has identified several external groups with which LPM has common interests, and several of the Committee members serve as liaisons to these groups. These groups include the Association of Legal Administrators, the ABA Law Practice Management Section, and American Lawyer Media (lawjobs.com).

NSYBA Activity:

The Committee offered numerous programs in the past year to help support the solo and small firm practitioner. Four programs were offered in 2007: *The Lawyer as Employer*, *Accounting for Lawyers*, *How to Start a Practice* and *Risk Management for Law Firms*. These programs were recorded and are available for purchase at the LPM Web site.

The LPM Committee has worked on promoting the use of the LPM website as a resource for practitioners. The Web site is continuously updated and includes a weekly tip regarding law practice management. The site includes resources for attorneys who are departing a firm, business continuity plans for small firms, sample forms for practitioners, LPM articles and upcoming programs.

The Committee has been working on its affinity partnership with ALM's Lawjobs to help attorneys find the right job and to help employers find qualified candidates. The site contains information on career development, staffing and salaries. The Committee holds an annual Career Development Conference on the first day of Annual Meeting. More than 300 attorneys attended the 2007

networking event, which included free educational sessions on resumes, interviewing, networking and alternative careers for attorneys.

The LPM vendor resource guide provides attorneys with a place to find available technology and services to help them in their practices. There are currently more than 55 listings on the guide.

Pamela McDevitt

Mandated Retirement of Judges

NYSBA Position:

Mandatory retirement of judges deprives the courts and the people of New York of experienced and productive individuals and discourages otherwise qualified and experienced judicial candidates from seeking judicial offices.

All state judges of the County, Surrogate, Family, City, District, New York City Civil and New York City Criminal Courts and of the Court of Claims should be allowed to serve to age 76, subject to the two-year certification process currently in place for Supreme Court Justices with certification beginning at age 70 and service until age 76; secondly, the retirement age for Court of Appeals judges should be raised from 70 to 76, provided that a process be established for certification of Court of Appeals judges at two-year intervals after age 70 and subject to the establishment of a judicial review certification structure and implementation process that will satisfy the requirements of the State Constitution.

Background:

Since the 1869 State Constitution was adopted, all judges/justices (except town or village court justices) must retire on December 31st of the year they reach the age of 70 (Article VI, §25[b]). Exceptions to this blanket provision have been adopted by means of amendments to the State Constitution. Since 1961, judges of the Court of Appeals and Supreme Court justices may be certified for up to three two-year terms—to the age of 76—to serve as a Supreme Court justice. Since 1966, retired Supreme Court Appellate Division justices may serve in the Appellate Division upon certification. However, a Court of Appeals judge can only be certified to sit in the Supreme Court as a trial justice.

In 1999, a Task Force formed under the auspices of the state's Office of Court Administration issued a report recommending two possible state constitutional amendments that would raise the retirement age by certain mechanisms, but no legislative action occurred as a result of the 1999 report.

NYSBA Activity:

The Task Force on the Mandatory Retirement of Judges, formed in mid-2006, issued its report and final recommendations in March 2007.

On March 31, 2007, the House of Delegates approved the report and recommendations, which were conveyed to Governor Spitzer's counsel on April 26, 2007.

Jean E. Nelson, II

No-Fault Divorce

NYSBA Position:

In June 2004, the Executive Committee approved an affirmative legislative proposal put forth by the Family Law Section to amend Domestic Relations Law Sec. 170 to include, as a ground for divorce, the irretrievable breakdown of a marriage.

Background:

In April 2003, the Family Law Section surveyed its approximately 3,000 members to gather data regarding contested and uncontested divorce cases. Respondents were equally divided between upstate counties, New York City and suburban counties on Long Island and in Westchester. Seven hundred respondents (representing a 24% sampling) were returned. More than 75% of those responding stated that fault should be eliminated as a ground for divorce in New York because this state lags behind virtually all other jurisdictions in the U.S. which allow some form of no-fault as a basis for divorce.

The Section then surveyed Supreme and Family Court judges to obtain their views. After compiling and reviewing the data, the Section's leadership concurred that New York should enact a no-fault divorce provision.

In March 2004 the Section developed a proposal to permit parties to end their marriages without the finding of fault. While the amendment to DRL 170 would continue to include all of the fault grounds currently provided for under the statute, the new clause would state:

“The marriage has broken down irretrievably, provided that both parties have so stated under oath or one of the parties has so stated and the other has not denied it. If one of the parties has denied under oath that the marriage is irretrievably broken, the Court shall consider all relevant factors, and shall make a finding as to whether the marriage is irretrievably broken.”

The statutory language would also require that the spouses have lived separate and apart for at least twelve consecutive months immediately prior to the commencement of the action, and that they have resolved all issues of equitable distribution, spousal and child

support, and counsel fees, and have consented under oath to the granting of a judgment of divorce.

NYSBA Action:

Since the time when the NYSBA Executive Committee established its position on no-fault divorce, the Association has vigorously lobbied in support of the legislative proposal before the Legislature, the Executive Chamber, and with interested groups. Those efforts include numerous meetings by the Association's leadership with state policy makers, coordinated media campaigns, and participation in public roundtable sessions on the topic. The Association has argued that New York is not in the mainstream on its laws on divorce, that fault-based divorce aggravates rather than eases the conflict between spouses, that the current divorce laws place a substantial burden on the courts of New York, and that the law creates an unproductive and destructive atmosphere for the children of marriages that end in divorce.

Since 2005, significant time and effort has been directed at addressing objections raised by groups that are opposed to the no-fault concept.

The Association will continue to promote the legislative proposal to implement no-fault divorce in New York as a part of the 2008 legislative program.

Lisa J. Bataille

Recording Custodial Interrogations

NYSBA Position:

Confessions are powerful evidence. They should not be coerced or false. Electronic recording of custodial interrogations can substantially reduce false confessions. The Association therefore urges that, in the most serious cases, all law enforcement agencies should videotape custodial interrogations in their entirety at buildings where crime suspects are held for questioning and further urges the State Legislature to enact laws requiring the videotaping or audiotaping of such interrogations.

Background:

In *Escobedo v. Illinois*, 378 U.S. 478 (1964), the United States Supreme Court observed: “We have learned the lesson of history...that a system of criminal law enforcement which comes to depend on the ‘confession’ will...be less reliable and more subject to abuses than a system which depends on extrinsic evidence independently secured through skillful investigation.”

In 1989, in the Central Park jogger case, five teenagers were convicted based largely on their confessions. However, in 2002, another man confessed, and the five defendants’ convictions were vacated. Four of the defendants’ confessions had been videotaped, but the lengthy interrogations that yielded them had not been. That case was a catalyst for a 2004 New York County Lawyers Association Report, which was endorsed by the American Bar Association and presented to the NYSBA House of Delegates in 2004.

The NYCLA Report explained that interrogations employing certain forms of psychological manipulation often induce false confessions and that mentally impaired, youthful or otherwise vulnerable suspects are particularly likely to provide unreliable statements. To reduce false confessions, many jurisdictions videotape custodial interrogations.

NYSBA Activity:

The NYSBA Criminal Justice Section conducted its own study, reviewed the NYCLA Report and proposed a joint resolution to indicate that mandatory taping need occur only in the most serious cases. The Resolution was adopted by the House of Delegates in 2004. Accordingly, in 2005, legislation to amend relevant statutes was introduced in both houses of the state Legislature. Further, at the Association’s request, in 2006 the state Legislature

appropriated \$100,000 to fund a pilot project operated by the offices of two district attorneys. The Association will continue to work closely with the state Division of Criminal Justice Services to develop the project in the counties of Broome and Schenectady and report information obtained through the project to the Legislature in order to promote this important change in the law.

Also, in 2007 the Legislature appropriated an additional \$100,000 to expand the project to additional jurisdictions. The process to expand the project will continue into 2008.

Ronald F. Kennedy

Special Committee on Senior Lawyers

NYSBA Position:

The NYSBA Special Committee on Senior Lawyers was created in recognition of the fact that senior lawyers have special talents and needs and that the Association should seek to provide them with relevant services, technology support and public service opportunities. More than one fourth of NYSBA members are age 55 or older. According to a recent law review article, some 400,000 attorneys throughout the country, or roughly 40 percent of all U.S. lawyers, will retire over the next several years. It is anticipated that a Senior Lawyers Section may be created as a culmination of the efforts of the Special Committee.

Background:

The Special Committee on Senior Lawyers was appointed by then NYSBA President Mark Alcott in June 2006. The Committee consists of an impressive and diverse group of senior lawyers, including three former NYSBA presidents, state judges, a federal judge, members of the private bar, a law school dean, a retired in-house counsel, and public interest attorneys. To further its mission, the committee has formed three subcommittees: Pro Bono, Technology, and Services.

NYSBA Activity:

Pro Bono

The Pro Bono Subcommittee has studied existing pro bono programs statewide for senior volunteers. The subcommittee also reviewed New York's "emeritus rule," which provides that no annual registration fee is required from retired attorneys. While the emeritus rule was created to encourage pro bono, unlike the pro bono practice rules in many states, the rule does not require that the legal services be rendered through an organized pro bono program or that the services be rendered to a poor person. The committee concluded that the existing rule should be substantially revised and clarified and then broadly publicized and will make such a recommendation to the Administrative Board of the Courts.

The subcommittee recommended creation of a Senior Lawyer category for the annual President's Pro Bono Service Awards, presented on Law Day, and the Committee agreed that the new category should be suggested to the relevant groups (President's Committee on Access to Justice,

Committee on Legal Aid, and Department of Pro Bono Affairs).

Technology

The Technology Subcommittee recommended that, in partnership with the NYSBA Law Practice Management Department, CLE programs be offered on such basic issues as how to use e-mail, do online legal research, electronic filing, use of Blackberries and Treos, and how to avoid committing malpractice when using the Internet. Suggestions were made that discounts be arranged for seniors using Westlaw or Lexis for pro bono work and that a reverse mentoring program be established for technologically proficient young associates to train seniors. The committee is considering widespread promotion of a NYSBA publication entitled “Planning Ahead: Establishing an Advance Exit Plan to Protect Your Clients’ Interests in the Event of Your Disability, Retirement or Death.”

Services

The Services Subcommittee has recommended that CLE programs on retirement and financial planning and information on career planning and “of counsel” arrangements be among the initial services offered to senior members. They have reviewed CLE retirement/financial planning programs offered by local bar associations and are considering whether the Association should offer such programs statewide. Other services discussed included providing information on closing and sale of law practices, long-term nursing care, and recreational/travel and other quality-of-life programs for seniors. The committee viewed with interest a survey conducted by the Oregon Bar and determined to obtain comparable data regarding New York’s senior lawyers.

Senior Attorney Survey

The committee has agreed to sponsor a survey of senior attorneys with a planned distribution to 16,000 randomly selected attorneys age 50 or more, consisting of both members and non-members. The committee has enlisted the assistance of the Siena Research Institute (SRI). The survey will be administered both online and in hard copy format.

Richard Martin

Specialization

NYSBA Position:

NYSBA's House of Delegates, in adopting Section 7.4 of the Proposed Code of Professional Responsibility, has taken the position that attorneys, who are certified as specialists by an ABA-accredited entity which confers such status, should be able to indicate their status as a specialist without having to include the present disclaimer language, set forth below. The House included in Section 7.4 a provision enabling (but not requiring) NYSBA to act in the same capacity as the ABA in accrediting entities that confer specialization status on individual attorneys.

Background:

The issue of specialization arose in November 2006 when, in the course of considering various proposed changes by the Association's Committee on Standards of Attorney Conduct (COSAC) to the Code of Professional Responsibility, the House of Delegates added the words "or the New York State Bar Association" to Rule 7.4 in the COSAC proposal, thus recognizing not only the ABA, but also the NYSBA, as an accrediting authority for specialization-certifying organizations. If the Appellate Divisions ultimately approve this provision, it would enable NYSBA to play the role of accrediting authority, as the ABA does, but it would not require us to do so.

Another important step taken by the House of Delegates in its consideration and adoption of the COSAC Report relates to the disclaimer currently required by New York's ethics rules. Under DR 2-105 of The Lawyer's Code of Professional Responsibility, a lawyer who is certified as a specialist in a particular area of law by a private organization approved by the American Bar Association or by the authority having jurisdiction over specialization under the laws of another state, may state the fact of certification provided he or she accompanies the statement with a disclaimer that, in essence, provides:

"Certification is not a requirement for the practice of law in the State of New York and does not necessarily indicate greater competence than other attorneys experienced in this field of law."

The vast majority of members of the New York Bar who are certified do not bother to identify themselves as such because the required disclaimer virtually nullifies the advantage certification is thought to confer. To address this

anomaly, the COSAC Report proposes elimination of the disclaimer.

NYSBA Activity:

In April 2007, then NYSBA President Mark Alcott addressed the need for the Association to re-examine the issue of legal specialization in New York. President Alcott noted that New York lawyers may not hold themselves out as specialists even though many do, in fact, specialize. He urged the Association to undertake a thorough study to determine whether New York lawyers should be permitted to qualify as certified “specialists,” and pointed to developments in the profession, particularly changes in lawyer advertising rules, that may have altered the public’s view of specialization. President Alcott concluded, “It has been more than 20 years since our Association looked at the issue of specialization. It is time to look at it again.”

The committee’s mission was to study professional specialization as it exists in the legal profession in various states throughout the country, and in other professions in New York. The committee was asked to “review methods of certifying specialists and accrediting entities that engage in such certification” and, ultimately, to submit a report to the Executive Committee and the House of Delegates, “including recommendations and various proposed contingency plans pertaining to implementation of legal specialization in New York.” It was also asked to consider the potential impact of a legal specialization plan on the public and the profession in New York. Among the issues it was asked to study are:

The public’s ability to identify and access qualified lawyers

Concerns about professional competence

Public confidence in the Bar

The potential relationship between formalized legal specialization and lawyer advertising, legal malpractice and mandatory CLE in New York

The concerns of practitioners in various areas of practice and in firms of different sizes, especially the potential concerns of general practitioners and attorneys in small firms or solo practices

To achieve these goals, the Committee decided to create five subcommittees:

Public Concerns

Professional Concerns

Development of a plan, with criteria for the NYSBA to accredit, as the ABA does, organizations that certify attorneys as specialists, including an analysis of what staffing would be needed to operate such a plan and what the financial implications would be.

Development of a plan where NYSBA would be a certifying organization that confers specialization status on individual attorneys.

Development of a plan for a program in which the Court adopts a specialization plan and administers such plan through its offices.

The Special Committee on Legal Specialization will submit its Interim Report to the Executive Committee at the Annual Meeting in January of 2008.

Terry J. Brooks