NEW YORK STATE BAR ASSOCIATION REPORT of the COMMITTEE ON COMMITTEES

Donald C. Doerr, Chair

June 21, 2012

BACKGROUND & CURRENT STATUS

The Committee on Committees (ComCom) was established in June of 2007 as a Special Committee and became a Standing Committee in June of 2011. The original mission Statement of ComCom (See, Appendix A) is being updated and will be modified and submitted to the Executive Committee (EC) with our next report to reflect the standing nature of the Committee as well as the recommendations (which were adopted by the EC last June) that every standing Committee of the Association be reviewed on a three year cycle and that all Task Forces and Special Committees be reviewed on an annual or two year cycle, as appropriate. Pursuant to ComCom's request of the EC, the membership of ComCom was augmented and now has 12 active members, both original and new members, primarily selected based on prior leadership experience within the Association. In 2012, ComCom has slated 23 Committees for a full review and 4 Committees for an update (where previous Report's recommendations remain outstanding). This Report to the EC includes a full review of 5 Committees. As indicated in last year's Report, ComCom now maintains an Excel Spreadsheet of all current Association Committees, Task Forces and Special Committees indicating, interalia, the date they were formed/disbanded or merged; the last date they were reviewed; next scheduled review; ComCom reviewer; and the status of recommendations approved by the Executive Committee.

COMMITTEE/TASK FORCE/SPECIAL COMMITTEE RECOMMENDATIONS:

Full ComCom Reports of each of the 5 entities reviewed are attached at **Appendix B** and EC members are encouraged to read the full reports for additional information and the basis for ComCom's recommendations.

COMMITTEES WHERE COMCOM RECOMMENDS SOME MANNER OF CHANGE IN STATUS:

1. UNLAWFUL PRACTICE OF LAW:

Unlawful practice of the law is an important and topical issue for the Association, its members, the legal profession generally, and the public. The action of the Executive Committee in approving the report of the Committee on Committees with respect to the UPL Committee in 2009 underscores the importance with which the subject of UPL is viewed by the Association. Moreover, the report of the Special Committee on Immigration Representation and the issues raised by the Elder Law survey serve to reinforce the need for the Association to maintain an active presence in this area. (Please see full ComCom report on UPL attached as **Appendix B pp. 10-14** for a full analysis of this Committee).

However, the relative lack of activity by the UPL Committee in recent years (notwithstanding that they did develop a legislative proposal [approved by EC in January 2012] to increase penalties for some aspects of unlawful status from misdemeanor to felony status) does raise concerns as to how best to provide that presence. Addressing the nuances of UPL in various fields and defining what constitutes unlawful practice requires active committee involvement and expertise from a variety of practice areas, such as the elder and immigration areas referenced above. Other areas, such as real property and trusts and estates were also discussed by ComCom as fields in which UPL arises often. To provide the UPL Committee with the necessary expertise, we are of the opinion that its membership should be augmented with representatives from other relevant committees and sections. To ensure that all relevant fields are covered, in advance of making appointments to the UPL Committee. the President and Executive Director are encouraged to contact pertinent sections and committees to determine the existence of UPL issues in their respective fields and to make appointments to the UPL Committee accordingly. The Committee's charge should also be revised and updated to reflect current and projected activities.

RECOMMENDATION: That the "Committee on Unlawful Practice of Law" should be continued as a standing committee, but its stated purpose should be revised to reflect the current and anticipated needs of the Association, and its membership should be augmented with representatives from other relevant committees and sections to provide expertise with regard to practice areas such as elder law, immigration, real property and trusts and estates. To ensure that all relevant fields are covered, in advance of making appointments to the UPL Committee, the President and Executive Director are encouraged to contact relevant sections and committees to determine the existence of UPL issues in their respective fields and to make appointments to the UPL Committee accordingly.

COMMITTEES WHERE COMCOM RECOMMENDS NO CHANGE IN STATUS:

2. COMMITTEE ON COURTS OF APPELLATE JURISDICTION:

The Committee on Courts of Appellate Jurisdiction is an active group that fulfills its mission statement by: providing CLE programs covering appellate practice before the state and federal courts; submitting proposals and *amicus curiae* briefs related to appellate issues to the Association's Executive Committee; developing materials to assist attorneys and pro se litigants at the appellate level; operating a Pro Bono Appeals Program with the Association's approval; and maintaining an informative website.

It should be noted that when the Committee was last evaluated by ComCom in 2008, it was recommended that the Committee's mission statement be expanded from a rather brief statement to one that was more expansive in terms of describing the breadth of activities now engaged in by the Committee. This has been done and the stated purpose as set forth in the attached full report (See, Appendix B at pp.15-18) accurately reflects the key areas of current involvement for the Committee.

In summary, the Committee is making a valuable contribution to the work of the Association, is cost effective with a modest budget, and produces excellent programs and reference materials covering a variety of appellate topics. It has a unique area of focus and does not conflict with other Association entities and should remain as a separate committee and not be merged with any other committee or section.

RECOMMENDATION: That the "Committee on Courts of Appellate Jurisdiction" continue as a standing committee.

3. COMMITTEE ON CHILDREN AND THE LAW:

The Committee on Children and the Law is fulfilling its mission statement and is making a definite, positive contribution to the Association, the field of juvenile justice, practitioners in this area and the public through its diverse activities and programs. These initiatives include: CLE programs; legislative reports on relevant bills pending in the State Legislature; an informative website; the development of excellent informational materials for practitioners; and the formulation of timely legislative proposals for consideration by the Association (such as the proposed raising of the age for juvenile delinquency from 16 to 18).

When last reviewed in 2008, ComCom recommended and the EC agreed that their mission statement should be revised and expanded to reflect in more specific detail the current activities engaged in by this group. According to the staff liaison, a subcommittee has been working on this revision, but it is yet to be completed.

As detailed in the full report (See, Appendix B at pp.19-21) the Committee coordinates well with the Family Law Section through the section liaison to the Committee, avoids conflicts regarding the development of program topics, and does joint mailings with the section for programs.

RECOMMENDATION: That the "Committee on Children and the Law" continue as a Standing Committee with the recommendation that the Committee revise and expand its mission statement to reflect in more specific detail its current activities.

4. <u>COMMITTEE ON COURT STRUCTURE AND OPERATIONS</u>:

The Committee on Court Structure and Operations over the last three years has continued to meet its stated purpose. In that regard, the Committee has submitted reports and recommendations to the Executive Committee regarding: Selection of Judges for Courts of Appeals (2009); Comments on proposed Part 151 of the Rules of the Chief Administrator of the Courts (assignment of cases/campaign contributions) (2011); and Court Re-organization/Simplification (2011). The Committee is presently finalizing its report on E-Filing of documents in State Courts. The Committee is proactive, vibrant and responsive to issues as they arise within its stated purpose as detailed in the full report (See, Appendix B at pp. 22-23).

According to Co-Chairs Hank Greenberg & Steve Younger, the mission statement was updated to read as follows:

Mission Statement: The Committee on Court Structure and Operations (the "Committee") shall review issues relating to proposals to amend the New York State Constitution regarding the structure of the state court system. It shall consider improvement of the structure of the court system and methods of judicial selection, and make appropriate recommendations relating thereto.

In light of our "Other Recommendations" (See below), we recommend that the Executive Committee adopt and approve this updated mission statement.

RECOMMENDATION: That the "Committee on Court Structure and Operations" continue as a Standing Committee and that their updated Mission Statement be accepted and adopted by the Executive Committee.

5. COMMITTEE ON LAW, YOUTH AND CITIZENSHIP:

This Committee on Law, Youth and Citizenship is unique among all committees of the Association. It is not providing a service to attorneys and it is not involved in a

substantive area of the law. Its primary purpose is to encourage and facilitate the education of citizens of this state (non-lawyers) and particularly school children through high school. It accomplishes its purpose by providing substantive education and training for social studies teachers who, in turn, give their students a better understanding of the operation of the legal system and the role of attorneys in it. The Committee also sponsors the NYS High School Mock Trial Competition and also has its own portal website linked on the NYSBA site www.lycny.org. It also hosts several other sites to fulfill its mission: www.brownvboard.net and www.statecourtwatch.org.

It should be noted that the Committee was receiving a civic education grant of \$221,000 from the federal government to provide operating monies for the Committee's mission and teaching obligations. However, that grant was discontinued in August of 2011 and the Committee is pursuing other sources of funding to bring its course offerings up to its previous level. In that regard, it is in consultation with the Bar Foundation as well as other possible funding sources. For additional information please see the full report at Appendix B pp. 24-25).

Finally, the Committee's Mission Statement needs to be updated to reflect its current name:

The [Committee on Law, Youth and Citizenship] is charged with the duty of developing, supporting and participating in education programs for the people of the State of New York on the privileges as well as the duties of citizens of the United States, including programs for the education and training of students, teachers and adults, both on its own initiative and in cooperation with the Education Department of the State of New York and other public and private agencies. "

RECOMMENDATION: That the "Committee on Law, Youth and Citizenship" continue as a Standing Committee and that its Mission Statement be updated to reflect its current name.

OTHER RECOMMENDATIONS:

1) A Committee's Mission Statement (also referred to as the Committee's Charge) is approved by the Executive Committee of the Association when the Committee/Task Force/Special Committee is formed. In the process of reviewing several committees, ComCom recommended and the Executive Committee agreed that some of the committee's Mission Statements should be updated. In certain instances it appears that the committees have updated their Mission Statements and put them on their web pages, but may not necessarily have gotten the Mission Statements approved by the

EC. It is the recommendation of ComCom that a procedure be put in place to keep track of all Committees Mission Statements to ensure that there is a central repository at the Association for all Mission Statements and that the amended or updated Mission Statements are ultimately approved by the EC.

2) Last June (2011), in our Report to the EC, we listed several recommendations that were approved by the EC but that were not yet fully addressed by the Association. According to the Association's General Counsel Kathy Baxter, all but the first bullet item have now been addressed by the Association:

There should be three entities – standing committees, special committees and task forces – defined in the Bylaws;

In order for any entity to be created, the Executive Committee should be provided with explanatory information regarding the purpose of the entity, projected costs and staffing needs, and expected duration;

Application of the Not for Profit Corporation Law (NFPCL) to the Association as it relates to the creation of entities should be addressed and, if permitted, the President should have the right to four entities if there is a pressing immediate need;

There should be mandated reports from chairs and staff liaisons as well as greater coordination among Association entities;

There should be an umbrella "coordinating entity" (similar to the ABA's Center for Professional Responsibility) for all ethics and professionalism related committees; and

The publication of House of Delegates materials on the Website that have not yet been approved should be reviewed.

We now respectfully request that the first bullet item (below) be sent to the Bylaws Committee for action and implementation:

There should be three entities – standing committees, special committees and task forces – defined in the Bylaws;

The rationale and the background of this recommendation are contained in **Appendix C** to this Report.

SUMMARY OF REQUESTED ACTION BY EXECUTIVE COMMITTEE:

- 1) Approval and adoption of the reports & recommendations of the 5 Committees reviewed in this report;
- 2) That a procedure be put in place to ensure that each Committee/Task Force/Special Committee's Mission Statement is approved by the EC and that the most recent approved Mission Statements are kept on file with the Association;
- 3) Follow up by the Executive Committee and referral to the Bylaws Committee with regard to "Other Recommendations" previously approved by the Executive Committee as outlined in Appendix C, that there should be three organizational "committee" entities defined in the bylaws: (1) Standing Committees; (2) Special Committees; and (3) Task Forces.

Respectfully submitted by the Committee on Committees:

Donald C. Doerr, Chair	Dennis R. Baldwin
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Michael I. Chakansky Maryann Saccomando Freedman

Sharon Stern Gerstman Michael A. Klein

C. Bruce Lawrence Edwina Frances Martin

Michael E. O'Connor Patricia L. R. Rodriguez

Robert T. Schofield, IV John A. Williamson, Jr.

Kathryn T. McNary, NYSBA Staff Liaison

Eileen D. Millett, Executive Committee Liaison

APPENDIX A

SPECIAL COMMITTEE ON COMMITTEES MISSION STATEMENT

The Special Committee on Committees is charged with:

- (1) developing a methodology for review of all standing and special committees and task forces, with the exception of the Executive, Nominating and Finance Committees, to assess whether they are within the scope of and relevant to the Association's purposes and its membership, can be combined with any other existing committee(s), task force or section, or otherwise modified or reconstituted, and are functioning in a manner that is beneficial to the Association and in accordance with their missions;
- (2) applying the resulting methodology to each such committee and task force, and thereafter recommending to the Association the continuation, modification or termination of each committee and task force so reviewed; and
- (3) developing guidelines for the creation of future standing and special committees and task forces.

The Special Committee on Committees shall be terminated upon completion of its work as determined by the Executive Committee.

APPENDIX B

Appendix B contains the following ComCom Final Reports:

- 1. UNLAWFUL PRACTICE OF LAW;
- 2. COMMITTEE ON COURTS OF APPELLATE JURISDICTION;
- 3. COMMITTEE ON CHILDREN AND THE LAW;
- 4. **COMMITTEE ON COURT STRUCTURE AND OPERATIONS**; and
- 5. COMMITTEE ON LAW, YOUTH AND CITIZENSHIP.

COMMITTEE ON COMMITTEES FINAL REPORT

On

COMMITTEE ON UNLAWFUL PRACTICE OF LAW

History: The Committee on Unlawful Practice of Law was established May

31, 1996 as a special committee. It was made a standing committee in

June of 2010.

Name of Reporter: John A. Williamson – (518) 482-5638; jaw 51046@aol.com

Date of Report: June 8, 2012

Current Budget: Currently unfunded as it has no recent expenditures

Committee Chair: Current Chair: Mark Solomon; (607) 277-2919;

mark@msololaw.com

Past Chair: Nancy Langer; (716) 984-5146;

nmlanger@aol.com

NYSBA Liaison: Richard Rifkin; (518) 487-5614; rrifkin@nysba.org

Exec.Comm- Liaison: Arlene Gordon-Oliver; (914) 682-2113;

ago@gordonoliverlaw.com

Committee Staffing: Richard Rifkin

Recommendation:

Unlawful practice of the law is an important and topical issue for the Association, its members, the legal profession generally, and the public. It requires active committee involvement to address its various facets and concerns. To accomplish this objective, the Committee on Unlawful Practice of Law should be continued as a standing committee, but its stated purpose should be revised to reflect the current and anticipated needs of the Association, and its membership should be augmented with representatives from other relevant committees and sections to provide expertise with regard to practice areas such as elder law, immigration, real property and trusts and estates. To ensure that all relevant fields are covered, in advance of making appointments to the UPL Committee, the President and Executive Director are encouraged to contact relevant sections and committees to determine the existence of UPL issues in their respective fields and to make appointments to the UPL Committee accordingly.

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Explanation for the Recommendation:

Mission Statement:

Dated 1996: The New York State Bar Association Committee on Unlawful Practice of Law will serve to promote the policy of the State of New York, as set forth in the Judiciary Law, to protect the public from those who would practice law without a license. To that end, the Committee will seek to monitor the unauthorized practice of law and to inform those who are charged by law with the enforcement of the UPL statutes, including the State Attorney General and local District Attorneys, of possible violations of law.

From time to time the Committee will render and publish opinions regarding circumstances which, in the Committee's view constitute the unlawful practice of law, provided such opinions are of an advisory nature and so indicate in a clear and unequivocal fashion.

The Committee will also inform members and other interested citizens as to means available to bring unlawful practice of law complaints to the attention of the proper authorities.

Website Review:

The committee has a website which sets forth its history of the past several years including activities as described in its 2006 report to the House of Delegates and its 2008 report to the Executive Committee.

Preparation of Report: In preparing this report, I received and reviewed the chair's questionnaire, the staff liaison's questionnaire, minutes of meetings held in 2006 and 2007, the committee's website, a recent survey by the Elder Law Section dealing with unlawful practice in that field, an excerpt from the current report of the Special Committee on Immigration Representation regarding unlawful practice issues in that area, as well as the Committee on Committee's report to the Executive Committee in 2009 concerning the UPL Committee. I also spoke with the committee chair, the current staff liaison and his predecessor, who also is the Association's General Counsel, and who provided staff services to the committee for a number of years.

The committee consists of 27 members, and as noted above, has had no expenditures in recent years, as it has not had any physical meetings in the past three years, only telephone conferences in connection with a legislative proposal developed in 2011 to raise penalties for some unlawful practice acts from misdemeanor to felony status.

To provide perspective regarding the committee, the following history should prove helpful. Dating back at least to the 1960s and 1970s, a Committee on Unlawful Practice of Law had been active in terms of investigating on behalf of the Attorney General allegations of unlawful practice and issuing advisory opinions as to what might or might not constitute unlawful practice in various fields.

However, U.S. Supreme Court opinions which raised the specter of treble damage antitrust actions for the organized bar involved in policing UPL caused the Association to cease such activities. The committee, having discontinued these major functions, became relatively dormant and was discharged in 1992.

The committee was subsequently reformed as a special committee in 1996, with the stated purpose as set forth above. This was based on a recommendation by the Ad Hoc Committee on Non Lawyer Practice. In June 2000, the House of Delegates approved the report of the Special Committee on the Law Governing Firm Structure and Operation (the MacCrate report) which studied issues related to multi-disciplinary practice involving lawyers participating in business entities owned or controlled by non-lawyers. One of the recommendations approved by the House called for an appropriate committee within the Association to develop statutory amendments to refine the definition of the practice of law in New York. The UPL Committee was given this assignment and presented its report defining the practice of law to the House of Delegates in 2002. However, the House recommitted the report to the committee for further review based upon concerns raised during its discussion. The matter still rests with the committee and a further report regarding this issue has not been submitted to either the Executive Committee or the House.

The committee did report to the House in April 2006, presenting a series of recommendations which were approved. These included the holding of a series of hearings around the state to gather data, and hear testimony from the public, attorneys, and non-lawyer providers of legal services; canvass local bar associations regarding the receipt and handling of UPL complaints; obtain input from Association sections regarding unauthorized practice concerns; review cases in which the Attorney General, bar associations, or district attorneys have brought charges of unauthorized practice; develop recommendations and goals to increase the role of law students and paralegals working under the supervision of attorneys; open a dialogue with the Legislature, the Attorney General, and the Administrative Board to work toward consensus on a comprehensive plan to address unauthorized practice; and, with respect to suspended or disbarred attorneys, recommend definite standards for permissible activities and guidelines to be followed.

The committee met regularly in 2007 to pursue these purposes and gather necessary background data. In 2008, the committee presented a report to the Executive Committee, in which it summarized the information gathered to that point and noted that the organized bar generally appeared to be unaware or unconcerned about the vulnerable population at risk of being taken advantage of by non-lawyer providers of legal services, particularly in the areas of immigration, bankruptcy and residential real estate transactions. The committee recommended that the statewide hearings envisioned in its 2006 report to the House be replaced with a series of forums which would allow the committee to delve more deeply into the concerns that it had uncovered in those areas. The forums would focus on the three noted practice areas, and allow the committee to bring together

appropriate individuals both within and outside the Association and develop appropriate recommendations for consideration by the Executive Committee and House of Delegates.

The UPL Committee was thereafter reviewed by the Committee on Committees, which recommended to the Executive Committee in January 2009 that the UPL Committee's mission statement be revised to reflect what was then its current activities, specifically to investigate the issues around and develop a definition of the unauthorized practice of law; work with the Legislature, the Attorney General and the Administrative Board to develop a comprehensive plan to address the unlawful practice of law; and with respect to suspended or disbarred attorneys, recommend definite standards for permissible activities and guidelines to be Noting the need for sensitivity to antitrust concerns, the report recommended that consideration be given to including in the mission statement wording that UPL activities would be conducted in compliance with all applicable antitrust laws, and current operating methods be institutionalized and made part of the structure of the UPL Committee to insure compliance with the antitrust laws. It was also recommended that consideration be given to making the UPL Committee a standing committee given the continuing need for its important work. recommendations of the Committee on Committees were approved and I was informed that the UPL Committee was designated a standing committee in 2010.

As noted above, the UPL Committee has been relatively dormant in recent years, although it did develop a legislative proposal approved by the Executive Committee in January 2012 to increase penalties for some aspects of unlawful practice from misdemeanor to felony status. The relevant bill is presently pending in the Legislature.

While the committee has otherwise been inactive, the chair and the staff liaisons agree that it does have an important role to play in the Association given the nature of concerns that exist regarding unlawful practice issues. The chair sees a definite clearinghouse function for the committee in terms of gathering relevant information and then informing and educating the Bar as well as encouraging the proper authorities to prosecute appropriate cases where warranted. He also noted that if the Legislature enacts the Association's legislation to increase penalties for some UPL activities, it will create an impetus to have a better definition of what constitutes UPL.

With regard to the definition of UPL, the recent report of the Special Committee on Immigration Representation deals in part with UPL concerns and a need to better define what are mere ministerial functions that a non-lawyer can perform as opposed to the legal guidance that should rest with attorneys. Similarly, the Elder Law Section is surveying its members regarding what should be ministerial actions and what should be the province of attorneys with respect to Medicaid matters.

The action of the Executive Committee in approving the report of the Committee on Committees with respect to the UPL Committee in 2009 underscores the importance with which the subject of UPL is viewed by the Association. Moreover, the report of the Special Committee on Immigration Representation and the issues raised by the Elder Law survey serve to reinforce the need for the NYSBA to maintain an active presence in this area.

However, the relative lack of activity by the UPL Committee in recent years does raise concerns as to how best to provide that presence. Addressing the nuances of UPL in various fields and defining what constitutes unlawful practice requires expertise from a variety of practice areas, such as the elder and immigration areas referenced above. Other areas, such as real property and trusts and estates, come to mind as well. To provide the UPL Committee with the necessary expertise, its membership should be augmented with representatives from other relevant committees and sections. To ensure that all relevant fields are covered, in advance of making appointments to the UPL Committee, the President and Executive Director are encouraged to contact pertinent sections and committees to determine the existence of UPL issues in their respective fields and to make appointments to the UPL Committee accordingly. The Committee's charge should also be revised and updated to reflect current and projected activities.

In summary, the need to address UPL in a meaningful way remains an important concern for the Association, although the UPL Committee has been relatively dormant the past few years. To remedy this, the UPL Committee should be continued as a standing committee and its membership augmented with the necessary expertise from other committees and sections, and this should be accompanied by revision of the committee's charge to reflect its current and anticipated activities.

COMMITTEE ON COMMITTEES FINAL REPORT

on

COURTS OF APPELLATE JURISDICTION

History: The Committee on Courts of Appellate Jurisdiction was established June

1,1968.

Name of Reporter: John A. Williamson – (518) 482-5638; jaw51046@aol.com

Date of Report: May 23, 2012

Current Budget: \$18,950

Committee Chair: Current Co-Chairs: Cynthia F. Feathers;

(518) 223-0750; cfeathers@appealsny.com

Denise A. Hartman;

(518) 474-6697; hartman@mhcable.com **Past Chair: Hon. Betty Weinberg Ellerin;** (212) 210-9424; Betty.ellerin@alston.com

NYSBA Liaison: Jean E. Nelson;

(518) 487-5588; jnelson@nysba.org

Exec.Comm-Liaison: Emily F. Franchina;

(516) 877-7500; eff@elderlawfg.com

Committee Staffing: Jean E. Nelson & Carol A. Reilly (Mr. Nelson's assistant)

Recommendation: That the Committee on Courts of Appellate Jurisdiction should

continue as a separate standing committee of the Association and should not be merged with any other committee or section. As explained more fully below, the committee is an active group that fulfills its mission statement by providing CLE programs covering appellate practice before the state and federal courts, submitting proposals and amicus curiae briefs related to appellate issues to the Association's Executive Committee, developing materials to assist attorneys and pro se litigants at the appellate level, operating a Pro Bono Appeals Program with the Association's approval, and maintaining an informative website. The committee's function and

purposes are unique and do not warrant combining it with any other

Association group.

Explanation for the Recommendation.

Mission Statement:

As provided by the committee's co-chairs and set forth on the website: The Committee on Courts of Appellate Jurisdiction is devoted to improving the practice of appellate law and appellate court operations in the State of New York. Toward that end the Committee will:

> Hold meetings at which appellate lawyers and judges discuss emerging issues concerning practice in the state and federal appellate courts in New York;

Submit proposals and evaluations to NYSBA Executive Committee and House of Delegates;

Conduct CLE programs and publish appellate practice aids; Sponsor other projects that may enhance appellate representation or the appellate process;

Co-sponsor programs and projects with other bar associations and with other NYSBA sections that relate to the appellate process; Propose amicus briefs for Executive Committee consideration.

Website Review:

The committee has a detailed and current website that is maintained by Jean Nelson in his capacity as staff liaison to the committee. The website contains the committee's purpose; information regarding its Pro Bono Appeals Program with links to an explanatory brochure and application; information regarding recent programs and meetings; information regarding publications, including Leaveworthy, the committee's newsletter published twice a year; links to the committee's guide to the Rules of the Appellate Divisions; the report on Criminal Leave Applications to the New York Court of Appeals (as approved by the Executive Committee); a report on the Electronic Filing of Briefs and Records in the Court of Appeals; and the roster of the committee. The committee also maintains a listsery to allow for the exchange of ideas and opinions among its members regarding various appellate topics.

Preparation of Report: In preparing this report I received and reviewed the co-chairs' questionnaire, the staff liaison's questionnaire, the minutes of recent meetings, reports as referenced above, information concerning the pro bono appeals program, the committee's website, and its roster. I also spoke separately with both co-chairs and the staff liaison.

The committee has 56 members, including 16 women and 9 judges. It has good geographic distribution in terms of upstate and downstate members, urban and suburban locations and firm size. Members are drawn from a variety of practice sectors including government as well as private practitioners from firms of various sizes. Approximately half the members participate in any given meeting. The co-chair system has worked well for the committee, and the co-chairs communicate and coordinate well with each other.

The committee meets five times per year, with four held in New York City and one in Albany. Law firm offices are utilized for meetings to minimize costs. Participation by telephone is available for those members unable to attend in person. One of the NYC meetings, in January during the Annual Meeting week, is a dinner to which appellate court judges are invited.

The committee's activities provide ample opportunity for members to participate and to take on leadership roles for various projects. For example, the committee conducts CLE programs either annually or biennially. In 2011 it conducted five Cle state appellate practice programs across the state, and in 2012 is holding two federal appellate practice programs, one upstate and one downstate. The committee also publishes Leaveworthy twice yearly covering articles about recent developments in appellate matters.

The committee has published a pamphlet, *Rules of the Appellate Divisions*, which juxtaposes in tabular form each of the Appellate Division's rules regarding motions, records, briefs, etc., as a reference for practitioners. It also has published pamphlets to guide pro se litigants through the appellate process. In 2010, with Executive Committee approval, the committee instituted a pilot pro bono appeals program to offer representation in selected family law appeals to the Appellate Division, Third Department. Last year, expansion of the program was approved to cover other fundamental civil legal services such as education, health and housing. Currently, the committee is exploring expansion of the program to the Fourth Department and the preparation of a pro se appellate manual.

The committee also evaluates and reports on appellate procedures in the various courts. In 2009 it prepared a report on criminal leave applications to the Court of Appeals which was approved by the Executive Committee, and is currently considering implementing legislation to recommend to the Executive Committee. The committee has also prepared reports regarding the electronic filing of briefs and records in the Court of Appeals and proposed Second Circuit local rules.

In preparing reports and considering matters related to the federal courts, or in developing programs, the committee coordinates well with the Commercial and Federal Litigation Section to avoid conflict or overlap.

While the committee is highly active, the staff liaison is able to handle the work of the committee in addition to his duties as Associate Director of the CLE Department. He noted that this is possible due to the establishment of a separate section services group at the staff level which has relieved him of his former section liaison responsibilities.

It should be noted that when the committee was last evaluated by the Committee on Committees in 2008, it was recommended that the committee charge be expanded from a rather brief statement to one that was more expansive in terms of describing the breadth of activities now engaged in by the committee. This has been done and the stated purpose as set forth above accurately reflects the key areas of current involvement for the committee.

In summary, the committee is making a valuable contribution to the work of the Association, is cost effective with a modest budget, and produces excellent programs and reference materials covering a variety of appellate topics. It has a unique area of focus and does not conflict with other Association groups. It should remain as a separate committee and not be merged with any other committee or section.

COMMITTEE ON COMMITTEES FINAL REPORT

on

CHILDREN AND THE LAW

History: The Committee on Children and the Law was established August 9,1993

having originally been formed in 1986 as the Special Committee on

Juvenile Justice.

Name of Reporter: John A. Williamson – (518) 482-5638; jaw51046@aol.com

Date of Report: May 18, 2012

Current Budget: \$21,000

Committee Chair: Current Chair: Prof. Merril Sobie;

(914) 422-4251; msobie@law.pace.edu **Past Chair: Hon. Edward O. Spain;** (518) 285-6159; espain@courts.state.ny.us

NYSBA Liaison: Katherine Suchocki;

(518) 487-5590; ksuchocki@nysba.org

Exec.Comm-Liaison: Oliver C. Young:

(716) 845-9327; oyoung@courts.state.ny.us

Committee Staffing: Katherine Suchocki

Recommendation:

That the Committee on Children and the Law should continue as a separate standing committee of the Association and should not be merged with any other committee or section. As a separate committee, it is fulfilling its mission statement and is making a definite, positive contribution to the Association, the field of juvenile justice, practitioners in this area and the public through its diverse activities and programs. These initiatives include CLE programs, legislative reports on relevant bills pending in the State Legislature, an informative website, the development of excellent informational materials for practitioners, and the formulation of timely legislative proposals for consideration by the Association, such as the proposed raising of the age for juvenile delinquency from 16 to 18. The committee's mission statement, as set forth below, presents in general terms the committee's purposes and activities with respect to providing guidance on existing laws and pending legislation, and the preparation of reports on issues affecting children. When last reviewed in 2008, the Committee on Committees recommended that this mission statement be revised and expanded to reflect in more specific detail the current activities engaged in by this group. According to the staff liaison, a subcommittee has been working on this revision, but it is yet to be completed. It is recommended that this be done.

Explanation for the Recommendation.

Mission Statement:

The Committee on Children and the Law is charged with the duty to study and render information and guidance on the effect of existing laws of the state and pending legislative action relating to legal issues impacting children and to the administration of juvenile justice and child welfare. The committee examines, studies and prepares reports on issues related to the rights and interests of children, particularly those involved in court proceedings

Website Review:

The committee has a website at www.nysba.org/ChildrenandtheLaw. It is maintained by Katherine Suchocki in her capacity as staff liaison. The site is current and comprehensive in terms of information and links to helpful materials for practitioners. Information is provided concerning the recipients of the Howard A. Levine Award, the members of the committee, as well as links to the 2011 version of the Standards for Attorneys Representing Children in New York, and the standards applicable to specific aspects of representing children, including juvenile delinquency proceedings, persons in need of supervision, guardianships, child protective proceedings and termination of parental rights proceedings. A link is also provided to the committee's Child Support Pamphlet.

Preparation of Report: In preparing this report, I received and reviewed the staff liaison questionnaire, the minutes of recent meetings, representative legislative reports, and the committee's report and recommendation regarding the raising of the age for juvenile delinquency. I also spoke with committee chair Merril Sobie, staff liaison Katherine Suchocki, and Executive Committee liaison Oliver Young. I also reviewed the committee's roster and the web page content.

The committee numbers 52 members plus a liaison from the Family Law Section. The committee has good geographic distribution of upstate and downstate members, urban and suburban locations, as well as firm size. It includes 34 women as well as 8 judges. Approximately half of the members are active at any given time and participate in meetings. The committee's leadership is seeking to reduce the non-participants going forward, so the committee's size might be reduced to approximately 40 when done.

The committee meets approximately 10 times per year, mainly in New York City, but also upstate and by telephone conference. The committee is highly active in the legislative area, doing approximately 10 to 15 reports per session. Given the number of bills that arise in the field, the committee focuses on those that are filed in both houses and have some likelihood of moving forward.

A key work for the committee is its updated Standards for Representing Children, which serves as a valuable reference for those representing children in a variety of proceedings.

The committee has also been coordinating with the Association's Family Court Task Force, with Merril Sobie serving as reporter for that group.

In cooperation with the Court of Appeals and the OCA, the committee is planning a program to commemorate the 50th anniversary of Family Court. This will take place on September 14, 2012 and will include a ceremony at the Court of Appeals followed by a luncheon at the Bar Center.

As noted, the committee is working with the Association leadership to secure passage of legislation to raise the age for juvenile delinquency based on a report previously prepared by the committee and approved by the Executive Committee.

Each year, the committee presents a topical program at the Annual Meeting. This year's subject was "Adoption Secrecy and Paternity Estoppel in the Age of Information." Each year in the spring, the committee presents the Howard A. Levine Award for Excellence in Juvenile Justice and Child Welfare at the Bar Center. The award recognizes individuals who have done outstanding work and have been proponents and leaders in the effort to improve New York's child welfare and juvenile justice system.

The committee is highly active concerning relevant issues and provides a positive benefit to the Association and its members that is well worth the \$21,000 annual budget. The staff liaison is able to handle the work of the committee in addition to her duties as Director of Law Practice Management. She noted that this is possible because of the establishment of a separate section services group which has relieved her of her former section liaison responsibilities.

The committee coordinates well with the Family Law Section through the section liaison to the committee, avoids conflicts regarding the development of program topics, and does joint mailings with the section for programs.

In summary, the committee makes a valuable contribution to the work of the Association, is cost effective with a modest budget, and continues to produce excellent programs and reference materials. Its area of focus is unique and it does not conflict with other Association groups. It should remain as a separate committee and not be merged with any other committee or section.

COMMITTEE ON COMMITTEES FINAL REPORT

on

COMMITTEE ON COURT STRUCTURE AND OPERATIONS

History: This Committee was formed on January 10, 2004 (Special Committee on Court

Structure and Judicial Selection). It became a standing committee on

November 1, 2008. The committee was renamed in June 2011.

Name of Reporter: Michael A. Klein (315) 671-2111 maklein@courts.state.ny.us

Date of Report: May 25, 2012

Current Budget: \$2,500

Committee Chair: Current Co-Chairs: Henry M. Greenberg appointed 7/1/2001

(518) 689-1492 henrymgreenberg@aol.com **Stephen P. Younger** appointed 7/1/2001
(212) 336-2685 spyounger@pbwt.com

NYSBA Liaison: Ron Kennedy (518) 487-5652 rkennedy@nysba.org

Exec.Comm- Liaison: Stephen P. Younger

Committee Staffing: Ron Kennedy

Recommendation: That the Committee continue as a Standing Committee.

Explanation for the Recommendation:

Mission Statement: The Committee on Court Structure and Operations (the "Committee") shall review issues relating to proposals to amend the New York State Constitution regarding the structure of the state court system. It shall consider improvement of the structure of the court system and methods of judicial selection, and make appropriate recommendations relating thereto.

PLEASE NOTE: According to the Co-Chairs Hank Greenberg & Steve Younger the mission statement was updated to the above. This was not the Mission Statement that we had on file however.

The Committee over the last three years has continued to meet its stated purpose. In that regard, the Committee has submitted reports and recommendations to the Executive Committee regarding Selection of Judges for Courts of Appeals (2009), Comments on proposed Part 151 of the Rules of the Chief Administrator of the Courts (assignment of cases/campaign

contributions) (2011), and Court Re-organization/Simplification (2011). The committee is presently finalizing its report on E-Filing of documents in State Courts. The Committee is proactive, vibrant and responsive to issues as they arise within its stated purpose.

Website Review: The website is functioning and is being utilized.

Preparation of Report: In preparing this report I received and reviewed the Chair Questionnaire and Staff Liaison Questionnaire and spoke to Committee Co-Chair Henry M. Greenberg and the NYSBA Staff Liaison (Ron Kennedy). I also reviewed the minutes, the website, the reports of the Committee and other information available to me. There are approximately 36 committee members, of which 15 regularly participate. The Committee meets as necessary; with six meetings held in 2010-2011 and 10 meetings held in 2009-2010. The meetings are held at the offices of Patterson Belknapp, 1133 Avenue of the Americas, and the Bar Center (video conference).

(Revised 5/30/2012)

COMMITTEE ON COMMITTEES FINAL REPORT

ON COMMITTEE ON LAW, YOUTH AND CITIZENSHIP

History: The Committee on Law, Youth and Citizenship, under a

former name, was formed June 1, 1974. The name of the Committee was changed from Committee on Citizenship

Education to its current name in November 2004.

Name of Reporter: Michael E. O'Connor, Esq. - (315) 476-8450

oconnor@delaneyoconnor.com

Date of Report: May 24, 2012

Current Budget: \$181,850.00

Committee Chair: Current Chair: Richard W. Bader - (518) 641-3982

richard.bader@gmail.com

Past Chair: James Hanlon - (716) 983-3689

jimhanlon2007@yahoo.com

NYSBA Liason: Eileen Gerrish - (518) 486-1748

egerrish@nysba.org

Executive Committee

Liason: Oliver Young - (716) 845-9327

oyoung@courts.state.ny.us

Recommendation: That the Committee continue operating as it is indefinitely

into the future.

This Committee is unique among all committees of NYSBA. It is not providing a service to attorneys and it is not involved in a substantive area of the law. Its primary purpose is to encourage and facilitate the education of citizens of this state (non-lawyers) and particularly school children through high school. It accomplishes its purpose by providing substantive education and training for social studies teachers who, in turn, will give their students a better understanding of the operation of the legal system and the role of attorneys in it. The Committee also sponsors the NYS High School Mock Trial Competition.

The Committee is in a state of transition. The cost of carrying out its mission is substantial. It was receiving a

civic education grant of \$221,000 from the federal government to provide operating monies for the Committee's mission and teaching obligations. That grant was discontinued in August of 2011.

The Committee is pursuing other sources of funding to bring its course offerings up to its previous level. In that regard, it is in consultation with the bar foundation as well as other possible funding sources.

Mission Statement:

The mission of the Committee is important to the bar and cannot be handled in any other committee or entity. The Mission Statement should be updated to reflect its current name:

"The [Committee on Law, Youth and Citizenship] is charged with the duty of developing, supporting and participating in education programs for the people of the State of New York on the privileges as well as the duties of citizens of the United States, including programs for the education and training of students, teachers and adults, both on its own initiative and in cooperation with the Education Department of the State of New York and other public and private agencies. "

Website Review:

The Committee has its own portal website linked on the NYSBA site www.lycny.org, and it also hosts several other sites to fill its mission: www.brownvboard.net and www.statecourtwatch.org. The Committee also utilizes the Committee's NYSBA webpage site for Committee meetings and on-going Committee work.

Preparation of Report:

I reviewed the Committee's Mission Statement, Chair & Staff Liaison Reports as well as three sets of the Committee's Minutes and ComCom's previous report from May of 2008. In addition I spoke with the Committee's Staff Liaison.

APPENDIX C

INCLUDED WITH THE "FINAL REPORT" OF THE SPECIAL COMMITTEE ON COMMITTEES, APRIL 2009

OTHER RECOMMENDATIONS TO THE EXECUTIVE COMMITTEE

I. RECOMMENDED ENTITIES AND BYLAWS AMENDMENTS

ComCom recommends that there should be three organizational "committee" entities and they should be defined in the NYSBA Bylaws to encompass the following:

- 1) **Standing Committee**: Generally, expected to be a permanent entity with ongoing purpose, subject to dissolution if that purpose ceases to exist in the future.
- 2) **Special Committee**: Created for up to three years for special reasons (such as the Special Committee on Senior Attorneys), as a prelude to interest/involvement in possibly becoming a section, or to address a new statute (*e.g.* Sarbanes-Oxley).
- 3) **Task Force**: Created for specified limited duration (three years maximum) to perform one defined task. If that develops into something more than the single project, should be reviewed for change of status (*e.g.* different designation, merger into another committee or section). Also, refer to proposed Guidelines for creation of a new entity (below).

INTERIM REPORT TO THE EXECUTIVE COMMITTEE

Miriam M. Netter, Chair

Special Committee on Committees

April 4, 2008

* * *

RECOMMENDED ENTITIES:

The NYSBA is a 501(c)(6) not for profit organization. Therefore, we researched the NFPCL statute regarding committees/formation, and learned the following with comparisons to our NYSBA Bylaws:

Under NFP 712(a) [and our bylaws], we designate an Executive Committee and other "standing Committees." Under 712(c), the bylaws may also provide for "special committees of the board" or may authorize the "board to create such special committees as may be deemed desirable." If you look at our current by-laws they only provide for Standing Committees and Special Committees. There is no specific provision for Task Forces, Special Task Forces or the like.

Note: In our case, the Board is the House of Delegates, not the Executive Committee.

Under subsection (e): "Committees, other than standing or special committees of the board, whether created by the board, or by the members, shall be committees of the corporation." Under the Practice Commentaries, "such committees can be created by the board or by the members and are considered committees of the corporation."

The bottom line is that under the NFPCL the only entities that can establish any committee (no matter what they are called) are the Board (The House of Delegates) or the Membership. It does not appear (under the

NFPCL) that the President has the right to create a "Special Committee" or other committee (Committee of the Corporation) without the ultimate approval of the House. It is up to the Executive Committee to determine how to go forward.

The SCC recommends in any case that three entities appear appropriate, to be defined in the NYSBA Bylaws:

- 1) Standing Committees: Generally, permanent committees with ongoing purpose, subject to dissolution if that purpose no longer exists in the future.
- 2) Special Committees: Created for up to three years for special reasons (such as Public Attorneys, as a prelude to interest/involvement in becoming a section).
- 3) Task Forces: Created for specified limited duration to perform one defined task. If that develops into something more than the single project, should be reviewed for change of status (e.g. different designation, merger into another committee or section).

We are therefore recommending that we need not come up with any special designation for Presidential Committees or put a limit on the number of committees established, as ALL Committees that are created (whether called Special Committees or by any other name) require the ultimate approval of the House of Delegates (the Board). However, prior to the NFPCL research, a majority of the SCC determined that the President should be able to have the right to an immediate rapid creation of en entity (up to four total) if he or she believed a pressing immediate need existed. In that case, the proposed entity would have an absolute duration of the term of the creating president, unless approved by the Executive Committee/HOD for continuation subject to the Guidelines we are recommending.