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TO: Executive Committee Members

RE: Special Committee on Discovery and Case Management in Federal Litigation
Special Committee on Immigration Representation
Special Committee on Veterans

The House of Delegates approved reports issued by the above-referenced entities last year. The Committee on Resolutions prepared recommendations for the implementation of recommendations contained in these reports.

For your information, we are providing an enclosed chart relating to the Special Committee on Discovery and Case Management in Federal Litigation, which shows our recommendations for implementation. We understand that the special committee moved forward with implementation after its report was approved, and this chart is intended to provide supplemental guidance. As a next step, we plan to send letters to the sections, committees, and other entities referenced in this chart to request their assistance with implementation.

We also are providing enclosed charts relating to the Special Committee on Immigration Representation and the Special Committee on Veterans. These charts reflect the feedback we received from sections, committees, and other entities after requesting their assistance with implementation.

We will keep you apprised of the status of these initiatives.

Sincerely,



David P. Miranda

Enclosures

New York State Bar Association
 Resolutions Committee
 Implementation of Recommendations Contained in the
 Report of the Special Committee on Discovery and Case Management in Federal Litigation

Recommendations ¹	Implementing Entities
<p>1. NYSBA should advocate for the revision of Rule 26(h) of the Federal Rules of Civil Procedure. This revision would provide guidance with respect to the <u>preservation</u> of documents, electronically stored information, and things discoverable under Rules 26 and 34.</p> <p>(a) Proposed Rule 26(h)(1) -- covers the triggering of the duty to preserve; (b) Proposed Rules 26(h)(2) and (4) -- cover the scope of the duty to preserve; and (c) Proposed Rule 26(h)(3) -- covers the termination of the duty to preserve. (2-3, 46, 47, 94).</p>	Commercial and Federal Litigation Section Dispute Resolution Section Trial Lawyers Section
<p>2. NYSBA should advocate for the revision of Rule 37(g) of the Federal Rules of Civil Procedure. This revision would provide guidance with respect to the <u>spoliation</u> of documents, electronically stored information, and things discoverable under Rules 26 and 34. The proposed language covers possible remedies and sanctions for spoliation. (3, 46, 47, 48, 94).</p>	Commercial and Federal Litigation Section Dispute Resolution Section Trial Lawyers Section
<p>3. NYSBA should advocate for the revision of Rule 16 of the Federal Rules of Civil Procedure. This revision would require an early pre-trial conference (unless the court decides otherwise). The purpose of the conference would be to facilitate the following: (a) eliminate frivolous claims and defenses; (b) amend pleadings; (c) provide for limited discovery in anticipation of Rule 12 motions; (d) schedule motions; and (e) address preservation issues. (3, 4, 53-54, 94).</p>	Commercial and Federal Litigation Section Dispute Resolution Section Trial Lawyers Section

¹ Fuller explanations of the numbered items can be found in the Report of the Special Committee on Discovery and Case Management in Federal Litigation of the New York State Bar Association at the designated pages (listed in parentheses). The report can be found at the following link: www.nysba.org/federaldiscoveryreport.

<p>4. NYSBA should advocate for the deletion of Rule 26(a)(1)(A)(ii) of the Federal Rules of Civil Procedure. This deletion would eliminate certain mandatory discovery-related disclosures and make them a discretionary matter to be considered by the court at an early pre-trial conference. (5, 58-60, 70, 73, 94).</p>	<p>Commercial and Federal Litigation Section Dispute Resolution Section Trial Lawyers Section</p>
<p>5. NYSBA should advocate for the adoption of eight guidelines proposed by the Special Committee on Discovery and Case Management in Federal Litigation. The guidelines relate to best practices for reviewing documents for privilege and protection, and for preparing a privilege log.</p> <ul style="list-style-type: none"> (a) Proposed Guideline 1 – parties should meet and confer early and set out topics for discussion at an early pre-trial conference; (b) Proposed Guideline 2 – counsel should utilize Federal Rule of Evidence 502 and agree to secure an order early in a case that the production of privileged or protected documents will not result in any waivers; (c) Proposed Guideline 3 – counsel should agree on alternative approaches to logging every privileged or protected document that would shorten the process; (d) Proposed Guideline 4 – attachments to e-mails should be identified and logged separately from the e-mails containing them; (e) Proposed Guideline 5 – counsel should keep track, in written form, of the efforts made to search for privileged or protected documents; (f) Proposed Guideline 6 – counsel should verify the accuracy and thoroughness of searches for privileged or protected documents; (g) Proposed Guideline 7 – counsel should treat a document that is partially redacted in the same manner as a document that is privileged or protected in its entirety; and (h) Proposed Guideline 8 – parties should agree that large-scale challenges to the assertion of privilege or protection should be resolved by the court conducting an <i>in camera</i> sampling, rather than a review of all contested documents. <p>(5-7, 78, 79, 82, 89, 90, 91, 92).</p>	<p>Commercial and Federal Litigation Section Dispute Resolution Section Trial Lawyers Section</p>

New York State Bar Association
Resolutions Committee

Implementation of Recommendations Contained in the Report of the Special Committee on Immigration Representation
Feedback from Implementing Entities

The following entities provided responses regarding implementation. The responses are highlighted in the column entitled “Recommendations and Responses.”

Implementing Entities	Recommendations ¹ and Responses
A. Special Committee on Immigration Representation	<p>The committee reported the following: (1) that it plans to widely distribute hard copies of “Standards of Representation of Clients in Immigration Cases” by the end of June 2013; (2) that it has recommended and will continue to recommend improvements regarding training and immigration representation to the Executive Office of Immigration Review; (3) that it supports efforts to create a pro bono docket that will improve attorneys’ access to detained clients and their files; (4) that it is partnering with governmental and other organizations to make pro se immigration materials available to detained immigrants; (5) that it is working with Albany Law School and Prisoners Legal Services of New York to provide immigration representation; and (6) that it is preparing a proposal for a NYSBA CLE program that would train attorneys to represent immigrants in criminal and family law matters.</p> <ol style="list-style-type: none"> 1. NYSBA should support the distribution and adoption of the committee’s proposed “Standards of Representation of Clients in Immigration Cases” by law firms, attorneys, and service providers throughout New York State. (5-6) 2. NYSBA should support the committee’s recommendation to the Executive Office of Immigration Review (“EOIR”) that it develop a training curriculum that all prospective accredited representatives are required to complete (with an exemption for pre-existing accredited representatives until such time as they are required to seek re-accreditation). (28)

¹ Fuller explanations of the numbered items can be found in the Final Report and Recommendations of the Special Committee on Immigration Representation at the designated pages (listed in parentheses). The report can be found at the following link: www.nysba.org/immigrationreport.

	<ol style="list-style-type: none"> 3. NYSBA should support the committee's recommendation to EOIR that it develop an exam that would test prospective representatives' understanding of the topics covered by the basic curriculum and test their legal analysis and writing skills. (28) 4. NYSBA should support the committee's recommendation to EOIR that it mandate continuing legal education-type training in immigration law on a periodic basis for all accredited representatives as a requirement for being re-accredited (currently, accredited representatives must be re-accredited every three years). (28) 5. With regard to a proposed EOIR rule relating to immigration representation, the committee should continue to monitor and develop comments for submission to EOIR during the comment period. (28) 6. NYSBA should continue a dialogue with the following entities to improve pro bono attorneys' access to detained clients and to each client's immigration file (often referred to as the "Alien" or "A" file): (1) New York State Department of Corrections and Community Supervision ("DOCCS"); (2) EOIR Institutional Removal Program immigration courts; and (3) Immigration Customs Enforcement. (46) 7. NYSBA should explore ways to educate the immigrant detained community and make available current pro se immigration materials. This should include further exploration of ways to work with the EOIR Legal Orientation Program and DOCCS to improve detained immigrants' access to materials and resources (e.g., "Know Your Rights" presentations) that are designed to assist pro se immigrants in immigration matters. NYSBA should also encourage the development of and access to pro se materials for detained and non-detained immigrants who are preparing for removal proceedings. (46) 8. NYSBA should explore alternative service delivery models for immigration representation, including the following: (1) pro bono referrals with training and mentoring support; (2) law school clinical program representation; (3) representation through immigration fellowship and mentoring programs; and (4) bar association training and mentoring programs. (47-48)
B. Committee on Standards of Attorney Conduct	<p>The committee reported that it appointed one of its members to be a liaison to the Committee on Immigration Representation with respect to the implementation of this report.</p> <ol style="list-style-type: none"> 1. NYSBA should support the distribution and adoption of the committee's proposed "Standards of Representation of Clients in Immigration Cases" by law firms, attorneys, and service providers throughout New York State. (5-6) 2. NYSBA should support the committee's recommendation to the Executive Office of Immigration

	<p>Review (“EOIR”) that it develop a training curriculum that all prospective accredited representatives are required to complete (with an exemption for pre-existing accredited representatives until such time as they are required to seek re-accreditation). (28)</p> <p>3. NYSBA should support the committee’s recommendation to EOIR that it develop an exam that would test prospective representatives’ understanding of the topics covered by the basic curriculum and test their legal analysis and writing skills. (28)</p> <p>4. NYSBA should support the committee’s recommendation to EOIR that it mandate continuing legal education-type training in immigration law on a periodic basis for all accredited representatives as a requirement for being re-accredited (currently, accredited representatives must be re-accredited every three years). (28)</p>
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The following entities are still contemplating our requests.

C. Committee on Continuing Legal Education	1. NYSBA should support the distribution and adoption of the committee's proposed "Standards of Representation of Clients in Immigration Cases" by law firms, attorneys, and service providers throughout New York State. (5-6)
D. Committee on Legal Education and Admission to the Bar	1. NYSBA should explore alternative service delivery models for immigration representation, including the following: (1) pro bono referrals with training and mentoring support; (2) law school clinical program representation; (3) representation through immigration fellowship and mentoring programs; and (4) bar association training and mentoring programs. (47-48)
E. New York State Conference of Bar Leaders	1. NYSBA should explore alternative service delivery models for immigration representation, including the following: (1) pro bono referrals with training and mentoring support; (2) law school clinical program representation; (3) representation through immigration fellowship and mentoring programs; and (4) bar association training and mentoring programs. (47-48)

New York State Bar Association
Resolutions Committee
Implementation of Recommendations Contained in the Report of the Special Committee on Veterans
Feedback from Implementing Entities

The following entity provided a response regarding implementation. The response is highlighted in the column entitled “Recommendations and Responses.”

Implementing Entities	Recommendations ¹ and Responses
A. Committee on Lawyer Referral Service	<p>The committee submitted a request to the Finance Committee to obtain funding relating to the creation of a lawyer referral panel for veterans.</p> <ol style="list-style-type: none"> 1. NYSBA should encourage those local bar associations that have existing veterans' committees to expand their membership to include all lawyers who have training and background in the substantive civil areas of law in which veterans have disproportionately more legal problems (e.g., divorce, support, bankruptcy, foreclosure, debt collection, and eviction). (8-9) 2. NYSBA should encourage those local bar associations that do not have existing veterans' committees to establish such a committee and to include not only attorneys who are veterans on such a committee, but also any lawyers who have training and background in the substantive civil areas of law in which veterans have disproportionately more legal problems (e.g., divorce, support, bankruptcy, foreclosure, debt collection, and eviction). (8-9) 3. NYSBA's Committee on Lawyer Referral Service should consider developing a panel of attorneys who would be willing to assist veterans in various civil legal needs by providing them with a free, half-hour initial consultation and, if retained, would accept the case at their usual hourly rate discounted by 25%. (9-10) It is recommended that if a Veterans' Lawyer Referral hotline is created, it should operate from Veterans Day through Memorial Day. (10) 4. NYSBA should consider establishing a dedicated 800 line to receive veterans' telephone calls and make referrals to lawyers who sign up for the veterans' Lawyer Referral and Information Service ("LRIS") initiative. (10)

¹ Fuller explanations of the numbered items can be found in the Report of the Special Committee on Veterans at the designated pages (listed in parentheses). The report can be found at the following link: www.nysba.org/veteransreport.

	<p>5. NYSBA should encourage local bar association lawyer referral programs to adopt a similar veterans' LRIS initiative. (10)</p>
B. Committee on Legal Aid	<p>The committee's co-chairs held a teleconference with leaders of the President's Committee on Access to Justice ("PCAJ") and the Pro Bono Coordinators' Network. As a result of the teleconference, the Pro Bono Department is planning to dedicate a special issue of its newsletter to veterans' pro bono issues. The committee reached out to the New York State Conference of Bar Leaders ("NYSCBL") to gather information about local bar associations' efforts to assist veterans. It plans to further discuss implementation – including additional cooperation with NYSCBL -- at a meeting in July. The committee expects to coordinate further with PCAJ after the July meeting.</p> <ol style="list-style-type: none"> 1. NYSBA should undertake efforts to raise awareness among NYSBA members about the civil legal needs of veterans and encourage interested attorneys to volunteer to serve on the committee. (9) 2. NYSBA should encourage existing pro bono programs to consider developing veteran- specific initiatives similar to those established in Albany, New York City, and Syracuse. (8-10)
C. Committee on Veterans	<p>The committee's co-chairs are planning to schedule a summer meeting to discuss implementation.</p> <ol style="list-style-type: none"> 1. NYSBA should explore and facilitate the spread of Veterans Treatment Courts throughout New York State. (2, 5) 2. NYSBA should facilitate the means by which every veteran in New York State may gain access to a Veterans Court and/or treatment tracks so that a veteran living in a jurisdiction without a veterans' court may have his/her case referred to a county where those services exist, preferably a neighboring county. (2, 5) 3. NYSBA should expand access to veterans' courts and/or tracks by amending court rules, changing existing legislation, or creating new legislation. (6) 4. NYSBA should include the proposed new Article 5-C of the Judiciary Law as part of its legislative agenda for 2013. The new Article 5-C would be entitled "Veterans Courts" and would consist of the following: (a) section 178-a ("Establishment of courts for veterans"); (b) section 178-b ("Transfer of cases to courts for veterans; how effectuated"); and (c) section 178-c ("Procedure in a court for veterans upon transfer of cases thereto"). (6) 5. NYSBA should develop and present continuing legal education programs for attorneys interested in representing veterans in civil legal matters. The programs should familiarize attorneys with military culture and psychology, their potential impact on veterans' reintegration into civilian life, and the ways military culture may affect how a veteran deals with his/her legal issues. (3, 7) 6. NYSBA should provide regular and on-going training opportunities for attorneys interested in providing civil

	<p>legal services for veterans – whether paid or pro bono. (7)</p> <p>7. NYSBA should acquaint attorneys interested in representing veterans with the complex area of laws governing veterans' benefits so that they may be sufficiently aware of potential benefit claims issues to appropriately refer veterans either to attorneys who practice in this highly specialized area of law or to veterans' organizations that offer free representation and advice on benefit issues to veterans. (8)</p> <p>8. NYSBA should undertake efforts to raise awareness among NYSBA members about the civil legal needs of veterans and encourage interested attorneys to volunteer to serve on the committee. (9)</p> <p>9. NYSBA should encourage those local bar associations that have existing veterans' committees to expand their membership to include all lawyers who have training and background in the substantive civil areas of law in which veterans have disproportionately more legal problems (e.g., divorce, support, bankruptcy, foreclosure, debt collection, and eviction). (8-9)</p> <p>10. NYSBA should encourage those local bar associations that do not have existing veterans' committees to establish such a committee and to include not only attorneys who are veterans on such a committee, but also any lawyers who have training and background in the substantive civil areas of law in which veterans have disproportionately more legal problems (e.g., divorce, support, bankruptcy, foreclosure, debt collection, and eviction). (8-9)</p> <p>11. NYSBA's Committee on Lawyer Referral Service should consider developing a panel of attorneys who would be willing to assist veterans in various civil legal needs by providing them with a free, half-hour initial consultation and, if retained, would accept the case at their usual hourly rate discounted by 25%. (9-10) It is recommended that if a Veterans' Lawyer Referral hotline is created, it should operate from Veterans Day through Memorial Day. (10)</p> <p>12. NYSBA should consider establishing a dedicated 800 line to receive veterans' telephone calls and make referrals to lawyers who sign up for the veterans' Lawyer Referral and Information Service ("LRIS") initiative. (10)</p> <p>13. NYSBA should encourage local bar association lawyer referral programs to adopt a similar veterans' LRIS initiative. (10)</p> <p>14. NYSBA should encourage existing pro bono programs to consider developing veteran-specific initiatives similar to those established in Albany, New York City, and Syracuse. (8-10)</p> <p>15. NYSBA should encourage New York law schools that do not have pro bono veterans' legal clinics to consider implementing such clinics as a means of providing law students with experience and veterans with additional resources to address their civil legal needs. (10)</p>
D. President's Committee on Access to Justice	The committee's co-chairs held a teleconference with leaders of the Committee on Legal Aid and the Pro Bono Coordinators' Network. They reached out to the New York State Conference of Bar Leaders to gather information about local bar associations' efforts to assist veterans. The committee plans to further discuss implementation at a

	<p>meeting in July.</p> <ol style="list-style-type: none">1. NYSBA should undertake efforts to raise awareness among NYSBA members about the civil legal needs of veterans and encourage interested attorneys to volunteer to serve on the committee. (9)2. NYSBA should encourage existing pro bono programs to consider developing veteran- specific initiatives similar to those established in Albany, New York City, and Syracuse. (8-10)
E. Pro Bono Coordinators' Network	<p>The committee's chair held a teleconference with leaders of the Committee on Legal Aid and the President's Committee on Access to Justice. They reached out to the New York State Conference of Bar Leaders to gather information about local bar associations' efforts to assist veterans.</p> <ol style="list-style-type: none">1. NYSBA should undertake efforts to raise awareness among NYSBA members about the civil legal needs of veterans and encourage interested attorneys to volunteer to serve on the committee. (9)2. NYSBA should encourage existing pro bono programs to consider developing veteran- specific initiatives similar to those established in Albany, New York City, and Syracuse. (8-10)

The following entities are still contemplating our requests.

F. Committee on Court Structure and Operations	<ol style="list-style-type: none"> 1. NYSBA should explore and facilitate the spread of Veterans Treatment Courts throughout New York State. (2, 5) 2. NYSBA should facilitate the means by which every veteran in New York State may gain access to a Veterans Court and/or treatment tracks so that a veteran living in a jurisdiction without a veterans' court may have his/her case referred to a county where those services exist, preferably a neighboring county. (2, 5) 3. NYSBA should expand access to veterans' courts and/or tracks by amending court rules, changing existing legislation, or creating new legislation. (6)
G. Committee on Legislative Policy	<ol style="list-style-type: none"> 1. NYSBA should expand access to veterans' courts and/or tracks by amending court rules, changing existing legislation, or creating new legislation. (6) 2. NYSBA should include the proposed new Article 5-C of the Judiciary Law as part of its legislative agenda for 2013. The new Article 5-C would be entitled "Veterans Courts" and would consist of the following: (a) section 178-a ("Establishment of courts for veterans"); (b) section 178-b ("Transfer of cases to courts for veterans; how effectuated"); and (c) section 178-c ("Procedure in a court for veterans upon transfer of cases thereto"). (6)
H. Committee on Continuing Legal Education	<ol style="list-style-type: none"> 1. NYSBA should develop and present continuing legal education programs for attorneys interested in representing veterans in civil legal matters. The programs should familiarize attorneys with military culture and psychology, their potential impact on veterans' reintegration into civilian life, and the ways military culture may affect how a veteran deals with his/her legal issues. (3, 7) 2. NYSBA should provide regular and on-going training opportunities for attorneys interested in providing civil legal services for veterans – whether paid or pro bono. (7) 3. NYSBA should acquaint attorneys interested in representing veterans with the complex area of laws governing veterans' benefits so that they may be sufficiently aware of potential benefit claims issues to appropriately refer veterans either to attorneys who practice in this highly specialized area of law or to veterans' organizations that offer free representation and advice on benefit issues to veterans. (8)
I. Finance Committee	<ol style="list-style-type: none"> 1. NYSBA should consider establishing a dedicated 800 line to receive veterans' telephone calls and make referrals to lawyers who sign up for the veterans' Lawyer Referral and Information Service ("LRIS") initiative. (10)

J. Committee on Legal Education and Admission to the Bar	1. NYSBA should encourage New York law schools that do not have pro bono veterans' legal clinics to consider implementing such clinics as a means of providing law students with experience and veterans with additional resources to address their civil legal needs. (10)
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