

CONNECTICUT BAR ASSOCIATION

**TASK FORCE ON THE
FUTURE OF THE LEGAL
PROFESSION**

FINAL REPORT

MAY 26, 2006

TABLE OF CONTENTS

I.	Introduction	1
II.	Task Force Process: Fall 2004 – Spring 2006	2
III.	Competition and the Business of Law	3
	A. Background: Trends Contributing to Increased Competition	3
	B. Particular Concerns: MJP, UPL and Solo/Small Firm Practice.....	7
	1. Multi-Jurisdictional Practice	7
	2. Unauthorized Practice of Law	10
	3. Survivability of Solo/Small Firm Practice	13
IV.	Delivery of Justice	19
	A. Legal Services Funding and IOLTA.....	19
	B. Court Technology	21
	C. Pro Se Litigants and “Unbundled” Legal Services	23
	D. Alternative Dispute Resolution.....	30
	E. Diversity in the Courts	32
V.	Professionalism and Professional Identity	36
	A. Aspirations, Lawyer Regulation and Modern Day Practice and Pressures.....	36
	B. Ethnic and Racial Diversity in the Profession	46
	C. Lawyering and Quality of Life	51
VI.	Summary of Recommendations and Conclusion	57

I. Introduction

In fall 2004, then Connecticut Bar Association (“CBA”) President Fred Ury appointed members of a CBA Task Force on the Future of the Legal Profession.¹ The Task Force’s mission statement follows:

The legal profession is under unprecedented pressure to adapt to new challenges. Competition from outside the profession, new technologies, changing ethical requirements, and the need to balance family life with the demands of work, to name just a few, are making our careers harder than ever. Certain traditions of the bar will become more difficult than ever to preserve, while lawyers will have to develop skills that were unknown to previous generations and were likely not taught in school. At the same time the bar is becoming increasingly segmented, as lawyers in some career paths live out professional lives that are almost unrecognizable to their colleagues in other career paths. These circumstances make it essential that the legal profession and the courts examine the changes ahead and plan how we will adjust to those.

The Task Force on the Future of the Legal Profession is charged with examining these challenges and considering their impact on the profession. The Task Force will, through consultations with members of the bar, the judiciary, legal educators and various members of the public, seek to identify those core values of the profession that must be preserved in the face of changing times, while also identifying those changes that are occurring within and without the legal community to meet new demands and technologies. In doing so, the Task Force will serve as an early warning system for new trends and an incubator for new ideas that will be presented to the bar and bench for their consideration. The Task Force is charged with

¹ Individuals who have served on the Task Force, in alphabetical order, are as follows: Professor Melanie Abbott; Attorney Elizabeth K. Acee (formerly Andrews); Attorney Andrea Barton Reeves; Attorney Daniel S. Blinn; Professor Jennifer G. Brown; Attorney Gregory J. Cava; Attorney Glenn E. Coe; Attorney Peter L. Costas; Attorney Mark A. Dubois; Attorney Timothy Fisher (Co-Chair); Attorney Michael A. Fitzpatrick; Honorable Holly B. Fitzsimmons; Professor Robert Gordon; Attorney Norman K. Janes; Professor Quintin Johnstone; Honorable Linda K. Lager; Professor Leslie C. Levin; Attorney Ralph J. Monaco; Honorable Lynda Munro; Attorney Kathleen L. Nastri; Attorney William H. Prout, Jr.; Attorney Sylvester L. Salcedo; Dean Brad Saxton (Co-Chair); Attorney Edward M. Sheehy; Attorney Robert R. Simpson; Attorney Eroll V. Skyers; Attorney Ernest Teitell; Attorney Frederic S. Ury and Professor Jamison V. Wilcox. The Task Force acknowledges valuable assistance and support from Chief Justice William J. Sullivan and Justice Richard N. Palmer in its work.

submitting an interim report to the House of Delegates in June 2005, and a final report in June 2006.

Consistent with this mission statement, the Task Force has prepared this report discussing its findings. Part II of the report briefly summarizes the process the Task Force used to gather information and examine the issues this report addresses. Parts III, IV and V then discuss the Task Force's observations and – where appropriate – recommendations for initiatives that might help address perceived problems in the three general subject areas the Task Force explored: (1) in Part III, **Competition and the Business of Law** (addressing multi-jurisdictional practice, the unauthorized practice of law, and the survivability of solo/small firm practices); (2) in Part IV, **Delivery of Justice** (addressing funding of legal services, court technology, pro se litigants and unbundled services, alternative dispute resolution, and diversity in the courts); and (3) in Part V, **Professionalism and Professional Identity** (addressing aspirations, lawyer regulation and modern day practice and pressures; ethnic and racial diversity in the profession; and lawyering and quality of life). Part VI concludes with a brief recapitulation of the Task Force's principal recommendations and an Action Plan for follow-up on those recommendations.

II. Task Force Process: Fall 2004 – Spring 2006

The Task Force met periodically in the fall of 2004 and in the spring of 2005 to discuss the range of topics it would examine and plan the process it would use to complete its work. As a result of those discussions, the Task Force organized itself into three subcommittees, with each subcommittee assigned principal responsibilities for examining a set of related topics:

- The subcommittee on “Competition and the Business of Law” explored the pressures on private practice from increased competition, both from within and outside the legal profession, and the stresses on traditional business models for law firms. Those issues include the “commoditization” of certain types of legal services, globalization, multi-disciplinary practice (“MDP”), multi-jurisdictional practice (“MJP”), unauthorized practice of law (“UPL”), and the impact of technology on each of these issues.
- The subcommittee on “Delivery of Justice” explored access to courts and other legal services, especially for persons of limited financial means. Those issues include affordability of legal services, court efficiency, diversity issues in court settings, *pro se* litigants, unbundled legal services, and the role that technology plays with respect to each of these issues.
- The subcommittee on “Professionalism and Professional Identity” explored the pressures on traditional features of the legal profession from technological, economic, and political changes. The subcommittee

addressed civility, competition, “core values” of the profession, Continuing Legal Education (“CLE”), the image of the profession, regulation of the profession, diversity, public service, quality of life, mentoring, client service, and – again – the impact of technology in each of these areas.

To conduct this analysis, the Task Force gathered and analyzed information from a broad range of sources, including previous studies, other publications and presentations by experts on the future of the profession. The Task Force conducted a reasonably detailed survey of the Connecticut Bar to learn more about Connecticut attorneys’ experiences with and views on these topics. (The survey results are included as Attachment 1 to this report.) The Task Force also conducted a series of meetings in fall 2005 and spring 2006 with representative groups of attorneys, again with the goal of becoming better informed about Connecticut attorneys’ experiences and views on the topics the Task Force was examining. Finally, the Task Force cooperated with the Connecticut Bar Foundation in sponsoring a major symposium on the future of the legal profession, at which national and local experts discussed current and future trends in the profession. The symposium took place at Yale Law School on October 29, 2005; the proceedings were subsequently published in the *Quinnipiac Law Review*, 24 QLR 527-607 (2006). (Copies of the symposium proceedings are available free of charge from the *Quinnipiac Law Review*.)

III. Competition and the Business of Law

This section discusses the Task Force’s observations on the increase in competition among legal providers and the changes underway in traditional business models for private practice. The section begins by exploring background, the trends contributing to increased competition in the profession. The section then examines more specifically the challenges presented by competition and possible solutions, in three particular areas: (1) multi-jurisdictional practice; (2) unauthorized practice of law; and (3) survivability of solo and small firms as business models for private practice.

A. Background: Trends Contributing to Increased Competition

The Task Force’s investigations suggested that several types of changes have significantly increased competition in the legal profession. These include:

- the increased number of American lawyers;
- the increasing complexity of legal issues, contributing to the challenges for lawyers who seek to handle a variety of matters;
- enhanced competition from non-lawyers offering legal services – such as real estate brokers, title insurance companies, accountants, commercial banks, and other financial organizations;

- technological changes – especially computerization and Internet usage – that have changed information-gathering, advice-giving, and document preparation;
- substantial market power of certain client groups such as insurance companies, which use that power to dictate fees and other features of the attorney-client relationship;
- the impact of targeted advertising on competition for clients;
- globalization and in particular competition (made possible by the Internet) from non-lawyers and persons (whether lawyers or not) in other countries; and
- increased client willingness to make decisions on the purchase of legal services significantly on the basis of cost.

A fuller discussion of some of these factors helps establish the context for the more detailed discussion later in this section of MJP, UPL, and the particular pressures on solo and small firm practices.

The Competitive Pressures on Law Practice Reflect Broad Changes in Society and Technology in the Past Generation

The Task Force’s investigations strongly suggested that some important factors driving competition in the legal profession reflect much broader cultural changes. Specifically, some general trends in consumer behavior are having important repercussions for consumers’ approach to purchase of legal services. The Task Force offers the following as examples of these trends:

- ***Consumers increasingly seek the lowest prices for most goods and services, and they more and more frequently rely on the Internet and other computer technology to obtain those goods and services.***

The Internet and “big box” stores have enabled the average American consumer to purchase many goods for low prices. That consumer success has found its way to the market for legal services, where potential clients now use the Internet to find low cost legal services and alternatives to legal services.²

- ***Consumer technology already brings services to consumers, including legal information and document preparation, without human intermediaries.***

Computer technology has contributed to consumers’ ability to handle by themselves matters that in the past would have seemed to require professional assistance. As one example, individual taxpayers have become accustomed to using such programs as TurboTax for detailed, context-specific, tax information – information that amounts to legal or accounting advice. Such computer programs provide advice for each line

² See Donat C. Marchand, Comments, 24 Quinnipiac L. Rev. 587, 588 (2006).

on the form and also offer tax planning advice. Even if they cannot match the best professionals in their advice, the programs are probably as accurate and thorough as many accountants or lawyers who do similar work, and they are certainly much cheaper.

Similarly, courts are adopting on-line filing requirements, enabling lawyers and sometimes non-lawyers to access some court filings directly.³ Many court clerks' offices offer assistance to litigants if they choose to proceed *pro se* in court. And document-preparation computer programs now provide forms and guidance for preparation of wills, leases and contracts.⁴

Lawyers argue that the provision of blank legal forms or computer programs cannot substitute for the advice and other services of competent legal counsel. But such arguments fail to impress many consumers who may find the computer programs, in particular, to be convenient, inexpensive, and apparently satisfactory. For many of these consumers – particularly those whose matters involve relatively small sums of money – a reasonable cost-benefit analysis may support the decision to forego paying for a lawyer's services.

Lawyers and others are providing substantial amounts of legal information free on the Internet, or at low cost in computer programs

Much Internet-available information is provided by licensed professionals including doctors, dentists, chiropractors, naturopaths, acupuncturists, accountants, financial advisers, bankers, mortgage brokers, real estate brokers – and lawyers. These professionals have found that providing free information and advice related to their professional areas is a good way to present themselves in a positive way and advertise their services to the public. The Internet also provides a wealth of other sources – many of which are accurate and reliable – about legal matters. The Internet thus provides a ready source of free information that many clients are using to familiarize themselves with legal issues, reducing their willingness to pay lawyers to get that familiarization.

The law's growth in complexity pushes lawyers toward specialization

³ See discussion *infra* at notes 26-32 and accompanying text.

⁴ Personal-computer-based programs have long been available to the public. See, e.g., interactive software, now usually in the form of CD-ROMs, such as “Quicken® *WillMaker Plus 2006* by Nolo,” available at <<http://www.nolo.com/product.cfm/ObjectID/6E9ED903-C9B4-42E0-9C2E235DD87A0A8A/309/>>; *LeaseWriter Plus* by Nolo, available at <<http://www.nolo.com/product.cfm/ObjectID/2339920E-A8B9-4866-A95D9C44ACF90C48/catid/450464AB-FA7C-4AAC-B374F1BCE305E4DB/111/159/>>; and *Quicken® Legal Business Pro 2006* (Pub. Date: Jul 2005; Edition: 2006; ISBN: 1-4133-0434-6; Forms: 140 forms ; Platform: Windows) (see <http://www.nolo.com/product.cfm/ObjectID/2339920E-A8B9-4866-A95D9C44ACF90C48/catid/450464AB-FA7C-4AAC-B374F1BCE305E4DB/111/159/>).

In many areas of law, increasingly complex statutes and regulations and a burgeoning body of case law present very serious challenges for the lawyer who would prefer to remain a “generalist.” More and more areas can be handled effectively and efficiently only by attorneys who do that kind of work regularly. The end of recommended fee minimums, together with increased competition, has narrowed profit margins for virtually all kinds of routine work, contributing to the pressures toward specialization.⁵

Non-lawyer commercial entities offering financially related services increasingly offer services that compete with those offered by lawyers

Lawyers also face substantial competition from non-lawyer organizations, such as firms of real estate brokers, title insurance companies, accountants, and commercial banks. An important competitive advantage of these non-lawyer competitors is their cross-selling of legal services to their regular clients.⁶

Competition from abroad is growing and is difficult to regulate

Globalization does not merely add to the complexity of the law; it adds competition to the business environment of law practice. Lawyers and non-lawyers in countries with comparatively low labor costs, such as India – in which many persons are fluent in English – are increasingly a presence on the Internet.⁷ The services they offer to American lawyers may assist domestic lawyers in providing cost-effective service to clients, but may also reduce the amount of legal work available to lawyers in Connecticut and elsewhere in the U.S.

Moreover, such services can market themselves directly to consumers and are likely to do so with increasing frequency in the future. More and more Americans have Internet access and at least some experience with it. Conceivably, anyone with access to an Internet terminal or a telephone should soon be able to pay relatively inexpensive fees by credit card and get an hour’s internet or telephone consultation with a lawyer in India or Pakistan, and receive documents with ease by email. Officials charged with regulating the legal profession may find it virtually impossible to effectively regulate direct client contact with Internet providers of legal assistance.⁸

⁵ On the increase in specialization by lawyers, see Michael H. Trotter, Profit and the Practice of Law, What’s Happening to the Legal Profession 50-51 (1997); Roger C. Cramton, Comments, 24 Quinnipiac L. Rev. 529, 531 (2006); John P. Heinz, et al., The Changing Character of Lawyer’s Work: Chicago in 1975 and 1995, 32 Law & Soc. Rev. 751, 760-65 (1998).

⁶ See C.R. Hinings et al., The Dynamics of Change in Large Accounting Firms, in David Brock et al (eds.), Restructuring the Professional Organization 131 at 136 (1999); Barry C. Melancon, In Support of CPA Financial Planners, J. Accting. 30 (Feb. 2005).

⁷ On outsourcing abroad of legal work, see Helen Costas, Briefed in Bangalore, Amer. Lawyer 98 (Nov. 2004); Daniel Brook, Made in India, Legal Affairs 10 (May-June 2005). A selected bibliography from the ABA Law Practice Management section, “Outsourcing,” by Tom Mighell (April 2006), is at <<http://www.abanet.org/lpm/lpt/articles/slc04061.shtml>>.

⁸ Foreign attorneys’ direct contact with American clients likely violates existing unauthorized practice of law rules. But attempts to enforce jurisdiction over persons outside Connecticut -- let alone in another

B. Particular Concerns: MJP, UPL and Solo/Small Firm Practice

Many of the factors described above play especially significant roles for three topics that warrant more particularized treatment here: (1) Multi-jurisdictional Practice (MJP); (2) Unauthorized Practice Laws (UPL); and (3) the survivability of small firm and solo practices.

1. Multi-Jurisdictional Practice

Multi-jurisdictional practice (MJP) is the provision of legal services by lawyers in jurisdictions in which they have not been admitted to practice. It includes practitioners not admitted in Connecticut practicing in Connecticut and practitioners admitted in Connecticut practicing in out-of-state jurisdictions where they are not admitted. MJP is now having and in the future will have substantial impact on lawyers practicing in Connecticut.⁹ The MJP issue is presented in at least the following circumstances:

- Transactional lawyers engaged in matters involving clients and client affairs in other states and countries.
- Activity of corporate counsel who are not admitted to practice in Connecticut but work in corporations headquartered in Connecticut.
- Lawyers who handle mediations and arbitrations in states where they are not licensed, without prior court permission in those jurisdictions.
- International practice, governed by the provisions of the General Agreement on Trade Services (GATS).
- Provision of legal services by foreign legal counsel.

Current status of regulation

- State and federal courts in Connecticut currently permit attorneys from other states to appear in individual cases by admission *pro hac vice*. Admission in federal courts has been granted routinely; some state courts have begun to be more restrictive, with some judges requiring a compelling reason for an out-of-state attorney to try cases in Connecticut.
- The CBA Committee on Unauthorized Practice has issued an opinion that house counsel are engaged in the practice of law, but there has been no real pressure to take action against house counsel who are not admitted in Connecticut. In 1999,

country -- confront enormous practical obstacles, as Mark A. Dubois, the Connecticut state Judicial Branch's chief disciplinary counsel, has acknowledged. (Task Force "Town Meeting," Bridgeport, CT, March 8, 2006.)

⁹ See "Client Representation in the 21st Century," Report of the ABA Commission on Multi-jurisdictional Practice (ABA Center for Professional Responsibility 2002).

the CBA created a committee on in-house counsel; the committee drafted a detailed rule for certification of house counsel who are admitted in other jurisdictions. In 2000, adoption of this rule was recommended overwhelmingly by the CBA House of Delegates, but the Superior Court Rules Committee has not at this point recommended adoption of the rule.

- In 2003, the ABA adopted amended Model Rules of Professional Conduct 5.5 and 8.5, providing safe harbors from unauthorized practice of law statutes for those who engage in temporary legal activities in a state in which they are not admitted.¹⁰ Since that time, twenty-six states have adopted these modified rules or versions similar to them, providing some protection for Connecticut practitioners who represent clients in those states.¹¹
- In 2000, the Connecticut Bar Association established a Task Force on Multi-jurisdictional Practice which ultimately recommended adoption of modified Model Rules 5.5 and 8.5. In 2003, the CBA House of Delegates declined to recommend adoption of the modified version of these rules, largely due to the opposition of the Real Property Section. Debate has continued since that time between the opponents and proponents of MJP rules.

In early 2006, the proposed rules as further modified by a reconstituted CBA MJP Task Force were presented at a meeting of the House of Delegates and were discussed at length. As a result of the discussions, which also considered the problem of policing and enforcing unauthorized practice rules and statutes, the Task Force further revised Rule 5.5 to incorporate the CBA House Counsel Rule as it had been modified by the then Chair of the Superior Court Rules Committee. To facilitate enforcement, the CBA Unauthorized Practice of Law Committee also created a definition of the practice of law which is incorporated by reference in Section 5.5(a). Lastly, a new section 5.5(e) was added, which provides that the out-of-state attorney must file a short report as to each separate matter and a report of the closing of that matter.

These proposed rules were approved by the CBA House of Delegates at a meeting on May 15, 2006.¹²

¹⁰ Copies of [ABA](http://www.abanet.org/cpr/mrpc/model_rules.html) Model Rules 5.5 and 8.5 are available on the ABA website at http://www.abanet.org/cpr/mrpc/model_rules.html.

¹¹ The twenty-six states are Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Iowa, Louisiana, Maryland, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, and Wyoming. See http://www.abanet.org/cpr/jclr/5_5_quick_guide.pdf. (Accessed May 22, 2006) (Noting status of states' adoptions of rules.)

¹² Copies of the rules as approved by the House of Delegates at its May 15, 2006 meeting – including the modified versions of Model Rules 5.5 and 8.5 – are included as Attachment 2 to this report. All attachments are available on the Connecticut Bar Association's website, <http://www.ctbar.org/>. Readers requiring assistance retrieving copies of attachments may call the CBA administrative offices at 860-223-4400.

- As to GATS, the principal activity is currently at the national level, but Connecticut and other states may find that treaty obligations will ultimately result in increased temporary activity in Connecticut by foreign-national practitioners.
- As to lawyers who are admitted in foreign countries, Connecticut has adopted rules which allow foreign-national legal specialists to provide advice and services involving the law of their home countries.¹³

Addressing the Issues: Possible Approaches

The Task Force’s investigations suggested that – for now – the two most likely approaches for addressing these issues are (1) preserving the status quo, or (2) adopting amended Model Rules of Professional Conduct 5.5 and 8.5.

❖ Preserve status quo

Opponents of the adoption of MJP rules in Connecticut cite the competitive impact of their adoption, particularly on solo practitioners and small firms. They argue that allowing lawyers from other states to practice here would result in unfair competition from out-of-state lawyers from other jurisdictions in which overhead costs are lower than they are in Connecticut. Opponents also express concerns that the salutary purposes of licensure -- *i.e.*, the protection against unprofessional and uninformed advice and conduct -- could be defeated by the adoption of MJP rules.

❖ Adoption of amended Model Rules of Professional Conduct 5.5 and 8.5

Proponents of the adoption of the amended rules argue that clients reasonably request their lawyers to assist them in matters across state lines in circumstances where the lawyer’s familiarity with the client’s needs outweighs any disadvantage that lawyer may have by not being admitted in the jurisdiction where the client seeks his or her services. Proponents also argue that existing unauthorized practice statutes and lax enforcement are ineffective in precluding practice within the state by out-of-state lawyers. These factors have led to a situation where the nominal rule is violated on a constant basis, leading to risks of uneven and potentially unfair enforcement. Proponents maintain that MJP rules would enable the state to discipline out-of-state lawyers for sub-standard work and other violations of the Rules of Professional Conduct, by assuring that lawyers who practice in Connecticut meet Connecticut standards of practice. Proponents also argue that the national trend is towards adoption of MJP

¹³ See Practice Book §2-17 *et seq.* <http://www.jud.state.ct.us/Publications/PracticeBook/PB1.pdf> (accessed May 30, 2006).

rules and that Connecticut's lawyers will be at a competitive disadvantage if Connecticut falls within a minority of states without MJP rules.

Task Force Recommendations

The Task Force concludes that the advantages of the proposed new MJP approaches outweigh the potential disadvantages discussed by those who would prefer to preserve the status quo.¹⁴ The Task Force thus recommends the following action items:

- **ACTION ITEM: Connecticut should implement Modified Model Rules 5.5 and 8.5 as approved by the House of Delegates at its May 15, 2006 meeting.**
- **ACTION ITEM: The CBA should monitor adherence of the United States to the GATS Treaty, which will likely require at least some modification of the rules on admission to practice within Connecticut to prevent discrimination against foreign lawyers (extra-national) protected by the provisions of the treaty.**

2. Unauthorized Practice of Law

Even resolution of MJP will not address all issues related to encroachment into legal services by persons not licensed to practice law in Connecticut. A closely-related issue that will remain even after the MJP issue is resolved is the extent – if any – to which non-lawyers should be permitted to provide legal services to others.¹⁵ Legal services include principally legal advice, drafting of legal instruments, and representation of parties before courts, administrative tribunals and, in many cases, before arbitrators or mediators.¹⁶

Non-lawyers, including those who call themselves “notarios,” are providing legal services to clients for many types of problems, and in most instances the clients pay the non-lawyers for providing those legal services. In terms of volume and significance of their services, the more important non-lawyer occupational groups providing legal services to others in Connecticut include accountants, real estate brokers, commercial banks, business consultants, and non-lawyers providing alternative dispute resolution services to others. The legal services provided clients by non-lawyers in Connecticut fall

¹⁴ In weighing possible approaches on the MJP issue, the Task Force members found significant the results of the Task Force survey, in which 51 % of respondents favored and 17 % opposed adoption of rules authorizing and governing MJP. (Thirty-one % were unsure.)

¹⁵ Consistent with this focus, the discussion in this section of the “unauthorized practice” of law will refer to the provision of legal services by non-lawyers, not to the provision of legal services within a jurisdiction by lawyers not licensed to practice in that jurisdiction.

¹⁶ For background information on unauthorized practice of law in Connecticut, see Johnstone, Quintin, *Connecticut Unauthorized Practice Laws and Some Options for Their Reform*, 36 Connecticut Law Review 303 (2004).

into three categories: (1) those which are clearly permitted by the laws governing unauthorized practice; (2) those which are clearly prohibited by the laws governing unauthorized practice; and (3) those for which permission under the laws governing unauthorized practice is unclear.

Important organizations within the legal profession can be influential forces in achieving changes in unauthorized practice laws and their enforcement. The state bar association and the law schools, for example, can be particularly useful in drafting and advocating changes that may be needed in unauthorized practice laws, including changes in relevant court rules. The state bar association and the law schools can also be very helpful in increasing knowledge and understanding by the government, the bar and the public as to the extent, risks and trends in unauthorized practice of law by non-lawyers.

Addressing the Issues: Possible Approaches

The Task Force identified several alternatives that bar leaders might use to address the issue of UPL in Connecticut.

❖ Alternatives for changes in the laws governing unauthorized practice

Three general alternatives are available:¹⁷

- comprehensive and detailed changes in the law to increase clarity and consistency of purpose
- narrow changes pertaining to but one type of non-lawyer provider, or one limited type of service
- no changes

❖ Alternatives for enhancing enforcement of unauthorized practice laws

The Task Force's investigation suggested that current enforcement of unauthorized practice laws is quite limited.¹⁸ Alternatives for enhanced enforcement might include:

- undertaking legal proceedings to enjoin or sanction violators
- threatening use of legal proceedings
- notifying non-lawyer legal service providers more consistently that they are in violation

¹⁷ These alternatives can likely be implemented using state laws, as most laws pertaining to unauthorized law practice are state laws. Some applicable laws, however, are federal; further federal intervention may be increasingly likely if state laws and enforcement approaches continue to fail to address perceived problems.

¹⁸ Comments received by the Task Force suggested that current enforcement may be limited at least in part because unauthorized practice violations are relatively minor infractions. Some commentators suggested that making violations a more serious offense would enhance the likelihood that enforcement authorities would deem these offenses important enough to merit prosecution.

Those favoring less-restrictive approaches to UPL tend to emphasize the potential pro-consumer benefits of more liberal rules. They note that many non-lawyers providing legal services to others can and do provide services of adequate quality at a lower price than lawyers will charge for the same service, and often with less delay.

Similarly, proponents of less-restrictive approaches argue that lawyers have failed to provide legal services to a large percentage of those who need such services but cannot afford them, and non-lawyers willing to fill this void should thus be permitted to do so even if the quality of services in some instances might be inferior to the quality that lawyer performance would ensure.

Those favoring more-restrictive approaches to UPL tend to emphasize the dangers to consumers (and sometimes, to lawyers' livelihoods) if more legal services are provided by non-lawyers. They argue that lawyers are more competent, by virtue of their training, and that well-developed rules of ethics – and enforcement procedures for grievable conduct – provide a level of quality assurance that cannot easily be found outside of the community of licensed attorneys.

Task Force Recommendations

Based upon its investigations, the Task Force concludes that the most important feature of effective UPL rules may be clear line-drawing – unambiguous identification of those services that are legal services and therefore should be provided only by lawyers. The Task Force also concludes that those charged with enforcing unauthorized practice laws should give priority in enforcement to those UPL violations that appear to have the most potential for harming consumers' interests. (The Task Force contrasts these types of UPL violations with those which appear to present little risk of harm to consumers but still provoke attorneys' opposition, principally because of their potential to siphon off clients' fees that might otherwise go to attorneys.)

In addition to refining unauthorized practice rules and increasing enforcement, the legal profession must remain attentive to the challenge of competition by non-lawyers. The profession needs to better understand why potential clients seek out non-lawyers for services and to find ways to make licensed legal services attractive and available to those potential clients who otherwise might turn to non-lawyers for assistance.

To address these issues, the Task Force recommends the following steps:

- **The CBA should encourage appropriate entities (e.g., law schools, the Connecticut Bar Foundation's James W. Cooper Fellows program, and other existing committees and sections) to conduct thorough and reliable empirical studies of problems involving unauthorized practice of law. Possible studies of this kind include the following:**
 - a study of the extent to which certain non-lawyer firms are providing legal services to others in Connecticut that eventually turn out to be unacceptably

risky to those being served, because of the incompetence of the service provider. (Examples might include legal services of real estate brokers or those of non-lawyer document preparation firms.)

- a study of why very large law firms have not emerged, with many branches, that could provide fast and cheap legal services to clients with relatively routine legal service needs, much as non-lawyer mass retail marketing operations like H&R Block, Walgreens and Wal-Mart provide inexpensive goods and services to large numbers of consumers.¹⁹ The successful operation of such massive law firms might largely deter non-law firms from serving the routine legal services market.
- a study of how Connecticut law firms have lost market share to non-lawyers and can halt or reverse that trend through advertising and other marketing efforts and thereby compete more effectively with non-lawyers, whether the non-lawyers are providing legal services to clients legally or illegally.

- **ACTION ITEM: Connecticut should implement the new court rule, drafted by the CBA Unauthorized Practice Committee, that defines the practice of law in some detail, as approved by the House of Delegates at its May 15, 2006 meeting.**²⁰

3. Survivability of Solo/Small Firm Practice

Changes in the business and legal aspects of private law practice are presenting special challenges for small firm practices. These challenges appear serious enough to jeopardize the future viability of small firms that attempt to pursue traditional approaches to small firm practice.

Lawyers in small firms (defined here as firms of 1-5 lawyers) may suffer the most – more than lawyers in larger firms and lawyers not in private practice – from the difficulties of being generalists in a legal world of ever-increasing specialization, and from being lawyers in a commercial world in which non-lawyers offer competing services. Small firm and solo lawyers are increasingly struggling to find business models that assure a steady revenue stream, while at the same time their costs of doing business continue to rise.

The Task Force is concerned about these developments, as roughly half of all lawyers in private practice are in firms of this size. The Task Force's investigations

¹⁹ The experiences in the 1980's and 1990's of Hyatt Legal Services and the Law Offices of Jacoby and Meyers might provide interesting case studies for an exploration of the challenges large law firms would confront in attempting to use such a business model.

²⁰ A copy of the proposed rule is attached as Attachment 2. The new rule also lists those actions that may constitute the practice of law but may nonetheless be performed by non-lawyers. The Task Force concludes that the rule would eliminate much of the uncertainty in Connecticut's unauthorized practice law and would also increase awareness of the more essential terms of that law by including them in one readily available rule.

suggested a number of factors contributing to the competitive challenges facing small, general practice firms.

The Problems of Adjusting to this New World of Competition are Especially Difficult for Small Law Firms

Small firms probably disproportionately serve clients with smaller budgets for legal services.

Legal services in America are becoming increasingly concentrated in services to large organizations. Families and individuals, more and more, turn to attorneys only at times of crisis (such as criminal matters) or situations where transactions tend to generate funds to cover legal fees (real estate closings, personal injury claims, and estate administration, for example).

Small firms and solo practitioners provide the lion's share of legal services to families and individuals. Especially significant for small law firms, even more than for larger law firms, is the fact that for most of their clients (individuals and businesses of modest means), the incentive to simply forego seeing a lawyer may be greater than it is for other would-be legal clients. Although large business clients increasingly scrutinize lawyers' charges, lawyers' work is clearly necessary for a business of large size, the client often understands that the attorney's professional services add value, and lawyers' fees are part of the cost of doing business. For the clients of many small law firms, by contrast, a lawyer's fee is harder to pay and is often not a tax-deductible business expense.

While in the past, the lawyer was seen as necessary in many circumstances, many clients find that they now can get relevant legal information from the Internet or from an inexpensive computer program at a local store. If lay persons are mistaken about the risks of filling in one-size-fits-all legal forms, they may not know that for many years, if ever. The lawyer is no longer the only comprehensible source of access to legal information or legal paperwork (such as legal forms).

"General Practice" has become more difficult for small law firms.

Thirty years ago, most small firms could describe themselves as involved in the "general practice" of law, for they could handle most kinds of legal work that an individual or a small business might need. A small firm typically might have included in its practice, in an economically profitable way, any or all of the following: personal injury litigation (for plaintiff, defendant, or both), commercial litigation, divorces and other matrimonial litigation, planning and zoning counseling and litigation, consumer bankruptcies, debt collections, will drafting and estate planning, employment matters, probate of estates, real estate foreclosures, real estate sales, real estate refinancings, and the incorporation of small businesses – not to mention a miscellany of other kinds of legal work. Such work was the bread and butter work of small firms. Only projects of a size that obviously required many hands or unusually specialized knowledge (patent

work and various kinds of tax work, for example) were commonly thought to be beyond the capabilities of an experienced legal generalist.

But specialization has become increasingly a fact of life, with the result that the small law practice of today is very different from its predecessor of thirty years ago. Today, small firms may find it increasingly difficult to handle the full breadth of legal work needed by most clients in an economically sensible way. Types of work that have become increasingly difficult for small firms to build general practices upon include at least the following:

- *“Routine” work involving small sums.* Increasingly many “routine” types of work cannot economically be handled by most practitioners, and instead are handled by a small number of law firms that have set themselves up to handle these matters efficiently (often with paralegals doing most of the work, with limited attorney supervision). Examples are real estate closings, small consumer bankruptcies, collection of small debts, and most real estate foreclosures. For some services, such as corporate filings, non-lawyers also offer competition.
- *Personal injury work.* Routine personal injury work has increasingly moved to firms that advertise. While in past decades these cases tended to come to small firms through personal referral networks, many clients now respond to media advertising to choose a personal injury attorney. On the defense side, insurance carriers have taken advantage of their market power, and increasingly oversee litigation closely and handle much of it on an in-house basis, with less professional independence and lower compensation than in the past for most counsel, both outside and in-house.
- *Increasing complexity of certain types of work.* Other kinds of work have become too complex for most non-specialist attorneys to handle competently. Examples are tax-sensitive estate planning, elder law, matrimonial litigation, and employment law. Medical malpractice litigation has become more complex and expensive and more of a specialty than in earlier years, with special requirements to be met before an action can be filed. Many small firms cannot bear the financial burden of carrying a complex case, especially one that requires expert testimony, to trial.
- *Work from which lawyers are increasingly excluded.* With regard to still other formerly common kinds of work, lawyers have less and less place at the table. Residential real estate refinancings, for example, are now commonly done without the aid of a lawyer.

Addressing the Issues: Possible Approaches

The Task Force’s investigations suggested that lawyers whose small practices are likely to survive and prosper are those who either (1) handle routine tasks with great efficiency, resulting from specialization, or (2) satisfy complex needs that computer

programs, non-lawyer document preparers, foreign lawyers operating over the Internet, and court clerks assisting *pro se* litigants cannot address. Either way, the lawyers will need to consciously develop business plans in which they use their resources cost-efficiently, rather than scatter resources by trying to take on too many kinds of tasks.

❖ **The Task Force concludes that small firms and solos – in conjunction with developing effective business plans geared to their specific circumstances – may need to take some or all of the following steps to remain viable:**

- “Mechanize” the practice to minimize lawyer and other staff time on tasks, so as to become cost-competitive and able to earn net income on small fees.
- Continue to explore ways – as most small firms are already doing – to cut costs to a minimum, such as by working from home, or by using shared staff or space. Some successful solos have no staff, and instead rely on automated voice mail and other systems to monitor client communications.
- Become a boutique by developing a recognized skill in a particular practice area and generating a referral stream from lawyers and other professionals who are likely to meet potential clients who have that need.
- Identify a particular geographic or demographic niche where there are few lawyers meeting the client population need. Frequently, solo or small firms succeed as generalists in rural areas or in ethnic communities where the rest of the bar does not have the language, cultural, or other skills needed to be accessible to the client population.

The Task Force also identified some concrete initiatives that might be undertaken by institutions concerned with ensuring the viability of small firm practices in the future. (These institutions include bar associations, the legislature, the judiciary, law schools, and other legal institutions.) Many of these initiatives will be helpful to lawyers in all types of practices, but the Task Force concludes that they may be especially important for solo and small firm practitioners.

❖ ***Education and Mentoring***

- More law school courses and more development of continuing legal education for study of the business side of law practice, including appropriate uses of technology.
- Continuing legal education to encourage appropriate specialization, by stressing issues presented in particular specialized kinds of practice.
- Mentoring that reflects the new competitive realities and encourages new lawyers, in particular, to recognize that professionalism includes the business value of efficiency, even while it requires due attention to traditional professional values.

❖ ***Specialization, Coordination, and Referral***

- Steps to encourage specialization, as by supporting measures that enhance the value of specialist certifications.
- “Unbundled legal services” rules that enable lawyers to have other lawyers take on limited aspects of a client’s work without assuming responsibility for the full scope of the client’s needs on the matter. As discussed later in this Report, the unbundling of legal services seems to be attractive to would-be clients, and might enable lawyers to take on those tasks that they personally handle best.
- C.B.A.-established lawyer-referral service that goes beyond the traditional list by geographical area. Such a service would indicate areas of specialization, certifications, and other information of legitimate interest to consumers.
- Establishment of increased numbers of formal referral networks among small firms, and also between small firms and large firms.
- Other measures to encourage and facilitate lawyers’ working cooperatively, mentoring, and referring work without being members of the same firm:
 - ◆ Use of listservs would enable lawyers to share ideas and obtain informal help quickly and efficiently.
 - ◆ Further encouragement may be needed for cooperative physical working arrangements such as office-sharing, perhaps including sharing of “virtual” office tools.
 - ◆ Ethical rules regarding conflicts and confidentiality may need to be rethought to encourage communication within the bar that respects core values while recognizing the benefits to clients of lawyers’ continual self-improvement through sharing of information and experience.

❖ ***Enhancing Lawyers’ Efficiency***

- Bar association initiatives to evaluate and recommend specific technological products and services to the bar, and perhaps even to serve as negotiating or buying services.²¹
- Encouragement of the establishment of businesses to provide more or less comprehensive “back-office” services to lawyers. Such businesses might use only those technological tools that are highly rated by the state bar association. The bar association might certify the businesses that do so.
- Enhanced pressure by the organized bar and others for the courts to increase their efficiency in ways that will reduce the times expended by lawyers in litigation matters. Much has been accomplished on the civil side with the elimination of short calendars with routine oral arguments or personal appearances. The same is not entirely true on the criminal side, where the courts may be able to save costs for private defense counsel by

²¹ The American Bar Association already makes much of this type of information available through publication of its annual technology surveys. See <http://www.abanet.org/tech/ltrc/survstat.html>.

reducing the number of personal appearances required before disposition of cases.

❖ ***Public Education and Protective Legislation***

- Establishment and encouragement of web sites and other types of publications in which bar associations and law firms provide legal information. Such sites both inform the public and indicate ways in which lawyers can assist them.²²
- New legislation that both protects the public and encourages consultation with an attorney in appropriate situations may warrant consideration. For example, some states allow three days to rescind a residential real estate contract, and require a contract to notify the parties of this fact. The effect (and apparent purpose) is to let buyers and sellers have a lawyer counsel them before the deal becomes final. Such legislation might be an appropriate way to protect persons dealing in real estate transactions while educating them about the benefits that legal consultation can offer them. Such laws might extend into other areas to protect consumers.
- Consideration of clarifying (and, if need be, changing) rules on multi-disciplinary practice to allow lawyers to serve as coordinators and overseers of clients' law-related needs involving their finances, insurance, real property, etc. Today, others not bound by ethical rules that are as client-protective as those of lawyers are filling these coordinating roles. Perhaps part of the future of the small-firm lawyer can be to become, as in earlier years, the trusted advisor to whom a client goes first – but, as a large part of this work, to oversee some of the work of others who can provide specialized services, both legal and non-legal, without having full responsibility for the quality of the work of these others.

Task Force Recommendations

- **ACTION ITEM: The CBA should reconstitute its section on Small Firm and Solo Practice and charge it with following up on the recommendations included in this section of this report, perhaps planning some programs in cooperation with the James W. Cooper Fellows of the Connecticut Bar Foundation.**

²² An example of this type of public education is presented by CATIC's radio spots and billboards, reminding consumers of how attorneys can protect consumers' interests in real estate transactions.

IV. Delivery of Justice

In examining issues relating to the delivery of justice in Connecticut, the Task Force focused its investigations on five sub-topics: (A) Legal Services Funding and IOLTA; (B) Court Technology; (C) Pro Se Litigants and Unbundled Legal Services; (D) Alternative Dispute Resolution; and (E) Diversity in the Courts.

A. Legal Services Funding and IOLTA

Connecticut has a tightly integrated network of legal aid providers with a shared mission to address the civil legal needs of the state's low income population. Five separate non-profit organizations make up the core network. Three of the programs provide a wide range of legal services to clients in distinct geographic regions: Connecticut Legal Services, Inc. (CLS), New Haven Legal Assistance Association, Inc. (NHLAA) and Greater Hartford Legal Aid, Inc. (GHLA). Telephone intake, analysis, advice and brief service for the entire state is provided by Statewide Legal Services of Connecticut, Inc. (SLS); and legislative representation and back-up support for the other organizations is provided by Legal Assistance Resource Center of Connecticut, Inc. (LARCC). In addition a number of smaller 'boutique' organizations provide services to specialized client groups and a number of other organizations provide non-legal advocacy services.

Funding to support these organizations has always been inadequate to meet the need. Two recent studies provide quantification of the extent of the service need:

- In 2003 the Connecticut Bar Foundation released its Legal Needs Survey, documenting the "dauntingly large" need for legal services among low-income households in Connecticut.²³ The survey found that households eligible for services from legal aid agencies had an average of 2.7 civil law problems per year, totaling 289,000 problems per year, of which 90% received no attention from a lawyer.²⁴
- Documentation of the need on a national level comes from a recently released study by the Legal Services Corporation. In a survey of its grantees across the country, LSC reported that 50% of applicants for legal assistance are turned away for lack of resources. The report also calculated that the present national cadre of legal services attorneys yields a ratio of one legal services attorney for every 6,861 low income persons in the country. (This statistic compares unfavorably with the number of lawyers available to serve the needs of the general public – data show that the United States has one lawyer for every 525 persons in the general population.)

²³ "Statement of the James W. Cooper Fellows of the Connecticut Bar Foundation Upon Release of Its 2003 Legal Needs Survey Report," available at http://cbf.ctbar.org/index_files/Page523.htm.

²⁴ *Id.*

The Connecticut legal aid network is funded by a wide range of public and private sources. The core network programs operate on \$13.4 million each year. The most recent significant addition to legal aid funding comes from the State of Connecticut, which for the 2006-2007 fiscal year has appropriated \$1 million in direct funding.

The largest single funding source continues to be Interest on Lawyer's Trust Accounts (IOLTA). Its administrator, the Connecticut Bar Foundation, annually makes grants in excess of \$9 million, which historically represents 65 % to 70 % of total Connecticut legal aid funding. Having a single funding source of such significance is not without its risks. Because the amount of money generated by IOLTA accounts is dependent on both interest rates paid by banks and the amount of money flowing through lawyers' trustee accounts, the annual income generated fluctuates.

Meanwhile there continues to be significant disparity among Connecticut banks in the rates they pay on IOLTA accounts, and the rates paid by the vast majority of banks are distressingly low. A number of banks are currently offering rates as low as .10%, despite the general rise in interest rates in recent months; and the "non-weighted" average rate paid by participating banks is currently just under .5%. Rule 1.15(d)(4) of the Rules of Professional Conduct currently instructs lawyers only that "[t]he rate of interest payable on any interest-bearing trust account shall not be less than the rate paid by the depository institution to other depositors." It also provides that "[h]igher rates offered by the institution to customers whose deposits meet certain time and/or amount requirements, such as those offered in certificates of deposit, may be obtained by a lawyer or law firm on some or all of the deposit funds, so long as there is no impairment of the right to withdraw or transfer principal immediately." The rule thus currently provides little guidance to banks or lawyers as to the rate that should be paid, contributing to the wide range of rates that banks are currently paying on IOLTA funds. Nor does the rule provide an enforcement mechanism or process by which interested parties can ascertain what the appropriate rate is. A measure has been presented to the Judicial Branch to amend Rule 1.15 to fill in these gaps by requiring lawyers who hold IOLTA accounts to place them only at banks that pay rates on IOLTA balances comparable to the rates they pay on comparable accounts to other customers.²⁵ This amendment would end any disparate treatment of IOLTA accounts, while leveling the playing field among banks by ending any disadvantage accruing to those that give equal treatment to IOLTA and non-IOLTA accounts. In doing so the amendment would greatly bolster this crucial revenue stream for legal services. The Task Force recommends that this rules amendment be adopted.

Even if the proposed change in Rule 1.15 is implemented, the long term future of IOLTA remains a concern. In Connecticut much of the IOLTA income is generated by clients' funds held by lawyers representing clients in real estate transactions. As noted

²⁵ A copy of the proposed rule change is included at Attachment 3 to this report. All attachments are available on the Connecticut Bar Association's website, <http://www.ctbar.org/>. Readers requiring assistance retrieving copies of attachments may call the CBA administrative offices at 860-223-4400.

elsewhere in this report, the role that lawyers play in real estate transactions has been changing in recent years. Continuing changes in how real estate transactions are handled may have a dramatic effect on IOLTA income. A statute adopted in 2005 extended IOLTA to title companies that hold real estate closing balances, but there is currently no effective method to monitor or insure compliance with this law.

The Task Force concludes that Connecticut must continue to watch these trends to make sure that the legal services funding base is secure in the long run.

Task Force Recommendation

- **ACTION ITEM: The Judicial Branch should amend Rule 1.15 of the Rules of Professional Conduct to require lawyers who hold IOLTA accounts to place them only at banks that pay rates on IOLTA balances comparable to the rates they pay on comparable accounts to other customers.**

B. Court Technology²⁶

Court filings: The increasing availability of technology has made participating in court proceedings easier and more affordable for many litigants, in particular those with access to computers and Internet service. Technology has made filing documents easier and has made it possible for lawyers to use their time more efficiently.²⁷ Though not all systems are equally well-developed, Connecticut's courts are making progress in the use of online court resources.

The federal court system has a well-developed electronic case filing and management system. Lawyers can file all case-related documents electronically, reducing the need for travel to the courthouses. The PACER (Public Access to Court Electronic Records) system, available for a fee, allows lawyers not only to file documents for their own cases but also to search other cases.²⁸ The case management portion of the system, Case Management/Electronic Case Files (CM/ECF), provides significant access to court filings and documents.²⁹ These tools enable lawyers to keep abreast of arguments, theories and other approaches well before decisions are reported in the traditional legal case report databases. Federal district court judges in Connecticut are in the process of converting to a mandatory e-filing system; as of May 17, 2006, eleven of

²⁶ Information in this section not otherwise referenced comes from a conversation with Jeffrey M. Donofrio, Esquire, Ciulla & Donofrio, LLP, Chair of the CBA's Technology Committee.

²⁷ Lawyers responding to the Future of the Legal Profession Survey agreed strongly with the statement that "On-line access to forms and services has made me more efficient in practice," with a mean score of 4.26 out of 5.

²⁸ <http://pacer.psc.uscourts.gov/>.

²⁹ http://www.uscourts.gov/cmecf/cmecf_about.html

thirteen federal district court judges require e-filing for some or all civil cases, while only five require criminal cases to be filed electronically.³⁰

Use of PACER requires access to a computer and the Internet, which will work to the disadvantage of litigants – particularly pro se ones – who do not have ready access to computers and the Internet. And while the availability of these technology tools may be helpful to computer-savvy litigants, it seems unlikely that litigants (or their counsel) who lack reasonable computer skills will find it easy to navigate the system.

The state court system has been slower to implement online filing and case management systems, though the availability of those resources continues to develop.³¹ The state courts allow e-filing of tort, contract and most property cases.³² Though the availability of e-filing makes the filing process faster and more convenient, the lack of interactivity in the system makes it less useful than the PACER system in the federal courts. As the state e-filing system continues to develop, practitioners expect the system's utility to increase. The website explaining the state system continues to develop as well, with e-file demonstrations and other features intended to make the system easier for practitioners to navigate.

In-court technology: Most federal courthouses in the state have at least one courtroom wired for use of technology; newer state courthouses provide that capability as well. Practitioners report that judges generally allow them to use technology in trials, though they remind lawyers that rules of evidence still apply and they caution that these methods should not make trials move more slowly.

The continued development of technological tools for use in court proceedings provides great opportunities for lawyers seeking to enhance the effectiveness of their litigation techniques. The CBA provides numerous programs to help lawyers use technology in the courtroom, so lawyers seeking to use those techniques will be able to learn how to do so effectively. Scholars are also exploring the ways in which these techniques can be used.³³

Obviously, to the extent that such techniques add to the cost of litigation, they create a greater divide between the litigant with means and the one without. Further, the

³⁰ http://www.ctd.uscourts.gov/cmecf/mandatory_efiling_list.pdf

³¹ The State of Connecticut Judicial Branch at present makes information about pending cases available to the public at <<http://www.jud.ct.gov/jud2.htm>>. The Judicial Branch website also states: “[More extensive] [e]lectronic services are presently offered for attorneys and firms. Services include: Civil E-Filing, Short Calendar Markings, Docket Management, Attorney Registration & Changes.” <<https://www.efile.jud.ct.gov/login.aspx>> (accessed May 1, 2006). The website also notes that “[t]he Judicial Branch is building its capacity to handle transactions electronically. The ultimate goal is to allow for electronic filing of documents with the Superior Court.” <<http://www.jud.state.ct.us/external/super/E-Services/efilenotice.htm>> (accessed May 1, 2006).

³² <http://www.jud.ct.gov/external/super/e-services/efile/>.

³³ See, e.g., the work of Professor Neal Feigensohn, Quinnipiac University School of Law, <http://law.quinnipiac.edu/x550.xml?School=&Dept=&Person=554> .

skills necessary to use such techniques may impose pressure on lawyers less familiar with technology to learn new skills to compete with more technologically-adept opponents. This “skills gap” may shrink as younger lawyers – many of whom have a lifetime familiarity with ever-more-complex methods of communication – take on a more active role in managing trials.

C. Pro Se Litigants and “Unbundled” Legal Services

Given the prevalence of legal problems among those without means to afford legal assistance, it is not surprising that significant numbers of people in Connecticut seek to navigate the legal system on their own. And many of those who cannot afford legal services won’t even attempt to use the legal system, but will instead choose simply not to address problems for which the legal system may have provided solutions.

The hardships experienced by inexperienced litigants attempting to handle their own legal matters represent just one facet of the problem of making the court system in Connecticut more accessible and available to all residents of our state. The Delivery of Justice Subcommittee considered the implications of self-representation for litigants, lawyers, and the courts.

Background

A significant number of litigants seeking relief in the courts in Connecticut do so without benefit of legal counsel. Many of these litigants are indigent, but significant numbers are not.³⁴ Litigants appear pro se for a variety of reasons, and in many types of cases, though their impact is felt most strongly in the family and housing courts. Court personnel and lawyers appearing opposite pro se litigants suggest that there are a number of problems associated with the increased prevalence of self-representation, including delays, pressure on court service centers seeking to provide assistance to litigants, ethical concerns about the role judges play in cases involving pro se litigants, and lawyers’ fears about the impact increases in self-representation may have on lawyers’ ability to sustain their careers. While pro se representation exists in areas other than litigation, most of the frustration expressed by those who deal with pro se litigants seems to be concentrated on the impact of that trend on the courts. Thus, this section of the Report focuses on the increased incidence of pro se representation in the courts, recognizing nevertheless that participants in other areas of the legal system represent themselves as well.

Frequency of Self-Representation

Statistics reported in Connecticut indicate that in 2001, self-represented or pro se litigants appeared in 26% of family cases seeking dissolution of marriage and in 55% of

³⁴ Courts today report that a number of litigants who are proceeding pro se appear to be members of the middle class, with incomes well above the poverty line.

all other pending family cases.³⁵ The percentage of non-family civil cases was much lower, with only 4% being undertaken by non-represented parties.³⁶ Overall, the frequency of self-representation in civil cases was approximately 10%.³⁷ Most studies show that cases dealing with family issues and landlord-tenant disputes are those most likely to have pro se litigants on at least one side. Obviously, small-claims matters are generally done without assistance of counsel.

Reasons for Appearing Pro Se

Some studies of pro se litigation report that people choose to represent themselves when they lack sufficient funds to pay for legal counsel, or when the proceeds they anticipate from their legal action are inadequate to cover the cost of legal counsel.³⁸

Other sources suggest a complex range of reasons that may motivate litigants' decisions to proceed pro se. Some pro se litigants, for example, represent themselves because of their mistrust or suspicion of lawyers; they believe that involving lawyers in a simple case will result in the case becoming more complex and therefore more costly than it needed to be. Other pro se litigants see the introduction of legal counsel into their cases as the first step in a loss of control over the process and the outcome of the case. Rather than believing the assessment of lawyers who attempt to explain the legal complexities of their cases, these litigants may see the lawyers' explanations as an attempt by the lawyers to make work for themselves. Other pro se litigants seem to believe that the court system is inherently fair and will reach the correct result whether lawyers are involved or not. Still others view the increased availability of legal materials on the Internet as an indication that the process can be made sufficiently simple to allow litigants to represent themselves using the forms and documents available on the Internet or in commercially-available packages.³⁹

Problems Attributed to Pro Se Litigants

Anecdotal reports indicate a range of problems accompanying the higher numbers of litigants who are proceeding pro se.⁴⁰

³⁵ Marchand, Donat C., SYMPOSIUM ON THE FUTURE OF THE LEGAL PROFESSION, *Competition from Non-Lawyers*, presented by the Connecticut Bar Foundation, Yale Law School, October 29, 2005.

³⁶ *Id.*

³⁷ *Id.*

³⁸ See, e.g., Adams, Brenda Star, "Unbundled Legal Services": A Solution to the Problems Caused by Pro Se Litigation in Massachusetts's Civil Courts, 40 NEW ENG. L.REV. 303, 315 (2005); Swank, Drew A., *In Defense of Rules and Roles: The Need to Curb Extreme Forms of Pro Se Assistance and Accommodation in Litigation*, 54 AM. U. L. REV. 1537, 1541-42 (2005).

³⁹ See, e.g. Swank, Drew A., *The Pro Se Phenomenon*, 19 B.Y.U.J. PUB. L. 373, 378-79 (2005).

⁴⁰ See generally Adams, *supra* note 38 at 306-14; Swank, *In Defense of Rules*, *supra* note 38 at 1547-48; and Swank, *Pro Se Phenomenon*, *supra* note 39 at 384-86.

- Court personnel and lawyers appearing opposite pro se litigants in court proceedings find that cases in which they appear proceed less smoothly than cases in which both sides are represented by counsel:
 - Lawyers believe that delays in court proceedings are caused by pro se litigants, either because the party who represents himself is unfamiliar with the system and therefore misses deadlines or acts more slowly than a lawyer would, or because court personnel take more time to explain procedural options and legal concepts than they would if lawyers were handling the cases.
 - Some lawyers feel that the court tries so hard to be fair to the pro se litigant that the represented party suffers by contrast.⁴¹
 - Lawyers appearing opposite pro se litigants often find themselves in an awkward position. Some try to insist that the court hold the pro se litigant to the same procedural and substantive standards as applied to represented parties, leading to what is almost certainly a less-than-positive outcome for the pro se litigant. Other lawyers feel constrained to ensure that their unrepresented opponents understand the choices made by the lawyer representing the opponent, in effect causing the lawyer to assume more responsibility for the overall fairness of the proceeding than would be required if both sides had experienced representation.
 - Judges express some dissatisfaction with the nature of the role they must play in cases in which one or both sides are unrepresented by counsel. Rather than allow an unrepresented party to suffer a defeat caused by the pro se litigant's failure to ask the right questions or challenge elements of the other side's case, some judges find themselves "coaching" the pro se litigant during the proceeding, either suggesting strategy or questions or taking a more active role in eliciting the elements of the case than they would otherwise. Judges fear their impartiality is threatened by their efforts to help the unrepresented party make as complete a record as possible.

- Court service centers, along with court libraries and administrative offices, feel the strain of the increase in pro se representation as well. Litigants unfamiliar with the system may view the court service center personnel as substitutes for lawyers and may attempt to obtain legal advice from them, forcing them to devote time to assisting pro se litigants while navigating the fine line between providing appropriate assistance and giving legal advice.

- Lawyers seeking to earn their livelihoods by litigating cases of the types brought by pro se litigants fear that the increased access of these self-represented parties will mean that fewer lawyers will be able to maintain their

⁴¹ Lawyers responding to the Task Force Survey on the Future of the Legal Profession responded affirmatively to the statement "Pro se litigants should be held to the same standard of practice as attorneys," with their agreement reaching a mean score of 3.37 out of 5, where 5 indicates "Strongly Agree." Table 11, Attitudes Toward Courts, Services and Opportunities.

practices by representing parties in these cases. Lawyers fear that in a state with substantial numbers of small firms and solo practitioners, any efforts by the bench and bar to make the system more easily accessible to unrepresented parties will result in some lawyers losing their practices.

Addressing the Problems: Possible Approaches

❖ Unbundling of Legal Services

Unbundling of legal services is a shorthand term describing a number of ways in which lawyers can provide limited representation to a greater number of clients than would be possible if the lawyers were to provide full representation. Lawyers seeking to provide unbundled services break the overall representation of clients into discrete tasks, such as helping to identify legal issues, drafting pleadings, appearing in court or in negotiation sessions, and others, depending on the nature and complexity of the legal problem presented.

Unbundling helps pro se litigants by allowing them to consult with a lawyer to define their legal problems and develop a strategy to address those problems. The possibility of paying a limited fee – for a limited amount of unbundled service – might also encourage some individuals to seek redress in the legal system, when they might otherwise have simply avoided the legal system and left their problem unaddressed.

Lawyers who provide unbundled services believe that it helps them as well, both because it enables them to provide some legal services to clients who would not otherwise retain counsel and because a practice consisting largely of the provision of limited services to a greater number of clients may be more compatible with the lifestyle and family pressures many lawyers experience. Connecticut lawyers responding to the CBA’s Survey on the Future of the Legal Profession were generally favorable toward the unbundling of legal services, ranking it just below multi-jurisdictional practice in potentially favorable impact.⁴²

The provision of unbundled legal services, however, is not without risk. Professional responsibility rules in most states, including Connecticut, contain some provisions that may have implications for lawyers seeking to provide unbundled services. Potentially applicable ethical and legal issues include at least the following:

⁴² Task Force Survey Report, Section II, Table 2. (Unbundling of legal services received a mean score of 3.25 out of 5, where 5 indicates the respondent believed the issue would have a “Greatly Positive” effect on the respondent’s practice.) In Table 11, Attitudes Toward Courts, Services and Opportunities, the statement “I am in favor of providing unbundled legal services to pro se litigants” received a mean score of 3.04 out of 5, where 5 indicates “Strongly Agree.”

- Should a lawyer who prepares a legal document, especially one that a pro se party uses in litigation, have any duty to disclose that the document was prepared by the attorney? (CBA Informal Opinion 98-5)(Rule 3.1, 3.3, Practice Book 4.2) (FRCP 11(b), which prohibits “ghostwriting” by requiring a lawyer to sign documents prepared by her and filed with the court)
- If a lawyer provides a limited service, what is her duty to investigate the underlying facts in order to ensure that the advice/service is appropriate to the client’s circumstances? (Rule 1.2, 1.3)⁴³
- If a lawyer is engaged only to perform a discrete task, is he representing the client for purposes of Rule 4.2 and 4.3, thus controlling whether a lawyer on the other side can communicate directly with the client?
- What is the extent of the lawyer’s liability if the pro se client misuses or alters a document prepared by the lawyer or fails to follow the lawyer’s advice correctly? (Rule 3.1, 3.3, 4.1)
- How specific does an agreement to provide limited representation need to be? (Rule 1.2, 1.4)
- What steps should the lawyer have to take to ensure that the client, the court and the opposing party know when the agreed-upon tasks have been completed and the representation ends? (Rule 1.16)
- Do unbundled services present any issues requiring disclosure and client acceptance of conflicts of interest? (Rule 1.7)

Other states have considered revision of professional responsibility rules to address the problems they pose for lawyers seeking to expand their practices to include the provision of assistance to parties seeking to represent themselves.

❖ Self-Service Centers⁴⁴

The Connecticut Judicial Branch operates Court Service Centers in nine courthouses located throughout the state.⁴⁵ Court Service Center staff provide assistance with completion of forms, court calendar information, notary services, referrals to attorneys and referrals to social service agencies. Service centers also offer public access to computers and printers for word processing and Internet use, fax machines, telephones and directories, work space and, in some cases, meeting space and coin-operated copy machines. Seven of the Service Centers provide bilingual assistance.

⁴³ Rule 1.2 (c) of the Connecticut Rules of Professional Conduct provides “A lawyer may limit the objectives of the representation if the client consents after consultation.” The Commentary to this section cautions that the agreement must “accord with the rules of professional conduct and other law.” The comments do not specifically address the provision of unbundled legal services.

⁴⁴ Information about Connecticut’s Court Service Centers and Information Desks was obtained from Tais Ericson, Caseflow Management Specialist, Tais.Ericson@jud.ct.gov. Statistics provided originated in a recent survey conducted by Ms. Ericson’s office.

⁴⁵ The nine locations are Bridgeport, Hartford, Meriden, Middlesex, Milford, New Britain, New Haven, Stamford and Tolland Judicial Districts.

The Judicial Branch also operates ten courthouse information desks.⁴⁶ These provide courthouse information, directions, judicial publications, and other general assistance.

In 2005, the nine Service Centers and ten courthouse information desks reported the following aggregate contacts: 155,000 with pro se litigants, 19,416 with attorneys and 12,900 with others.⁴⁷

Courts in other states offer similar self-service centers to assist unrepresented litigants as they learn to navigate the court system. In addition to the types of services provided by the Connecticut centers, these centers may offer tutorials, video or online instruction and occasional legal advice to people attempting to represent themselves. Many such programs are modeled after the one in Maricopa County, Arizona, where Superior Court Self-Service Centers provide pre-assembled packets of forms, instructions for completing the forms, and lists of lawyers and mediators willing to provide assistance.⁴⁸ Minnesota's program, based on the Arizona centers, also offers "Legal Access Points," free 15-minute meetings with attorneys based in the county in which the service center is located.

Programs providing access to forms and information about procedural requirements are helpful, but they do not address the need many self-represented parties have for assistance with analysis of legal issues and for guidance as to strategy.

❖ *Pro Se Clinics*

Some states offer information sessions for people attempting to represent themselves in certain types of matters, often including areas like family and probate law. These information sessions are conducted by lawyers, law students, and/or paralegals and provide information on selecting and completing forms and conducting court proceedings. Pro Se Clinics are often scheduled during the evening hours to make them more accessible to people unable to take time off from work to attend proceedings during traditional court hours.

Connecticut currently has a range of clinical programs, some of them serving essentially as Pro Se Clinics. Law Schools in Connecticut provide assistance to indigent clients through a wide range of clinical programs.⁴⁹ The Sappern

⁴⁶ Bridgeport (2), Hartford, Middletown, New Britain, New Haven, Rockville, Stamford, and Waterbury (2).

⁴⁷ The others include jurors, witnesses, marshals and other process servers, and social service providers. For additional information about Court Service Centers, see the Judicial Branch website, <http://www.jud.state.ct.us/directory/directory/servcenter.htm>.

⁴⁸ See http://www.superiorcourt.maricopa.gov/ssc/info/gen_info.asp.

⁴⁹ In-house clinics at the Quinnipiac University School of Law are the Civil, Tax and Health Law Clinics, and the Defense and Prosecution Appellate Clinics. The University of Connecticut Law School offers the Criminal, Tax, Mediation and Asylum and Human Rights Clinics. Yale Law School offers the Jerome N.

Fellows program, funded by the Yale Sappern Foundation, enables Quinnipiac University law students to provide assistance to pro se litigants in family cases in New Haven Superior Court. The Connecticut Bar Association, through the Connecticut Pro Bono Network, works with Connecticut's legal assistance organizations to provide help from volunteer lawyers and paralegals to indigent clients in many different types of civil cases.⁵⁰ The Pro Bono Network also assists a tax assistance program and Family Law Walk-In Clinics.⁵¹

Though pro se clinics are helpful, they serve at most only a small percentage of those who seek to present their own cases. Further, even those who are able to attend such clinics may want, or need, more personal advice directly addressing their questions.

❖ ***Lawyer Referral Services; “Lawyer for the Day”***

Referral services, offering to match an indigent litigant with a lawyer willing to take the case for free or for a reduced or flat fee, represent another attempt at addressing the problem of pro se litigants. A variant of this approach has been in place in New Haven, through the New Haven County Bar Association's “Modest Means Reduced Fee Referral Program.” Another such program, created in 2000 by the Massachusetts Bar Association, targeted probate and family courts and created a list of lawyers willing to be matched with an unrepresented litigant. Massachusetts was also among the states instituting a “Lawyer for the Day Program” (LDP), placing volunteer lawyers in courts to provide assistance to unrepresented litigants. In some LDP programs, the lawyers take on limited representation for clients in mediations or in court proceedings. In other such programs, the LDP lawyers provide assistance on completing forms or help to frame and explain legal issues for unrepresented people.

These programs are helpful for some of the pro se litigants who use them, but the lawyers participating find that the requests for assistance exceed their ability to help. In courts where LDP programs exist, the volume of need is great and the ability of the lawyers participating to render in-depth advice to a large number of litigants is small.

Task Force Recommendations

- The CBA should explore the reasons for self-representation by pro se litigants in Connecticut, by survey or otherwise.

Frank Legal Services Organization (offering ten projects covering a variety of civil, criminal and legislative areas), the Allard K. Lowenstein Human Rights Law Clinic, and the Environmental Protection Clinic.

⁵⁰ See <http://www.ctbar.org/article/articleview/207>.

⁵¹ Id.

- The CBA should consider working with other state and local bar associations and law schools to increase education about legal procedures and access to self-service information in courts.
- **ACTION ITEM: The CBA’s ad hoc committee on unbundled legal services should prepare recommendations for changes in state rules of professional responsibility to allow lawyers to engage in limited representation and to perform other tasks considered unbundled services.**
- **ACTION ITEM: The CBA should develop supporting materials (e.g., a “Best Practices” manual, with accompanying form documents) to assist practitioners and clients who elect to pursue unbundled service arrangements.**

D. Alternative Dispute Resolution

Alternate Dispute Resolution (“ADR”) has grown significantly in its use and recognition over the last two decades. The ABA has established a Section of Dispute Resolution,⁵² as did the CBA in 1992, and other organizations have been increasing the profile and discussions of alternatives to classic litigation as means of resolving disputes.⁵³ ADR is becoming “mainstreamed” in many lawyers’ practices, and the courts generally have been receptive to ADR processes to resolve cases and reduce caseloads, especially in the civil and family dockets.⁵⁴

While much progress has been made in the use of ADR, much still remains to be accomplished. As in other areas, the Task Force notes the desirability of developing a reliable body of empirical data permitting sound assessment of how – and how well – ADR is working in various contexts. Our Task Force notes the following areas where trends are already underway to enhance the quality and frequency of ADR usage:

- Early intervention. Alternatives to litigation often are most helpful if they are utilized early in the course of a dispute. The ADR community has urged courts to implement procedures by which mediation or other alternatives are presented to the parties early in the case, so as to save litigation costs and explore settlement opportunities before further erosion in relationships due to the adversary features of litigation.⁵⁵ The ADR community urges that the courts do more to institutionalize the use of ADR at all stages of litigation.
- Simplifying commercial arbitration. There is some belief among practitioners and clients that commercial arbitration has taken on too many of the delays and

⁵² www.abanet.org/dispute

⁵³ See website of Association for Conflict Resolution, www.acrnet.org

⁵⁴ The CBA established a Standing Committee on Dispute Resolution in the Courts in 2000; it is completing a report of its work and recommendations as of Spring 2006.

⁵⁵ For example, the Middlesex Multi-Door Courthouse program in Massachusetts. www.multidoor.org/

features of civil procedure that led many parties to opt for arbitration in the first place. Arbitration providers are being challenged to make arbitration preserve the speed, lower cost and simplicity that arbitration promises, at the same time that they are having to institute rules that accommodate the increasing complexity of disputes.

- Involving transactional lawyers in ADR. ADR is often viewed as a tool of litigators. However, transactional lawyers have great opportunities to influence the course of future disputes through the language they insert in the documents they prepare, especially if they wish to tailor the process to the nature of the disputes likely to arise under the contract.
- Uniform Arbitration and Mediation Acts. The National Conference of Commissioners of Uniform State Laws has promulgated a Revised Uniform Arbitration Act (RUAA) and a Uniform Mediation Act (UMA).⁵⁶ Both have been introduced in the Connecticut General Assembly over the last five years but neither has been adopted. Members of the ADR community support these statutes. While resistance has come from certain interest groups, there are important considerations favoring updating and uniformity of laws among the states, since disputes increasingly cross state lines, and Connecticut's current statute regarding mediation does not address pre-litigation mediations.
- Collaborative law. The "collaborative law model" is a relatively new development which to date has been practiced primarily in the family law context. Collaborative law entails an agreement at the outset by both parties and their counsel that the attorneys will limit their representation to non-adversarial, interest-based negotiation and turn the file over to another firm if the matter cannot be resolved by agreement and thus requires litigation.⁵⁷ This approach is designed to create incentives for parties to a dispute to work toward a settlement agreement without involving the courts. The success to date of collaborative law in Connecticut and elsewhere may presage expanded use beyond the family area to commercial and tort cases. The process does appear to raise the confidence of each party regarding the commitment of the opponent and opposing counsel to achieving a settlement, thereby improving the likelihood of a resolution short of litigation.
- Non-lawyer neutrals in divorce cases. In 2005 Connecticut adopted Public Act No. 05-258, which allows non-custody divorce disputes to be referred to binding arbitration by agreement of both spouses. The statute is still new and has not yet been utilized to an extent that establishes acceptance of the approach by the bar or parties to a divorce proceeding. The process does represent a creative step toward simplified resolution of divorce case and is worthy of study and monitoring.
- Full-time professional mediators. While historically mediators in Connecticut have been lawyers in private practice, there has been a national trend in recent years toward reliance on professional full-time mediators, particularly for more significant disputes. Many lawyers and parties believe that a mediator requires

⁵⁶ www.nccusl.org

⁵⁷ See e.g. bibliography at <http://www.peacemakers.ca/bibliography/bib41collaborative.html>

skills beyond those required to be a successful advocate and are looking for those skills in particular when selecting a mediator.

- Ethics and credentials for neutrals. There is universal recognition of the importance of ethical conduct by neutrals such as arbitrators and mediators. Most major ADR providers have rules of ethics for their rosters of neutrals,⁵⁸ and in August 2005 the ABA adopted the revised Model Standards of the Conduct for Mediators.⁵⁹ There is considerable debate within the ADR community over whether certification should be available for mediators. Supporters identify the benefits of quality control and assistance to users in selecting a mediator. Opponents cite the concern that certification would create another barrier to entry to the profession.
- Involving the community in ADR. Too often, ADR is viewed as the province of lawyers. However, ADR has many potential benefits to offer the community at large. Just one example is the success of community mediation programs such as those offered by Community Mediation Inc of New Haven. Often the community programs which have become most successful have been those in which the Bar has made substantial contributions.
- ADR in legal education. As the profession has increased its embrace of ADR, the legal education community has as well, often in ways ahead of practicing lawyers. Most law schools now provide courses in ADR, and many have developed courses and clinics in negotiation and mediation to teach the specific process skills that their graduates will need to represent their clients effectively in these settings.⁶⁰

All of these trends hold the promise to increase the quality and use of the options that clients and lawyers have to resolve disputes without the intervention of the courts on a fair and less costly basis.

E. Diversity in the Courts

Later in this report, the Task Force discusses diversity in the profession – the continuing under-representation of women and minorities in the upper echelons of practice and the judiciary; and concerns about the continuing impact of bias, both real and perceived, on the professional lives of women and minorities. In this section, the Task Force addresses another aspect of diversity, namely racial disparities in the delivery of justice in Connecticut and elsewhere in the United States. Our discussion here focuses on the criminal justice system, in which substantial social science research has

⁵⁸ For example, the AAA's Code of Ethics for Arbitrators can be found at <http://www.adr.org/codeofethics>

⁵⁹ <http://www.abanet.org/dispute/news/ModelStandardsofConductforMediatorsfinal05.pdf>

⁶⁰ The Quinnipiac University and University of Connecticut Law Schools, for example, both offer clinics and/or courses in Alternative Dispute Resolution, Negotiation, and Mediation; and the Quinnipiac University School of Law has a Center on Dispute Resolution, which coordinates programs and other law school activities in the dispute resolution field.

demonstrated stark racial disparities in the delivery of justice and a critical need for the legal profession's attention.

Background

Recent data supports perceptions reported anecdotally by judges, lawyers and defendants alike for some time: the current operation of our justice system is characterized by significant disparities in the treatment and sentencing of African-American and Hispanic criminal defendants, as compared to Caucasian defendants. As explained below, the disparities are revealed – among other ways – in comparatively higher rates of arrest and incarceration and harsher prison sentences for African-American and Hispanic defendants.

While these issues are certainly not unique to Connecticut, recent reports do suggest that Connecticut would benefit from attention to the question of racial disparities in Connecticut's delivery of justice. For example, the Annual Report and Recommendations of the Connecticut Commission on Racial and Ethnic Diversity in the Criminal Justice System recently noted that Connecticut's incarceration rates for African-American and Latino defendants are above the national average.⁶¹ While the Committee Report is careful to point out that “[n]either overrepresentation, under-representation nor disparity necessarily imply discrimination,”⁶² these statistics at a minimum suggest grounds for re-examining how people of color are treated in the Connecticut Criminal Justice System.

An examination of racial disparities in the criminal justice system can draw on a rich body of social science that has focused on other jurisdictions, as well as Connecticut. For example, in an article entitled “An Embarrassment to All Minnesotans: Racial Disparity in the Criminal Justice System”,⁶³ authors Thomas Johnson and Cheryl Heilman note that data “suggest a racial disparity exists within the criminal justice system statewide – in rural, as well as urban communities.”⁶⁴ The article suggests that racial disparities begin with unlawful targeted police stops, more commonly known as “racial profiling.” Citing the most widely known study of police stops, Johnson and Heilman observe that on the New Jersey Turnpike, over seventy percent of those stopped and arrested by state troopers were African-Americans, while the same group made up only fifteen percent of all drivers on the Turnpike.⁶⁵

⁶¹ See Commission on Racial and Ethnic Disparity in the Criminal Justice System, Annual Report and Recommendations, 2003-2004 (“Annual Report”). The Annual Report, notes that “African Americans have an incarceration rate in Connecticut that is above the national average. Connecticut incarcerates 2,427 per 100,000 African-American people . . . [and] Connecticut incarcerates 1,429 per 100,000 Latinos /Hispanics compared to the national average of 759 per 100,000 of the population. Annual Report at page 9, citing Bureau of Justice Statistics, Prison and Jail Inmates at Midyear 2001 (May 2002), p. 13, table 16.

⁶² See Annual Report at 6.

⁶³ See “An Embarrassment to All Minnesotans: Racial Disparity in the Criminal Justice System,” Thomas L. Johnson and Cheryl Widder Heilman, *Bench & Bar of Minnesota*, May/June 2001.

⁶⁴ *Id.*

⁶⁵ *Id.*

Once a suspect is arrested, greater disparities seem to arise in setting bail, prosecution and sentencing. Johnson and Heilman observe that in Minnesota, statistics suggest that whites are less likely than minority defendants to serve time in prison for felonies.⁶⁶ Ronald Weich and Carlos Angulo draw similar conclusions in their work, entitled “Racial Disparities in the American Criminal Justice System.”⁶⁷ In the course of discussing prosecutors’ broad discretion in pursuing criminal charges, the authors discuss a study that found that in almost 700,000 criminal cases prosecuted between 1981 and 1990, twenty percent of white defendants charged with a crime were offered the option of a diversion program that would not involve incarceration, while only fourteen percent of blacks and eleven percent of Hispanics were offered the same option.⁶⁸

With respect to bail, Weich and Angulo note that once again, a prosecutor’s discretion plays a significant role in determining whether the accused will be released on bail or spend time in jail awaiting trial or sentencing.⁶⁹ The authors, citing a study reviewing bail determinations for criminal defendants in New Haven, Connecticut, found that “the bail rate set for black defendants exceeded that set for similarly situated white defendants”⁷⁰ Similarly – discussing a study of sentencing disparities in the New York courts from 1990 and 1992 – Weich and Angulo reported that “researchers concluded that one-third of minorities sentenced to prison would have received shorter or non-incarcerative sentences if they had been treated like similarly situated white defendants,” who were offered bail, released on their own recognizance, or offered non-incarcerative measures such as diversionary programs that avoid prison altogether.⁷¹

Some criminal defense attorneys suggest that minority populations are overrepresented in the criminal justice system because they lack access to resources that would allow them better representation in court. Often, minorities who have regular interaction with the criminal justice system are poor, live in communities that do not offer adequate educational and housing resources, and have hostile and untrusting relationships with law enforcement personnel.

The high rates of incarceration of black and Hispanic males also have serious repercussions for the families they leave behind when they go to prison. Weich and Angulo observe:

The massive incarceration rate of black and Hispanic males also has a destabilizing effect on their communities. It skews the male-female ratio in those communities, increases the likelihood that children will not be raised by both

⁶⁶ Id.

⁶⁷ Racial Disparities in the American Criminal Justice System, Chapter 14, Part two, Report on Citizens’ Commission on Civil Rights, Ronald Weich and Carols Angulo.

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Id. at 198.

parents, and contributes to the fragmentation of inner-city neighborhoods that renders the crime-race linkage a self-fulfilling prophecy.⁷²

Task Force Recommendations

The Task Force believes that the problems addressed in this section are enormously complex, and no easy solution seems available to reverse the continuing pervasiveness of disparate rates in arrest, sentencing and incarceration of blacks and Hispanics in Connecticut and elsewhere in the United States. The Task Force also concludes that many initiatives that might begin to address these problems are beyond the purview of this Task Force's charge. The Task Force concludes, however, that several types of initiatives that are within the purview of its charge present essential components of any serious efforts to redress racial disparities in the delivery of justice. The Task Force offers the following suggestions:

- The bar and the judiciary must continue to press for greater diversity in law enforcement and court personnel, including judges and court staff.
- The profession must continue to work to improve indigent individuals' access to high quality legal representation. Whether for juvenile or adult offenders, public defenders are generally overworked and underpaid, and they are frequently not provided adequate resources to defend their clients against serious charges.
- The courts should explore increased use of diversionary programs, particularly with youthful or first time offenders.
- Agencies and courts should resist efforts to move children into the adult justice system.

While our discussion here has focused on the criminal justice system – in large part because of the greater availability of social science data documenting the racial disparities in that system – the Task Force notes that its investigations suggested analogous concerns about racial disparities in the experience of the civil justice system as well. The results of the Task Force's survey, for example, indicated that minority lawyers believed in higher percentages than white lawyers did that judges and other court personnel treated them differently – and presumably less advantageously – because of their race.⁷³ The Task Force believes that the recommendations included above and in section V.B. below (addressing Racial and Ethnic Diversity in the Profession) are critical steps toward enhancing the diversity of the profession and ensuring that the delivery of justice in Connecticut is not tainted by unjustifiable racial disparities.

⁷² Id. at 205

⁷³ See discussion *infra* at Section V.B.

V. Professionalism and Professional Identity

A. Aspirations, Lawyer Regulation and Modern Day Practice and Pressures

As we contemplate our future, we must focus on attorney regulation and professional values. The Task Force considered whether lawyers' core values change with the nature of the profession, whether such changes (if any) are a good or a bad thing, and what can be done to preserve our defining professional values as we move into the future.

Defining Core Professional Values

Despite increased competition, technology, and economic pressures, lawyers' core professional values seem to be largely unchanged. Competence, collegiality, and community service continue to drive lawyers' professional identity, though the definitions and illustrations of those values may change with time.

Connecticut lawyers express a mix of pride and concern about their profession. One Task Force Survey respondent said, "I think the practice of law is a truly noble profession and I think efforts must be taken to preserve this status." Other attorneys worry, however, that lawyers can lose their sense of mission and inspiration over the years. The Task Force survey revealed that almost one-third of responding lawyers agreed that "collegiality and civility among attorneys has declined." An even greater number, forty-one percent, strongly agreed that "attorney advertising has contributed to the perception of a decline in professionalism." As one attorney stated at a Task Force town meeting, "there is a need to restore the sense of idealism and value in the law/legal profession that tends to become diluted with cynicism over the years."

Certainly it is true that lawyers perceive decreasing levels of public trust in the profession. When asked whether the public perceives ethical standards of most attorneys to be high, only 28 % of surveyed Connecticut lawyers "strongly" or "somewhat" agreed. Interestingly, lawyers may actually underestimate the public's actual regard for them as professionals: An Ohio opinion poll, for example, found that 51% of the public strongly or somewhat agrees that the ethical standards of most attorneys are high.

When asked to describe core professional values, lawyers were clear. Those values center on independence, competence, collegiality, and community service.

Independence

Independence has long been an essential element of lawyers' professionalism. This independence has two facets. First, lawyers remain independent of social and political pressure as they represent the marginalized and unpopular. This independence enables them to stand strong by a client against attacks from without. But even as

lawyers champion the causes of their clients, they maintain independence from their clients as well. This independence enables them to counsel their clients objectively and to remonstrate with clients who pursue illegal, irresponsible, or foolish goals.

Competence

Because service to clients is the centerpiece of law practice, lawyers tie their sense of professionalism very closely to competence. Competent work is thorough, diligent, and strictly compliant with confidentiality and conflict-of-interest rules. Competence also includes important elements of loyalty and zeal. Competence requires lawyers to remain up-to-date with substantive and procedural changes in the law. Indeed, when asked how important various professional qualities and services were to their clients, 85 % of Task Force Survey respondents gave the highest, or most important, rating to their “skill and expertise in handling the issue.” Some lawyers question whether it is possible to maintain competence without continuing legal education.

Collegiality

Lawyers understand collegiality to require reasonableness, civility, and cooperation (all with an eye toward promoting client interests). When lawyers are behaving in a collegial way they do not “grandstand;” litigators try to work things out before running to court and transactional lawyers negotiate with a problem-solving style.

Collegiality is easier to maintain when lawyers know each other on a personal basis. These personal relationships are increasingly difficult to establish and maintain for a complex array of reasons, but family responsibilities and changing residential patterns (dispersion from city centers to suburbs) seem to be having significant effects. With increasing numbers of lawyers who are women and/or people of color entering and progressing in the profession, appreciation for diversity may itself become a professional value.

Community Service

Traditionally, lawyers have performed one of their most important types of community service through the delivery of “pro bono” legal services, representing poor or near-poor clients for no fee or a reduced fee. For many lawyers, this commitment is a vitally important element of their sense of professionalism. Indeed, the profession has at times debated whether pro bono service should be mandatory. This Task Force contained a diversity of views on the issue. The Task Force is aware that the CBA Pro Bono Committee has considered and decisively rejected proposals that would impose mandatory pro bono requirements on Connecticut lawyers. No other states have gone this far, but five states have established mandatory or optional reporting systems so that lawyers can report the number of hours or the amount of money they have donated to the

delivery of legal services to the poor.⁷⁴ The CBA Pro Bono Committee is considering recommending this approach. Another option adopted by some states is recommended targets for hours or money donated.

The Task Force's investigations suggested some other avenues that the profession is using or might use effectively to promote higher levels of pro bono service. Some law schools have begun to include pro bono service as a requirement for graduation.⁷⁵ Here in Connecticut, the Connecticut Pro Bono Network is an organization with some promise for further efforts to increase the amount and efficiency of pro bono work. Judges might also increase lawyers' willingness to take on pro bono cases by more liberally permitting lawyers to limit the scope of representation or even withdraw when the burden becomes too great.⁷⁶ Additional encouragement might be provided by implementation of the unbundled legal services initiatives described earlier in this report.

While community service is a key component of professionalism, the Task Force's investigations confirmed lawyers' widespread feeling that community service is not necessarily expressed solely in pro bono legal services. Many lawyers devote significant and uncompensated time when they serve on disciplinary grievance committees or as special masters, to cite but two examples. Lawyers volunteer with community development projects, work with youth at risk, and engage in fund raising to benefit community organizations through their local bar associations. These are all seen as legitimate and important ways to contribute to the community *as lawyers* even though these forms of community service deviate from traditional pro bono legal services.

The Task Force's investigations also suggested that community service – like collegiality – may be significantly affected by residential patterns. As lawyers generally move out of urban centers to less centralized suburban settings, lawyers not only have less contact with each other as fellow community members, but also have a reduced sense of connection to the city in which they practice law. This trend accelerates when business clients leave some of our urban centers. Lawyers who have served these departing clients lose both business and a sense of connection to that city.

⁷⁴Those states are Florida, Maryland, Nevada, Utah, and Washington. See American Bar Assoc., State Pro Bono Service Rules, <http://www.abanet.org/legalservices/probono/stateethicsrules.html> (last visited May 5, 2006).

⁷⁵ See American Bar Assoc, Graduation Requirement Programs, http://www.abanet.org/legalservices/probono/lawschools/definitions.html#pb_graduation_requirement (last visited May 5, 2006). See generally American Bar Assoc, Directory of Law School Public Interest and Pro Bono Programs, <http://www.abanet.org/legalservices/probono/lawschools/> (last visited May 5, 2006).

⁷⁶See Connecticut Rules of Professional Conduct 1.16 (Declining or Terminating Representation) & 6.2 (2) (Accepting Appointments). Cf. *Vachula v. General Electric Capital Corp.*, 199 F.R.D. 454 (D.Conn. 2000) (fact that a client is “difficult” is not sufficient cause to allow for permissive withdrawal under [Rule 1.16\(b\)](#); although some of the client’s conduct was disruptive and difficult, motion on eve of trial denied); Informal Opinion 93-22 (1993)(lawyers working on contingency basis learned the defendant would likely declare bankruptcy, eliminating their ability to get paid for their work; in determining whether withdrawal is permissible pursuant to Rule 1.16(b)(5), the firm should analyze the amount of time and money already expended, and to be expended, the likelihood of being successful on the claim, and the likelihood of successful recovery of funds from which the lawyers could be paid).

New Pressures on Core Professional Values

Within this structure of competence, collegiality and community service, several issues arose that merit further attention in Connecticut.

Issue: How do members of the profession share with each other their sense of professional values?

Most lawyers have come up in a system in which older lawyers taught younger ones how to behave. These senior lawyers actively recruited younger lawyers into the local bar association for more active engagement with the profession. The purpose of the bar association was to promote collegiality. Many lawyers still look to their local bar associations for this purpose, but as practices grow in size and complexity, bar associations lose touch with their members. Many lawyers expressed concern that younger lawyers today are not as active in the bar as they were a generation ago. The question then arises: can state and local bar associations continue to play a role in building relationships and networks among lawyers that facilitate a shared sense of professionalism?

Mentoring remains a crucial element of the profession's perpetuation of values. Much of this occurs within organizations such as law firms, corporations, and government agencies. Where that process fails – either because young lawyers are not a part of such organizations or the organizations have devoted inadequate time and resources to professional development – local bar associations can intervene to connect junior lawyers with mentors and advisors. Indeed, some lawyers said that focusing these efforts on lawyers who are actively engaged in practice was even more important than mentoring law students, because lawyers are more subject to the economic pressures that might cause them to compromise their professional values.

Issue: How should the profession contend with the difficulties faced by younger attorneys in finding time for professional engagement beyond the office?

Given the importance lawyers placed on mentoring and networking for younger lawyers to establish relationships with other lawyers and learn the "rules of the game," some senior lawyers expressed concern with what they perceived to be declining levels of professional engagement by lawyers entering the profession. The sense of some lawyers we talked to is that younger lawyers are not matching the commitments of their seniors when it comes to activities outside of the workplace, including bar association involvement, community service, and other networking opportunities. Despite this perception, evidence shows that the Young Lawyers Section ("YLS") of the Connecticut Bar Association is in fact the largest, and possibly the most active section of the bar. In 2004 and 2005, the YLS held more continuing legal education seminars, social events, and public service events than any other section or committee.

While the Task Force lacks reliable empirical data to tell us whether young lawyers do, in fact, devote less time to bar association activities than they did a generation ago, at least two changes in the profession make such a thesis at least possible. First, competitive pressures and increasing billable hour requirements make it harder for junior lawyers to give significant non-billable time to professional activities. Second, more attorneys are bearing significantly greater family responsibilities than they did a generation ago, and this also affects their ability to devote time to networking and mentoring relationships.

Both male and female attorneys entering the profession are bearing significant family responsibilities. Far more married attorneys are in two-income households now than in past generations. As one lawyer explained at a town meeting, more lawyers of *either gender* are married to someone who works full or part time; they simply cannot devote the same amount of time to professional activities as lawyers used to. Because of this dilemma, younger lawyers are forced to participate only in those activities that they believe will provide the most opportunities with the least amount of time away from the office, or home. This may be one reason why we see so many younger lawyers choosing to participate only in the state bar YLS, as opposed to participating in both state and local bar associations. This may also explain why more senior lawyers are not seeing younger lawyers at local bar events, thus creating the perception that younger lawyers are not as active as past generations. Regardless, bar association leaders at the senior and junior levels acknowledge that they have had to work extraordinarily hard to help create community, sometimes sacrificing both personal and professional lives.

Whether or not the perception that young lawyers have lower levels of involvement is accurate, consensus did seem clear that bar associations need to take steps to ease young lawyer's transition into practice and professional activity.

Issue: Has attorney advertising caused deterioration in professional values and public perception of lawyers?

Many lawyers express concern about the effect of advertising on professionalism. The Task Force Survey showed that 79 % of lawyers agree that attorney advertising has contributed to the perception of a decline in professionalism (41 % “strongly” agree; 38 % “somewhat” agree.) The longer lawyers are in practice, the more concern they express about advertising. Perhaps this should not surprise us, since only lawyers who graduated before 1977 have experienced practice prior to the U.S. Supreme Court's decision in *Bates v. Bar of Arizona* striking down bans on lawyer advertising. As we near the 30th anniversary of *Bates*, perhaps the organized bar has reached a propitious time for reexamining our regulation. The Judicial Branch's Committee on Lawyer Advertising has proposed changes to the Connecticut Practice Book and Rules of Professional Conduct to reflect several changes in the way lawyer advertising is monitored in the state. These changes do not appear to effect a change in substantive standards applied to lawyer advertising, but instead facilitate more effective policing by the bar to insure that advertising complies with existing substantive standards of truthfulness and

professionalism.⁷⁷ The Task Force members believe that the goal in all such regulation should be to increase the potential benefits of advertising (lowered barriers to entry, competition leading to lower costs for consumers, more and better information about the range and costs of legal services available) while mitigating the possible negative effects on public perceptions of lawyers.

Issue: Do our Rules of Professional Conduct adequately reflect professional values and aspirations?

Many lawyers expressed the feeling that our rules of professional conduct “don’t shoot high enough.” The rules most central to professionalism are those focused on relationships, including relationships with clients, tribunals, fellow lawyers, and third parties. In these rules, lawyers see their central duties of diligence and zeal, confidentiality, loyalty, and fiduciary duty to clients balanced and integrated with other important interests, including the interests of courts and third parties. In general, lawyers expressed a wish that these central, relationship-oriented rules could be kept separate from rules they described as “logistics.” These “logistics” rules seem to be the ones focused on the business aspects of law practice, such as advertising, fee sharing, or the structure of law firms. One lawyer characterized these as “trade craft,” and complained that they dilute the power of the more aspirational rules focused on relationships.⁷⁸

The bulk of the ABA Ethics 2000 revisions have been proposed in Connecticut and remain under consideration. Perhaps the courts and the Connecticut Bar Association can do more to educate lawyers about the ways in which nuts-and-bolts rules serve as specific illustrations or implementation of more general, relationship-based rules.

Issue: Do Connecticut’s disciplinary procedures facilitate self regulation and high levels of professionalism?

⁷⁷ For example, the proposal includes the following provisions: “Lawyers may use new electronic technology, including the Internet, to advertise their services and such advertising is subject to the Rules of Professional Conduct”; “An electronic advertisement or communication must be copied once every three months and retained for three years after its last dissemination”; “A lawyer who is not admitted to practice in Connecticut is subject to the disciplinary authority of this state if the lawyer provides or offers to provide any legal services in this state”; “Lawyers who advertise must file a copy of their advertisement with the statewide grievance committee either prior to or concurrently with the first dissemination of the advertisement;” and “A lawyer may request an advance advisory opinion concerning a contemplated advertisement’s compliance with the rules from the statewide grievance committee.” See Lawyer Advertising Committee, Proposals by the Lawyer Advertising Committee to Amend the Practice Book and the Rules of Professional Conduct Concerning Lawyer Advertising.

⁷⁸ Prior to the Model Rules of Professional Conduct, the governing body of attorney regulation proposed by the ABA and adopted by states was the ABA Code of Professional Responsibility. Interestingly, the Code was organized into Ethical Considerations, which were aspirational, and Disciplinary Rules, which were mandatory. This division is close to that proposed by some Connecticut lawyers, but it is still important to recognize that the Code’s Disciplinary Rules included not only “nuts and bolts” rules but also the relationship-based rules covering such matters as confidentiality, conflicts of interest, and candor with the court.

Lawyers agreed that self regulation requires lawyers to take seriously their responsibility to report misconduct when they observe it in another lawyer. In the past, Connecticut disciplinary procedures discouraged lawyers from fulfilling this responsibility because they forced a reporting lawyer also to stand as the complaining party in disciplinary proceedings. Now, when a lawyer reports another's misconduct, the statewide grievance committee steps into the shoes of the reporting attorney and becomes the complaining party. Although many disincentives remain, this procedural change removes at least one obstacle for attorneys who observe professional misconduct by another lawyer and feel duty-bound to report it to authorities.

Questions remain, however, about whether lawyers have a sufficiently strong sense of their own duties to report misconduct. Banks often monitor attorney accounts, and help to police financial misconduct; perhaps the role of fellow lawyers is not so great with respect to this sort of misconduct.

Some lawyers ask whether local ethics panels should play a more central role in disciplinary proceedings. A disadvantage of reliance upon such panels, one lawyer pointed out, is that they tend not to hold hearings, but instead take matters "on the papers" in ways that may not satisfy complainants that the system is fair and complete. On the other hand, these local panels often have a much better sense of community norms and the grieved lawyer's place in that community. Perhaps there is some virtue in a system that capitalizes on local attorneys' ability to prevent professional failure within their community, as well as discern and address it when it does occur. Judges also play a key role in monitoring professional responsibility among the lawyers with whom they interact. But even as Connecticut relies upon its judiciary and Statewide Grievance Committee for fair and uniform enforcement of the rules of professional conduct at adjudicatory stages (that is, in determining whether a violation has occurred), we might consider a system that fosters local involvement at remedial stages of discipline.

Some of the most potentially effective means of addressing attorney misconduct may lie outside the disciplinary system, in initiatives to address developing problems before discipline becomes necessary. One complicating factor is that many instances of attorney misconduct involve drug, alcohol, or gambling addictions. "Lawyers Concerned for Lawyers," recently underway with its operations, has an important role to play in dealing with professional failures that involve substance abuse and other addictions.⁷⁹

Issue: Should Connecticut institute mandatory CLE?

Twenty-eight percent of our survey respondents "strongly agreed" and 30 % "somewhat agreed" that "it is necessary to make continuing education a requirement in order to ensure attorney competence."⁸⁰ Connecticut lawyers tell their Bar Association that continuing legal education is important to them, and one of the most important things

⁷⁹ See Douglas S. Malan, *Crisis Management*, The Connecticut Law Tribune, April 3, 2006, at p.1, col.1 (discussing history and development of Lawyers Concerned for Lawyers – Connecticut, Inc.).

⁸⁰ Task Force Survey Report at 8.

the bar association can provide.⁸¹ Yet today Connecticut is one of only six states lacking mandatory Continuing Legal Education (“CLE”).⁸²

While reasonable people can differ about the value of mandatory or “minimum” CLE requirements, Task Force members conclude that Connecticut misses an opportunity other states have used to keep lawyers up to date on ethical requirements. When states require that some minimum number of hours of annual CLE must be devoted to professional ethics, they insure that lawyers read, attend classes, and discuss ethical requirements. Mandatory CLE also gives local bar associations some legitimate function in promoting professional ethics. The bar can certainly give lawyers many choices about the way they fulfill CLE requirements – national, state, or local conferences and symposia, phone and video conferences, or Internet courses – but it can insure that whatever forum lawyers choose, they will gain some continuing education in Professional Responsibility.

Such local CLE gatherings can also build collegiality as well as competence. They are a good way to give solo and young lawyers more training with the aid of experienced attorneys in their field. CLE courses can also mix together lawyers from different substantive areas who might not meet each other in daily practice but have common professional interests. Finally, and very importantly, CLE training programs can bring minority lawyers into the fold and provide an entre into local professional networks.

The arguments against mandatory CLE tend to focus on the time crunch and economic pressure that lawyers must manage; the last thing lawyers need is an additional professional obligation. Other lawyers worry that mandating CLE will dilute the experience for those who voluntarily participate. As one survey respondent predicted, “If CLE were made mandatory, you would have to deal with people who are not interested and this would become a distraction to those who are.”⁸³ But proponents hope that mandatory CLE might force lawyers to do something they’d like to do anyway but find hard to justify in an optional regime: “slow down, step away from [their] practice, and get to know and interact with [their] colleagues in a non-adversarial environment -- for at least a few hours every year.”⁸⁴

Recognizing this value, the CBA CLE Committee has proposed rules changes that would, among other things, establish a Commission on Minimum Continuing Legal Education and require of Connecticut Lawyers a minimum of thirty-six hours of accredited activities every three years, with at least six hours (of the thirty-six) dedicated to training in legal ethics and professionalism. To reduce costs, the CLE Committee

⁸¹ Lou Pepe, *Mandatory Continuing Legal Education: Has The Time Come To Embrace This Concept?* Conn. Lawyer (forthcoming 2006) (“in a 2003 survey of its members, the Connecticut Bar Association learned that its members consider adequate and appropriate continuing legal education to be the most important function of their Association.”),

⁸² Id.

⁸³ Task Force Survey at 25.

⁸⁴ Pepe, *supra* note 81.

proposes that twenty of those thirty-six hours may be earned “through self-study or through attending an accredited activity by remote means (such as participating in a telephone or video conference or participating in a web cast program).”⁸⁵ The Task Force recommends that the CLE Committee’s proposal be adopted.

Task Force Recommendations

- **Public Service:** to promote continued community service by lawyers, the Task Force suggests the following steps:
 - The Connecticut Bar Association should continue to provide training and support services for lawyers who undertake pro bono work, and should publicize those resources broadly so that more attorneys become aware of the help they can get with pro bono work.
 - The Connecticut Bar Pro Bono Committee should consider the following Rules of Professional Conduct:
 - ◆ Rules that would require lawyers to report their pro bono activities each year.
 - ◆ Rules that would suggest a certain number of hours or amount of money to be donated to pro bono services as defined by the rule, preferably focused on the delivery of legal services to the poor or near-poor for no fee or a reduced fee.
 - To address the disconnect between lawyer activities on behalf of the community and public perceptions, local and state bar associations should devote more resources to public education and public relations, with particular attention given to generating more positive coverage in print and broadcast media.

- **Engaging Young Lawyers in the Bar:** to address the difficulty many young lawyers have in participating in bar association activities, the Task Force suggests:
 - Bar leaders should place less emphasis on traditional evening activities, and focus instead on bar activities within working hours, such as lunches or breakfasts.
 - The bar should consider greater use of the Internet both for mentoring of young lawyers by more senior attorneys, and also to create a greater sense of community (announcing milestones, spreading news).
 - The bar should plan weekend bar activities that include children and other family members, allowing lawyers to develop personal relationships with each other while they are fulfilling family responsibilities.
 - Local bar associations should compile “expert” lists, not only for referral purposes, but for mentoring as well.
 - Local bar associations should sponsor “Ask-a-Lawyer” days for lawyers,

⁸⁵ See CBA CLE Committee, Proposed Rules For Minimum Continuing Legal Education In Connecticut, (March 30, 2006 Draft).

- at which senior experts could advise junior lawyers about issues in particular practice areas.
- Bar organizations should promote “each one bring one” events: bar association activities to which each senior member is required to bring a lawyer who has been in practice for 5 years or fewer.
 - Local bar associations should participate in the state bar's receptions for newly admitted members of the bar each year.
 - The bar should consider required participation in mentoring for lawyers in practice for fewer than 10 and more than 30 years; junior lawyers need the guidance in order to thrive (or even survive); senior older lawyers may have more time to give and can pass on traditions and sense of professional pride.
 - Bar organizations should sponsor “reverse mentoring” programs, in which relatively younger lawyers tutor senior attorneys on the uses to which technology may be put.
- **Legal Education:** to strengthen the role that law schools play in the ethical and professional training of new lawyers, we suggest the following programs:
- Comprehensive coverage of Professional Ethics and the Legal Profession. This could include strong encouragement to professors in a wide variety of courses to devote at least one class hour entirely (and explicitly) to professional and ethics issues that arise in their fields of law.
 - At least one visit from a practicing lawyer to appropriate law school classes to discuss the ethics issues in that field from a “real world” perspective. The goal would be to show students the relationship ethics rules play to the substantive courses they are taking. Such a program might also address the cynical view of some students that ethics is fine for the classroom but has little applicability in “the real world.”
 - Mentoring or shadowing programs that match students with practicing lawyers, and the greater use of email to facilitate these relationships.
 - Pro bono service imposed as a requirement for graduation.
- **Rules:** to address the concern of some lawyers that ethics rules have been watered down by nuts-and-bolts regulatory material, Connecticut should undertake a thoroughgoing review of its rules of professional conduct, carefully considering whether it would be wise to separate and emphasize relationship-focused, aspirational rules, and move nuts-and-bolts, business-related rules to a separate volume.
- **Disciplinary Proceedings:** to maintain public trust and increase lawyers’ respect for disciplinary proceedings, Connecticut’s statewide grievance committee should continue to substitute itself as complainant when a lawyer reports another’s misconduct and the grievance procedure goes forward. In addition, the committee should consider the possibility of these changes:
- The state bar should consider ceding some measure of control to local panels in disciplinary matters, if only in remedial stages of the

- proceedings.
- The bar should consider increasing the role for clients and former clients who are the victims of professional failure or misconduct when their grievances go to disciplinary hearings.
- **ACTION ITEM: Mandatory CLE: to address the need for the additional training and networking opportunities that CLE provides, the Connecticut bench and bar should reconsider instituting a modest but mandatory system of continuing legal education, per the recommendations of the CBA CLE Committee.**

B. Ethnic and Racial Diversity in the Profession

Background

It was not until the latter part of the twentieth century that the legal profession made serious efforts to open itself to the full range of talent in our population. Progress has been made in this regard, but more must be done to encourage ethnic and racial diversity in the profession. In order to best represent a diverse public, the bar must continue its efforts to become open to all talented persons who can contribute to the legal profession. Moreover, the justice system itself benefits from the diversity of individuals who participate in the judicial process. And finally, if the profession is to be true to the values on which the rule of law is based, it must ensure that individuals have access to careers and promotion within the bar based on their individual character, and not be limited by social, ethnic, or racial preconceptions.

Minority representation in the legal profession is estimated to be about 9.7 % nationwide, which is significantly lower than in most other professions.⁸⁶ Moreover, minority enrollment in law school appears to have dropped in recent years, especially among African-American males. Initial employment of minority lawyers still differs from the employment of white lawyers, with minority lawyers less likely to go into judicial clerkships or private practice. Minority lawyers are more likely than white lawyers to leave law firms within the first three years of practice. Minority lawyers remain underrepresented at the upper echelons of law practice, in the ranks of law partners and corporate general counsel.

Approximately 22 % of Connecticut residents are minorities,⁸⁷ but it is not known how many minority lawyers practice in Connecticut or how many minority lawyers belong to the CBA. There are five minority bar associations in the state. Slightly less

⁸⁶ Elizabeth Chambliss, *Miles to Go: Progress of Minorities in the Legal Profession*, American Bar Association Commission on Racial and Ethnic Diversity in the Legal Profession (2004). Unless otherwise indicated, the information described in this paragraph comes from the ABA's report.

⁸⁷ According to the 2000 U.S. Census, 77.5 % of Connecticut residents are white persons, not of Hispanic/Latino origin.

than 9 % of the state judiciary is comprised of minorities.⁸⁸ The most recent available data suggest that in Hartford's larger law firms, the percentage of minority partners is 1.36 % and the percentage of minority associates is 7.26 %; the same data suggest that 17.14 % of the summer associates are minority law students, which is substantially less than the nationwide average.⁸⁹

Ten years ago, many minorities reportedly perceived that Connecticut was not a good place for a minority lawyer to find a job after law school. A Task Force that considered the issue at the time concluded that difficulties in recruiting and retaining minority attorneys appear to "relate primarily to issues concerning the lack of minority colleagues in the system, workplace opportunities, peer support, cultural diversity, and mentoring."⁹⁰ At that time, two groups reportedly were taking leadership roles in the effort to recruit minority lawyers: The CBA's Diversity Committee and the Connecticut Lawyers Diversity Collaborative, a consortium of some of Connecticut's larger law firms, corporate law departments, bar associations and public sector entities.⁹¹ Those two groups continue their efforts to this day.

Nevertheless, there continues to be a problem with attracting minorities to the legal profession and then convincing them to work in Connecticut. Connecticut is perceived to be a non-diverse state, affecting the willingness of some minority lawyers to accept offers from the state's larger law firms, where they feel that they will be a "token" minority lawyer. The large Connecticut law firms also find it difficult to compete with the nearby New York City and Boston law firms, which can offer higher salaries to minority lawyers. Even if they accept positions in Connecticut, minority lawyers do not always receive the mentoring and support that they need in their law offices, causing them to leave larger law firms within their first three years of practice.

Some minority lawyers also encounter barriers to obtaining legal work. For instance, few minorities are hired to fill judicial clerkships. Minority lawyers who enter solo practice immediately after graduation from law school report that it is difficult to find work when they are starting out in their practices.

There are also indications that minority lawyers do not feel comfortable in the Connecticut legal community. One African-American lawyer responding to the CBA's December 2005 survey noted that the "bar should make an attempt to be accepting [of] minority lawyers." The same respondent noted that "[j]udges should likewise not assume that attorneys of color are incompetent." The CBA's 2005 survey also revealed that more African-American lawyers than white lawyers believe that judges and/or other court personnel tend to be affected by their race or gender. The African-American and Asian

⁸⁸ Comparison Chart: Number of Female and Racial/Ethnic Minority Judges Serving on Connecticut State Courts—July 1, 2005.

⁸⁹ NALP, *Women and Attorneys of Color Continue to Make Small Gains* (Nov. 17, 2005), available at <http://www.nalp.org/press/details.php?id=57>.

⁹⁰ State of Connecticut Judicial Branch Task Force on Minority Fairness 29 (April 1996).

⁹¹ *Id.*

respondents were also more dissatisfied with the number of women and minorities on the bench in Connecticut.⁹² In the CBA Task Force’s town meetings, some female minority lawyers reported that they are even more likely than other women to be mistaken for nonlawyers by judicial clerks. The Task Force received anecdotal evidence that some minorities believe they are disciplined in greater numbers than other lawyers.

The context describes above suggests several issues:

- What more can be done to attract minority law students to Connecticut law schools and encourage them to practice law in Connecticut after graduation?
- What more can be done to create job opportunities for minority lawyers who wish to practice in Connecticut?
- What more can be done to create an environment in law offices, the courts and the legal community to improve the retention of minority lawyers in Connecticut?

Addressing the Issues: Possible Approaches

The problem of attracting and retaining minority lawyers is, in part, a “chicken and egg” problem. In order to attract minority lawyers, it is important for them to feel that they are not “token” minorities and that there is a community of minority lawyers to whom they can look for support and advice. There is not, as yet, a substantial community of minority lawyers in Connecticut. Thus, it is difficult to attract minority lawyers to Connecticut and retain them.

Increasing the number of minority law students in Connecticut is obviously of critical importance, and pipeline programs and targeted minority scholarships may help to achieve that goal. Once enrolled in Connecticut law schools, if minority students feel well-supported and respected during their law school experience, they are more likely to view Connecticut as a hospitable place in which to practice law. The greater the presence of minority lawyers, the more hospitable Connecticut will appear. Law schools can do more through faculty and staff hiring, programming, mentoring and academic support to make the legal community hospitable. They can also help to provide connections between Connecticut employers and minority law school students.

The judiciary and the larger law firms can also do more to create an environment that is welcoming to minority lawyers. The presence of more minority judges and law clerks in the courthouses will help change the impression that Connecticut is a non-diverse legal community. Many law firms have stated a commitment to increasing diversity, but they need to do even more to provide mentoring for minority lawyers whom they have employed and to create a welcoming environment within their firms. Diversity committees within law firms should be composed of lawyers who have

⁹² Task Force Survey (December 2005).

significant political power within the firms, to send the message that diversity is a serious priority.

The bar can also do more to make Connecticut an attractive place for minorities to practice law by supporting the minority bar organizations and encouraging joint programming with the CBA and local bar associations. Some of the minority bar associations lack staff and administrative support, and they might be more effective if they were more visible. Minority lawyers might become more comfortable practicing law in Connecticut if they could easily reach out to other minority lawyers within these bar associations. For this reason, the CBA should consider providing some administrative support to these organizations so that they can help to create a more welcoming legal community for these lawyers.

Task Force Recommendations

➤ Law School Initiatives

- Connecticut law schools should institute “pipeline projects” to identify promising minority high school and junior college students in Connecticut and encourage them to consider legal careers and attend law school in Connecticut. Projects that might help accomplish this goal include “adopt-a-school” programs.
- Law schools should actively pursue diversity in a manner that is consistent with the *Grutter* and *Gratz* decisions, including encouraging attendance at their law schools through minority-targeted scholarships.
- Law schools should do all that they can to insure that they provide minority students with a campus environment that is inclusive and respectful so that minority students perceive that the legal environment in Connecticut is inviting.
- Law schools should continue to seek to hire more minority faculty and staff members.
- Law Schools should provide sufficient academic support to students who may require it so that they can succeed in law school.
- Law Schools should support the efforts of minority student organizations such as BLSA and AALSA both financially and through the participation of faculty in student law association events.
- Law school career services offices should continue to work on initiatives with the private sector to place their law students of color in Connecticut law offices.

➤ Judicial Branch Initiatives

- Although diversity training has been held in the courts, efforts should be made to assess the effectiveness of the training. Further training should be done of the court staff to increase sensitivity to diversity issues.
- Federal district court and state court judges should place a high priority on diversity when hiring full-time law clerks.

- Information about the ethnicity of law clerks should be maintained to track the judiciary’s progress in this regard.
 - Minority lawyers should be advised how to get on judicial lists for foreclosure, juvenile matters, probate and family matters to help them build their practices; consideration should be given to whether preference in assignments should be given to minority lawyers in their first few years of practice. Specific training in handling these matters should be provided to minority lawyers.
 - **ACTION ITEM: The Judicial Branch should begin to ask lawyers on the annual lawyer registration forms about their ethnicity so that information about diversity in the Connecticut legal profession can be tracked over time.**
- **Law Firm Initiatives**
- Firms should make a serious commitment to diversity and should make efforts to hire minority lawyers not only when hiring new associates, but when hiring lateral attorneys.
 - Law firms should provide appropriate mentoring and other support for minority lawyers.
 - Law firms should take steps to attempt to ensure that minority lawyers do not feel that they were hired as “token” minorities.
 - Diversity committees within larger law firms should monitor the firm’s progress and should be composed not only of women and minorities, but also of some of the more powerful non-minority male partners in the firm.
 - Corporate counsel may be able to increase diversity hiring by advising law firms that they consider diversity within law firms to be an important factor in the corporation’s decision to retain a law firm on new matters.
- **CBA Initiatives**
- **ACTION ITEM: The CBA should continue to try to determine the number of minority lawyers among its members so that efforts can be made to ascertain the needs of those members and to track trends over time.**
 - The CBA should reach out to the minority bar associations and offer its assistance with administrative support and joint programming that would particularly benefit minority lawyers.
 - Since minority lawyers who work in private practice work disproportionately in solo and small firm practice, the CBA should sponsor programs that will provide information to solo and very small firm lawyers about how to set up their practices, find business and locate mentors.
 - **ACTION ITEM: The CBA should encourage the appropriate public officials to nominate and appoint additional minority lawyers to the judiciary.**

C. Lawyering and Quality of Life

Practice Pressures and Life Balance Generally

Lawyers are finding it increasingly difficult to find a satisfactory balance between work and the rest of life. The demands of law practice are rising, and taking over ever-larger shares of lawyers' lives.⁹³

The demands may be most acute in large law firms. Clients expect to be able to reach their lawyers at any hour of the day or night and have new technologies to reach them -- e-mails, blackberries, instant messaging, as well as phones and faxes. To compete for new associates, firms believe they must raise salaries, and then require that they bill more hours to cover the cost of raises. To compete for partnership, associates must demonstrate value to the firm both by billing hours and taking extra time to market the firm's services and to seek out, cultivate and recruit new clients. To compete for status and compensation within the firm, partners must do the same. The result is continuous upward ratcheting of time spent at work. Many lawyers in private practice now bill over 2000 hours a year -- some bill well over 2400 hours -- and the number rises every year.

Time demands on attorneys may generally be less intense in smaller firms, in-house corporate counsel's offices, government law offices and legal-services and public-defender offices. All these may still generally have shorter work-weeks than large firms; but time demands are increasing in those settings as well. The time demands of law practice are especially hard to manage when not steady or consistent: they come in waves of unpredictable court or market-imposed deadlines, unexpected client demands, and needs for sudden and frequent travel.

By many reports the pressures and strains of practice are increasing in other forms than time demands. Lawyers in bar surveys complain of increasing incivility and adversarial behavior in relations with other lawyers and of alienation and arbitrariness at work.⁹⁴ Overall satisfaction with law practice is (by most though not all surveys) on the

⁹³ For a helpful summary of recent research on these trends, see Deborah L. Rhode, ABA Commission on Women in the Profession, *Balanced Lives: Changing the Culture of Legal Practice* (2001), available at <http://www.abanet.org/women/balancedlives.pdf>.

⁹⁴ Many studies and surveys report this conclusion. One of the most detailed is the Report of the Boston Bar Association Task Force on Professional Fulfillment (updated January 2006), available at <http://www.bostonbar.org/prs/fulfillment.htm>.

decline⁹⁵; and ironically seems to be lowest among young attorneys in practices with the highest status and incomes.⁹⁶

These time demands and other strains and pressures impose costs – costs most obviously upon the lawyers themselves, but also on their firms and on society and the profession. Increased hours at work tend to produce exhausted and overstressed lawyers, not very productive at the end of their shifts and prone to mistakes and bad judgment. Time spent at work naturally crowds out time for other engagements and responsibilities. These burdens fall disproportionately on women, the special subject of the next section. But clearly they affect men as well, especially those who would prefer to spend more time at home and – as work demands increase on their partners and spouses – will be expected to take more responsibility for home life and child care. Unmarried lawyers find it hard to find the time to meet partners. National surveys have found that 70 % of lawyers reported conflicts between life and work; two-thirds say “they are forced to sacrifice personal fulfillment outside of work in order to advance their careers;” one-third of men (and almost half of women) gave as an important reason for choosing their current job a reasonable work-life balance; in one survey 40 % of managerial and 46 % of supervised attorneys say they would “gladly take less money if it meant working fewer hours.”⁹⁷

The costs to firms when attorneys leave because of work-life conflicts are substantial: the lost investment in training young lawyers, the lost productivity from those who have been trained, the cost of replacing and retraining them, the cost to clients of losing lawyers familiar with their problems; the costs in morale to those who remain.⁹⁸ But there are less tangible costs to the profession as well. Increasing work demands also crowd out the public engagements of lawyers that create good will for the profession and benefits for the community, society and legal system: examples include pro bono practice; bar association work; and charitable, civic and political activity.

One obvious set of solutions to problems of work-life conflict would seem to be that law offices create more opportunities for part-time work and flexible schedules. Such opportunities are in fact offered at most legal workplaces – 95 % of law firms have

⁹⁵ The most comprehensive recent study of a group of lawyers found fairly high levels of satisfaction among lawyers in the Chicago bar, though conceding that the numbers may be high because “[u]nhappy lawyers have left the field.” John P. Heinz, et al., *Urban Lawyers: The New Social Structure of the Bar* (2005) at 272. Patrick J. Schiltz, *On Being a Happy, Healthy and Ethical Member of an Unhappy, Unhealthy and Unethical Profession*, 52 *Vanderbilt L. Rev.* 871 (1999) summarizes other surveys reporting much higher levels of dissatisfaction.

⁹⁶ NALP Foundation, *After the J.D.: First Results of a National Study of Legal Careers* 30 (2004), available at http://www.nalpfoundation.org/webmodules/articles/articlefiles/87-After_JD_2004_web.pdf.

⁹⁷ Catalyst, *Women in Law: Making the Case*, Executive Summary 10 (2001); Jill Schachner Chanen, *Discontented in the Law: Supervised Lawyers Report Struggle to Balance Work and Family*, Survey Shows, *ABA Journal Report* (2006), available at <http://www.abanet.org/journal/ereport/m17study.html>.

⁹⁸ These are detailed in an extensive American University study: Joan Williams & Cynthia Thomas Calvert, *Final Report: Balanced Hours: Effective Part-Time Policies for Washington [D.C.] Law Firms: The Project for Attorney Retention* (2001), available at <http://www.pardc.org/Publications/BalancedHours.shtml>.

policies that allow part-time work. But hardly anyone, around 3 % of lawyers, actually takes advantage of them.⁹⁹ The reasons are clear: lawyers see accepting part-time work as deadly to their careers – a track to trivial work assignments, exclusion from important management committees and meetings with clients, bad performance evaluations, and relegation to “slacker” and “outcast” status. Male lawyers in particular are likely to be stigmatized for choosing work options that give them more time for family life. In any case, “part-time” work in practice often ends up involving almost full-time levels of hours, while the worker is still being paid at part-time rates.

Many lawyers – perhaps especially the older generation who are currently managers of firms and who themselves have made considerable sacrifices of personal life to become successful in their profession – tend to be fatalistic about these problems, which they see as simply inherent in the nature of law practice. After all, many clients’ demands, court schedules and long trials, and the need to time deal-closings to market and other conditions, are unpredictable and require many hours of continuous work and travel out of town. Lawyers whose time is not available on call are bound to be considered less useful to the firm and its clients.

Clearly -- in some practice areas at some times -- there is some truth to the view that these challenges in achieving life-balance are unavoidable. But there is also reason to think, from the experience of law offices that have adopted part-time and flexible-hours policies that lawyers actually take advantage of, that the problems are exaggerated and can often be overcome.¹⁰⁰ Intense periods of overtime work can be balanced by time off between them. Someone who is working on three deals or cases at a time could be working on two instead. The key to successful part-time and flexible work policies turns out to be demonstrating through live examples that lawyers can use them and still be treated as respected and valued members of the team.

Particular Impacts on Women in the Profession¹⁰¹

Women were not admitted in significant numbers to law practice until the 1970’s. The first cohorts of newly admitted women had to deal with relatively crude kinds of discrimination: harassing and demeaning treatment and inappropriate comments on dress and appearance by judges, court personnel and other lawyers; relegation to marginal status and petty and trivial work assignments in law offices; overt disparagement of their skills and presence in the profession; and obvious bias in hiring, retention and promotion. These problems were abundantly documented in a series of reports issued by Gender Bias Task Forces in forty states and the federal court system in the 1980’s and 90’s.

⁹⁹ Balanced Lives, supra n. 93, at 12.

¹⁰⁰ See especially Balanced Hours, supra n. 97, at 41-52.

¹⁰¹ Our Task Force attended several Town Meetings called to discuss how women attorneys perceive their profession, one of them (on Feb. 3, 2006) open only to women in the expectation – which was fully realized -- of more candid expressions of views. This part of the Report draws heavily on discussions at those meetings.

As comments in our town meetings indicate, these problems have by no means disappeared.¹⁰² But behind the current complaints is a more subtle set of perceptions:

- The model of what a successful lawyer looks like is still male, and women who deviate from it – for example by adopting a less aggressive or confrontational style in litigation or more cooperative way of dealing with clients or adversaries – tend to be undervalued. Women are also less likely to have role-models or mentors, or women in authority such as judges, to tutor them in successful modes of practice;
- Women are still treated as second-class citizens in work assignments – given less interesting work, prone to having contributions to meetings ignored, asked to fill supporting roles like sitting second-chair at trials, but also required to do more work than men and do it better to be noticed;
- Senior attorneys are mostly men who adopt other men to mentor and promote; senior women are sometimes “Queen Bees” who also disfavor junior women;
- Law offices are increasing pressures to develop a business book, which is especially hard on women who have other out-of-work commitments, are less likely to have time for and interest in male-bonding activities like sports or male-only social events.

The major problem, however, remains that of work-life imbalance, compounded for women because of the “double shift” -- cultural expectations that they will have the largest share of responsibilities for home and family and the care of children and elderly parents. Men can still manage the conflict by finding partners who will take on these burdens. To be sure, increasing numbers of men would also prefer to play a larger role in home life and child care; but both general cultural expectations and employers’ policies will have to change substantially to make that shift feasible.

The results are clear from basic numbers. Women drop out, or are winnowed out, from the most time-demanding practices: in 2000, women were 27 % of the profession but only 15 % of partners in law firms; and were over-represented in government (36 %) and public defender and legal aid programs (44 %).¹⁰³ In law firms today, women are 43 % of associates, but still only 15-16 % of partners. The recent NALP study of young lawyers (ages 27-32) found that 76 % of the women (and 64 % of the men) had no children, compared to 36 % of women (and 53 % of men) in the population at large.¹⁰⁴ A senior attorney at one of our town meetings noted that of her law school study group of

¹⁰² A recent ABA Report, *The Unfinished Agenda: A Report on the Status of Women in the Legal Profession* (2001), at 18-22, indicates that female lawyers continue to experience sexual harassment, disrespectful treatment and devaluation of their credibility in workplace settings.

¹⁰³ ABA Lawyer Statistical Report (2004); see also Timothy L. O’Brien, *Why Do So Few Women Reach the Top of Big Law Firms?*, N.Y. Times, March 19, 2006, sec. 3, p. 1, col. 5.

¹⁰⁴ After the J.D., supra n. 96 at 60.

twelve women, only three were still in practice, because after 10-15 years of practice those who had an exit option (usually a spouse with an adequate income) had dropped out. “If you have two high-powered spouses and children,” another commented, “something has to give;” and it’s usually the woman’s career.

The cumulative effect of such work-life pressures seems to be that in many cases women lawyers are substantially more likely than men to feel – or at least to express – dissatisfaction, ambivalence, or depression about work-life conflicts.¹⁰⁵

A source of intense frustration to many female attorneys is their male counterparts’ unwillingness to recognize that they are subject to distinct pressures and burdens. The gender gaps in perceptions is borne out by the Task Force survey of Connecticut lawyers, which found that only 14 % of men agree with 52 % of women that female attorneys are subject to more competing demands for their time and energy from family obligations than male attorneys; that 18 % of men are satisfied with the number of women and minorities on the bench in Connecticut, as opposed to 7 % of women; and that only 3 % of men agree with 26 % of women that female attorneys have the same advancement opportunities as male attorneys.

Possibly some of those who are relatively unconcerned about the special problems of women in balancing life and work believe that women always have the choice men have – to stay in demanding careers at some sacrifice to personal and family life – and the further option of choosing the socially approved path of quitting work to be supported by someone else. Others are fatalists about both the structure of law practice and of family life: law is inherently demanding and getting more so, and women will always be expected to do more at home.

This Report suggests that such responses may be somewhat misconceived. Few women, whether married or unmarried, have the choice not to work. Most who leave legal jobs because of work-life conflicts do so to take more accommodating jobs. If they do leave the profession, or work in jobs that make less than full use of the talents they have acquired through long education, practice and experience at huge expense, not only they but their profession and society generally are losing an enormous amount of human potential. Limiting part-time alternatives does not lead more women to choose full time work; it induces them to leave.

The Task Force believes that it is worth experimenting with changes in the structure of practice that would accommodate the extra demands made on women by home life and children, and thus increase the happiness and productivity of all lawyers, male and female. Progress on these critical issues might make the practice of our profession more consistent with the values of personal and family life and public service, allowing the profession to avoid at least some of these losses.

¹⁰⁵ An especially revealing account of the emotional costs of these conflicts may be found in a recent study of lawyers in Toronto, Ontario: John Hagan and Fiona Kay, *Gender in Practice: A Study of Lawyers’ Lives* (1995), 155-177.

Addressing the Issues: Possible Approaches

❖ Law offices of all sizes and types could experiment with varieties of part-time and flexible work models.

The main obstacles to such experiments tend to be inertia; unfamiliarity with useful models; fear of administrative complexity; fear of loss of control over lawyers' time; fear that if options are made available to some, everyone will want them and sink the enterprise.

There are however templates and models available from the examples of firms that have effectively implemented flexible work schedule and family leave policies, and thereby increased both the work satisfaction, retention rates, and productivity of their attorneys.¹⁰⁶ Some firms have also experimented with forms of "value billing" to decrease the relative importance of billable hours, sheer time spent at work, as the main measure of a lawyer's productivity. The CBA could play a most useful role by disseminating some of these models and examples and holding seminars for law office managers. The state's law schools could play a role in helping to find experts and hosting such events.

❖ Law offices could experiment with other initiatives used by law firms that have successfully incorporated aspiring women trial lawyers into the practice and retained their services.

Besides flexible part-time schedules and part-time work, these firms provided day care facilities (or spaces in back-up emergency day care), trial opportunities for female associates as second chairs or observers, pro bono opportunities outside the firm to gain trial experience, mentoring relationships with senior lawyers at the firm, women on the committees that manage the firm, less emphasis on client recruitment as a factor in promotion, and care not to exclude women from social activities to recruit clients.¹⁰⁷

❖ The bar could also sponsor classes and seminars in modes of lawyering – trial practice, negotiating deals – conducted by women for women attorneys.¹⁰⁸

¹⁰⁶ See, e.g., the ABA study, *supra* n. 93; the Boston Bar Association Task Force Study, *supra* n. 94; the American University study, *supra*, n. 98; Project for Attorney Retention, Corporate Counsel Project, Final Report: Better on Balance (2003), available at <http://www.pardc.org/Publications/BetterOnBalance.pdf>

¹⁰⁷ The initiatives discussed in this paragraph were described in Defense Research Institute, *A Career in the Courtroom: A Different Model for the Success of Women Who Try Cases* (2004), available at <http://www.dri.org/dri/course-materials/2004cdwchidden.html>.

¹⁰⁸ The Connecticut Trial Lawyers Association Women's Caucus provides some programs of this type, and they have been well-received.

The Task Force conducted one of its “town meetings” as a “women-only” discussion of gender issues affecting the profession. We did so because -- bolstered by social science research¹⁰⁹ -- we concluded that group conversations in which only women (or only men) are present proceed in very different ways than conversations in which women and men both participate. The women who participated in our “women-only” town meeting reinforced this view in the reflections they shared with the Task Force after the “women-only” meeting had taken place. The Task Force discussions suggested strongly that these dynamics play a role in other types of forums, and that it might be very helpful for law schools and bar organizations to sponsor classes and seminars that – by design – would be taught by women, for women, and from which men would be excluded.

For all of the initiatives and approaches described above, however, the Task Force stresses that progress will depend critically on law offices’ ability to exhibit examples of lawyers who have taken advantage of them and not only survived but flourished – made partner, and made responsible for important cases, transactions, and clients.

Task Force Recommendation

- **ACTION ITEM: In cooperation with the James W. Cooper Fellows of the Connecticut bar Foundation, the CBA should plan and sponsor a major conference on the issue of life balance and lawyering, with a particular emphasis on the challenges confronting women in the profession.**

VI. Summary of Recommendations and Conclusion

The Task Force’s charge was so broad – and the Task Force’s discussions covered such a wide range of topics – that we find it impractical to present a comprehensive list of possible solutions to the challenges confronting the “future of the legal profession.” This report has attempted to include some fairly detailed suggestions for possible approaches to the various issues we examined, and the Task Force hopes that other bar organizations, committees and Task Forces will find these suggestions useful as they continue to monitor the rapid changes in the profession.

¹⁰⁹ See, e.g., Catherine Krupnick, *Meadows College Prepares for Men*, in GENDER & PUBLIC POLICY 137, 141-47 (Kenneth Winston & Mary Jo Bane eds., 1993) (noting that even when women far outnumbered men in the classroom, male students consumed disproportionate amounts of air time with comments and questions); Catherine G. Krupnick, *Sex Differences in College Teachers' Classroom Talk* (1984) (unpublished Ph.D. thesis, Harvard University Dept. of Education, 1984) (stating that although men consistently speak more frequently and for longer periods of time than women do, the gender of professor and the composition of the class may mitigate or exacerbate this dynamic). See generally Lani Guinier et al., [Becoming Gentlemen: Women's Experiences at One Ivy League Law School](#), 143 U. PA. L. REV. 1 (1994); Jennifer Gerarda Brown, *To Give Them Countenance": The Case For A Women's Law School* 22 Harv. Women's L. J. 1 (1999).

In each area that it explored, the Task Force did seek to identify immediate, concrete “Action Items” that might be immediately helpful in the Connecticut bar’s efforts to confront present and future challenges. Below, we repeat those “Action Items,” indicating where appropriate the appropriate actor(s) whose action would be required for implementation.

- **ACTION ITEM: Connecticut should implement Modified Model Rules 5.5 and 8.5 as approved by the House of Delegates at its May 15, 2006 meeting.**
- **ACTION ITEM: Connecticut should implement the new court rule, drafted by the CBA Unauthorized Practice Committee, that defines the practice of law in some detail, as approved by the House of Delegates at its May 15, 2006 meeting.**
- **ACTION ITEM: The CBA should monitor adherence of the United States to the GATS Treaty, which will likely require at least some modification of the rules on admission to practice within Connecticut to prevent discrimination against foreign lawyers (extra national) protected by the provisions of the treaty.**
- **ACTION ITEM: The CBA should reconstitute its section on Small Firm and Solo Practice and charge it with following up on the recommendations included in this section of this report, perhaps planning some programs in cooperation with the James W. Cooper Fellows of the Connecticut Bar Foundation.**
- **ACTION ITEM: The CBA’s ad hoc committee on Unbundled Legal Services should prepare recommendations for changes in state rules of professional responsibility to allow lawyers to engage in limited representation and to perform other tasks considered unbundled services.**
- **ACTION ITEM: The CBA’s ad hoc committee on Unbundled Legal Services should develop supporting materials (e.g., a “Best Practices” manual, with accompanying form documents) to assist practitioners and clients who elect to pursue unbundled service arrangements.**
- **ACTION ITEM: The Judicial Branch should amend Rule 1.15 of the Rules of Professional Conduct to require lawyers who hold IOLTA accounts to place them only at banks that pay rates on IOLTA balances comparable to the rates they pay on comparable accounts to other customers.**
- **ACTION ITEM: Mandatory CLE: to address the need for additional training and networking opportunities that CLE provides, the**

Connecticut bench and bar should reconsider instituting a modest but mandatory system of continuing legal education, per the recommendations of the CBA CLE Committee.

- **ACTION ITEM: The Judicial Branch should begin to ask lawyers on the annual lawyer registration forms about their ethnicity so that information about diversity in the Connecticut legal profession can be tracked over time.**
- **ACTION ITEM: The CBA should continue to try to determine the number of minority lawyers among its members so that efforts can be made to ascertain the needs of those members and to track trends over time.**
- **ACTION ITEM: The CBA should encourage the appropriate public officials to nominate and appoint additional minority lawyers to the judiciary.**
- **ACTION ITEM: In cooperation with the James W. Cooper Fellows of the Connecticut bar Foundation, the CBA should plan and sponsor a major conference on the issue of life balance and lawyering, with a particular emphasis on the challenges confronting women in the profession.**

* * * * *

In closing, we would like to express the Task Force’s gratitude to the many lawyers and judges who assisted the Task Force in its investigations by completing surveys and by sharing insights with us through correspondence and in the “town meetings” that the Task Force conducted in 2005-2006.

NOTE: Questions, comments and suggestions may be directed to Tim Hazen, Executive Director of the Connecticut Bar Association.

Attachments

(Available on the CBA Website: <http://www.ctbar.org/>)

- 1. Task Force Survey Results**
- 2. MJP/UPL/House Counsel Rules as approved by the House of Delegates on May 15, 2006**
- 3. Proposal on Rule 1.15 (IOLTA Interest rates)**