The Future of Pro Bono in New York

VOLUME TWO:

Report and Recommendations

from the

New York State Unified Court System's Pro Bono Convocations

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Executive Summary

The scope and complexity of New York's law and court structure make the assistance of a lawyer critical for obtaining civil justice. New York's one million households living in poverty cannot afford to hire a lawyer; moreover, the amount of free legal help available to them for their civil legal needs is wholly insufficient.

A study of the New York State Bar Association reported that New York's poor households experience an average of 2.37 unmet civil legal needs annually – a total of approximately 2.5 million legal problems for which no lawyer is available. Providing even a minimal amount of legal help for each of these legal problems would require many millions of hours of legal assistance.

How are these additional hours to be provided? Placing emphasis on educational programs and materials for those without a lawyer, while useful, has practical limitations and begs the fundamental unfairness of leaving the poor to fend for themselves in New York's challenging legal arenas. Moreover, while identifying sources of additional public and private funding for civil legal services continues to be essential, those efforts, however successful, are unlikely ever to raise sufficient funds to meet more than a relatively small percentage of the need.

Thus, it is important to consider whether and how New York State lawyers can increase their pro bono activity to serve the legal needs of poor New Yorkers. A statewide survey of the 2002 pro bono activities of the New York Bar found that 46% of New York's lawyers provided some pro bono service for the poor, with 54% providing no such service. Moreover, just 27% provided more than 20 hours of service – the amount recommended by the Administrative Board of the Courts in its 1997 Pro Bono Resolution.

In 2002, the New York State Unified Court System hosted four Pro Bono Convocations to brainstorm issues and develop tangible, feasible ideas and strategies for expanding pro bono service in New York. Judges, Bar leaders and other practicing attorneys, and legal educators from New York and elsewhere were among those participating in the Convocations.

From these Convocations the following **findings** emerged:

- A need exists to increase pro bono services in New York State.
- A formal statewide initiative is necessary and desirable.
- All stakeholders should be involved in the statewide program that is developed to expand pro bono.

- The Judiciary should have a significant role in the statewide program, but local leadership, design, implementation and control are essential for a comprehensive and workable program.

- Pro bono service should be voluntary.

Convocation **recommendations** include the following:

- Local pro bono action committees throughout New York State, supported by a statewide Standing Committee on Pro Bono, should develop local pro bono action plans. The plans should be in place within one year.

- The Judiciary's leadership role in increasing pro bono service should include, among other things, development of educational, recruitment and recognition programs for attorneys.

- Court-based initiatives should be developed to facilitate court access for litigants with pro bono attorneys.

- Pilot projects should test the efficacy of discrete task ("unbundled") representation as a way to increase pro bono service.

- Materials for law students and newly admitted attorneys should emphasize pro bono service.

- A methodology should be developed for the ongoing collection of data about pro bono service levels.

Ensuring all New Yorkers access to justice and to the justice system will require commitment, innovation and great effort. The Pro Bono Convocations were designed to generate ideas and potential solutions. The thoughtfulness and hard work of those who attended made the Convocations highly effective for achieving this objective. A more intensive phase lies ahead. The integrity of New York State's administration of justice demands no less a degree of effectiveness as ideals and concepts are given tangible expression.

I. Introduction

The scope and complexity of New York's law and court structure make the assistance of a lawyer critical for obtaining civil justice. New York's one million households living in poverty cannot afford to hire a lawyer; moreover, the amount of free legal help available to them for their civil legal needs is wholly insufficient.[1] The ability to obtain civil justice in New York State has thus become associated with one's financial status.

A study of the New York State Bar Association reported that New York's poor households experience an average of 2.37 unmet civil legal needs annually[2] – a total of approximately 2.5 million legal problems for which no lawyer is available. These unmet needs represent 86% of all civil legal needs of the poor.[3] A reasonable estimate is that ten million additional hours of attorney assistance may be required annually to provide New York's poor with even a bare minimum amount of the legal help that they need.[4]

Who will provide these additional millions of hours of attorney time? The time must be provided; otherwise, New York State must continue to abide the observation that its civil justice system works effectively mainly for people of means. Placing emphasis on programs and materials that provide an elementary degree of legal education and training to those who are without a lawyer, while useful, has practical limitations and begs the fundamental unfairness of

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[1] In New York, funding from the two primary funders of civil legal services – the federally-funded Legal Services Corporation ("LSC") and the Interest on Lawyers Account Fund ("IOLA") – has decreased by approximately 40% since the early 1990s. While state and local government have sought to address the funding cuts with budget appropriations and earmarked grants, these have not made up for the drastic reductions. For example, an internal Spring 2001 review conducted by The Legal Aid Society of New York City found that the Society turns away six applicants for each one accepted. *See also* Legal Services Project, *Funding Civil Legal Services for the Poor: Report to the Chief Judge*, at 3-4 (May 1998)("Legal Services Project").

[2] New York State Bar Association, *The New York Legal Needs Study 1990* (revised 1993)("Legal Needs Study"). *See also Legal Services Project*, *supra* note 1, at 5-6.

[3] *Legal Needs Study, supra* note 2, at 157 (finding that only 14% of the civil legal needs of New York's poor were being met).

[4] This calculation is based on a minimal average of four hours of legal help for each of the approximately 2.5 million legal problems for which the State Bar found no help available.

leaving the poor to fend for themselves in New York's challenging legal arenas. Identifying sources of additional public and private funding for civil legal services continues to be essential. Yet those efforts, however successful, are unlikely ever to raise sufficient funds to meet more than a relatively small percentage of the need.

Thus, it is important to consider whether and how New York State lawyers can increase their pro bono activity to serve the legal needs of poor New Yorkers.[5] A statewide survey of the 2002 pro bono activities of the New York Bar found that 46% of New York's lawyers provided some pro bono service for the poor; in other words, 54% provided no such services. Moreover, just 26.5% provided more than 20 hours of service[6] – the amount recommended by the Administrative Board of the Courts in its 1997 Pro Bono Resolution.[7]

Immediately following the events of September 11th, a surge in pro bono activity occurred of a kind not previously experienced in New York. The post-September 11th pro bono effort to help people affected by the tragedy drew volunteer attorneys from a broad cross-section of the Bar. Many lawyers performed pro bono for the first time. With Bar associations at the helm, a coordinated system was developed that promptly identified legal needs and assigned tasks among lawyers to ensure that services were provided efficiently. A mentoring/facilitator system was established to assist attorneys who had limited experience with the requisite substantive legal areas and with helping people in crisis. This targeted pro bono effort was an

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[5] The New York Bar has a highly-regarded tradition of performing a wide variety of pro bono services, including providing free legal services to charitable and not-for-profit organizations. While these activities significantly contribute to the public good, the goal of the Convocations was to increase the level of pro bono service that directly addresses the specific legal needs of poor individuals and households.

As defined by the Administrative Board of the Courts, pro bono legal services for the poor are: professional services rendered in civil matters, and those criminal matters for which the government is not obliged to provide funds for legal representation, to persons who are financially unable to compensate counsel; activities related to improving the administration of justice by simplifying the legal process for, or increasing the availability and quality of legal services to, poor persons; and professional services to charitable, religious, civil and educational organizations in matters designed predominantly to address the needs of the poor. *Resolution of the Administrative Board of the Courts* (May 1997).

[6] New York State Unified Court System, *Report on the 2002 Pro Bono Activities of the New York State Bar* (January 2004).

[7] A copy of the Resolution is attached as Appendix A.

extraordinary success, representing the exemplary public-spiritedness of attorneys and demonstrating how effective a motivated Bar can be.

In 2002, the New York State Unified Court System hosted four Pro Bono Convocations to brainstorm issues and develop tangible, feasible ideas and strategies for expanding pro bono service in New York. This report summarizes the Convocations and their findings. As background, the report first examines New York's recent pro bono history and reviews the experiences of other states in implementing pro bono plans and initiatives. The report then describes the Convocations, with emphasis on the discussions and findings of the Convocation's Working Groups. Finally, the report makes recommendations to be considered for implementation.

II. Recent History of Pro Bono in New York

In the 1980s, the widening gap between the legal needs of the poor and the resources available to meet those needs became dramatically apparent.[8] To address the matter, former Chief Judge Sol Wachtler appointed the Committee to Improve the Availability of Legal Services (commonly known as the "Marrero Commission") to review the extent of the poor's unmet legal needs and to explore the scope and operation of existing legal services. The Marrero Commission also was charged with devising a plan to increase pro bono services to the poor.

The Committee's report, issued in April 1990, found an enormous unmet need which was causing a crisis in the legal system.[9] The Committee concluded that existing voluntary pro bono efforts and publicly-funded legal services programs would continue to be insufficient for

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[8] During this time, the New York State Bar Association undertook a study of the unmet legal needs of New York's poor. *See Legal Needs Study, supra* note 2.

[9] Committee to Improve the Availability of Legal Services, *Final Report to the Chief Judge of the State of New York* (April 1990), *reprinted in* 19 Hofstra L. Rev. 755 (1991). The Marrero Commission relied in large part on the findings of the *Legal Needs Study* (*supra* note 2), including the findings that only 14% of the civil legal needs of New York's poor were being met and that funding for legal services programs in New York was inadequate to serve more than 4% of those needs.

meeting the legal needs of the poor. The Committee recommended that a mandatory pro bono requirement be adopted in New York for each member of the Bar to perform a minimum of 20 hours a year of qualifying pro bono service or to contribute financially to organizations serving the legal needs of the poor. Qualifying pro bono was defined as:

- legal service rendered in civil matters to persons who cannot afford to pay counsel, or to such persons in criminal matters for which there is no government obligation to provide funds for legal representation;
- activity related to simplifying the legal process for, or increasing the availability and quality of legal services to the poor; and
- legal services provided to charitable, public interest organizations on matters which are designed predominantly to address the needs of the poor.

Chief Judge Wachtler accepted the Committee's findings but deferred decision on its recommendations concerning mandatory pro bono.[10] Believing that voluntary pro bono efforts would be more acceptable than the imposition of a mandatory system, the Chief Judge called upon the Bar to demonstrate that pro bono service could be increased through voluntary efforts.[11] To monitor the Bar's pro bono activities, he appointed a Pro Bono Review Committee ("Review Committee") in 1990 to determine the amount and types of pro bono work being done by New York lawyers and the impact of the Bar's renewed voluntary efforts. That committee surveyed New York lawyers about their pro bono work, including the number of hours performed and the reasons for not engaging in pro bono, over a three-year period.

In April 1994, the Review Committee issued its final report. Although there had been

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[10] Prior to the Committee's issuance of its final report, the New York State Bar Association issued a report acknowledging the unmet legal needs of the poor but opposing mandatory pro bono as the solution. The State Bar urged the former Chief Judge not to consider any mandatory plan for at least three years, during which time the State Bar would work to stimulate greater voluntary efforts. The report included a "20-Point Activation Plan" that would demonstrate that voluntary pro bono could address the legal needs of the poor as well as, or maybe better, than mandatory pro bono. New York State Bar Association, *Report of the Special Committee to Review the Proposed Plan for Mandatory Pro Bono Service* (October 1989).

[11] In deferring a decision on mandatory pro bono, the Chief Judge cautioned the Bar that if voluntary efforts were not successful in increasing pro bono activity, he would seek implementation of the mandatory plan proposed by the Marrero Commission. Hon. Sol Wachtler, *Symposium on Mandatory Pro Bono: Introduction*, 19 Hofstra L. Rev. 739 (1991).

much activity aimed at increasing pro bono[12] between 1990 and 1994, the survey results showed that the percentage of lawyers doing pro bono had remained relatively static during those years, with approximately 48% of New York attorneys providing pro bono services.[13]

In February 1997, the Association of the Bar of the City of New York proposed that New York lawyers be required to report their voluntary pro bono efforts in conjunction with their biennial registrations. The proposal adopted the Marrero Commission's definition of pro bono and suggested that the aspirational goal for any attorney should include a commitment of 20 hours per year or a financial contribution to organizations providing free legal services to the poor.

In May 1997, the Administrative Board of the Courts adopted a resolution urging attorneys to provide 20 hours of pro bono service annually (using the Marrero Commission definition)[14] and to support financially the work of organizations that provide legal services to the poor. A copy of the Pro Bono Resolution is included in every New York attorney's biennial registration materials.[15]

Following adoption of the Resolution, the Administrative Board sought to assess the level of pro bono service in New York. It authorized a survey of the 1997 pro bono activities of the New York State Bar. The results of this survey were nearly identical to the earlier results. In

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[12] Among the numerous initiatives undertaken were: projects developed by the organized Bar, including creation of the New York State Bar Association's President's Committee on Access to Justice and Department of Pro Bono Affairs; creation of new organizations to connect lawyers with pro bono matters; expansion of existing pro bono programs; increased use of technology to promote pro bono opportunities; implementation of mandatory pro bono at some law schools; and the establishment of the ABA Pro Bono Challenge (an initiative to increase pro bono at large law firms).

[13] The final report showed that the percentage of New York attorneys providing pro bono services in the years 1990-1993 was as follows: 48.3% in 1990; 49.3% in 1991; and 47.1% in 1993. Pro Bono Review Committee, *Final Report* (April 1994). It is interesting to note that although pro bono service levels remained static during this period, New York experienced a dramatic increase in poverty. In addition, IOLA funding decreased significantly due to a drop in interest rates. *See Legal Needs Study*, *supra* note 2, at vii.

[14] *See supra* note 5.

[15] A copy of the Resolution is attached as Appendix A.

1997, 47% of New York lawyers with a principal place of business or residence in New York State performed qualifying pro bono service.[16] Of those attorneys, 27% reported performing 20 or more hours of pro bono service.

Recognizing the need for greater focus by the courts on access to justice issues, the Administrative Board of the Courts created the post of Deputy Chief Administrative Judge for Justice Initiatives in July 1999 and appointed Judge Juanita Bing Newton to the position. Among her responsibilities is the challenge of increasing pro bono service. Soon after her appointment, she recommended amendment of New York's Continuing Legal Education (CLE) rules to allow CLE credit for the performance of pro bono work. In Spring 2000, the CLE Board adopted this proposal, making New York the third state in the nation to grant attorneys CLE credit for pro bono service. Up to six such hours may be earned for performing uncompensated legal services for clients unable to afford counsel.

In September 2001, the Deputy Chief Administrative Judge for Justice Initiatives hosted the first New York State Access to Justice Conference. The purpose of the Conference was to bring together members of the civil justice community, including judges, court administrators, government officials, Bar leaders, academicians and advocates, to exchange ideas and develop partnerships to eliminate barriers to justice. A major area of focus at the Conference was on how to increase pro bono in New York, examining the role of the Judiciary, Bar associations, private attorneys and law schools. The conference provided an opportunity to discuss pro bono initiatives that might be developed in New York, including establishment of a statewide pro bono system, implementation of discrete task representation ("unbundled" legal services)[17] and creation of additional court-based programs.

III. Experiences in Other States

New York's experience in seeking to increase pro bono service to address the legal needs of the poor is not unique. Throughout the United States, advocates for access to justice have

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[16] New York State Unified Court System, *Report on the Pro Bono Activities of the New York State Bar* (February 1999).

[17] *See infra*, at 12.

struggled with the issue of ensuring access to justice for all and the role that pro bono plays in that equation. Florida, Maryland and Indiana are three states that have established statewide plans and structures for Judiciary and Bar involvement in the pro bono effort. A brief description of their statewide systems follows.

A. Florida

In 1993, after four years of intense debate on how best to improve and expand the delivery of legal services to the poor, the Florida Supreme Court adopted a rule that created a statewide voluntary pro bono plan with a mandatory reporting requirement. Under Florida's rule,[18] each of the twenty judicial circuits is required to establish a Circuit Committee, composed of the chief circuit judge or his/her designee and representatives of Bar associations, pro bono and legal services providers, the public and the client community.[19] The Circuit Committees are responsible for assessment of the legal needs, and the availability of services to meet those needs, within each circuit. Pursuant to the rule, the Circuit Committees are required to establish plans for their respective legal communities to address the unmet needs through pro bono service and to promote participation in pro bono legal services. Each circuit must prepare an annual written report that is submitted to a statewide Standing Committee on Pro Bono Legal Services,[20] which is responsible for reviewing and evaluating the Circuit Committees' pro bono plans and reports.

In addition to establishing the statewide structures, the rule requires that attorneys report

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[18] Fla. Bar R. Prof. Cond. 4-6.5(c).

[19] Pursuant to the rule, the chief circuit judge or designee appoints the Circuit Committee and the committee appoints its chair. *Id.*

[20] Fla. Bar R. Prof. Cond. 4-6.5(b). The president-elect of the Florida Bar appoints the members of the Standing Committee as indicated in the rule. *Id.*

their voluntary pro bono activity annually.[21] Failure to report the information constitutes a disciplinary offense under the rules.[22] Following adoption of the rule, there was lengthy and contentious debate over the mandatory reporting requirement. In 1996, the Florida State Bar petitioned the Supreme Court to rescind the rule, arguing that rescission would reduce the "unnecessary hostility" within the Bar and thus increase pro bono activities. In 1997, the Supreme Court denied the Bar's petition and reaffirmed the importance of mandatory reporting.[23] An unsuccessful federal lawsuit also was brought challenging the constitutionality of the pro bono rule.[24]

The Florida system has been successful in bringing about significant increases in pro bono activities as can be seen in the following chart comparing the 1994-1995 base year data with 1999-2000 data:[25]

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[21] Fla. Bar R. Prof. Cond. 4-6.1(d). In adopting the rules, the Florida Supreme Court recognized the necessity of reporting: "We believe that accurate reporting is essential for evaluating this program and for determining what services are being provided under the program. This, in turn, will allow us to determine the areas in which the legal needs of the poor are or are not being met." *In re Amendments to Rules Regulating the Florida Bar–1-3.1(a) and Rules of Judicial Administration–2.065* (Legal Aid), 630 So.2d 501, 502-503 (Fla. 1993).

[22] Fla. Bar R. Prof. Cond. 4-6.1(d).

[23] *In re Amendments to Rule 4-6.1 of the Rules Regulating the Florida Bar–Pro Bono Publico Service*, 696 So.2d 734 (Fla. 1997).

[24] *Schwarz v Kogan*, 132 F.2d 1387 (11th Cir. 1998), *cert. denied*, 524 U.S. 954 (1998).

[25] The Standing Committee on Pro Bono Legal Services, *Report to the Supreme Court of Florida, the Florida Bar, and the Florida Bar Foundation on the Voluntary Pro Bono Attorney Plan* (December 2001).

	1994-1995	1999-2000	% Change
Members Providing Services	22,283	26,897	21%
Hours of Service	561,352	1,146,502	104%
Contributors	3,608	6,230	73%
Amount of Contributions	$876,837	$1,642,033	87%
Lawyers in Firm Plans*	823	1,120	36%
Hours of Service in Firm Plans*	19,698	84,483	329%

* Data are for calendar years 1994 and 2000.

B. Maryland

In February 2002, Maryland also adopted a voluntary pro bono plan with mandatory reporting. Previously, Maryland had rejected a mandatory pro bono proposal and adopted a voluntary recruitment plan.[26] While voluntary efforts initially were successful, in the late 1990s the pro bono commitment throughout the state diminished. Recognizing the need for strong and visible leadership by the Judiciary in this area, the Chief Judge appointed the Maryland Judicial Commission on Pro Bono in 1998 to investigate and make recommendations about the role the Judiciary can and should play in expanding pro bono service in Maryland.

Guided by the Commission's recommendations,[27] the Maryland Court of Appeals voted to revise the Maryland Rules of Professional Conduct to encourage attorneys to render at least 50 hours of pro bono service each year, with a substantial portion of those hours devoted to helping the poor.[28] A related rule established local county Pro Bono Committees, to be composed of the Public Defender, members of the Bar (selected by the president of the county bar association), representatives from legal services and pro bono organizations, and members of the general public (the latter two groups selected by the County Administrative Judge and District

[26] Maryland adopted voluntary reporting in 1994. However, in any given year, fewer than 7% of licensed attorneys reported their pro bono services.

[27] The Maryland Judicial Commission on Pro Bono, *Report and Recommendations* (March 2000).

[28] Md. R. Prof. Cond. 6.1. The rule change was effective July 1, 2002.

Administrative Judge).[29] The Pro Bono Committees are responsible for assessment of the legal needs, and the availability of services to meet those needs, within each county. Pursuant to the rule, the Pro Bono Committees are required to establish plans for their respective legal communities, as well as to establish goals and priorities for pro bono legal services. Annually, each Pro Bono Committee must prepare a written submission to the statewide Standing Committee of the Court of Appeals on Pro Bono Services[30], which is responsible for overseeing the work of the Pro Bono Committees as well as developing a state pro bono action plan.

Maryland's rules also mandate pro bono reporting by attorneys. Under the reporting requirement, every Maryland attorney must submit an annual pro bono report describing the nature of his or her pro bono service.[31] In the event of noncompliance, the attorney is subject to a decertification order prohibiting the attorney from practicing law in the state. In making its recommendation for mandatory reporting, the Maryland Judicial Commission recognized that a required reporting system was needed to obtain complete and accurate information about the rendering of pro bono services in the state.[32] The collected data would be used by the statewide Standing Committee to monitor the amount of pro bono service being performed by lawyers and the success of pro bono projects.

Maryland's system is too new to assess results.

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[29] Md. R. Pro. 16-902. Pursuant to the rule, the Pro Bono Committees select their chairs. *Id.* The Maryland Judicial Commission on Pro Bono proposed that judges be included as members of the local Pro Bono Committees. This recommendation was not adopted in the final rule.

[30] Md. R. Pro. 16-901. The Standing Committee, appointed by the Court of Appeals, consists of 13 members: eight members of the Bar; two judges; the Public Defender; a representative of a legal services organization; and a member of the public.

[31] Md. R. Pro. 16-903.

[32] *Report and Recommendations*, *supra* note 27, at 59.

C. Indiana

In 1997, the Indiana Supreme Court adopted a rule establishing a voluntary pro bono plan. Under Indiana's rules, lawyers are encouraged to render free or reduced fee services to persons of limited means or public service or charitable organizations, and to financially support organizations that provide legal services to persons of limited means.[33] To ensure that this obligation is met, the Supreme Court adopted a rule establishing the Indiana Pro Bono Commission and the framework for 14 district Pro Bono Committees.[34]

The Pro Bono Commission is a partnership of the Indiana Bar Foundation and the Supreme Court. It consists of 21 members – 11 appointed by the Supreme Court and 10 appointed by the Bar Foundation – and has overall responsibility and authority for management of the voluntary pro bono plan, including supervision of the district pro bono committees. The primary responsibility of the Pro Bono Commission is to evaluate the district plans and allocate IOLTA funds (through the Bar Foundation) to the local committees for implementation of their plans.[35] Through 2003, the Pro Bono Commission has provided funding of $1.3 million to the 14 district committees.

The 14 district Pro Bono Committees are each chaired by a local trial judge who is responsible for appointing the committee consisting of local bar leaders, law school representatives, judges and individuals who have benefitted from pro bono. The Pro Bono Committees are required to develop pro bono plans that address how legal needs in their community will be met. In order to carry out this responsibility, the Pro Bono Committees monitor the pro bono activity of local attorneys and the gaps in the provision of legal services.

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[33] Ind. R. Prof. Cond. 6.1.

[34] Ind. R. Prof. Cond. 6.5.

[35] Ind. R. Prof. Cond. 1.15(d)(8) provides that IOLTA funds shall be used, among other purposes, to assist or establish approved pro bono programs pursuant to Ind. R. Prof. Cond. 6.5.

Given the relatively short history of Indiana's pro bono plan, data on changes in pro bono service levels are not yet available. However, reports from the district committees indicate that the number of attorneys working toward developing pro bono resources in Indiana has increased.[36]

IV. Discrete Task Representation

Many states and Bar associations are studying the concept of "discrete task representation" or "unbundled services" as an alternative to traditional full-service representation in order to attract attorneys who might not otherwise undertake pro bono due to limitations on time and resources. Under an unbundled model of representation, the attorney and client agree that the scope of legal services to be performed will be limited to defined tasks, with the remaining tasks to be performed by the client. For example, the client could decide to self-represent in court but retain an attorney to review completed papers and provide advice and research on the law.

Although the concept of unbundled services is often advanced as new, the practice has been used for years in certain areas of the law, particularly in non-litigation areas such as estate planning and certain aspects of business law. Attention is now being focused on how unbundling can be applied in the litigation setting. In February 2002, the American Bar Association House of Delegates adopted changes to the Model Rules of Professional Conduct which aim to clarify and encourage the use of unbundled legal services.[37] Many states have followed the ABA's lead, examining how their rules and statutes might be modified to permit

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[36] Indiana Pro Bono Commission, *Annual Report 2002* (available on the web at www.in.gov/judiciary/probono/attorneys/reports/an-rept-2002.pdf).

[37] *See* ABA Model Rules of Professional Conduct 1.2(c)(amended Feb. 5, 2002), 6.5 (added Feb. 5, 2002) and Comments.

unbundling.[38] To date, at least six states – Colorado, Florida, Maine, New Mexico, Washington and Wyoming – have adopted rules governing unbundled legal services.[39]

In New York, unbundled legal services gradually has been attracting attention. The New York State Bar Association Commission on Providing Access to Legal Services for Middle Income Consumers has been studying the issue of unbundling and recently issued its final report and recommendations.[40] At the Unified Court System's Access to Justice Conference, a panel focused on limited representation, discussing how it serves the legal needs of low- and middle-income New Yorkers, and the challenges faced by attorneys and judges in the unbundled environment.

In conjunction with that panel discussion, Administrative Judge Fern Fisher of the Civil

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[38] *See, e.g.,* California Commission on Access to Justice Limited Representation Committee, *Report on Limited Scope Legal Assistance with Initial Recommendations* (Oct. 2001)(proposed rules and forms for family law matters which were adopted by the California Judicial Council in April 2003); *In re Proposed Amendments to the Rules Regulating the Florida Bar (Unbundled Legal Services)*, No. SC02-2035 (August 2002)(decided November 13, 2003).

[39] *See, e.g.,* Colo. R. Civ. P. 11(b) and 311; Colo. R. Prof. Cond. 1.2; Me. Bar R. 3.4(i), 3.4(j), 3.5(a)(4), 3.6(a)(2) and 3.6(f); Me. R. Civ. Pro. 5(b) and 11; Fla. Fam. L. R. P. 12.040; Fla. Bar. R. Prof. Cond. 4-1.2; N.M. Prof. Cond. R. 16-102, 16-103; Wash. R. Prof. Cond. 1.2(c), 4.2, 4.3 and 6.5; and Wyo. R. Prof. Cond. 1.2. *See also* Ca. R. Ct. 5.170, 5.171; Ca. Judicial Council Forms FL-950 (Notice of Limited Scope Representation form for use in family law proceedings); FL-955, FL-956 and FL-958 (forms for attorney withdrawal upon completion of limited scope representation in family law proceedings).

[40] New York Sate Bar Association Commission on Providing Access to Legal Services for Middle Income Consumers, *Final Report and Recommendations on "Unbundled" Legal Services* (Feb. 2003). The Commission's recommendations include: prohibiting limited appearances in litigated matters as a general rule; permitting lawyers to prepare or help self-represented litigants to prepare court papers, without entering an appearance in the case; amending the Code of Professional Responsibility to include a new ethical consideration which states that discrete task representation is permissible for non-litigated matters; and establishing special conflict of interest rules for lawyers providing discrete task representation through a non-profit or court-annexed legal services program. It is important to note that while the Commission recommended that limited appearances in litigated matters not be permitted, it did recommend that the New York State Bar Association support use of limited appearances by specific court-annexed or non-profit legal services programs "that are structured to accommodate an appearance limited in tasks and objectives." *Id.* at 7-8.

Court of the City of New York co-authored a law review article urging that unbundled legal services be adopted in New York and recommending how that could be accomplished.[41] Specifically, the article recommends:

- amending CPLR 321(b) to permit limited appearances by an attorney;
- amending the Code of Professional Responsibility to clarify the ethical requirements for discrete task representation;
- permitting attorneys to prepare court documents ("ghostwriting") but requiring disclosure to the court of such assistance; and
- amending Rule 130 of the New York Code of Rules and Regulations to allow for limited representation signature certification by an attorney.

V. Pro Bono Convocations

In order to build upon the positive outcomes from the court system's Access to Justice Conference and in light of the outpouring of enthusiasm for pro bono following the events of September 11th, the court system hosted four Pro Bono Convocations around the State in 2002.[42] These Convocations were designed to bring together the various segments of the Bar for their best thinking on pro bono, looking towards development of a concrete plan for New York. Accordingly, the Convocations were designed as working meetings, kicking off with a brief plenary session for background and then breaking into small working group sessions for intensive discussion and brainstorming on three major pro bono issues:

- Should New York have an organized statewide pro bono system and, if so, what should it look like?;
- What are the obstacles to implementing a statewide system in New York and how can they be overcome?;

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[41] Hon. Fern Fisher-Brandveen and Rochelle Klempner, *Unbundled Legal Services: Untying the Bundle in New York State,* 29 Fordham Urb. L.J. 1107 (2002).

[42] The Convocations were held as follows: June 20, 2002 at Fordham University School of Law in New York City; October 15, 2002 at the University at Buffalo Law School; October 25, 2002 at Albany Law School; and November 8, 2002 at the Ramada Inn Geneva Lakefront in Geneva.

- What role does discrete task representation[43] play in expanding pro bono and how can it be implemented in New York?

At the conclusion of the Working Group Sessions, the participants again met in a plenary session to present and discuss the tangible ideas and strategies developed throughout the day. Participants also were provided an opportunity to submit in writing further thoughts and recommendations for expanding pro bono service in the State.[44]

To ensure enlightened discussion at the Convocations, participants were provided resource materials prior to the events, including a Background Paper on Pro Bono which outlined major initiatives and models for advancing pro bono. The resource materials also were posted on the Unified Court System's web site along with other relevant information about the Convocations.

A. Findings of Convocations

The Convocations produced thoughtful debate and discussion about what is feasible for increasing pro bono in New York State. Summarized below are the findings.

1. General Findings

- A need exists to increase pro bono services in New York State.
- A formal statewide program for pro bono is necessary and desirable.
- All stakeholders should be involved in the statewide program.
- The Judiciary should have a significant role in the statewide program, but local leadership, design, implementation and control are essential for a comprehensive and workable program.
- Pro bono services should be voluntary.

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[43] *See supra*, at 12.

[44] *See* Appendices B-E for details of the Convocations, including the programs, texts of the Keynote Addresses and lists of participants.

2. Specific Findings of the Working Groups

a. Organizing a Statewide Pro Bono System

The Convocations provided an opportunity for extensive discussion about whether a formal statewide pro bono system should be considered for New York and, if so, what the system should look like. The clear consensus was that such a system had good potential for increasing the amount, scope and quality of pro bono, although important concerns were raised. These included whether participation in the system would be voluntary, whether initiatives would be locally designed and controlled, and whether existing programs would be able to continue to operate and coordinate effectively with a new statewide pro bono structure.

Convocation participants recommended a two-tiered structure consisting of local pro bono action committees supported by a statewide standing committee. The participants viewed the local committees as multi-functional, with responsibilities including assessing local needs, devising appropriate pro bono plans, recruiting attorneys, shaping local culture, providing resources, support and recognition, and ensuring accountability. If resources were available, the local committees also could undertake client screening and the provision of referrals to attorneys. There was no consensus among the participants of how "local" should be defined. Generally, participants believed that county committees were not feasible given the large number of New York counties and variations among Bar associations. There appeared to be support for creating local committees based upon New York's 12 judicial districts, although some participants felt such a system would place the rural areas at a disadvantage. Other suggestions included modeling the local committee structure on the federal Legal Services Corporation's seven service areas.[45]

With regard to composition of the committees, participants stressed the need for committees to be of workable size, with a suggestion that there should be no more than 12-15 members. Participants believed membership should include the Judiciary, legal service providers,

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[45] Following implementation of New York State's Reconfiguration Plan, there will be seven Legal Services Corporation service areas in the State: Long Island Region; New York City Region; Hudson Valley Region; Northeast Region; Central Region; Buffalo/Niagara Region; and Finger Lakes/Southern Tier Region.

pro bono coordinators, local bar associations, the State Bar Association and law schools. There was some concern about judicial involvement, *i.e.*, whether judges were ethically barred from committee's activities and whether judicial involvement would hinder rather than promote committee work. Some participants emphasized the importance of membership by the Administrative Judge of each judicial district. Other suggestions for committee membership included pro bono clients, consumer groups, religious leaders and members of the business community. There appeared to be consensus that each stakeholder group should have the right to nominate a member to the committee.

There was less consensus concerning the statewide entity. While many saw the practical benefits of such an entity, others feared that it could lead to centralized control and a loss of independence for the local committees. Participants saw the statewide entity as being largely responsible for backup, support and training. In addition, it would address statewide issues, such as analyzing legal needs and the plans developed to address those needs, identifying gaps in funding and providing funding to fill the gaps, promoting pro bono through message and media campaigns, developing uniform practice procedures, seeking simplification of laws and procedures, and ensuring balance between New York City and the rest of the State. While some suggested that one or two designated individuals could perform these roles, others felt a committee was more appropriate and necessary. There was no consensus regarding the committee's makeup but participants made clear that the committee had to be geographically diverse, and not dominated by the Office of Court Administration or the State Bar Association. A few participants suggested that the statewide entity be composed of the chairs of the local pro bono committees, but concerns also were raised about this proposal.

The participants discussed how the local committees and statewide entity would report progress and activity. While the participants recognized the value of collecting data to monitor progress and secure funding,[46] there was deep division about individual reporting by attorneys.

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[46] Data to be collected would include: amount of hours of pro bono performed; number of cases in which pro bono was performed; types of cases in which pro bono was performed; how cases were taken (*i.e.*, through individual or organizational referral); and the dollar amount contributed in lieu of pro bono service.

At the New York City Convocation, the Working Group participants favored mandatory reporting of pro bono as a means both to collect data and to increase the visibility of pro bono. Outside New York City, participants opposed mandatory reporting and recommended that the local committees collect data on the services being performed.

The participants saw numerous obstacles to implementing a statewide system. These included lack of funding for administrative support and client services, fear of mandatory pro bono, lack of trust among stakeholders and existence of geographic differences around the State. For the most part, participants thought these obstacles could be overcome, particularly with the leadership and support of the Judiciary. With regard to funding, there appeared to be a consensus that the Office of Court Administration should provide funding to support a statewide pro bono system.

b. Obstacles to Providing Pro Bono Services

The Convocations provided participants an opportunity for frank discussion of the obstacles that would hinder development and implementation of a statewide pro bono system. Overall, there was a general consensus regarding the numerous obstacles and how they can be overcome.

The participants first discussed the components of an ideal pro bono system. The participants generally agreed that an ideal pro bono system should be locally based and involve all stakeholders working collaboratively and in partnerships to meet the assessed unmet legal needs of the community. An ideal pro bono system would require that an infrastructure be established to: provide funding and resources, training and support, and evaluation and monitoring; serve as a central clearinghouse for clients and attorneys; and promote pro bono and the good work of attorneys who undertake it. It is interesting to note that data collection and reporting were deemed essential components – to ensure greater publicity and recognition for attorneys.[47] The ideal system also would create incentives and rewards for attorneys who perform pro bono.

[47] Many participants supported the use of technology (such as electronic reporting) to facilitate the collection of data.

Discussion then turned to the obstacles that would hinder the development and implementation of a statewide pro bono system. The chart that follows summarizes the discussions.

OBSTACLES	**POSSIBLE SOLUTIONS**
Lack of Knowledge/Misconceptions about Pro Bono	• Law schools should educate students about pro bono • Mandatory pro bono for students and/or law professors • Pro bono requirement incorporated into law school accrediting requirements • Include information on pro bono in admissions process and swearing-in ceremony • Include pro bono statement on bar admittance form • Include pro bono hypothetical/question on bar exam • Develop campaign to promote the Resolution of the Administrative Board of the Courts
Insufficiency of Volunteers	• Create an ethic of participation • Increase judicial support/encouragement • Encourage judges and law professors to be part of the pro bono system • Involve government attorneys • Instill pro bono ethic into daily work of law firms • Develop programs that match needs with interests • Tap into unique skills of attorneys that transcend substantive practice areas
Lack of Expertise	• Provide training and mentoring • Partnering with legal services providers • Assign cases within area of expertise • Develop infrastructure to match attorneys and clients, and to support volunteers with needs
Lack of Time	• Mechanism for responsible bail-out (return case to provider; have mentors/partners) • Pro bono-friendly court calendars • Pro bono as alternative to bar exam for attorneys who are already admitted • Develop brief advice programs • Implement rules for "unbundled" legal services in the litigation context
Lack of Incentives	• Increase CLE credits for pro bono service • Provide tax deduction for pro bono • Provide loan forgiveness or NY tax credit • Hold recognition ceremonies and media campaigns
Lack of Leadership	• Courts, law firms and bar associations need to be more involved • Define roles of each stakeholder • Increase judicial involvement, support and encouragement

Lack of Infrastructure/Collaboration	• Pro bono is part of a larger delivery system, needs to be tied to staff-based legal services programs • Create a clearinghouse/repository that provides information and resources and a referral mechanism • Partnerships between the courts, bar associations, law schools and legal services providers
OBSTACLES	**POSSIBLE SOLUTIONS**
Lack of Funding/Resources	• Find new private and public funding sources • Explore court system funding for administrative costs and outlays by client • Supplement or replace IOLA funds previously awarded to pro bono legal services • Develop technology for greater efficiencies • Develop collaborations for sharing resources
Lack of Liability/Malpractice Insurance	• Inform attorneys of availability • Provide through local pro bono committees
Definition of Pro Bono	• Broaden definition to include low- and middle-income individuals • Read current definition more creatively

The participants also discussed which stakeholders are responsible for overcoming the obstacles. There was consensus that all stakeholders had a role to play as the obstacles were not discrete but involved every aspect of the civil justice community. In addition, some participants recognized that the obligation goes beyond the justice community and extends to the executive and legislative branches, as well as other institutions, such as the media, as the crisis in accessing justice is a societal matter.

c. Facilitating Pro Bono Through Discrete Task Representation

In the third Working Group session, participants explored the role of discrete task representation ("unbundled" legal services)[48] in increasing pro bono services. These sessions were lively, with participants having strong sentiments concerning the appropriateness or inappropriateness of discrete task representation in litigated matters. While there appeared to be a consensus about the usefulness of unbundling in some limited circumstances, many of the

[48] For a discussion of discrete task representation or "unbundled" legal services, *see supra*, at 12.

participants were concerned about how unbundling would actually operate and whether the negatives of unbundling outweighed the positives. There appeared to be more support for unbundling from legal services providers and New York City participants. Reservations were voiced by the Judiciary and court personnel from outside New York City, and from attorneys in rural areas.

During the session, the participants first discussed the limited services that attorneys routinely perform. There was consensus that attorneys routinely perform discrete tasks, such as gathering facts, providing legal information and advice, performing legal research, drafting documents, negotiating, mediating and providing supportive services/follow-up. However, when the discussion turned to these tasks within the litigation context, some participants questioned the appropriateness of performing them without full representation. Some suggested that unbundling in a litigated matter should be limited to providing advice only.

To fully explore whether unbundling is ever appropriate in litigated matters, the participants then focused on the types of cases where unbundling might be applied. Generally, there was consensus that discrete task representation would be most appropriate in the following types of cases: landlord and tenant; foreclosure (advice and negotiation); child support; custody and visitation; matrimonial; bankruptcy (drafting the petition); consumer; and small estate administration. But even in these types of cases, the participants stressed that the appropriateness of unbundling had to be determined on a case-by-case basis, giving consideration to the case's complexity and whether it was contested or not. Accordingly, at the New York City Convocation, the participants suggested that unbundling be accomplished using a "facilitator" or team model. Cases would be screened by experts in the substantive areas to determine the type of representation needed and, after assessment, referred for either full or limited representation. Under such a model, the facilitator would remain involved in the unbundled case and provide guidance and resources, such as mentors, as necessary.

Even in the most ideal situation, participants saw obstacles in implementing limited representation in New York. In particular, concerns were raised about the unfamiliarity of attorneys and judges regarding unbundling. Many participants were not convinced that attorneys would more

readily perform pro bono under an unbundled system because it is contrary to their training. They believed that attorneys would be unwilling to step into a case after a litigant has appeared pro se or where work was done by another attorney, and for fear of not being able to step out of it. Concerns about malpractice and ethics also were repeatedly voiced.

Some of the judges in the Working Group session were averse to unbundling in litigated matters. They voiced concern that unbundling would require judges to serve as advocate rather than neutral fact-finder when the "unbundled" attorney was not before the court. This view was countered by some judges who believed that unbundling does not change the role of the judge. Rather, they opined, it is consistent with a judge's obligation to make inquiry, particularly when a matter involves a self-represented litigant.

Generally, the participants thought that certain obstacles to discrete task representation could be overcome if the CPLR were amended to allow for limited appearances.[49] Participants agreed that the education of judges and attorneys about unbundling was essential. They also agreed that providing model forms, including a model Retainer Agreement and Release Form, would facilitate unbundling both for the attorney and the self-represented litigant, and address malpractice and ethics concerns. With regard to malpractice, participants thought it necessary to meet with insurers to educate them about unbundling and, if necessary, to seek statutory changes.

VI. Recommendations

A. Develop Local Pro Bono Action Plans by Means of Local Pro Bono Action Committees Supported by a Statewide Standing Committee on Pro Bono

The experiences of Florida and Indiana support establishing a New York framework for voluntarily increasing pro bono by means of local Pro Bono Action Committees supported by a statewide Standing Committee. The Pro Bono Action Committees would oversee development and implementation of the local pro bono action plans to increase pro bono within their jurisdiction. The plans, which would be completed within one year after formation of the committees, would feature specific goals, targets, actions and timetables.[50] Among other things, the plans would address local

[49] There was some discussion about whether limited appearances should only be available to poor litigants or whether it should be available to all litigants.

[50] It is recommended that the local Pro Bono Action Committees assess the unmet legal needs of the poor within their jurisdictions, quantify the hours of pro bono service that would be necessary to meet those needs and articulate a strategy for increasing pro bono to meet some, if not all, of those needs.

promotion of pro bono; recruitment, training, and support of attorneys for pro bono; incentives and rewards for attorneys performing pro bono; development of an infrastructure to match attorneys with prospective clients; procedures for monitoring assigned matters and the quality of services being provided; and coordination between stakeholders for implementation.

It is recommended that the State be divided into ten local Pro Bono Action Committees. Such a division would permit coverage of the entire State with a rational geographic scheme. The ten local Pro Bono Action Committees would be as follows:

1. New York City (with subcommittees for each borough);

2. Third Judicial District (Albany, Columbia, Greene, Rensselaer, Schoharie, Sullivan and Ulster Counties);

3. Fourth Judicial District (Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, St. Lawrence, Saratoga, Schenectady, Warren and Washington Counties);

4. Fifth Judicial District (Herkimer, Jefferson, Lewis, Oneida, Onondaga and Oswego Counties);

5. Sixth Judicial District (Broome, Chemung, Chenango, Cortland, Delaware, Madison, Otsego, Schuyler, Tioga and Tompkins Counties);

6. Seventh Judicial District (Cayuga, Livingston, Monroe, Ontario, Seneca, Steuben, Wayne and Yates Counties);

7. Eighth Judicial District (Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming Counties);

8. Ninth Judicial District (Dutchess, Orange, Putnam, Rockland and Westchester Counties);

9. Tenth Judicial District (Nassau County);

10. Tenth Judicial District (Suffolk County).

Convocation participants strongly recommended that the Judiciary should take the leadership role in increasing pro bono. To this end, it is recommended that outside New York City, the local Pro Bono Action Committee members be selected by the respective Administrative Judge of the Judicial District, in consultation with the Presiding Justice of the respective Judicial Department and

local Bar president(s), from the broad base of stakeholders, including trial judges, representatives of local Bar associations, attorneys from government and private practice, representatives of pro bono and civil legal services providers, legal educators, representatives of community groups and individuals who have experienced and benefitted from pro bono.[51] It is further recommended that the committees have joint Judiciary-Bar leadership, with the Administrative Judge of the local Judicial District co-chairing the local Pro Bono Action Committee with a local attorney (preferably a local Bar leader).

Inside New York City, given the court system's administrative structure,[52] it is recommended that the local Pro Bono Action Committee members be selected by the Deputy Chief Administrative Judge for New York City Courts, in consultation with the Presiding Justices of the First and Second Departments, the local Administrative Judges and the local Bar presidents. It is further recommended that the Judiciary co-chair of the citywide Pro Bono Action Committee be an Administrative Judge of one of the citywide courts. It is anticipated that the New York City Pro Bono Action Committee would operate with five subcommittees, representing each of New York City's boroughs. The members of these important subcommittees, which would be responsible for developing and implementing borough action plans under the direction of the citywide Pro Bono Action Committee, would be chosen by the citywide committee in consultation with local Bar leadership.[53]

The statewide Standing Committee would provide guidance and support to the local Pro

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[51] Having representative committees is a more important objective, on balance, than attempting to limit the size of the committees; issues of size can be handled by using subcommittees to carry out specific work.

[52] In New York City, there are nine administrative judges: six administrative judges for the Supreme Courts and one administrative judge for each of the three courts of citywide jurisdiction (Civil Court of the City of New York; Criminal Court of the City of New York; and Family Court of the City of New York).

[53] Each Administrative Judge whose court or courts have jurisdiction over civil matters has an Access to Justice Team comprised of representatives from the major Access to Justice stakeholder groups. In selecting local Pro Bono Action Committee members, these teams should be consulted to ensure that the committees are representative of the local communities.

Bono Action Committees by studying and reporting on pro bono needs and shortfalls,[54] promoting pro bono through message and media campaigns, and developing and recommending solutions to obstacles and issues impacting the performance of pro bono (*e.g.*, malpractice insurance). It is recommended that the Standing Committee be composed of no more than 21 members, appointed by the Chief Judge, including: representatives of the New York State Bar Association;[55] a representative of a statewide Bar association other than the New York State Bar Association; representatives from local Bar associations; appellate and trial level judges;[56] a representative each from a law school within New York City and outside New York City; the Executive Director or designee of the Interest on Lawyers Account Fund of the State of New York; representatives from pro bono and civil legal services organizations; and a member of the general public.

As previously described in this report, during the decade-long period preceding the Pro Bono Convocations, extensive good-faith study, discussion and promotion of voluntary pro bono activity took place. Despite this, New York's pro bono service levels remained static even in the face of a worsening crisis in the availability of civil legal services for the poor. This period also featured a rejection of mandatory pro bono. The successful coordinated design and implementation of local action plans supported by a statewide Standing Committee, as recommended here, represents a major new approach and initiative for increasing pro bono in New York State.

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[54] As mentioned, the most recent data suggests that approximately half of New York State's lawyers provide pro bono and that the average number of hours provided annually by each lawyer is 41. This data translates very roughly into approximately two million hours of pro bono. Yet at least ten million additional hours of legal help may be needed to address the poor's unmet civil needs. *See supra*, at 1-2. How much of that estimated gap can additional pro bono services reasonably be expected to close? The statewide Standing Committee should carefully examine this issue.

[55] The representatives of the New York State Bar Association should include a member of the President's Access to Justice Committee and a member of the Pro Bono Coordinator's Network.

[56] There should be at least one trial level judge from a court of limited jurisdiction.

B. Emphasize the Judiciary's Leadership Role in Increasing Pro Bono Services

The Judiciary's leadership and active involvement in pro bono initiatives are essential to increasing such services statewide. The following activities are recommended to be undertaken by the Judiciary:

1. Design and implement programs to educate the Bar about the need for pro bono services, the opportunities available for providing pro bono and the professional responsibility of lawyers to provide it;

2. Design and implement attorney recruitment programs for pro bono;

3. Coordinate training and legal education programs for pro bono;

4. Design and implement programs to recognize attorneys who provide pro bono; and

5. Designate staff from the Office of the Deputy Chief Administrative Judge for Justice Initiatives to provide technical support to the statewide Standing Committee.

In devising their pro bono action plans, the local Pro Bono Action Committees should address the Judiciary's involvement in activities one through four above.

C. Implement Court-Based Initiatives to Facilitate Court Access for Litigants with Pro Bono Attorneys

To the extent feasible, courts should provide flexible scheduling and docket preferences for pro bono cases when doing so will not contravene statutes or policies that give preferences to other cases. Courts should consider other accommodations such as providing courthouse space, free copying and telephone access for pro bono attorneys with limited resources. Each local Pro Bono Action Committee, in conjunction with a Judicial District's or court's Administrative Judge, should develop specific accommodations that take into consideration the needs of the court, pro bono lawyers and litigants. When a uniform rule or practice appears appropriate for facilitating pro bono, the statewide Standing Committee should recommend modifications to existing rules or policies for accomplishing that end.

D. Educate Law Students and Newly-Admitted Attorneys About Pro Bono

The findings of the Convocations demonstrate the need for education of the Bar about pro bono and the legal needs of the poor. New York law schools can play an important and unique role in this regard. Law students need to be educated about the importance of pro bono; this should be accomplished by incorporating materials on pro bono into coursework, particularly Professional Responsibility and Legal Ethics, and by providing students opportunities for pro bono service. In addition to educating their students, law schools should actively encourage their law professors to engage in pro bono work and to share their experiences with students.

The Bar admission process also should be used as a means to educate young attorneys about pro bono. The Board of Law Examiners and the Appellate Divisions should explore where current policies and procedures might be modified to stress an attorney's obligation to provide pro bono services, such as: incorporating a question dealing with pro bono into the bar examination; adding written materials about pro bono service to the Bar Admissions packet; incorporating a discussion of pro bono in the character and fitness interview process; and incorporating a discussion of the importance of pro bono into the Bar Admission ceremony.

E. Develop a Methodology for Collecting Data About Pro Bono Services

An effective voluntary pro bono system that meets the civil legal needs of the poor must collect and report comprehensive data about the extent and nature of the need. This is particularly important in the initial years of a statewide pro bono system – at least until goals are met and confidence exists in the ongoing success of the system. To ensure the availability of this data, it is recommended that the statewide Standing Committee, in coordination with the local Pro Bono Action Committees, establish a means for assessing the legal needs of the poor within the local committees' jurisdictions and the pro bono services being provided to meet those needs.

Based upon Florida's experience with reporting pro bono service, it is further recommended that the statewide Standing Committee, within its first six months of formation, examine the issue of individual pro bono reporting and recommend to the Chief Judge whether and how individual reporting should be accomplished in New York.

F. Explore the Use of Discrete Task Representation in Litigated Matters by Establishing Pilot Projects Throughout the State

Based upon the literature and the experience of some participants at the Pro Bono Convocations as well as in other states, it appears that discrete task representation or "unbundled" legal services can be beneficial in promoting pro bono service by attorneys. However, because there are many unreconciled viewpoints throughout the State, we do not recommend that rule changes be implemented at this time to allow for limited appearances by attorneys in litigated matters. Rather, within the first two years of its formation, the statewide Standing Committee should recommend whether new rules or rule changes should be adopted in this regard and, if so, what they would contain. The Standing Committee should take particular note of the pros and cons expressed at the Convocations as well as the experiences of New York and other states in applying discrete task representation.

It is further recommended that the statewide Standing Committee, in collaboration with the local Pro Bono Action Committees, bar associations and legal services programs, establish and report on pilot discrete task representation projects in four locations (New York City, suburban New York City, urban upstate and rural upstate). At each location, one type of proceeding (*i.e.,* housing, custody and visitation, child support or matrimonial proceedings) would be selected for a pilot. The four pilots would be monitored to identify common problems, issues and outcomes, and to assess the reactions and perceptions of litigants, attorneys and judges.

VII. Conclusion

Ensuring that poor New Yorkers can use their justice system as effectively as those with means will require commitment, innovation and great effort. The Pro Bono Convocations were designed to generate ideas and potential solutions. The thoughtfulness and hard work of those who attended made the Convocations highly effective for achieving this objective. A more intensive phase lies ahead. The integrity of New York State's administration of justice demands no less a degree of effectiveness as ideas and concepts are given tangible expression.