

# THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK

REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK



NOVEMBER 2012

due to the stimulus to the economy. The average cost of a job supported by funds brought into the State is \$100,224. Thus, as presented in Table 6 below, NERA found that the number of new jobs created by a stimulus of \$561 million for funds received in 2011 is approximately 5,600 jobs.<sup>60</sup>

**TABLE 6.**  
**Economic Impact on New York State and Jobs Creation**  
(dollars in millions)

A.	Total Federal Funds Brought Into State	\$378,212,636
B.	Multiplier	1.484
C.	<b>Total Economic Stimulus Effect of Federal Funds</b>	<b>\$561,116,267</b>
D.	Jobs Factor	100,224
E.	<b>Total Jobs</b>	<b>5,599</b>

**4. NERA Calculated That The Provision Of Civil Legal Services Reduces New York State’s Excess Federal Tax Burden By 2 Percent:** NERA also evaluated the value of the incremental federal benefits brought into New York State by the provision of civil legal services, relative to New York’s excess federal tax burden. New York receives only 79 cents for every dollar that it pays in federal tax.<sup>61</sup> New York’s total federal tax liability is approximately \$95 billion, making this excess tax liability about \$20 billion.<sup>62</sup> The \$378 million in incremental federal expenditures in New York from access to the federal benefits discussed above is about 2 percent of that excess federal tax liability.

As described below, the Task Force’s non-monetary recommendations complement and limit the level of the recommendations for additional funding. In particular, the Task Force’s law school involvement and *pro bono* initiatives build upon the Task Force’s recommendations for action in its 2011 Report.

### **III. The 15 Law Schools In New York State Can Take — And Are Taking — Concrete Steps To Help Meet The Increasing Need For Civil Legal Assistance For Low-Income Families And Individuals.**

**BASED ON ITS 2011 RECOMMENDATIONS**<sup>63</sup> and under the leadership of the Chief Judge, the Task Force convened an unprecedented conference on May 22, 2012 that brought together for the first time Deans and law school faculty from the 15 law schools in New York State and representatives of the Judiciary, the private bar, and civil legal services providers. No other State has initiated such an effort.

Convened as a “leadership conversation” focused on access to justice and the role of the law schools, the Task Force’s May 22nd conference was held at the Benjamin N. Cardozo School of Law as a full-day program entitled “A Conversation About the Role of Law Schools in Helping to Meet the Essential Civil Legal Needs of Low Income New Yorkers.” The program brought together 150 participants, including 91 attendees from all of the State’s 15 law schools (Deans, faculty members, administrators, and law students), 23 representatives of legal services providers, 13 members of the Judiciary and the Office of Court Administration, and 23 leaders of the bar. In addition to attendees representing the different geographic regions in the State, a number of national experts and leaders on access-to-justice issues were present.

The Task Force's May 22nd law school program assembled law school administrators and faculty to encourage greater coordination between their programs and existing legal services programs. The goal was to channel the efforts of law schools and law students in ways that make sense to the institutions that deal with the gap in access to justice on a daily basis and in ways that are, therefore, most likely to maximize the contribution that law schools can make to the effort. At the conference, four work groups were formed to focus on the discrete areas of *pro bono* efforts, post-graduate opportunities, clinical and other experiential learning, and curriculum development.

The May 22nd law school initiative took place three weeks after Chief Judge Lippman announced the establishment of a new 50-hour *pro bono* requirement for admission to the bar in New York State. This new rule recognizes the value of engaging future lawyers in meeting the real world needs of vulnerable people in our justice system. Although the conference did not address the way in which this requirement would be defined and implemented, there was broad recognition that the new requirement would place a renewed emphasis on the contributions that law students can make to narrow the justice gap and on the ways in which law schools can support and encourage such work.

Following the May 22nd program, the Task Force's Law School Involvement Working Group — which included Task Force members and faculty representatives of the law schools in New York State — developed recommendations for action based on the sessions at the conference. Drawing on a comprehensive report by the Law School Involvement Working Group,<sup>64</sup> the Task Force makes the following recommendations for action that focus on legal education and the identification of opportunities for law students, law graduates, and law faculty in New York State to apply their skills to help close the justice gap for low-income New Yorkers.

Based on the report of its Law School Involvement Working Group, the Task Force is adopting six key recommendations to:

- Include law schools in regional planning processes that can help guide law students toward areas of greatest need;
- Establish an annual conference to encourage and promote communication and collaboration among the law schools and legal services providers, the courts, and the bar to further efforts to meet the civil legal needs of low-income residents in our State;
- Create on-line systems to match law students with providers, track students' work and hours, gather feedback, and measure outcomes;
- Establish a uniform student practice order to allow law students to perform the same tasks anywhere in New York State (as is the case in the other 49 States);
- Support recent law school graduates who are building new law practices that respond to the justice gap; and
- Provide law students with an understanding of the justice gap and with the knowledge and skills necessary to represent low-income clients effectively in *pro bono* activities as students and throughout their careers as attorneys.

Below are the six steps that the 15 law schools in New York State can take based on the work of the Task Force's Law School Involvement Working Group.

**1. Law Schools Should Participate In Regional Planning To Respond To The Justice Gap And Establish A Law School Access to Justice Council To Provide Better Cooperation And Collaboration Among Schools And With The Broader Justice Community:**

No regular channels exist through which to coordinate the access-to-justice activities of the State's 15 law schools, dozens of legal services providers, numerous courts, bar associations, and private firms. Law schools should be regular and active participants in State and local planning and coordination initiatives, including those undertaken by regional bar associations, and task forces and other initiatives of the court system.

New York's law schools should establish a Law School Access to Justice Council that would help link the schools with each other and other stakeholder institutions to foster coordination and collaboration in programs that provide access to justice to low-income or vulnerable New Yorkers confronted with legal matters implicating the essentials of life. The Council should consist of a representative from each law school and representatives from major bar associations, the courts and the legal services community. The Council should work to increase the law schools' involvement in responding to the justice gap and to focus law school programs on areas of demonstrated need.

The Council's specific activities should include:

- Coordinating law student initiatives
- Promoting development of programs to involve law students to respond to a) Statewide or regional legal needs, such as foreclosure and domestic violence, and b) short-term or one-time needs, such as the 9/11 Victims' Compensation Fund (enabling victims to file administrative claims online) and the Deferred Action Childhood Arrivals program (protecting certain immigrants from deportation)
- Promoting best practices
- Organizing events to promote best practices for law student initiatives
- Promoting curricular innovation
- Creating resources for curricular innovation in substantive law that affects low-income clients and practice skills that are central to the effective representation of low-income clients
- Promoting communication about civil legal needs in specific communities to enable legal services providers, law school officials, law students, the courts and the bar to work jointly to coordinate delivery of critical legal services to vulnerable individuals, maximizing efficiencies and bridging the justice gap.

The Task Force also recommends that each law school take two additional steps to enhance this Statewide coordination:

**A. Each Law School Should Create An Access To Justice Committee:** Law schools are complex institutions, engaged in dozens of initiatives to improve access to justice in their communities, including public service projects, clinics, externships, centers and institutes. In addition, unique initiatives to meet the civil legal needs of neighboring low-income communities are often pursued by faculty members. While this creates a rich and varied environment for students, it is not always apparent whom to contact or how to access the resources of the law schools. Likewise, the imperatives that inform the development of initiatives at law schools may not correlate with the imperatives of the courts and/or legal services providers. Therefore, the Task Force recommends the creation of an Access to Justice

Committee to improve communication with all justice system stakeholders and to improve access-to-justice planning within each school. Each school's Committee should designate a representative to serve on the New York State Law School Access to Justice Council described above.

**B. Each Law School Should Create An Access To Justice Law School Webpage With A Portal On The New York State Law School Access To Justice Council Website:** Each school should establish an Access to Justice webpage to inform the public — and the legal community — of the range of activities undertaken by the law school, enabling members of the public and justice system stakeholders to understand how the school is working to bridge the justice gap. By collecting this information on a centralized website maintained by the Access to Justice Council, a Statewide law school network can be established that will improve access to justice.

**2. An Annual Conference Should Be Convened To Continue The Dialogue On The Law Schools' Efforts To Bridge The Justice Gap:** Working in conjunction with the Law School Access to Justice Council and each law school's Access to Justice Committee, the Task Force will host an annual conference for law school Deans, faculty and students, legal services providers, representatives of the courts and members of the bar, to promote regular communication and coordination among the law schools; to identify curricular innovations that address skills and practices unique to the needs of low-income litigants; to highlight programs and projects through which law students can effectively respond to the civil legal needs of low-income people in the community; and to promote greater understanding of the competing interests that impact the delivery of civil legal services.

Each year's Conference can study the impact of the law schools' civil legal services work, compare programs and service models, discuss prospects for expanded collaborations, and exchange ideas and information concerning curriculum relating to the representation of low-income clients. The 2012 Conference demonstrated the need for a forum where the law schools, legal services providers, the courts and the bar can engage in open dialogue on how best to serve the civil legal needs of low-income New Yorkers.

**3. An Online Clearinghouse Should Be Established To Identify Pro Bono Opportunities And Enhance Online Services To Track And Support Law Student Pro Bono Work:** An "Online Clearinghouse for *Pro Bono* Opportunities" can serve as a unified conduit for providers and courts to post *pro bono* opportunities open to law students, simplifying the myriad processes and avenues that law students — and law school administrators — must currently navigate to identify appropriate *pro bono* placements. The recent announcement of the rules governing the 50 hours of *pro bono* service, in law school or post-graduation, required for admission to the New York Bar underscores the importance of preparing a database that would serve as a marketplace for *pro bono* opportunities.

A streamlined system can be implemented through enhancements to existing software platforms to enable a systematic matching of students, based on their individual profiles, to appropriate open positions. With increased technological capacity, the courts and providers will be better equipped to integrate large numbers of students into volunteer initiatives that have maximum impact in areas of demonstrated unmet need. The law schools — and other stakeholders — will also be better positioned to gain an accurate understanding of the true breadth and nature of the impact.

Certain features of some of the existing foundational platforms in use by providers can be leveraged to support law student *pro bono* work throughout New York State, including:

- A *Pro Bono* Opportunities Guide: providing a searchable database of *pro bono* providers;
- New Case Summaries: describing individual cases or projects in need of staffing;
- Calendars: presenting a comprehensive Statewide calendar of events and trainings;
- Libraries: aggregating high quality training and best practices resources; and
- Listservs/Message Boards: allowing *pro bono* volunteers and service providers to share questions and expertise.

In addition, online systems can greatly facilitate law student *pro bono* work in other ways, such as enabling students, providers, and law schools to record and track hours of service, providing feedback from students and employers, and gathering information for program assessment.

Maintenance of an online clearinghouse will require dedicated staffing to ensure accuracy of the content and to engage key stakeholders to coordinate content development and dissemination activities among provider organizations and law school *pro bono* leaders.

**4. A New York State Uniform Student Practice Order Should Be Established:** Currently, each Judicial Department issues student practice orders setting forth the terms and conditions under which law students and graduates can represent clients in court. Practice orders are issued in response to applications received from the institutions and programs located within the Department. The orders may vary substantially both across Judicial Departments and from order to order within the Departments. Under this current system, the location of an institution or program may determine whether its law students receive authorization to engage in a broader or narrower range of tasks, and may therefore determine whether educational goals are satisfied and, critically, whether individuals in need of legal representation are able to receive valuable assistance. Student practice orders are not always models of clarity, and the perceived need to obtain a student practice order may, in some instances, have the effect of reducing the number of students who become involved in *pro bono* activities or bar assistance in circumstances in which no student practice order is, in fact, needed.

A Statewide model student practice order applicable to both law students and law school graduates would form the basis for all practice orders, eliminate the discrepancies between and within the Judicial Departments, and take into account the ways in which law students differ from law school graduates. This model uniform order will provide for greater consistency and enable successful programs developed in one part of the State to be replicated in others. It will also enable schools with programs in more than one Judicial Department to offer consistent services and to design their coverage to meet real world needs. Moreover, the additional precision available through Statewide adoption of a model student practice order can help clarify the tasks that students are authorized to perform or prohibited from performing, as well as those that students are free to perform without obtaining a student practice order.

Therefore, the Task Force recommends that the Chief Administrative Judge lead an effort to develop such a model order.

**5. Law Schools Should Establish Incubator And Related Projects To Help Law Graduates Build Solo or Small Practices In Underserved Areas:** Incubators and related projects, supported by law schools and staffed by their graduates, have proven to be effective tools that provide practical experience for new graduates committed to starting a law practice that will serve individuals with unmet legal needs. Incubators often work with established legal services programs or volunteer projects through the courts to enable new lawyers to develop practical experience and to match experience to need.

Since the City University of New York School of Law’s development of the first law school-based incubator, similar programs have cropped up across the United States and more are on the drawing board. A team of individuals with experience in setting up successful incubators should be convened to serve as mentors for each of the law schools in New York State. The team can create a guide that outlines best practices for incubator development and management that would be disseminated to law schools seeking to create incubators for their graduates. The team can provide technical support and training to law schools committed to designing, sourcing and implementing incubators.

**6. Law School Curricula Should Prepare Students For Public Service:** This is a period of transition and innovation in legal education. Many law schools are currently reviewing their curricula in order to take into account major changes in the legal profession, and a number of schools have recently launched major curriculum initiatives. Whether this curriculum review is undertaken by a law school’s administration, a faculty committee, a special committee or a task force, it is important that practitioners be included in the discussion. As part of this pattern of curriculum reform, law schools should ensure that students are educated in the systems of providing representation to low-income clients and the distinctive ways in which laws and the legal system affect low-income individuals and communities. While many classes and programs in law schools deal with the legal issues that impact low-income clients, this issue is rarely viewed as a core part of the educational mission of schools, and, as a result, is addressed in *ad hoc* ways. A focus on these issues as part of the process of curriculum reform will ensure that each school has a considered approach with clear objectives, rather than a haphazard set of offerings.

In addition to focusing on substantive law and legal issues that affect low-income clients, law schools should equip students with practice skills and competencies necessary to represent such clients. Because many of these practice skills and competencies overlap with those required for representing clients generally, educating students for public service practice will overlap with other goals of professional practice education. Nonetheless, representation of low-income clients does require distinctive skills and competencies, such as an ability to represent clients whose cultural, social and economic backgrounds may be very different from the lawyer’s, and an understanding of how legal issues fit into the context of the lives of low-income clients.

To carry out this recommendation, the Task Force concludes that the following three steps should be taken:

**A. There Should Be A Required Class On Access To Justice:** As a prerequisite to graduation, law schools in New York State should require students to complete a course, which could be one or more credits, that offers an introduction and orientation to civil legal assistance involving the “essentials of life” areas of housing, family matters, access to health care and education, and provides skills training

and the practical application of doctrinal law in this context. The recommendation is also intended to assure that students gain an understanding of the importance of public service in their careers as lawyers and their responsibilities as members of the profession. New York State can include criteria in its bar exam to evaluate whether students have acquired this knowledge. Subjects covered in the course and on the bar exam can include:

- The problem: causes and consequences of the access-to-justice gap, including numbers of people, categories of cases, systemic problems and funding concerns;
- The response: efforts to assure that the courts, legal services programs, *pro bono* systems, and other resources and strategies address the problem;
- The doctrine: pertinent legal doctrine, including United States Supreme Court and other jurisprudence on the right to counsel in civil proceedings, and the right of access to the civil justice system;
- The role: the nature of civil legal services practice, including the role of lawyers, law students and officials at the organizations that provide assistance, such as legal services agencies, law firm *pro bono* programs, bar associations and the courts; and
- Substantive law that affects low-income clients in unique and distinctive ways, such as government benefits law, housing law, and wage and hour law.

Law schools can develop the course through collaboration with one another and through consultation with each other, the legal services bar, the courts and other justice system stakeholders. This course is not intended to displace other initiatives to integrate access-to-justice issues into classes across the curriculum. Law schools can also determine how a required access-to-justice class would relate to elective classes focused on areas of law specific to low-income clients that also play important roles in the curriculum.

**B. Basic Doctrinal Classes Should Include Consideration Of How Law Impacts Low-Income Clients And Communities:** Each law school should ensure that basic doctrinal courses include consideration of how the subject matter impacts low-income clients and communities, providing a doctrinal context for *pro bono* and public service work that addresses the justice gap. For example, property law classes can address foreclosure and the warranty of habitability; tax classes can highlight the earned income tax credit; family law classes can study issues presented in domestic violence cases and child custody proceedings; and administrative law classes can include consideration of administrative adjudication systems that low-income clients deal with regularly. Moreover, doctrinal courses can include components that focus on practice skills or link to *pro bono* work in the area. Certainly, some courses cover subjects of particular importance to low-income clients; but, in most schools, it is entirely *ad hoc* as to whether they are included, and a matter of happenstance whether issues relating to low-income clients are presented. The Access to Justice Council that the Task Force is recommending should create a collaborative mechanism by which law schools can work together to create and share relevant and topical teaching materials.

**C. Law Schools Should Educate Students In The Skills And Competencies Necessary To Represent And Advise Low-Income Clients:** Over the past 30 years, law schools have greatly expanded programs and courses that teach students professional skills in representing and advising clients. These programs include clinics, simulation courses, externships and other forms of experiential learn-

ing. Sparked by the publication of the Carnegie Report and other studies,<sup>65</sup> discussion about the role of experiential learning in legal education has intensified. A focus on professional skills and competencies is important in preparing lawyers to contribute to closing the justice gap. Low-income clients pose distinctive issues with regard to counseling and cultural competencies. Because this representation often requires advocacy before courts and government agencies that are overburdened and under-resourced, it calls for a different set of advocacy skills than those that may be used in other settings. Faculty and administrators who design experiential learning programs should ensure that these issues are addressed, whether through clinical programs, simulation courses, externships, new practice components in doctrinal courses, or a combination of all of these approaches.

Law schools should also explore the creation of opportunities for students to spend a semester working in offices that provide legal services to low-income clients with appropriate classroom components and supervision. The Access to Justice Committee at each law school can facilitate this effort by fostering communication and the exchange of ideas among schools. As law schools further develop curricula relating to professional skills and competencies, it is important that lawyering issues relating to the representation of low-income clients be integrated into the basic law school curriculum.

#### **IV. Attorneys In Private Practice In New York State Are Already Providing A High Level Of *Pro Bono* Legal Assistance For Low-Income Clients And Additional Reporting And Other Initiatives Will Enhance These Efforts.**

**IN ITS 2011 REPORT, THE TASK FORCE RECOGNIZED** the “long-standing tradition of *pro bono* efforts by private attorneys to expand the availability of civil legal assistance for low-income families and individuals.”<sup>66</sup> Relying on the strength of that tradition, the Task Force concluded that, in 2012, it would “explore new efforts to increase the already high levels of *pro bono* assistance that the private bar provides.”<sup>67</sup>

To carry out this exploration of ways to enhance *pro bono* involvement, the Task Force convened a *Pro Bono* Involvement Working Group. This Working Group studied current trends in *pro bono* participation by the private bar in New York, Statewide average monetary contributions by individual lawyers to legal service providers, and various means to increase private bar support for *pro bono* assistance to low-income families and individuals. Based on the Working Group’s findings,<sup>68</sup> the Task Force makes these key recommendations:

- Revise New York Rule of Professional Conduct 6.1 to encourage 50 hours of *pro bono* service per year;
- Revise New York Rule of Professional Conduct 6.1 to include a monetary contribution guideline for donations to legal services organizations that serve low-income clients;
- Revise the Biennial Attorney Registration Form to include a *pro bono* hours reporting requirement for the private bar;
- Revise the Biennial Attorney Registration Form to include a monetary contribution reporting requirement for the private bar for donations to legal services organizations that serve low-income clients;