

NEW YORK STATE BAR ASSOCIATION



# NYSBA

## Report of the Task Force on the Future of the Legal Profession

February 2011



Opinions expressed are those of the Task Force that prepared this report and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates.

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**Table of Contents**

<b>EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS .....</b>	<b>1</b>
Law Firm Structure and Billing .....	4
Educating and Training New Lawyers .....	5
I.    Participate in the National Development of Model Competencies for Lawyers .....	5
II.   Monitor Proposed Revisions to Accreditation and Admissions Standards.....	6
III.  Propose Assessment of New Skills-Based Practice-Based Licensure Requirements.....	7
IV.  Study and Integrate Mentorship, CLE, and New Lawyer Training Programs .....	7
V.   Support Appropriate and Realistic Entry Into the Profession.....	8
VI.  Integrate Assessment of Legal Education and Professional Development with Model Competencies.....	8
VII. Work With U.S. News & World Report.....	8
Work-Life Integration and the Practice of Law .....	9
Technology and the Practice of Law .....	9
<b>LAW FIRM STRUCTURE AND BILLING.....</b>	<b>11</b>
Introduction.....	11
An Era of Change.....	12
I.    Social Changes Impacting the Legal Profession.....	12
II.   Economic Changes Impacting Private Practice .....	14
III.  Changes to Law Firm Organization and Structure .....	20
IV.  Managing the Work of Delivering Legal Services .....	27
Conclusions.....	31
Recommendations.....	35
<b>EDUCATING AND TRAINING NEW LAWYERS .....</b>	<b>36</b>
Introduction.....	36

Innovations in Training and Development .....	38
I.    Identifying, Assessing and Shaping Good Professional Development: Making Better Lawyers Faster .....	38
II.   Understanding the Robust Knowledge, Skillful Expertise and Fundamental Values of a Lawyer: The Model Competencies Project .....	40
III.  Measuring Progress: The Problem of Assessing Professional Development .....	46
Influencing Preparation for Practice .....	47
I.    Strengthening Court of Appeals Rules Governing Clinical and Practical Coursework and Encouraging Capstone Curricula.....	47
II.   Strengthening the New York State Bar Exam’s Assessment and Licensing Requirements.....	50
Helping New Lawyers Form a Professional Identity.....	53
I.    Exploring Mandatory Mentoring .....	58
II.   Assessing Continuing Legal Education Requirements .....	63
III.  Learning From Law Firm Training Programs .....	65
IV.   Attending to the National Debate Regarding Law School Debt.....	66
Recommendations.....	67
I.    Participate in the National Development of Model Competencies for Lawyers .....	67
II.   Monitor Proposed Revisions to Accreditation and Admissions Standards.....	68
III.  Propose Assessment of New Skills-Based, Practice-Based Licensure Requirements.....	69
IV.   Study and Integrate Mentorship, CLE and New Lawyer Training Programs .....	70
V.    Support Appropriate and Realistic Entry Into the Profession.....	71
VI.   Integrate Assessment of Legal Education and Professional Development With Model Competencies .....	72
VII.  Work With U.S. News & World Report.....	73
<b>WORK-LIFE INTEGRATION AND THE PRACTICE OF LAW.....</b>	<b>73</b>
Introduction.....	73
The Business Case for Work-Life Balance: Good for Lawyers, Good for the Bottom Line .....	74
I.    Benefits to Employers.....	74

II.	The Negative Impact of Not Addressing Work-Life Issues .....	78
III.	Empirical Studies .....	79
IV.	Responses to the Empirical Evidence .....	80
Best Practices for Law Firms and Some Things to Consider .....		81
I.	Flexible Work Arrangements.....	82
II.	Preserving Attorney Vacation Time .....	86
III.	Sabbaticals .....	87
IV.	Quality of Life Initiatives.....	89
Recommendations.....		91
I.	Flexible Work Policies.....	92
II.	Quality of Life Initiatives.....	92
III.	Addressing Expectations.....	92
IV.	Support for Work-Life Policy Implementation.....	92
V.	Vacations/Sabbaticals .....	93
VI.	Research into Stress-Related Health Issues .....	93
<b>TECHNOLOGY AND THE PRACTICE OF LAW .....</b>		<b>94</b>
Introduction.....		94
Practical Approaches to the Adoption of Technological Solutions .....		95
I.	Employ a Systems-Based Approach.....	95
II.	Define the Goals for Applying Technology to a Legal Practice.....	98
III.	Understand and Embrace the Concept of “Knowledge Management” .....	99
IV.	Educate and Train Lawyers to Understand and Use Technology More Effectively .....	99
Current Trends and Tools .....		100
I.	Cloud Computing.....	100
II.	Mobile Computing .....	102
III.	Virtual Law Firms.....	104
IV.	Online Advertising and Social Media.....	105
V.	Extranets .....	107
VI.	Enterprise Search .....	108
VII.	E-Filing .....	109
Recommendations.....		111

**REPORT OF THE TASK FORCE ON  
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**EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS**

The rapid pace of change in the legal profession, accelerated in part by the recent national economic downturn, prompted New York State Bar Association President Stephen Younger to form a task force to examine issues concerning the future of the profession. Under the leadership of Co-Chairs Linda L. Addison and T. Andrew Brown, the Task Force on the Future of the Legal Profession (“Task Force”) was asked to address the following:

(1) developments in the economics, structure, and billing practices of private law firms; (2) changes in the model for educating and training new lawyers; (3) the pressures on lawyers seeking to find balance between their professional and personal lives; and (4) the implications of technology on the practice of law.

Given the inherent difficulty in predicting the future with certainty, the Task Force studied current trends that are driving change. Understanding these trends provides insights into the probable future in various areas of the legal profession and enables lawyers to manage change as it unfolds.

There is strong evidence that unprecedented changes in practice are producing a restructuring in the way legal services are delivered. These changes include widespread access to legal information, the routinization of many legal tasks, demands by clients for more control of legal service delivery, and the emergence of an increasingly competitive marketplace. This restructuring in the way legal services are delivered affects all law firms—regardless of size, geographic location, and substantive practice area—although it may impact different firms in different ways. Clients are seeking more efficient services, predictable fees, and increased



responsiveness to their needs, and they are willing to replace their lawyers if they are not satisfied with the services they receive.

In the area of billing for legal services, the hourly billing model has been strongly criticized by clients and commentators, leading to a shift away from hourly billing to alternative fee arrangements (“AFAs”). There are differing opinions among members of the Task Force as to how fundamental and pervasive this shift in billing practices will be. The Task Force believes, however, that AFAs will continue to expand over the course of the next decade, as a model for compensating lawyers and providing value to clients. The Task Force also believes that hourly billing will not disappear as a fee model in some practice areas.

The economic downturn of 2008–09 produced considerable economic fallout for law firms, including lower earnings, reduced hiring, more downsizing, and greater internal reorganization. As the economy recovers, it is apparent to many observers that the legal profession will not return to business as usual, and that to be successful in the post-recession era, law firms will need to engage in long-term restructuring to maintain sustainability and grow organically. Lawyers also will need to rethink the model and methodology of educating and training lawyers to deliver services and serve clients in the evolving law practice environment.

Competition for legal work will be intense, not only within the legal profession, but also among law firms and nonlegal service providers, foreign law firms, *pro se* litigators and self-help providers, as well as companies that use innovative delivery systems. Law firms that do not understand and address these changes will have difficulty competing in the emerging marketplace. Law firms will need to think more strategically, manage more effectively, and strive to be more client-centered than they have been in the past.

Technology is a driving force for many of these changes. Technology is a double-edged sword that helps lawyers to work faster and more efficiently, yet enables them to work constantly. It permits them to find better solutions to legal problems, yet increases the expectations of clients; assists them to compete more effectively in the marketplace, but opens the door to more competition. Technology has revolutionized the practice of law over the past quarter century. All signs indicate that technology will continue to impact the way lawyers are educated and practice, and will impact the traditional skills associated with lawyering and how lawyers interact with their clients.

It is in this context that the Task Force undertook its charge. Task Force Co-Chairs Linda L. Addison and T. Andrew Brown created four subcommittees: (1) the evolving structure of private practice, including alternative billing practices; (2) the education, training, and development of new lawyers; (3) work-life balance and integration; and (4) harnessing technology to support practice. Members of the Task Force were selected for their expertise regarding the mission of the Task Force. The Task Force's subcommittees collected information on their respective subject areas, met to discuss the issues raised by this research, and then formulated a coherent report on their findings. Thereafter, the Task Force integrated the four subcommittee reports into a cohesive whole.

This Task Force Report ("Report") reflects a conceptual order. The first section discusses fundamental issues involving critical changes in the practice of law. The second section addresses the extent to which these changes will require new approaches to education and training of lawyers. The third section recognizes that these changes are not just economic and that individual lawyers attach great significance to finding balance in their personal and

professional lives. The fourth section examines technology because it is a common thread throughout the other sections of the Report.

The Task Force presents this Report and its recommendations, informed by months of research and solicitation of input from private practitioners, in-house counsel, legal academics, and professional consultants. The Task Force urges the House of Delegates of the New York State Bar Association to adopt these recommendations to help shape the future of the profession. The Task Force also urges all members of the legal profession, from individual lawyers to lawyers practicing in law firms and other organizations, to examine this Report and its recommendations with an eye toward enhancing the quality of the future of their own legal practices and enhancing their ability to meet the needs and expectations of their clients.

The complete recommendations of the Task Force and the bases for those recommendations are more fully set forth below. Certain key recommendations of the Task Force are summarized here.

#### **LAW FIRM STRUCTURE AND BILLING**

1. The Task Force recommends that the New York State Bar Association (“NYSBA”) offer continuing legal education (“CLE”), print and electronic publications, and Web-based services to teach members how to achieve the objectives of providing quality legal services in ways that maximize value to the consumers of legal services. The Task Force observes that responding to clients’ needs may require new and different ways to deliver services.

2. The Task Force recommends that NYSBA’s Committee on Standards of Attorney Conduct explore changing models of law firm structure and compensation, make recommendations to the House of Delegates as needed to address professional responsibility

issues that may emerge, and propose appropriate amendments, if needed, to the New York Rules of Professional Conduct and other regulatory standards.

3. The Task Force recommends creating a best practices manual and related CLE seminars concerning the economics of alternative fee arrangements and value billing to assist NYSBA members.

4. The Task Force recommends that NYSBA's Unauthorized Practice of Law Committee and its Law Practice Management Committee reaffirm the 2009 Report of the Special Committee on Solo and Small Firm Practice, particularly as it supports the allocation of greater resources to assist small firms and solo practitioners who need to take advantage of low overhead and adaptability to leverage their skills for effective competition in the legal markets they serve.

5. The Task Force recommends that NYSBA investigate issues presented by the increased availability of print and online legal information to nonlawyers, and assist lawyers to make a strong business case for the continuing need to retain lawyers to solve legal problems.

6. The Task Force recommends that NYSBA conduct economic and other research to continue to keep lawyers informed about the ongoing changes identified by the Task Force and the changing landscape of the legal profession.

## **EDUCATING AND TRAINING NEW LAWYERS**

### **I. Participate in the National Development of Model Competencies for Lawyers**

1. The Task Force recommends that NYSBA endorse the ALI-ABA Summit Recommendations pertaining to the development of model competencies that are needed to practice law effectively and provide active support for that project, including active engagement by NYSBA in a national model competencies project.

2. The Task Force recommends that NYSBA should request New York State law schools to report to NYSBA's Standing Committee on Legal Education and Admissions to the Bar on whatever current steps they are taking to develop learning competency-based models at their schools, and that NYSBA work with law schools to support the development of curricular initiatives that integrate the knowledge, skills, and values specified in the model competencies, as well as those designed to encourage the development of practice-ready graduates.

## **II. Monitor Proposed Revisions to Accreditation and Admissions Standards**

3. The Task Force recommends that NYSBA should closely monitor the currently proposed changes to ABA accreditation standards in light of the need of clients and consumers of legal services to have law graduates ready to begin the competent and ethical practice of law.

4. The Task Force recommends that NYSBA should recommend that the New York Court of Appeals reevaluate its rules for the admission of attorneys and counselors of law to (1) emphasize how to apply theory and doctrine to actual practice and (2) encourage the process of acquiring and applying professional judgment through simulated and clinical activities under appropriate faculty supervision.

5. The Task Force recommends that NYSBA should recommend that the New York Court of Appeals eliminate the hourly restriction governing hours spent by law students "outside the classroom," which may in certain circumstances discourage students from taking critical clinical experiences and which forces law schools to separate clinical credits from the rest of the academic program.

### **III. Propose Assessment of New Skills-Based Practice-Based Licensure Requirements**

6. The Task Force recommends that NYSBA should recommend that the New York State Board of Bar Examiners begin assessing professional skills. The Task Force notes that law schools have already done much of the groundwork for developing this assessment tool, and a useful evaluative and developmental project could begin within eighteen months.

7. The Task Force recommends that through the Standing Committee on Legal Education and Admission to the Bar, NYSBA should participate in serious study of important potential licensing reforms including:

- adoption of the Uniform Bar Exam—a format that would promote efficiency and reciprocity;
- sequential licensing, which would permit limited practice for new professionals pending further training and examination;
- adjusting an applicant's score on the bar exam to reflect the successful completion of skills courses; and
- permitting licensure after a period of closely supervised public service work.

8. The Task Force recommends both continued commitment to the central values of diversity and inclusion for our profession, as well as serious attention to how licensing shapes diversity of the legal profession.

### **IV. Study and Integrate Mentorship, CLE, and New Lawyer Training Programs**

9. The Task Force recommends that NYSBA's Law Practice Management Committee and NYSBA's Young Lawyers Section study and make recommendations regarding how to assist new lawyers' transition to practice from law school through use of mentorship programs, CLE, and model training programs for new lawyers.

**V. Support Appropriate and Realistic Entry Into the Profession**

10. The Task Force recommends that NYSBA closely monitor the issue of law student debt and play an active role in all aspects of the national debate regarding law school debt and full disclosure of tuition costs and job prospects, including working cooperatively with other entities to develop ways to reduce the impact of student debt on the future of the legal profession and to promote greater transparency regarding the cost of legal education and prospects of employment.

11. The Task Force recommends that law firms consider using hiring criteria that more accurately reflect their needs for practice-ready lawyers in addition to the criteria historically used by private practice law firms.

**VI. Integrate Assessment of Legal Education and Professional Development with Model Competencies**

12. The Task Force recommends that law schools, bar examiners, CLE providers, and others concerned with professional development build capacity to perform useful, valid assessments of the range of lawyer competencies, and explore structures for facilitating the development of useful, valid assessment tools for CLE providers and others who focus on professional development of lawyers in private practice.

**VII. Work With U.S. News & World Report**

13. The Task Force recommends that NYSBA should meet with representatives of *U.S. News & World Report* to discuss current methodologies and to propose changes that are aligned with improvement to the profession outlined in this Report.

## **WORK-LIFE INTEGRATION AND THE PRACTICE OF LAW**

1. The Task Force recommends that NYSBA and the legal profession recognize work-life balance as an issue that impacts both men and women, and treat the issue in a gender-neutral way.

2. The Task Force recommends that NYSBA adopt a policy encouraging law firms to commit to the value of encouraging a healthier work-life balance for their lawyers. The business case for such efforts includes (1) better relationships with clients; (2) reducing the cost associated with turnover and training; and (3) maintaining a reputation that will attract additional talent.

3. The Task Force recommends that NYSBA through the Law Practice Management Committee should offer support to legal employers striving to implement nonstigmatized/gender-neutral work-life policies and practices, including (1) creating and adopting model policies through the Law Practice Management Committee from which employers can formulate flexible work arrangement programs and quality-of-life initiatives; (2) using technology to facilitate flexible work arrangements; and (3) encouraging greater transparency from law firms about partnership, flexible work arrangements, and quality-of-life initiatives.

## **TECHNOLOGY AND THE PRACTICE OF LAW**

1. The Task Force recommends that law schools and firms increase educational and training opportunities for lawyers regarding practical ways to use technology to enhance their practices, to understand and use technology more effectively, and to develop practice management and project management skills.

2. The Task Force recommends that firms consider the adoption of system-based approaches, beginning with an assessment of the functions the firm performs and the



related flow of information and work among its personnel, to determine which tools are most useful and effective to meet their needs. The Task Force observes that firms that design sound practices and implement technology that makes sense in the context of their practices are more likely to benefit from and be satisfied with their investments.

3. The Task Force recommends that NYSBA's Committee on Standards of Attorney Conduct should study and make recommendations concerning the ethical and risk management considerations associated with new technologies such as social networking, third-party hosted solutions, and virtual law firms.

4. The Task Force recommends that NYSBA's Law Practice Management Committee create model policies concerning the use of mobile technology, including the establishment of guidelines for security issues associated with mobile technology, and clear communications to attorneys as to when they are, and are not, responsible for maintaining a connection with the workplace. The Task Force also recommends that NYSBA's Law Practice Management Committee assist firms in increasing their attorneys' productivity through the development of efficient tools and best practices for the efficient handling of the ever-increasing e-mail traffic they receive.

5. The Task Force recommends that NYSBA encourage legal employers to use technology to support a healthier work-life balance by facilitating flexible work arrangements.

6. The Task Force recommends that NYSBA consider whether and how NYSBA can leverage its resources to assist smaller firms with technology-related issues.

# WORK-LIFE INTEGRATION AND THE PRACTICE OF LAW

## INTRODUCTION

Over the past decade, numerous studies have concluded that organizations that implement policies and programs to support integrating an employee's professional and personal life have directly improved their profitability. There should no longer be a question that a commitment to work-life integration, or work-life balance (which terms are used interchangeably in this Report), is the right thing to do and one that makes economic sense.

The number of lawyers seeking better integration of their work and personal lives has increased in recent years. This is due, in part, to the “sandwich generation” phenomenon—as people live longer, many Generation X (those born between 1965 and 1976) and Baby Boomer lawyers (those born between 1944 and 1964) have responsibility to care for aging parents as well as for their own children.<sup>93</sup> Moreover, although work-life balance began as a women's issue, the increasing number of dual-earner families has made it an issue that impacts both men and women alike. Men are increasingly taking responsibility for the care of their children and elderly parents as well as for other family-related tasks and, in so doing, report

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<sup>93</sup> More than 25% of American families are involved in some way with elder/parent care. Carol Abaya, *The Sandwich Generation*, <http://www.thesandwichgeneration.com> (last accessed February 14, 2011).

dramatically increased work/life conflict.<sup>94</sup> In addition, technology is giving clients and other lawyers increasing access to attorneys during offhours decreasing truly personal time and making it more difficult to leave the office behind.

It is important to understand that attorneys who seek work-life balance are not necessarily less committed to the practice of law or their clients. Although some attorneys do want to work fewer hours, many are often simply trying to attain more flexibility or predictability in their work responsibilities.

This section of the Report provides the rationale for focusing on improved work-life balance. We begin with the benefits from three perspectives: expense reduction, revenue enhancement, and risk minimization. We then discuss the negative impact of ignoring the problem, citing empirical studies that describe the impact on health and wellness, initiatives that have been designed in response, as well as areas of interest requiring further research. Finally, we offer a list of “best practices” and recommendations for employers, including the development of flexible work policies, using technology to support work-life integration, guidelines for preserving vacation time, sabbaticals and other innovative “quality of life” programs that merit consideration.

## **THE BUSINESS CASE FOR WORK-LIFE BALANCE: GOOD FOR LAWYERS, GOOD FOR THE BOTTOM LINE**

### **I. Benefits to Employers**

#### **A. Expense Reduction**

Clients are demanding more transparency and accountability with regard to the cost of legal services. One report put it plainly, “[c]lients will be increasingly focused on

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<sup>94</sup> Joan Williams, *Reshaping the Work-Family Debate: Why Men and Class Matter*. (Harvard University Press Oct. 1, 2010), see also Galinsky, et al., *Times Are Changing: Gender and Generation at Work and at Home*, 2008 National Study of the Changing Workforce, Family and Work Institute, 2009.

considerations of efficiency and cost effectiveness in the delivery of legal services.”<sup>95</sup> Associate attrition, some of which is related to the challenge of work/life balance,<sup>96</sup> undermines the clients’ interest in controlling costs while maintaining the quality of legal services. As one Assistant General Counsel told the Task Force, “[o]ften when we purchase professional services in other contexts we use a turnover metric which impacts the fees paid for services. Stability in the staffing of certain matters is important enough that we should consider making it part of the agreements we negotiate for legal services.”

Retention of lawyers has been of less concern in recent years because lawyers’ professional mobility was reduced by poor economic conditions. However, as the legal profession emerges from the economic downturn, retention will once again take prominence as a key issue that law firms must address. Clients are increasingly sensitive to paying for the learning curve of new attorneys assigned to work on their matters. If clients resist paying for newly assigned lawyers to “get up to speed,” realization rates<sup>97</sup> will decrease, negatively impacting a firm’s profitability. In addition, attorney turnover is expensive.<sup>98</sup> One analysis concludes that firms do not recoup their initial investment in an associate until close to three years from the date of hire.<sup>99</sup> Another estimates that the costs to identify, recruit, pay, and

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<sup>95</sup> 2010 Client Advisory, *supra* note 11.

<sup>96</sup> Stark, Kristin, and Prescott, Blane, “Why Associates Leave: A Special Report,” LEGAL TIMES, May 7, 2007.

<sup>97</sup> Billing Realization is the percentage of billable hours logged that are actually billed to the client. THE LAWYER’S GUIDE TO GOVERNING YOUR FIRM (American Bar Association Section of Law Practice Management 2009).

<sup>98</sup> In 2006, 78% of new associates leave their firms by the end of their fifth year (up from 60% in 2000). 2006 NALP Foundation study.

<sup>99</sup> Peter Giuliani, “Parting May Be Sweet Sorrow, But It’s Getting More Expensive,” N.Y. ST. B.A.J. May 2006, p. 32.

support an associate for the first three years ranges from \$500,000 to \$700,000.<sup>100</sup> Firms that manage to reduce attorney attrition will be in the best position to maintain or even increase profit margins as conditions improve.

## **B. Revenue Enhancement**

Not only does the failure to address work-life integration affect the expense side of the ledger, there is an opportunity cost on the revenue side as well.

Better work-life integration impacts job satisfaction,<sup>101</sup> and increased satisfaction leads to stronger performance and decreased attrition. Associate attrition frustrates clients. For example, Linda Madrid, former General Counsel at CarrAmerica, considers the quality of life at a firm as a consideration before she engages a firm:

It is frustrating when outside counsel don't provide consistent lawyers . . . [N]othing [is] worse than investing in and relying on someone, and then having that person pulled out. Or, even worse, the firm isn't treating them well enough to keep them. We have tried to look at how our outside counsel treat their young lawyers . . . including demands in terms of billing. These are all issues that we think ultimately have an impact on the services we receive.<sup>102</sup>

The same report also highlighted the resentment clients feel when they are forced to expend additional time to educate newly assigned lawyers to replace those who have left the firm. John J. Flood, then Vice President and Associate General Counsel, NASD, stated, “[s]ome firms try to hide attrition. In one case, the chief partner, a trial lawyer, and two associates disappeared in an 18-month period and we were only told about one. I won't use that firm again.

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<sup>100</sup> BEST PRACTICES FOR THE HIRING, TRAINING, RETENTION AND ADVANCEMENT OF WOMEN ATTORNEYS, Committee on Women in the Profession, New York City Bar, February, 2006. *See also Changing Approaches to Lawyer Training: The Latest Battleground in the Growing War for Talent*, James W. Jones, Hildebrandt Institute, March 2006.

<sup>101</sup> Galinsky, et al., *Overwork in America: When the Way We Work Becomes Too Much* (Family and Work Institute 2005).

<sup>102</sup> *Better On Balance? The Corporate Counsel Work/Life Report*, The Project For Attorney Retention Corporate Counsel Project Final Report, Dec. 2003.

It's wasting my time to have to retell the story, what my corporation is about, what our history is.”<sup>103</sup>

Firms that offer consistency with regard to legal talent will be able to differentiate themselves from those that do not, and well may benefit from increased revenue and profitability as a result. And, they may be able to encourage clients to assign additional work to associates with whom they develop longer term relationships.

Savvy business organizations are recognizing the upside potential of parlaying innovative solutions to the work-life integration conundrum into a corporate capability. Mike Cook, the CEO of Deloitte LLP, recognized in 1992 that the demographics of its future talent pool warranted an aggressive response to the recruitment, retention and advancement of women.<sup>104</sup> One of the findings was that work-life integration was important not only to women but to men, too.<sup>105</sup> Cook assembled a task force and implemented a strong program that continues to this day. Deloitte created an entirely new model<sup>106</sup> known as Mass Career Customization<sup>TM</sup> that provides alternative ways for all employees to manage their careers.<sup>107</sup> Law firms are well advised to consider similar initiatives.

### **C. Risk Minimization**

Successful law firms recognize that “brand management” strategy is important to long-term profitability. One important element of brand management for professional services

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<sup>103</sup> *Id.*

<sup>104</sup> Douglas M. McCracken, *Winning the Talent War for Women: Sometimes It Takes a Revolution*, HARVARD BUSI. REV., Nov.-Dec.2000, 78(6), 159-165.

<sup>105</sup> This is still the case. See Galinsky, et al., *Times Are Changing: Gender and Generation at Work and at Home* (Family and Work Institute, 2008).

<sup>106</sup> See <http://www.masscareercustomization.com/>.

<sup>107</sup> Cathy Benko & Anne C. Weisberg, *Mass Career Customization: Aligning the Workplace with Today's Nontraditional Workforce*, HARVARD BUSI. PRESS, 2007.

firms is the ability to recruit top talent and, increasingly, work-life integration is a barometer that matters to law students as they decide where they want to work. For example, in 2006 students at Stanford Law School created Building A Better Legal Profession,<sup>108</sup> a grassroots organization that ranks law firms according to their minimum associate billable-hour expectations and other characteristics. By 2008, BBLP had chapters at the top twenty law schools.<sup>109</sup> Firms risk damaging their ability to attract “the best and the brightest” if they ignore the issue of work-life integration.

Not only does attention to work-life balance/integration enhance a firm’s profile and reduce attrition, a recent study showed that requiring “predictable” (scheduled) time off actually increased communication among a team of professionals. The result of this collaboration was new processes that enhanced efficiency and effectiveness with no negative impact on client service standards.<sup>110</sup> This example demonstrates that law firms too can approach work-life balance issues from a risk management perspective.

## **II. The Negative Impact of Not Addressing Work-Life Issues**

The lack of a sustainable work-life balance has a negative impact on the attorneys themselves. In recent decades, a plethora of literature has emerged, documenting the emotional toll visited upon significant numbers of practitioners as a result of the current training methods and the present culture of legal work environments. Organizations and employers that fail to adopt and adapt policies to ameliorate these effects, or that do not have written policies in place to do so, may bear the consequences of individuals’ declining work product and potential health

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<sup>108</sup> See <http://www.betterlegalprofession.org/index.php>.

<sup>109</sup> Nina Schuyler, *Building A Better Legal Profession*, SAN FRANCISCO ATTORNEY, The Bar Ass’n of San Francisco, Winter 2008.

<sup>110</sup> Leslie A Perlow & Jessica L. Porter, *Making Time Off Predictable—and Required*. HARVARD BUSI. REV., Oct. 2009.

problems, as well as the associated business costs of attrition. At least thirty years ago, anecdotal evidence began to appear in scholarly articles and bar journals describing the toxic effects of the present physically and emotionally demanding method of educating young lawyers and its carryover into the practice of law.

### **III. Empirical Studies**

Two seminal studies address this issue. The first, conducted in 1986, tracked University of Arizona Law School students in the first two years of legal practice.<sup>111</sup> That study was replicated and expanded among Washington lawyers in 1990. Interestingly, there was a high correlation between the Arizona study and the Washington study. Both studies' findings were disturbing.

The 1986 Arizona study found:

As the results indicate, before law school, subjects develop symptom responses similar to the normal population. This comparison suggests that prospective law students have not acquired unique or excessive symptoms that set them apart from people in general. During law school, however, symptom levels are elevated significantly when compared with the normal population. These symptoms include obsessive-compulsive behavior, interpersonal sensitivity, depression, anxiety, hostility, phobic anxiety, paranoid ideation, and psychoticism (social alienation and isolation). Elevations of symptom levels significantly increase for law students during the first to third years of law school. Depending on the symptom, 20–40% of any given class reports significant symptom elevations. Finally, further longitudinal analysis showed that symptom elevations do not significantly decrease between the spring of the third year and the next two years of law practice as alumni. . . . Specifically, on the basis of epidemiological data, only 3–9% of individuals in industrial nations suffer from depression; pre-law subject group means did not differ from normative expectations. Yet, 17–40% of law students and alumni in our studies suffered from depression, while 20–40% of the same subjects suffered from other elevated symptoms.<sup>112</sup>

These findings were repeated in the Washington study:

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<sup>111</sup> G. Andrew Benjamin, Alfred Kaszniak, Bruce Sales, & Andrew H. Benjamin, et al. *The Role of Legal Education in Producing Psychological Distress Amongst Law Students and Lawyers*. AM. B. FOUND. RES. J. 1986.

<sup>112</sup> *Id.*, 246-247



Compared with the 3–9% of individuals in westernized, industrialized countries who suffer from depression, 19% of Washington lawyers suffered from statistically significant elevated levels of depression. Of these individuals, most were experiencing suicidal ideation . . . .

Eighteen percent of the lawyers were problem drinkers. This percentage is almost twice the approximately 10% alcohol abuse and/or dependency prevalence rates estimated for adults in the United States . . . .

While approximately 18% of the lawyers who practiced 2 to 20 years had developed problem drinking, 25% of those lawyers who practiced 20 years or more were problem drinkers. . . . Alcohol abuse and dependency is a chronic and progressive disease.<sup>113</sup>

Finally, the authors noted that, “it appears from comparing the new Arizona alumni with the similar group of Washington lawyers that the presence of depression, problem drinking, and cocaine abuse is likely to affect lawyers at similar rates, regardless of jurisdiction within the United States.”<sup>114</sup>

#### **IV. Responses to the Empirical Evidence**

During the last thirty years, programs to ameliorate depression and alcohol and drug abuse within the legal profession have increased exponentially. Virtually every state in the nation maintains a Lawyer Assistance Program with different organizational structures and levels of support. NYSBA initiated the State’s first professionally staffed Lawyer Assistance Program, and the Lawyer Assistance Committee provides guidance for the Program; other local bar associations have followed suit.

Although significant progress has been made in the numbers of attorneys who have benefited from these educational programs and the provision of services through the Lawyer Assistance Program, legal employers have done little to educate attorneys and staff

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<sup>113</sup> G. Andrew H. Benjamin, et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 INT’L J.L. & PSYCHIATRY 233, 240-241 (1990).

<sup>114</sup> *Id.* at 242

within their organizations as to the prevalence of these diseases. Nor have they structured work environments in such a way as to foster early recognition and treatment of these diseases.

A 2009 NYSBA survey discovered that 80% of the responding law firms had no specific written policies concerning impairment due to depression or alcohol and drug addiction and 20% of the law firms surveyed would not allow leave time for treatment of these diseases.<sup>115</sup> As a result of this survey, the Lawyer Assistance Committee drafted a Model Policy on Impairment intended to be adapted and adopted by law firms or other legal employers<sup>116</sup>, which was approved by NYSBA's House of Delegates.<sup>117</sup>

What do these studies mean for the future of the legal profession? Work settings that do not address stressors of the modern practice of law will continue to produce a significant number of lawyers who are depressed, dissatisfied with the quality of their lives, spend too little time with their families and communities, continue to be isolated and show increased levels of depression and addictive behaviors.

#### **BEST PRACTICES FOR LAW FIRMS AND SOME THINGS TO CONSIDER**

As discussed above, attracting and retaining the best and the brightest will require a flexible work environment, as more practitioners are to maintain the delicate balance between their personal and professional lives. We address below (1) how organizations can create and implement Flexible Work Arrangements that meet both the organizations' and the employees' needs; (2) vacation policies and practices; (3) sabbaticals; and (4) other quality of life initiatives.

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<sup>115</sup> See "Survey Results & Analysis for 2009 HOD Lawyer Assistance Program Law Firm Policy Survey," New York State Bar Association, at 2, 3, Oct. 14, 2009.

<sup>116</sup> See "New York State Bar Association Lawyer Assistance Committee Model Policy," New York State Bar Association, Apr. 9, 2010.

<sup>117</sup> See "New York State Bar Association Resolution Adopted by House of Delegates," New York State Bar Association, Apr. 10, 2010.

## **I. Flexible Work Arrangements**

Law firms should implement flexible work arrangements and policies that are mutually beneficial to the law firm and to the attorney. For purpose of this Report, “flex-time” refers to attorneys working full-time hours with regular flexibility built into their schedule (*e.g.*, regularly working one day a week from home). “Reduced hours” is used to refer to attorneys who work fewer hours than traditional full-time attorneys. The Task Force notes that the term “part-time” is a misnomer for such arrangements because most attorneys, even those on reduced hour schedules, work more than traditional part-time employees. The term “flexible work policies” is used to encompass both “flex-time” and “reduced hours.” This subsection of the Report addresses assisting law firms in crafting flexible work policies.

For years, flexible work policies have been identified with attorney/mothers who wanted to have reduced or flex-time hours. Although more women than men work less than full time,<sup>118</sup> an individual attorney of either gender may desire flex-time or reduced hours for a variety of reasons, including, but not limited to, parenting. For instance, an attorney may have other interests he or she wishes to pursue such as writing, teaching, or volunteering. An attorney may be struggling with a personal illness or injury, or that of family members. An attorney may desire flex-time or reduced hours to transition into retirement.

An attorney also may find he or she is consistently working at a reduced pace, and a firm may wish to offer reduced hours to match the reality of the attorney’s work. Law firms need to recognize that although an attorney may be strongly committed to the profession, there are many valid reasons why he or she may seek a more flexible or reduced work schedule. The law firm should strive to be creative and responsive to attorneys’ needs while ensuring the firm’s

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<sup>118</sup> See <http://www.catalyst.org/publication/246/women-in-the-law-in-the-us>.

business needs are being met. The Task Force recognizes that this is a challenge, which we address in the remainder of this section of the Report with some practical tips.

**A. Establish Guidelines and Formalize a Program**

Firms that have succeeded in offering alternative work schedules have adopted written policies to provide guidance to their attorneys about their expectations of hours and schedules.<sup>119</sup> To date, the legal marketplace has two established practices to structure these policies: uniform reduced hours policies and “custom” arrangements for individual attorneys. For either of these options, flexibility on the part of the lawyer and the firm as well as technology-resources are key to making alternative work schedules successful. The Task Force notes that no alternative work schedule policy will be effective without buy-in from firm management.

Of critical importance overall is the commitment to proportionality—the recognition that those working reduced-hours or other flexible arrangements should be provided the same opportunities as their standard-schedule colleagues with respect to quality of work, advancement, benefits, training, business development opportunities, etc. The following are some additional factors to be considered in establishing a program for flexible hours.

**B. Define Reduced Hours**

Most firms that offer attorneys an option of working a reduced work week have established guidelines that address eligibility, scheduling and approval. Of the firms we contacted, most require:

- A target range of billable hours of at least 65% of that of attorneys on traditional schedules.

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<sup>119</sup> In her book *Law & Reorder*, Deborah Epstein Henry highlights what she refers to as the “Ten Principles for Successful Flexible and Reduced Hour Policies.” It is important for the profession to recognize that work-life balance is no longer simply an option. *See* Law and Reorder, *supra* note 3.

- An agreement from the attorney that he/she remains flexible as needed to accommodate client needs and emergencies, etc.
- Approval from the practice group leader who will consider both the needs of the lawyer making the request and the overall needs of the firm and its clients.

#### **C. Establish Eligibility Criteria**

At some firms, eligibility to work a flexible work schedule depends on the attorney's employment at the firm for a period of time; others require no "tenure" period. Those with a "tenure" period also require the attorney to have been through at least one review cycle and be deemed in good standing.

#### **D. Manage the Process**

Most firms recommend appointing a partner or manager to oversee all flexible work arrangements. This is the person to whom requests for flexible work arrangements are submitted, and the person who makes recommendations regarding approval or modification of flex-time or reduced hour proposals. She/he is the go-to person for issues that arise for the flexible work arrangement lawyer, and is sometimes the person monitoring usage/hours and possibly work assignments and professional development opportunities. She/he may also be the person who ensures that honest conversations occur regarding the success or lack thereof of any given flexible work arrangements for the lawyer and for the firm. Firms should understand the impact of flexible work arrangements on career progression, compensation and professional development, and should discuss this impact with lawyers who seek such arrangements.

#### **E. Encourage Usage of Flexible Work Policies**

Many organizations that have well-written and well-intentioned flexible work policies experience poor utilization of their policies. The Task Force observes that a common obstacle to utilization of flexible work arrangements is stigma. The Task Force further observes

that firms may reduce stigma associated with flexible work arrangements by encouraging greater transparency among users, so that flexible work arrangements become an accepted practice.

Partners and other leaders in the firm who openly support or even use these policies can make a significant difference in minimizing any stigma associated with flexible work arrangements.

Consider, for example, the effect on a team of a partner who will let team members know that he or she will arrive at 11 o'clock on Thursday mornings to take his or her child to physical therapy.

#### **F. Customized Arrangements**

Flexible work arrangements should offer the opportunity for attorneys to make individualized arrangements. These arrangements generally involve lowering base salary in exchange for limiting hours or days of work. Similar to the reduced hours schedules, the Task Force observes that it is a best practice for a partner to oversee such arrangements and that the lawyer seeking the arrangement have a good track record at the firm. It is important that such arrangements be open to all attorneys so as to meet the needs of their personal and professional circumstances.

#### **G. Technology as a Resource**

To make it easier for participants to work from home, some firms provide the necessary technology to make the participants' home office as functional as their law firm office. Many attorneys provide this for themselves. Desktop computers, laptops, high speed Internet connection, printers/scanners and fax machines are examples of what technology is required for attorneys who work remotely.

Additionally, technological advances (addressed in the Technology section of the Report) such as "smartphones" and Blackberrys, have made it easier for attorneys to work from almost anywhere. Of course, the ability to work anywhere, anytime also creates the challenge of increased expectations that lawyers will give immediate attention even to matters that do not

require it. The result is to deprive lawyers of uninterrupted personal time. These advances have also raised the expectations of clients, who anticipate speedy responses even at off hours. As is discussed in the Technology section of this Report, the Task Force recommends that firms should support their attorneys' use of these devices to maximize responsiveness, while setting clear guidelines and expectations regarding response time, respect for personal time, privacy concerns, acceptable uses of the technology, effective billing practices, and client confidentiality.

## **II. Preserving Attorney Vacation Time**

It is common for attorneys to feel the need to be accessible on vacation via electronic means (*e.g.*, cellular phone, remote access and Blackberry/"smartphones"). Further, such accessibility is often expected by firms and clients. Additionally, small firms and solo practitioners often feel compelled to be equally responsive so as not to risk jeopardizing their client base.

As noted above, research has recognized that the failure to detach from office demands can lead to stress-related medical issues, burn-out and decreased productivity. Therefore, attorneys must prepare for and preserve their time away from the office. The benefits are likely to include enhanced performance and a more satisfying personal life. Law firms should institute a written policy recognizing the importance of vacations and make other attorneys within the firm available to handle client matters while an attorney is on vacation.

Small or solo firms should set vacation time well in advance, providing clients the vacation schedule in advance, and most import, have a plan for who to handle issues during that time. If expectations are defined early, there is less likelihood of unreached expectations. The

retainer agreement or engagement letter also should provide clients with information about the plan to have another attorney assist, in the event of an emergency.<sup>120</sup>

### **III. Sabbaticals**

A somewhat more dramatic approach toward ensuring work-life balance for lawyers is the time-honored academic tradition of a sabbatical; *i.e.*, an extended break from professional practice for professional and/or personal development, reflection and rest. Although less common than other leaves for family or personal reasons, sabbatical policies are in place in an increasing number of law firms. Generally, they allow lawyers, typically partners, with a substantial investment of time and effort in the firm to leave for a specified duration, with full, partial or no pay, and with very little restriction on their sabbatical activity.

#### **A. The Reasons for Sabbaticals**

What is the rationale? Letting income-generating lawyers address significant personal or family obligations is one thing; allowing them to step out of productive practice for a period of time for no reason other than their need to refresh or recharge themselves is quite another. It may seem unrealistic or irrational.

Firms with sabbatical policies take a long-term view of their investment in their partners, allowing productive lawyers to refresh and reenergize so that they continue to perform at the highest levels of effectiveness and efficiency. As the standard model for law firm practice evolves, the sabbatical may become an important tool to recruit and retain the best professional talent. Similarly, sabbaticals can help lure a highly sought-after lateral.

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<sup>120</sup> See Blackford, Sheila, *How to Take a Vacation From Your Law Practice*, LAW PRACTICE MANAGEMENT TODAY. Law Practice Mgmt. Section (A.B.A. Aug. 2009).



There is a balancing factor to the justifiable worry about clients' reactions to a key attorney's sabbatical; it may force a level of collaboration and teamwork that significantly benefits the client, overcoming many attorneys' reluctance to share responsibility.

For smaller firms, accommodating a sabbatical may be more problematic. Yet, the fact remains that any number of life's uncertainties could befall that key player—an accident, a health care crisis, a family emergency or an irresistible offer from a competing law firm. Some form of “succession planning” is necessary, irrespective of whether a sabbatical program is in place.

## **B. Key Elements of Sabbatical Policies**

Issues to be addressed in a sabbatical policy include the following:

1. ***Duration.*** Attorney sabbaticals commonly extend only three to six months or even shorter in some cases so as not to permanently disrupt client relationships and the business objectives of the firm.
2. ***Eligibility.*** Most firms limit sabbaticals to partners who have been in the partnership ranks for some period of time, ranging from as little as two to as many as ten years. For most firms, it is a one-time experience.
3. ***Notice, preparation, and approval.*** A substantial amount of notice is typically required, and attorneys are required to take whatever steps are necessary to prepare and effectively “hand-off” responsibility for their matters.
4. ***Compensation.*** Policies run the gamut, from full-pay to partial-pay to no-pay. A reduced pay approach may be the ideal way to protect the firm's economic interests without entirely discouraging lawyers from taking the sabbatical. At a minimum, firms should maintain key employee benefits in place during the sabbatical.

5. ***Sabbatical activity.*** The sabbatical activity is normally not circumscribed by the firm, with one exception: lawyers are typically precluded from practicing law during the sabbatical, for both liability and competitive reasons.

The key to the policies' success, like most law firm initiatives, is the level of acceptance and support at the firm's highest levels, including its utilization by the key members of the firm's hierarchy.

#### **IV. Quality of Life Initiatives**

Law firms can employ many programs other than flexible work arrangements and sabbaticals to have a positive impact on the quality of life of their attorneys. The Task Force conducted a survey of twenty-five law firms of varying sizes in New York State regarding their quality of life initiatives. In general, the initiatives can be broken down into four sub-categories:

(1) assistance with day-to-day personal matters that affect many or all lawyers in the firm; (2) social morale-building initiatives; (3) professional development and morale-boosting initiatives; and (4) programs and policies (other than alternative work schedules) designed to assist subgroups of lawyers in work-life integration in order to achieve professional success.

Examples used by firms are:

##### **A. Assistance With Day-to-Day Personal Matters**

- health club memberships/discounts/on-site gyms
- high-quality coffee, fresh fruit, and healthy snacks provided free of charge in break rooms
- dinner served in conference room at 8 p.m. each evening for those lawyers who have to work late
- private banking
- personal computers for home use
- laundry and/or dry cleaning services

- carry-over vacation policies for associates whose workloads do not permit them to take all of their vacation in a given year

**B. Social Initiatives**

- business casual dress codes
- on-site yoga classes
- foreign language classes
- movie nights
- trivia nights at a local bar
- Weight Watchers on-site meetings
- March Madness/World Cup parties in a conference room
- Wii tournaments
- ping pong/bowling tournaments
- sports teams
- karaoke nights at local bars
- gift certificates for dinner/movie as a reward for excessive hours worked
- themed lunches or cocktail parties

**C. Professional Initiatives**

- career counselor—either on staff at the firm as some firms already have or a local for-hire professional career counselor to assist associates with career-related issues
- professional outplacement assistance—most large (*e.g.*, NALP) firms provide some professional outplacement assistance to lawyers who are leaving their firms involuntarily
- career counseling program—a growing number of New York firms have arrangements with outside career consultants to provide career coaching
- client development budgets—available to all lawyers at a specified degree of seniority (often beginning at about the third year) to spend on meals and/or sporting or other social events to strengthen client relationships

- percentage of fees paid to nonpartners who originate business—while this is more common at small firms, a growing number of larger New York firms are adopting this as well
- “secondment programs” to strengthen relationships between associates and clients, and to facilitate the eventual transition of attorneys to in-house positions
- “Side Bar” or other public interest/public sector externship programs in lieu of economic-based layoffs
- annual teaching award—given by the associates to one partner in each practice group for his or her outstanding mentoring/teaching
- upward performance reviews—a growing number of firms solicit performance evaluations of partners, counsel and more senior associates by associates, as well as of associates by more senior lawyers

**D. Assisting Subgroups of Lawyers With Work-Life Integration to Achieve Professional Success**

- reentry coaching—providing services of an outside professional coach to assist attorneys returning from family leave or disability-related absence from the firm in reintegrating with the firm and practice group
- associates committee—with elected members to voice associate concerns regarding quality of life and professional development initiatives
- other affinity group initiatives—providing opportunities for subgroups, such as ethnic minorities, LGBT attorneys, parents, and attorneys with disabilities to hear strategies for success from more senior lawyers, and to discuss their own concerns in a safe environment
- mentoring across subgroup lines—providing opportunities for a minority group associate to receive one on one coaching from a majority group partner, often combined with professional “shadowing” programs

**RECOMMENDATIONS**

1. The Task Force recommends that NYSBA and the legal profession recognize work-life balance as an issue that impacts both men and women, and treat the issue in a gender-neutral way.

2. The Task Force recommends that NYSBA adopt a policy encouraging law firms to commit to the value of encouraging a healthier work-life balance for their lawyers. The business case for such efforts includes (1) better relationships with clients; (2) reducing the cost associated with turnover and training; and (3) maintaining a reputation that will attract additional talent.

### **I. Flexible Work Policies**

3. Law firms should implement flexible work arrangements and policies. To do so, law firms should (1) establish guidelines and formalize a program; (2) define reduced hours; (3) establish eligibility criteria; (4) appoint a partner or manager to manage the process; (5) encourage usage of flexible work policies; (6) allow for customized arrangements; and (7) provide technology/support/advice as a resource for participants.

### **II. Quality of Life Initiatives**

4. Law firms should consider adopting quality of life initiatives (itemized in detail in subsection IV above) in the following areas: (1) assistance with day-to-day personal matters that affect many or all lawyers in the firm; (2) social morale-building initiatives; (3) professional development and morale-boosting initiatives; (4) programs and policies designed to assist subgroups of lawyers in work-life integration to achieve professional success; and (5) policies designed to allow attorneys to leave the office behind them while on personal time.

### **III. Addressing Expectations**

5. NYSBA should encourage law firms to provide accurate disclosure regarding expectations of hours worked and work environment when recruiting associates.

### **IV. Support for Work-Life Policy Implementation**

6. NYSBA through the Law Price Management Committee should encourage and offer support to legal employers striving to implement nonstigmatized/ gender-neutral work-

life policies and practices, including the following: (1) creating and adopting model policies through the Law Practice Management Committee from which employers can formulate flexible work arrangement programs and quality-of-life initiatives; and (2) encouraging greater transparency from law firms about partnership, flexible work arrangements, and quality-of-life initiatives.

7. NYSBA should publicize success stories of law firms/legal employers who have successfully implemented policies/practices supporting work-life balance and encourage mentoring by attorneys who are successfully working a flexible schedule.

#### **V. Vacations/Sabbaticals**

8. Lawyers and law firms should strive to preserve vacation time by defining expectations within firms and with clients. Larger firms may consider adopting a practice of awarding sabbaticals to productive attorneys. Law firms should have written policies for vacations and, if offered, sabbaticals.

9. NYSBA should facilitate and encourage collaboration between clients and law firms to implement such arrangements, in part by offering or highlighting CLE programs that train lawyers on how to negotiate issues related to successful work-life integration.

#### **VI. Research into Stress-Related Health Issues**

10. NYSBA should support continued research on attorney impairment (*i.e.*, mental and physical illness, as well as alcoholism and drug addiction) and continue to encourage firms to adopt NYSBA-suggested Model Policy on Impairment in an effort to educate the profession about these issues.

e-filing system. As more courts adopt the NYSCEF system and allow e-filing or mandate its use, more New York attorneys will need to learn to use the system. The NYSCEF Web site<sup>125</sup> contains several user guides to assist attorneys with the system and also contains links to the relevant sections of New York rules and legislation that cover e-filing. The New York County Supreme Court also provides attorneys a free two-hour e-filing training session worth two CLE credits. In addition, the NYSCEF site contains both a live system and a practice system on which attorneys can practice using and filing forms. At the federal level, e-filing is handled through the PACER system. E-filing in federal courts is mandatory nationwide, and all attorneys in the state who practice in federal courts should be trained on the federal e-filing system.

## **RECOMMENDATIONS**

1. The Task Force recommends that law schools and firms increase educational and training opportunities for lawyers regarding practical ways to use technology to enhance their practices, to understand and use technology more effectively, and to develop practice management and project management skills.

2. The Task Force recommends that firms consider the adoption of system-based approaches, beginning with an assessment of the functions the firm performs and the related flow of information and work among its personnel, to determine which tools are most useful and effective to meet their needs. The Task Force observes that firms that design sound practices, and implement technology that makes sense in the context of their practices are more likely to benefit from and be satisfied with their investments.

3. The Task Force recommends that NYSBA's Committee on Standards of Attorney Conduct should study and make recommendations concerning the ethical and risk

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<sup>125</sup> See <https://iapps.courts.state.ny.us/fbem/mainframe.html>.

management considerations associated with new technologies such as social networking, third-party hosted solutions, and virtual law firms.

4. The Task Force recommends that NYSBA's Law Practice Management Committee create model policies concerning the use of mobile technology, including the establishment of guidelines for security issues associated with mobile technology, and clear communications to attorneys as to when they are, and are not, responsible for maintaining a connection with the workplace. The Task Force also recommends that NYSBA's Law Practice Management Committee develop model suggestions to assist firms in increasing their attorneys' productivity through the development of efficient tools and best practices for the efficient handling of the ever-increasing e-mail traffic they receive.

5. The Task Force recommends that NYSBA encourage legal employers to use technology to support a healthier work-life balance by facilitating flexible work arrangements.

6. The Task Force recommends that NYSBA consider whether and how NYSBA can leverage its resources to assist smaller firms with technology-related issues. For example, NYSBA may wish to consider whether it can work with its technology vendors to develop services that benefit members and practitioners for whom individual investment in technological solutions is not economically feasible.





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