

COMMISSION ON ALCOHOL AND  
SUBSTANCE ABUSE IN THE  
LEGAL PROFESSION

**ACTION PLAN**

FOR  
**HONORABLE JUDITH S. KAYE**  
CHIEF JUDGE OF THE STATE OF NEW YORK  
AND  
**HONORABLE JONATHAN LIPPMAN**  
CHIEF ADMINISTRATIVE JUDGE OF THE  
STATE OF NEW YORK

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## EXECUTIVE SUMMARY

On September 16, 1999, the Honorable Judith S. Kaye, Chief Judge of the State of New York, announced the creation of the Commission on Alcohol and Drug Abuse in the Profession. The Chief Judge charged the Commission with the creation of a comprehensive and statewide action plan to address the problem of alcohol and substance dependency within the legal profession in the State of New York, a professional community which includes lawyers, judges, and students preparing for careers in the law. While mindful that there are other forms of addiction or other compulsive behavior that may threaten the public interest, the Commission, in accordance with the Chief Judge's charge, has focused its efforts on the acute and complex problems stemming from alcohol and substance dependency.

The Commission recognizes that these problems involve a continuum of behavior ranging from use, to abuse, and ultimately addiction. Accordingly, the Commission intends that the phrase "alcohol and substance dependency," which is used throughout this Action Plan only for purposes of consistency, should encompass all diseases of addiction, including alcoholism, substance abuse, and substance or chemical dependency.

Chief Judge Kaye also requested that the Commission explore and identify a reliable funding mechanism for its statewide action plan. The Chief Judge's full statement and mandate to the Commission are contained in the Appendix to this Action Plan, at Exhibit A.

Thousands of people in New York's legal community are suffering from the effects of the diseases of alcohol and substance dependency. They include lawyers, judges, and law students. These diseases cause enormous personal suffering to those who are afflicted, their families, their professional colleagues, and their friends. They pose obvious risks to law clients, litigants, and the general public. But, these diseases are treatable. Addiction may not necessarily be prevented, but the consequences can be avoided or, at least, mitigated through early intervention, and the suffering caused by addiction may be assuaged.

In appointing this Commission, the Chief Judge observed that lawyers and judges hold a unique public trust in our system of justice. How to preserve that trust, protect the public, and help members of the legal profession who suffer from alcohol and substance dependency are continuing challenges to the profession and the judicial and legal institutions which regulate the practice of law throughout the United States.

Violations of the public trust resulting from alcohol and substance dependency necessarily erode public confidence in the legal profession and, indeed, in all parts of the justice system. The Commission has determined that education and effective intervention for treatment are the core professional responsibilities which should be supported and

enhanced to address the problem of alcohol and substance dependency within New York's legal institutions.

The Commission holds the firm belief that the legal profession has a professional and moral obligation to help lawyers address alcohol and substance dependency problems at the earliest possible point in a legal career. Indeed, it is never too early to educate people in this important area, and never too late, for that matter. The Commission also believes that there is an appropriate supportive role for the courts in dealing with these problems. The Commission recommends that New York State's court system undertake a statewide approach to address the most pressing aspects of the problems of alcohol and substance dependency within the legal profession.

The Commission proposes the creation of an independent statewide entity to address these difficult problems, to be called the Lawyer Assistance Trust. The Commission proposes that the Lawyer Assistance Trust be financed by lawyers, and that it be administered by a blue-ribbon panel of Trustees to be appointed by the Judges of the New York State Court of Appeals.

The Commission envisions that the Lawyer Assistance Trust will be a highly respected and visible resource within New York's justice system, and a source of reliable information and effective help for any lawyer or judge who has a problem caused by alcohol or substance dependency.

The Commission proposes that the Lawyer Assistance Trust, during its organizational stage, will work with the Commission, which should remain in existence until a functioning program is fully operational. Thereafter, the Lawyer Assistance Trust will continue the task of implementing the recommendations of the Commission to the extent they are approved by the Chief Judge.

The Commission's major recommendations to the Chief Judge include:

- creating a special trust fund, to be called the Lawyer Assistance Trust, which will provide Statewide leadership and financial assistance to programs for the treatment and prevention of alcohol and substance dependency among lawyers and judges;
- financing of the Lawyer Assistance Trust by the legal profession, not taxpayers, through a portion of the existing \$300 attorney registration fee, which is required of practicing attorneys;
- creating special educational programs designed specifically for law students, practicing lawyers and judges in the field of alcohol and substance dependency; and

- modifying and supplementing existing court rules and procedures to facilitate the early detection of alcohol and substance dependency, intervention and referral to needed treatment of those experiencing alcohol and substance dependency.

The Commission members wish to thank Chief Judge Kaye for this opportunity to provide impetus and guidance in this important and challenging effort to improve the administration of justice in the State of New York.

## I. Introduction

The members of the Commission share the common conviction that the legal profession collectively has a responsibility to its membership to ensure the delivery of the highest quality of legal services to the public. That responsibility is shared by the judicial branch of government, which, in New York State, has constitutional and statutory obligations to regulate the admission and discipline of lawyers, the practice of law, and the integrity of judges and the judicial process.

Bar and judicial leaders must continue to step forward to help at-risk members of the profession, and simultaneously protect the public. Members of the profession who may be in need of assistance should understand that the Commission has concentrated its efforts on developing a plan to promote self-awareness and is not attempting to stigmatize colleagues who may be suffering from alcohol or substance dependency problems.

**“Every state now has at least one type of lawyer assistance program or committee, as do the provinces of Canada and a few foreign countries.”**

<http://www.abanet.org/media/august96/lapwkshp.html>

## II. Need for Central Leadership and Funding

The abuse of alcohol and controlled substances is a symptom of the disease of addiction. Addiction is treatable and because it is progressive, early detection and treatment is desirable. Addiction can be treated effectively, like many chronic diseases.

Thousands of people in New York’s legal community are suffering from the effects of alcohol or substance dependency. The afflicted include not only practicing lawyers, but judges, and students who are training for careers in the law. These diseases cause enormous personal suffering to those who are afflicted and to their families, friends and colleagues. They also pose obvious and documented risks to law clients and to the general public. These are chronic diseases, not moral deficiencies. They are medically treatable diseases, and, with early intervention, the consequences otherwise manifested may be prevented and controlled.

There are currently two Lawyer Assistance Programs—one administered by the New York State Bar Association and a second by the Association of the Bar of the City of New York. Additionally, county bar associations in Erie, Kings, Monroe, Nassau, New York, Oneida, Onondaga, Schenectady, Suffolk and Westchester Counties provide help to their

members through bar committees or Employee Assistance Program models. These voluntary efforts by bar associations are to be applauded, supported, and enhanced (rather than displaced) by a Statewide program. These existing efforts provide an invaluable foundation on which to continue building and expanding effective treatment and prevention programs within the State of New York.

Existing bar association programs are funded by bar association revenues and other support provided and gathered by these associations. There is, however, no integrated statewide entity to provide financial and administrative support for these efforts. Lack of funding is a critical deficiency in the existing voluntary system. Services must be expanded to meet actual need, with an assurance of quality consistency in the administration of these programs. The Commission urges an expansion of lawyer assistance programs throughout the State of New York so that every member of the legal community suffering from an alcohol or substance dependency problem will have access to quality and effective service.

#### **New York State Bar Association**

The New York State Bar Association's Lawyer Assistance Program is supported by a 63-member Lawyer Alcoholism and Drug Abuse Committee. Services provided by the Lawyer Assistance Program include: early identification of impairment; intervention and motivation to encourage lawyers to seek help; assessment, evaluation and development of treatment plans; referrals to appropriate community resources such as self-help groups, outpatient counseling, detoxification and rehabilitation services; information and referral for depression; training programs on alcoholism, drug abuse and stress management; and monitoring at the request of courts and attorney grievance committees. All lawyers and judges in New York State are welcome to utilize the program's services.

Contact: Ray M. Lopez, Director  
(800) 255-0569 or (518) 487-5685



### **Association of the Bar of the City of New York**

The New York City Lawyer Assistance Program (NYCLAP) was established in 1999 to address the needs of the 70,000 practicing lawyers in the five boroughs that comprise New York City. NYCLAP offers free, confidential help to lawyers, judges, law school students (and their families) who are troubled with alcohol and/or drug abuse. NYCLAP seeks to prevent or alleviate problems before they jeopardize a lawyer's personal and professional life.

NYCLAP provides a 24-hour, 7-day-a-week confidential hotline, assessment, evaluation and treatment planning, short term counseling, intervention, referral, monitoring, and educational outreach.

NYCLAP operates under the guidance of the Association of the Bar's Committee on Alcohol and Substance Abuse and a network of dedicated peer volunteers, with a special knowledge of helping resources, who can provide immediate responses to persons in need.

Contact: Eileen C. Travis, Director  
(212) 302-5787

### III. Alcohol and Substance Dependency and Lawyer Discipline

The Commission has not focused extensively on the disciplinary aspects of alcohol or substance dependency, except to acknowledge that disciplinary action may be inevitable if a problem remains untreated. Indeed, suspension or disbarment from practice must remain the ultimate penalty if the profession is to protect law clients and the public from a lawyer's incompetence or dishonesty. But, involving the lawyer discipline system in the problems of alcohol and substance dependency, other than in situations involving professional misconduct, would likely deter many lawyers from seeking or accepting treatment or other needed help.

A statistical analysis of disciplinary proceedings would lead us to believe that relatively few complaints involving addiction problems result in disciplinary actions against lawyers and judges. However, information provided by New York's lawyer disciplinary agencies indicates that the existing disciplinary process does not fully capture the incidence of attorneys with alcohol or substance dependency problems. It is not captured unless the lawyer charged with professional misconduct waives or raises the disability for purposes of mitigating a sanction. The result is that there seems to be little evidence that disciplinary actions are directly the result of alcohol or substance dependency, and the disciplinary proceedings that have attempted to address such problems with diversion and monitoring have been sporadic and largely *ad hoc*.

In a majority of the state's four judicial departments, the Appellate Division has ordered treatment and monitoring of alcohol and substance dependency problems as a condition of suspension or reinstatement in the exercise of the courts' authority under section 90 of the Judiciary Law. The Commission applauds this conditional treatment of these serious cases but recognizes that the disciplinary process addresses only the results, and not the cause of an alcohol or substance dependency problem.

While the Commission believes firmly that alcohol and substance dependency programs should be administered separately from the state's lawyer discipline process, changes in current discipline policies nonetheless would be helpful. Reliance on the disciplinary process as it currently is structured generally addresses only the results of the problem. However, the ability to detect an alcohol or substance dependency problem at an early stage and divert the lawyer or judge to treatment addresses the cause of the problem. This latter approach is far preferable.

In order to enhance the current approach to the disciplinary process, the Commission recommends that the four departments of the Appellate Division adopt uniform rules and procedures in this area. Similarly, the authority vested in the Appellate Division Committees on Character and Fitness should be reviewed so that the Committees can respond effectively and responsibly when candidates for admission to the bar show signs of alcohol and substance dependency problems.

**Alcoholism “is . . . very treatable with professionals who are treated having a 70-90% rate of success.”**

<http://www.tedcohen.com/chemical/index.html>

#### IV. Combating Alcohol and Substance Dependency with Enhanced Educational Efforts

The mutual interests of the public and of lawyers will be served by raising the awareness of current and future members of the legal profession to the ethical implications of alcohol and substance dependency. Illuminating the potential impact of alcohol and substance dependency through education will reinforce the connection between seemingly personal conduct and professionalism. Further, knowledge of the symptoms and causes that lead to addiction or dependency frequently will prompt an individual's early recognition of the problem and may signal the need to seek help.

Similarly, it is beneficial for members of the profession to have an increased understanding and sensitivity to colleagues who may be in crisis or in danger. Greater awareness will facilitate the recognition of colleagues who may need treatment and provide the opportunity for either appropriate intervention or referrals for assistance before problem behavior escalates. For individuals suffering from an alcohol or substance dependency, education and awareness of available help can only increase the likelihood of earlier treatment and recovery. The public interest is served in all of these circumstances.

The Commission has identified continuing legal education (CLE) as an effective channel for orienting lawyers and judges to the relationship between personal conduct and professional responsibility. The Commission proposes that the Lawyer Assistance Trust also establish and promote innovative incentives, not mandates, that will be consistently implemented within those educational institutions in the State of New York which provide legal education and CLE programs.

In this regard, the Commission views educational initiatives along a continuum, with a comprehensive curriculum and multi-staged materials directed toward law students, lawyers and judges at all stages of their legal careers. An educational component for law students can be readily implemented with the cooperation of law schools within their existing curriculum structures. All candidates for admission to the bar are required to pass a professional responsibility test, and all law schools in the State of New York offer courses in professional responsibility. These educational resources should address alcohol and substance dependency issues. Similarly, educational components for practicing lawyers and judges also could be implemented without difficulty because educational courses are already required of judges and lawyers.

The establishment of proposed guidelines for law schools and CLE curricula will ensure a permanent base of information to help educators create and deliver programs dealing with the problems of alcohol and substance dependency awareness. CLE providers and educators will benefit from a uniform, fundamental curriculum and are free to use their discretion with respect to various training techniques, resources, and program format. The availability of Internet technology in delivering these resources also should be encouraged.

### **Brooklyn Bar Association**

The Lawyers Helping Lawyers Committee of the Brooklyn Bar Association, created in 1998, works with the Lawyer Assistance Programs of the New York State Bar Association and the Association of the Bar of the City of New York to provide professional and technical assistance in education and direct access to helping services. This assistance is provided by volunteers and is entirely confidential.

Contacts: Hon. Sarah L. Krauss  
(718) 643-3174 for alcohol and drug problems  
Mark Cossuto (718) 852-8047 or  
Joe Osrolosky (718) 522-1358  
for gambling problems

## V. Recommendations

### A. Creation of a Lawyer Assistance Trust for the State of New York

The Commission recommends that the court system create a permanent public trust for the purpose of funding local lawyer assistance programs and establishing guidelines and standards for educational programs to treat and prevent alcohol and substance dependency among law students, lawyers and judges. High on the list of the trust's priorities should be the preservation and invigoration of existing bar association lawyer assistance programs with their proven records of effectiveness. As mentioned above, the Commission suggests that this entity be named the Lawyer Assistance Trust.

The Lawyer Assistance Trust will reflect a genuine partnership between the judiciary, as an institution, and the legal profession to address the unique challenges in this complex area of lawyer regulation. Its existence will demonstrate to the public the shared commitment of lawyers and judges to maintaining competence and integrity within the profession and to protecting the public. The Trust also will serve to refresh public trust in our institutions of justice.

The Commission recommends that the Lawyer Assistance Trust be administered by a Board of Trustees appointed by the Judges of the New York State Court of Appeals. This organizational structure would guarantee institutional independence and prestige as the Trust tackles the formidable task of providing the State of New York with effective programs to combat the problem of alcohol and substance dependency within the legal and judicial communities.

The Commission makes no recommendations as to the number of Trustees or their qualifications. This is properly left to the discretion and judgment of the judges of New York's highest court. The Commission recommends that the fund's Trustees serve without compensation and only be reimbursed for expenses incurred in the performance of their official duties.

The Board of Trustees will be responsible for, and accountable to, the Court of Appeals for the administration and management of the Lawyer Assistance Trust. The Trustees' responsibilities will include developing standards and policies in the delivery of lawyer assistance-type services statewide; facilitating the development of outreach and educational programs throughout the state; providing financial grants to develop and support these programs; and, of course, such other responsibilities that may be assigned by the Court of Appeals.

The Board of Trustees will not exercise operational authority in the day-to-day delivery of services by Lawyer Assistance Programs and other service providers that may ultimately receive support from the Lawyer Assistance Trust. The Board should require no more than minimal staffing to facilitate the performance of the Trust's responsibility.

The Commission proposes that the Lawyer Assistance Trust be created by court rule and that its funding be implemented, to the extent possible, in the Unified Court System's annual budget. If legislation proves necessary, the Commission is confident that appropriate consultations and cooperation among the three branches of government will facilitate and bring about the goal.

The Lawyer Assistance Trust is not intended to supplant the legal profession's existing efforts through bar association Lawyer Assistance Programs. To the contrary, the Commission's proposals are intended to supplement these efforts, which are in the finest traditions of the legal profession in service to the public. Nonetheless, the Commission expects that bar associations will maintain their current levels of financial support for their existing LAP and related programs.

The Commission is of the firm belief that the expense of funding the Lawyer Assistance Trust should be borne by the legal profession and not the state's taxpayers. In this regard, the Commission is impressed with the commitments made by physicians and nurses in New York State to finance alcohol and drug abuse treatment and prevention

programs with their registration and licensing fees. Accordingly, the Commission recommends that the principal source of revenue for the Lawyer Assistance Trust should be a portion of the current revenues received from attorney registration fees, which fees are required of all active practitioners by section 468-a of the Judiciary Law.

In this regard, the Commission finds no reason at this time to propose an increase in the current registration fee, which is \$300 payable biennially. Rather, existing annual revenues, supplemented by whatever grants and contributions may be obtained by the Trustees, may serve as a reliable source of funding for the Lawyer Assistance Trust and its treatment, education and prevention programs. The Commission recommends that a portion of those revenues be earmarked in the State's Judiciary Budget for the administration and operation of the Lawyer Assistance Trust. Since New York State recognizes approximately 169,000 active lawyers, the Commission proposes initial funding for the Lawyer Assistance Trust in the amount of \$1 million, or approximately \$6.50 per active attorney.

**Bar Association of Erie County**

The Erie County Bar Association's Lawyers Helping Lawyers Committee assists lawyers with alcohol and drug abuse problems. The Committee is funded by the Erie County Bar Foundation and provides a broad range of services for lawyers needing help and rehabilitation services. The Association also supports a new program to help lawyers cope with depression.

Contact: Laurie Menzie, Esq.  
(716) 870-8770

**B. Educational Initiatives**

The Commission can raise awareness of the ethical implications of alcohol and substance dependency in the profession by establishing model guidelines and suggested curricula specifically geared toward addressing problems of alcohol and substance dependency in: (1) professional responsibility legal education; and (2) the continuing legal education ethics component. Guidelines for this education should be tailored to address the professional needs and differing obligations of the bench, bar and prospective attorneys, their respective legal obligations, and familiarity with available resources in New York State.

The Commission recommends that new providers develop stand-alone programs in accordance with model guidelines and that existing CLE or professional responsibility programs incorporate fundamental components of the guidelines into existing legal ethics curricula. Toward this end, resources for CLE providers and professional responsibility educators will be developed by the Lawyer Assistance Trust in conjunction with existing LAP and treatment and prevention specialists. These resources are meant to support and enhance existing CLE requirements and LAP efforts and will be available to all providers that seek financial or other assistance from the Lawyer Assistance Trust. These resources will be disseminated by the Lawyer Assistance Trust's LAP support office, which will function as a clearinghouse for this purpose, in various forms and may include:

- a Training Reference Manual, which will include LAP Model Guidelines, a legal outline or flow chart setting forth various ethical and legal obligations implicated in some way by alcohol or substance dependency issues, an updated list of alcohol and substance dependency resources, training formats and delivery techniques, and a glossary of terms; the LAP Model Guidelines will provide minimum standards for program operation;
- an Internet Website, which will contain the guidelines, available resources, and information about LAPs in New York State and beyond, including a newsletter format; this site will serve as a means for ensuring that providers receive current and continuing information about LAP activities, events and programs;
- a "Training Format and Techniques" program to emphasize the importance of interactive training formats, including the use of panel discussions, hypothetical problem analysis and roundtable sessions. Presenters, including existing LAP and judicial assistance programs or committees, should be identified and certified based on their professional credentials and their knowledge and familiarity with the subject matter, particularly personal and professional experience with the problems of alcohol and substance dependency;
- periodic LAP Convocations where New York State LAP and CLE providers can meet with each other, lawyers, judges, state and national treatment providers and clinicians to share information on program status, effectiveness and current or emerging problems; perhaps these Convocations may be included as part of the annual NYSBA LAP conference, and these Convocations could serve as a forum for the Lawyer Assistance Trust to gain information about how to assist and support these significant pre-existing efforts; and
- quarterly meetings for LAP providers to discuss program status, share information and assist other programs with current or emerging problems and issues.

The Commission envisions the various components of the educational initiatives set forth below as evolving into a relatively structured pathway through the system of legal education, bar admission, bar membership, law practice, and continuing legal education. The Commission recommends that at each stage, appropriate “awareness” publications and LAP-type self-evaluation checklists should be provided. Further, “help lines” for people with questions or “hot lines” for people in emergency situations should be created where they do not already exist and should be maintained and promoted where they do exist. Details regarding the Commission’s recommendations for educational initiatives at each stage are set forth below.

The Commission also recommends that an evaluation methodology be established to track, modify, and improve the various goals and outcomes of these educational initiatives. These evaluation methods could include evaluations by volunteers who participate in various aspects of LAP programs or training. Evaluations are already distributed at CLE seminars, and participants should be strongly encouraged to fill out evaluations regarding the alcohol and substance dependency awareness programs. Additionally, a survey could be developed and included with the biennial registration form to ask whether the attorney has ever heard of LAP programs available locally or within the State or ever taken a CLE class that addresses alcohol and substance dependency-related issues.

The educational initiatives are a cornerstone for whatever success may come from the Commission’s recommendations. They will be the first express reference that many people have to pervasive alcohol and substance dependency problems. The educational initiatives also will expose lawyers to the steps that can be taken to combat these problems on an individual level, including information relating to the availability of twelve-step programs of recovery. Ideally, these initiatives will follow a person through the legal career path, providing a consistent, confidential, and trusted support base whenever assistance is needed and sought.

**Monroe County Bar Association**

The Monroe County Bar Association’s Lawyers Concerned for Lawyers Committee has separate programs for various problems involving lawyers: alcohol and drug abuse, old age and physical problems, and lawyer dementia.

Contact: John W. Crowe, Esq.  
(716) 258-2820



## 1. Law School Educational Initiatives

Professional Responsibility courses establish an early and critical foundation for law students to focus on the interrelation between personal conduct and the ethical obligations they will accept when they enter the legal profession. By highlighting the importance of personal conduct and the pattern of professional stresses, the early provision of information can reorient patterns and practices of young attorneys' behavior. The Commission's goal with respect to involvement at this level is to promote self-awareness and monitoring, with a clear vision of potential professional ramifications if alcohol or substance dependency progresses unchecked.

The Commission believes that there is an opportunity to utilize existing professional responsibility curricula in a more advantageous manner in law schools. Research conducted in May 1993 by the Association of American Law Schools (AALS) concerning problems of substance abuse among law students analyzed law schools' substance abuse policies and practices. The AALS survey revealed that programs on substance abuse included education, counseling and treatment.

Interestingly, while the AALS survey revealed that 25% of reporting law schools included substance abuse education in their first-year orientation programs, only a small number noted that they include a discussion of substance abuse problems in their Professional Responsibility courses<sup>1</sup>. While the Commission's goal is to help attorneys avoid the disciplinary process by early treatment of a problem, there are several ethics-oriented rules, laws and opinions that appear in the disciplinary context, with which law students should be familiar upon graduation (see, Appendix, at Exhibit E).

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<sup>1</sup>Executive Summary of the Report of the Association of American Law Schools Special Committee on Problems of Substance Abuse in the Law Schools, May 1993.

### **Nassau County Bar Association**

The Nassau County Bar Association maintains a Lawyer Assistance Program Committee, which provides a support system for lawyers and their families made up of volunteer members of the Association. The program is enhanced with a professional part-time Director, who provides assessment, guidance and direction to persons needing help.

Contacts: James Gavin, Director  
(516) 739-8182

## **2. Bar Admission Educational Initiatives**

This stage presents an important crossroads for prospective attorneys who may be exhibiting early symptoms of alcohol or other drug addiction, and it is, therefore, a stage where there is great potential for increasing the effectiveness of a self-evaluation system. The Commission's goal at this stage is to promote self-awareness, knowledge of admissions criteria specifically affected by alcohol and substance dependency issues and potential disciplinary ramifications. The bar admission process requires that a candidate report on him or herself. Accordingly, the process must inspire the desire to seek assistance for any problems the self-evaluation system may identify, as well as inspire confidence in the candidate that the candidate is facilitating, rather than jeopardizing, his or her entry into and a future in the legal profession.

The Commission recommends that, together with the admission application, which asks questions regarding the identification of an alcohol or substance dependency history or problem, bar applicants be provided with materials demonstrating how alcohol or substance dependency problems may begin, and progress, and eventually impact adversely the practice of law and the public perception of the profession. At the very least, applicants should receive materials with an emphasized focus on the following concerns:

- a. the attorneys\* professional obligation to maintain the integrity and competence of the profession, to perform in accordance with the Ethical Considerations of the Lawyer\*s Code of Professional Responsibility (EC1-1 and EC1-2) and to be aware of the prohibitions set forth under Disciplinary Rule 1-102;

- b. the potential for stress among legal professionals as engendered by the challenges and demands of the particular professional environment;
- stress management and conflict management principles designed to emphasize the importance of balancing personal and professional priorities and challenges;
  - LAP information; resources to support and guide intervention efforts, treatment and rehabilitation;
  - Relevant Employee Assistance Program (EAP) information, including information about social services, support resources and organizations serving professionals challenged by stress, alcohol and substance dependency problems;
- c. the professional and legal obligations when assisting or representing attorneys experiencing alcohol or substance dependency problems;
- d. an explanation of the success of the LAP in protecting the confidentiality of information communicated to LAPs (Judiciary Law § 499), along with an advisory regarding the otherwise mandatory disclosure rules regarding violations of the disciplinary rules (Professional Responsibility DR 1-102, 1-103).

Additionally, as further set forth below in section V(C)(4), the Commission also recommends changes in the composition and procedures of the Character and Fitness Committees of the Appellate Division that will better alert the Committees to recognize and address a prospective attorney with an alcohol or substance dependency problem.

**New York County Lawyers' Association**

The New York County Lawyers' Association supports a Committee on Substance Abuse which provides peer counseling to lawyers with alcohol and substance abuse problems, and monitoring for lawyers at the request of the Departmental Disciplinary Committee of the First Judicial Department.

Contacts: Robert Turnier, Esq. (212) 642-5210  
Andral Bratton, Esq. (212) 401-0800

### 3. New Lawyers' Educational Initiatives

Because it is evident that the circumstances of the first several years of practice may exacerbate or set the stage for the development of an alcohol or substance dependency problem in many lawyers, education at this stage also is critical. Lawyers in the early years of their professional lives are keenly vulnerable to the development of an alcohol or substance dependency problem. The Commission's goal at this stage is to promote self-awareness, a group approach toward assisting peers in the profession, and knowledge of intervention possibilities for the early identification and thwarting of an alcohol or substance dependency problem.

One of the most effective ways to reach large numbers of young lawyers is through CLE programs, as discussed in greater detail below in section V(C)(6). Additionally, coordinators of mentoring or young lawyer programs should be strongly and continually encouraged to disseminate information about alcohol and substance dependency and available, confidential treatment.

#### **Oneida County Bar Association**

The Oneida County Bar Association's Lawyer Assistance Committee assists members of the legal community who have problems with alcoholism or drug addiction. All communications are strictly confidential.

Contact: Timothy D. Foley, Esq.  
(315) 733-7549

#### 4. Bar Association Educational Initiatives

The Commission's goal at the stage where attorneys admitted for several years may be facing alcohol or substance dependency problems—personally or with their colleagues—is to promote self-awareness, knowledge of available resources, outreach to lawyers not already affiliated with bar associations, and recognition of professional ramifications of uncontrolled alcohol or substance dependency problems. Again, one of the most available methods of outreach is through CLE programs, as discussed below in section V(C)(6).

The Commission also recommends that all bar associations continue existing LAPs or establish new LAPs so that all lawyers will have local access to a support network on at least a regional basis. The cooperative relationship between NYSBA's LAP and the Association of the Bar of the City of New York's LAP may be used as a model for the Lawyer Assistance Trust's relationship with all localities in terms of providing guidance and support.

Further, the Commission recommends that bar associations encourage and work with large law firms (50 or more attorneys) to help the firms develop an in-house LAP or to contract with an existing LAP in the community. These law firm LAP programs should offer periodic in-house training programs—assisted with or presented by local bar associations, LAP programs, or lawyer assistance committees—regarding stress management and alcohol and substance dependency for attorneys and non-attorney employees. Partners in law firms should understand and acknowledge that they have a responsibility to address alcohol and substance dependency problems, and lawyers should not become enablers of affected personnel. This process would help educate and train law firm partners and employees about alcohol and substance dependency and stress management, the relationship between them, and the resulting reduction in both work-related problems and disciplinary problems when early intervention is accomplished.

### **Onondaga County Bar Association**

The Onondaga County Bar Association's Lawyer to Lawyer Committee is a volunteer program to provide assistance to local attorneys with alcohol or drug abuse problems. The Association's Lawyer Assistance Program is a gatekeeper referral program administered by a professional counseling organization funded by the Onondaga County Bar Association.

Contact: Noreen Shea, Esq.  
(315) 476-3101

#### **5. Educational Initiatives for Judges**

The Commission's goal with respect to the judiciary is twofold. First, judges should be able to recognize and address any alcohol and substance dependency problems that they or their colleagues face. Further, judges should be able to recognize and assist the lawyers who appear before them with any alcohol or substance dependency manifestations.

Education for judges should include the following concepts:

- a. the judges\* obligation with respect to the Code of Judicial Conduct and Part 100 of the Rules of the Chief Administrator of the Courts to uphold the integrity and independence of the Judiciary (§100.1) and to avoid impropriety and the appearance of impropriety in all judicial activities (§100.2);
- b. the judges\* professional obligation as attorneys to maintain the integrity and competence of the profession, performing in accordance with the Ethical considerations of the Lawyer\*s Code of Professional Responsibility (EC1-1 and EC1-2); and a warning of the prohibitions set forth under Disciplinary Rule 1-102;
- c. the potential for stress among legal professionals as engendered by the challenges and demands of the professional environment;
  - stress management and conflict management principles designed to emphasize the importance of balancing personal and professional priorities and challenges;
  - LAP information; resources to support and guide intervention efforts, treatment and rehabilitation;

- relevant EAP and social services, support resources and organizations serving professionals challenged by stress, alcohol and substance dependency problems;
- d. the judicial role and obligation when faced with a judge's or an attorney's misbehavior which may be the result of alcohol or substance dependency; and
- e. an explanation of the success of the LAPs in protecting the confidentiality of information communicated to LAP's (Judiciary Law § 499), along with an advisory regarding the exceptions to the otherwise mandatory disclosure rules regarding violations of the disciplinary rules (Professional Responsibility DR 1-102, 1-103).

#### 6. CLE Initiatives

The Commission's goal is to utilize the pre-existing mandatory CLE requirements to encourage self-awareness among admitted attorneys and continually reinforce the message that help in treating an alcohol or substance dependency problem is always available. As set forth in further detail below in section V(C)(6), the Commission also recommends various incentives and amendments to CLE requirements to encourage attorneys to utilize and benefit from this important educational resource.

In an effort to support and enhance existing programs, the Commission's proposed Lawyer Assistance Trust shall annually issue or promulgate proposed guidelines (such as those utilized by the ABA Commission on Lawyers Assistance Programs) to CLE providers, bar associations, government providers and law schools. The Lawyer Assistance Trust also shall maintain and update an Internet site (with the technical support of the Unified Court System). The Lawyer Assistance Trust also should transmit to the Chief Judge and Chief Administrative Judge these initial guidelines and annual revisions, particularly those directed toward Judges and Justices.

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### **Schenectady County Bar Association**

The Schenectady County Bar Association's Lawyer Assistance Program provides assistance to members of the local bar and bench who are ill or incapacitated, experiencing difficulty with alcohol or drug addiction, gambling, financial debt, depression or other psychological illness.

Contact: Hon. Vincent J. Reilly, Jr.  
(518) 388-4305

The Commission envisions that the Lawyer Assistance Trust will work closely with leaders of the judicial branch to secure court rules that are necessary to the implementation of the Commission's proposals. Those proposals include amendments to existing court policies and regulations dealing with lawyer discipline proceedings, the admission of lawyers to the practice of law, lawyer registration, and CLE requirements.

#### 1. Diversion to Treatment and Monitoring in Lawyer Discipline Proceedings

The Commission recommends the adoption of a uniform rule by all four departments of the Appellate Division, which would authorize a diversion procedure whereby lawyers who are involved in attorney discipline proceedings may be required to participate in a lawyer assistance program. "Diversion" to a monitoring program would not be available in cases involving serious acts of professional misconduct. The purpose of the rule would be to provide an incentive for a lawyer to seek and obtain early intervention, treatment and monitoring and, ultimately, to protect the public from more harmful conduct if the lawyer's disease goes untreated.

The Commission proposes the following rule for consideration by the four departments of the Appellate Division:

#### ***Diversion to Monitoring in Cases of Alcohol or Other Substance Dependency***

- (1) *During the course of a disciplinary proceeding or investigation, the Appellate Division may defer disposition of the matter and divert the Respondent to a monitoring program if a Respondent claims disability due to alcohol or other substance dependency and the Appellate Division finds that:*



- (a) *the alleged misconduct, if proven, would not result in the disbarment or suspension of the Respondent from the practice of law; and*
- (b) *the alleged misconduct is sufficiently related to an alcohol or substance dependency problem on the part of the Respondent; and*
- (c) *the diversion is in the best interests of the public, the legal profession, and the Respondent.*

*The monitoring program selected for this diversion option must be sponsored by a lawyers' assistance program approved by the Appellate Division.*

- (2) *Upon confirmation by the lawyers' assistance program that Respondent has successfully completed the monitoring program, the underlying disciplinary matters or investigation may be dismissed by the Appellate Division.*
- (3) *Upon reasonable notice and opportunity to be heard, the Appellate Division may terminate the monitoring program and resume the underlying disciplinary proceedings or investigation or take other appropriate action, if:*
  - (a) *the Respondent fails to satisfactorily complete the terms and conditions of the monitoring program; or*
  - (b) *the Appellate Division concludes that the Respondent has committed additional misconduct which warrants disciplinary action.*
- (4) *The Respondent shall be responsible for any costs associated with his or her diversion to the monitoring program.*
- (5) *This diversion to monitoring option is not available under circumstances governed by those sections of these rules relating to proceedings to determine incapacity or that may result in disbarment or suspension.*

To address those cases that may result in disbarment or suspension (which are excluded from the above proposed rule), the Commission also recommends the adoption of a uniform rule in all four departments of the Appellate Division to permit the courts to impose conditions of treatment and monitoring as a condition of suspension or reinstatement. The Commission notes a majority of the four departments of the Appellate Division already perform such conditional monitoring as a way to deal with these most serious cases. Again, evaluation and oversight of this program should be accomplished by an appropriate designee or entity approved by the Appellate Division.

The Commission further recommends the adoption of a uniform rule in all four departments of the Appellate Division to protect the interests and property of law clients in the event of an attorney's disability or involvement in an alcohol or substance dependency program, with appropriate and necessary funding.

**Suffolk County Bar Association**

The Suffolk County Bar Association's Committee on Alcohol and Substance Abuse provides peer volunteers who provide confidential counseling to members needing help for an alcohol or substance abuse problem.

Contacts: A.G. Chancellor and Mark M. Musachio, Co-Chairs  
Suffolk County Bar Association (631) 234-5511

## 2. Diversion to Treatment and Monitoring in Judicial Conduct Proceedings

The Commission recommends that the Commission on Judicial Conduct consider the adoption of a comparable policy to permit that agency to divert to treatment and monitoring less serious instances of judicial misconduct which are attributable to instances of alcohol or substance dependency.

## 3. Lawyer Discipline Committee Membership

The Commission recommends that the four departments of the Appellate Division appoint at least one member who is in long-term recovery to each lawyer discipline agency or grievance committee. The lawyer discipline system will benefit greatly from the inclusion of lawyers with this experience and perspective.

The Commission also recommends that the four departments of the Appellate Division sponsor annual orientation programs for the staff and members of lawyer discipline agencies and grievance committees. These programs should include training and education about alcohol and substance dependency, its consequences to the public, and the need for treatment of the problem as a disease.

### **Westchester County Bar Association**

The Westchester County Bar Association's Committee on Alcohol and Substance Abuse provides peer counseling to lawyers with alcohol or substance abuse problems in the Westchester County area. All calls are strictly confidential.

Contact: John W. Keegan, Esq. (914) 949-7227

## 4. Screening for Alcohol or Substance Dependency Prior to Admission to Practice

The Commission recommends that the Character and Fitness Committees of all four of the departments of the Appellate Division evaluate their current screening procedures and consider the feasibility of recommending conditions on the admission of candidates who have exhibited problems attributable to alcohol or substance dependency, such as the successful completion of a court-approved monitoring program. To the extent that screening procedures can be improved to enhance the professionalism of the bar and

protect the public, appropriate court rules should be recommended to the four departments of the Appellate Division.

The Commission also recommends that the four departments of the Appellate Division consider appointing at least one lawyer who is in long-term recovery to each Committee on Character and Fitness. Again, this appointment will help identify candidates for admission whose application or interview may disclose a potential issue of alcohol or substance dependency.

The Commission also recommends that the Committees on Character and Fitness consider training and education about alcohol and substance dependency as part of the orientation for new committee members. This training would provide committee members with heightened skills and the knowledge to better screen candidates for admission to the bar.

#### 5. Inclusion of Educational Materials with Attorney Registration Materials

The Commission recommends that the biennial registration mailing to members of the bar, administered by the Office of Court Administration, include informational materials or a brochure explaining the resources available to lawyers and judges who may be suffering from alcohol or substance dependency problems. This mailing will help educate the bench and bar to recognize and seek assistance for lawyers who are impaired by alcohol or substance dependency. The information will help lawyers recognize problems in themselves and their colleagues, and the information will reinforce the concept that confidential help is available on a statewide and/or regional basis.

#### 6. Amendments to Continuing Legal Education Requirements

The Commission recommends that the CLE rules be amended to include alcohol and substance dependency awareness programs within the articulation of Ethics and Professionalism programs.

The Commission recommends that the CLE rules require that the four-hour biennial Ethics and Professionalism requirement include ½ hour per year in alcohol and substance dependency education. This requirement would include three hours of Ethics and Professionalism and one hour of alcohol and substance dependency education every two years. This requirement will foster education of the lawyers and judges to the causes of, and treatments for, impairments affecting lawyers.

The Commission also recommends that professionals affiliated with LAPs participate, as a matter of course, in annual educational conferences for judges, including town and village magistrates.

The Commission recommends that information about LAPs be made available at every CLE program, regardless of topic. Further, the Commission recommends that various incentives be implemented by the Office of Court Administration to encourage lawyers to participate in lawyer assistance activities.

For example, the mandatory alcohol and substance dependency-related CLE credits might be earned by participating in classes that would qualify volunteers to answer help or hot lines, conduct an intervention, or present a CLE seminar. A reduction in CLE tuition could be granted to lawyers who participate in help and hot lines, who perform intervention work, or conduct a CLE seminar. These volunteer efforts also could be included in the calculation of a lawyer's voluntary annual *pro bono* commitment. Additionally, Office of Court Administration annual awards could be presented to law firms or organizations that display innovative, effective means of addressing and combating alcohol and substance dependency concerns.

#### 7. Town and Village Justice Initiatives

The Commission recommends that LAP information be provided by the Town and Village Justice Courts to alcohol offenders who are identified or identify themselves as attorneys or judges.

**“The professionals are agreed that nothing really works as a support program for recovery in place of the Twelve-Step Programs such as Alcoholics Anonymous, Narcotics Anonymous, Cocaine Anonymous; or Al-Anon and Al-Ateen, for family members where appropriate.”**

<http://www.tedcohen.com/chemical/index.html>

#### **HOTLINES:**

**NYC LAP 212-302-5787 – 24 hours, confidential or  
[etravis@abcny.org](mailto:etravis@abcny.org)**

**NYSBA LAP 1-800-255-0569 / 518-487-5685—confidential or  
[lap@nysba.org](mailto:lap@nysba.org)**

**Lawyers Helping Lawyers 1-800-255-0569  
nationwide, 24 hours**

## CONCLUSION

The Commission's recommendations can be divided into several initiatives which are intended to raise awareness regarding the problem of alcohol and substance dependency within the ranks of New York's legal and judicial communities:

- (1) the creation and financing by the legal profession of a statewide Lawyer Assistance Trust to provide leadership and funding to address the problem of alcoholism and substance dependency;
- (2) the invigoration and full support of existing and newly created Lawyer Assistance Programs through increases in funding and related resources;
- (3) enhanced educational and outreach initiatives through existing Continuing Legal Education programs, with an emphasis on alcohol and substance dependency concerns, including the identification of stress-related behavior, intervention techniques, and resource availability; and
- (4) the reconfiguration of the lawyer regulation system to emphasize the significance of education, to provide monitoring programs as a viable, state-supported option to attorney discipline, and to enhance the screening capabilities of the Committees on Character and Fitness of the Appellate Division.

Clearly, educational initiatives form the crux of the Commission's concern and provide the impetus for all of its recommendations. As the Commission's educational proposals are implemented statewide and evolve into the structured pathway of education that the Commission envisions, the demands on existing Lawyer Assistance Programs and their resources and personnel will increase significantly. But, with the support of existing and successful programs, complemented by an expansion of those programs to areas of the state that are currently unserved, the profession's ability to respond effectively to the needs of lawyers, judges and law students will be enhanced greatly.

The Commission is confident that this action plan will demonstrate the necessity and wisdom of addressing the problems of alcohol and substance dependency in a bold and comprehensive effort by New York's judicial and bar leaders. Central to that effort is the bar's responsibility to provide necessary financing for the Commission's proposals. At stake is the continuing integrity of the legal profession, the effectiveness of New York's system of lawyer regulation, and the preservation of the public's trust and confidence in our institutions of justice.

# APPENDIX

## EXHIBIT A



## EXHIBIT B

### Members of the Commission

Chair: Hon. Joseph W. Bellacosa -- *Ex Officio* Chair, Subcommittee on Educational Initiatives

Retired Associate Judge, New York State Court of Appeals  
Dean, St. John's University Law School, Jamaica, New York

Kenneth E. Ackerman, Esq. -- Member, Subcommittee on Educational Initiatives  
Partner, Mackenzie, Smith, Lewis, Mitchell & Hughes, LLP, Syracuse, New York

Terrance M. Bedient -- Member, Subcommittee on Structure and Finance  
Director, New York State Committee for Physicians' Health, Medical Society of the State of New York, Albany, New York

Katherine S. Bifaro, Esq. -- Chair, Subcommittee on Other State Initiatives  
Executive Director, Bar Association of Erie County, Buffalo, New York

Sheila Birnbaum, Esq. -- Initial Commission Member; now Chair of the Commission on Fiduciary Appointments  
Partner, Skadden, Arps, Slate, Meagher & Flom, LLP, New York, New York

Peter J. DeLuca, Esq. -- Member, Subcommittee on Other State Initiatives  
Partner, Kaye, Scholer, Fierman, Hays & Handler, LLP, New York, New York

Timothy D. Foley, Esq. -- Member, Subcommittee on Structure and Finance  
Partner, Foley, Frye & Foley, Utica, New York; Chair of the NYSBA Committee on Lawyer Alcoholism and Drug Abuse

Robert P. Guido, Esq. - Member, Subcommittee on Ethics and Professionalism;  
Member, Subcommittee on Adjudication Processes  
Deputy Counsel, State of NY Grievance Committee for the Tenth Judicial District, Syosset, New York

W. David Harmon, Ph.D. -- Member, Subcommittee on Educational Initiatives  
Director, Counseling Center, St. John's University, Jamaica, New York

John W. Keegan, Sr., Esq. -- Member, Subcommittee on Other State Initiatives  
Partner, Keegan, Keegan & Strutt, LLP, White Plains, New York

Kathleen Kettles-Russotti, Esq. -- Member, Subcommittee on Structure and Finance  
Partner, Wingate, Rusotti & Shapiro, LLP, New York, New York;  
Chair, Association of the Bar of the City of New York's Special Committee on  
Alcoholism and Substance Abuse

Hon. Sarah Krauss – Member, Subcommittee on Final Report  
Judge, Criminal Court of New York City, Brooklyn, New York

Mary Ann Le Fort, Esq. -- Member, Subcommittee on Final Report  
Associate, Skadden, Arps, Slate, Meagher & Flom LLP, New York, New York

Ray Lopez -- Member, Subcommittee on Educational Initiatives  
Director, Lawyer Assistance Program, New York State Bar Association, Albany,  
New York

Frederick Miller, Esq. -- Chair, Subcommittee on the Final Report;  
Member, Subcommittee on Structure and Finance;  
Special Counsel, Chamberlain, Kaufman & Jones, Esqs., Albany, New York;  
Former Executive Director and Counsel, New York Lawyers' Fund for Client  
Protection

Eugene J. O'Brien, Esq. -- Member, Subcommittee on Adjudication Processes  
Partner, Hammill, O'Brien, Croutier and Dempsey, P.C., Smithtown, New York

David R. Pfalzgraf, Esq. -- Member, Subcommittee on Adjudication Processes  
Partner, Renda, Pares & Pfalzgraf, Buffalo, New York

Hon. Ann T. Pfau – Chair, Subcommittee on Ethics and Professionalism  
Deputy Chief Administrative Judge, Office of Court Administration, New York,  
New York

Hon. Vincent J. Reilly, Jr. -- Chair, Subcommittee on Adjudication Processes  
Judge, Schenectady County Family Court, Schenectady, New York

Eileen C. Travis -- Chair, Subcommittee on Structure and Finance  
Director, Association of the Bar of the City of New York Lawyer Assistance Program,  
New York, New York

Dean Joan Wexler – Commission Member, Subcommittee on Educational Initiatives  
Dean, Brooklyn Law School, Brooklyn, New York

Patricia K. Bucklin, Esq. -- Counsel  
Director of Public Affairs, Office of Court Administration, Albany, New York



Margaret S. Morton, Esq. -- Counsel

Assistant Deputy Chief Administrator, Office of Court Administration, New York,  
New York

Kimberly A. Troisi, Esq. – Assistant Deputy Counsel

Office of Public Affairs, Office of Court Administration, Albany, New York  
Former Principal Law Clerk to the Honorable Joseph W. Bellacosa

## EXHIBIT C

### The Commission's Subcommittees

The Commission was organized into the following subcommittees: (1) Subcommittee on Structure and Finance; (2) Subcommittee on Ethics & Professionalism; (3) Subcommittee on Adjudication Processes; (4) Subcommittee on Other State Initiatives; (5) Subcommittee on Educational Initiatives; and (6) Subcommittee on Final Report.

Each subcommittee developed a mission statement, devised and conducted a research methodology, and prepared reports to propose recommendations, indicating the purpose or rationale for each recommendation. The full Commission deliberated each subcommittee's work product, and developed a consensus with respect to the subcommittee's policy recommendations.

#### 1. Subcommittee on Structure and Finance

The Subcommittee on Structure and Finance undertook a review to identify available governmental and professional structures to administer and coordinate the delivery, on a statewide basis, of comprehensive treatment and educational services to lawyers, judges, law students and their families.

The Subcommittee reviewed the structure and financing of all bar association assistance efforts within the State of New York (called Lawyer Assistance Programs or LAPs), as well as similar programs throughout the United States, particularly in those states those having significant lawyer populations.

The Subcommittee also examined the structure, operations and experiences of the Committee for Physician's Health, which is a program operated by the Medical Society of the State of New York. The program is financed by physicians, through a registration fee collected by the State Health Department.

The Medical Society derives its authority from the New York Public Health Law, which provides a program that confronts and refers to treatment physicians who are suffering from alcoholism, drug abuse or mental illness (see, Public Health Law section 230). The Subcommittee also reviewed the structure of similar medical programs in the states of New Jersey, Pennsylvania, Massachusetts and Connecticut.

#### 2. Subcommittee on Ethics & Professionalism

The Subcommittee undertook a review of the most appropriate method to raise awareness among lawyers and judges regarding the ethical implications that alcohol and substance dependency have on their professional status. In seeking to inform the legal profession that behavioral problems relating to alcohol and substance dependency carry

ethical implications and serious legal consequences, the subcommittee sought ways to heighten sensitivity to these problems and their deleterious impact on representation of clients and service to the public.

The subcommittee sought to determine the extent to which alcohol and substance dependency could manifest itself in instances of professional misconduct and to identify mechanisms for early awareness of a potential problem, as opposed to later-stage disciplinary procedures. Toward this end, the subcommittee consulted with the Chief Counsels of the Attorney Disciplinary Committees in each of the state's judicial departments concerning their experiences. The subcommittee also reviewed relevant continuing legal education (CLE) requirements.

### 3. Subcommittee on Educational Initiatives

The mission of this subcommittee was to create a comprehensive educational syllabus. The subcommittee focused on alcohol and substance dependency problems from the early stages of the educational process through the various stages of becoming a practicing lawyer. The educational initiatives proposed by the subcommittee are intended to an environment of widely accepted and supported voluntary early "intervention" -- ideally through self-awareness.

Early and meaningful "intervention" through self-identification might help avoid the later, more formal connotation of the term "intervention," a process which is generally performed at a stage when a legal career is in jeopardy, or in ruin, following significant losses and damage to clients, the profession and many families and victims.

The subcommittee reviewed alcohol and substance dependency programs at various New York State institutions, especially law schools, as well as continuing legal education initiatives in other states. It also considered federal and New York law regarding specific issues, such as pre-employment drug testing and medical examinations. Finally, it reviewed pertinent disciplinary and reinstatement determinations to better understand the breadth of circumstances that lawyers face when being disciplined as a result of alcohol or substance dependency. The subcommittee made special efforts to determine systems which could provide educational and intervention components in legal training to help lawyers avoid professional discipline.

### 4. Subcommittee on Adjudication Processes

The subcommittee focused its mission on the development of uniform policies and procedures for law students, those seeking admission to the bar, practicing lawyers, and judges who are or may be suffering from alcohol or substance dependency. Such policies and programs should acknowledge that substance abuse is a disease. They should provide for early detection and treatment. Educational, licensing and the disciplinary

process should all provide programs of diversion prior to formal proceedings and dispositional alternatives of probation or conditional or suspended judgments.

Because the broad scope of this mission included issues upon which other subcommittees were specifically focused, the subcommittee narrowed its focus to an examination of the disciplinary processes within the four judicial departments, and the State Commission on Judicial Conduct. The subcommittee also studied diversion programs in Florida, Arizona, Texas and Washington.

#### 5. Subcommittee on Other State Initiatives

The mission of this subcommittee was to collect and review information about programs in other states for lawyers, law students and judges who have alcohol and substance dependency problems. The subcommittee reviewed other state initiatives and consulted with knowledgeable persons around the country, most significantly, representatives of Lawyer Assistance Programs. From this survey, the subcommittee identified models for the full Commission's consideration in determining appropriate recommendations for programs in New York State.

#### 6. Subcommittee on the Final Report

Based on the deliberations of the full Commission, this subcommittee compiled the findings and recommendations of the various subcommittees in a written document for presentation to the Chief Judge, bar and judicial leaders, experts in the field of alcohol and substance dependency and to the general public.

## EXHIBIT D

### The Meetings of the Commission

The Commission held full membership meetings on October 7, 1999, December 2, 1999, January 26, 2000, March 3, 2000, April 27, 2000, June 16, 2000 and September 13, 2000. Guest experts included:

Scott Anglehart, Chair of NYSBA's Young Lawyers' Section. Mr. Anglehart discussed his Section's efforts to work with judges and lawyers to develop panel presentations for young attorneys. He said that there is a definite need to educate new attorneys regarding the warning signs of alcohol and substance dependency. Membership in the Section is automatic upon admission to the bar, so there is a large audience for these materials. Mr. Anglehart said that many of the pressures that lead to an alcohol or substance dependency problem appear to begin within three to seven years of commencing a law practice, and the Section has started to focus on ethical issues for these young attorneys.

Terrance M. Bedient, Director of the Committee for Physician's Health of the Medical Society of the State of New York. Mr. Bedient discussed the Medical Society's 25 year-old program that assists physicians with alcohol and substance dependency problems. The effort was initially begun by a group of volunteer physicians who were concerned about impaired colleagues, was suspended when legislation mandated that there would be no confidentiality for such a program, and was reinstated when the legislation was amended to restore confidentiality for physicians seeking treatment and entering rehabilitation. At the time of Mr. Bedient's discussion, the Committee for Physician's Health was monitoring 405 physicians to ensure the practice of quality health care. The \$1.3 million in funding for the program is derived from medical malpractice carriers (25%) and physician's licensing fees (75%).

Daniel Brennan, Principal Attorney, Admission Office of the Appellate Division, Third Department. Mr. Brennan discussed his responsibilities, which include administering the court's attorney admission program. The admission application is uniform in all four Judicial Departments, and applicants disclosing alcohol or substance dependency problems are asked to explain further. A Committee on Character and Fitness reviews each application and Committee members conduct interviews of each candidate. Committees cannot refer applicants for counseling or treatment, but they can request that an applicant take certain steps and then report back. Mr. Brennan noted that Committee members may feel uncomfortable in cases where the problem does not seem serious enough to deny the application, but there is no referral mechanism in place.

William Kane, Director of New Jersey's Lawyer Assistance Program. Mr. Kane spoke about New Jersey's decision to create a LAP. In 1979, a group met to develop a resource for attorneys with alcohol problems, but several years passed before they secured funding. The New Jersey Lawyers' Fund for Client Protection provided \$168,000 in funding -- two years of seed money that permitted a staff of three people. Thereafter, the New Jersey



Supreme Court determined to allocate \$5 per attorney from the attorney registration fee toward a program that focuses on alcoholism, drug abuse and compulsive gambling.

New Jersey's LAP contracted with the New Jersey Supreme Court to deliver services statewide. Approximately 600 people in 5 years have utilized the LAP and another 300 cases are open and pending. New Jersey's LAP also assists attorneys who are clinically depressed or have family problems. Mr. Kane discussed relevant court rules, the services provided by the LAP (administering and analyzing a self-evaluation, arranging a weekly group meeting), and the methods of referrals (self, family, colleagues, drunk driving systems, and treatment providers).

Ray M. Lopez, Director of the New York State Bar Association's Lawyers Assistance Program. Mr. Lopez discussed the NYSBA's Committee on Lawyer Alcoholism and Drug Abuse, which was created in 1979, expanded in 1982, and transformed into a standing committee of the Association in 1985. In 1990, NYSBA formed its Lawyer Assistance Program (LAP), which consists of 60 volunteer members.

From 1990 to the time of Mr. Lopez's presentation, NYSBA's LAP had received 2,830 referrals, performed 486 interventions, fielded **40,000** phone calls, and overseen over 300 volunteers. Approximately 65% of those referrals were for alcohol problems. Mr. Lopez noted that the lack of insurance or treatment money is one of the largest problems for attorneys with an alcohol or substance dependency problem.

Frederick Miller, Esq., Executive Director and Counsel to the Lawyers' Fund for Client Protection. Mr. Miller discussed the Lawyers' Fund for Client Protection, which is a statutorily-created public trust that operates under the aegis of the Court of Appeals. The Lawyers' Fund provides upwards of \$8 million annually in reimbursement to law clients for money and property that has been misused in the practice of law.

The fund is administered by a seven-member Board of Trustees appointed by the Judges of the Court of Appeals. Funding is derived from the attorney registration fee, with \$100 of each attorney's \$300 biennial fee appropriated by the Legislature to the fund. Alcohol and substance dependency is a significant contributing factor in client losses presented to the Lawyers' Fund. Mr. Miller emphasized the need for statewide direction and a highly visible source of information and the need to help lawyers in every region of the state.

Jean Somers Miller, Commissioner of Alcoholism and Substance Abuse Services (OASES). Commissioner Miller discussed the functions of OASES, which include establishing minimum standards for all chemical dependence treatment programs, credentialing counselors, funding some providers (such as Daytop Village), and expending \$80 million per year in statewide prevention efforts. OASES providers treat 120,000 people daily, and an issue of particular concern is increasing health care costs. Data collected

regarding each person treated at an OASES Addiction Treatment Center is kept confidential through a coding system. The treatment centers run by OASES are located generally in psychiatric center campuses and provide last resort treatment for growing numbers of uninsured people; some of the treatment centers may be appropriate for professional people, such as lawyers.

Gerald Stern, Esq. Administrator and Counsel to the Commission on Judicial Conduct. Mr. Stern discussed the role of the Commission, which investigates misconduct in judicial office. He stated that in 25 years of existence, the Commission has had almost no experience with substance abuse, but he did mention an instance where alcohol abuse appeared to be the root of a particular non-lawyer judge's problem. He noted that non-lawyer judges (Town and Village Justices need not be attorneys) appear to exhibit a greater problem with alcohol abuse than lawyer judges, although Mr. Stern also knew of one case where a judge went to NYSBA's LAP program and was treated successfully. He recommended that an LAP counterpart be developed for the large number of non-lawyer judges that may experience alcohol and substance abuse problems.

Eileen C. Travis, Director of the Association of the Bar of the City of New York's Lawyer Assistance Program. Ms. Travis discussed the Association's LAP, which has been operational since May 1999, utilizing a staff volunteer model. In 1980, the City Bar organized its first effort to address alcohol and substance dependency by forming a committee, and, in November 1993, the City Bar authorized a special Committee on Alcohol and Substance Abuse to address downstate program development.

The purpose of the Association's program is to protect clients and assist lawyers and judges by providing treatment planning, short-term counseling, intervention, family resources, attorney monitoring, education and outreach. The ABCNY LAP has received a significant number of referrals (over 100 as of October 2000) and monitors 3 cases referred by disciplinary authorities in the First Judicial Department.

Steven Winston, Senior Vice President of Legal Affairs/General Counsel of Daytop Village, Inc. Mr. Winston also discussed this residential treatment program, which is funded by OASES. Mr. Winston discussed his personal experiences with substance dependency and treatment, his suspension and re-admission to practice, and the role of the Lawyers' Fund for Client Protection in his rehabilitation. He estimates that people will voluntarily come forward for treatment before a serious problem occurs in only 8 out of 100 cases. His remarks focused on possibilities for confidentiality if someone does come forward, particularly with a drug problem, which (unlike alcoholism) automatically invokes criminal-law ramifications. Mr. Winston emphasized the importance of mandatory education for attorneys regarding alcohol and substance dependency.

## EXHIBIT E

### Relevant Law

Section 17.3 of the Rules of the Chief Judge provides that Judges and Justices shall attend at least 24 hours of training and education courses; while §17.2 requires Town and Village Justice to attend an initial orientation course as well as annual training.

Part 1500 of the Rules of the Chief Judge provides a mandatory continuing legal education requirement for attorneys. Newly admitted attorneys must take a minimum of 32 credit hours including a minimum of 3 credit hours of ethics and professionalism.

Attorneys other than newly admitted attorneys must take a minimum of 24 credit hours including a minimum of 4 credit hours of ethics and professionalism.

Disciplinary Rule (DR) 1-102 among other things, provides a general prohibition against violations of Disciplinary Rules, illegal conduct involving moral turpitude, acts of dishonesty, fraud or deceit.

Disciplinary Rule (DR) 1-103 requires disclosure of information regarding the violation of DR 1-102 to a tribunal or authority empowered to investigate or act upon such violation.

Judiciary Law §499 allows confidentiality privilege to extend to information communicated to lawyer assistance committees.

Opinion #531 of the New York State Bar Association\*s Committee on Professional Ethics provides that "despite the literal wording of the rule, . . . committee members may, with ethical propriety, refrain from reporting what they have learned of professional misconduct."