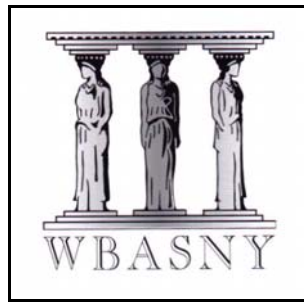


---

# Women's Bar

---

OF THE STATE



---

# Association

---

OF NEW YORK

**PRESIDENT**

Mindy R. Zlotogura

Post Office Box 936  
Planetarium Station  
New York, NY 10024-0546

(212) 362-4445  
(212) 721-1620 (FAX)  
1-877-4-WBASNY (Toll Free)  
info@wbasny.org (e-mail)  
www.wbasny.org

**PRESIDENT-ELECT**

Andrea Phoenix

**VICE PRESIDENTS**

Elizabeth A. Bryson  
Maria Cortese  
Deborah A. Scalise

**TREASURER**

Risa Sugarman

**SECRETARY**

Elaine N. Avery

**IMMEDIATE**

**PAST PRESIDENT**

Jo M. Katz

**CHAPTER PRESIDENTS**

**Adirondack**

Karla W. Buettner

**Bronx**

Katherine M. Burns

**Brooklyn**

Theresa M. Ciccotto

**Capital District**

Cynthia A. Platt

**Central New York**

Heather C. Sponenburg

**Greater Rochester**

Audrey P. Peartree

**Mid-Hudson**

Janis Mary Gomez

**Nassau**

Latonía Early-Hubelbank

**New York**

Elizabeth A. Bryson

**Orange-Sullivan**

Deborah W. Estis

**Queens**

Elizabeth Anderson

**Rockland**

Valerie J. Crown

**Staten Island**

Anne-Louise DePalo

**Suffolk**

Michele T. Pilo

**Westchester**

Kathleen Donelli

**Western New York**

Karen Richardson

**EXECUTIVE DIRECTOR**

Linda A. Chiaverini

February 4, 2005

New York State Commission to Examine  
Solo and Small Firm Practice  
Office of Court Administration  
140 Grand Street, Suite 704  
White Plains, NY 10601

Dear Commission Members:

The Women's Bar Association of the State of New York ("WBASNY"), appreciates this opportunity to share with you our suggestions as to how the judicial system can best support solo and small firm practitioners, a vital segment of the legal community.

Founded in 1980, WBASNY has a membership of more than 3,200 attorneys across the state, many of whom are solo and small firm practitioners. Our mission is to promote the advancement of the status of women in the legal profession; to promote the fair and equal administration of justice; and to act as a unified voice for our members with respect to issues of statewide, national and international significance to women generally and to women attorneys in particular.

For your convenience, we will present our comments in the order set forth in the Notice of Public Hearings.

### Case Processing & Scheduling

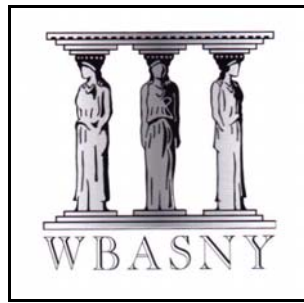
Time spent waiting for court appearances is time that is not spent addressing client needs. While this is true for all attorneys, the impact of such delays is greatest on solo and small firm practitioners, who are less likely to have administrative support staff and/or other associates/partners to provide coverage while they wait for a case to be called. We believe that scheduling smaller numbers of cases to hourly calendars, and holding counsel and the judiciary accountable for timely appearances and the timely functioning of the calendar is in the best interests of the courts, counsel and the litigants. We strongly urge the Commission to recommend increased use of conference calling for routine status conferences and for oral argument on non-substantive motions. In appropriate circumstances and as permitted by applicable substantive law, appearances in court should not be required when stipulated agreements have been reached by the parties. These simple steps would greatly improve efficiency for both the bench and bar.

---

# Women's Bar

---

OF THE STATE



---

# Association

---

OF NEW YORK

Our members would also like to request that uniform rules be applied uniformly, and that wherever possible that judges and county clerks be encouraged not to deviate from “uniform rules” in favor of their own personal preferences without a compelling reason for doing so. When such deviation is warranted, the special rules should be readily available to counsel, ideally on the court’s web site. It is unfair to counsel and litigants who comply with a published uniform or local rule only to discover that the rule has been changed or is not honored in that court. Not only does this decrease judicial efficiency and increase client costs, it undermines client confidence in the profession and the court system.

## **Attorney Regulation and CLE Requirements**

While we recognize the concerns prompting the sometimes cumbersome regulations that apply to attorneys and the practice of law, we encourage the Court to recognize the corresponding economic and administrative burden of compliance with such regulations. For example, many of our members report that the fee dispute arbitration requirement has substantially increased the amount of fees they write off, as the investment of time required by this process is frequently more costly than the potential recovery. A less onerous mechanism for attorneys to collect outstanding legal fees would certainly be welcome. Alternatively, the requirement to arbitrate fees should not apply to disputes involving fees less than \$3,000.00 (rather than \$1,000).

Similarly, the cost of compiling with the MCLE requirements is becoming especially burdensome on solo and small firm attorneys. While large firms can insulate themselves from these increased costs by becoming an accredited provider and delivering targeted educational programs in-house, many solo and small firm practitioners are often faced with more expensive, less relevant, and less convenient choices to fulfill their CLE requirements. Fortunately, many bar associations, including WBASNY, pride themselves on providing high quality CLE courses at reasonable rates. However, despite the best efforts of the organized bar, such opportunities are not available in all areas throughout the state and are not always relevant to meet the needs of the diverse practices of solo and small firm attorneys. Accordingly, the Unified Court System should make such courses available at little or no cost, particularly in areas where there are few bar association alternatives.

## **Technology**

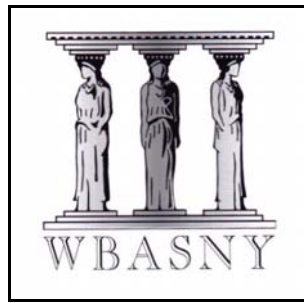
While technological advances have provided enormous benefits to solo and small firm practitioners, they can also impose unique difficulties on this segment of the legal profession. In recognition of the advent of the “Filing By Electronic Means” system within the state courts, our solo and small firm practitioners would like to share some concerns based upon their experiences

---

# Women's Bar

---

OF THE STATE



---

# Association

---

OF NEW YORK

with this system, as well as with the transition to mandatory electronic case filing in the United States District Courts and New York City's Automated City Register Information System ("ACRIS"), which provides online real estate document management.

Conceptually, it is important to recognize that, to a certain extent, the emergence of electronic filing results in a transfer of administrative responsibilities from the Court Clerk's Office to the law office, presumably without any reduction in court fees to offset the increased time and expense to the attorney, and ultimately, the cost to the client.

The cost of installing and maintaining electronic filing capabilities can be substantial. In addition to the monetary investment in hardware and software that is required initially, as a practical matter attorneys who do electronic filing will also incur ongoing monthly costs for high-speed Internet access. While many solo and small firm practitioners are proficient with computers, others will require dependable access to a skilled information technology professional to understand and maintain their systems. Most importantly, however, is the substantial time required to scan attachments and upload documents for electronic filing. Our members report that it can take 10-15 minutes to electronically file a simple affidavit of service using the federal electronic filing system. Hopefully, the time component will be reduced as practitioners develop proficiency with the systems and as the court's electronic filing systems improve in speed and technology. In the meantime the process of electronic filing will take time that solo and small practitioners do not have.

In light of these concerns, we request that any state electronic system include a transition period during which extensive training and support will be made available. Also, during the transition period courts should allow solo and small firms to make an application to opt out of filing by electronic means in appropriate circumstances. We also recognize that it is important to simultaneously promote the existence and benefits of these emerging systems, particularly to solo and small firm practitioners who may be establishing new practices or expanding practice areas. The more time afforded attorneys to perceive the benefit of localized programs such as ACRIS, the more receptive they will be to the transition to more global electronic filing systems.

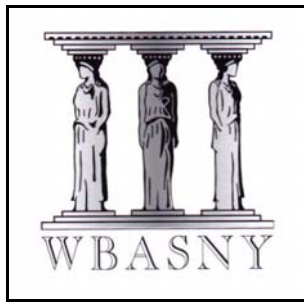
Finally, we note that one of the most positive aspects of the transition to electronic filing in federal court was the substantial administrative and technological support provided by the federal court during the initial transition period and beyond. As state courts continue to move toward electronic filing, we urge them to incorporate and expand training opportunities and technological support for counsel, and that specific provisions for this be included in the courts' personnel allocations and budget plans. We would also suggest a survey of small and solo practitioners to assess their current technological capacity so as to better understand the barriers, challenges and training needs that this segment of the bar faces as electronic filing becomes a reality throughout the state court system.

---

# Women's Bar

---

OF THE STATE



---

# Association

---

OF NEW YORK

## **Strengthening the Profession-Pro Bono Service**

Our members would like the Commission to recognize the disparate impact mandatory *pro bono* would have upon solo and small firm practitioners. While larger firms can assign an associate to develop expertise handling certain types of *pro bono* cases and can take credit for the associate's efforts, solo and small firm practitioners must bear the burden of *pro bono* representation individually. In addition, practitioners in particularly specialized fields may not have expertise in practice areas where *pro bono* services are most often needed and may lack support to develop that expertise. Thus, although we recognize the ethical obligation of *pro bono* service, it is our experience that solo and small firm practitioners are already handling more than their fair share of *pro bono* cases, and we respectfully request that the Court refrain from imposing mandatory *pro bono* requirements.

As the Honorable Jonathan Lippmann, Chief Administrative Judge of the State of New York, recently discussed at our January Board meeting, it is important that the concept of *pro bono* be examined, since many solo and small firm practitioners spend thousands of unpaid hours helping the working poor, who often cannot pay at all or at the going rate for their legal matters. Representing the working poor often will not qualify under the legal definition of "pro bono," but the needs of this population are no less dire.

## **Law Office Economics-Managing the Practice**

The economic viability of solo and small firm practices is largely dependent on the sophistication and management skills of the attorneys involved. For example, best practices for engagement letters, retainer fees, billing and fee collection are increasingly sophisticated, requiring continued development of business management skills. Similarly, attorneys must carefully consider their malpractice, disability and life insurance options, not only with respect to cost, but also with respect to scope of coverage. In a solo or small firm practice, there are few or no individuals to share the burden of staying on top of such essential practice management needs. Law schools and continuing legal education courses should be encouraged to address the business management skills needed to succeed in the practice of law. These skills may be the difference between a thriving practice, a surviving practice and a failing practice. Accordingly, we encourage efforts to streamline regulations, publicize best practices, provide training and support, and pool resources whenever possible.

---

**Women's Bar**

---

OF THE STATE



---

**Association**

---

OF NEW YORK

**Conclusion**

The Women's Bar Association of the State of New York appreciates the opportunity to address the Commission with respect to the concerns of solo and small firm practitioners. We would welcome the opportunity to further assist the Commission in its efforts and look forward to receiving the Commission's Report.

Respectfully submitted  
Women's Bar Association of the  
State of New York

Mindy R. Zlotogura, President