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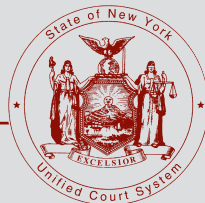
# THE FUTURE OF PRO BONO IN NEW YORK

## VOLUME ONE:

### REPORT ON THE 2002 PRO BONO ACTIVITIES *of the* NEW YORK STATE BAR

HON. JUDITH S. KAYE  
CHIEF JUDGE

HON. JONATHAN LIPPMAN  
CHIEF ADMINISTRATIVE JUDGE



NEW YORK STATE UNIFIED COURT SYSTEM

JANUARY 2004

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## Executive Summary

Fewer than half (46%) of New York State's attorneys performed qualifying pro bono work for the poor in 2002, a slightly lower percentage than those performing this work in 1997 (47%). Since adoption of the Administrative Board of the Courts' April 1997 Pro Bono Resolution, which urges attorneys to provide at least 20 hours of pro bono legal services to poor persons each year, the percentage of attorneys providing this amount has not changed; the percentage was 27% in 2002, as it was in 1997. While individual categories of qualifying pro bono evidenced slight decreases, direct services to poor persons in civil matters showed a significant decline (34% of attorneys in 2002 compared with 39% of attorneys in 1997). These findings represent some of the more noteworthy results of the 2002 Survey of the Pro Bono Activities of Members of the New York Bar.

The decline in the 2002 attorney participation rate for qualifying pro bono work for the poor was not uniform throughout New York State. While Albany, Erie, Monroe, Nassau, Onondaga, Suffolk and Westchester Counties all showed significant decreases in the percentage of attorneys performing qualifying pro bono in 2002 compared with 1997, the remaining fifty counties outside New York City (viewed as a group) showed an increase. Participation rates also increased between 1997 and 2002 in three New York City counties (Bronx, Kings and Queens).

Other important findings of the survey include the following:

- The average number of hours spent by attorneys who performed any qualifying pro bono remained essentially unchanged from 1997 to 2002 (2002, 41.3 hours; 1997, 41.9 hours).
- Nearly two-thirds (66%) of attorneys would be willing voluntarily to report their pro bono work as a means of helping to assess the unmet legal needs of the poor.
- The four most frequent reasons given for non-participation in qualifying pro bono activities in 2002 were the same as in 1997 (each reason cited by more than 45% of 2002 survey respondents):
  - N concern over the time and resources pro bono work might demand
  - N lack of expertise in legal areas involving poor persons
  - N lack of office staff to support qualifying pro bono work
  - N lack of malpractice insurance or policy that does not cover pro bono representation

- Other reasons for non-participation in qualifying pro bono work that appeared in significant numbers and with notable increases in 2002 compared with 1997 were:
  - N financial circumstances as limiting availability for pro bono work (cited by 35% of respondents, up from 22% in 1997)
  - N participation in pro bono activities other than on behalf of the poor (cited by 32% of respondents, up from 20% in 1997)
  - N lack of interest in performing qualifying pro bono for the poor (cited by 29% of respondents, up from 24% in 1997)
  
- The approaches and strategies for encouraging participation in qualifying pro bono work cited by more than 65% of 2002 survey respondents (not asked in 1997) included:
  - N ensuring the availability of training and resources of an organized pro bono program when an attorney lacks legal expertise
  - N matching of attorneys to clients in areas of attorney expertise
  - N permitting attorneys to handle only a discrete task involved in the representation rather than full representation
  
- The percentage of attorneys giving financial support to one or more organizations that provide legal services to the poor decreased slightly (56% in 2002; 57% in 1997). The average contribution among those providing such financial support rose, however, from \$191 to \$212.
  
- Suggestions made for expanding pro bono service in New York State included:
  - N maintaining a voluntary pro bono system in the State
  - N allowing Continuing Legal Education (CLE) credit for all pro bono work
  - N implementing a more structured pro bono program that would provide attorneys with coordination, training and, if possible, office space, equipment and support staff.

## I. Introduction

In May 1997, the Administrative Board of the Courts adopted a Pro Bono Resolution urging attorneys to provide at least 20 hours of pro bono legal services to poor persons each year and to support financially the work of organizations that provide such services.<sup>1</sup> The Resolution defines qualifying pro bono as follows:

- professional services rendered in civil matters, and in those criminal matters for which the government is not obliged to provide funds for legal representation, to persons who are financially unable to compensate counsel;
- activities related to improving the administration of justice by simplifying the legal process for, or increasing the availability and quality of legal services to, poor persons;
- professional services to charitable, religious, civic and educational organizations in matters designed predominantly to address the needs of poor persons.<sup>2</sup>

Following the adoption of the Resolution, the Administrative Board sought to assess the efforts of the New York Bar in providing pro bono services by authorizing a survey of the 1997 pro bono activities of members of the New York State Bar. One of the survey's objectives was to establish a benchmark for measuring the quantity and type of pro bono activities being performed. In 1997, 47% of New York lawyers who either resided or had a principal place of business in New York State performed qualifying pro bono services; 27% of those attorneys performed 20 or more hours of such service.<sup>3</sup>

Since the adoption of the Administrative Board's Pro Bono Resolution and the 1997 survey, a number of developments have taken place that impact the provision of pro bono services in New York. Recognizing the need for greater focus by the courts on access to justice

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<sup>1</sup> See Appendix A for the full text of the Resolution.

<sup>2</sup> This definition tracks the definition of qualifying pro bono contained in the April 1990 final report of the Committee to Improve the Availability of Legal Services (commonly known as the Marrero Commission).

<sup>3</sup> New York State Unified Court System, *Report on the Pro Bono Activities of the New York State Bar* (February 1999).

issues, the Administrative Board of the Courts created the post of Deputy Chief Administrative Judge for Justice Initiatives (DCAJ-JI) in July 1999. Increasing attorney participation in pro bono service is an important goal of the DCAJ-JI. In Fall 1999, the DCAJ-JI recommended amendment of New York's Continuing Legal Education (CLE) Rules to allow CLE credit for the performance of pro bono work. In Spring 2000, the CLE Board adopted this proposal, making New York the third state in the nation to grant attorneys CLE credit for pro bono service.

In September 2001, the DCAJ-JI hosted the first New York State Access to Justice Conference. The purpose of the Conference was to bring together members of the civil justice community to exchange ideas and develop partnerships to eliminate barriers to justice. A major area of focus at the Conference was on how to increase pro bono in New York, examining the role of the Judiciary, Bar associations, private attorneys and law schools.

Immediately following the events of September 11<sup>th</sup>, a surge in pro bono activity occurred of a kind not previously experienced in New York. The post-September 11<sup>th</sup> pro bono effort to help people affected by the tragedy drew volunteer attorneys from a broad cross-section of the Bar. Many lawyers performed pro bono for the first time.

In order to build upon the positive outcomes from the court system's Access to Justice Conference and in light of the outpouring of enthusiasm for pro bono following the events of September 11<sup>th</sup>, the court system hosted four Pro Bono Convocations around the State in 2002. These Convocations were designed to bring together the various segments of the Bar to brainstorm issues and develop tangible, feasible ideas and strategies for expanding pro bono service in New York.

Following the Convocations, the Administrative Board requested that a second survey of the pro bono activities of the New York Bar be conducted to measure the level of activity during 2002 as well as to obtain the Bar's views about a full range of initiatives aimed at encouraging pro bono service and expanding the availability of legal services to the poor. This report presents the results of the 2002 survey and provides comparisons to the findings of the 1997 survey.<sup>4</sup>

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<sup>4</sup> The survey was conducted in early 2003 but sought information about pro bono activities during the prior full-year period (2002).

## II. Survey Methodology

The use of an anonymous, voluntary mail survey based upon a statistically reliable sample of members of the New York Bar was determined to be a cost-effective and highly accurate means of collecting the types of information sought. This approach had been used successfully for the 1997 survey, as well as earlier benchmark surveys conducted by the Pro Bono Review Committee during the period 1990 to 1992.<sup>5</sup>

The definition of qualifying pro bono adopted by the Administrative Board in its Pro Bono Resolution was tracked in the survey through the use of specific questions that inquired about free legal services for poor persons (*i.e.*, individuals poor enough to qualify for free legal services based upon federal income guidelines). Lawyers also could indicate the extent to which they provided non-qualifying pro bono or engaged in law-related activities for charitable, public interest or not-for-profit organizations in matters other than those primarily addressing the needs of the poor.

Moreover, questions were asked about how the pro bono work was undertaken, referral sources and the reasons for non-participation in pro bono during 2002, if applicable. Demographic questions relating to current employment, years admitted to practice and principal place of business, as well as a series of questions that solicited the views of lawyers regarding ways to expand the availability of legal services to the poor, were incorporated into the final survey form. Many of the new questions added to the 2002 survey were developed based upon input from lawyers who participated in the court system's Pro Bono Convocations. A copy of the survey instrument is included as Appendix B.

Survey forms were mailed to a 10% random sample of members of the New York Bar derived from the Office of Court Administration's attorney registration database of active and retired attorneys who either reside or have a principal place of business in New York State. The attorney registration database meeting this definition consisted of 117,620 attorneys

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<sup>5</sup> See Pro Bono Review Committee, *Final Report* (April 1994).



(approximately 65% of all attorneys registered with the Office of Court Administration). The random sample of 10% of these attorneys resulted in the selection of 11,762 study participants. All survey responses were anonymous. Based upon survey sampling statistical theory, the results of this survey can be considered accurate within two to three percentage points, with at least 95% confidence of what would be expected had the full population of New York State registered attorneys been surveyed who reside or have a principal place of business in the State.

During the first two weeks of February 2003, the Office of Court Administration, with the assistance of a professional mailing house, distributed the survey form, a pre-paid return envelope and a cover letter jointly signed by Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman to each attorney in the study sample (a copy of the cover letter also is included in Appendix B). The survey instructions specifically asked each attorney to complete the survey regardless of whether or not they engaged in pro bono during 2002. A second identical survey and pre-paid envelope, along with a follow-up letter from Deputy Chief Administrative Judge for Justice Initiatives Juanita Bing Newton, was sent during late April 2003 to all study participants in order to maximize response rates. A toll-free telephone number and e-mail address were provided to assist survey participants with any questions regarding the survey.

### **III. Survey Results**

#### **A. Survey Sampling and Response Rate**

As of June 2003, a total of 3,839 surveys had been returned. Of the 11,762 potential survey participants, 862 were deemed "ineligible"<sup>6</sup> (mostly undeliverable) and removed from the sample, resulting in a survey response rate of 35.2%. The survey sampling and response rate information for this survey are shown below:

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<sup>6</sup> "Ineligible" surveys include surveys that were undeliverable or unusable, or where the sampled participant had retired or is deceased.

## Survey Sampling and Response Rate

A.	Members of the New York State Bar <sup>7</sup> with Residence or Place of Business in New York as of January 2002 (Attorney Registration File)	117,620
B.	10% Sample of Members of the New York State Bar	11,762
C.	Ineligibles (undeliverable, not useable)	862
D.	Eligible Sample of Members of the New York State Bar	10,900
E.	Final Respondent Sample	3,839
F.	Survey Response Rate <sup>8</sup>	<b>35.2%</b>

### **B. Demographic Characteristics of Survey Respondents**

Table 1 shows the demographic characteristics of the survey respondents. These data are taken from the demographic questions of Part I of the survey. Among the survey respondents, 90.7% were residents of New York State, 54.3% were between the ages of 35 to 55 years of age, 45.7% were admitted to practice over 20 years ago and 58.8% were in private practice. Among attorneys reporting working in private practice, 31.6% were solo practitioners and 29.6% were in firms of 2-10 attorneys.

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<sup>7</sup> Includes both active and retired members admitted to practice in New York and either residing or having a place of business in New York.

<sup>8</sup> A comparative analysis of the survey sample to the full population of 117,620 members of the New York State Bar based upon the principal place of business by Judicial Department indicated that the 10% random sample was highly representative of the full population. For example, 51.9% of the sample respondents and 51.8% of all members of the New York State Bar with residence or place of business in New York have their place of business in the First Judicial Department. Also, sample and population means were identical based upon other variables such as the mean age (48.2 years) and mean number of years admitted to the Bar (19.1 years).

**Table 1**

**Demographic Characteristics of Survey Respondents**

1. Resident of New York State	
Yes	3432 (90.7%)
No	351 (9.3%)
2. Age Group	
a. under 35	525 (13.8%)
b. 35-44	989 (26.1%)
c. 45-54	1070 (28.2%)
d. 55-64	644 (17.0%)
e. 65+	564 (14.9%)
3. Years Since Admitted to Practice	
a. 5 or less	441 (11.7%)
b. 6-10	539 (14.3%)
c. 11-15	576 (15.3%)
d. 16-20	488 (13.0%)
e. Over 20	1719 (45.7%)
4. Current Employment	
a. Attorney in Private Practice	2224 (58.8%)
b. Corporate Counsel	264 (7.0%)
c. University Faculty	25 (0.7%)
d. Government Lawyer	399 (10.5%)
e. Public Interest Lawyer	102 (2.7%)
f. Judge	67 (1.8%)
g. Non-Legal Occupation	195 (5.2%)
h. Retired	263 (6.9%)
i. Not Currently Employed	88 (2.3%)
j. Other	156 (4.1%)
5. If in Private Practice, Size of Firm	
a. 1 (self)	745 (31.6%)
b. 2-10	696 (29.6%)
c. 11-40	289 (12.3%)
d. 41-100	136 (5.8%)
e. 101-200	81 (3.4%)
f. Over 200	408 (17.3%)

### C. Types of Pro Bono Services Performed and Time Devoted

In Part II of the survey, attorneys were asked whether they engaged in one or more of six categories of free legal work or other law-related activities during 2002 in New York State. The first four categories consisted of "qualifying pro bono service" (using the definition adopted by the Administrative Board) and the remaining two categories were "other activities."<sup>9</sup> Respondents were also asked to indicate the approximate number of hours by various intervals of time devoted to each specific activity.

Table 2 shows the responses of attorneys concerning qualifying pro bono services for both 1997 and 2002. For each activity, the results are broken into the following categories: the percent of attorneys responding who engaged in the activity; the percent of attorneys who spent more than 20 hours in the activity; and the average number of hours spent by attorneys engaged in each activity. For instance, for category "a" ("free legal services for poor persons in a civil matter"), 34.2% of attorneys who completed the survey (*i.e.*, those responding either "yes" or "no" for the specific activity) said they engaged in the activity and 13.9% said they spent 20 hours or more in this activity. Furthermore, attorneys who engaged in this activity spent an average 27.7 hours performing this type of free legal service during 2002.

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<sup>9</sup> "Other activities" refers to the following activities, which fall outside the Administrative Board's definition of "qualifying pro bono service": (1) free legal services or other law-related activities for a charitable, public interest or not-for-profit organization in matters other than those primarily addressing the needs of the poor; and (2) other free legal work or law-related activities which would be considered pro bono.

<p align="center"><b>Table 2</b></p> <p align="center"><b>Amount of Time Devoted to Performing Qualifying Pro Bono Services in New York State in 1997 and 2002</b></p>				
<b>Type of Qualifying Pro Bono Service</b>	<b>Survey Year</b>	<b>Percent of Attorneys Engaged in Activity</b>	<b>Percent of Attorneys Who Spent 20 Hours or More in Activity</b>	<b>Average Number of Hours</b>
a. Free legal services for poor persons in a civil matter	1997	38.8%	13.3%	25.8
	<b>2002</b>	<b>34.2%</b>	<b>13.9%</b>	<b>27.7</b>
b. Free legal services for poor persons in a criminal matter	1997	11.6%	3.1%	23.7
	<b>2002</b>	<b>9.6%</b>	<b>3.1%</b>	<b>23.0</b>
c. Free legal services for a charitable, religious, civic or educational organization primarily addressing the needs of the poor	1997	21.7%	7.7%	28.5
	<b>2002</b>	<b>20.5%</b>	<b>7.8%</b>	<b>26.2</b>
d. Activities that increase the availability or quality of legal services for, or access to justice by, poor persons (e.g., bar association activities focused on these objectives or fundraising for a legal services organization)	1997	14.9%	3.7%	20.0
	<b>2002</b>	<b>13.1%</b>	<b>3.7%</b>	<b>21.7</b>
<b>Any Qualifying Pro Bono (a) - (d)</b> (survey respondents who indicated at least one of the above types of qualifying services)	1997	47.0%	27.2%	41.9
	<b>2002</b>	<b>45.6%</b>	<b>26.5%</b>	<b>41.3</b>

The activity most frequently cited by survey respondents was “free legal services for poor persons in a civil matter” (34.2%), while the least frequently cited was “free legal services for poor persons in a criminal matter” (9.6%). Approximately 20% of the respondents indicated they performed “free legal services for a charitable, religious, civic or educational organization primarily addressing the needs of the poor” and 13% of respondents engaged in activities that increase the availability or quality of legal services for, or access to justice by, poor persons. Overall, 45.6% of attorneys participated in at least one of the four categories of qualifying pro bono activity during 2002 (47% in 1997). The percentage of attorneys involved in qualifying pro bono work remained relatively unchanged in 2002, with slight decreases in each of the categories cited above compared with 1997. A significant decrease occurred in “free legal services for poor persons in a civil matter”, with 34% of respondents reporting engaging in this activity in 2002 compared with 39% in 1997. Only 26.5% reported performing 20 hours or more of some type of qualifying service. In 1997, 27.2% reported engaging in 20 hours or more of such qualifying service.

The type of qualifying service in which the largest proportion (13.9%) of respondents spent 20 hours or more was “free legal services for poor persons in a civil matter.” Among non-qualifying other activities, 15.3% of attorneys indicated that they spent 20 hours or more on “free legal services or other law-related activities for a charitable, public interest or not-for-profit organization in matters other than those primarily addressing the needs of the poor.”

The average number of hours<sup>10</sup> spent by lawyers performing qualifying activities overall was 41.3 hours during 2002 (41.9 hours in 1997). For individual activities, the average ranged from 21.7 hours to 27.7 hours. Applying the sample data obtained in the survey to the full population of 117,620 attorneys registered in New York whose residence or principal place of business is within the State, it can be estimated that New York lawyers performed 2,215,114 hours of qualifying pro bono service (45.6% of 117,620 x 41.3 hours average per attorney) during 2002.

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<sup>10</sup> The average number of hours was computed by multiplying the number of respondents who selected a given time interval by the midpoint of the time interval (*e.g.*, 1-9 hours = 5 hours). For the over 100 hours category, a conservative 100 hours was selected.

Table 3 presents an analysis of pro bono participation other than for qualifying pro bono activities on behalf of poor persons. About 30% of the survey respondents reported providing “free legal services or other law-related activities for a charitable, public interest or not-for-profit organization in matters other than those primarily addressing the needs of the poor.” Overall, 41.5% of all respondents participated in at least one of these “other activities” during 2002. While the individual categories of this section of the survey were modified from the earlier 1997 survey, thus limiting item by item comparisons, the percentage of attorneys who indicated that they participated in a law-related activity they considered pro bono (but not necessarily qualifying pro bono) rose from 39.9% in 1997 to 41.5% in 2002.

<b>Table 3</b>			
<b>Amount of Time Devoted to Performing Other Free Legal Activities (Categories e-f) Considered Pro Bono During 2002</b>			
<b>Type of Service</b>	<b>Percent of Attorneys Engaged in Activity</b>	<b>Percent of Attorneys Who Spent 20 Hours or More in Activity</b>	<b>Average Number of Hours</b>
(e) Free legal services or other law-related activities for a charitable, public interest or not-for-profit organization in matters other than those primarily addressing the needs of the poor	29.9%	15.3%	34.2
(f) Other free legal work or law-related activities which you consider pro bono	23.8%	10.9%	30.0
<b>Any non-qualifying pro bono (e-f)</b>	<b>41.5%</b>	<b>23.9%</b>	<b>39.2</b>

#### **D. Qualifying Pro Bono Work By Substantive Legal Area**

Table 4 shows the top ten substantive areas of legal practice and the number of pro bono matters undertaken among the survey respondents performing qualifying pro bono service during 2002. The two most frequently cited legal areas for pro bono work were landlord-tenant and not-for-profit law (23% and 22%, respectively). Family law involving matrimonial matters was the most frequently cited area by attorneys during 1997 (27%), but this area was less frequently indicated (22%) in the 2002 survey.

<b>Table 4</b>					
<b>Substantive Areas of the Law Where Qualifying Pro Bono Work was Performed by the Number of Pro Bono Matters*</b>					
<b>Legal Area</b>	<b>Number of Respondents</b>	<b>% of Total Respondents</b>	<b>1-3 Matters</b>	<b>4-8 Matters</b>	<b>9 or More Matters</b>
Landlord-Tenant	357	<b>23.2%</b>	32.9%	41.9%	25.2%
Not-for-Profit Law	345	<b>22.4%</b>	38.6%	38.9%	22.5%
Wills, Probate & Estates	337	<b>21.9%</b>	36.2%	43.4%	20.4%
Family Law - Matrimonial	335	<b>21.8%</b>	39.5%	40.8%	19.7%
Criminal Law	296	<b>19.3%</b>	33.7%	44.1%	22.2%
Family Law - Non-Matrimonial	270	<b>17.6%</b>	32.6%	40.3%	27.1%
Real Property	247	<b>16.1%</b>	41.0%	41.0%	18.0%
Debt Collection & Bankruptcy	217	<b>14.1%</b>	37.7%	44.7%	17.6%
Elder Law	196	<b>12.8%</b>	28.7%	41.9%	29.3%
Labor & Employment	162	<b>10.5%</b>	35.9%	35.9%	28.2%
Immigration	148	<b>9.6%</b>	40.2%	32.3%	27.6%
Consumer Law	144	<b>9.4%</b>	35.7%	36.5%	27.8%
Civil Rights	123	<b>8.0%</b>	35.7%	39.1%	25.2%
Public Benefits	100	<b>6.5%</b>	39.2%	34.2%	26.6%
Taxes	89	<b>5.8%</b>	39.4%	40.8%	19.7%

\*Data based upon 1,537 survey respondents performing qualifying pro bono service who indicated legal area of work and the number of pro bono matters handled during 2002.



## E. Financial Support

Table 5 shows the amount of financial support survey respondents reported giving to organizations providing legal services to the poor. For 2002, 55.9% of the respondents indicated that they did not provide any financial support to one or more organizations that provided legal services to the poor. Attorneys who did provide support contributed an average of \$212. When combined with those respondents who did not provide financial support, the average drops to \$94 per year per attorney. The 2002 contribution was 14.6% higher than the average contribution level reported in 1997 (\$82). However, this rate of change is comparable to the rate of inflation of the five-year interval between surveys.

<b>Table 5</b>		
<b>Financial Support to Organizations that Provide Legal Services to the Poor</b>		
<b>During the last year, I provided financial support to organizations that provided legal services to the poor in the amount of:</b>	<b>1997</b>	<b>2002</b>
(a) none	56.9%	55.9%
(b) \$1 - 49	8.4%	7.0%
(c) \$50 - 149	16.5%	16.0%
(d) \$150 - 299	8.9%	9.6%
(e) \$300 - 499	2.5%	3.2%
(f) \$500 and over	6.8%	8.2%
Average Financial Contribution (Among Respondents Who Provided Support)	\$191	\$212
Average Financial Contribution Per Attorney for All Respondents	\$82	\$94

**F. Referral Sources for Qualifying Pro Bono Work During 2002**

The survey asked respondents who undertook pro bono work during 2002 to indicate the referral source or sources of their clients. As shown in Table 6, among attorneys who performed qualifying pro bono, 42% indicated that the client contacted them directly and it was clear that they would perform legal work on a pro bono basis. During 1997, 64% of attorneys indicated the same source.

Among 2002 survey respondents, 24% said they received referrals through an organized pro bono or volunteer lawyer program. This compares with the 17% of the attorneys who indicated that in 1997 their clients were referred through an organized pro bono program *not affiliated* with a Bar association and the nearly 14% who said their clients were referred through an organized program *affiliated* with a Bar association. Less than 1% of attorneys reported obtaining clients through an internet-based system.

<b>Table 6</b>		
<b>Referral Sources for Qualifying Pro Bono Work During 2002</b>		
<b>Referral Source</b>	<b>N*</b>	<b>% of Those Doing any Qualifying Pro Bono (a-d) (N=1626)</b>
Clients who contacted me directly and it was clear that I would perform legal work on a pro bono basis.	<b>688</b>	<b>42.3%</b>
Clients who are poor and were referred to me by friends or family members.	<b>496</b>	<b>30.5%</b>
Clients referred to me through an organized pro bono or volunteer lawyer program.	<b>385</b>	<b>23.7%</b>
Clients who originally agreed to pay for service, but I later agreed to provide the service on a pro bono basis.	<b>381</b>	<b>23.4%</b>
Clients who are poor and were referred to me by former clients.	<b>276</b>	<b>17.0%</b>
Clients referred to me by a social service agency or charitable organization.	<b>230</b>	<b>14.1%</b>
Clients referred by a legal services or legal aid program.	<b>157</b>	<b>9.7%</b>
Clients who are poor and were referred to me by an internet-based system.	<b>11</b>	<b>0.7%</b>
All Other Referral Sources	<b>236</b>	<b>14.5%</b>

\* N column equals more than 1,626 as survey respondents were asked to identify all sources of referrals.

## **G. Qualifying Pro Bono by Geographic Location**

Table 7 provides a breakdown of qualifying pro bono service by 11 benchmark New York State counties with relatively larger populations and, for the remaining areas of the State, by various geographic groupings for those attorneys responding who provided information about their principal place of business. Among the 11 counties, the percentage of survey respondents who performed qualifying pro bono service ranged from a low of 37% in Albany County to a high of 59% in Erie and Onondaga Counties. The percentage of respondents reporting qualifying pro bono among the remaining group of 50 upstate New York State counties was 57%. Among the boroughs of New York City, the incidence of qualifying pro bono work ranged from 39% in New York County to 53% in Queens. There was increased participation of attorneys in pro bono work in 2002 in Kings, Bronx and Queens Counties compared with 1997. Large suburban counties surrounding New York City showed lower pro bono participation for 2002 compared to 1997. The highest increased participation rates across the two periods (+8.3%) was found among the 50 upstate counties in the aggregate.

The percentage of attorneys performing more than 20 hours of qualifying pro bono conforms to the same general pattern. While 26.5% of all survey respondents statewide and 25.7% from New York City spent 20 hours or more, a considerably higher percentage (44%) of lawyers in the 50 upstate counties spent 20 hours or more performing qualifying pro bono.

<b>Table 7</b>						
<b>Qualifying Pro Bono Performed by Attorneys by Geographic Location</b>						
<b>Place of Business</b>	<b>Any Qualifying Pro Bono (a-d)</b>					
	<b>Overall Percent Engaged in any Qualifying Pro Bono (a-d)</b>			<b>Percent Engaged in 20 Hours or More of Pro Bono Activities</b>		
	<b>1997</b>	<b>2002</b>	<b>Change</b>	<b>1997</b>	<b>2002</b>	<b>Change</b>
<b>New York City (combined)</b>	42.5	41.3	<b>-1.2</b>	20.0	25.7	<b>5.7</b>
Bronx	48.6	51.9	<b>3.3</b>	30.0	30.8	<b>0.8</b>
Kings	40.9	45.9	<b>5.0</b>	22.3	27.4	<b>5.1</b>
New York	41.3	39.4	<b>-1.9</b>	24.1	25.2	<b>1.1</b>
Queens	48.4	53.0	<b>4.6</b>	28.1	30.4	<b>2.3</b>
<b>Suburban Counties</b>						
Nassau	53.3	48.3	<b>-5.0</b>	25.6	24.7	<b>-0.9</b>
Suffolk	57.8	44.4	<b>-13.4</b>	35.6	25.9	<b>-9.7</b>
Westchester	45.1	40.3	<b>-4.8</b>	25.6	24.4	<b>-0.2</b>
<b>Upstate</b>						
Albany	50.0	36.9	<b>-13.1</b>	27.3	24.1	<b>-3.2</b>
Erie	64.5	59.1	<b>-5.4</b>	42.1	42.3	<b>0.2</b>
Monroe	66.7	56.1	<b>-10.6</b>	39.1	40.9	<b>1.8</b>
Onondaga	71.0	59.0	<b>-12.0</b>	45.0	37.3	<b>-8.7</b>
<b>Remaining 50 New York Counties</b>	48.3	56.6	<b>8.3</b>	28.4	44.0	<b>15.6</b>
<b>All Survey Respondents</b>	47.0	45.2	<b>-1.8</b>	27.2	26.5	<b>-0.7</b>

## **H. Other Factors Associated With Pro Bono Participation Rates**

The data tables shown in Appendices C through F provide additional types of data from the 2002 survey associated with pro bono participation rates. The principal findings from these tables include:

- A large majority of attorneys engaging in qualifying pro bono work are in private practice (78%). See Appendix C.
- By far the highest percentage of attorneys performing pro bono activity in 2002 (qualifying and non-qualifying, *i.e.*, not solely for poor persons) were law school faculty (72%) followed by private practitioners (57%) and public interest lawyers (55%). See Appendix D.
- A higher percentage of lawyers in small firms (10 or fewer attorneys) and very large firms (more than 100 attorneys) performed pro bono work in 2002 than lawyers in mid-size firms (11-100 attorneys). See Appendix E.
- Lawyers in New York City performed a higher average number of hours of qualifying pro bono in 2002 (46 hours) than their counterparts in the seven largest counties outside New York City (32 to 41 hours). See Appendix F.

## **I. Miscellaneous Survey Response Topics**

Attorneys also were asked a series of follow-up questions regarding their qualifying pro bono service during 2002. Specifically, a majority of respondents (57.7%) indicated that they undertook pro bono mostly on their own rather than through one or more organized programs (26.7%) or some combination of these (15.6%). Nearly 80% indicated that they had undertaken the work in the same county as their principal place of business.

When asked about whether they reported their pro bono work during 2002, 79% indicated that they did not report the work, another 8.8% reported their work to a local pro bono coordinator and 5.3% reported their work to a Bar association. Only 5% of the survey respondents indicated that they used their pro bono work during 2002 to fulfill Continuing Legal Education (CLE) requirements.

## **J. Reasons for Non-Participation in Qualifying Pro Bono Activities**

Part IV of the survey asked respondents to indicate the reason(s) why they did not perform qualifying pro bono service. Table 8 lists the reasons in rank order, from the most to least frequently cited responses, for both the 2002 and 1997 surveys. The most frequently cited reasons for non-participation in qualifying pro bono within both survey years remained unchanged: “I did not have the time to volunteer;” “I did not have the expertise in the legal areas involving poor persons;” and “I did not have the office support staff to perform this type of pro bono legal work,” cited by 62%, 59% and 55% of the 2002 survey respondents, respectively. The 2002 survey included a more generic reason – “I am concerned that the pro bono work will demand more time and resources than I can provide” – that was cited by 62% of the 2002 survey respondents as well. For 2002, attorneys were more likely than in 1997 to assert that they did not have malpractice insurance or that their policy does not cover pro bono representation (46% v. 20%), that their financial circumstances limited their availability for pro bono work (35% v. 22%) and they did not have the office support staff (56% v. 41%).

<b>Table 8</b>				
<b>Reasons for Non-Participation in Qualifying Pro Bono Activities*</b>				
<u>Reasons for Non-Participation</u>	<b>1997</b>		<b>2002</b>	
	Rank	%	Rank	%
I am concerned that the pro bono work will demand more time and resources than I can provide. (2002 survey only)	NA	NA	1	62.1%
I did not have the time to volunteer.	1	48.4%	2	61.8%
I did not have the expertise in the legal areas involving poor persons.	2	45.9%	3	59.2%
I did not have the office support staff to perform this type of pro bono legal work.	3	40.6%	4	55.5%
I do not have malpractice insurance or my policy does not cover pro bono representation.	6	20.4%	5	46.1%
My financial circumstances limited my availability for pro bono work.	5	21.8%	6	34.9%
I participated in activities identified in (e) through (f) in Part II (other activities).	7	20.1%	7	31.5%
I am not interested in doing that type of pro bono work identified in (a) through (d) in Part II.	4	24.2%	8	28.9%
My employer prohibits or discourages me from doing this type of pro bono legal work.	8	18.7%	9	19.7%
I have participated in activities in (a) through (d) in prior years at a level in excess of 20 hours per year, but not during 2002.	9	10.7%	10	16.2%
I was interested in doing this type of pro bono work but have found it difficult to find appropriate projects.	10	10.1%	11	15.1%
I am retired from the practice of law in New York State.	14	6.2%	12	14.8%
I was not able to arrange for sufficient childcare or other family care accommodations that would make it possible to perform pro bono work.	11	10.1%	13	13.9%
I worked for or am a member of a firm which, in the aggregate, devotes at least 20 hours per lawyer per year to activities identified in (a) through (d) in Part II. (1997 survey only)	12	8.1%	NA	NA
My personal health limited my availability for pro bono work. (1997 survey only)	13	7.0%	NA	NA
A very small portion of my legal practice is in New York State. (1997 survey only)	15	3.4%	NA	NA

\* Data based upon 1,939 survey respondents not engaged in qualifying pro bono activities during 2002 and 2,685 survey respondents during 1997.

Several of the more frequent reasons overall for non-participation in qualifying pro bono were examined by the type of employment setting for the largest three respondent groups to the 2002 survey. This resulted in a comparison of the reasons for non-participation among private practitioners, corporate counsel and government lawyers as shown in Table 9 below. Corporate counsel as compared to private practitioners were far more likely to report that they did not have the expertise required (72% v. 55%), the office support (72% v. 44%) or the malpractice insurance (73% v. 19%) needed to work with poor persons. Government lawyers were less concerned about having the necessary expertise in the legal areas involving poor persons when compared to corporate and private practice attorneys (43% v. 72% and 55%, respectively). A separate analysis revealed that, among attorneys in private practice, the smaller the firm, the more likely that attorneys indicated a lack of office support and financial circumstances as playing an important role in their not performing pro bono.

<b>Table 9</b>			
<b>Five Most Frequently Cited Reasons for Non-Participation in Qualifying Pro Bono Services by Employment Setting</b>			
<b>Reason for Non-Participation</b>	<b>Private Practice</b>	<b>Corporate Counsel</b>	<b>Government Lawyer</b>
I am concerned that the pro bono will demand more time and resources than I can provide.	57.71%	71.8%	50.9%
I did not have the time to volunteer.	59.8%	73.7%	50.3%
I did not have the expertise in the legal areas involving poor persons.	55.1%	72.3%	43.2%
I did not have the office support staff to perform this type of pro bono legal work.	44.1%	72.3%	50.3%
I do not have the malpractice insurance or my policy does not cover pro bono representation.	19.2%	72.8%	60.2%
<b>Survey Samples</b>	962	202	322



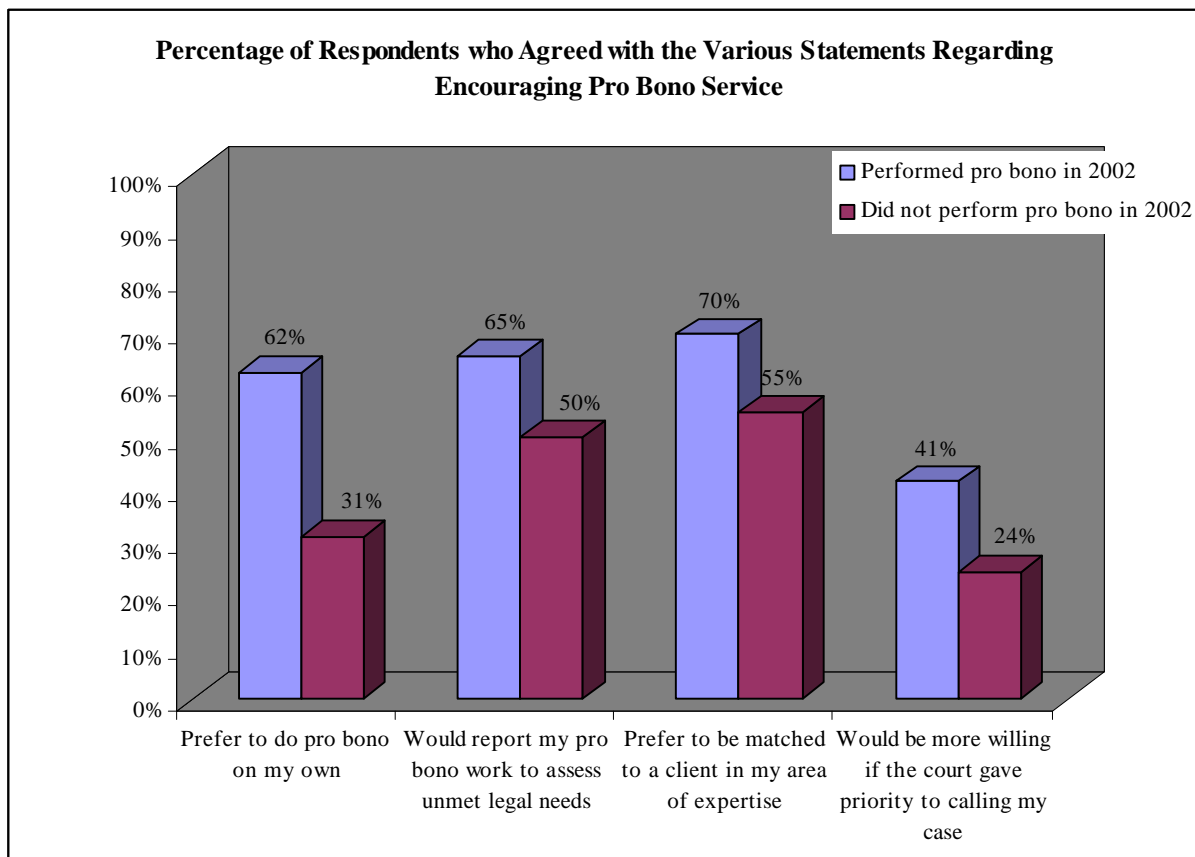
**K. Encouraging Pro Bono Service and Expanding the Availability of Legal Services to the Poor**

Part V of the 2002 survey contained a series of attitudinal questions that solicited the views of lawyers regarding different approaches to encouraging and expanding the availability of legal services to the poor. Survey respondents were asked to indicate the extent to which they either agreed or disagreed with these approaches.

Table 10 summarizes the responses (percent strongly agree/agree) of all survey respondents to the various approaches and strategies for encouraging pro bono that appear relevant to improve access to justice for poor persons. Several of the approaches with which survey respondents were more likely to agree were: (1) that the training and resources of an organized pro bono program are essential to doing pro bono work in an area where the attorney does not have expertise (77%); (2) that attorneys would prefer to be matched to a non-paying client in their own area of expertise rather than to seek training in a new legal area (70%); (3) that attorneys would more likely participate in pro bono work if they could handle a discrete task rather than full representation (66%); and (4) assuming a voluntary pro bono system, that attorneys would be willing to report their pro bono service as a means to assess the unmet legal needs of the poor (66%).

<b>Table 10</b>	
<b>Views about Encouraging Pro Bono Service and Expanding the Availability of Legal Services to the Poor</b>	
	<b>Percent Strongly Agree/Agree</b>
The training and resources of an organized pro bono program are essential to doing pro bono work in an area where I do not have legal expertise.	76.5%
I would prefer to be matched to a non-paying client in my area of expertise rather than having to seek training in a new legal area.	70.0%
I would be more likely to participate in pro bono work if I could handle a discrete task in the representation ( <i>e.g.</i> , initial consultation, pleading, drafting a letter, conducting a negotiation) rather than full representation.	66.1%
Assuming a voluntary pro bono system, I would be willing to report my pro bono work as a means to assess the unmet legal needs of the poor.	65.9%
I would prefer a pro bono service arrangement where I could partner with another attorney or legal service provider on a particular case.	54.2%
I would consider using an internet-based system where I could search for appropriate pro bono work that fits my schedule and legal skills.	52.6%
I would prefer to provide pro bono service on my own rather than through an organized program.	49.9%
I would be comfortable with receiving additional training and resource materials to do pro bono work through the use of an internet-based training web site.	46.4%
I would consider registering with a pro bono program that maintains an internet-based system designed to match me with clients with unmet legal needs.	42.2%
I would be more willing to handle a pro bono litigation matter if the court gave some priority to calling my case.	36.5%

Responses to these statements were compared with those attorneys performing qualifying pro bono and those not performing such work during 2002. For the statements showing the more salient differences (see Figure 1 below), attorneys engaged in pro bono work are considerably more likely to prefer providing pro bono service on their own rather than through an organized program (62% v. 31%); are more willing to report their pro bono work (65% v. 50%); prefer a client in their area of expertise (70% v. 55%); and would be more willing to handle a pro bono case if the court gave some priority to calling their case (41% v. 24%).



**Figure 1**

Part V also sought, through an open-ended question, suggestions from attorneys for expanding pro bono in New York State. Approximately 15% of survey respondents answered this question and provided some type of suggestion(s). Table 11 summarizes the responses. The most frequently cited suggestion was that pro bono should not be made mandatory. The next two most frequently cited suggestions were: to have *all* pro bono legal services qualify for Continuing Legal Education (CLE) credit; and to implement a more structured pro bono program that would provide attorneys with coordination, training and, if possible, office space, equipment, and support staff.

<b>Table 11</b>	
<b>Suggestions for Expanding Pro Bono in New York State</b>	
<b>Suggestion</b>	<b>Number of Respondents Making Suggestion</b>
Pro bono service should not be mandatory	117
All pro bono should qualify for CLE credit	116
A structured program should exist to support pro bono attorneys	73
Pro bono should be mandatory only for certain classes of attorneys ( <i>e.g.</i> , by length of practice, income, type of practice)	53
Large and mid-size firms should be tapped for pro bono service due to their available resources	42
More incentives should be available for attorneys who perform pro bono ( <i>e.g.</i> , waive attorney registration fee, jury duty, bar dues; give tax credits)	39
Provide free malpractice insurance	37
Do not limit the definition of qualifying pro bono	33
Fund pro bono expenses and/or increase public funding to support pro bono work	32

#### **IV. Conclusion**

Data from the Survey of the 2002 Pro Bono Activities of the New York State Bar indicate relatively static statewide rates of qualifying pro bono work for poor persons compared with 1997. Increases in key categories of qualifying pro bono in various counties, as well as the Bar's impressive pro bono contributions associated with the events of September 11, 2001, provide hope that rates can be improved and can become more consistent on a statewide basis. The positive attitudes and experiences of attorneys who provide pro bono service give additional reason to be optimistic about the potential for overcoming obstacles to expansion. Despite these encouraging signs, however, achieving broader participation remains a major challenge with significant implications for the ability of New York State's justice system to provide equal access to justice.