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**REPORT ON IMPACT OF COVID-19
ON NYC AREA SOLO AND SMALL LAW FIRMS
BY THE SMALL LAW FIRMS COMMITTEE
COVID-19 TASK FORCE SUBCOMMITTEE¹**

I. INTRODUCTION

The purpose of this Report is to provide the New York City Bar Association, the legal profession and policy-makers with information about the impact of the COVID-19 crisis on New York City area solo and small law firm attorneys and their practices as well as recommendations of possible policy responses. This Report, its discussion of impacts on attorneys and its conclusions, are the results of a survey of the members of the New York City Bar Association Small Law Firms Committee (the “Survey”) conducted between April 13, 2020 and April 21, 2020.

To provide context for the Committee’s recommendations, this Report will first set forth the factual background for the Survey (Part II), then discuss the origins and design of the Survey (Part III), then in turn discuss how members responded to the Survey, organized according to the following categories of questions (1) personal impacts of the COVID-19 crisis; (2) practice management impacts of the COVID-19 crisis; and (3) impacts of the COVID-19 crisis on clients of solo and small law firm attorneys (Part IV). The Report will then discuss the Committee’s recommendations (Part V).

II. BACKGROUND: COVID-19 CRISIS

New York State first declared a state of emergency on March 7, 2020 and instituted mass gathering restrictions on March 12, 2020. This was followed by initial business closure orders on March 16, 2020, school closure orders on March 18, 2020. Finally on March 22, 2020, in an attempt to “flatten the curve” of COVID-19 cases, New York State issued both a stay-at-home order and closure of all non-essential businesses, also referred to as the “Pause”, which has so far been extended to May 15, 2020. The historically far-reaching closures included cessation of non-essential medical procedures and closing of state courts other than for emergency matters followed by a gradual expansion of the virtual court model and e-filing in recognition of the future uncertainties related to COVID-19. They also included the issuance of Executive Orders tolling statutes of limitations, and enabling virtual and remote notarizations and will executions.

¹ The principal drafters of this Report are: William Funk, Gary Kaufman, Karl Dowden, Anne Wolfson, Alla Roytberg, Mira Weiss, and Doron Zanani.

It has been estimated that at least 1.2 million jobs have been lost so far in the last five weeks alone.² There are projections that unemployment could reach ranges between 20-30 percent.³ Low paid workers are thought to have borne the brunt of these job losses.⁴ Independent contractors are also estimated to experience twice the job losses as salaried workers.⁵ Businesses in which face-to-face service is a crucial component have endured the most severe losses.⁶ The federal government has enacted a series of laws appropriating funds and committing to other actions in response to this crisis. It is with this background that the Small Law Firm Committee designated a COVID-19 Task Force Subcommittee (the “Task Force”) to assess and respond to the impact of the crisis on the members of its community.

III. THE SURVEY: PURPOSE AND DESIGN

Several significant motivations spurred the development of the Survey, among them:

- to establish a framework for understanding what had occurred and what was still happening to our legal community, even as the crisis continues to unfold;
- to determine the needs of our legal community and to advocate as necessary based on the information gathered;
- to make clear that we all take an interest in each other’s lives and would do our best to provide mutual assistance; and
- to provide the means by which this legal community could bear witness to its experiences in this crisis and describe those experiences.

As an initial survey, the Task Force chose to ask open-ended questions on three broad areas in the life of a solo or small firm practitioner, their personal life, their management of their practice, and their active practice representing or advising clients. In choosing open-ended questions, the Task Force sought to elicit the full range of responses that may be on members’ minds rather than select specific multiple choice answers that may not reflect the full range of opinions and experiences.

It is understood that the Survey does not and could not have made use of such statistical methods as simple random samples to poll the legal profession or even all of New York’s solo and small law firm attorneys. The members are likely to have self selected as among the more motivated members of the legal profession to organize as a legal community. What the Survey lacks in statistical methodology, it makes up for in comprehensiveness, with a nearly 100 percent response rate from membership and qualitative inquiry that tells a story.

² “The New Strain of Inequality: The Economic Impact of Covid-19 in New York City” James A. Parrott and Lina Moe, April 15, 2020
https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5e974be17687ca34b7517c08/1586973668757/NNewStrainofInequality_April152020.pdf

³ Id.

⁴ Id.

⁵ Id.

⁶ Id.

IV. RESPONSES

a. Personal Impacts

The Task Force received responses from 29 members, including themselves. Of the 29, 19 (66 percent) reported having been personally affected and ten (10) reported not having been personally affected. Of the 19 personally affected, five (5) reported having family, friends, or clients who died of COVID-19. Three (3) reported having family, friends, or clients who had become ill with COVID-19. One member reported having contracted COVID-19. The total affected by the infection of themselves or those in their circles is 28 percent of membership. The remainder who reported being personally affected cited factors such as the stress of family having surgery delayed, “cabin fever”, work-family issues of related to the stay-at-home order, financial distress, difficulty conducting necessary travel within New York City, inability to exercise, postponed vacation, and fear of COVID-19 itself.

The Survey found a significant level of financial uncertainty among members. Only 16 members responded outright that they had the financial resources to endure the COVID-19 crisis with the remainder stating that their ability to weather the crisis was contingent on receiving Paycheck Protection Program (“PPP”) loans, recovery in six to nine months, or were uncertain or skeptical that they had sufficient resources.

The Survey found concern over whether their situation would improve in the coming six months and what their conditions would be. Only 16 were hopeful or optimistic that their situation would improve in six months with the remainder pessimistic or uncertain. Among the range of outcomes seen as likely in six months were a return to normal, a lower caseload, and bankruptcy.

With respect to what types of assistance members identified as necessary or helpful, thirteen separately suggested various forms of financial relief including expanded PPP loans and rent relief. Other suggested assistance included technical assistance such as learning more about tools such as Zoom, continued maintenance of a sense of community through the Small Law Firms Committee, marketing guidance, continuing legal education, and advocacy of honesty in tracking COVID-19 fatalities (based on personal experience of having family members’ deaths not counted among COVID-19 deaths).

b. Practice Management Impacts

The Survey found that 23 of 29 reported COVID-19 impacts on their practices. There were three categories of issues that members reported as being the sources of impact: factors causing loss of revenue, factors rendering work more difficult, and factors impeding advocacy on behalf of clients. With respect to loss of revenue, this stemmed from reduction in demand for services including loss of the peak season, clients who already owed fees for services becoming less likely to pay invoices timely, and inability to conduct usual marketing activities such as in-person networking. Factors rendering work more difficult included loss of access to mail and files, working without separation from family, and internet connections and software at home

that was not equal to the level of at the office. Factors impeding or relevant to advocacy included closure of courts, urgency of evacuating clients from jails that accelerated the spread of COVID-19, and difficulty with signing documents for which original signatures are a legal requirement.

With respect to issues anticipated upon the end of the Pause were several portending a legal version of supply chain shock. Members anticipated significant court backlogs, controversies involving delinquencies in rent and mortgage payments, and bankruptcies. A possible scenario involved having to hire assistance with the anticipated demand after having had a significant financial depletion. Other anticipated challenges were a potential need to diversify practice areas away from those adversely affected by the crisis and having to learn bankruptcy practice.

c. Impacts on Clients and Practice Areas

The Survey found that 20 out of 29 members viewed the COVID-19 crisis as significantly affecting their practice areas and clients. The issues, broken out by practice area, were identified as follows:

Employment Law

- Increased volume
- Understanding the new laws

Intellectual Property

- Increased Interest in Patent Investment

Tax

- Delays in Filing Deadlines
- Suspension of Enforcement
- Stimulus Changes in Tax Law
- Easing term of Tax Debt Resolution

Real Estate

- Problems related to in-person closing requirements
- Inability to obtain necessary forms
- Inability to obtain government documents
- People not moving, buying or leasing
- Clients cannot pay or get paid on leases/mortgage

Entertainment

- No entertainment produced

Bankruptcy

- Anticipated spike in demand

Elder Law and Guardianship

- Concerns regarding nursing homes failure to provide adequate care
- DSS not processing Medicaid benefits applications
- Community benefits eligibility and service changes
- Medicaid fair hearings cancellation
- Guardianship – lack of access to courts, clients and client services

Trusts and Estates

- Implementation of remote notarization and clarification of requirements for execution of wills
- Access to Surrogate's Court personnel and proceedings

Transactional Practice, Broadly

- Corporate Transactions are postponed
- Lack of Deal Flow
- Contractual Performance Issues
- Need for Wet Signatures
- International Transactions affected
- Document Witnessing problems
- Getting small businesses the funding they need to operate

Criminal Law

- Time consumed by emergency bail applications and writs

Education Law

- Unclear what constitutes Free Appropriate Public Education at this time
- Remote Learning at private schools affecting claims

Family Law

- Parenting plans during the COVID-19 Crisis
- Issues around financial support when a parent has lost his/her job
- Inability to pursue and finalize divorce cases in court

Landlord-Tenant

- Problems regarding inability to pay rent

Litigation Practice, Broadly

- Courts Closed (Specific Issues – Inability to appear in person, Collections impossible to enforce, Litigation delays, problems with guardianship and surrogates, inability to advance or dispose of cases)
- Filings not accepted
- Suspension of Time Limits (Leads to longer period of pre-trial incarceration in criminal cases)
- Courts not rendering decisions
- Filing deadlines in Federal Court not moved

- Difficulty conducting discovery
- No Arbitrations
- Difficulty finding a mediator who uses Zoom

V. RECOMMENDATIONS

Based on the information gathered, the Task Force sees the building blocks of a response to the COVID-19 crisis on behalf of our community. Because it is not within the power of the Small Law Firms Committee to deliver results for everything requested, the recommendations will be set forth according to who would be capable of performing the response requested and how the Small Law Firms Committee can assist with respect to such recommendations.

a. Recommendations Implementable by the Small Law Firm Committee Itself

One set of needs identified, particularly with the stay-at-home order, was the need to preserve and strengthen the sense of community among solo and small law firm attorneys and to provide them with opportunities for networking. This can be performed directly, using technology for the remainder of the Pause, if extended or reinstated at a later date, and with in-person events and remains a central function.

Also, as stated earlier, the Task Force will continue to track the ongoing effects of the COVID-19 crisis on members of the Small Law Firms Committee with follow-up surveys at three-month intervals.

b. Recommendations Implementable by the Small Law Firm Committee in Collaboration with the larger New York City Bar Association

With the significant changes in law as well as the need for solo and small firm attorneys to acquire, adopt and be adept in previously optional technology in order to communicate and practice law during the COVID-19 crisis, members expressed interest in CLE and non-CLE programming to keep members up to date on a wave of changes in the law and on training to use the latest information technology tools. The full resources of the New York City Bar Association and the expertise of members of the Small Law Firms Committee can be called upon to develop CLE and non-CLE programs to keep members up to date on a wave of changes in the law and on training to use the latest information technology tools.

Further, the Survey revealed the potential for the legal profession's version of supply chain shock. This could take the form of a potential wave of contract reformations and breaches, bankruptcies and other COVID-19 generated needs for legal services occurring at the same time that many clients themselves are financially distressed. One unfortunate but likely result is that many attorneys who have routinely provided support to community organizations, not-for-profits legal service providers and the courts pro bono have less financial ability to accept pro bono cases and provide free or below cost legal services just as the need for free or below cost legal services spikes. The Small Law Firms Committee and the New York City Bar Association should at minimum be alert to signs that this is developing, its severity if it does emerge, and to the efficacy of responses to this problem.

c. Recommendations Not Directly Implementable by the Small Law Firm Committee or the New York City Bar Association Alone

To date there are issues concerning federal funding that has not reached the intended beneficiaries, the need to provide rent and mortgage relief to individuals and small businesses, and the inability of attorneys to help clients who are in dire need of help. County, city, state and federal government must address known and anticipated deficiencies in regulations and pass legislation that will be relevant to the unique circumstances of trying to live during a pandemic. These require policy advocacy and as many allies as possible. The prompt and enthusiastic assistance and collaboration of the Policy Office of the New York City Bar Association, as well as of any interested substantive law committee within the New York City Bar Association is desirable. Further, to the extent that sister bar associations have publicly stated a mission to work on these issues, it is desirable that the Small Law Firm Committee and the New York City Bar Association communicate with such bar associations about how best persuade policy-makers to enact critical changes.

VI. CONCLUSION

As the legal profession reopens, the Task Force will continue to monitor the problems unique to the legal community and the full range of challenges of operating a small firm. We appreciate the support of the NYCBA through this crisis to date.

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