

DIALOGUE

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Every Lawyer Referral and Information Service (LRIS) keeps a solid focus on the public side of the LRIS equation. We often hear that a LRIS is "in the business of public service." [Read more...](#)

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There may be no issue that generates more heated discussion in today's society than the impact of social media on how we communicate with each other and, more generally, with the world at large. [Read more...](#)

The New Census Results Are Here! The New Census Results Are Here!

By George D. Wolff

Though not often a direct concern to a Lawyer Referral and Information Service (LRIS), census data is used for grants and funding decisions for legal aid offices and other legal services organizations. [Read more...](#)

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LAMP Feature

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By Dwain Alexander, II

From the Chair

Military life and laws that protect servicemembers exist outside of the life experience of most civilian attorneys and the judiciary. Courts will often appoint civilian attorneys to represent the interests of a person with respect to a single action in litigation in the role of guardian *ad litem* (GAL). It is vital for attorneys appointed as GALs to servicemembers to fully understand their responsibilities and to have an appreciation of military life and, duties and the laws established to protect servicemembers' rights. Three bodies of law provide guidance on the duties of the GAL representing a servicemember: the Servicemember's Civil Relief Act (SCRA), the statutory duties of the GAL under state law, and the state Rules of Professional Conduct. When attorneys executing their duties as GALs for servicemembers fail to comply with these standards of conduct, the consequences for the client can be devastating.

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The purpose of the SCRA is to provide for, strengthen, and expedite the national defense through protection extended to servicemembers. The SCRA ensures that servicemembers are able to devote all of their energy to the defense needs of the nation. Moreover, the act provides for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service. The SCRA establishes the requirements for representatives and counsel to be appointed when the servicemember can not be present in court. The Act also contains numerous provisions to protect the legal and financial rights of servicemembers. A significant portion of these protections are provided in the default protection and stay provision of section 521 and in the stay provision of section 522.

The requirements of Section 521 apply to any case where the defendant is a servicemember and does not make an appearance. In civil suits, Section 521 requires every plaintiff to file an affidavit stating whether or not the defendant is in the military and to support the conclusion with facts, or, in the alternative, that the plaintiff is unable to determine the military status of the defendant. Section 521 requires that the court appoint counsel as representative for the absent defendant-servicemember. Under this Section, the court may require that the plaintiff post a bond to protect the defendant-servicemember from loss or damage if the judgment is later set aside. If the court determines that there may be a defense to the action that cannot be presented without the defendant-servicemember or if after **due diligence** counsel has been **unable to contact** the defendant-servicemember or **determine if there is a meritorious defense**, Section 521 provides for a 90-day stay. (Emphasis added.)

Section 522 provides for a stay in civil cases where the servicemember has actual notice of the proceeding. The court must grant a stay of not less than 90 days upon proper application by the servicemember. The court may grant an additional stay upon the servicemember's request. If the court denies this request the court must appoint counsel to represent the servicemember in the action or proceeding.

State statutes also provide rights. For example, in Virginia, a servicemember who is unable to appear in court due to military duty is considered a person under disability.¹ The status as a person under a

disability provides the servicemember the right to representation by a GAL.² The GAL for a person under a disability has a **duty to faithfully represent the interests of the client**, to **communicate with the client**, to **conduct an investigation of the facts** of his or her case, and to **present that information** to the court.³ (Emphasis added.)

The Virginia Rules of Professional Conduct set forth the requirements for the ethical execution of the duties as GAL for a person under a disability. Rule 1.14 requires that the lawyer strive to maintain a normal client-lawyer relationship. A lawyer who is appointed has the same obligations to the client as retained counsel.⁴ In a normal client-lawyer relationship, counsel has a duty of competence, to make inquiry, and to analyze the factual and legal elements of the problem.⁵ In that same relationship, counsel has a duty to use due diligence when representing a client despite opposition, obstruction or personal inconvenience, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor.⁶

Like any law or regulation the SCRA is only as effective as those who implement and enforce it. Many GALs represent servicemembers with competence, diligence, and passion. However, if in some instances a GAL minimizes his or her duties, they reduce the effectiveness of the SCRA and diminish its and the servicemembers' ability to fulfill their mission and deprive them of the very rights they are sworn to protect. To avoid such unfortunate circumstances, we can require that GALs apply and fulfill established standards and duties when representing servicemembers, we can require that judges appoint diligent GALs, we can provide guidance on GAL standards, and we can assist in locating servicemembers.

This is an actual case:

A young servicemember purchased a vehicle. On the purchase and finance documents he used his soon to be ex-wife's address. Approximately three weeks later, he was shot in the head. The servicemember was gravely wounded and not expected to live. He survived, but was incapacitated and in hospitals for over a year.

While he was in the hospital, the divorce was finalized. The servicemember's command and ex-wife decided to return the vehicle to the lien holder who accepted it as a voluntary repossession. No one was authorized to act on the servicemember's behalf. The vehicle was later sold at auction pursuant to the security interest and lien. During the collection process the lien holder was aware of the servicemember's injury and status. The lien holder was in contact with the servicemember's command and ex-wife during the period between the shooting incident, the sale, and collection actions. The lien holder mailed the notice of sale to the servicemembers post-divorce address. The sale resulted in a deficiency, and the lien holder proceeded to collect the deficiency filing a warrant in debt against the servicemember.

The lien holder served the servicemember at the address listed on the contract. The lien holder complied with the SCRA and filed the affidavit of service with the court indicating that the defendant was a servicemember. This invoked the servicemember's rights under section 521 of the SCRA. Pursuant to the SCRA and Virginia law, a GAL was appointed for the servicemember. There was a 90 day stay and a new trial date was set. During the stay, the GAL sent the notice of the suit and his representation to the same address used for service of process by the lien holder. The servicemember did not respond. Sometime prior to trial, the ex-wife sent correspondence to the court indicating that the servicemember had been gravely injured, that the lien holder was aware of the injury, that the servicemember was in a local hospital, and that he would not be available for trial.

The GAL sent a preprinted letter to the address on the warrant

in debt. At trial, the GAL asserted that the defendant had not responded to his inquiry, that the commanding officer had not replied pursuant to the SCRA, and that he did not find a legal basis for a defense or a stay. The default judgment was entered and the servicemember's bank account and pay were garnished.

In this case, the servicemember had defenses discoverable in the court's record -from the plaintiff, from the family members and ex-wife, and in the law - that were not presented. The rules for representation by a GAL under federal law, state law, and the Rules of Professional Conduct are clear and had they been followed this injustice would not have occurred. GAL representation for servicemembers is not a sub-category of representation. Counsel should assume these duties with a professional level of diligence. Our servicemembers deserve effective representation.

Dwain Alexander, II is an attorney with the Naval Legal Service Office Mid-Atlantic in Norfolk, Virginia where he serves as a legal assistance attorney. The views expressed in this article are those of Mr. Alexander and not those of the Department of Defense, Department of the Navy, or any other government agency.

¹ VA Code Ann 8.01(6)(e)

² VA Code Ann 8.01-9(A)

³ VA code Ann 8.01-9(A), Ruffin v. Commonwealth, 10 Va. App. 488, 393 S.E. 2d 425 (1990), Baby Doe v. Doe, 15 Va. App 242, 421 S.E. 2d 913 (1992)

⁴ Va. Sup. Ct. R. Pt.6 sec II, Rule 6.2 Accepting Appointments, Comment (3)

⁵ Va. Sup. Ct. R. Pt.6 sec II, Rule 1.1 Competence

⁶ Va. Sup. Ct. R. Pt.6 sec II, Rule 1.3 Diligence, Comment (1)

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From the Chair...

By Donald J. Guter, RADM JAGC USN (Ret.)

Standing Committee on Legal Assistance for Military Personnel

One of my privileges as chair of the LAMP Committee is the ability to recommend appointments of new members to the committee every year. Ours is a hard-working and productive committee, and we are fortunate to have a strong group of dedicated, accomplished attorneys involved in the committee's various projects.

We recently had a vacancy on the committee, and I am very pleased that Captain Dwain Alexander II has been appointed to serve out the remainder of the vacancy's term. Captain Alexander is a former active-duty Navy Judge Advocate and served as department head for legal assistance, senior defense counsel and senior trial counsel at the Naval Legal Service Office, North Central. His following tour was on board the USS Enterprise (CVN 65) as assistant staff judge advocate. In 1995, he transferred to my command, Naval Legal Service Office, Mid-Atlantic (NLSO), and served as the department head for legal assistance.

In 1996, Captain Alexander left active duty and accepted a position as civilian legal assistance attorney for NLSO where he is currently employed. In 1997, he joined the Naval Reserve and is currently the Commanding Officer of Naval Reserve Legal Service Office Pacific. Captain Alexander is entitled to wear the Navy Commendation Medal, Navy Achievement Medal and other service ribbons. In 2006, LAMP awarded him the Distinguished Service Award, and he was civilian of the year at the NLSO. In 2007, the National Association of Consumer Advocates selected him as Consumer Advocate of the Year. In 2008, he was Civilian of the Year for the Judge Advocate Generals Corps, and received the Superior Civilian Service Award from the Navy.

Additionally, Captain Alexander is a frequent speaker on military issues relating to consumer and family law issues, and he is a contributing editor for the National Consumer Law Center's publication, *Collection Actions*. In this issue of *Dialogue*, Captain Alexander has authored an article on the duties of a guardian *ad litem* (GAL) when handling a case for a servicemember. This is important information not only for those serving as GALs, but also for any practitioner who may be involved in cases where a GAL may be appointed to represent the interests of a military-related party. The LAMP Committee thanks Captain Alexander for preparing this very useful article.

As we near the time when some of our membership will be rotating off and new members come on, I look forward to continuing to enhance the stability and competence of the committee through appointments like that of Captain Alexander. With this caliber of experience, LAMP will continue to effectively carry out its mission to support the legal needs of our nation's men and women in uniform through our innovative projects and policy advocacy.

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IOLTA Feature

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Insurance Basics for IOLTA Programs

IOLTA

By Maria Henderson

Insurance Basics for IOLTA Programs

In economic downturns, Interest on Lawyers' Trust Accounts (IOLTA) programs will seek ways to reduce costs and maximize revenues in an effort to avoid big cuts to grantees. Insurance premiums may seem to be a logical target for cost cutting, but a short term savings could come at a price. This article will address how IOLTA programs should balance the insurance expense with the protection insurance affords and what issues they should consider regarding types and amounts of coverage to obtain.

From the Chair

Grantee Spotlight

Why have insurance?

News and Notes

Insurance provides protections for property and assets from loss through disaster or theft. It covers costs of treatments and lost wages for persons harmed on the program's premises. If the directors and officers of the program are sued, it provides a defense.

Pro Bono

Some states provide limited immunity for non-profit and charitable organizations. However, even in these states, insurance is necessary because limited immunity laws often have provisions restricting protection to certain actions and conditions. Generally, charitable immunity laws do not provide protection from: 1. being sued, resulting minimally in costs for a legal defense; 2. gross negligence or willful or wanton misconduct; 3. employment laws; and 4. injuries resulting from use of a motor vehicle, among others.

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On the federal level, President Clinton signed the Volunteer Protection Act of 1997, which provides limited civil liability protection for non-profit volunteers in certain circumstances. While volunteers get some protection, this law does not limit the liability of an organization for harm caused by volunteers. Insurance can provide important protections for the gaps in the federal and state immunity laws.

What is the role of the insurance agent?

Knowledgeable insurance agents are invaluable in the process of evaluating insurance needs and comparing options; therefore, it is important to find someone who understands the unique

Insurance Requirements Checklist

- Know what protections are afforded through charitable immunity laws in the program's state.
- Find a qualified insurance agent.
- Identify the coverages needed and discuss those requirements with the agent – commercial general liability, directors & officers, workers compensation, ERISA, crime, umbrella, etc.
- Request that the insurance agent provide a chart comparing costs and benefits of various products that can be purchased.
- Check the A.M. Best rating of the insurance companies from which the program is considering purchasing coverage.
- Ask the state's department of insurance about complaints against the insurance

risks faced by IOLTA organizations. In order to find the best agent, it may be helpful to identify the person who handles the insurance needs of the state bar or a non-profit located in the state with similar needs. In addition, consulting with directors of other IOLTA programs may be helpful because many large insurance agencies are licensed to provide products outside their resident state.

companies from which the program is considering purchasing coverage.

- If event coverage is needed, verify whether the program's commercial general liability policy already includes this or a rider for each event is needed.

Once the agent procures coverage, he/she receives commissions from the insurance companies. In return for that compensation, agents provide the following services: an annual review of your insurance needs, product comparisons of benefits and costs, and updates on insurance laws and rules that may affect your needs.

What coverages should be purchased?

Insurance needs will vary from program to program; for this reason, it is imperative to have a discussion with an agent about the organization's structure. The agent asks questions to assist in finding the optimal protection. In most cases, a commercial general liability policy is sufficient. These policies provide a number of protections – business risks associated with fire, theft, flood, premises liability, personal injury, libel/slander, services liability, employee dishonesty, advertising injury, data protection, and automobile coverage. The agent can help in selecting the limits most appropriate for the organization.

One of the greatest risks IOLTA programs face is the potential for employee theft; therefore, adequate coverage for this risk is imperative. Coverage for employee theft is often available as part of a commercial general liability policy; however, its limits may be less than the overall limits for other covered acts. As a result, it may not provide adequate protection. In this situation, a crime policy can be purchased to augment the coverage.

Most boards of directors are requiring the organization to purchase a professional liability policy known as Director's and Officers (D&O). This policy provides coverage for legal liability of the board and the officers of the IOLTA program. Specifically, it affords protections for the wrongful acts of the board, breeches in their duties, mismanagement of funds through its investment strategy, employment related actions, and the associated defense costs. Recruiting good board members is important and affording them protection from being personally liable for claims is something they will expect.

Workers compensation protection requirements vary from state to state but some insurance coverage is typically mandatory. While the type of work performed at IOLTA programs does not often lead to an injury, it is important to have coverage for those times when an employee may be injured in a slip and fall event or some other accident while at work.

If an IOLTA program provides a 401K, SEP, or 403 (b) plans for its employees, it is prudent to consider ERISA coverage which provides protection against claims related to employee retirement.

If the organization has periodic events, such as a fundraiser, event coverage should be considered. Some commercial general liability policies may already provide such coverage, and others may require a rider or endorsement to the policy for each separate event.

Further, basic coverage afforded through a commercial general liability, crime, automobile, director and officer, or commercial property policy may not be enough protection for the organization's needs. To increase coverage, the program can purchase an umbrella or excess coverage policy. For example, if the maximum available commercial general liability policy limits are \$1,000,000 in aggregate, and the organization or agent believe that

\$3,000,000 is the needed coverage, the excess policy can be purchased for an additional \$2,000,000 in coverage. Typically, excess policy premiums are not that costly relative to the underlying policies, and thus the purchase of an excess policy can be a very good investment.

What is the role of the insurance company?

The insurance company should maintain adequate surplus to pay claims. When making the decision to purchase insurance, the program should ascertain the company's A.M. Best rating, either by asking the agent or by going to www.ambest.com. A.M. Best evaluates insurance companies and provides ratings that speak to the financial stability of the company and its solvency. A poor A.M. Best rating is a red flag; it indicates that the rating organization has concerns with the financial viability of the company.

It is also important to check the state's department of insurance website or call them to inquire about complaints against the company. Insurance companies are required to report all complaints and resolutions to their respective departments of insurance. Because a customer expects responsiveness and good service, understanding the types of complaints that have been made will aid in the evaluation of the company.

In an effort to understand the risk it is assuming and to avoid unnecessary claims, most major insurance companies provide risk evaluation services. These services may range from simple checklists of controls that an IOLTA program should consider putting in place to on-site visits by the insurance company with recommendations for changes to be implemented. No matter how small an IOLTA program is, the organization should consider taking advantage of these programs.

What is the IOLTA program's role in the insurance process?

As challenging as it sounds, the program should know the contents of the policy contracts. Minimally, the program should read through the exclusions to understand what is not covered. If something is not covered for which protection is needed, it should consult the agent to procure coverage or look for alternatives.

Conclusion

Insurance can be a significant cost for an IOLTA program, but before making a decision to reduce coverage or not purchase it at all, carefully consider the risks. One serious claim against the program could result in enormous losses that might otherwise have been avoided. Consult with the program's insurance agent to assist in the decision-making process and find a new agent if the expected service is not given. Insurance buying can be a complicated process but taking the time to make informed decisions will result in security for IOLTA programs.

***Maria Henderson** is the Director of Insurance Services at the law firm of Akeman Senterfitt and the First Vice President of The Florida Bar Foundation.*

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From the Chair...

By Lora Livingston

Commission on Interest on Lawyers' Trust Accounts

On December 29, 2010, our community breathed an audible sign of relief when President Obama signed into law H.B. 6398, which continues unlimited Federal Deposit Insurance Corporation (FDIC) insurance for IOLTA accounts through December 31, 2012. (For more information on the legislation and its background, see [News and Notes](#).) The successful legislative advocacy campaign to pass this bill was led by the American Bar Association, the National Association of IOLTA Programs and the National Legal Aid and Defender Association, each of which called upon their leaders and membership to aid in obtaining the desired result. There are many political leaders, organizations and individuals to thank for this victory. While I cannot provide a full listing in the limited space of this column, I do want to take this opportunity to express my gratitude to some of the key supporters.

Representative Lloyd Doggett (D. TX) deserves special mention for getting the ball rolling by introducing the legislation in the House of Representatives on November 15, 2010. His leadership and commitment to our issue were clear from his eloquent remarks on the Floor of the House in support of the bill. Rep. Judy Biggert (R. IL) also provided supportive remarks and illustrated the bi-partisan nature of the concern raised by this issue. In addition, the support of Rep. Barney Frank (D. MA), Chair of the House Financial Services Committee, Rep. Richard Shelby (R. AL), Ranking Member of that Committee, and Rep. John Conyers (D. MI) were essential to our victory.

In the Senate, there were four co-sponsors of legislation who demonstrated leadership and the bi-partisan nature of support for fixing the problem in that branch of Congress: Senators Jeff Merkley (D. OR), Michael Enzi (R. WY), Tim Johnson (D. SD) and Bob Corker (R. TN). In addition, Senators Chris Dodd (D. CT), John Cornyn (R. TX) and Johnny Isakson (R. GA) deserve special mention for lobbying their colleagues to gain unanimous consent for the bill on the last day that the Senate was in session.

I also want to thank the many IOLTA directors, trustees and friends who lobbied their members of Congress on this issue. There were many different "calls for action" that were sounded, and each time members of the IOLTA community swiftly responded with letters, calls and e-mails to their elected officials, thereby keeping the issue front and center at all times.

While I was hopeful that we would succeed in our lobbying efforts, NAIP President Betty Balli Torres and I were aware that planning for a less desirable outcome was needed. As a result, we appointed the Joint Commission/NAIP FDIC Task Force whose members were: Al Azen, Steve Casey, Michael Gunn, Linda Rexer and ourselves; staffing was provided by Bev Groudine. This group worked tirelessly during the months of November and December, holding numerous conference calls, developing talking points, website postings and other messages that could be used in the event that Congress failed to act. I know that the Task Force members and staff are thankful that the products of their labor were ultimately not needed. Nevertheless, the entire IOLTA community owns them our gratitude for their time, effort and commitment.

And last but certainly not least, there are many people at the ABA who deserve our heartfelt thanks. ABA President Stephen Zack and President-elect Bill Robinson were most supportive of our efforts. Ann Carmichael, the ABA's stellar lobbyist, did an incredible job on our behalf. Ann's intelligence, political acumen and strategic thinking were key to our success. Tom Susman, Director of the ABA's Governmental Affairs Office, was also most helpful in developing our successful legislative approach. Finally, I hope you will help me thank Bev Groudine, the Commission's Staff Counsel, for her tireless efforts and support during this process.

There is no doubt that our community is one that has weathered many storms. This latest one demonstrated once again our strength, resiliency and ability to overcome obstacles. I am hopeful that the days ahead will be a calmer ones in which we can turn our focus to the ongoing goals of increasing revenue and improving the quality of services provided to clients.

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Grantee Spotlight: Connecticut Legal Services Stamford Day Laborer Wage Clinic: Getting paid for an honest day's work

By Steve Eppler-Epstein

Introduction

Two day laborers in Stamford, Connecticut thought they were the lucky ones. They stood under a bridge with all the others hoping for work and were the two picked by a contractor for a job that turned into weeks of employment. They demolished leaky chimneys in a condominium project and helped the mason build new ones. Just one problem: the sub-contractor who hired the workers refused to pay them.

The two men found their way to the Connecticut Legal Services (CLS) Stamford Day Laborer Wage Clinic, which is funded by IOLTA and other sources, including the government grants, United Way, and foundation funding. This Clinic is held two evenings each month to assist in wage enforcement claims by low wage workers. The pro bono lawyers interviewing these two men knew time was short. The sub-contractor had disappeared, but the attorneys realized the condominium owners acted through their association as general contractors. Therefore, they were liable for the wages, if a mechanics' lien could be filed within the 90-day time limit. Lawyers at CLS contacted Attorney Brian Rice at McCarter & English; before the 90 days expired, he prepared 38 mechanics' liens (2 for each condominium owner) and had them served. The case was settled with full payment of wages shortly thereafter.

"Without our Day Laborer Wage Clinic, these two workers' issues would never have been addressed," notes CLS manager Nadine Nevins. "The state agency that enforces wages and hours can only handle a fraction of the instances of unpaid wages. Our community presence brought this case in, and our partnership with pro bono counsel resulted in a spectacular success. What's sad is that this work is so essential – that so many people doing an honest day's work are not being paid properly."

The Background

In the 1990's, advocates for "welfare reform" sharply cut back on government assistance to low-income households. They argued that people who can work should "play by the rules" and support themselves. Since that time, many less educated and less-skilled people have entered the labor market. One problem that emerged in the wake of these changes is that not everyone else is "playing by the rules": too many employers of low-wage workers are ignoring state and federal law regarding payment of wages.

Connecticut Legal Services, the largest legal aid program in Connecticut, responded to the problems faced by low-wage workers by starting its Day Laborer Wage Clinic in Stamford, Connecticut. The project began in 2007 when CLS Attorney Megan McLeod was approached by Father Juan David Paniagua, a community organizer working with low-wage immigrant workers in Stamford. Among the issues they raised with him was one that sounded like a legal problem: employers were not properly paying the workers, i.e. sometimes not all the wages were paid, sometimes overtime was not properly paid, sometimes no wages were paid at all. Paniagua's first task was to convince workers to meet with lawyers. "At the beginning,

some of them didn't believe that anyone would give them a lawyer for free," he said. However, once a few workers got help, word of the successes spread in the community.

McLeod already was assisting four men who had worked at a cleaning company for a month—ten hours a day, seven days a week. At the end of the month, the owner of the company refused to pay them. When the men insisted on collecting their wages, the owner threatened to report the workers to Immigration and Customs Enforcement. McLeod eventually was able to help them obtain most of their back wages, but she now knew that the problem of unpaid wages was becoming epidemic.

Development of the Clinic

CLS' legal team knew the only way to make a dent in the burgeoning issue was to create a community-based evening clinic. This Clinic could be marketed to day laborers and leverage a significant level of pro bono assistance. "Our goal is to let all employers know that they can't get away with cheating their employees," says CLS Deputy Director Debi Witkin. "Thirty years ago, few people knew what rights tenants had under the law; landlords were throwing people out of their apartments without a chance to defend their rights," she added. "It took years of legal services' presence in the housing courts to create an expectation that laws protecting tenants would be followed. A few years from now, we hope most employers will realize that they can't exploit immigrant day laborers and get away with it."

The clinic proved to be an eye-opening experience for pro bono lawyers. "Before I started volunteering at the clinic, I had no idea of the extent of the abuse that goes on a daily basis. It has been shocking to me," reports CLS Board member Amy Haberman. "Clients come in who haven't been paid by landscaping companies working down the block from my home, and restaurants where I eat. And it's not happening just once or twice – we hear these stories over and over again at every clinic."

Attorney Mark Sank, who leads his own small practice, was recognized by the Connecticut Bar Association for his pro bono efforts on behalf of the clinic. "It's a shame, what's happened to so many of these laborers," Sank said. "They stand out on the street, they work really hard on these jobs, and at the end of the week the employer says 'I'm not going to pay you,' and they're all scared."

Overcoming Fear

Some workers have particular reason to be frightened. In one case brought to federal court by CLS staff, with pro bono support from employment lawyer Peter Goselin, two men worked hundreds of hours for a home repair contractor. Not only did the contractor fail to pay them, but before he "hired" them, he insisted one of them make a \$600 payment to cover the contractor's supposed "insurance costs." When the workers sought legal help to collect the wages, the contractor began making threatening calls and leaving threatening messages for both men. He even forced his way into the house of one of the workers and threatened to kill him, if he continued to pursue the wage collection action.

"The refusal to pay day laborers and other low-wage workers is in danger of becoming just another cost-saving measure for too many employers in Connecticut," said Goselin. "When this kind of exploitation is coupled with threats and intimidation it undermines the rights of all working people. We need to get the word out that failure to pay wages is illegal and that employers who resort to it can and will be challenged."

In addition, some of the workers going unpaid are immigrants or perceived by their employers to be undocumented workers. "Fear is the greatest ally of exploitation," notes Cecily Ziegler, a former CLS attorney who worked at the clinic for two years. "The combination of desperation for work, limited English proficiency, and fear concerning their immigration status makes these workers incredibly vulnerable."

Services Provided by the Clinic

While the clinic has its share of high-profile cases, much of the work handled on “clinic night” is less glamorous, but just as important to the workers who receive assistance. Pro bono lawyers (trained and supported by CLS’ staff) interview clients and determine if a violation of wage and hour laws occurred. They help clients produce documentation of the unpaid wages, and then develop a demand letter or filings for the worker present in small claims court. Complex cases that cannot be handled through this self-help approach are assigned to a CLS staff attorneys or pro bono attorneys. Volunteers also train workers to better protect themselves in the future. They advise workers to carefully keep records of their hours worked and note all available information about their employer, should it be necessary to enforce their wage rights at a later date.

The Growing Need

Despite the assistance of counsel, too many cases of unpaid wages are unresolved; however, the Clinic is making a difference: in the first years of its existence over 100 workers received back wages totaling over \$200,000. “In a time of financial stress, these dollars are enormously important in the lives of low-income families,” said Nevins. “The reality is that these services are needed throughout Connecticut, not just in Stamford. Our hope is that as the IOLTA crisis eases, we will be able to expand this service model throughout our service area.” Day laborers who worked their hours without getting paid hope so too.

***Steve Eppler-Epstein** is the Executive Director of Connecticut Legal Services. He joined the program as a staff attorney in 1984.*

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News and Notes

FDIC Insurance of IOLTA Accounts

On December 29, 2010, President Obama signed into law legislation (H.R. 6398) that extended unlimited FDIC insurance for IOLTA accounts through December 31, 2012. The House of Representatives passed this legislation on November 30, 2010, and the Senate passed it by unanimous consent on December 22, 2010.

As is well known by members of the IOLTA Community, the FDIC created the Transaction Account Guarantee (TAG) Program in November 2008 to “strengthen confidence and encourage liquidity in the banking system by guaranteeing newly issued senior unsecured debt of banks, thrifts, and certain holding companies, and by providing full coverage of non-interest bearing deposit transaction accounts, regardless of dollar amount.” In response to advocacy by the American Bar Association, the National Association of IOLTA Programs and many other organizations and individuals, the category of non-interest bearing transaction accounts included IOLTA and functionally equivalent accounts, and provided for unlimited insurance for such accounts held in participating financial institutions through December 31, 2009. The TAG Program was extended several times by the FDIC and in June 2010, it was extended once again until December 31, 2010.

In July 2010, President Obama signed the Dodd Frank Wall Street Reform and Consumer Protection Act into law. While that legislation continued unlimited FDIC insurance for non-interest bearing accounts until December 31, 2012, it inadvertently did not extend that coverage to IOLTA accounts. H.R. 6398 addressed this oversight.

In praising the passage of H.R. 6398, ABA President Stephen Zack stated: “The issue was serious and the hour was growing late: if Congress had not extended unlimited FDIC insurance on these accounts for two more years, lawyers and their clients faced complicated ethical and financial questions about handling money involved in legal transactions. The ultimate casualty of this confusion would have been poor people whose access to the justice system comes through assistance from IOLTA-funded programs.”

For information on the successful efforts to pass the legislation and its key supporters in Congress, see [“From the Chair.”](#)

ABA Honors IOLTA Champions

The American Bar Association presented its 2011 Justice Awards to four members of Congress who were instrumental in obtaining passage of the amendment to the Dodd Frank Wall Street Reform and Consumer Protection Act that provided unlimited FDIC coverage to IOLTA Accounts. The awards were presented on April 12, 2011, at a dinner held during ABA Day in Washington. Senator Jeff Merkley (D. Oregon) and Representatives Lloyd Doggett (D. TX) and Judith Biggert (R. IL) were present to accept their awards, and each spoke eloquently about the importance of IOLTA and the Legal Services Corporation. Senator Michael Enzi (R. WY) was unable to attend the event, but received his award earlier in the day. The dinner was attended by ABA President Stephen Zack and over 100 state and local bar leaders from across the country.

Mandatory IOLTA Update

New Hampshire has joined the growing list of states that have adopted mandatory IOLTA. On December 29, 2010, the New Hampshire Supreme Court approved an amendment to the state's IOLTA rule, converting the IOLTA program from opt-out to mandatory status. The new rule, which requires attorneys who handle client funds to participate in IOLTA, became effective on March 1, 2011. With the addition of New Hampshire, there are now a total of 44 mandatory IOLTA jurisdictions.

Assistance in exploring, drafting, and implementing rule revisions to enhance IOLTA income is available through the Commission on IOLTA and National Association of IOLTA Programs Joint Technical Assistance Committee. Contact Commission Counsel, [Bev Groudine](#) at 312/988-5771 for more information.

New IOLTA Director in Ohio



Angela Lloyd joined the Ohio Legal Assistance Foundation (OLAF) as its new executive director on January 3, 2011. Prior to starting her new position, Angie was a clinical professor at the Ohio State University Michael E. Moritz School of Law for eight years, managing the Justice for Children Practicum and teaching a variety of courses related to children and the law. She also has worked as an immigration attorney with the African Community Resource Center in Los Angeles and has held a number of leadership positions on the legal and management staff of Covenant House New York and Covenant House New Jersey.

Angie is a graduate of the University of Notre Dame and of the Columbia University Law School. She also has a Masters Degree from the Fletcher School of Law and Diplomacy where she was a recipient of a Ford Foundation Fellowship for Study in Public International Law.

Summer 2011 IOLTA Workshops

The Summer 2011 IOLTA Workshops will take place on August 4 – 5, 2011, in Toronto, Canada, at the Delta Chelsea Hotel in conjunction with the ABA Annual Meeting. Co-sponsored by the ABA Commission on IOLTA and the National Association of IOLTA Programs, these sessions will include topics of keen interest to IOLTA program executive directors, staff members and trustees, as well as time for networking. Some of the issues to be discussed include: communications plans, program evaluation, strategic planning, current economic trends and comparative legal services delivery systems. The registration deadline is July 8, 2011. To register online go to <http://www2.americanbar.org/annual/pages/default.aspx>.

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Alternative Models for Providing Pro Bono: Engaging the Inactive Attorney Parent

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Throughout America, there are lawyers on inactive status or who are in transition looking for ways to stay connected to the practice of law. Identifying these lawyers, developing strategies that will facilitate their participation in pro bono legal services, and overcoming obstacles to their participation presents a win-win opportunity for the lawyers and for the clients they serve.

In 2007, under the leadership of then president Karen Mathis, the American Bar Association (ABA) began an initiative to assist senior lawyers transitioning from active employment to retirement. The initiative was known as "The Second Season of Service" and one of its areas of focus was to identify opportunities for senior lawyers to engage in pro bono practice. In addition to directing lawyers to pro bono volunteer opportunities, The Second Season of Service website, www.secondseasonofservice.org provided a wide range of resources on insurance, professional standards and licensing requirements necessary to do pro bono work.

In combination with this effort, many states in recent years have passed emeritus rules, which encourage senior and inactive lawyers to provide pro bono. These rules allow lawyers licensed locally or in another jurisdiction to practice pro bono under the supervision of a legal services or pro bono organization. By practicing under the auspices of an organized program, emeritus lawyers can receive training, supervision and free malpractice insurance. Often these rules provide for a waiver of bar dues.

Passage of emeritus rules alone has not been enough to encourage the targeted lawyers to take advantage of the opportunity to provide pro bono. A survey conducted by the ABA Commission on Law and Aging found that adopting emeritus attorney pro bono practice rules without establishing an emeritus attorney pro bono program is not effective in connecting emeritus attorneys to opportunities to address the unmet civil legal needs of persons unable to pay for those services or in providing a meaningful volunteer experience for emeritus attorneys. Without a program in place, very few attorneys take advantage of the limited practice rules and volunteer to provide pro bono legal services.

Although several states have adopted rules that allow senior and inactive lawyers to do pro bono work, and programs to support those lawyers' interests, many of the programs focus more on engaging senior attorneys as opposed to attorneys who might be inactive. Few programs have been developed to address specific groups of inactive attorneys - lawyers who might have particular needs or interests depending on the reason for their inactive status. One of these groups is inactive lawyers who are mothers, many of whom have stopped working to care for young children. This group represents a large untapped pool of attorneys who might want to do pro bono but are constrained by not having the support and resources of a law practice, or by lack of access to training and mentoring. These lawyers need a program that will fully support their interest in doing pro bono work while at the same time providing them flexibility in how they use their time.

To this author's knowledge, there are only two pro bono programs in the country geared specifically towards providing opportunities for inactive lawyer parents. One of these programs is based in Chicago and has been operating for just a few months. The program, known as the Chicago Pro Bono Attorney Moms Group, is a group of inactive and part-time attorney

mothers who are interested in doing pro bono. The group has partnered with an established public interest organization in Chicago, the Public Interest Law Initiative (PILI), to find opportunities and become connected with pro bono organizations that can provide the group with malpractice insurance and supervision. Currently, there are over 40 members who will initially be focusing on group pro bono projects so that the women have a chance to meet each other while also providing time limited pro bono work.

The purpose of the group is to bring mothers together with structured pro bono activities while also providing a built-in network for a teamwork approach to cases, a resource for babysitting, training and support. The group is informal in nature as the organizing structure is through the use of an online community group tool. The group's first activity will be to provide Powers of Attorney to seniors at a community center with the intention to expand to other types of pro bono as the group further develops.

The other pro bono attorney mothers' group is based in Washington D.C. - The DC Volunteer Lawyers Project (DCVLP) - which has been operating for three years. This article focuses specifically on the development of the DCVLP as it is more well established and provides a model for states interested in developing their own program for inactive attorney mothers. To find out more about the establishment and growth of the DCVLP, this author interviewed Jenny Brody, a founder of the DCVLP who currently serves as its Co-Executive Director.

Dialogue: Why did you create the DC Volunteer Lawyers Project?

Brody: After leaving private practice and staying home to care for my three kids for 15 years, I wanted to get back into legal work. I decided to start by taking pro bono cases on my own. I found the work very rewarding, but also found it expensive, because I had to purchase my own malpractice insurance policy and also pay for other costs associated with practicing law. I met two other lawyers at home, Marla Spindel and Karen Marcou, who were also taking pro bono cases, and paying for their own malpractice policies and other associated costs. We thought there were probably other lawyers at home who would take pro bono cases if there was an organization to support them, so we decided to create one.

We first approached existing legal services organizations for help with the idea, but found lack of funding to be a barrier. As a result, we decided to start our own organization and incorporated into a 501 (c)(3). While waiting for our tax-exempt status to be approved, we held our first recruiting meeting in January 2008 at my house. We posted notices of the meeting on the listservs of local schools and parent groups. Thirty lawyers attended. At that meeting, we asked for contributions to buy a malpractice policy, and also talked about the types of cases we were interested in, namely, family law, particularly domestic violence, and also serving as guardians *ad litem* for children.

We received enough funds from our first meeting to purchase our group malpractice policy through the NLADA, which was quite affordable, since that organization covers legal services organizations like the DCVLP. We also started taking cases, teaming up together in pairs, because we found it worked well: we could discuss the cases and co-mentor each other, and also, if one volunteer had a child-care emergency, the other could cover. We continue to assign all of our cases to pairs of volunteers because we find it has a number of benefits, including providing added security for our volunteers. Since our clients often live in high-crime areas, volunteers are more secure if they make home visits in pairs.

From the beginning, our volunteers have showed a high level of commitment to their cases, and bring extensive experience from their work in private practice or with the government before having taken time off to stay home with their families. We have been able to help each other to re-enter the world of law practice, "dusting off" our skills in representing clients, dealing with opposing counsel, filing motions and appearing in court. We also started getting together on a regular basis to talk about our work, at first informally, and now through scheduled "active cases meetings." In addition, we now sponsor a monthly speaker series, in which we have experts in family law speak on topics related to our work.

Dialogue: Who are the members of the group and why did you target this particular population?

Brody: The original members were lawyer parents at home. We targeted this group because we ourselves were lawyers at home, and because we felt that it was an underutilized resource. Based on our own experience, we knew that many lawyers at home did not want to practice law full time, but would take on one or two pro bono cases, if they had the resources to do so. Also, we knew that many lawyers in this group had years of legal experience that could be put to good use on behalf of indigent clients who needed help. So, we wanted to connect this underused resource -- lawyers at home -- with the people who needed their skills.

Dialogue: How many volunteers did you have initially and how has the group grown over time?

Brody: Our original group, in January 2008, consisted of only three lawyers: Marla, Karen and me. Three years later, by January 2011, we have over 300 volunteers registered with the DCVLP. Our group grew much faster than we had ever anticipated. We started with lawyers at home and expanded in early 2009 to include associates who had been laid off from their law firms as a result of the recession. We also started recruiting senior lawyers, who had retired but still wanted to practice on a limited basis. Further, we formed a partnership with the U.S. Department of Justice Pro Bono Manager, to recruit and train federal government attorneys. Lawyers who work for the federal government are not covered by malpractice insurance, and are not allowed to use government resources for "private use," yet many want to take pro bono cases. Our resources, including malpractice coverage, office space and reimbursement for litigation costs, make it possible for these federal government attorneys to do pro bono work. As a result, we have a growing number of highly-qualified, committed, federal government attorneys volunteering with us.

Dialogue: What type of pro bono does your group provide and how has this developed?

Brody: We decided to focus on family law because there is the greatest need for free legal services in family law cases, with approximately 77% of the parties in these cases proceeding pro se. We started by representing children as guardians *ad litem* in disputed custody cases as well as representing domestic violence victims who needed civil protection orders. We soon learned that many domestic violence victims needed additional legal help, particularly with child custody, child support and divorce, so we started taking those cases. One of our volunteers also started helping foreign-born domestic violence victims with U Visas and Violence Against Women Act (VAWA) petitions. She has since expanded our immigration practice to include unaccompanied juveniles and T Visas.

Our organization also formed a partnership with Foster and Adoptive Parents Advocacy Center (FAPAC), an organization which was seeking attorneys to represent foster parents in adoption and guardianship cases, and we now staff legal information clinics for FAPAC and also take referrals from them.

Dialogue: How are cases assigned?

Brody: Our first case assignment procedures were relatively informal. We now send out a weekly email update to all of our volunteers, describing cases which need attorneys. In addition, we take Civil Protection Order cases on designated days of the week, when we have a supervisor in domestic violence court to assist our volunteers. These cases are referred by us by the domestic violence intake center in DC Superior Court. Judges in the Domestic Relations Branch of Superior Court contact us with requests for GALs, which we then assign to interested volunteers. Generally, we have a new volunteer "shadow" a more experienced volunteer first, before taking a case as lead counsel. In all cases, the attorney is required to take a relevant training program and we have a supervisor who monitors the case closely, reviews all court documents before filing, and goes to court with the volunteer team. We have developed a software program to keep track of all of our cases, and we complete conflicts checks before accepting a new

client.

Dialogue: Are there other group pro bono experiences that the members engage in?

Brody: In addition to the legal clinics with FAPAC, we recently started participating in an Attorney Negotiator Program, in which our volunteers go to DC Superior Court and offer to negotiate a settlement with parties who are making initial appearances in family law cases. In this program, our volunteers do not represent either party, but instead serve as informal mediators. It is a great volunteer opportunity for a lawyer with limited time, since it involves one morning in court, with no further ongoing responsibility for a case.

Dialogue: What is the overall time commitment that is required from your members and what types of tasks are members expected to engage in?

Brody: For volunteers representing clients, the time commitment varies widely. Civil Protection Order cases are very condensed: they take ten days from the time the client is referred to us until the hearing date. A volunteer attorney spends approximately 10-15 hours in that time period, meeting with the client, gathering evidence, preparing witnesses and representing the client at a hearing. It's a great opportunity to gain litigation experience in a short time frame. Volunteers representing clients in GAL, custody, adoption/guardianship or immigration matters typically spend 30-40 hours on a case, but this time is spread out over 12-18 months, and involves several hearings, along with settlement negotiations and/or an evidentiary hearing.

Dialogue: Can you describe some of the relationships you have with other organizations in the community and how you have developed these relationships over time?

Brody: We work with a wide range of partner organizations in DC. We have been very fortunate to receive valuable mentoring and training from existing legal services organizations. We first started working with Women Empowered Against Violence (WEAVE), a local organization serving domestic violence survivors. We also take referrals from law school domestic violence clinics, and work with a local organization called DV LEAP, which represents domestic violence survivors at the appellate level.

At this point, our most important relationship is with DC Superior Court. Most of our domestic violence clients are referred to us from an organization called SAFE, which runs the domestic violence intake center at the Court. The office of Counsel for Child Abuse and Neglect (CCAN) in the Court refers foster parents to us for help with guardianship and adoption cases. In addition, judges in the Family Division send us requests for volunteers to serve as guardians *ad litem* for children in custody cases.

In 2009, we obtained an Administrative Order from DC Superior Court, which allows lawyers who are active members of the bar of another state, but not members of the DC Bar, to practice pro bono in DC Superior Court under the supervision of the DCVLP. This permits us to take many more cases because it allows volunteers who have recently moved to DC, and who cannot afford to "waive in" to the DC Bar, to practice pro bono in DC Superior Court.

We also work with KIND (Kids in Need of Defense) on immigration matters, and, as described above, with FAPAC on representing foster parents. Other partners include the Washington College of Law, Lawyers' Re-entry Program, which is a program to assist lawyers "on ramp" back into practice after taking time off. And, we are members of the DC Consortium of Legal Services Providers, an organization of over 20 legal services agencies in DC. It is very important to the DCVLP to develop and maintain close ties to the DC legal services community. In this way, the community is aware of the services we provide, we coordinate with other providers to ensure we serve those most in need, and we ensure that we do not duplicate services.

Dialogue: How does your organization obtain funding?

Brody: We began in 2008 by holding our first annual fundraiser at the

home of one of our volunteers, and invited friends and family. Individual donations from our annual fundraiser still make up the largest portion of our funding. Early in our development, we were able to attract funding from a private family foundation, which has been crucial to our ability to grow as an organization. In 2009 and 2010, we were fortunate to receive a grant from the Verizon Foundation, which supports domestic violence work. In 2010, we also received funding from the DC Women's Bar Association and the Washington Area Women's Foundation. These funding sources help pay the salaries of a few of our administrative personnel as well as some supervising attorneys. We are always looking for new sources of support to help us expand the number of clients we can serve, because the need is so great.

Dialogue: How do you market your project to potential members?

Brody: We tell potential volunteers: "you can make a difference in the life of a woman, family or child." Our clients are people desperately in need of legal assistance. For instance, representing a domestic violence survivor in a case to obtain a protection order can save her life. Also, serving as a guardian *ad litem* for a child allows a volunteer to help not only a child, but also the child's family, by helping the court to resolve a custody dispute in a way that ensures the child's safety and allows the child to grow and develop in the best way possible

We also recruit volunteers by stressing to them the benefits they will receive from doing pro bono work: gaining litigation experience, learning a new area of law, and developing confidence and skills as a lawyer. Aside from these practical benefits, there is a tremendous emotional benefit as well to using your law degree to help others.

From a practical perspective, we emphasize that the DCVLP makes it possible for its volunteers to practice law by providing all of the supports they need, as well as training, mentoring and supervision. This increases volunteers' confidence and ensures that they have a rewarding experience and provide quality representation to their clients. The proof is that two-thirds of DCVLP volunteers go on to take another case with us, and some are now on their fourth or fifth case with our organization.

Dialogue: What types of benefits do your lawyer parent participants receive being a part of your organization?

Brody: Tangible benefits that our volunteers receive include honing their legal skills, gaining litigation experience, having a supervisor who can provide a recent reference to potential employers, having a network of other attorneys to work with, and receiving substantive training in family law. Some of our volunteers have gone on to start their own family law practices as solo practitioners, and others have become guardians *ad litem* for children in foster care, receiving payment for this work from DC Superior Court.

Dialogue: What types of benefits have been realized by the clients served?

Brody: It is difficult to describe the profound impact of our representation on our clients. We represent them in matters which affect their deepest and most important needs: for safety, in the case of domestic violence survivors; for their children, in the case of custody matters; for economic freedom from an abuser, in the case of child support; for the right to remain safe in this country, in the case of immigration matters.

Sometimes funders ask us, "How do you know your clients are being helped by your work?" Our answer is, "We win 99% of our cases." When you accomplish a client's goal in his or her case, either through litigation or through an advantageous settlement, you can be reasonably sure that your client is better off as a result of your work.

Dialogue: What are some of the "lessons learned" that you've experienced through the evolution of this group?

Brody: Many lawyers want to do pro bono work, but don't. I think that the most significant obstacle holding lawyers back is insecurity about practicing in an area in which they are unfamiliar, in a court where they have never

practiced, and with clients they do not know. Working together, in pairs, as part of an organization with other lawyers doing the same thing, and being supervised, gives volunteers the confidence they need to do this work successfully and have a rewarding experience. This has been the key to our ability to recruit and retain a large number of volunteers who do high quality legal work.

Another key is to make it practical for lawyers to represent clients by becoming a "surrogate law firm" for them, ie, by providing the administrative supports they need. We are always looking for new ways to eliminate practical barriers to doing pro bono work.

Dialogue: What are some of the obstacles your group has experienced and how did you overcome them?

Brody: Initially, we faced skepticism from established legal services providers in DC about our organization. Many asked us how we would maintain quality control when our volunteers were not associated with law firms. We developed systems to check the bar membership and disciplinary history of all of our volunteers, and also, as noted above, supervise them closely. The organizations, which refer cases to us have come to know and respect our work, which I think has helped our reputation in the legal services community.

In addition, when we started our organization, it was relatively small, and we all knew each other. As we grew quickly, we had no model of an existing organization that worked the way we do, ie, in a decentralized way, with non-law firm volunteers, and no "staff attorneys." We needed to quickly design policies and procedures, and management systems, to manage our rapid growth in volunteers and cases. Fortunately, we have benefited from excellent advice and assistance from a volunteer management consultant who left work to raise her children, and now works with us part-time consulting on organizational issues. We also have a really helpful Advisory Board, whose members assist us with organizational issues. And, we have an excellent IT person who has designed a software system which meets our needs, and helps us keep track of a large number of cases.

Dialogue: How is the group innovative in its approach?

Brody: As far as I know, we are the first organization to focus on recruiting lawyers at home to do pro bono work.

One of our important innovations was to do away with a "bricks and mortar" office, because we could not afford to rent office space. Instead, we signed up for a "virtual office" in an office suite, which, for a very low price, entitles us to use conference rooms for private meetings with clients, and for training programs and speaker events. The virtual office package also includes a mailing address for pleadings, and a phone answering service. All of our volunteers work from home on their computers. To facilitate this, we created an online "pleadings library," which contains sample legal documents utilized in our cases, such as complaints, answers, and motions. These can be downloaded as word documents for our volunteers to use as templates. The pleadings library now contains extensive practice resources as well, such as court rules, forms and a "How To" section, for example, "how to serve a subpoena." The pleadings library is password protected, and only volunteers with active cases are given passwords.

Another innovation is that we realized many volunteers were eager to take a case, but had to wait until our next training program was scheduled. So, we filmed our live training programs, and put them online, in our password protected area. Now we give new volunteers our training manual and a password, and they can take our training program online, on their computer, at their own pace. Volunteers really appreciate this flexibility.

Dialogue: How could another state/city replicate this model? What type of resources does a group need to be able to successfully manage this type of program?

Brody: Our model would be relatively simple to replicate elsewhere. To start, you would need to recruit and gather a group of lawyers at home to

work together on the project and obtain malpractice insurance. Next, you should explore existing legal services organizations and resources in each community, then decide what types of cases to take and sign up for training programs. Group members can then sign up to take cases in pairs. Each lawyer in the pair should then recruit another lawyer to “shadow” her on the next case. Then the shadows can move up and take a case, recruiting a new shadow. And so on, until you have built a critical mass of experienced attorneys. Also, I would advise setting a regular day each month to get together and discuss your cases and experiences. Finally, we at the DCVLP are more than happy to talk with lawyers at home in other jurisdictions, who are interested in starting similar groups, so please feel free to contact us.

Dialogue: Any final words?

Brody: Creating and growing the DCVLP has been a terrific experience, and we urge other lawyers at home to consider doing pro bono work. It is really rewarding.

*To learn more about the DCVLP in Washington, D.C., see <http://www.dcvlp.org> and/or contact Jenny Brody, jbrody@dcvlp.org. For more information about the Chicago Pro Bono Attorney Moms Group, see <http://www.meetup.com/Chicago-Pro-Bono-Attorney-Moms/>

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Vermont Bar Association Presents Celebrate Pro Bono Conference

On October 27, 2010 the Vermont Bar Association held a large pro bono conference at the Vermont statehouse. Morning sessions focused on a discussion of the types legal services organizations operating in the state and pro bono projects being performed at various state courts. The afternoon session consisted of break out groups such as offerings of pro bono training, a discussion of how to incorporate pro bono into legal practice, and how to fix pro bono service gaps. Chief Justice of the Vermont Supreme Court Paul Reiber was the keynote luncheon speaker. The conference was free to attend and participants earned five credits of CLE for their attendance.

For more information, see <http://www.vtbar.org/images/journal/journalarticles/fall2010/ProBonoConference.pdf>.

Mississippi Report on Unmet Needs

In September 2010, the Mississippi Access to Justice Commission released its report on the series of regional hearings on unmet legal needs held around the state by order of the Mississippi Supreme Court. The report includes a series of recommendations for increasing pro bono services, heightening public awareness, increasing legal aid funding, facilitating pro se representation, and expanding general access.

For more information, see <http://msatjc.com/pdf/New%20ATJ%20Report.pdf>.

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By George D. Wolff

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Every Lawyer Referral and Information Service (LRIS) keeps a solid focus on the public side of the LRIS equation. We often hear that a LRIS is “in the business of public service.” Much of a LRIS’s marketing efforts are targeted to the public, and significant resources are devoted to gathering feedback from folks who have contacted a LRIS. Panelist attorneys, however, are a huge and somewhat overlooked part of the LRIS equation when it comes to gathering feedback.

[LRIS](#)

[Leveraging the Power of Focus Groups](#)

Professor Maureen O’Connor, a plenary speaker at the most recent LRIS Workshop and Marketing Instructor at Portland State University in Portland, Oregon, likens panelists to a LRIS’s sales force: “Attorneys are conveying the message. Every LRIS should be putting their attorneys through some kind of training. They have as much to do with the brand as the advertising, web presence, and the service being sold.”

[From the Chair](#)

[The New Census Results Are Here!](#)

Have you checked-in with your panelists lately? What feedback would they offer about your LRIS, its programs, rules and operations? Are they optimistic or pessimistic about the direction your LRIS is going and how it is addressing the current economy? What are panelists hearing from potential clients?

[2011 LRIS Workshop](#)

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After initial training, and perhaps some written feedback in reports, there remains a need to have panelists open up -- to let you know how they think things are going and tell you how things might be improved. What is an effective way to make that happen?

Focus groups.

I recently conducted a non-statistically-significant survey of LRIS Directors regarding their use of focus groups. Some LRIS Directors described experiences with focus groups conducted by outside organizations to change an entire brand or name of a non-profit organization. These focus groups were helpful, but expensive. They were also formal, and often conducted by specialists. And, it turns out, that among all the LRIS Directors surveyed, none have conducted focus groups in connection with their LRIS attorney panelists.

I wanted to relate two recent experiences with what I must very loosely call focus groups. In the past two years, the Oregon State Bar Referral & Information Services conducted two meetings with panelist attorneys that had extraordinary results and many unanticipated benefits – so much so that we are on the verge of convening another such meeting in 2011.

To those who study marketing research techniques, calling the two meetings we conducted “focus groups” might be tantamount to heresy. We did, however, borrow techniques often used in conducting focus groups. On the other hand, it would not be correct to simply call the meetings “think-tanks” either. We divulged few of the outcomes we hoped to achieve. Regardless, we still refer to these meetings as focus groups, conscious of the fact that we bend formal focus group rules.

For example, due to limited resources, we did not use an outside organization or a disinterested third person to conduct either focus group, even though it called upon our moderators’ emotional discipline. As Richard

A. Kreuger and Mary Anne Kasey put it in *Focus Groups: A Practical Guide for Applied Research, Fourth Edition* (2009):

Moderators need to keep their personal views to themselves and focus on understanding the perceptions of the group participants. It's hard to listen to people who don't know a program as well as you do or who criticize a program near and dear to your heart. Harder yet is to smile and say "Thank You" after they've ripped up your sacred program. Some moderators make the mistake of trying to defend or explain rather than the participants being the experts. Professional focus group moderators have a distinct advantage in this respect because they are emotionally detached from the topic of the study. (p. 87)

Despite being known to the group participants, our moderators – one current and one past LRIS manager – tried to maintain a sense of neutrality. For example, we asked non-leading questions: "If additional revenue is generated in a given year, what are your thoughts about how it should be used?" Remaining emotionally detached, however, was challenging. We would catch ourselves correcting misinformation or perceptions about policies and procedures that came up in discussions between the panelists. We had to stay on our toes and not derail the focus group.

We also kept costs low by e-mailing invitations, using our meeting rooms, and providing inexpensive refreshments – pastries and coffee, or sandwiches, chips, and soda. In the invitation and at the outset of the meeting we provided a general statement of our intention for conducting the focus group, mentioned that we invited them in particular because they were very active participants in the program, and expressed our extreme gratitude. We anticipated that about 10% of those invited would accept, and were surprised that closer to 20% accepted.

We did not experience much shyness in either group, and had to intervene little to counter the effects of attorneys that might otherwise be prone to rambling or dominating the discussion. In controlling dominant talkers, *Focus Groups* suggests seating a known dominant talker by the moderator to control him/her with body language, and –

When this strategy does not work, then the more frontal tactic of verbally shifting attention is required. For example: "Thank you, John. Are there others who wish to comment on the question?" . . . or "That's one point of view. Let's hear what others have to say." Avoid eye contact with the talker, and look at others in the group to invite them to talk. (p.100)

Our focus groups may have been unique or attorney focus groups may be different from others in that most attorneys like to talk, and do not suffer fools lightly. We were pleased and surprised that both of our focus groups ran beyond the time allotted.

Case Study Number One: Modest Means Program Focus Group

2008 presented a number of challenges: we were having difficulty maintaining our existing number of Modest Means Program panelists, and we saw an increasing public need -- a ballooning population of moderate-income households that were drifting downward, closer to federal poverty guideline (FPG) levels.

At that time, we had one qualification level – 200% of the current FPG – and our application asked for home and outstanding loan values. Yet, many applicants did not know where to begin in estimating the value of their home in such a volatile market.

According to our policies and procedures, participating panelist attorneys agreed to charge qualified applicants no more than \$60 per hour. Yet, when attempting to recruit prospective panelists, many attorneys commented that they could not afford to take cases at \$60 per hour.

On a Saturday morning in early 2009, enticing participants with only coffee and pastries, we presented this information to a handful of our most active Modest Means Program panelists, local non-profit representatives, and a few committee-member observers. We sought answers to a number of questions, including, “Should the Modest Means program tie itself to other economic indicators or census figures, and if so which ones?” and “Can or should current recessionary indicators be incorporated and/or considered in adjusting Modest Means hourly attorneys’ fees rates?” Where we ended up, however, surprised us all. Recommendations from that meeting included:

- Changing the “\$60 per hour maximum” standard for attorney fees for all clients to a tiered system based on client income and assets, with the goal of encouraging more lawyers to join the program.
- Increasing the income ceiling for the top tier of applicants so that more are eligible for the program.
- Changing how non-liquid assets are evaluated so that homeowners are not disqualified (or wrongly qualified) based on the uncertainty of home values, home equity, and limited access to these assets.

Although we had allocated three hours for this meeting, it lasted closer to 5 hours. The panelists were thoughtful, engaged and enthusiastic, and the time seemed to fly by.

Initially, the tiered approach was introduced at rates of \$60, \$90, and \$120 per hour; however, the panelists raised concerns about pricing the tiers too closely to market rates in rural communities. They also created a simple “rent or own” home analysis that would be fair to applicants, easier to administer, and acceptable to them. They crafted these parameters out of their own experiences with numerous applicants. And, the panelists thanked us for inviting them to participate and be involved in the process.

Not only has the Modest Means Program been enhanced significantly by these changes – providing major benefits to both the public and the participating attorneys – but also the level of goodwill generated endures. This experience was echoed in our second focus group.

Case Study Number Two: Perceptions of Percentage Fees Models

In April of 2010, we invited participating Lawyer Referral Service attorneys to a focus group meeting designed to explore perceptions about various percentage fee models. As before, we did not hire an outside firm. The response rate was so high that we had to divide into two groups, each group containing nearly 10 participants. This meeting lasted close to 3 hours.

This focus group explored a more volatile area and, as a result, the topics of discussion did not necessarily follow the order of our questions. As noted in *Focus Groups*: “Expect these leaps. Know where you are going well enough to know if altering the flow matters.” (p.99)

After outlining possible percentage fee models, we asked: “What are your preliminary thoughts or first impressions about the percentage fee models just outlined?” The immediate responses included discussion of registration fees, consultation fees, flat fees, and administrative costs, but not the actual models presented. Having an outline was essential to ensuring that we covered all desired topics, despite the actual flow of the discussion.

Again, we knowingly bent the rules since one current and one past LRIS manager served as moderators. Arguably, however, since the participants knew us personally and took it for granted that we fully understood the intricacies of Lawyer Referral Service policies and procedures, the discussion produced great results:

- The participants did not feel the need to explain the context – they simply voiced their opinion.

For example, the participants discussed whether they charged a \$35 consultation fee, whether it should be collected and kept by the Lawyer Referral Service, and whether it should exist at all. One older attorney suggested that perhaps the Lawyer Referral Service should keep the consultation fee; and one younger attorney voiced her opinion that the consultation fee was important to those just starting out.

- The dialogue between the participants was free flowing, comfortable, and unguarded.

One panelist countered a few other panelists' complaints about callers not becoming clients, stating: "I don't know what you are talking about. I have a 90% retention rate." The panelist went on to explain that, unlike many other attorneys that "tend to be full of themselves, setting appointments a week out," he returns calls immediately and gets clients into his office "in 24 to 48 hours. If you do that," he said, "clients sign you up." We saw other panelists write this down.

- Perhaps because the participants knew the managers, or perhaps because attorneys are not so shy, the participants exhibited no hesitancy in sharing criticisms, comments or suggestions.
- Above all else, the participants were grateful for our interest in their opinions. We generated a tremendous amount of goodwill from our panelists. As Connie Pruitt, Hillsborough County Bar Association Executive Director described her non-LRIS experience working with a focus group: The most surprising thing about working with a focus group was the "enthusiasm of those that participated and how happy they were to be heard."

This was a common theme for both of our focus groups: The panelists appreciated the opportunity to be heard and were extremely pleased that they had been asked their opinions – good and bad. They understood that we valued their feedback and their participation in the focus groups highly and, above all, their loyalty to the programs. We may have bent the cardinal rules for conducting focus groups, but the amount of goodwill generated was worth it.

George D. Wolff is Manager of the Oregon State Bar Lawyer Referral and Information Service.

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From the Chair...

By Sheldon Warren

Standing Committee on Lawyer Referral and Information Service

There may be no issue that generates more heated discussion in today's society than the impact of social media on how we communicate with each other and, more generally, with the world at large. Those of you who were at the ABA's LRIS Workshop in Portland in October are aware that a significant portion of the program was focused on how the LRIS community can use social media to its advantage. There's no question in my mind that social media, if used properly, can and should be an integral part of any LRIS marketing effort. The marketing of public service oriented lawyer referral services through social media can be done inexpensively and can allow those services to compete on a more level playing field with better funded for-profit entities.

Many of the Workshop attendees (myself included) were somewhat intimidated by the notion of leaping into the social media "pool," and I know all of the presenters worked hard to assuage those concerns. Since the Workshop, I have been thinking about some simple initial steps that a LRIS might want to take to begin evaluating a social media marketing program (or at least begin an internal discussion regarding such a program). I will leave the actual "tricks of the trade" to social media experts, of which I am most definitely not one. However, I think the following simple tasks will at least get a LRIS started. (We'll thus call this column "Beginning Social Media for the Technologically Challenged.")

First, a LRIS should explore what, if any, opinions have been issued by local or state ethics agencies related to the use of social media. Obviously, the first place to start is with your local or state governing bar association. It is at least possible, in fact likely, that the marketing of legal services through social media has already been addressed by one or both of these entities. If it has not, the ABA Journal would be an excellent resource as to what is going on in other venues with regard to this issue. Hardly a week goes by that there are not articles in the Journal relating to social media marketing as it relates to the legal profession. Additionally, the ABA LRIS listserv is, as always, another valuable resource as to how other services are dealing with any ethical issues. (Of course, the LRIS listserv can also be the source of valuable - and free - advice once you decide to implement a social media marketing program for your LRIS.)

Next, wade out into the shallow end of that social media pool and spend several weeks just looking around. (One of the presenters at the Workshop made this very point, indicating that she had spent two months just "observing" how social media worked before ever posting herself.) In addition to any formal rules of operation that the social utilities/information networks (e.g. Facebook, Twitter) might have, there are informal rules, or better yet protocols, that a user is expected to follow. Make sure you know and understand these "protocols" prior to going "live" with your social media program. While a *faux pas* may simply be embarrassing if you are talking to a friend, violating a social media protocol can undermine a marketing effort into which you have poured significant time and effort.

Once you've decided that you can ethically market your LRIS using social

media, and that it would be worthwhile for you to do so (I would suggest this is a given), be absolutely certain that you are ready to make the time commitment necessary to make your marketing program a success. If there is one rule that seems to me to be applicable to all of social media it is: Don't Be Static. If you do not have the time to regularly update your Facebook page or send out regular Tweets, you are simply not going to draw the attention (or get the "friends" or "followers") that is the goal of the entire effort. It may actually take only a few minutes each day to do this, but you have to be willing to put in those few minutes.

Social media is here to stay (or here at least until the next new technological phenomena appears to replace it). Facebook has over 500 million regular users; Twitter has over 175 million. Amongst those millions there are no doubt an enormous number of consumers who need legal services. Your LRIS can and should be reaching those consumers and, unlike many forms of marketing, this can be accomplished at relatively little cost. It just takes an investment of that most precious commodity – time. However, I am confident that your "return on investment" will be significant. So, everyone into the pool!

Finally, the 2011 LRIS Workshop will be in New Orleans from October 19 through 22. We are already working on the agenda, which will again include several programs on using social media to market lawyer referral services. I can guarantee you it will be a great Workshop, as well as great fun. I hope to see you there.

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The New Census Results Are Here! The New Census Results Are Here!

By George D. Wolff

Though not often a direct concern to a Lawyer Referral and Information Service (LRIS), census data is used for grants and funding decisions for legal aid offices and other legal services organizations. Reduced legal services funding in a given community can translate into future consolidation and even closure of satellite legal aid offices. In turn, such funding reductions can foreshadow that a Lawyer Referral Service or Modest Means Program might need to brace itself for increases in call and application volume.

And that's just scratching the surface. U.S. Census Bureau data and reports can have far more direct implications. Census data can substantiate funding LRIS program initiatives, marketing campaigns, and budget requests; help justify sustained levels of funding; and fend off uninformed proposals to make programmatic cuts. Census data provides the backdrop against which an individual LRIS's statistics should be interpreted, grounding both the LRIS's and its oversight committee's or board's policy decisions and long-range strategic plans.

On December 21, 2010, the U.S. Census Bureau announced the 2010 Census Population Counts and delivered the Apportionment Counts to President Obama. Additional reports are scheduled for release from 2011 through 2013. While much of the practical data, such as county-by-county and city-by-city data, has not yet been updated with the 2010 Census results, it is worth the time to explore the level of nuance that is available, bookmark the web pages, and even calendar the release dates for future U.S. Census Bureau reports. By paying attention to this data now, a LRIS is doing its best to be proactive and anticipate changes that may affect its programs. Consider the following:

- A significant percentage increase in persons of Hispanic or Latino origin might provide a solid justification for a budget request or strategic plan that includes new or additional bilingual staff members.
- Changes in demographic data might suggest that community outreach and advertising campaigns be revisited and revised:
 - A county's older demographic might justify continuation of local newspaper ads; targeted, subject-matter-specific pamphlets in community centers/libraries (e.g., long-term care issues and advance directives); LRIS-sponsored presentations by its panelist attorneys.
 - A county population's percentage of commuters and average commuting time to work can provide helpful information for launching an effective radio or public service announcement campaign.
 - An increase in building permits might suggest a community where a pamphlet on working with contractors would reach its target audience.
 - In Oregon, for example, past census data justified the elimination of a series of pamphlets translated into Vietnamese.

Confirmed by both community and lawyer interviews, census data indicated that well over 90% of Vietnamese self-identified as being comfortable with and able to read English -- a significant change from prior census data. This programmatic change, and reallocation of public outreach funds, was grounded in census data and also demonstrated appropriate stewardship to the LRIS's oversight committee.

- Percentage changes in "housing units," "home ownership rate," and "housing units in multi-unit structure" might signify a shift in legal needs from homeowners to landlords and tenants. In turn, this might both affect advertising and outreach efforts to the public, as well as attorney recruitment strategies. Funds budgeted for a public service announcement, for example, might be spent on tenant's rights instead of a segment on home buying.
- Social, economic, housing, and demographic changes could shape changes in attorney recruitment efforts:
 - Is the community increasing or decreasing in size?
 - Are there emerging language needs?
 - Is the population aging? What proportion of the population is now receiving Social Security? What was the average income from Social Security? What percentage of the community population received retirement income other than Social Security?
 - What is the population's employment by industry? What are the occupations and type of employer in the community? What is the population of self-employed, non-incorporated business owners?
 - What are the poverty rates? How does the data breakdown among age groups and families?
- Although on a different cycle from that of the 2010 Census, the [Small Area Income and Poverty Estimates](#) are also extremely helpful in making county-by-county comparisons and understanding emerging needs for Modest Means Programs.

There are a number of different entry points into the [U.S. Census Bureau](#) data, which can be somewhat overwhelming. You might begin by exploring the current county-by-county and city-by-city data for your favorite LRIS through [State & County QuickFacts](#). The U.S. Census Bureau has broken the data down into helpful "QuickFacts." The first display is a state and national comparison – also great background information – which can be broken down further by city and county. At this point, individual county's percentage changes can be compared, side-by-side, with state percentage changes.

QuickFacts are divided into categories, two of which are the most relevant for LRIS purposes – People QuickFacts and Business QuickFacts. Scanning the left-hand column headings reveals statistics which may connect directly to a LRIS, its budget, operations, and marketing and advertising efforts: Population (percent change); Persons Under 5 Years Old (percent); Persons Under 18 Years Old (percent); Persons 65 Years Old And Over (percent); Language Other Than English Spoken At Home; Homeownership Rate; Median Household Income; and Persons Below Poverty Level (percent), among others.

Another point of entry is through the [Fact Sheets](#), through which you can access data by city/town, county, zip or state. The data is grouped by social characteristics, economic characteristics, housing characteristics, and American Community Survey (ACS) demographic characteristics. Each of these categories has an option and link to "show more," which can reveal a treasure trove of data relevant to marketing and advertising, such as: Sex and Age; Educational Attainment; Veteran Status; Grandparents; Relationship status; Commuting to work; Occupation; Industry; Class of

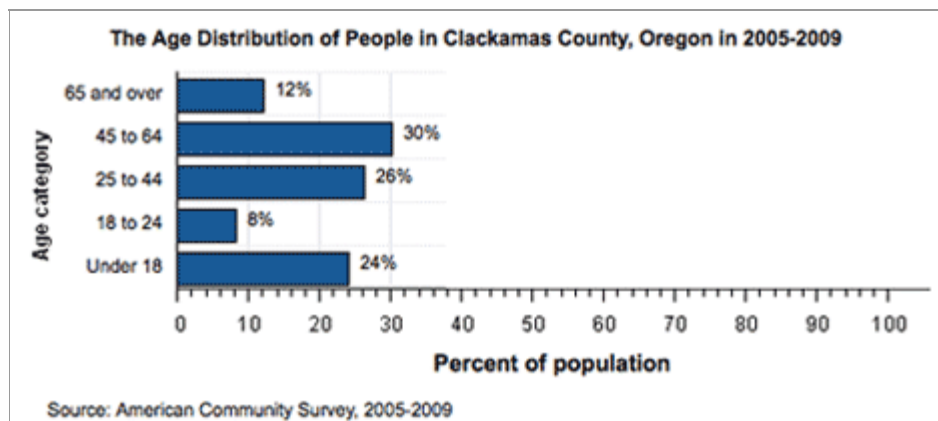
Worker; Income and Benefits.

In addition, the ACS provides a "Narrative" analysis that provides a text profile with easy-to-read graphs. For example, here is the narrative entry for Clackamas County, Oregon regarding commuting:

"TRAVEL TO WORK: Seventy-five percent of Clackamas County workers drove to work alone in 2005-2009, 10 percent carpooled, 3 percent took public transportation, and 4 percent used other means. The remaining 7 percent worked at home. Among those who commuted to work, it took them on average 25.8 minutes to get to work."

And, here is the narrative and graph of the age distribution for the county:

"POPULATION OF Clackamas County: In 2005-2009, Clackamas County had a total population of 376,000 - 189,000 (50 percent) females and 187,000 (50 percent) males. The median age was 39.4 years. Twenty-four percent of the population was under 18 years and 12 percent was 65 years and older."



Now imagine that the LRIS Director wanted to justify an increase in operation costs related to a new expansion into radio advertising. Together, the chart and narrative data could be very helpful in substantiating the new media expansion, and could even affect the message used in the ads.

As of this writing, the U.S. Census Bureau advertised that its first results from the 2010 Census will be available in February 2011 in a new and improved service called [American FactFinder](#), which "offers a fresh look, new tools and easier access to a wide range of Census Bureau statistics." And, finally, so that you can keep track of the forthcoming reports, you may wish to calendar some of the dates found here: [Planned Release Dates For Additional Data](#).

George D. Wolff is Manager of the Oregon State Bar Lawyer Referral and Information Service.

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Consults with a Web Designer

Want to get a quick assessment of what you can do to make your web site more user-friendly? Get an overview of ways enhance the user-friendliness and appeal of your website.

Networking Sessions

Meet with your peers from comparable size programs and discuss shared issues and concerns. This is the best opportunity to have an extended dialogue focused on the operation of your program.



Royal Café

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