

# DIALOGUE

Fall 2010  
VOL. 14, NO. 4

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

As 2010 draws to a close, I am presented with an opportunity to reflect on all of the excellent work undertaken by our standing committee. [Read more...](#)

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IOLTA Feature

IOLTA

## Show Me the Money: Successful Fundraising for Legal Aid in Challenging Times

Fundraising for Legal Aid in Challenging Times

*By Meredith McBurney*

From the Chair

Fundraising is always a challenge, and it is particularly difficult in the current tough economic times. However, as many access to justice leaders have demonstrated, it is possible to continue generating increased revenues for legal aid.

Grantee Spotlight

News and Notes

At the Summer 2010 IOLTA Workshops in San Francisco, three IOLTA directors who are also among our community's best strategic fundraisers - Betty Balli Torres, Caitlin Carlson, and Susan Erlichman<sup>1</sup> - participated in a session with this article's author to discuss fundraising for legal aid in the current challenging economic time.

Pro Bono

The session focused on three of the many fundraising initiatives that are used to generate resources for legal services. They each have their pluses and minuses, and not all will work in every state or program. But all three have proven to be successful in the past year or so in some states, and they were presented to encourage members of the IOLTA community to think about what might be possible in their states. This article will review the highlights of that presentation.

LAMP

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### Overview of Three Initiatives to Consider Pursuing Now

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#### Filing Fees

State legislative funding, through filing fees and appropriations, is the second largest funding source for legal aid. Virtually every state government is suffering severe economic problems, and that might suggest that this is not a good time to be asking the state legislature for funding. However, because the funding mechanism is a fee or fine, the legislature is not put in the position of using scarce general revenue funds. Filing fees also tend to be more stable than appropriations; in many states, appropriations for legal aid have been reduced in the last two years, while filing fees have been largely untouched. The disadvantage of seeking any state funding is that it requires significant time and resources to be successful.

#### Cy Pres

*Cy pres* is the term used for finding another appropriate use for unclaimed funds in class action lawsuits. The decision about the other appropriate use is usually arrived at jointly by counsel and the court, most typically in the context of a settlement agreement. Contributions to legal aid programs based on the doctrine of *cy pres* have increased significantly in recent years. The advantage of running a *cy pres* campaign now is that the number and size of these residuals are unrelated to the economy. The disadvantage is that the funding is unlikely to be available soon, and it is unpredictable – a program cannot budget for these funds.

#### Bar Dues Check-offs

Bar dues check-offs – a line item added to the bar dues form to make a contribution - provide lawyers with an easy mechanism for donating funds to legal aid. There are two approaches. The first is through an "add-on", where the statement provides a suggested donation amount which the lawyer can add to the total due on the statement. The second approach is

“opt-out”, in which a suggested donation is included and the lawyer must subtract the amount from the total amount due if he/she does not want to make the gift. Opt-out almost always generates more revenue than an add-on. There have been check-offs on bar dues statements for many years, most of them producing relatively small amounts of revenue. In the last couple of years, bar associations in a few states have mounted marketing campaigns when they have introduced dues check-offs, educating attorneys about their responsibility to help fund access to justice, and thus raising more funds.

## Case Studies

### Court Fees and Fines: Maryland’s Recent Experience

Like many states, Maryland’s IOLTA program, the Maryland Legal Services Corporation (MLSC), has faced a significant loss of annual revenue because of the historic low interest rates. There has been a filing fee surcharge for legal aid in Maryland since 1998, when it generated about \$2.3 million annually. It was increased in 2004 during an earlier IOLTA revenue drop to generate \$7.2 million. Legal aid advocates made the decision to return to the legislature in 2009 to request another increase. This successful effort is generating an additional \$6.3 million, for total filing fee revenue of \$13.5 million. Because of this filing fee increase, MLSC was able to distribute the largest grant awards in its history at a time when the need could not be greater.

Legislative funding initiatives have the potential for huge returns; however, they are a tremendous undertaking that requires sustained long-term effort and planning. The adage that “all politics are local” cannot be overstated; nevertheless, there are strategies that were key to Maryland’s success that will likely prove useful in any legislative campaign:

- Know and assess the local political landscape, in relation to both the legislature and other key stakeholders. Look at current leadership in key legislative committees, as well as leadership among the judiciary and state and local bar associations.
- Know how your state’s filing fees compare with neighboring states and nationwide. Maryland’s filing fees are relatively low compared with surrounding states, thus making it easier to make a case for increasing the fees.
- Make sure you have the support of the bench and bar. Start early to educate key stakeholders on the issues to build support. In Maryland, legal aid advocates began concerted education efforts and lobbying to get the bar and other key stakeholders on board eight months before the legislative session began.
- Seek assistance from allies, like social service agencies, religious groups, and certain legislative caucuses, to help with grassroots efforts
- Hire a professional lobbyist who is well known and well regarded by the legislators *and* truly understands access to justice.
- Generate as much press as possible, including stories in local, regional, and statewide publications, bar and other legal publications, and well-timed editorials.
- Identify your opposition and to the extent possible, try to work out an agreement or at least neutralize their position. The landlord lobby has historically opposed all surcharge increases; this time around MLSC met with them prior to the session, and although they still opposed the bill, the negotiations were more productive, less hostile.
- Prepare for every possible eventuality, but be ready to respond when something totally unexpected occurs.

Other states that have had recent successes obtaining filing fee surcharges for legal aid include Connecticut, South Dakota, and Wyoming.<sup>2</sup>

### Cy Pres: Campaigns in Washington State and Texas Washington State

In 2005, the Legal Foundation of Washington (LFW), Washington’s IOLTA program, petitioned the Washington Supreme Court for a change in State Court Rule 23 to require that 25 percent of residuals in class actions filed in

state court be paid to LFW. The Court granted the rule change in late 2005, making Washington the first state to require a percentage of *cy pres* to be so designated.<sup>3</sup>

At the time that the rule was under consideration, Congress passed the Class Action Fairness Act, which moved many class actions from state to federal court. To mitigate the impact of this, LFW employed a strategy to encourage volunteer contributions from federal court class actions. Specifically, the program hired a coordinator to educate the bench and bar about the new rule and about the appropriateness of legal aid as a recipient for *cy pres* funds. The coordinator met with various judge's associations, attended bar meetings and wrote articles for bar publications. In addition, LFW developed relationships with lawyers in the class action bar, particularly on the plaintiffs' side. This included inviting them to special events and encouraging them to join boards and committees.

As a result of the Rule 23 change and the education efforts, LFW has received 40 *cy pres* awards totaling approximately \$3 million. Additionally, LFW was just notified that it will be receiving another \$450,000 very shortly. This compares to only four *cy pres* awards between 1993 and 2005 totaling under \$1 million. The awards have ranged in size from \$12 to \$750,000.

### **Texas**

Texas has recently begun a campaign to generate *cy pres* contributions. The effort, a joint project of the Texas Access to Justice Foundation (TAJF), the Texas IOLTA program, and the Texas Access to Justice Commission, is totally voluntary – there has been no rule change. They formed a Court Awards Strategy Committee which studied the issue, produced a toolkit, and educated members of the bench and bar. They recently received their first major *cy pres* gift - more than \$2.6 million has been given to TAJF and five legal aid organizations that provide civil legal services to Texans with disabilities.

### **Bar Dues Check-offs: The Texas and Washington Experiences**

Texas has experimented with various methods of utilizing the bar dues form to provide an opportunity for attorneys to donate to legal aid. Their check-off currently is an opt-out provision with a suggested donation of \$150. In 2010, the approximately 75,000 lawyers in Texas donated \$693,000 through this mechanism. In 2009, the bar dues check-off was an add-on, and generated \$597,000. Texas also has a mandatory fee of \$65<sup>4</sup> (split equally between civil legal aid and criminal indigent defense), that attorneys must pay as part of their license fee to practice law. As a result, it has been especially important that the dues statement be transparent, ensuring that lawyers understand that the check-off is a voluntary contribution.

The Washington State Bar Association (WSBA) adopted a bar dues opt-out of \$50 in 2009. They also launched a strong public awareness campaign, led by the WSBA president, to encourage attorneys to make the voluntary gift of \$50. The campaign included making presentations about the new check-off to judges, local bar associations, and specialty bar associations as well as publishing articles about the check-off and legal aid in various bar publications.

In this first year, they focused on getting bench and bar leadership to demonstrate their commitment and this effort paid off - judges increased giving from 15 to 42 percent, 100 percent of the members of the WSBA Board of Governors contributed, and several local bar association governing boards and the Young Lawyers Division board also gave at 100 percent. In total, \$380,000 was raised through the bar dues check-off, from 7,777 of Washington's approximately 23,000 lawyers. The vast majority of those attorneys had not given to legal aid in the past.

### **Assistance Available**

The consultants for the ABA Resource Center for Access to Justice Initiatives are available to help identify the best strategies for resource development for your state. Contact Meredith McBurney at [meredithmcburney@msn.com](mailto:meredithmcburney@msn.com)

or 303-329-8091 for more information.

***Meredith McBurney** is a resource development consultant for the ABA Resource Center for Access to Justice Initiatives and for Management Information Exchange.*

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<sup>1</sup> Betty Balli Torres is the Executive Director of the Texas Access to Justice Foundation; Caitlin Carlson is the Executive Director of the Legal Foundation of Washington; and Susan Erlichman is the Executive Director of Maryland Legal Services Corporation. In addition to participating in the panel, they each provided information for the case studies in this article.

<sup>2</sup> For a more complete list of states with filing fee surcharges, contact the author at [meredithmcburney@msn.com](mailto:meredithmcburney@msn.com).

<sup>3</sup> Since then, Illinois, Massachusetts, and North Carolina have adopted similar changes to Rule 23.

<sup>4</sup> In addition to Texas, five other states (Illinois, Minnesota, Missouri, Pennsylvania and Wisconsin) include a mandatory fee for civil legal assistance as part of the attorney registration or bar dues that lawyers are required to pay to practice law in the state.

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## From the Chair...

*By Lora Livingston*

### Commission on Interest on Lawyers' Trust Accounts


Once again, the Joint Meetings Committee of the Commission on IOLTA and the National Association of IOLTA Programs (NAIP) is to be congratulated for producing excellent sessions during the recent Summer IOLTA Workshops in San Francisco. The topics presented were timely and interesting, and the formats used enabled time for thoughtful discussion among the panelists, among the panelists and the attendees and among the attendees themselves.

The Workshops began with an update regarding the efforts to obtain unlimited FDIC insurance coverage for IOLTA programs in 2011 and beyond. As members of the IOLTA community are well aware, the Dodd-Frank Wall Street Reform and Consumer Protection Act passed by Congress and signed into law by President Obama in July continued unlimited FDIC insurance for non-interest bearing accounts for two years, beginning January 1, 2011. However, through an oversight, IOLTA accounts, which currently receive unlimited FDIC coverage through the end of the year, were not included in the extension of that coverage when the legislation was passed in July.

As reported in San Francisco, the American Bar Association and the National Legal Aid and Defender lobbyists are hard at work to correct this problem before the end of the year. Many IOLTA programs, state bar associations and state access to justice commissions have weighed in with their members of Congress, seeking action to correct this oversight. Those efforts have already paid off in the House of Representatives: on November 30, 2010, the House passed HB 6398, which extends unlimited FDIC insurance to IOLTA accounts through December 31, 2012. I am optimistic that the Senate will take similar action before adjourning for the year. However, if that does not occur, the Joint FDIC Task Force appointed by NAIP President Betty Torres and myself will continue to develop strategies to assist IOLTA programs respond to any issues that may arise.

It was also in San Francisco that the Commission on IOLTA had to bid farewell to four members whose terms ended: Tim Crim, Justice Denise Johnson, Bruce Iwasaki and Diane Kutzko. I want to take this opportunity to thank each for their dedicated service to the Commission. Tim Crim served as co-chair of the Joint Banking Committee and provided a critical perspective to the Commission as a former banker. Justice Johnson served as co-chair of the Joint Communications Committee and was a source of many interesting topic ideas for *Dialogue* articles. Bruce Iwasaki was a member of both the Joint Technical Assistance Committee and the Joint Communications Committee. His thoughtful comments during Committee and Commission meetings were always appreciated. And last, but not least, Diane Kutzko provided excellent leadership as co-chair of the Joint Meetings Committee, for which I am most grateful.

The Commission is fortunate to be able to welcome four new members this fall: Diane Don, Ainslee Ferdie, Justice Bernette Johnson and Darrell Jordan. You can read more about each in the IOLTA News and Notes section. I look forward to begin working with each of them, and I have no doubt that they will make important contributions to the work of the Commission during their terms of service.



Be sure to mark your calendars now for the Winter 2011 IOLTA Workshops, which will be held in conjunction with the ABA Midyear Meeting in Atlanta on February 10 – 11. While I recognized that many IOLTA programs are operating under budget constraints, having the opportunity to network with your colleagues, to share your successes and challenges, and to learn from one another will be an enormous help and an inspiration as you move forward to face the challenges ahead.

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## Grantee Spotlight: North Dakota's Council on Abused Women's Services

*By Janelle Moos*

The North Dakota Council on Abused Women's Services (NDCAWS), which was established in 1978 as a Coalition, has grown from a loose network of five organizations to a membership of 21 direct service agencies, assisting domestic violence victims in all 53 counties and the four reservations in North Dakota. The organization has indeed operated as a "coalition," with the director of each of the 21 member agencies serving as the board of directors until November 2009, when the membership elected a board of directors that includes community members.

The rich history of the organization includes not only the nurturing and subsequent growth of a direct service provider network, but also a consistent presence in the legislative and policy work advocating for victims' rights and support in a variety of systems. The coalition has been active in this role since the first state protection order statute was passed in 1979.

### A Critical Rule Change

Each year victims of domestic violence seek refuge at crisis centers that offer services designed to provide safety when fleeing a violent relationship. Advocates may offer assistance in securing housing, employment, and transportation but more often than not victims request assistance navigating the civil legal process for obtaining a protection order. Although this type of service is offered by other crisis centers across the county, advocates in North Dakota hold a unique position within the court system because of Administrative Rule 34, which was adopted by the North Dakota Supreme Court in 1992. It significantly changed the way protection orders are handled within the courts.

Under the Rule, certified domestic violence advocates are allowed to assist the petitioner in completing the protection order forms, sit with the petitioner during court proceedings, and at the judge's discretion, make oral and written statements to the court. The most significant change to the protection order process occurred under Section 7 of Administrative Rule 34, which says that while providing these services, "advocates are not engaged in the unauthorized practice of law."

Before Administrative Rule 34 was adopted, the legal profession and the Court had jealously guarded the sole right of licensed lawyers to help prepare court pleadings, to sit with petitioners at counsel table, and to make statements to the court on behalf of the petitioner. Until that language was passed it was unthinkable, and in fact a crime, a class A misdemeanor, that non-lawyers would be permitted to do those things. And yet, because the need was there, because most domestic violence victims can't afford lawyers, because the Court realized how nearly impossible it is for a victim to find the strength to stand up and defend herself, and because there aren't always lawyers available, somebody had to help. Once Administrative Rule 34 was adopted some lawyers criticized the change, but the Court stood behind it and supported it.

Today, there are 64 certified advocates available to help victims throughout the state. During the first six months of 2010, advocates helped victims secure 331 temporary protection orders and 194 permanent protection orders.

## Certification and Training

Section 3 of Administrative Rule 34 sets forth the certification and training requirement for domestic violence advocates. The certification curriculum was established by the State Bar Association and the North Dakota Supreme Court to ensure that advocates have a solid background in court procedures, domestic violence statutes, and the role of law enforcement, advocates, and the court system in the protection order process. Initially, all new advocates are required to receive 10 hours of legal issues training and an additional 30 hours of training on domestic violence. Each year, advocates are required to receive an additional 10 hours of continuing education.

Since the inception of the Rule, the North Dakota Council on Abused Women's Services (NDCAWS) has been responsible for training the advocates. In recent years, it has become apparent that the complexity and diversity of protection order requests and decisions of the court require advocates to maintain a high level of understanding regarding the current environment in which protection orders are awarded. These changes, statutory and by Supreme Court decision, warranted the need for additional training for advocates.

## IOLTA as a Resource

When NDCAWS received an IOLTA grant in 2009, it provided critical support for an advanced legal issues training that was offered to advocates with more than three years experience. In August 2009, almost half the advocates in the state attended a 12-hour training. Topics included understanding the boundaries of Rule 34, the judicial role in protection orders, recent Supreme Court cases, and expert witness testimony in domestic violence cases. The training provided advocates with an opportunity to increase their knowledge while also allowing time for roundtable discussions regarding the current challenges and barriers victims face when requesting protection orders in order to identify solutions.

The IOLTA grant was renewed in 2010, and it supported NDCAWS's second annual advanced legal issues training. That event focused on training advocates to become expert witnesses in domestic violence cases.

These training events have been highly successful. The advocates in attendance specifically appreciate having a forum to problem solve with other advocates with a similar level of experience and to receive feedback and support from experts in the field. IOLTA funds proved to be an invaluable resource to ensure the scope of the Rule is maintained, to increase the number of expert witnesses available, and to enhance the credibility and competence of advocates assisting domestic violence victims in North Dakota.

*Janelle Moos is the Executive Director of the North Dakota Council on Abused Women's Services*

*Excerpts from William A. Neumann's, Executive Director of the State Bar Association in North Dakota, opening statements for Advanced Legal Issues training are included within the article.*

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## News and Notes

### New Commission Members

The Commission on IOLTA welcomes new members Diane Don, Ainslee Ferdie, Justice Bernette Johnson and Darrell Jordan for the 2010-2011 bar year.



**Diane Don** has an extensive background in the financial services industry. She currently serves as Senior Vice President, Downtown Miami Market Executive, at Gibraltar Private Bank & Trust. She is the manager of the Miami Office and her responsibilities span multiple disciplines including fiduciary banking and asset management. Prior to joining Gibraltar, Ms. Don served as a Senior Vice President and Law Firm Practice Group Manager at BankUnited. Ms. Don began her banking career at SunTrust Bank from which she moved to

Citigroup to serve as Director of the Law Firm Group, managing an extensive portfolio of nationally recognized law firms.



**Ainslee Ferdie** is a partner in the firm of Ferdie and Lones in Coral Gables, Florida. His practice focuses on title insurance and real estate and business closings. As a litigator, Mr. Ferdie has appeared in over 50 of Florida's 67 counties and in federal courts in seven states. He is an active mediator in both state and federal district court, as well as with the Florida Department of Insurance. Mr. Ferdie has served as a

magistrate in Dade County and as an associate municipal judge in West Miami. He is a former president of the Coral Gables Bar Association and played a leadership role in the Association Abogados Interamericana.



**Justice Bernette Johnson** has been an Associate Justice of the Louisiana Supreme Court since 1994. Prior to her election to the bench, Justice Johnson spent most of her legal career working in the public sector, including as a legal services attorney and as a deputy city attorney for the City of New Orleans. She has been the recipient of numerous awards, including the ABA Margaret Brent Women Lawyers of Achievement Award, the ABA Spirit of Excellence Award, the Ernest N. Morial

Award, presented by the New Orleans Legal Assistance Corporation, and the Distinguished Civil Rights Advocate Award.



**Darrell Jordan** is the Managing Attorney of the Dallas Office of Dykema Gossett. His name is a very familiar one to the IOLTA community, as he is a former chair of the Commission on IOLTA and provided countless hours of pro bono service representing the Texas Access to Justice Foundation in the litigation challenging the constitutionality of IOLTA. Mr. Jordan is also a former member of the ABA Board of Governors, as well as the former president of the State Bar of Texas and the Dallas Bar Association. He specializes in civil trial

practice and has been designated a Texas Super Lawyer by *Law & Politics* and *Texas Monthly* for the years 2003 through 2010.

**Winter 2011 IOLTA Workshops**



The Winter 2011 IOLTA Workshops will be held on Thursday and Friday, February 10-11 at the Hyatt Regency in Atlanta in conjunction with the ABA Midyear Meeting. The workshop sessions will address many timely topics, and the two days of programming will provide a wonderful opportunity for IOLTA staff and trustees to share information and network. The registration deadline for the workshops and hotel is January 14, 2011, but hotels fill up quickly, so be sure to register as soon as possible. To register online go to: <http://new.abanet.org/calendar/midyear/Pages/default.aspx>

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Pro Bono Feature

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**Bankruptcy Assistance: Creative Strategies**

Pro Bono

*By Allyn O'Connor, ABA Assistant Staff Counsel,  
Business Law Pro Bono Project*

**Bankruptcy  
Assistance:  
Creative  
Strategies**

As unemployment rates soar and the weakened economy stresses individual finances, more consumers are turning to the bankruptcy process for protection from creditors. According to the National Bankruptcy Research Center, consumer bankruptcy filings between April 2009 and April 2010 rose 15%. In some states, filing rates are even higher. Filings in Arizona and California, for example, are up 40% or more from the prior year. A recent *USA Today* headline reads "Only a Fraction of Those in Need File for Bankruptcy." The author cites a lack of affordable legal assistance as a primary reason why most debtors don't file for bankruptcy.

**From the Chair**

**Guide to the  
Pro Bono  
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**Policy News**

More concerning, however, are the number of debtors who attempt to file pro se. A recent study comparing Chapter 7 pro se filings made during 2007 to those made during 2001 found a significant increase in the number of pro se filings. Furthermore, in 2007, 20% of the Chapter 7 cases filed pro se were dismissed or converted to a Chapter 13 case whereas in 2001, only two percent of the Chapter 7 cases filed by an unrepresented debtor were dismissed or converted.

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Bankruptcy courts, legal services organizations and pro bono programs have all noticed the dramatic increase in the need for bankruptcy legal assistance as well as most pro se filers' lack of success. Often working together, these groups have devised creative and effective ways to help consumers by maximizing scarce volunteer resources. The most successful of these involve the collaboration of all stakeholders: bankruptcy judges and court staff; members of the state, local and bankruptcy bars; legal services agencies; and volunteer lawyer programs.

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Bankruptcy experts agree the best form of debtor assistance is full representation by an experienced consumer bankruptcy practitioner through the entire bankruptcy process. Dedicated volunteers continue to make this possible in many instances, through programs such as the Rutgers University School of Law - Camden Bankruptcy Pro Bono Project, which pairs volunteer lawyers with law students to provide debtors with full bankruptcy representation. The ABA Business Law Section's *How to Begin a Pro Bono Program in Your Bankruptcy Court* remains one of the most downloaded pro bono publications offered by the ABA.

Many bankruptcy pro bono programs, however, have faced a shortage of volunteers for the last few years. In part, this is due to the myriad of changes to the bankruptcy process imposed by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. In addition, the current economy has meant a booming business for consumer bankruptcy attorneys, who may not have the time to take on pro bono matters. As a result, many pro bono programs are exploring alternative ways to help debtors.

### **Low Bono Representation**

Maryland debtors have access to a Debtor Assistance Project (DAP). Bankruptcy court personnel coordinate the DAP, though which a debtor may seek pro bono representation. If a debtor is not financially eligible for pro bono representation, he or she may seek reduced-fee, or "Low Bono" services from a volunteer bankruptcy attorney.

The Low Bono portion of the DAP is a list of attorneys developed from those who have completed an on-line DAP volunteer information form. In order to be included on the Low Bono list, attorneys must already serve the DAP in some other capacity, either by staffing the DAP office (help desk) periodically or by completing a bankruptcy pro bono case through the Maryland Volunteer Lawyers Service's Pro Bono Panel. If a lawyer signs up for Low Bono representation, her name is included on a list made available to the debtors who have first come to a DAP clinic. Lawyers on the list agree to take on cases at reduced fees. There is no established reduced-fee structure, but Low Bono lawyers have copies of area legal aid and pro bono program client qualification guidelines. Low Bono lawyers have agreed to negotiate a reduced fee with the client consistent with the client's financial situation. The DAP does not match lawyers with debtors. Rather, a debtor has access to the Low Bono list and is invited to contact a lawyer and negotiate a lower fee.

### **Clinics / Consultations**

Many times, debtors seek to file bankruptcy without first understanding the process or the implications of filing. A number of organizations sponsor clinics in which volunteer lawyers provide general education about the bankruptcy process or meet with the unrepresented debtors one-on-one to answer questions and explain all aspects of the bankruptcy process. The DAP, mentioned above, uses volunteer bankruptcy lawyers to meet with debtors individually. The Legal Aid Center of Southern Nevada, on the other hand, partners with the William S. Boyd School of Law to conduct a community legal education class on bankruptcy. They provide an accompanying manual and have made a video of the class available online. Legal Aid Services of Oregon works with volunteers for the Debtor-Creditor Section of the Oregon State Bar both to hold regular bankruptcy education classes and to follow each class with individual consultations with a volunteer lawyer.

### **Pro Se Help Desks**

On a minimal budget, business bankruptcy lawyers in the Eastern District of Wisconsin (Milwaukee) staff a help desk for a few hours each week, answering debtors' questions and providing them with a handful of sample documents for their use. The desk is located in the courthouse, and volunteers have a good relationship with the court, the clerk's office and filing desk personnel.

A similar program is the bankruptcy assistance desk in the Northern District of Illinois. The desk is staffed by an employee of the Legal Assistance Foundation of Metropolitan Chicago, who is available during the morning hours on any day the court is open. The project was funded indirectly with moneys remaining from a Chapter 11 case resulting in the debtor's liquidation. The court made a cy pres grant of the funds to the Chicago Bar Foundation, intending to support the bankruptcy assistance desk. The person staffing the desk answers questions, directs petitioners to forms and schedules, provides explanations, and unofficially reviews prepared documents.

In Phoenix, the local bankruptcy bar has been instrumental in setting up a walk-in Self Help Center at the courthouse. There, debtors can find on-line and printed information about how the bankruptcy process works in Arizona. The Self Help Center is open daily, with volunteer law students assisting debtors with basic questions, and volunteer bankruptcy lawyers available for individual consultations.

### **Pro Se Filing Preparation**

In some locations, legal services organizations have determined the most effective use of resources is to assist pro se filers with the preparation of bankruptcy petitions and schedules. Legal Services NYC's Bankruptcy Assistance Project (BAP) utilizes staff and volunteers to provide basic bankruptcy education and to prepare filings. The staff conducts a final review of petitions and schedules and then facilitates the filing of the petition with the bankruptcy court. And while recruiting volunteer lawyers

from certain law firms would ordinarily be problematic due to conflicts, the BAP relies on an ethics opinion issued by the Bar of the City of New York setting out the circumstances under which volunteers may assist pro se filers without raising conflict issues.

### **Reaffirmation Clinics**

Chapter 7 debtors quite often owe balances on items such as car loans. The bankruptcy process offers them the opportunity to agree to repay, or reaffirm, the debt. Many debtors agree to do this in order to retain possession of the property. A car, for example, may be a consumer's only form of transportation and may make the difference between a paycheck and unemployment. In many instances, however, consumers reaffirm these debts when it may not necessarily be in their best economic interest.

Legal services programs and volunteer lawyers have been joining in the effort to educate Chapter 7 debtors on the reaffirmation process. They work with bankruptcy courts to consolidate reaffirmation hearings, and then schedule reaffirmation education clinics beforehand to prepare debtors. Volunteer lawyers and legal services attorneys develop reaffirmation information packets for debtors and take the time to go over the reaffirmation process and explain the benefits and disadvantages of reaffirming a debt.

Hundreds of consumers have been helped this way in clinics across the country. In Los Angeles, Public Counsel's Debtor Assistance and Consumer Law Projects have been counseling consumers on reaffirmations for over ten years. In Atlanta, volunteer lawyer John Mills replicated the Los Angeles model in the United States Bankruptcy Court for the Northern District of Georgia.

### **Adversary Representation**

There are circumstances in which a pro se filer's case has not yet been dismissed, but a creditor has raised an issue in an adversary proceeding. Some organizations have created projects where bankruptcy attorneys volunteer to represent the debtor through the adversary proceeding. In Denver, Faculty of Federal Advocates Bankruptcy Pro Bono Program volunteers furnish free legal services to debtors in pending bankruptcy cases. In Minnesota, the Minnesota State Bar Association Bankruptcy Section, partnering with the U.S. Bankruptcy Court for the District of Minnesota and the Volunteer Lawyers Network in Minneapolis, created a project to represent indigent defendants in adversary proceedings.

### **Funding**

Some traditional, IOLTA-funded sources are strained at this time and may not have funds for new debtor assistance programs. A state or local bankruptcy bar or the bankruptcy section of a state or local bar, may be able to provide some monetary assistance. In addition, the American College of Bankruptcy (ACB) may be a source of funding. The ACB has a well-funded grant program and generously distributes funds each year to facilitate the growth of bankruptcy pro bono programs. Finally, if members of an area business bankruptcy bar are involved in Chapter 11 cases that result in liquidation, unclaimed funds may be available for the court to make cy pres awards to fund bankruptcy assistance programs.

### **Conclusion**

This article briefly presents just a few of the many new ideas legal services organizations and pro bono programs are using to help the greatest number of debtors possible with scarce resources. Staff creativity is resulting in extensive unbundling within the bankruptcy process, as well increased use of volunteers for limited-scope tasks. The bankruptcy community as a whole is committed to an open, accessible, bankruptcy system, and the future promises even more innovation in the delivery of justice for consumer debtors.

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## From the Chair...

*By A. Michael Pratt*

### Standing Committee on Pro Bono and Public Service

Thanks to all for a successful second annual National Celebration of Pro Bono. For the second year, over 600 events were held in almost every state and territory. Over two-thirds of these were direct service clinics, CLE and training programs, or recruitment events, all of which resulted in increased services to our most financially distressed and vulnerable citizens.

Building on last year's success, the ABA Standing Committee on Pro Bono and Public Service focused on broadening and deepening participation in the 2010 Celebration by encouraging every participant and sponsoring entity to think strategically about local needs, local programs, and local issues, and then to plan and take the next steps in providing access to justice to poor and vulnerable people in their area. The growing participation of pro bono attorneys has become both an integral and indispensable part of the delivery of legal services to poor people. Ongoing efforts to expand critical representation to the growing numbers of people living on the social margins depend heavily on the involvement of volunteer lawyers; the Celebration of Pro Bono provides an annual opportunity to advance the pro bono enterprise significantly.

The week owes its resounding success to hundreds of lawyers, law students, paralegals, administrative staffers, and the organizations for whom they work, who took yet another step on the road to equal justice for all. We are grateful to everyone who puts their knowledge, talent, and passion to work for justice every day and appreciate those who utilized the National Celebration of Pro Bono to expand civil legal services for those in need.

Just after the conclusion of the Celebration we surveyed participants to get their insight on why the Celebration is important to them. When we asked if the National Celebration of Pro Bono helps advance their local pro bono agenda we were told:

- "Our local attorneys like to know that they are part of a nationwide effort to recognize and increase pro bono representation."
- "It has developed new local leaders that support the program throughout the year. It has also served to educate both the public and our local government leaders about the need for access to justice and the pro bono efforts of the bar. It has led to the development of new service delivery components. By all measures it has been a benefit to our pro bono efforts in the state."
- "It helps us organize with other pro bono agencies to get the word out to the legal community."
- "It puts a spotlight on the work we do and helps us to get coverage in the local media."
- "I think events like this help focus on the satisfaction of pro bono work and make the attorneys proud of the volunteer work that they do. It also provides them with social exposure to the Judges whom they usually only interact with in the Court setting."
- "It's a great way to shine a spotlight on things that are happening the other 51 weeks of the year, to celebrate those who are giving back year round, and to also draw more lawyers in."

We also wanted to know how groups used the Celebration to improve and increase access to legal services for their clients. The responses we received, including the following, reflect the care and thought that was given to this issue as groups went forward with their Celebration planning. For example:

- We held 21 clinics throughout the state that provided direct client services. This was a significant increase over last year. We expect that some of these clinics will continue on a regular schedule throughout the year.
- We organized several significant recruitment events during pro bono week that increased participation and as a result expanded service to clients.
- We used the celebration as a way to challenge local bar associations and organizations to plan a specific event to train lawyers to reach more clients, host a clinic to help clients, host a reception/awards ceremony to honor the good work done by lawyers in their community or host a public education event to provide relevant legal information to targeted groups (immigrants, the elderly and their caregivers, etc.).

The Pro Bono Committee is working on evaluating the 2010 Celebration and the overall National Celebration of Pro Bono initiative. As we explore our plans for the future, we could use your input on the following questions:

- Should the initiative continue to be called the National Celebration of Pro Bono or would some other name work better for you in your planning, promotion and implementation efforts at a local level? What suggestions do you have?
- To avoid conflicting events and a planning process that was too intense in 2009, five states converted the Celebration week into a month-long series of events. Would you find it useful to have the Celebration promoted as a month-long initiative?
- How can the ABA be more helpful from a national perspective as you plan for your 2011 activities?

Please email your responses to Steven Scudder, Committee Counsel at [scudders@staff.abanet.org](mailto:scudders@staff.abanet.org).

Thank you for your commitment to pro bono and for understanding the value of the National Celebration of Pro Bono. The Standing Committee on Pro Bono and Public Service stands ready to help you throughout the year as you work to develop new pro bono projects and improve existing ones. For more information, visit our website at [www.abaprobono.org](http://www.abaprobono.org).

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## An Intriguing Web of Pro Bono Content: A Guide to the ABA Pro Bono Committee's Web Site

*By Steven B. Scudder, Committee Counsel,  
ABA Standing Committee on Pro Bono and Public Service*

*What are some new strategies for engaging judges in supporting our pro bono efforts?*

*How can I use my bar presidency to advance pro bono services by our association's members?*

*Is mandatory pro bono reporting something that our state should consider?*

*What are some tips for better management of our pro bono program?*

*Who are some of the partners with whom we should be working?*

These questions and many more can be answered by checking out the Standing Committee on Pro Bono and Public Services Committee's website at [www.abaprobono.org](http://www.abaprobono.org).

The Standing Committee on Pro Bono and Public Service is the ABA's center of activity for the development and promotion of pro bono policies, initiatives and individual lawyer volunteer legal service. The mission of the Pro Bono Committee, and its project the ABA Center for Pro Bono, is to ensure access to justice through the expansion and enhancement of the delivery of legal and other law-related services to the underserved through volunteer efforts of legal professionals nationwide. The Committee fosters the development of pro bono programs and activities by law firms, bar associations, corporate legal departments, law schools, government attorney offices and others; analyzes the scope and function of pro bono programs; offers best practices and resources to help improve program operation; and proposes and reviews policy and rules that affect lawyers' ability to provide pro bono legal services.

The Committee's website is our on-site tool for sharing our expertise, resources, news and information with our many constituents. It has become the national "go-to" website for pro bono content with over one million page views during the last fiscal year.

Once you arrive at [www.abaprobono.org](http://www.abaprobono.org) you will find three ways of accessing the vast amount of information it contains: by topic, by resource, and by the "who are you" tool. The home page introduces you to the Pro Bono Committee and its project the ABA Center for Pro Bono and provides brief overviews of and links to the rest of the site's content. Using the access strategies described below you will be able to take full advantage of what the site has to offer.

### Topic Access

Using the left navigation bar or the topic areas highlighted on the home page you can find information about:

- [Pro Bono Awards](#)

...including information about the Committee-sponsored ABA Pro Bono Publico Awards and pro bono and public service awards sponsored by other ABA entities. All of these award programs are always looking for more nominees. Review the options and consider lawyers in your area who might qualify.

- [Equal Justice Conference](#)

...the largest gathering of access to justice advocates held each year. Sponsored by the ABA Pro Bono Committee and the National Legal Aid and Defender Association this annual conference brings together representatives from all components of the legal profession – both public sector and private practice – to explore new strategies for serving the legal needs of low and moderate income individuals.

- [Policies & Rules](#)

...offering information about a range of pro bono policy strategies including ethical rules, pro bono reporting, emeritus rules and much more.

- [Program Management](#)

...including ideas for developing new pro bono projects, managing existing programs and promoting pro bono within your workplace or community.

- [Projects](#)

...featuring links to descriptions and resources of Committee and Center for Pro Bono Projects including the Medical-Legal Partnership Pro Bono Support Project, the Business Law Pro Bono Project and more.

- **National Celebration of Pro Bono**

...a national initiative designed to highlight pro bono at a local level and providing you with the opportunity to join in the annual celebration of the invaluable volunteer legal services provided by America's lawyers.

#### Resource Access

- [Calendar of Training and Events](#)

...offering information about webinars, conferences, national events and also providing you with the opportunity to promote your own events.

- [Publications](#)

...showcasing the many publications the Pro Bono Committee has produced over the years geared toward improving pro bono program management, assisting with project outreach, managing pro bono in certain contexts (e.g. rural areas), teaching pro bono lawyers about how to work with their clients, and much more. Directories of pro bono projects and access to two clearinghouses of extensive project material are also available through this link. Most of the Committee's publications are available as free downloads.

- **News and Highlights**

...keeping you up-to-date on the site with news of note regarding pro bono at the ABA and around the country....and,

- **Social Media**

...providing you a way to keep up-to-date about the world of pro bono through Twitter and Facebook.

- [Videos](#)

...offering a collection of videos (and the opportunity for you to share your own) showcasing how to use this medium to recruit new attorneys, to educate the public about the good work of lawyers, to highlight the work of award recipients, and to promote your program initiatives.

- [Volunteering](#)

...featuring the National Pro Bono Volunteer Opportunities Guide, providing you an easy to find pro bono programs where you can volunteer by substantive area and geographic region. This section of the web site also features information about and access to special interest pro bono opportunities.

### **"Who Are You?" Access**

Many people visiting the Pro Bono Committee's web site find that the best way to access the wealth of information contained there is to find the box that's titled *Resources Just For You*. Simply click on the arrow next to "Who Are You?" and select the descriptor that best represents your pro bono interest. If you want to know more about law firm pro bono, select "law firm." If you are a judge who wants to know more about what you can do to expand pro bono in your area, select "Courts." Other choices include:

- Access to Justice Commissions
- Bar Association Leaders/Staff
- Corporate Law Departments
- Funders
- Government Attorneys
- Law Schools
- Paralegals
- Pro Bono/PAI Programs
- Senior/Inactive Lawyers
- State Pro Bono Support
- Volunteers

Once you've made your selection, click "Go to Page" and you will be on your way to learning more about pro bono within the context of your particular area of interest.

We keep the web site as up-to-date as possible with new content added regularly. Efforts are underway to upgrade the site to make it even more user friendly and accessible. Your feedback is always welcome. Are there new features you would like to see added? Is there content that you wish was on the site but is either not there now or it is hard to find? Send your suggestions to Cheryl Zalenski, Director of the ABA Center for Pro Bono, at [zalenskc@staff.abanet.org](mailto:zalenskc@staff.abanet.org).

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## Policy News

### Tennessee Supreme Court Adopts Pro Bono Emeritus Attorney Program

The Tennessee Supreme Court adopted Rule 50A establishing a Pro Bono Emeritus Attorney Program. The new rule will allow lawyers who no longer actively practice law to provide free legal services through approved legal assistance organizations. The Tennessee Access to Justice Commission proposed the rule and Tennessee Bar Association supported it. The rule will take effect on January 1, 2011. [Click here](#) to see the new Rule and Order. [Click here](#) for more information about the new program.

### American Medical Association Supports Medical-legal Partnerships

The American Medical Association, during its 2010 Annual Meeting on June 15, 2010, adopted a policy to encourage physicians to develop medical-legal partnerships—collaborations between doctors and lawyers that seek to remedy the legal causes of poor health. Recently released studies, available at [www.ATJsupport.org](http://www.ATJsupport.org), have shown that low-income hospital patients have unmet legal needs that negatively affect their health, and that medical-legal partnerships can improve outcomes for patients. [Click here](#) for more information.

### D.C. Develops Senior Lawyers Project

In June, the District of Columbia Access to Justice Commission and the D.C. Bar Pro Bono Program launched a Senior Lawyers Project, to infuse the talent and expertise of experienced law firm attorneys into the legal services network. Ten leading law firms have signed on to be "Founding Partners" of the project by agreeing to institutionalize a senior lawyers program at their firms. The initiative grew out of a meeting of law firm and legal services leaders convened by the Commission in January 2010 to respond to possible economy-driven changes in the law firm business model and their impact on pro bono and financial support for legal services organizations.

### South Carolina Proposes Mandatory Pro Bono Reporting Rule Changes

The South Carolina Bar Pro Bono Committee and the South Carolina Access to Justice Commission are seeking comments to proposed changes to Rule 6.1 of the Rules of Professional Conduct. The Rule addresses the provision of pro bono legal services to individuals of limited means or to organizations that serve individuals of limited means. The proposed changes include a requirement to report one's pro bono hours and the process for doing so. [Click here](#) for more information about the proposed changes.

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## From the Chair...

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

### Standing Committee on Legal Assistance for Military Personnel

As 2010 draws to a close, I am presented with an opportunity to reflect on all of the excellent work undertaken by our standing committee. The LAMP Committee is a very active one, and I am constantly impressed by all that we are able to accomplish on behalf of the men and women serving in our armed forces.

One of the high points of the year was LAMP's receipt of the 2010 Supporting Military Families Award from the National Military Families Association (NMFA). In presenting this prestigious award to LAMP, the NMFA noted the committee's work to strengthen legal protections for servicemembers through legislative advocacy and the delivery of pro bono legal counsel through the Military Pro Bono Project. I was joined by ABA President-Elect Bill Robinson and ABA Executive Director Jack Rives in accepting the award on behalf of LAMP at an awards ceremony in Washington, D.C., in September. It was a proud moment for both our committee and the American Bar Association to receive such recognition.

Our committee held three on-site meetings in 2010. In March we were at Pope Air Force Base and Fort Bragg in Fayetteville, North Carolina. There, in addition to our meeting, we sponsored an all-day CLE for military attorneys and other interested attorneys from the area, which was very well-attended and well-received. In November we met at Fort Sam Houston in San Antonio, Texas, where we held another successful CLE. We thank our contacts at these installations for their assistance and hard work supporting these educational opportunities and our committee business meetings.

Of particular note was our July meeting in Boston, Massachusetts. The driving force behind meeting in Boston was our coordination of what we dubbed the "New England Military Pro Bono Roundtable," which we could not have so effectively organized without the help and support of the Boston Bar Association. The Roundtable brought together our committee and military service liaisons with representatives from a wide array of programs throughout New England, including bar organizations, veterans groups, veterans' agencies, legal aid, and military legal assistance. The multi-disciplinary forum allowed for information sharing, coordination, networking, and breakout planning sessions. Attendees commented that this type of meeting had been badly needed and was very much a success from their perspective. I hope the committee will continue to play an important role in supporting coordination among diverse local groups delivering legal help to those currently or formerly serving in the military.

Our Military Pro Bono Project has continued to effectively deliver pro bono legal support to active-duty servicemembers for those cases where military legal assistance cannot provide representation. In 2010 the Project assisted over 140 servicemembers and their families, bringing the total number to over 270 cases in 40 states since the Project launched in September 2008. For these cases, our pro bono volunteers report a value of the donated legal work at well over a million dollars. Though the Project has achieved these results with extremely limited funding and less-than-full-time staffing, the Project received a boost this year with the Pentagon's mobilization of New York National Guardsman LTC George McHugh to serve as a full-time,

dedicated liaison to the Military Pro Bono Project from the Department of Defense. LTC McHugh has worked hard to expand the Project's ability to reach out to both the military and civilian bars through outreach, speaking engagements, and program development, and the result has been a much higher visibility of the Project than could otherwise be accomplished with our limited resources. LAMP is very grateful for LTC McHugh's ongoing work. We are similarly pleased to have had Defense Secretary Gates note the value of the Project in providing important legal support in family law matters, as well as the public acknowledgement by the services' Judge Advocates General and Staff Judge Advocate to the Commandant of the Marine Corps of the Project's value to the all of the services. Though we face funding challenges in sustaining the Project's work in 2011, we remain hopeful that we will not only secure ongoing funding, but that it will be sufficient to expand the staffing and resources provided by the Project and thereby get us closer to seeing the Project achieve its fullest potential to meet the legal needs of our servicemembers.

Policy advocacy and education continue to be priorities of the committee, and we worked hard in 2010 in both arenas. Our committee was a proponent behind federal legislation signed into law by the President in October adding new sections to the Servicemembers Civil Relief Act providing for Attorney General enforcement in certain cases, clarification that a private cause of action exists under the Act to sue violators, and providing that damages (both compensatory and punitive) plus attorneys fees can be awarded in such civil actions. Strengthening the law in this manner will better enable military attorneys to help their clients enforce their rights under the Act. We have also begun the process to promote amendments to the Uniformed Services Employment and Reemployment Rights Act to address a number of problems that have arisen for our National Guard and Reservists who have encountered problems with their employment situations post-deployment. And we continue to monitor child custody proposals also working through Congress to ensure that the child custody needs of active-duty servicemembers are met in the best possible ways. Finally, on the education front, we are pleased to be in the final stages of the development of our latest publication, "The Judges' Guide to the Servicemembers Civil Relief Act," written by Colonel John Odom (USAFR), a nationally-recognized expert on the Act and former member of the committee. We look forward to getting the Guide into the hands of judges across the country, who, in this day and age, are encountering more and more instances where a party to a case has a military connection and rights under the Act in need of observation.

It has been a remarkably productive year for our committee, and as I move into the final months of my term as chair, I continue to be honored by the opportunity to be involved with its work and look forward to many more challenges and opportunities for LAMP in the years to come.

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