

Dialogue

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Resources for Practitioners Handling Military Divorces

by Steve Lynch

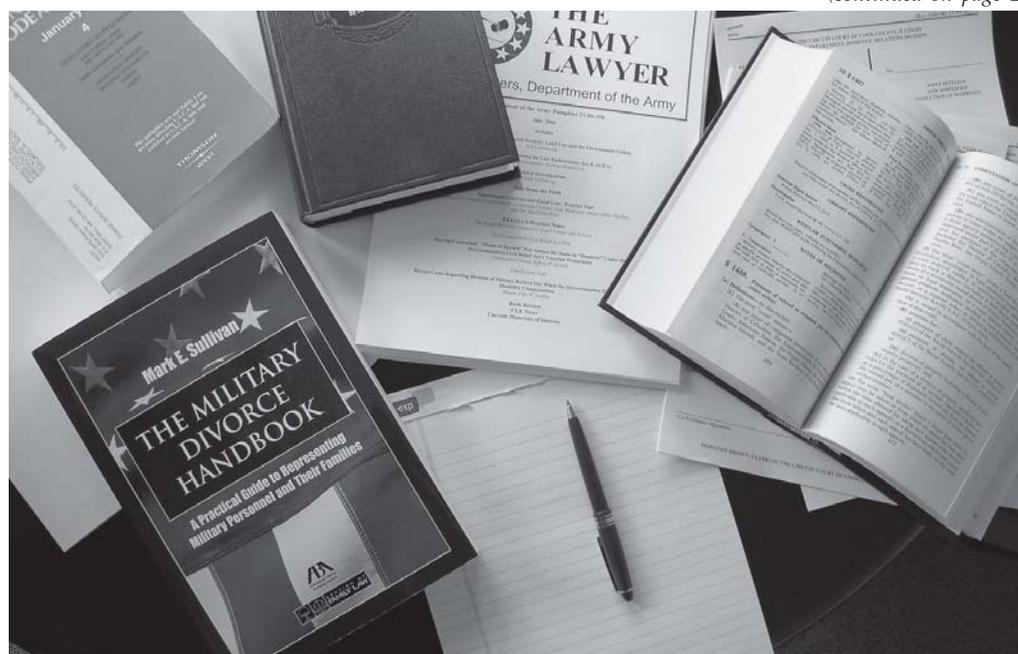
Mmilitary divorces, like military families, no longer just cluster near large military installations, as was the case during the Cold War. Increased reliance on deploying National Guard and Reserve personnel to Iraq and elsewhere means that many military families stay behind in towns far from large installations, while military spouses head off to war or elsewhere around the globe. This also means that family law practitioners across the country are seeing more divorces involving military personnel.

This article highlights resources that help those practitioners with divorces involving military personnel. It is not an exhaustive list, nor is any of these resources a substitute for solid practical experience, continuing legal education, or state-specific resources. Each supplements the other.

A good starting point for any family law practitioner handling a military divorce is *The Military Divorce Handbook* by Mark Sullivan.¹ Sullivan provides comprehensive coverage of every facet of the divorce process relating to the military, including practical guidance on military compensation and tax issues, custody and visitation, family support, domestic violence, pension and property division, and service of process both at home and abroad.

Of particular note is his analysis of the Servicemembers Civil Relief Act (SCRA)² and the Uniformed Services Former Spouses' Protection Act (FSPA).³ Together, these laws impact numerous critical issues, such as service of process, domicile, jurisdiction, divisibility of military retired pay, and entitlement to medical benefits under TRICARE.⁴ Each act

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Resources

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suffers from common misconceptions that lead inexperienced practitioners astray. One misconception is that military personnel stationed overseas can use the SCRA to unconditionally delay an action for divorce or custody back home. Another is that the FSPA limits the amount of military retired pay divisible by state courts. Sullivan thoroughly addresses these and other misconceptions.⁵

The SCRA and FSPA are part of a complex legal pattern that Sullivan expertly details in eight chapters covering more than 600 pages, with an extensive glossary, table of cases, index and set of appendices. The publication also includes a CD-ROM containing all 57 appendices—with numerous model pleadings, forms and checklists. In short, if your reference library can afford only one text on military family law, that text should be *The Military Divorce Handbook*.

JAG resources

A varied set of helpful material is available through The Army Judge Advocate General's Legal Center and School (Army JAG School).⁶ For example the *Legal Assistance Family Law Guide*⁷ provides a solid introduction to family law topics with a special focus on military issues. It covers three broad topics: marriage, termination of marriage and separation, and also offers summaries of state laws. The *Family Law Guide* is not as comprehensive as *The Military Divorce Handbook*, nor is it as current; but it is a good starting point for those new to military family law issues. Another useful resource is the *Uniformed Services Former Spouses'*

*Protection Act Guide*⁸ which provides detailed coverage of the FSPA, including a state-by-state analysis of the divisibility of military retired pay. Both guides are prepared by distinguished military attorneys on the faculty of the Army JAG School, are presented in outline format, and are available on the Web.⁹

The Army Lawyer, published monthly by the Army JAG School, often contains notes or articles on military family law topics. A recent note examines cases involving the impact of disability compensation on military retired pay.¹⁰ Another offers excellent tips on working with local child support enforcement offices.¹¹ *The Army Lawyer* is available on the Web and can be searched by key word.¹²

ABA resources

The ABA Section of Family Law offers excellent introductory and advanced reference materials on its Web site.¹³ Materials from the CLE program *A Short Course in Military Family Law Issues* (May 2006) have proven very useful, in particular for their coverage of issues related to military deployments, the Parental Kidnapping Prevention Act, and the Uniform Child Custody Jurisdiction Act.¹⁴ The Section's Web site also contains brief introductions to 23 topics relevant to the practice of family law in the military environment. Each is intended to provide guidance to practitioners, and not directly to clients; thus, the author refers to each as a "Silent Partner." One "Silent Partner" that I've found particularly helpful is *Lost Military Pensions: the Ten Commandments*.¹⁵

Two other notable reference works are *Attacking and Defending Marital Agreements*¹⁶ by Laura Morgan and Brett Turner, and

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From the Chair...



by Gen Earl E. Anderson, USMC (Ret.)
Chair of the ABA Standing
Committee on Legal Assistance
for Military Personnel

Laws worth making are worth defending, and vigilance is in order for a new law safeguarding the interests of veterans. The Veterans' Choice of Representation and Benefits Enhancement Act gives veterans the option of retaining counsel to represent them in benefits proceedings before the Veterans Administration. This overdue reform ends a regrettable policy of denying our military veterans, of all people, the essential American right to counsel in the benefits process.

The American Bar Association supported passage of the Veterans' Choice Law. It was barely on the books, however, when it became evident that interests were aligning against key provisions. A few veterans' organizations continue to circulate the message in Washington that the new law will enrich lawyers at the expense of veterans. The fact is, without the option of engaging independent counsel who will work strictly for them, veterans will always be at a disadvantage in a benefits process effectively controlled on all sides by the VA.

The Disabled American Veterans has advanced the view that allowing veterans to engage counsel will destroy the existing

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LAMP Committee Joins ABA Youth at Risk Initiative

The Standing Committee on Legal Assistance for Military Personnel (LAMP) closed ranks with the ABA Commission on Youth at Risk to co-sponsor a groundbreaking Youth at Risk roundtable November 16. The event at Fort Sam Houston gathered military and civilian youth services leaders to share insights and answers to the legal and social challenges facing teenagers. One of several YAR roundtables being conducted around the country, the forum uniquely emphasized the issues common to youth in military communities, particularly those dealing with extended overseas deployment of parents or frequent relocations.

The success of the San Antonio event was a springboard to another roundtable March 8 in Washington, D.C. That event brought together HQ-level youth services leaders from the services as well as civilian experts and state program leaders to focus on legal and social system responses to challenged teenagers. The Washington roundtable put its exclusive emphasis on the interests of teenagers in military families.

Youth at Risk Roundtable

The ABA Youth at Risk Initiative, created by ABA President Karen Mathis, is identifying ways lawyers and the legal system can better interact with challenged youth, primarily those between ages 13 and 19. A priority of the Commission on Youth at Risk is identifying and responding to the extraordinary challenges facing youth in military communities. Mathis underscored that priority in a meeting with the Judge Advocates General of the services in Washington in December.

The Fort Sam Houston roundtable helped the Commission on Youth at Risk identify some of those challenges through the insights of experts on the ground. Moderated by David Hague, Gen, USMC (ret.), the roundtable included frank input from a number of representatives of the military. Among those participating were: B.L. "Bull" Barnes, Branch Head, Marine Family Services, MCHQ; Sandy Primous, director of an Army teen services program at Fort Hood, Texas; Keith Toney, Fort Sam Houston school liaison and local school board president; Angela Huebner, associate professor in the Human Development Department at Virginia Tech University and a co-author of a 2005 study on the effects on adolescent children of deployment of service member; Hon. Laura Parker, a juvenile court judge from San Antonio; Karin Crump, president of the Texas Young Lawyers Association (the public service branch of the State Bar of Texas); two young men who are veterans of the foster care system in San Antonio; a 16-year-old boy who had been through the juvenile justice system; Janet Ketcham, executive director of Child Advocates San Antonio, Inc.; Gary Urdiales of the Casey Organization, San Antonio (another child advocacy and support group); Jim Watson, executive director of the Boys & Girls Clubs of San Antonio; and Lionel Collins, associate director of the Armed Services YMCA, near Fort Hood.

Addressing teen needs

A key theme that emerged at the roundtable was that the needs of teenag-

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From the Chair...

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“informal” and “pro-veteran” claims process and usher in a newly “adversarial” VA benefit procedure that allows lawyers to siphon off veterans’ benefits. That view ignores the reality that veterans collectively can never get a fair shake without the leverage afforded by access to a legal advocate. Veterans’ Choice means that no veteran will be obligated to retain counsel. But experience teaches that veterans will experience the likelihood of increased benefits and a greater measure of justice, through access to a lawyer working only for them.

The ABA has pledged to work with the Veterans Administration and veterans groups to establish programs and training that will ensure available, competent counsel for this work. It is not the self-interest of lawyers but a public-service commitment to the needs of veterans that motivates the ABA on this issue. The ABA believes in “Pursuing Justice.” Continuing to deny our veterans the right to counsel would be justice denied.

* * * * *

The Standing Committee on Legal Assistance for Military Personnel is moving forward on policy fronts both old and new. At the ABA Midyear Meeting in February,

the House of Delegates approved the LAMP Committee’s recommendation that the House “affirm” long-standing ABA policy urging enactment by Congress of a mandatory military legal assistance statute. The LAMP Committee sought reaffirmation of the legal assistance entitlement policy, in light of the intensified need for such services among regular and reservist service members and their families, particularly those affected by changes in deployment patterns and strategies.

The House of Delegates also acted on a new policy recommendation submitted by the LAMP Committee regarding support of the children of deployed servicemembers. The committee was gratified that ABA President Karen Mathis took to the floor of the House to speak passionately in support of that resolution, which called for (1) laws creating expanded employment leave for designated non-parent caregivers of deployed service members, such as grandparents, and (2) more uniform school residency rules allowing children to attend their old school, or new local school, tuition free, when forced to move across school district lines to live with a caretaker while one or both parents are deployed.

The employment leave policy does not call for any additional

leave days for caretakers of deployed service members, but simply would allow them to use otherwise earned and available employment leave to care for a deployed service member’s child. Underlying that policy is an enormous current need, among the children and families of deployed service members, for support services, as discussed in a previous column. Making ABA policy is just a first step but a necessary prelude to persuading state and local lawmakers to make laws that will make the difference on these timely issues.

The ABA further demonstrated its commitment to the needs of the families of deployed servicemembers in President Mathis’ press conference at the Midyear Meeting, where those issues were aired for the media. LAMP Committee member Patricia Apy and former chair Gen. David Hague both accompanied Mathis at the press event. Hague and Apy gave videotaped statements on the need for legal assistance entitlement and support of military families. The tapes are available from the ABA for use by media outlets, local or state military law committees and other interested persons or organizations. For more information, please contact the LAMP Committee at boonem@staff.abanet.org.

Youth at Risk

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ers tend to be overlooked and underserved by legal and social organizations. Angela Huebner noted a persistent tendency among adults to erroneously regard teens as “little adults” who can deal with the pressures in their lives, particularly when teens are

responding to adult challenges such as giving support to at-home parents and siblings while another parent is has been deployed to Iraq or Afghanistan. Huebner observed that it is not uncommon for those “responsible” teenagers to “hold it in” most of time but eventually to “lash out” in inappropriate conduct as a response to deployment-related stress.

Sandy Primous, the youth program representative from Fort Hood, said that nearly 10,000 teens live on or near that installation (the single largest source of deployments among all military installations) and 70 percent of those have parents who currently are deployed or in the pre-deployment stage. Primous said that the

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Resources

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*Child Support Guidelines: Interpretation and Application*¹⁷, by Laura Morgan. Neither focuses directly on military divorce issues per se, but both are exceptionally useful. The first (*Marital Agreements*) addresses the validity and interpretation of separation, antenuptial and postnuptial agreements. It focuses on the sorts of problems that arise from the use of ambiguous boilerplate provisions typically found in standard separation agreements drafted by military legal assistance attorneys. An appendix even includes a list of ambiguous provisions, along with a brief summary of judicial interpretation.

The second (*Child Support Guidelines*) is a truly comprehensive resource for determining child support under mandatory guidelines for each of the 50 states and the District of Columbia. Topics include add-ons, deductions and deviations from guidelines, modification of prior awards and trial preparation, along with an extensive bibliography and table of cases. The author's Web site, www.supportguidelines.com/main.html, contains a searchable link to the *Child Support Guidelines'* table of contents, and links to both government and commercial online support calculators. This is

particularly helpful for practitioners assisting military clients who move frequently.

Conclusion

The legal resources described here can help family law practitioners better represent military clients or spouses involved in a divorce. While they do not provide comprehensive training, they are an important starting point for those new to this challenging area of the law.

Steve Lynch is the legal assistance attorney for the Ninth Coast Guard District in Cleveland, and a past recipient of the LAMP Distinguished Service Award.

The views here are those of the author, and do not necessarily reflect those of the American Bar Association or the Division for Legal Services. The resources described here are intended as guides for practitioners, and should not be used in lieu of consulting primary sources of legal authority.

Endnotes

- ¹ Sullivan, Mark E., *The Military Divorce Handbook*, ABA Publishing (2006). Includes CD-ROM.
- ² 50 U.S.C. App. §501 et. seq.
- ³ 10 U.S.C. §1408
- ⁴ TRICARE is the Department of Defense's health plan for all uniformed service members and their dependents, military retirees, and (in some cases) former spouses of service members or retirees. Sullivan, *supra* at 236-250.
- ⁵ *Id.*, "Opposing a Request", §2.04, p. 105; and "The Uniformed Services

Former Spouses' Protection Act, §8.04, pp. 418-421.

- ⁶ The Judge Advocate General's School, ATTN: JAGS-ADA-LA, Charlottesville, VA 22903-1781.
- ⁷ Administrative & Civil Law Department, The Judge Advocate General's Legal Center and School, U.S. Army, JA 263, *Legal Assistance Family Law Guide* (1998).
- ⁸ *Id.*, JA 274, *Uniformed Services Former Spouses' Protection Act Guide* (November 1, 2005).
- ⁹ Go to www.jagcnet.army.mil/JAGCNETINTERNET/HOMEPAGES/AC/ARMYLAWYER.NSF/ and select "Other Publications" from the left side of the screen.
- ¹⁰ Major John P. Jurden, *Family Law Note: Recent Cases Involving the Divisibility of Retired Pay When The Servicemember Elects to Receive Disability Compensation*, *Army Law.*, July 2006, at 30.
- ¹¹ First Lieutenant Darrell Baughn, *Family Law Note: Utilizing, Overseeing, and Negotiating with the Local Child Support Enforcement Office*, *Army Law.*, June 2004, at 41.
- ¹² Web site referenced at fn. 9 *supra*.
- ¹³ www.abanet.org/family.
- ¹⁴ www.abanet.org/family/military/militarydivorce050306.pdf. Discussion relevant to military deployments begins at page 94 of the CLE materials.
- ¹⁵ Each "Silent Partner" handout can be found at www.abanet.org/family/military/silent/handouts.html.
- ¹⁶ Morgan, Laura W. and Turner, Brett R., *Attacking and Defending Marital Agreements*, ABA Publishing (2001).
- ¹⁷ Moran, Laura W., *Child Support Guidelines: Interpretation and Application* (Aspen Law & Business, 1996 and Supps.).

Youth at Risk

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single greatest problem facing these teenagers is excessive stress related to overseas deployment of a parent. She observed a compelling need for a big brother/big sister

program serving this population, because of the acute absence of mentors and role models in their lives during major deployments. Huebner reiterated the need for mentoring for adolescent children of deployed service members.

Bull Barnes, the Marine Family

Services chief, cited a threshold issue: that the Marines do not consider the adolescent children of deployed Marines to be "at risk," but rather see them as being challenged. He noted that a certain level of adversity can help a young

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Youth at Risk

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person's development. "That stress is what makes them stronger people as long as it doesn't overwhelm them." That point is consistent with reports from the National Military Family Association that children of deployed service members have shown great resilience in the face of considerable pressures on their families and themselves.

Barnes observed that parental deployment has been especially difficult for adolescent children of deployed National Guard members and reservists, because their families tend to live in more isolated civilian environments away from military installations. "For those children it is difficult because they are in the minority," he noted, and lack peers who understand what they are going through.

ABA President Mathis has said that civilian organizations have much to learn from the military in terms of effective youth services programming. Barnes stated that notwithstanding the best programming efforts, teenagers can be a "tough nut to crack" for military family services because of their tendency not to be receptive, at least initially, to service programs designed to support and assist them. Huebner said that for supportive social programming, such as parties with an educational theme to attract teens, it is critical get a buy-in not from the "best kids" but from the peer leaders of the average kids, who can influence their friends to take part.

Also attending the San Antonio roundtable were two young veterans of the foster care system who spoke movingly about their experiences. One regretted the fact that the system had provided no real mentoring opportunities for him.

LAMP CLE

While at Fort Sam Houston, the LAMP Committee also conducted its popular continuing education program for legal assistance attorneys and paralegals, in concert with the Texas Military Law Section. Nearly 100 military and civilian attorneys packed a Sam Houston Club lecture room to learn the latest on the Servicemembers Civil Relief Act (SCRA), Uniformed Services Employment and Reemployment Rights Act (USERRA), Family Law and municipal court procedures.

The CLE featured veteran standout instructors John Odom (who spoke about SCRA and USERRA) and Patricia Apy (who addressed family law). Military installations in the area sent more than 50 active-duty JAGs to the program, where they were joined by several dozen members of the civilian bar. The LAMP Committee was grateful for the presence the Honorable Barbara Weaver of the Killeen Municipal Court, who lectured the attorney audience on court procedures. At the lawyers' luncheon during the CLE, Brigadier Gen. Scott Magers, JA, USA (Ret.) gave a well received address on the challenges of the transition from military to civilian practices and other lessons learned over his long and distinguished career. In a separate curriculum, paralegals heard presentations on family law, probate procedure, and immigration law.

He indicated that he felt unengaged and left out because of the absence of positive influences in his life. He also noted that although he was supposed to see his child services caseworker regularly, he was only in touch once a year. Others commented that the child protective services system is overburdened to the point where caseworkers tend to focus on the needs of young children because they know that teenage foster children at least can feed and clothe themselves. It was suggested that adolescents are a low priority in the foster care system.

Need for access to services

Hon. Laura Parker is one of two juvenile court judges in San Antonio. She expressed concern that "juvenile court has become a clearinghouse for problems that should have been addressed much sooner." She explained that many of the young defendants that come before her have psychological or developmental challenges or

diagnoses that were never adequately addressed before they ran afoul of the law. Even where services from public agencies or other community programs are available, Parker noted that a simple lack of transportation imposes formidable access barriers for many adolescents. Even youth facing the threat of incarceration often fail to make appointments with probation officers or counselors because they simply lack the means to get there. "These kids are looking at getting locked up if they don't go and they just can't get there." Parker strongly advocated moving as many social, counseling and support services as possible into the schools, to improve accessibility.

Keith Toney, the Fort Sam Houston school liaison, said that staying in school was the greatest challenge facing students in his school system. He was critical of the practice of suspending students from school for bad behavior, which he said only encourages

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From the Chair...



by Mark I. Schickman
Chair of the ABA Standing Committee
on Pro Bono and Public Service

While the Encyclopedia Britannica used to be the definitive reference for many of us, today the great default resource is Wikipedia, the Web-based encyclopedia. If you search for “pro bono” in Google, Wikipedia’s entry on pro bono is at the top of the search results. Notably, the initial external link and reference provided in that entry go to the ABA Center for Pro Bono and the ABA’s Model Rule 6.1. To me, this underscores the critical role entrusted to the ABA’s pro bono institutions to provide broad and wide exposure to the importance of pro bono legal assistance to the American ideal of justice and liberty for all.

Too often, we focus our energy in pursuit of justice within the legal services community or, at best, among the universe of lawyers. But how well do we challenge doctors, accountants, career-counselors and other professionals to join us in the effort to improve the lot of the poor? Do we do enough to teach other socially conscious groups that lobbying for better social services is meaningless if individual eligible recipients cannot overcome legal hurdles which prevent them from enjoying the benefits of those laws? Does the public really believe and

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The Evolution of Pro Bono within the ABA and its Effects on State Policies and Programs

by Jamie Hochman Herz and Cheryl Zalenski

In 1992, Dennis A. Kaufman—then the director of the ABA Center for Pro Bono—wrote about the historical development of a lawyer’s obligation to provide pro bono legal services and how it developed into an important component of the ABA Model Rules of Professional Conduct. This article draws from Kaufman’s historical overview to describe the development of pro bono ethics in the United States from colonial times to the present. It goes on to outline the more recent steps the ABA has taken to modify its pro bono ethics rule to encourage additional lawyers to do pro bono. It will also highlight policies developed at the state level in response to the ABA’s efforts, as well as the creation of state and local pro bono programs.

The development of the early American legal profession was halting. Lawyers were not held in high esteem by European settlers, who perceived them as being aligned with the interests of the upper class, not the working class. The legal profession was not always compatible with the religious nature of governance in some of the colonies. There were few lawyers among the early colonists.

In the early 1700s, however, the law became more organized and a system of courts was becoming more established, with some jurisdictions seeking to control admission to law practice. As the American Revolution approached, lawyers became more esteemed as a professional class and became important to the independence movement. Associations of lawyers began to develop as well: the first organizations of lawyers formed in the late 1700s. It took many more years for bar associations to develop. The development of the modern bar began with the creation of the Bar Association of the City of New York in 1870, with the establishment of the American Bar Association following in 1878.

Development of ethics

Coinciding with the development of these lawyer associations was the first American writing on legal ethics in 1836. George Sharswood, a lawyer and judge who became head of the law department at the University of Pennsylvania, published his lectures on the “duties of the law” in 1854. Those later became the basis of Sharswood’s 1884 treatise on professional ethics. Other professions began to adopt written codes of ethics, such as that adopted by the American Medical Association. The first American written code of lawyer ethics was adopted by the Alabama State Bar Association in 1887.

Great changes in the legal profession further spurred the development of ethical codes. The profession was growing rapidly—from 60,000 lawyers in 1880 to 114,000 in 1900. As it grew, it also became more diverse and stratified: small town practitioners worked in vastly different settings than corporate lawyers representing nascent business corporations.

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From the Chair...

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understand that lawyers are a critical ingredient in the enjoyment of rights basic to all Americans?

We must expand our scope beyond lawyers and pro bono organizations, to give the access to justice agenda the broad-based support it deserves. The first line of approach is plainly through local bar associations and legal aid providers. The same people often lead those organizations **and** the local chamber of commerce, the local League of Women Voters chapter, and local charitable foundations. The leaders of those groups often have the best contacts with political leadership, and the best access to local media. There is nothing more powerful than those local contacts to foster support for, and public exposure of, pro bono efforts.

There are excellent examples of this brand of partnership. Lawyers and doctors work together in the Medical Legal Partnership for Children, founded at the Boston Medical Center and the Boston University School of Medicine (www.mlpforchildren.org), to combat the legal, medical, social and economic barriers facing the poor in Boston. The program “combines the strength of law and medicine to address ... factors [such as] food, housing, education and safety, known to influence child health.” That medical-legal model has spread to over 50 locations across the United States.

Other models of partnership have enlisted the help of paralegals, social workers, domestic

violence advocates, nutritionists, and other professionals who have non-legal skills needed by the poor. Untapped vocations such as teachers, city planners, and accountants have much to contribute as well, and are being approached by local programs.

But beyond local partnerships, we need to do a better job on a national level as well. The ABA can be a powerful partner with other national organizations for whom social justice is a priority, lobbying together in common support for legislation to aid the poor **and** sufficient lawyers to make those laws a practical reality. ABA leaders can approach their opposite numbers in other professions to join in this great cause. Together, we can effectively and widely spread the word nationally that we can narrow the persistent gap between the needs of the poor and the legal services available to them, and leverage our full legal talent to provide services worth scores their dollar cost.

There is an important public relations component to this effort, as well. It will require a national will to give pro bono representation the resources and support that it needs. The ABA’s support for “Civil Gideon” representation—providing civil legal help to all who need it to protect important human needs—will not become a reality until the public understands how important a lawyer is to poor people in need of food, shelter or health services. The bar cannot successfully carry that issue alone.

To obtain the much needed expansion of pro bono services, we

must fight the ignorance and apathy of those who understand neither the issue, nor its importance. We also must fight the prejudice of those who simply don’t like lawyers of any stripe, and the self-interest of those who rely upon their positions of power to keep the poor and unrepresented “in their place”. The recent comments by Deputy Assistant Secretary of Defense for Detainee Affairs Charles D. Stimson about the lawyers who have provided pro bono help for Guantanamo detainees are a sobering reminder of this prejudice. Stimson (who has resigned since making his comments) named the large law firms providing pro bono representation to detainees, accused them of “representing terrorists”, and asked their clients to pressure them to cease such representation or take their business elsewhere.

Stimson’s words called into question well-established and time-honored principles including a lawyer’s pro bono obligation, the presumption of innocence, and the right to counsel. Such an attack on the integrity and independence of the legal profession by a high-level governmental official serves as a warning that we must protect those principles, and reaffirms why we cannot shirk from our goal of providing legal help to everyone within our borders who needs it.

America’s lawyers and pro bono programs do a great service in aid of the poor. Now let’s do a better job of enlisting the aid of our fellow professionals to perform that work, and of making the public know what an important task it is.

Pro Bono Evolution

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Because of this stratification and a more sophisticated economy,

lawyers began to advertise their services to a larger client pool. The adoption of ethical codes in this environment could be seen as an attempt by legal associations to

publicly assure potential clients that the attorneys did have professional standards.

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Pro Bono Evolution

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The development of legal ethics

In response to an address by President Theodore Roosevelt in 1905, which criticized corporate lawyers for helping their clients avoid regulation, the ABA began to develop a code of ethics. In 1908, the Canons of Professional Ethics were adopted by the ABA. By 1914, 31 states had adopted the Canons with little or no modification.

The Canons did not contain a comprehensive recognition of the ethical responsibility to do pro bono work, nor were they explicit about providing services for which a client could not afford to pay. In 1928, 1933, and 1937, committees within the ABA recognized the Canons' deficiencies in being able to meet the needs of a growing legal profession, and recommended major revisions. It was not until 1964, however, that ABA President Lewis Powell formed a special committee to propose changes to the Canons. This resulted in the ABA Code of Professional Responsibility, adopted in 1969. For the first time, the ABA directly addressed the responsibility of the lawyer to engage in pro bono service. Ethical Consideration 2-25, an aspirational goal under the Code, stated, "The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer." It continued on with a statement in support of legal aid and other institutional responses to the need for free legal assistance.

In 1972, F. Raymond Marks published the results of a study on the public interest involvement of private lawyers and concluded that there had been too little effort made in the pursuit of the public

It was not until 1964, however, that ABA President Lewis Powell formed a special committee to propose changes to the Canons. This resulted in the ABA Code of Professional Responsibility, adopted in 1969. For the first time, the ABA directly addressed the responsibility of the lawyer to engage in pro bono service.

interest. Marks suggested that public interest or pro bono work should be a duty for all lawyers, and following this proposal, the next two decades demonstrated substantial activity in the evolution of pro bono responsibility.

In 1975, the ABA House of Delegates, without amending the Code of Professional Responsibility, adopted the "Montreal Resolution" which described further the lawyer's responsibility to engage in pro bono service. The ABA, however, was not ready to consider moving pro bono from a professional aspiration to a professional duty. Two years later, the ABA Special Committee on Public Interest Practice (now called the Standing Committee on Pro Bono and Public Service), at the request of the ABA House of Delegates, reported on the ways in which the 1975 resolution could be implemented. The report recommended that state and local bar associations adopt guidelines regarding the number of hours lawyers should contribute to pro bono and assist lawyers in deciding issues such as monetary contributions as a substitute for service.

Around the same time, the ABA began to review the Code of Professional Responsibility through the Commission of Evaluation of Professional Standards. In August 1979, the *Legal Times* reported that an early draft of the rule from the Commission would contain a mandatory pro bono requirement. This proposal was met with great criticism, and the language was altered by changing the pro bono obligation from a mandatory duty to an ethical responsibility.

Introducing Model Rule 6.1

In 1981, the proposed final draft of the Model Rules of Professional Conduct was submitted for consideration by the ABA House of Delegates. After much debate, the Model Rules were enacted by the House at the 1983 Annual Meeting. Among the approved rules was Model Rule 6.1, which encouraged lawyers to render pro bono legal service and described different ways that a lawyer could meet this professional responsibility. The rule suggested that a lawyer could provide professional services at no fee or a reduced fee to people of limited means or to public service or charitable groups, work to improve the law or the legal profession, or provide financial support to organizations that provided legal services to the poor.

At the 1988 ABA Annual Meeting, the ABA House of Delegates adopted the "Toronto Resolution" which urged lawyers to devote at least 50 hours per year to pro bono services. It also encouraged law firms and corporate employers to allow lawyers to count at least 50 hours per year of pro bono against their billable time, and urged law schools to request that recruiting firms provide a copy of their pro

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bono policies.

Model Rule 6.1 was revised in 1993 to include the aspirational goal of at least 50 hours of pro bono per year, provide a more specific definition of pro bono, and identify more options about how to discharge the pro bono responsibility. The modified rule stated that the substantial majority of the 50 hour responsibility should be discharged through the provision of legal services to the poor and organizations that serve the poor.

In addition to its efforts to improve Model Rule 6.1, the ABA passed a resolution in 1995 encouraging national, state and local bar associations to promote the expansion of pro bono legal services. The resolution urged bar associations to develop strategies to promote pro bono service, to provide sufficient bar resources to this end, and to coordinate development of these strategies with legal services providers and pro bono programs.

In 2002, the ABA again revised Model Rule 6.1 to add a sentence at the beginning of the rule to emphasize that every lawyer has a professional responsibility to provide legal services to the poor. A new comment (11) was also added that called upon law firms to act reasonably to enable all lawyers in a firm to provide pro bono services in accordance with the rule.

Most recently, the House of Delegates, at the 2006 Annual Meeting, passed several resolutions pertaining to pro bono. The first resolution (118A) encourages state bar associations and licensing agencies to allow pro bono legal service by qualified, retired or otherwise inactive lawyers, under the supervision of legal services

All of the recent activity pertaining to pro bono demonstrates that ABA's commitment to increasing lawyer participation in pro bono and lawyer recognition of a professional responsibility to serve those who cannot afford legal assistance.

organizations or other non-profit programs. The second resolution (121A) urges solo and small firms, larger law firms, corporate law departments and government and military offices to encourage their attorneys to do pro bono legal work and to establish internal policies and procedures that will be supportive of this work. Addressing law schools, the House passed a resolution (121B) urging law schools to require legal employers that recruit on campus to disclose and make available information regarding the employers' pro bono policies and practices. The House also passed a resolution (121C) encouraging all courts to develop programs in collaboration with other state entities to facilitate pro bono representation of the poor in civil cases.

Most recently, the House of Delegates passed a resolution (200) during the 2007 Midyear Meeting to amend the ABA Model Code of Judicial Conduct with language that encourages judges to enlist attorneys to participate in programs providing pro bono legal services. The commentary also encourages judges to train attorneys to do pro bono legal work and to recognize pro bono attor-

neys who do pro bono work.

All of the recent activity pertaining to pro bono demonstrates that ABA's commitment to increasing lawyer participation in pro bono and lawyer recognition of a professional responsibility to serve those who cannot afford legal assistance.

State pro bono policies

The ABA's 1995 resolution calling on states to expand pro bono legal services provided states with specific strategies to achieve this goal. In particular, the resolution mentioned reporting—mandatory or voluntary—as a means of increasing attorney participation in pro bono. Currently, five states have incorporated mandatory reporting, including Florida, Illinois, Maryland, Mississippi and Nevada. Thirteen states have implemented voluntary reporting and a few others are considering doing so. The methods for collecting this information vary by state. For example, some states collect the reporting information on the annual attorney dues forms, while others use a separate form. In states with mandatory reporting requirements, all attorneys are required to complete the reporting form, but no one is penalized if they have not engaged in any pro bono work.

Those states that have implemented reporting mechanisms, especially mandatory ones, have seen an increase in the number of attorneys who provide pro bono and financial contributions to programs that provide legal services to the poor. In addition, some states even have seen an increase in state funding for pro bono as a result of the reporting, because the results have highlighted the resources required to meet the legal needs of the poor and the resources already devoted

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toward that goal.

In addition to mandatory and voluntary reporting, several states with mandatory continuing education requirements have developed policies that allow lawyers performing pro bono to receive continuing legal education (CLE) credit for doing so. Six states have developed such policies, and several more are considering the issue. Although the states vary in terms of how much CLE credit they provide for a given number of pro bono hours, most of the states have found this to be a positive step in encouraging additional attorneys to participate in pro bono.

Judicial committees

States have also attempted to increase participation in pro bono by creating policy implementing judicial committees. These committees have been instrumental in coordinating efforts within a state to deliver and develop pro bono services locally. For example, Florida, Nevada, Indiana, Maryland, and New Mexico involve judges in this “hands on” approach. In these states, court rules establish a system in which pro bono efforts are organized into regional districts with local judges responsible for the efforts of each district. The involvement of judges at the local level in these states has increased local bar support for pro bono and the recruitment of pro bono attorneys.

Other policies developed by states to increase pro bono participation of all lawyers reflect openness to the idea of judges participating in pro bono. For example, four—Nevada, Florida, Indiana, and Colorado—include commentary in their Codes of

The past two decades have seen the development of professional pro bono staff positions in all sectors of the legal profession

Judicial Conduct that specifically addresses judicial involvement in pro bono. Nevada’s commentary clarifies that judges can assist organizations in recruiting attorneys to provide pro bono legal services as long as the recruitment is not perceived as coercive. The Nevada commentary also states that judges can provide an organization with solicitation material for use in its recruitment materials and can request that attorneys accept pro bono representation of cases before them. The Florida, Indiana and Colorado codes have commentary which states that judges may engage in activities intended to encourage attorneys to perform pro bono services, including participating in events that recognize attorneys for doing pro bono work. Colorado’s commentary also allows judges to make scheduling accommodations for pro bono attorneys and to act as advisors to pro bono programs.

The ABA Center for Pro Bono and the development of pro bono programs

In addition to its active role in developing legal ethics and pro bono, the ABA has supported the development and growth of pro bono programs through the Standing Committee on Pro Bono and Public Service and its Center for Pro Bono.

The Center for Pro Bono’s activities in its formative years

(first as the Pro Bono Activation Project and later as the Private Bar Involvement Project) were focused on starting pro bono programs. As pro bono organizations have grown, the assistance offered by the Center for Pro Bono has expanded to build upon and advance existing efforts. In addition to providing assistance and support to pro bono programs and supporters through staff assistance, a clearinghouse of documents and resources, publications, a Web site¹, and the peer consulting project, the Center for Pro Bono has periodically engaged in in-depth examinations of and strategy development for specific issues confronting pro bono programs.

One such issue was the effect on pro bono of the reconfiguration of organizations funded by the Legal Services Corporation (LSC). In the mid-1990s, the LSC began encouraging the development of state-wide, integrated equal justice communities and planning. Consequently, reconfigurations resulted in an approximately one-third reduction in the number of such programs, with a corresponding increase in the service area of each. In 2002 the Center for Pro Bono commissioned a study on the relationship between these changes and the pro bono delivery system. The resulting report, *The Impact of Legal Services Program Reconfiguration on Pro Bono*, was published in 2003.² The report identified common ways in which pro bono was affected, including the finding that pro bono was not being factored in to program reconfiguration decisions. A number of recommendations to address this issue and other areas of concern were laid out in the report, serving as a valuable resource to programs undergoing reconfiguration.

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In 2002, the Center for Pro Bono conducted a study of family law volunteers and quality family law projects in response to the growing gap between the number of family law volunteers and the increased need for assistance in family law matters. *The Impact of Family Law Cases on Pro Bono Programs* identified specific challenges in recruiting volunteers for family law matters and suggested strategies to increase participation.³ Building on the report, the Center has sponsored annual workshops on the topic at the ABA/NLADA Equal Justice Conference to maintain the exchange of ideas and techniques to address this ongoing challenge.

Pro Bono becomes an institution

The past two decades have seen the development of professional pro bono staff positions in all sectors of the legal profession as organizations including state bar associations, law schools, law firms, and government attorney agencies have evolved from engaging in ad hoc pro bono activities to establishing institutionalized pro bono programs.

In the 1980s, states began to establish statewide positions with the purpose of supporting pro bono programs and efforts. Early state pro bono support positions focused on pro bono and were generally located within state bar associations. As the development of statewide justice communities progressed, more states created statewide staff positions. The newer positions addressed a variety of access to justice issues in addition to pro bono, a trend that continues to this day. Cur-

The evolution of pro bono from an informal voluntary effort to a pervasive, institutionalized pillar of the legal profession continues.

rently there are 27 states with either a statewide pro bono support staff or access to justice staff that includes support of pro bono programs among its duties.

Formal law school pro bono programs and the corresponding staff in the law school environment are another recent development. In the late 1980s, a growing number of faculty, administrators, and students began encouraging law schools to take a more active role in promoting pro bono service. In 1987 Tulane Law School instituted the first law school pro bono service requirement. Over the next 15 years, most schools developed formal pro bono programs, and approximately 20 percent of them adopted public service graduation requirements.

Today, 31 accredited law schools have pro bono or public service graduation requirements, and approximately 95 other schools have formal, administratively supported voluntary programs. The majority of the remaining law schools rely on student groups to provide opportunities, while a very small minority has no formal pro bono opportunities.⁴ The trend toward formalizing pro bono efforts within law schools is apt to continue following the recent adoption of Standard 302(b)(2) of the ABA Standards for Approval of Law Schools which provides "a law school shall offer substantial opportunities for . . . student participation in pro bono activities."⁵

Law firms have also witnessed an increase in institutional commitment to pro bono. Early law firm pro bono coordination mostly consisted of a committee charged with facilitating pro bono participation by the firm's attorneys. Many of these committees were established through the firm's written pro bono policy; others were responsible for developing a formal pro bono policy.

A further step toward the institutionalization of pro bono occurred when the ABA established the Law Firm Challenge in 1988, which urged attorneys in firms to provide a minimum of 50 hours each of pro bono per year. Participation in the challenge led to an increase in firms tracking and reporting their pro bono hours. As entities such as law students and legal publications became interested in the number of pro bono hours the firms reported, the sophistication of the firms' recordkeeping and their internal support structures increased. Law firms on both coasts and multiple cities in between have demonstrated their commitment to pro bono through the creation of pro bono director and pro bono partner positions. Attorneys with the exclusive responsibility of facilitating the firms' pro bono efforts have multiplied exponentially in the past decade. With the growth in this arena, the Association of Pro Bono Counsel was established in 2006 to support the work and professional development of full time pro bono counsel within law firms.

The evolution of pro bono from an informal voluntary effort to a pervasive, institutionalized pillar of the legal profession continues as government agencies, corporate legal departments and others

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Pro Bono News Policy Update:

ABA Dues Waiver for Senior or Inactive Members Providing Pro Bono Service

The ABA Board of Governors has approved a plan to waive dues for retired and inactive ABA members who have performed 500 hours of pro bono service in the prior year. This dues waiver option will be in place for the 2007-2008 bar year (which starts September 1, 2007). This program complements one of ABA President Karen Mathis's core initiatives, the Second Season of Service.

To qualify for this dues waiver, an ABA member must perform the work that meets the definition of pro bono under ABA Model Rule 6.1, and submit appropriate documentation. This includes proof that at least 250 of the 500 hours of pro bono work involved direct representation of persons of limited means or organizations that provide services to those individuals, service on boards of organizations serving the poor, or serving as non-compensated legal staff for such organizations. Applicants will self-certify by submitting a signed document attesting to the 500 hours and the 250 minimum hours in the services outlined immediately above. To participate in this program, contact the ABA Service Center at 1-800-285-2221 or service@abanet.org.

New Mexico Supreme Court Assumes Pro Bono Plan Oversight

The Supreme Court of New Mexico has adopted key elements of the New Mexico Commission on Access to Justice's pro bono report. On April 28, 2006, the court issued an order adopting the following recommendations from the report:

- that the court assume oversight of a Pro Bono Plan through the New Mexico Commission on Access to Justice
- that the court adopt district court pro bono committees
- that the court support the creation of a funded support staff to be housed at the State Bar of New Mexico and assist in obtaining funding

The court also authorized the commission to coordinate pro bono recruitment efforts and the development of a Web site to offer pro bono opportunities. The court referred to its committees for consideration of the commission's proposed rule amendments regarding mandatory pro bono reporting and CLE credit for pro bono. The report can be viewed on the Web site of the State Bar of New Mexico (www.nmbar.org).

District of Columbia Adds Comment to Model Rule 6.1

On August 1, 2006, the District of Columbia Court of Appeals issued an order amending the Rules of Professional Conduct effective February 1, 2007. Among the amendments is the addition of comment six to Model Rule 6.1, the rule pertaining to pro bono service. The new comment states that "law firms and other organizations employing lawyers should act reasonably to enable and encourage all lawyers in the organization to provide the pro bono legal services called for by this Rule." The purpose of the comment is to emphasize the importance of pro bono service and to encourage individuals in managerial positions to engage other attorneys in pro bono and

create institutional policies that support this type of work. For more information, see: www.dcbbar.org/new_rules/rules.cfm

Increases in Pro Bono Services Documented in Florida

The Florida Bar Standing Committee on Pro Bono Legal Service's June 2006 report to the Supreme Court of Florida, The Florida Bar, and The Florida Bar Foundation on the state's Voluntary Pro Bono Attorney Plan is now available to the public. The report contains mandatory reporting pro bono statistics for 2002-2003 and 2003-2004. A review of the individual reporting data over time shows an overall increase in both the number of hours being provided and the number of attorneys providing pro bono legal assistance to the poor. The report is online at www.floridaprobono.org.

Washington State Adopts Comments to its Pro Bono Rule

Effective September 1, 2006, Washington State added comments to its Rules of Professional Conduct 6.1. Several of these comments mirror the comments in ABA Model Rule 6.1, but some apply exclusively to the state. For example, the rule contains comments that explicate how the state's version of the rule is different from the ABA Model Rule. The comments also describe how time devoted to pro bono services should be calculated and the types of service that can be qualified as pro bono service. Rule 6.1 and the comments are online at www.courts.wa.gov.

New Pro Bono Committee Members

The ABA Standing Committee on Pro Bono welcomed two new

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committee members at the beginning of the current bar year.

Mark Schickman is the new committee chair. A labor and employment lawyer for 30 years, he is the immediate past chair of California's Judicial Nominees Evaluation Commission. He is a past president of the Bar Association of San Francisco and governor of the State Bar of California.

Steve Nissen is chair of the Not-for-Profit Practice Group at Manatt, Phelps & Phillips. His practice focuses on litigation, land use, non-profit governance and government affairs. He has been a partner at Manatt, has served in the Office of the Governor, and was executive director of the State Bar of California.

New Director of the ABA Child Custody and Pro Bono Project

The ABA Standing Committee on Pro Bono and Public Service is pleased to welcome Genie Miller Gillespie as the new director of the Child Custody and Pro Bono Project.

Gillespie has been practicing law since 1993, primarily in the area of adoption. Following her graduation from the Columbus School of Law at the Catholic University of America, she clerked for the Honorable Wendell P. Gardner, Jr. of the Superior Court for the District of Columbia. In 1993, she returned to Chicago and practiced domestic relations and mental health law for a small firm, before joining the Chicago Bar Foundation as its pro bono director in 1997. In 2001, she started her own practice, specializing in adoption, mediation and issues related to children and

families. In 2004, Gillespie helped create the Center for Law and Social Work, a not-for-profit agency devoted to developing viable backup plans for older and ill adoptive parents. Additionally, Gillespie is one of five guardians ad litem appointed by the Circuit Court of Cook County in adoption cases.

Gillespie has written numerous articles and spoken at several seminars about adoption issues. She has also trained hundreds of attorneys to handle pro bono adoptions and guardianship cases. Gillespie is a board member of Parents Care and Share, a child abuse prevention program, and is a past-chair of the Chicago Bar Association Adoption Law Committee.

Gillespie is thrilled to be the new director of the Child Custody and Adoption Pro Bono Project and looks forward to continuing the great work of the project and helping to develop a new direction for the future of the Project.

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develop pro bono policies and structures. These developments enable and encourage broader participation in pro bono and a resulting increase in legal services to clients.

Conclusion

The development of pro bono ethics within the United States has been a gradual process, with the most significant activity occurring within the past 30 years. As efforts to highlight the importance of pro bono in fulfilling one's professional responsibility were being made by the private bar and ABA governance, states took their own steps to support pro bono activities by

their lawyers. In addition to the development of state policy such as mandatory reporting and CLE credit for pro bono, states have also implemented statewide pro bono coordinators and access to justice committees. Promotion of pro bono on a local level has quickly followed, with law schools initiating pro bono graduation requirements and law firms creating internal pro bono positions and policies. As states and the legal institutions within them continue to create and promote a pro bono culture, lawyers will only be encouraged to engage in more pro bono activity and fulfill their professional responsibility to provide public service.

Jamie Hochman Herz is assistant staff counsel to the ABA Standing

Committee on Pro Bono and Public Service.

Cheryl Zalenski is assistant staff counsel to the ABA Center for Pro Bono.

Endnotes

- ¹ www.abaprobono.org
- ² The full report is available online at http://www.abanet.org/legalservices/probono/impact_reconfiguration.pdf
- ³ The full report is available online at http://www.abanet.org/legalservices/probono/family_law_report.pdf
- ⁴ ABA Directory of Law School Public Interest and Pro Bono Programs
- ⁵ The relevant ABA Standards for Approval of Law Schools are available online at http://www.abanet.org/legaled/standards/20062007StandardsWebContent/B.Chapter%203_20061005150125.pdf

From the Chair...



by Jonathan D. Asher
Co-Chair of the ABA Commission
on IOLTA

What are the most appropriate criteria for assessing the effectiveness of a legal services program? By what criteria might a funder assess the work of its grantees? Is it sufficient to look at the performance of individual programs in isolation? If not, what measures might be used to assess how the efforts of a program fit into the wider delivery of legal services in a given state or other appropriate region or jurisdiction?

Fortunately, during the past year, several important resources have been completed and adopted which will greatly assist those seeking guidance regarding these compelling questions. In August 2006, the American Bar Association House of Delegates adopted the ABA Standards for the Provision of Civil Legal Aid. Earlier in 2006, the Legal Services Corporation issued updated and revised Performance Criteria for the first time in a decade. Also in August, the ABA House of Delegates adopted The ABA Principles of a State System for the Delivery of Civil Legal Aid. Members of the IOLTA community should consider all three of these new or revised instruments as they assess grantee performance and work to improve the overall effectiveness of legal services and their state delivery

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IOLTA Grantee Spotlight: The Pro Bono Project-New Orleans, Responding to Emerging and Changing Post-Disaster Needs

by Dennette Young

The widespread devastation of Hurricanes Katrina and Rita and the dislocation of New Orleans' citizens have been well documented over the past 18 months. The fate of the city's legal services community has received less attention, but organizations such as The Pro Bono Project—New Orleans have both weathered the storms and played a critical role in the city's efforts to recover.

The Pro Bono Project has its roots in efforts to meet the increasing need for free legal services among the poor in the greater New Orleans community during the 1980s. The Louisiana Bar Foundation (LBF) used an IOLTA grant to create The New Orleans Pro Bono Project in 1986. One of the first public service programs of the LBF, the project sought to utilize the local private bar, a previously untapped resource. The private bar's enthusiastic response quickly spurred the project's development from mere concept to a viable full-service resource in the community. In 1987, the American Bar Association Consortium on Legal Services and the Public honored the LBF for serving the highest tradition of the legal profession through the sponsorship and development of The New Orleans Pro Bono Project.

By 2005, the New Orleans Pro Bono Project, now called The Pro Bono Project (The PBP), had evolved into a widely used community resource, providing representation in approximately 1200 cases per year. Through partnership between the private bar and other community legal aid providers, the project provided much-needed legal assistance to thousands of people in the metropolitan New Orleans. The PBP received continuing assistance and funding from IOLTA, New Orleans Legal Assistance, Title III funds and private donations, and was looking forward to celebrating two decades of service to the community.

Responding to disaster

Then, in August and September 2005, Hurricanes Katrina and Rita swamped New Orleans, battered the Gulf Coast, and turned the lives of thousands of residents upside down. Today, the nightmare of the 2005 hurricanes continues for the vast majority of south Louisiana residents. Housing, employment, and insurance benefits have become issues for a wide swath of those affected by the disaster, not just those living in poverty before the storms. According to Rachel Piercey, the executive director of The PBP, the crisis added to the already high level of need that existed beforehand: "While clients vary in age, race and ethnic background, one constant remains the same: an absolute need for pro bono civil legal services. The needs in post-Katrina New Orleans are even

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systems. The ABA Standards for the Provision of Civil Legal Aid replaced the ABA Standards for Providers of Civil Legal Services to the Poor adopted by the ABA in 1986. The revision is the product of a nearly two-year process spearheaded by the ABA Standing Committee on Legal Aid and Indigent Defendants. The process included extensive input from a Task Force that had the active participation of liaisons from the Commission on IOLTA and the National Association of IOLTA Programs. Those responsible for the process went to extraordinary lengths to ensure that the new Standards effectively addressed the developments in the practice of law and society since the Standards were last considered in 1986. The new Standards devote particular attention to changes that have altered legal practice: the proliferation of information technology, the emergence of systems to provide brief service and advice and unbundled forms of legal assistance, and the priority given to addressing the needs of the rapidly increasing number of unrepresented litigants. The new Standards also address the expanding need for cultural competence of legal aid providers.

The Standards are neither mandates nor an inflexible model for the structure, organization and operation of legal aid offices. They are aspirational guidelines, reflecting the best and most current thinking of many leaders in the access to justice community. As such, they serve as a valuable framework for IOLTA programs in assessing and seeking improvements in the work and effective-

ness of their grantees.

Similarly, the Performance Criteria adopted by the Legal Services Corporation as part of its multifaceted quality initiative are intended to aid in the assessment of LSC funded-grantees. Although the Performance Criteria are intended to serve a somewhat more narrow set of purposes than the ABA Standards, they are fully consistent with the Standards, and an update of the Criteria to be issued by LSC this year will cross reference the Criteria and ABA Standards through footnotes. Importantly, the LSC Performance Criteria articulate concrete steps that LSC grantees should take in pursuing and meeting the Standards and other objectives detailed in the Criteria. The Criteria also detail areas of inquiry and indicators of quality that might be looked at, considered and documented in the assessment process. While this renders the Criteria most applicable to the assessment of LSC grantees, LSC also intended that the Criteria serve as a helpful assessment framework for other funding sources, including the IOLTA community.

In contrast to these first two resources, the ABA Principles of a State System for the Delivery of Civil Legal Aid are less suggestive of an approach to individual program evaluation. Rather, the Principles present important guideposts for state access to justice commissions and other related organizations in assessing their progress in planning and oversight of statewide legal services delivery systems. These Principles are particularly appropriate for IOLTA programs, given their natural leadership role and responsibilities as statewide funders. IOLTA programs might look to the Principles for guidance in supporting their efforts to build

effective and healthy statewide delivery systems.

The development of these resources reflects very significant input from the IOLTA community. Commission member Hon. Susan Calkins and NAIP liaison Linda Rexer, executive director of the Michigan State Bar Foundation, were active participants in the Task Force that produced the new ABA Standards. They also led sessions during several IOLTA Workshops at which they solicited input, feedback, suggestions and comments from the IOLTA community on the Standards, particularly focusing attention to the more difficult issues addressed in the Standards. De Miller and Linda Rexer also participated in the development of the LSC Performance Criteria. In addition, the Commission was a co-sponsor of the two resolutions presented to the ABA House of Delegates that resulted in the newly adopted Standards and Principles.

The Standards, Performance Criteria and Principles provide thoughtful and very current tools that will help those who wish to reflect on and assess quality within programs and across legal services delivery systems. IOLTA programs may wish to utilize these instruments to help define their own sense of quality and determine how to best assess it in their jurisdictions. A substantial portion of the 2007 Winter IOLTA Workshops was devoted to how IOLTA programs can foster high quality legal services, with a particular eye toward the effective use of the Standards. By considering these resources and continuing the discussion about how best to use them, IOLTA programs, hopefully, may take concrete steps to improve legal services and access to justice within their states.

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greater," according to Piercey. "Through outreach, staffing clinics and conducting telephone intake in our office, we see that low-income people have a myriad of civil legal needs directly related to or exacerbated by the social dislocation caused by the storm."

Donna Cuneo, executive director of the LBF, had a first-hand view of how Louisiana legal service agencies responded to Hurricanes Katrina and Rita. "So many agencies stepped up to the plate, but The Pro Bono Project has managed to see the immediate needs of the community in recovery and react with solutions," said Cuneo. Since the storm, FEMA appeals, family law, custody disputes, evictions,

bankruptcy and consumer problems, successions, special needs trust, and insurance matters have all become increasing problematic areas. As a service provider, The PBP has been challenged to remain responsive to the community's needs by leveraging its diverse talent and resources. It has worked diligently to re-establish contact with existing volunteers and to receive commitments from hundreds of new ones around the country to staff clinics and work cases.



A. Wendel Stout III, board chair of The Pro Bono Project (left), and Executive Director Rachel Piercey were presented with the Louisiana Bar Foundation's 2007 grant check by LBF board member David F. Bienvenu (right).

Louisiana IOLTA forges ahead

The devastation in New Orleans and throughout southern Louisiana could have led concerned observers to wonder how the state's IOLTA program would fare. Fortunately, the program's revenue has improved during the last two years. It has bolstered the LBF's extensive disaster recovery efforts and ongoing support for grantees like The Pro Bono Project. (The foundation's 2007 IOLTA grants total \$1.66 million.) IOLTA has also helped the foundation support several new initiatives.

The first is a capital development program that will enable grantees to purchase and own their own buildings. The LBF has found that ownership provides benefits such as reduced occupancy costs and continuity of office locations for grantees, a conclusion reinforced by the experience of Hurricane Katrina. The LBF's capital development program will provide grantees with matching funds up to \$25,000 per year, for five years.

A second initiative is a law student loan forgiveness program, which will provide qualifying public interest attorneys \$5000 in assistance per year for up to three years. For 2007, the LBF has made \$56,161 in LRAP grants to 19 public interest attorneys.

The LBF is also in the process of filling out its governance structure by establishing regional "community partnership panels" throughout the state, which will serve as executive committees of the foundation. These committees will form a permanent local structure and will serve as liaisons to local grantees and help gather information regarding local needs. They may also be a source of future leadership for the organization.

Coordinating new resources

As executive director, Piercey's job always has centered on coordinating volunteers. After Katrina, the program's traditional base of support from the local bar significantly eroded, and Piercey's coordination role took on a national dimension. Immediately after the storm, people from around the country began calling to see how they could help.

In an effort to broaden its volunteer base, The PBP responded and has become the "go-to" resource on all matters related to optimizing out-of-state lawyers, including ongoing outreach and communication. "Coordination with out-of-state resources is particularly crucial now that local resources are limited," explains Piercey. Today many of The PBP's volunteers are lawyers from out of state, and The PBP anticipates that it will continue its outreach and coordination efforts through 2007 and beyond.

The PBP's response was enabled by financial and logistical assistance from afar. Through the efforts of Jim Baillie, one of its past presidents, the Minnesota State

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Bar Association (MSBA) “adopted” The PBP. The MSBA formed the Katrina Relief Task Force and with the help of the Minnesota State Bar Foundation, raised more than \$420,000. A large portion of the funds were dedicated to legal services and pro bono providers in the most devastated areas of Louisiana, Mississippi and Alabama. Baillie, along with the National Association of Consumer Bankruptcy Attorneys, the ABA Business Section and the American College of Bankruptcy, then turned to programmatic support by helping to establish The PBP’s bankruptcy clinic.

Additional help came from Debbie Segal, pro bono partner of Kilpatrick Stockton in Atlanta. Segal spent a week at The PBP, helping to establish an infrastructure to manage volunteers. That system was immediately put to work as eager volunteers arrived. Kilpatrick Stockton provided associates to train, manage and oversee spring break volunteers and paralegals to input data and organize files.

The Successions for Katrina Survivors Project is one example of The PBP’s post-hurricane initiatives. This program helps Katrina victims in the greater New Orleans area pursue legal home ownership following the death of a homeowner. When ownership of a home was not fully legally transferred to the occupant after the death of the owner, problems arose when collecting disaster relief. FEMA, grants and private insurers only make payments to the owner of the property. The resulting need for assistance with successions has increased more

than 600 percent following Katrina. Today, The PBP has an enormous caseload due to the impact of deaths related to the storms.

Looking ahead

Nearly 18 months after Hurricane Katrina the legal fallout continues, and The PBP continues to marshal a wide array of resources in response. “Post-Katrina consumer issues are getting ready to explode. Family law and bankruptcy issues are really big, there are more than we can handle,” explains Piercey. With a special grant from Equal Justice Works, the program’s staff is now supplemented by two AmeriCorp attorneys whose duties include the bankruptcy clinic, outreach to the Vietnamese and Hispanic communities, and expanding the family law and domestic violence programs. The additional support of the AmeriCorp attorneys has provided The PBP with resources to shift to a hybrid model of staff and volunteer attorneys while address-

ing increased legal needs and stabilizing the volunteer base. And the program continues to rely on the invaluable support of IOLTA, which is funding the LBF’s \$58,000 grant to The PBP for 2007. (IOLTA grants to The PBP since its inception total more than \$1.2 million.) While most legal service providers struggle with the increased personal and professional demands of the current environment, The PBP wages the battle for balance between the needs of the legal community and the needs and interests of volunteers. “Managing and juggling volunteers is hard, but they inspire us,” says Piercey. “They come here on their own dime, work a hit list and help us to connect the dots. Without our volunteers we could not accomplish our tasks. And for that we are grateful,” adds Piercey.

Dennette Young is the Louisiana Bar Foundation’s communications director. Dee Jones, the foundation’s public relations coordinator, also contributed to this article.

IOLTA News and Notes

Illinois, Minnesota and Texas have become the latest states to adopt interest rate comparability requirements. Under the requirements, lawyers must hold IOLTA accounts only in financial institutions that pay no less on IOLTA deposits than the highest interest rate or dividend paid to a bank’s own non-IOLTA customers when the IOLTA account meets the same balance or other eligibility qualifications. Each of the three states expects the new requirements to increase IOLTA revenues.

The requirements were incorporated in amendments to each state’s IOLTA rule, approved by their respective supreme courts. Texas’ requirement was adopted in December and took effect March 1, 2007. The Minnesota provision was also approved in December, and will take effect July 1. The Illinois requirement was approved in January, and will take effect June 1.

The Commission on IOLTA and the National Association of IOLTA Programs, through their Joint Technical Assistance Committee, continue to assist IOLTA programs considering and drafting interest rate comparability requirements and other revenue enhancement provisions. For assistance or information, contact Commission Counsel Bev Groudine at 312-988-5771 or bgroudine@staff.abanet.org.

From the Chair...



by Ron Abernethy
Chair of the ABA Standing
Committee on Lawyer Referral
and Information Service

Throughout the past 15 years, I have had the opportunity to meet with local bar association lawyer referral programs—small and large, urban and rural—in all areas of this country. Some have been small programs with one employee serving a limited population; others have been large services with referral operators who are attorneys, and still more serve large populations, or areas with limited attorney participation. Some of these programs are very successful financially, with panel members relying on LRIS referral work for a large part of their practice.

Surprisingly, the size of a program's staff, referral panel or potential client population does not seem to correlate with its overall success. Some very large services struggle—as do many smaller ones—with developing and maintaining a base of clients who are sufficiently affluent to retain attorneys in private practice. A lawyer referral service's image, it turns out, has much more to do with its financial success than does size or location.

Lawyer referral services developed as a mechanism by which bar associations could address, as

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A New Way to Develop Personal Injury Referrals: Experience, Resources and Daytime TV Ads

by Alex Macdonald

Many lawyer referral services have witnessed a steady erosion in the number and quality of referrals in the personal injury field. Typical LRIS advertising budgets pale in comparison to the cost of television, radio and print advertising campaigns mounted by members of the private bar. In the last 20 years, we have gone from a time when lawyer advertising was regarded by some as unseemly and by many others as unethical, to a time when such advertising is pervasive and essential to compete for personal injury cases.

As ABA Standing Committee on Lawyer Referral and Information Service Chair Ron Abernethy noted in his "From the Chair" column in the Fall 2006 issue of *Dialogue*, LRIS programs "must adapt to" the changing needs and expectations of customers. Three years ago, the Cleveland Bar Association (CBA) decided it was time to adapt to the changing legal marketing environment and take steps to ensure that its LRIS program could compete for quality cases in the personal injury field. As a result of the steps taken, the CBA currently maintains a thriving Personal Injury Experience Panel that holds a unique and essential place in the CBA's roster of services.

The need for action

By 2003, the CBA concluded that "business as usual" could result in the demise of its LRIS. Too often, we found that panel lawyers without the proper experience and resources to fund litigation were screening their referrals and farming out large cases to better-situated firms, in essence becoming middlemen between the LRIS and attorneys who were actually equipped to take such cases. This created extra confusion for callers as well as substantial losses in revenue for the LRIS: The service was receiving 15 percent of the middleman's referral fee rather than 15 percent of the fees generated for the case as a whole.

As the LRIS program was unable to compete with private lawyer advertising, the number of quality referrals in the personal injury field declined, compounding the loss of revenue to the LRIS.

It was time to take action. William Novak, of Novak Robenalt & Pavlik L.L.P. and John Liber of Liber & Associates, L.L.C., spearheaded a drive to form a panel of experienced personal injury attorneys at the CBA. It was their efforts that led to a strategic planning session in early 2003, at which the CBA examined "best practice" models of such programs and their benefits for other metropolitan bar associations across the nation.

As a result of the planning session, two steps were taken to ensure that CBA's LRIS program would be able to make quality referrals to a wider audience. First, the program made the experience requirements for

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From the Chair...

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they still do, the ongoing public demand for assistance in obtaining legal representation. While handling unsolicited requests for assistance formed the primary reason for lawyer referral, two ancillary goals—the first the desire to help young lawyers develop a practice and the second the need to address the problem of legal assistance for those unable to afford it—were soon added to the lawyer referral mix.

Over the years it has become clear that the second of those ancillary goals, addressing the need for free legal assistance, is best handled by programs created solely for that purpose. What, you may ask, does this have to do with struggling lawyer referral services? The answer is simple: The mix of these three objectives is directly responsible for a community's image of its local lawyer referral service and that image directly correlates with financial success.

Lawyer referral services that are struggling financially are almost universally perceived by the public and, more importantly, by the lawyers working in the community as a dumping ground, as a place where you send people who do not have a case or who are without the financial ability to retain a lawyer even if they have a viable legal issue. When that is the public image of a lawyer referral service, it's not difficult to see why it might have difficulty developing a decent client base.

On the other hand, those lawyer referral services perceived as targeting moderate-income legal consumers find they are much better off financially, with happier panel members. Image seems to

be the key in the cold business reality of running a lawyer referral service.

A lucrative source of business for all well-run referral services is the local legal community, in the form of lawyers who refer cases they are unable to handle themselves. For larger firms it may be that a case is simply not "big enough" for the firm to handle. Or it may be that the client has a problem in an area that is not part of a lawyer's practice. The lawyer would like to see the client again under different circumstances, regarding a bigger case or one within the lawyer's area of practice. To ensure that this is more likely to occur, the lawyer wants to refer the client to a lawyer who can properly handle the matter and in a way that will not preclude the client from returning to the initial lawyer if the client needs legal assistance in the future.

A lawyer referral service can benefit from both these goals. A service operating in compliance with the ABA Model Supreme Court Rules Governing Lawyer Referral and Information Service assures referring lawyers that a case will be properly handled. Further, given that subject matter panels are used by a well-run referral service, the possibility remains that the client may return to the first lawyer should a different legal problem arise.

To tap into this source of referrals from other lawyers, a referral service needs to market itself within the local legal community. Some programs have done this quite effectively. Others have had much less success and the primary reason is service image.

If a lawyer referral service is seen as essentially a source for free legal assistance, local lawyers will be much less likely to refer cases.

Bias and prejudice being what they are, lawyers seem loath to send cases to a service with such an image. The key to increasing attorney-generated referrals is education, particularly on three fronts:

- Helping local bar members to understand that the referral service is not a dumping ground for bad cases
- More importantly, helping bar members understand that with subject matter panels, the referral service is able to ensure that any referral they make will be to a lawyer competent to handle the referral
- Educating the public about the existence of subject matter panels, and referring those who cannot afford a lawyer and who do not have a contingent fee case, to another, more appropriate program within the bar

Public education is necessary because many clients with the ability to pay for legal services continue to believe, however unfairly, that a low-income service means low quality. Many will look elsewhere for service if they think the lawyer referral service is geared toward low-income people. Again, the issue is perception and image rather than reality. What is reality is that the image of the lawyer referral service, the way it is perceived by both clients and lawyers, affects the kind of cases the service is able to attract.

This certainly does not mean that a bar association should overlook or diminish its efforts to serve the community's low-income population. A bar association should consider how low-income people are served and try to separate the lawyer referral service from services for low-income

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The Cindy A. Raisch Award at 10: Recognizing Achievement, Inspiring Success

by Amy J. Seefeld

Cindy A. Raisch was a national leader in the effort to improve the quality of lawyer referral service programs. Raisch's philosophy was that a lawyer referral service must be run as a business that has as its first priority service to the public. Her legacy can be found in the ABA Model Supreme Court Rules Governing Lawyer Referral and Information Service.

Moved by her unwavering dedication to LRIS, the ABA created the Cindy A. Raisch Award in 1996. The award recognizes lawyer referral services that have enhanced service to the public as demonstrated by:

- Superior efforts in revising or restructuring an existing program
- Implementing a major program innovation or developing an innovative program concept that increases the public's access to appropriate legal and non-legal services
- Operating as a superior lawyer referral and information program worthy of emulation

The Cindy A. Raisch Award was presented for the 10th year in 2006. Over the years, the programs developed by award recipients have represented some of the best in public service and innovation.

A review of the 10 LRIS programs that have received the award reveals that many have been pioneers. That is certainly true of the 2006 award recipient, the Houston Lawyer Referral Service (HLRS). Under the guidance of Executive Director Janet

Diaz and a committed board of trustees, the Houston program embarked on an effort to improve service to that city's burgeoning Hispanic population.

After conducting six focus group sessions with members of the Hispanic community, HLRS developed a four-tier strategic plan. The plan sought to raise awareness that HLRS exists, increase knowledge in the Hispanic community of the services HLRS provides, educate consumers about their need for legal representation regarding day-to-day legal problems, and present

Raisch's philosophy was that a lawyer referral service must be run as a business that has as its first priority service to the public.

an image in the Hispanic community of HLRS as a trusted source for a lawyer who has Spanish language competency and meets their needs. Among the steps HLRS has implemented are Spanish-language radio, television, newspaper and telephone directory advertising, the distribution of brochures and bookmarks at Hispanic community centers and events, and a Spanish language Web site.

HLRS performs an ongoing

comprehensive evaluation of the effectiveness of the strategic plan and makes adjustments accordingly. The Houston program is a model for other lawyer referral services struggling to connect with non-English speaking communities.

As a Cindy A. Raisch Award recipient, HLRS is in good company. Previous award recipients have included:

- The Bar Association of San Francisco LRIS, for superior public service including a criminal representation conflict-of-interest panel, brown bag lunch presentations at local companies, extended service hours, email referrals, clinics at local libraries, and a call-in legal advice radio show.
- The Legal Referral Service of the Association of the Bar of the City of New York and New York County Lawyers Program, for establishing within a few days of the September 11 attacks a highly successful, comprehensive assistance program to match victims, survivors and family members of those who perished with volunteer attorneys to handle the vast array of legal problems that resulted from the catastrophe.
- The Contra Costa County Bar Association LRS, for developing a limited-scope representation panel that serves as a "how-to" guide for integrating the delivery of unbundled services into lawyer referral programs.
- The Kansas Bar Association LRIS for creating a brief advice program for clients who do not

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Personal Injury

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membership on its Personal Injury, Medical Malpractice, Toxic Torts, Products Liability and Wrongful Death panels fairly rigorous. Attorneys must provide detailed statements affirming several qualifications:

- that they have completed a number of jury trials to conclusion sitting first or second chair
- that they have completed at least six hours of relevant CLE annually (including three hours specializing in some aspect of personal injury practice such as accident reconstruction, insurance law, or medical/legal malpractice, and three hours in any litigation-related area such as discovery, motion or trial practice)
- that they have a clean disciplinary history with the Ohio Supreme Court
- that they carry legal malpractice insurance with limits of liability of not less than \$1 million/\$2 million, an amount ten times larger than the requirements for non-personal injury LRIS panelists

The LRIS program also asked panel members to pay a premium to be listed on the experience panels. The premium can be up to 15 times greater than regular LRIS dues. These payments then were placed in a dedicated advertising fund to target clients with plaintiff's negligence cases. The CBA filmed its first television ads in a cost-reducing inclusive package with local CBS and UPN affiliates that reach well over half the counties in the state, and which boast the viewer demographic best suited to LRIS.

The high subscription fee, experience and elevated malpractice insurance requirements for membership cultivate a panel of dedicated, experienced lawyers to meet the higher standards that complicated cases demand.

Filmed in the summer of 2004, the ads began airing in November of the same year. With a significant budget, we were able to reach the coveted daytime broadcast television audience.

The trust consumers place in their local bar association was evident in the results of the advertising campaign. CBA's LRIS receives approximately 35,000 calls per year. After the ad began running, 16 percent of the calls resulting in referrals began going to the personal injury panels, or nearly one in every six referrals made. If just a few of those referrals turn into high fee-generating cases, the 16 attorneys accepting cases on the experience panels can recoup their investment several times over.

Public benefits

This new CBA program benefits the public in two ways. First, having a personal injury experience panel ensures that callers will be able to discuss their situation with a competent attorney, well-experienced in tort litigation and with both the drive and the ability to invest the necessary

time and money in their case.

To make the contingency fee gamble worth it, attorneys must be ready and able to win. More than experience, personal injury attorneys need extensive monetary and professional resources, the presence of which is often indicated by the ability to carry significantly higher amounts of malpractice insurance. The high subscription fee, experience and elevated malpractice insurance requirements for membership cultivate a panel of dedicated, experienced lawyers to meet the higher standards that complicated cases demand. Injured parties can call the lawyer referral service for help finding an attorney, assured that the lawyer they are referred to will have the experience and resources necessary to maximize their chances at trial.

Second, the public benefits in ways that extend beyond the referred callers to touch the bar association's other pro bono and community programs. Traditionally in Ohio, funds derived from the LRIS program first go to LRIS maintenance and necessary improvements. After the health of the program has been seen to, however, all excess revenue goes to fund the local bar's public interest and pro bono programs. In the three years the CBA's personal injury experience panel has been up and running, it has become a significant revenue generator, always working toward the goal of LRIS self-sufficiency and the ability to disburse its excess funds into the bar's public interest offers.

Assessing the impact

In July 2005 the CBA organized a meeting of the personal injury experience panelists to review the program's success in the year after

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Personal Injury

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its inception. All reports indicated then and continue to indicate now that the program is not only carrying its own weight but that it contributes significantly to both LRIS revenue and overall call volume. At the time of the 2005 meeting, the CBA had received remittances for several large-fee cases, including one referral that generated \$60,000 in revenue. By the end of 2006, the flow of per-

sonal injury referrals remained steady and the cases appeared to be consistently reliable revenue-generators. The CBA had records of dozens of pending cases in which attorneys' fees are estimated to be in six figures.

Since their inception, the LRIS personal injury ads have increased the presence of the CBA in the public eye. The ads are bringing in callers who might never have considered calling an attorney for their needs. In turn, the increased revenue enjoyed by the LRIS pours over into the CBA's public interest

projects and programs in a system that nourishes itself through increased public visibility and attorney satisfaction. The CBA hopes to continue to benefit the public as its personal injury experience panel grows and evolves to meet the Cleveland market's distinctive needs.

Alex Macdonald is director of program development for the Cleveland Bar Association, where he is responsible for LRIS and a variety of the bar association's other non-dues revenue programs and departments.

From the Chair...

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people in the minds of lawyers and potential clients. This may be as simple as using the same people to staff the two programs, but using separate phone lines for the low-income program and the referral service.

Image has much to do with how well your referral service is doing. A few simple steps can work wonders for that image and your bottom line.

Mark your calendars now! The 2007 National Lawyer Referral Workshop will be held October 17-20, 2007, at the Astor Crowne Plaza in the French Quarter in New Orleans.



Raisch Award

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need a full consultation or representation, and for developing a profitable statewide program in a rural area.

- The Fairfax County Bar Association LRIS for taking a moribund program and, with the help of the ABA's Program of Assistance and Review (PAR), making it fiscally solvent and bringing it into compliance with the model rules.
- The New York State Bar Association LRIS for providing a superior service worthy of emulation.

In addition, this statewide program provided emergency services for weather-related disasters and assistance to local bar referral services throughout New York.

- The Toledo Bar Association LRS for demonstrating that public service and running a referral service as a business can go hand in hand. The Toledo program implemented an "Ask the Attorney" program and a successful modest means panel at the same time that it rose from the status of a heavily subsidized program to one of the bar association's leading sources of revenue.

- The King County Bar Association LRIS in Seattle, Washington and the Travis County LRIS in Austin, Texas for developing high quality programs in every respect that are worthy of emulation by other programs.

Together the programs developed by these award recipients constitute a body of achievement that is an inspiration to the LRIS community. Cindy Raisch would have been pleased.

Amy J. Seefeld is senior attorney in the Philadelphia Bar Association Department of Public and Legal Services.

From the Chair...



by M. Catherine Richardson
Chair of the ABA Standing Committee
on the Delivery of Legal Services

As the number of self-represented litigants has increased from state to state over the past few years, both courts and bar associations have found themselves at a crossroad. Should policies discourage self-representation and encourage these litigants to obtain lawyers so that they will be better advised and represented, or should we recognize that people will proceed pro se, whether it is due to economics or other factors, while we assume the responsibility to guide them through the system?

Many jurisdictions, usually led by the judiciary, have crafted programs that help self-represented litigants navigate the system. Self-help centers, courthouse desks and court facilitators frequently receive highly positive feedback and are viewed as significant contributions. How-

ever, when jurisdictions study the challenges presented by self-represented litigants, the ultimate recommendations do not end with suggestions for programs. They also tend to advocate an examination of policies. Revised policies can expand access by reintroducing lawyers in ways that are affordable and attractive to those representing themselves.

Beginning with Colorado in 1999, a handful of states have now worked through the complex process of identifying and amending rules of procedure and ethics that enable lawyers to provide services to pro se litigants. Washington State and Maine soon followed Colorado, while a number of states embraced a portion of the package of issues addressing this area.

In 2005, the Delivery Committee collected state policies and published its white paper titled, "An Analysis of Rules that Enable Lawyers to Serve Pro Se Litigants." The paper is available at www.abalegalservices.org/downloads/delivery/prosewhitepaperfeb2005.pdf.

Not only does this paper include an analysis and copies of specific state rules, but it also provides a checklist to assist policy-makers as they identify the issues that need to be addressed. These include setting out the scope of representation between the lawyer and client,

clarification of communications between parties when an otherwise self-represented litigant has counsel for a portion of the matter, document preparation, limited appearance in court, expedited withdrawals, and issues of conflicts checks.

New Hampshire recently has completed the process of thoroughly examining its rules and implementing changes. In an admirable collaborative effort, stakeholders, including those with insights into access to justice, professional responsibility and the judiciary, came together to craft the necessary changes. Next up, the Supreme Court of Iowa has issued a set of rules on "Unbundled Legal Services." At the time of this writing, the rules are out for public comment. We applaud the efforts of the states that have taken the time and spent the intellectual capital to work through a complicated set of policies.

As part of its agenda, the Delivery Committee will continue to evaluate these efforts and assess whether it should advocate policy changes at the ABA level. While we do so, we encourage other states to go forward to examine ways in which lawyers can provide maximum assistance to those who have decided to proceed without complete representation. Let's work together to reintroduce lawyers in ways that benefit everyone involved.

Legal Assistance for Military Personnel

Youth at Risk

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students to stay out. "You shouldn't suspend children—that compounds the problem—you need to talk to the children."

Jim Watson of the Boys and Girls Clubs of San Antonio and

Lionel Hollins of the Armed Services YMCA spoke of the important work those youth service organizations are doing to support youth in military communities, through programs such as after-school activities and juvenile justice diversion programs.

The results of the Fort Sam

Houston roundtable were reported by Hague to the Commission on Youth at Risk for its consideration as it develops findings and policy recommendations going forward. To read more about the Commission and the Youth at Risk Initiative, visit www.abanet.org/initiatives/youthatrisk.

From the Chair...



by *Deborah G. Hankinson*
Chair of the ABA Standing
Committee on Legal Aid and
Indigent Defendants

In May 2006, the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 06-441, which addresses the pervasive problem of excessive caseloads of public defenders and other lawyers who represent indigent defendants. The opinion states that despite having crushing caseloads, criminal defense lawyers must fulfill their ethical obligations to their clients, providing competent and diligent representation as required by the ABA Model Rules of Professional Conduct 1.1 and 1.3.

The Standing Committee on Legal Aid and Indigent Defendants (SCLAID) has long recognized that excessive defender caseloads form a major impediment to providing indigent defendants with proper representation. In 2004, SCLAID conducted a series of public hearings across the nation to examine whether the right to counsel in state court proceedings for indigents was being upheld as established in the U.S. Supreme Court's decision in *Gideon v. Wainwright*, 372 U.S. 335 (1963). SCLAID published a compilation of its findings in its report, *Gideon's Broken Promise: America's Continuing Quest for Equal*
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Using the ABA Principles of a State System for the Delivery of Civil Legal Aid

by *Bob Echols*

The new ABA "Principles of a State System for the Delivery of Civil Legal Aid" are a powerful tool for expanding access to civil justice at the state level. Adopted in August 2006 by the ABA House of Delegates on the recommendation of the ABA Presidential Task Force on Access to Civil Justice (appointed by then-ABA President Mike Greco and chaired by Maine Supreme Court Justice Howard Dana, Jr.), the Civil Principles are intended for use by state access to justice commissions and other key stakeholders in assessing state systems, planning to expand and improve them, advocating for needed resources, and ensuring ongoing oversight of its development.

The Civil Principles were modeled on the ABA "Ten Principles of a Public Defense Delivery System" which have been extremely effective in improving state defender systems. The Civil Principles incorporate lessons from previous initiatives into a short, easy-to-read document. They are drawn from sources including efforts by the Legal Services Corporation, the Project for the Future of Equal Justice (a joint project of the National Legal Aid and Defender Association and the Center for Law and Social Policy), and the ABA Access to Justice Support Project (now part of the ABA Resource Center for Access to Justice Initiatives).

State legal aid delivery systems

The Civil Principles look at state civil aid delivery systems as a whole, rather than at individual providers. Legal aid programs, law school clinics, pro bono attorneys, and support for pro se litigants through the courts are each regarded as part of the system. Responsibility for achieving the goal articulated by the principles is placed on no single institution, but is considered to be shared among all the stakeholders in a state's justice system. These include the courts, state legislative and executive branches, the organized bar, legal services providers, law schools, funders, and other relevant institutions. While recognizing that the federal government through the Legal Services Corporation continues to play a leading role in providing access to civil justice, the Civil Principles reflect the current reality that achieving these goals will not occur without state-level leadership.

A number of states have well-integrated civil delivery systems, led by an access to justice commission or similar entity and providing a range of effectively coordinated services from different providers. Some states are just beginning to develop such a system. The Civil Principles provide guidance for states at all levels of development. No state achieves the ultimate goal articulated in the Civil Principles. Even where all the other principles are met, no state "provides services in sufficient quantity to meet the need."

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From the Chair...

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Justice, concluding that “lawyers frequently are burdened by overwhelming caseloads and essentially coerced into furnishing representation in defense systems that fail to provide the bare necessities for an adequate defense...resulting in routine violations of the Sixth Amendment obligation to provide effective assistance of counsel.” Soon after publishing the report in 2004, SCLAID, along with the National Legal Aid and Defender Association advocated for the Ethics Committee to issue an opinion addressing excessive defender caseloads.

The opinion states that defenders who represent indigent criminal defendants have an ethical duty to refuse new cases if they believe their workloads are so excessive that they cannot competently and diligently represent their clients. With regard to individual lawyers appointed as counsel, the opinion notes that if they are at risk of having caseloads that would prevent competent representation, they should request that the assigning judge stop the assignment of new cases, and if necessary, request permission to withdraw from existing cases.

On the other hand, defenders who work in public defender offices must first work with their supervisors to refuse new cases or transfer cases or non-representational responsibilities to other lawyers. In the event a supervisor unreasonably fails to provide appropriate relief, the opinion instructs lawyers to advance up the chain of command, first by informing the head of the defender

office, then appealing to the governing board of the office, and ultimately filing a motion to withdraw with the court. The opinion also addresses the responsibilities of supervising lawyers, stating that while they “frequently must balance competing demands for scarce resources,” supervisors are responsible for a subordinate’s violation of the ethics rules.

The opinion explains that there are several factors that determine whether a caseload is excessive, stating that it “depends not only on the number of cases, but also on such factors as case complexity, the availability of support services, the lawyer’s experience and ability, and the lawyer’s nonrepresentational duties.” Staying in line with the fact that the ABA has never adopted numerical standards, the opinion emphasizes that numerical caseload limits cannot be controlling.

While the opinion provides ethical guidance for overloaded defenders, its true significance lies in its potential use in controlling the problem of crushing defender caseloads across the nation. Because the opinion addresses the ethical responsibilities of not only the individual lawyers, but also of supervisors, heads of defender offices, public defender boards, and private practice lawyers serving as supervisors and managers of firms, all of these parties may potentially use the opinion as a tool to seek relief from excessive caseloads.

In a recently published *Champion Magazine* article regarding the opinion, Norm Lefstein, SCLAID member and chair of its subcommittee, the Indigent Defense Advisory Group, along with Georgia Vagenas, assistant counsel of SCLAID, reflect on the

importance of the opinion: “[t]he most influential ethics body in the United States has now told criminal defense lawyers that having an excessive number of cases can never be an excuse for failing to provide ‘competent’ and ‘diligent’ representation to their clients.” The article concludes that the opinion is a “call to action by both individual defenders burdened with excessive caseloads, as well as by supervisors and heads of defender programs.”

SCLAID has worked to publicize the opinion and ensure that the public is well informed of the requirements it enumerates. It has hosted two panel presentations on the subject, one at the NLADA Annual Conference and a second at the SCLAID Annual Summit on Indigent Defense Improvement. It has worked with the ABA Ethics Committee to make Formal Opinion 06-441 accessible without fee on the ABA Web site.

Currently, SCLAID is monitoring the response to the opinion in the various jurisdictions and is encouraging adherence to the opinion’s message. In fact, Professor Lefstein has been invited to testify before a committee of the Missouri legislature to speak on the implications of the opinion for that state’s public defender system. SCLAID will continue to educate the defender community on the opinion and provide assistance to jurisdictions requesting guidance.

It is SCLAID’s hope that the Ethics Opinion will catalyze much-needed reforms in indigent defense.

Visit SCLAID’s indigent defense home page at www.indigentdefense.org for more information, including the ethics opinion and SCLAID’s 2004 report on Gideon.

ABA Principles

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Lessons from the defender experience

The defender community has found that the prestige of the ABA enables the defender-related principles to have a major impact in many contexts. Those principles have been effective in making a persuasive case to funders, the press and opinion leaders. By condensing the many previously existing standards into a set of short and straightforward statements, they provide a simple way of demonstrating, in those states with inadequate systems, “the system is broken; here’s how; here’s what needs to be done to fix it.” The Defender Principles have been incorporated into state statute and used in litigation. Within state defender systems, they have been useful in helping leaders identify issues that need to be addressed.

The Civil Principles offer similar potential. The fact that the ABA has gone on record as saying “this is what is expected of a state civil legal aid system” provides a new tool for use in efforts to expand and improve civil legal aid. Advocates for increased legal aid funding and other forms of support in addition to making their own case.

Threshold question

An initial step for state leaders using the Civil Principles to assess their state systems is to ask: “Do we have a civil legal aid delivery **system**, as compared to minimally coordinated efforts on the part of legal aid providers, the bar and the courts?”

Regarding the participation of stakeholder institutions, the fundamental questions include:

- Are the courts and the orga-

nized bar engaged in supporting and seeking to expand civil legal aid?

- Are the courts seeking ways to make the system more user-friendly for self-represented litigants?
- Is the organized bar engaged in supporting and seeking to expand pro bono service?
- Do legal aid programs collaborate effectively with the bar and the courts?

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ABA Principles of a State System for the Delivery of Civil Legal Aid

The Goal

A state’s system for the delivery of civil legal aid provides a full-range of high quality, coordinated and uniformly available civil law-related services to the state’s low-income and other vulnerable populations who cannot afford counsel, in sufficient quantity to meet their civil legal needs.

A state’s system for the delivery of civil legal aid achieves the goal if it:

1. Provides services to the low-income and vulnerable populations in the state.
2. Provides a full range of services in all forums.
3. Provides services of high quality in an effective and cost efficient manner.
4. Provides services in sufficient quantity to meet the need by maximizing and making the most effective use of financial, volunteer, and in-kind resources dedicated to those services from all likely sources.
5. Fully engages all entities and individuals involved in the provision of those services.
6. Makes services fully accessible and uniformly available throughout the state.
7. Treats clients and other who receive services with dignity and respect, actively engages clients and interacts effectively with them and engages them in planning and obtaining meaningful information about their legal needs to improve the system as a whole.
8. Engages and involves the judiciary and court personnel in reforming their rules, procedures and services to expand and facilitate access to the courts and to reduce, whenever possible, the cost of providing civil legal services.
9. Is supported by an organized bar and judiciary that is providing leadership and participating with legal aid providers, law schools, the executive and legislative branches of government, the private sector and other appropriate stakeholders in ongoing and coordinated efforts to support and facilitate access to justice for all.
10. Engages in statewide planning and oversight of the system for the delivery of civil legal aid to coordinate and support the delivery of services and to achieve the principles set forth above.

ABA Principles

(continued from page 27)

Regarding the system itself, basic questions are:

- Do people in all parts of the state have the same level of access to civil legal aid?
- Does our system provide services to people who are denied service by federally-funded providers?
- Does our system provide a full range of services, from basic information about legal rights and responsibilities to systemic advocacy on behalf of low-income people?

Unfortunately, in some states the answers to these questions is likely to be “no.” Where that is the case, it is incumbent upon state leaders from the bench, bar and legal aid communities to step up to the plate and assume responsibility for building a truly coordinated system that effectively involves the key stakeholders and meets client needs.

LSC Funding Update

In February, President Bush signed a measure resolving FY2007 funding for all government programs, including the Legal Services Corporation (LSC). LSC’s appropriation under the measure totals \$348 million, a \$22 million increase from FY2006. LSC was one of the few programs to receive a funding increase.

Earlier in the month, the President’s FY2008 budget submission to Congress again sought a cut in LSC funding to \$311 million. The bipartisan LSC board also submitted its FY2008 budget request, asking for \$430 million.

Self-Assessment

For states that already have engaged key stakeholders and taken steps toward building an effectively coordinated system, the Civil Principles and the commentary to them offer a basis for assessing the current state of the system, planning to move forward, and measuring progress. To assist in such efforts, the ABA Task Force on Access to Civil Justice also prepared a self-assessment tool, which translates the principles and commentary into a set of questions. While most of these call for only a “yes” or “no” answer, at least one state has applied the

instrument using “inadequate,” “adequate” or “good” as responses. The self-assessment instrument can be used as the basis for a report or an event such as a retreat or the first stage of a state-wide planning process.

The Civil Principles and commentary, as well as the self-assessment tool, are available online at www.AJsupport.org (under “State Access to Justice Commissions: Key Resources” on the “Documents and Resources” page).

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