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Home

IOLTA

Pro Bono

LAMP

LRIS

LRIS
Programs
Reach Out
to Their
Communities

From the Chair

ABA
Approved
Attorney
Referral
System

2010 Cindy
Raisch Award

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White House Lauds ABA Approved Attorney Referral System

By Charles J. Klitsch

In a White House ceremony held November 19, 2010, Vice President Biden, ABA President-Elect Bill Robinson, Attorney General Eric Holder, Labor Secretary Hilda Solis and Senior Counsel for Access to Justice Laurence Tribe heralded the launch of the ABA Approved Attorney Referral System.

This joint effort between the American Bar Association and the United States Department of Labor (DOL) will direct potential clients in need of representation in Family and Medical Leave Act (FMLA) claims and wage and hour claims under the Fair Labor Standards Act (FLSA) to participating ABA certified lawyer referral services. It is the ABA's most ambitious new project involving state and local lawyer referral services since the adoption of the Model Rules.

The collaboration came about when the DOL contacted the ABA for help in resolving an access to justice issue. Each year, tens of thousands of workers with FMLA and FLSA claims file complaints with the DOL. The agency is able to investigate and resolve many of these claims. However, due to limited resources, DOL must tell thousands of others with potentially viable claims that they must pursue their remedies without the agency's representation. DOL, with representation decisions being made in each of its many regional offices, had no reliable uniform mechanism to get unrepresented clients to qualified lawyers.

The ABA, with its experience in coordinating and assisting lawyer referral services nationwide, jumped at the opportunity to work with DOL to come up with a nationwide program that would dramatically improve access to justice for thousands of workers.

The ABA Standing Committee on LRIS and ABA staff led by Jane Nobsch worked with representatives of DOL to develop a new program that would bridge the gap between the public and private sectors and bring qualified representation within the grasp of ordinary working people. Over the course of several months, they hammered out the details of the program, addressing issues such as new agency notice requirements to claimants, toll-free telephone technology, panel member experience standards and client confidentiality.

Vice President Biden, who formed a Middle Class Task Force to address the issues that create burdens for middle class Americans, was delighted to



(L-R) Vice President Joe Biden
and Laurence Tribe, Access to Justice
Initiative, Dept. of Justice

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learn of the fledgling ABA Approved Attorney Referral System. Likewise, the Access to Justice Initiative established by Attorney General Holder within the Department of Justice saw this new program as a prime example of the type of collaborative effort between the public and private sectors that would increase opportunities for equal justice. Consequently, the Vice President's Office and the Department of Justice chose the ABA Approved Attorney Referral System as one of three new programs to highlight at the White House ceremony.

Addressing an audience that included members of Congress and metropolitan bar leaders from across the country, Biden said, "I am proud to be able to announce concrete steps that we are taking toward the goal of equal access to justice in ... protecting workers rights."

The Vice President explained to the audience the problem DOL has faced in assisting claimants the agency cannot help due to limited resources.

"Thanks to a new collaboration between the Department of Labor and the American Bar Association," Biden announced, "workers whose cases can't be pursued (by the Department of Labor) are going to be provided with a new toll free number that links them to an attorney referral service so that if you are wrongly denied overtime pay or paid less than the minimum wage, you can call this number and, if there is a participating attorney in your area ... you are going to be able to be put in touch with a lawyer who can help you with your case ... in a way that is affordable."

Echoing Biden's comments, Tribe described the program as a "Hopeful new collaboration ... designed to help bring fair and equal opportunity that our tradition promises to those who struggle every day to make ends meet."

Labor Secretary Hilda Solis stated that the program will go live on December 13, 2010. Beginning on that date, claimants will be provided with the toll free number whenever the DOL declines to pursue a complaint.

"[W]hen Wage and Hour Division has conducted an investigation, the complainant will now be provided information about violations at issue and back wages owed," Solis explained. "This information will be given to the complainants in the same letter informing them that the Wage and Hour Division will not be pursuing further action, which will be very useful for attorneys who take on these cases."

Solis underscored the importance of collaboration between the public and private sectors in providing access to justice. Addressing ABA President-Elect Bill Robinson, Solis said, "Our agency, DOL, is so excited and pleased to be working with you."

Tribe noted, "The American Bar Association has learned through experience that we need to form innovative community-based partnerships cutting across ideological divides both within government and between government and the non-profit and private sectors to make the whole greater than the sum of its parts."

In closing remarks, Attorney General Holder termed the new program "a breakthrough" and promised more such collaborations in the future. "By working together, I am confident that we can make a meaningful - and in many cases life-altering - difference to people and families across this country."

LRIS Standing Committee Chair Sheldon Warren also attended the White House event. In an *ABA Journal* interview, Warren commented, "To say I'm excited would be an understatement." Noting that the goal of the effort from the very beginning was to make sure that workers were connected to lawyers with expertise in FMLA and FLSA matters, Warren described the program as "a perfect fit for lawyer referral."

The response of the LRIS community has been enthusiastic. In a very short period of time, LRIS programs established separate practice panels for FMLA and FLSA matters, set experience requirements for panel members according to guidelines agreed upon between ABA and DOL, recruited qualified attorneys and provided the ABA with information and data to make the toll free number an effective tool for acquiring a referral. A group of

LRIS directors recruited other programs, provided input on phone scripts, tested the data transmission process and assessed the final product.

To date, thirty-eight lawyer referral services across the country have been certified by the ABA to participate in the ABA Approved Attorney Referral System for FMLA and FLSA matters.

LRIS directors who are interested in participating in the program or who would like more information about the program should contact Jane Nosbisch at 312-988-5754 or jnosbisch@staff.abanet.org

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