The legal assistance needs of less than twenty percent of low-income Americans are being met. Enlisting the pro bono participation of America's lawyers is a critical component of the national challenge to provide equal access to justice for all Americans. Access to Justice Commissions are strategically positioned to foster the development of rules changes to promote pro bono.

ATJ Commissions, and their leaders, members and staff, can influence and set policies in their respective states that will encourage and enable more lawyers to provide pro bono legal assistance to underserved clients in a variety of ways.

ATJ Commissions can catalyze rules changes because of their “big picture” charge and the fact that they include representatives of the organized bar and the Supreme Court, as well as other stakeholders.

Many states, though not all, have adopted ABA Model Rule of Professional Conduct 6.1, setting an aspirational goal of fifty pro bono hours annually, a substantial majority of which should be provided to persons of limited means and the organizations that serve them. Such a rule is the foundation upon which a state pro bono structure is built. It says to the bar in no uncertain terms that every lawyer has a responsibility to provide legal services to those unable to pay.

Six states have adopted mandatory pro bono reporting requirements. A pro bono reporting system makes attorneys aware of and accountable for their professional responsibility to provide legal services and to make financial contributions to the poor. It focuses attention on Model Rule 6.1 and adds incentive for compliance with that rule. The data collected through pro bono reporting can reveal the number of attorneys performing pro bono service during a given time period, the number of hours served and details about financial contributions made to pro bono and legal services programs. The information can also facilitate recognition of contributing attorneys, enhance the public image of the legal profession and improve the coordination of statewide pro bono delivery efforts.

Many lawyers who retire or otherwise leave the active practice of law convert their bar membership to inactive status to avoid the expense of mandatory bar dues and continuing legal education programs. Some lawyers, particularly retirees, may have moved to states in which they are not licensed to practice law. Twenty-six jurisdictions have adopted rules that allow such lawyers to offer pro bono legal assistance to eligible clients.

A number of states have implemented rules that permit attorneys who take pro bono cases to earn credit toward mandatory continuing legal education requirements. This can be an important incentive to bring volunteers into the pro bono system.

Low-income and other disadvantaged residents are disproportionately affected by major disasters. A significant disaster, whether natural or man-made, can also cripple for months or years the local legal community’s ability to assist these clients. In the aftermath of Hurricanes Katrina and Rita in 2005, the American Bar Association adopted a Model Court Rule to permit out-of-state pro bono attorneys to provide legal assistance to victims of major disasters. Three states, Mississippi, Iowa and Missouri, have adopted such a rule, and it is being considered by at least fifteen other states.

In 2007, the ABA adopted a new Model Code of Judicial Conduct. Model Rule 3.7(B) of the Model Code provides, “A judge may encourage lawyers to provide pro bono publico services.” State ATJ Commissions may now want to take a look at their state judicial ethics rules to determine whether incorporating Model Rule 3.7 would be helpful to encourage pro bono in their respective states.

It takes a coalition to build and sustain an effective pro bono culture. Access to Justice Commissions are, at the core, enabling, encouraging and acknowledging the
How ATJ Commissions can Promote Pro Bono: Local Committees, the Colorado Model

By Kathleen Schoen, Director, Local Bar Relations and Access to Justice Department of the Colorado Bar Association

When the Colorado Access to Justice Commission was created in 2002, it was envisioned that in addition to the Commission itself, each judicial district would have a local Access to Justice Committee. With the support of the Access to Justice Commission, eleven judicial districts have organized local access to justice committees and two more judicial districts are in the formative stage. The membership of these local committees includes judges, lawyers, bar leadership, pro bono coordinators, and service providers. These committees not only encourage pro bono, but coordinate other means of helping Colorado’s low income and vulnerable populations with access to legal assistance.

Examples of the initiatives they have undertaken include the following:
- Clinics to provide assistance to pro se litigants.
- Allocation of county bar dues to hire a pro bono coordinator.
- Production of a video in English and Spanish to help pro se litigants understand the court system and processes.
- Creation of a fill-in-the-blank contract in Spanish for construction subcontractors to establish legal rights in jobs they undertake.
- Periodic “call-a-lawyer” television shows.

The local committees played a major role in the success of the series of ten regional hearings held around the state in the fall of 2007, to assess the civil legal needs of the indigent. Invited panelists included state legislators, Colorado Supreme Court justices, Colorado Court of Appeals judges, District and County Court judges, Bar Association leaders, and members of the Colorado Access to Justice Commission and of local Access to Justice Committees. Testimony was provided by legal services clients, low income individuals with legal needs who did not receive legal assistance, attorneys who provide civil legal services to the poor, judges, and employees of organizations that serve the indigent. A final hearing was held at the Supreme Court in Denver in November. In February 2008, a report setting forth the findings of the hearings was presented to the Supreme Court, the Governor’s office, the Colorado Bar Association Board of Governors, and the Colorado Legislature.

The local committees partnered with the Access to Justice Commission in setting up the hearings, including inviting the panelists, enlisting the witnesses, coordinating the logistics, and reviewing the hearing report as it pertained to the hearing held in their judicial district. The result of the hearings will, hopefully, not only increase state funding, but raise awareness of the need for legal services to help Colorado’s low income people secure and maintain basic needs, such as safety, housing, and health care.

Although there is always room for improvement, the testimony at the hearings revealed how much Colorado lawyers contribute, in time and money, to helping Colorado’s low income people. The Commission anticipates that the report and the surrounding publicity will spur further interest in the need and even further the participation by private lawyers in providing pro bono services.

1 Kathleen Schoen has worked in the area of domestic violence prevention and intervention since 1985. She is currently the Director of Local Bar Relations and Access to Justice Department of the Colorado Bar Association. She has served as the Colorado Bar Association’s Family Violence Program Director since 1997 and coordinates several projects, including Domestic Violence: Make It Your Business Project (MIYB), Colorado Alliance for

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process that is perceived as exclusive or closed will be worth the extra effort involved.

LESSON TWELVE: Partners should place a priority on promoting cooperation and consensus within their own community and strive to speak with one voice in public.

Disputes, lack of adequate communication, and failures of cooperation within partner communities can seriously damage Access to Justice efforts. Leaders must work within their own communities to avoid the negative consequences that can flow from such circumstances. In particular, diverse providers should place a priority on promoting cooperation and consensus. While debate and dissent may be inevitable — even helpful — within a community, turf, jealousy and unnecessary competition will divert energy and undermine the cause. Leaders should try to keep the “big picture” of Access to Justice as a whole front and center at all times. In their public statements, they should strive to speak with one voice.

ATJ CAN PROMOTE PRO BONO: RULES AND POLICIES

good and vital work of their state’s pro bono programs and attorneys.

1 Anthony H. Barash is the Director of the American Bar Association Center for Pro Bono. He spent thirty-five years in private practice and as corporate general counsel. While practicing in California, he served on the Boards and as President of the Beverly Hills Bar Association, the Beverly Hills Bar Foundation, and Public Counsel, one of the nation’s largest and best urban pro bono programs. Tony can be contacted at barasha@staff.abanet.org.


3 For more information concerning ABA Model Rule of Professional Conduct 6.1, including its state-by-state application, see www.abanet.org/legalservices/probono/rule61.html.

4 Florida, Hawaii, Illinois, Maryland, Mississippi and Nevada have adopted mandatory pro bono reporting rules. For an overview of state pro bono reporting requirements, see www.abanet.org/legalservices/probono/reporting.html.

5 For further information concerning the jurisdictions that have adopted emeritus rules, see www.abanet.org/legalservices/probono/emeritus.html.

6 State-by-state information about such rules can be found at www.abanet.org/legalservices/probono/clerules.html.

7 For further information, see www.abanet.org/cpr/jclr/home.html.

8 For commentary on Model Rule 3.7(B), see www.abanet.org/judicalethics/approved_MCJC.html.
with this pro bono effort. Without the Commission’s presence and urging, it is doubtful if the State Bar or the Supreme Court would have been moved to suggest such a comprehensive approach.

1 Sarah M. Singleton, a shareholder of Montgomery & Andrews, P.A., in Santa Fe, New Mexico, is a member of the board of directors of the Legal Services Corporation and Co-Chair of the New Mexico Access to Justice Commission, which she played a leading role in creating. She is a former president of the State Bar of New Mexico.

2 Research results and tool kit components available on-line at http://www.nlada.org/News/News_Education

3 Identifying target audiences, developing messages that appeal to audience values, choosing audience-appropriate messengers and tactics, etc.

Colorado Model

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Cruelty Prevention, and the Colorado Network to End Financial Exploitation of the Elderly. She is the 2003 recipient of the Carolyn Hamil-Henderson award given by SafeHouse Denver to individuals who make significant contributions to building community awareness about domestic violence and helping to stop future abuse. While a prosecutor for the City of Aurora, she spearheaded the development and implementation of the Aurora domestic violence response, the first fast track criminal prosecution program in the nation. She writes and teaches nationally and internationally on the subject of domestic violence, workplace violence, and violence against women. She is also a trained mediator, and received 2002 and 2003 mediator of the year in the area of domestic relations and parental responsibility from Jefferson County Mediation Services. She has served on the Board of Director of several organizations including SafeHouse Denver and the Colorado Women’s Bar Association. She received her JD from the University of Oregon. Kathleen may be reached at kschoen@cobar.org.

Massachusetts: Barriers to ATJ

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2 Because of the many efforts of our courts to improve access to justice.

3 Barriers to Access to Justice in Massachusetts: A Report, With Recommendations, to the Supreme Judicial Court, June 2007. The report can be found at www.mlac.org/accesstojusticereport and at www.ATJsupport.org (search under Massachusetts on “Documents and Resources” page).

California: Improving Language Access

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1 Hon. Kathleen E. O’Leary was appointed Associate Justice for the California Court of Appeal, Fourth Appellate District, Division Three (Santa Ana) in 2000, after having served on the Orange County trial court since 1981. She currently chairs the Judicial Council’s Task Force on Self-Represented Litigants and the Court Interpreters Advisory Panel. In 2007, she received the Benjamin Aranda Access to Justice Award in recognition of her long term commitment to equal access in the California courts.

2 Geoffrey L. Robinson is past chair of the California Commission on Access to Justice, and now chairs its Language Access Committee. He was the primary author of the Commission’s 2005 report, “Language Barriers to Justice in California.” He is a partner with Bingham, McCutchen, in their Walnut Creek, California office. He is the recipient of the firm’s first John J. Curtin Public Service Award and the California State Bar’s President’s Pro Bono Award.

ATJ Commissions and Resource Development

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1 Meredith McBurney, a consultant since 1997, specializes in resource development for legal services and other advocacy organizations. She currently serves as Resource Development Consultant for the American Bar Association’s Resource Center for Access to Justice Initiatives and Management Information Exchange. From 1981 to 1997, she was the Executive Director for Colorado’s IOLTA program and statewide fundraising organization. Before that, she was the administrator for Colorado Rural Legal Services. Meredith may be reached at meredithmcburney@msn.com.