Judges Should Encourage Pro Bono

By Hon. Michael G. Harrison

This article was previously published as the Chair's Column in the Summer 1998 Newsletter of the National Conference of State Trial Judges (NCSTJ) and is reprinted here with permission from the American Bar Association.

At the recent dedication of the new law building of the Detroit College of Law at Michigan State University, former President Gerald Ford said that a first-class nation should not have second-class citizens. Those who go unrepresented in today's legal system are more likely than not relegated to second-class citizenship. In a law-driven society and technically complex discipline, the cost of legal services places low-income individuals at a serious disadvantage. For most of them, meeting their basic needs is tenuous at best.

By some estimates, only 20 percent of the current critical legal needs of the poor are met. With cutbacks in funding of the Legal Services Corporation, little, if any, additional financial resources exist to fill the substantial unmet needs.

One of the few potential sources for assistance to those in need is through those members of the legal profession who are willing to accept pro bono cases. Not only does this provide representation for those in need of legal services, but it directly assists the court, lessening the difficulties which exist when one or both parties represent themselves.

A central goal of justice must be that individuals have the ability to address their grievances within a system which provides equal treatment to protagonists. Decades ago, Roscoe Pound spoke of the essence of legal professionalism. He called it the pursuit of "a learned art... in the spirit of public service." I suggest that those in our profession should accept as a fundamental professional value access to the justice system.

Pro bono representation is defined as direct hands-on legal services; it is not the attorney who serves on a community board or represents their church. Nor does participation depend on the nature of one's practice. In some major corporations, pro bono representation is encouraged or expected. There are major law firms which consider the attorney's participation in pro bono activities in promotion and bonus determinations. This is not an undue burden for lawyers who accept the core values of our profession. Moreover, many intangible rewards can come with such representation.

Judges can play a critical role in encouraging the pro bono commitment by attorneys. As professional and community leaders, judges should set a standard for the legal profession. In doing so, it is ethically permissible for judges to solicit lawyers to participate in pro bono programs and to acknowledge, publicly and privately, their participation. Judges may also encourage such efforts by accommodating those who undertake such representation, for example, by placing cases at the top of a docket call.

I urge you to enthusiastically join me and many of your colleagues in opening the door to an equitable legal system to all who are in need of representation.

Hon. Michael G. Harrison was the 1997-1998 chair of the NCSTJ. He is an Ingham County circuit judge and current president of the Michigan State Bar Foundation.