

Dialogue

Issue Highlights

IOLTA

A Banking Perspective

The *American Banker* takes a look at what IOLTA has to offer banks 3

LRIS

It's Not Just About the Referral

Briggs Cheney examines why lawyers should take care—and consider their local bar lawyer referral program—when referring clients 9

LAMP

Military Consumer Law Centers

The LAMP Committee explores a way to combat efforts to prey on military consumers 15

Pro Bono

"You Must Never Leave the House"

Congressman John Lewis draws on his life story to show how and why lawyers can make a difference in pursuit of justice 19

Delivery

Visionaries

The Delivery Committee spent a day hearing from those with insight into the delivery of legal services 29

SCLAID

Harrison Tweed Award

An indigent defense initiative in Georgia and a pro bono response to an economic crisis in North Carolina bring recognition for the State Bar of Georgia and the Mecklenburg County Bar Association 30

IOLTA Grantee Spotlight: TeamChild Helps Cincinnati-area Children Stay in School

Legal aid advocates and managers are familiar with common case-handling protocol: interview a client, resolve the legal issue in question, and then close the case. Management priorities, risk reduction policies and reporting requirements place a premium on promptly closing files in matters that have been resolved.

For some lawyers at the Legal Aid Society of Greater Cincinnati (Legal Aid), however, this practice is turned on its head. The juvenile cases referred through the organization's TeamChild program will remain open for 12 to 18 months after the initial legal problem is resolved, and that is just fine with Elaine Fink, managing attorney of Legal Aid's Children's Law Practice Group and manager of TeamChild. She explains, "The goal of TeamChild is to stabilize children who have been in juvenile court so they return to school or stay in school and to keep them out of new problems with the juvenile court. In other words, we want to see that they don't re-offend. So we proactively follow up in each case to see how the client is doing, to make sure their situation remains stable well after we got involved in their case."



This attention to long-term outcomes for its clients is part of the collaborative, problem-solving approach that helps TeamChild stand apart, and which led Legal Aid to establish the program in November 2003. Legal Aid, which receives significant general funding support from IOLTA funds administered by the Ohio Legal Assistance Foundation, performs a full range of legal work for its low-income clients, including assistance with family law matters, housing issues, and public benefits. The TeamChild model allows the organization to devote additional resources—the equivalent of one full time attorney—to representing youths, mostly ages 10 to 16, on the delinquency docket of the Hamilton County Juvenile Court.

The TeamChild concept

TeamChild was originally developed in Washington State by Columbia Legal Services (a grantee of the Legal Foundation of Washington, that state's IOLTA program). It has since been adopted by legal services programs in states such as Connecticut, Florida, Kentucky, and Minnesota. In Ohio, Legal Aid has modeled the program after the Washington program and adapted it to meet local needs through partnerships with local agencies.

(continued on page 2)

DIALOGUE

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TeamChild

(continued from page 1)

TeamChild's main partnership is between Legal Aid and the Hamilton County Juvenile Court, which also serves as the main source of referrals to the program. A handful of referrals come from juvenile court judges and magistrates who hear delinquency cases. But most referrals come from the court's probation department. Probation officers, who have attended TeamChild training sessions, conduct assessments and determine if a child is an appropriate candidate for the program. The department then refers the family to Legal Aid.

Legal Aid does not have any advocates exclusively dedicated to the program. Rather, TeamChild calls on four Legal Aid attorneys who take TeamChild cases in addition to the full range of other cases normally handled by Legal Aid. This approach lends TeamChild a multi-disciplinary capability for addressing some of the problems underlying clients' difficulties in school and the juvenile court. Fink explains, "We take a holistic approach toward these cases, with an eye toward the legal issues in which we have expertise, such as family law or housing."

Legal Aid advocates have applied their legal expertise to situations such as:

- Negotiating with the school system to avoid expulsion (or to reduce the length of an expulsion or suspension)
- Negotiating for a suspended or expelled child to receive (out of school) educational services
- Addressing unmet special education needs
- Resolving unstable custody and guardianship arrangements

*"Education is
the most effective
ticket out of poverty
for these kids."*

- Working with the school to see if the child has or needs an Individual Education Plan (IEP) and follow through regarding its implementation
- Ensuring that a child receives medical attention or mental health services, and that the parent or guardian is aware of available publicly funded health care opportunities
- Addressing homelessness, residency disputes and other assorted barriers to accessing school

Legal Aid also works with another TeamChild partner—the Hamilton County Mental Health Board—to create priority access for mental health services for children in the program, many of whom have undiagnosed or untreated illnesses.

Educational underpinning

TeamChild's case acceptance criteria do not require that education be at issue in referred cases. Nonetheless, the third TeamChild partner is the Cincinnati Public Schools, and of 40 cases handled by the program since November, the majority have involved some sort of school issue. (Clients in about 50 percent of the cases involve students from the Cincinnati Public Schools, and the remainder from other schools in Hamilton County.)

Elaine Fink explains that there are several reasons for the focus on school. First, the school envi-

(continued on page 6)

From the Chair...



by Darrell E. Jordan
Chair of the ABA
Commission on IOLTA

Soon Commission on IOLTA members and IOLTA program staff and trustees will gather in Atlanta for the Summer IOLTA Workshops. The two days of programming will once again feature regional banking break-outs, the "Let's Talk" forum for small-group discussion, and sessions addressing the inclusion of bankers on IOLTA program boards, communicating with lawyers and banks, media outreach, board responsibilities, and organizational leadership and coalition building.

As always, I look forward to the sessions and to seeing many of you again. I'd like to commend those who plan to be in Atlanta, because I know even with a comparatively low registration fee, the IOLTA Workshops have a price tag that programs struggling with falling IOLTA revenues may feel hard-pressed to meet. Nonetheless, programs—even smaller ones under great financial stress—have continued to take part in the workshops. This is important, because the workshops are one of the best opportunities programs have to exchange and acquire new information about revenue enhancement, program operations, and other vital topics. If you can't make

(continued on page 4)

A Banking Perspective: IOLTA Can Be a Good Way to Build Deposits

by Thom Weidlich

The following article was originally published in the June 8, 2004 edition of the American Banker, a leading newspaper covering the banking and financial services industry. The article is reprinted here with permission.

Never heard of an IOLTA? You're not alone, but your bank may be missing a source of steady deposits along with an opportunity to build relationships with attorneys and law firms, experts say.

IOLTAs, short for interest on lawyers' trust accounts, are used by attorneys and law firms to deposit client funds that are so small in amount or held for such a short time period that they will not net interest for the clients after the banking fees.

The funds might come from a personal-injury settlement, real estate closing, alimony payment, or unearned retainer. By pooling the clients' monies, the net interest generated is used to help pay for legal services for the poor through groups such as the Legal Aid Society.

Creating an IOLTA account system is fairly straightforward, though procedures differ from state to state. Every state and the District of Columbia currently have an IOLTA system in place. (Florida's, established in 1981, was the first.) Five were set up by state legislatures, the rest by state high courts.

About 27 jurisdictions have mandatory programs, in which all lawyers who handle client funds must participate; 23 jurisdictions have opt-out programs, in which all lawyers participate unless they affirmatively choose not to; and three jurisdictions (Oklahoma, South Dakota, and the U.S. Virgin Islands) are voluntary, meaning lawyers there must affirmatively choose to participate. *[Note: As of July 1, 2004, Oklahoma became the 28th state with a mandatory IOLTA program. Read more on page 5.]*

(In New York IOLTA is called IOLA, for interest on lawyer accounts, and in Florida it is IOTA, for interest on trust accounts.)

"One of the considerations banks should think about when getting into the IOLTA business is that you're dealing with state IOLTA programs that have their own general set of guidelines," though most are pretty similar, said Brad Arrowood, a senior vice president who manages checking products and oversees IOLTA business at Wachovia Corp., which is based in Charlotte and has about 10,000 IOLTA accounts in 11 states and Washington, D.C.

In March 2003 U.S. Supreme Court justices upheld the IOLTA system against arguments that using the interest generated by the funds was an unconstitutional taking of the clients' property. But the court ruled that because the interest would not have been generated but for the IOLTA

(continued on page 4)

From the Chair...

(continued from page 3)

it to Atlanta this summer, please put the 2005 Winter IOLTA Workshops (February 10 and 11 in Salt Lake City) on your calendar now and include attending them in your budget planning for next year.

The arrival of the Summer Workshops and the ABA Annual Meeting signals a time of change for the Commission. This August we will bid farewell to an exceptionally dedicated and productive group of members who have reached the end of their three years on the Commission.

Vermont Supreme Court Justice John Dooley, Toby Graff, and Karen Neeley are all “heavy lifters” and will leave an impressive legacy to the Commission.

John Dooley co-chaired the Joint Rules Task Force, which has provided guidance during the past year on issues related to the Supreme Court’s decision in *Brown v. Legal Foundation of Washington* and on effective rule provisions designed to increase IOLTA revenues. The task force has dealt with these two significant issues

on a time-limited basis, and John, along with his co-chair Linda Rexer, has deftly kept the process focused and on track. John also co-chaired the Joint Technical Assistance Committee and helped lead the Commission’s contingency planning efforts while we awaited a decision in *Brown*.

Toby Graff was another active participant in the Joint Rules Task Force. He also co-chaired the Joint Communications Committee, and helped represent the Commission in various roles overseeing the development of the IOLTA.org Web site project with NAIP. We will miss Toby’s willingness to ask difficult questions and to challenge accepted wisdom, as well as his dedication to maximizing IOLTA’s impact. He has helped raise the level of conversation and output on the Commission during the last three eventful years.

As general counsel to the Independent Bankers Association of Texas, Karen Neeley has lent her perspective on the world of banking to the Commission. Karen co-chaired the Joint Banking Committee for several years, and helped propel that committee in

creating banking sessions for the IOLTA Workshops, and in other projects such as developing a glossary of banking terms for IOLTA programs. It is entirely fitting that earlier this summer, when the *American Banker* published an article on IOLTA (something of an unprecedented event), it featured several quotes from Karen. For years we have talked about outreach to bankers, but Karen has led the way in showing us how it can be accomplished.

* * * * *

I devoted my last column, in the spring issue of *Dialogue*, to urging opt-out and voluntary programs to take a fresh look at the benefits of converting to mandatory IOLTA. I was very gratified to learn about the Oklahoma Bar Foundation’s successful motion to convert to mandatory status effective July 1. Congratulations to the foundation, the Oklahoma Bar Association and their supporters for this accomplishment. In turn, I think it is appropriate to ask the remaining 24 opt-out and voluntary programs, “Who’s next?”

Build deposits

(continued from page 3)

system, there was no property lost.

Banks that offer IOLTAs say they are a good way to attract attorneys as customers.

“It’s not a nice-to-have, it’s a have-to-have,” says Henry McCarthy Jr., manager for greater New Orleans private banking at Hibernia Corp. “We handle a lot of the law firms in New Orleans in the private-banking area.”

“From time to time we focus on attorneys and we call and solicit their IOLTA account as we would any other account.”

Hibernia has about 100 IOLTA accounts from lawyers in and around the city, he said.

James L. Long, senior vice

president for retail banking at Heartland BancCorp in Gahanna, Ohio, near Columbus, says that IOLTA accounts feature into the bank’s marketing. “From time to time we focus on attorneys and we call and solicit their IOLTA account as we would any other account.”

Bankers also note that providing IOLTAs is a way to give back to the community. But as the Supreme Court case indicated, not everyone appreciates the IOLTA system and some critics argue the monies

(continued on page 5)

Build deposits

(continued from page 4)

generated fund controversial causes.

Karen M. Neeley, general counsel to the Independent Bankers Association of Texas, disagrees.

"There's a misunderstanding among some people about what kind of programs are funded by IOLTA," says Neeley, who is also a board member of the Texas Equal Access to Justice Foundation, which oversees the IOLTA program in that state. "These truly are services for a sector of the community that has no recourse. ... It doesn't go for frivolous lawsuits. It's used to bring civil justice to people who would be out of luck."

Neeley is also a member of the American Bar Association's Commission on IOLTA and co-chair of the Joint Banking Committee of that group and the National Association of IOLTA Programs.

Don Saunders, director of civil legal services for the National Legal Aid and Defender Association, says the IOLTA programs are the second most important source of funds for legal aid. (The first is the \$336.6 million federal appropriation for fiscal year 2004 to the Legal Services Corporation).

IOLTA generated nearly \$143 million for groups that represent the needy in 2002 (the latest year for which figures are available), according to data collected by the American Bar Association's IOLTA Clearinghouse.

That's down 12 percent from the previous year, and due to the historically low interest rate environment, according to the bar association, which notes that many state IOLTA programs experienced a 50 percent drop in funds during that period.

IOLTA News and Notes

Oklahoma Converts to Mandatory IOLTA

On July 1, 2004, Oklahoma became the 28th state with a mandatory IOLTA program. Acting on a motion filed by the Oklahoma Bar Foundation, the Oklahoma Supreme Court signed an order on May 10 converting the state's voluntary program to mandatory status. The move is expected to significantly boost IOLTA revenues and increase the Oklahoma Bar

Foundation's financial support of legal services and other law related programs in Oklahoma. The effort was strongly supported by the Oklahoma Bar Association and benefited from hours of work by the Foundation's board, volunteers and staff. Following Oklahoma's conversion, there are 22 IOLTA programs that are opt-out and only two that remain voluntary.

Low interest rates have also significantly increased the number of negative IOLTAs (accounts whose interest earned is less than bank-imposed service charges). Legal aid groups try to encourage banks to waive fees and minimum balances and offer the highest interest rate possible.

Though banks do not receive tax benefits from waiving fees on IOLTAs, they can list their favorable treatment of the accounts as part of their community activities in their Community Reinvestment Act report. However, there are no specific points given for this activity, according to the American Bar Association.

In Texas, banks that waive IOLTA fees are designated "IOLTA-friendly" by the foundation, which lists them on its Web site (www.txiolta.org). The Massachusetts program maintains a list of "Honor Roll Banks"—those that do not charge IOLTA account holders regular fees or handling charges, and pay an above-average

interest rate of 1.25 percent. Other states such as Illinois and Michigan have similar lists.

Banks that charge fees say they try to reach a mutually agreeable price point that is fair to both parties. "We're constantly in contact with state IOLTA programs about what their agreements are on charging fees," said Wachovia's Arrowood.

"Generally our agreement with them is what types of fees we can net against that interest," he said. "Mostly they're processing fees or activity fees for checks written. The types of fees we can't charge against the interest are check-writing fees, which are borne by the attorney."

Heartland charges a flat \$7 monthly maintenance fee, which covers 20 transactions (it's 30 cents per transaction after that). The fee can be waived with a minimum balance of \$500.

Wachovia has specific tiered IOLTA interest rates, which vary

(continued on page 7)

TeamChild

(continued from page 2)

ronment often provides the most concrete feedback and clarity on a child's problems that is available. Another reason is simple, according to Fink: "Education is the most effective ticket out of poverty for these kids. The more they are in school and the less they are out of school, their ability to take advantage of the education that is being offered is maximized." Logically, then, a large part of TeamChild's mission is keeping children in school and helping them avoid the pitfalls of missing school. Research has shown a direct link between being out of school and poor school performance; poor performance often results in being left behind a grade; once a child is left behind one grade he or she is 65 percent less likely to graduate; and, being left behind two grades results in

an even greater chance of not graduating.¹

Most important, however, is the correlation between school and a child's prospects for not re-offending while in the juvenile justice system, and for avoiding trouble as an adult. Fink argues that staying in school is the number one factor in determining whether a troubled youth once in court will end up there for a second or third time. "Being out of school—due to truancy, expulsion, and so on—is the most powerful precursor to juvenile crime."

If a child is caught in the cycle of missed school, bad behavior, court appearances, more missed school, poor school performance and eventually dropping out—he or she enters adulthood without a high school diploma. This puts the child at a severe disadvantage, one that frequently prevents the child from becoming an economically self-sufficient member of the adult community.

Progress to date

In most cases, it is too early to tell how successful TeamChild's intervention will be over the long haul. But initial feedback from the juvenile court has been positive, and Legal Aid's efforts to keep children in school were lauded in a series on education in the *Cincinnati Enquirer* earlier this year. The program is still in the first year of a three-year pilot phase. Fink hopes that funding will be secured for the additional two years to help serve more clients and to see if the project is an effective model for serving children at risk of dropping out of the educational system. Elsewhere, TeamChild has been very successful. In Washington State, a study found that the program administered by Columbia Legal Services saved nearly \$4000 in public funds for each child who received services and avoided jail time.²

One indication of TeamChild's promise in Hamilton County is Legal Aid's latest, and unique, partnership with General Electric Aircraft Engines (GEAE). The senior legal counsel of GEAE and his staff of five attorneys will begin taking TeamChild cases as a pro bono community service project. The GEAE attorneys have already devoted considerable time to training supplied by Legal Aid, and have begun handling education cases as a precursor to taking the more complicated TeamChild cases. If this collaboration progresses as Legal Aid and GEAE envision, it may enable Legal Aid to increase the TeamChild caseload beyond the 50 cases per year that is currently projected.

Conclusion

The TeamChild approach toward its clients is not a speedy one. The

(continued on page 7)

TeamChild in Action

Tanya (not her real name) is 14 years old and in seventh grade. Due to her mother's drug addiction, she has been in the juvenile court's dependency system for some time and was in the custody of her great aunt until she died in 2001. When Tanya came to Legal Aid she did not have a legal guardian and was not doing well in school. First, Legal Aid attorney Donita Parrish helped Tanya's cousin secure guardianship. Then Legal Aid represented Tanya at an expulsion hearing that revolved around an argument with another student. At the time of the expulsion hearing,

Tanya had been out of school for 10 days and faced a possible 80-day expulsion. Through Legal Aid's representation, Tanya was permitted to return to school the next day. Now Legal Aid is working towards obtaining mental health services for Tanya (something she was previously not able to obtain, because access to most social services requires a legal guardian). Legal Aid is also working with Tanya's school to help her obtain interventions that will assist her in the classroom. While Tanya has a long way to go before graduation, she is now on a path where success is possible.

Build deposits

(continued from page 5)

by state, according to Arrowood. In general, balances of up to \$100,000 earn 0.25 percent; between \$100,000 and \$250,000 earn 0.75 percent; over \$250,000 earn 1.0 percent.

"The high tier on our IOLTA is paying a little more than the high tier in a business money market checking account," said Heartland's Long. The high end is 60 basis points for balances over \$75,000. The interest goes down to 25 basis points for balances of \$1,000 (the minimum

needed to earn interest).

Long said Heartland moved to a tiered structure about a year and a half ago. "We decided we should offer the same tiered structure to IOLTA customers even though the money goes to the state," he said. "It seemed like the fair thing to do because we paid higher interest rates on the business accounts. It seemed like the right thing to do to generate individual funds to help out the indigent in Ohio."

Columbia Bank of Fair Lawn, New Jersey, offers two types of IOLTAs. The first is a traditional

version, in which the attorney commingles client funds. The bank also offers a type of account that creates sub-accounts in the names of the lawyer's clients. Bank fees are waived for IOLTA accounts.

Mike Van Houten, senior demand deposit officer at Columbia, said the advantage to the sub-account method is that the bank manages most of the attorney's bookkeeping. When working with a commingled account, the attorney must keep track of each client's deposits.

Arrowood cited two issues

banks face when deciding whether to offer IOLTA accounts: dealing with the individual state programs; and the extra reporting and remitting of funds. "It's a bit more work than with a standard checking account," he said. "That is a consideration."

Neeley says that the Texas Equal Access to Justice Foundation created its system so that the banks could do the reporting electronically. "We make the reporting and the way it's handled very simple electronically," she said. "We want to bear the brunt."

Thom Weidlich is a freelance writer in New York.

TeamChild

(continued from page 6)

success of the project toward its goals will not be instantly recognizable either, but must be measured over time: Will a child stay in school? Can she successfully complete her probation without re-offending? Fink cautions, "Don't underestimate how much work is needed in these cases. There are no quick fixes." TeamChild permits advocates to pursue these cases over a longer term than normal, and to work, case-by-case, to keep kids in school.

Endnotes

- ¹ Data from Cincinnati Public Schools study conducted in 2003.
- ² "Watching the Bottom Line: Cost-Effective Interventions for Reducing Crime in Washington," Washington State Institute for Public Policy, January 1998.

Dialogue thanks the Legal Aid Society of Cincinnati for its assistance with this article.



Collaborative Law: Is it for Your Lawyer Referral Service?

by Ana Otero

Collaborative law, a fairly recent approach to family law cases, is an alternative conflict resolution process guided by the uncompromising principle of solving problems without litigation.¹ In the collaborative law process, both parties retain separate, trained lawyers whose sole role in the representation is to help them settle the dispute. "All participants agree to work together respectfully, honestly, and in good faith to try to find 'win-win' solutions to the legitimate needs of both parties. No one may go to court, or even threaten to do so, and if that should occur, the collaborative law process terminates and both lawyers are disqualified from any further involvement in the case. Lawyers hired for a collaborative law representation can never under any circumstances go to court for the clients who retained them."²

Responding to the adversarial system

Collaborative law, sometimes called collaborative divorce (CD), was started in 1990 by Stu Webb, a family law attorney in Minneapolis who was frustrated with the adversarial nature of family law. In the mid-1990s the movement reached California and it has grown considerably since. Today, lawyers throughout the United States have formed collaborative groups that focus solely on this type of dispute resolution. Participating lawyers typically are specialists in family

law with many years of experience. In addition, CD lawyers take specialty courses in collaborative law offered by a variety of associations, including the Academy of Collaborative Professionals, which is currently developing standards for collaborative practice.



Ana Otero

In 2001, Texas became the first state to codify collaborative law. Section 6.603 of the Texas Family Code defines it as follows: "... a procedure in which the parties and their counsel agree in writing to use their best efforts and make a good faith attempt to resolve their dissolution of marriage dispute on an agreed basis without resorting to judicial intervention except to have the court approve the settlement agreement, make the legal pronouncements, and sign the orders required by law to effectuate the agreement of the parties as the court determines appropriate."³

The Texas model, which mirrors others nationwide, contains the following provisions:

- The parties' counsel may not serve as litigation counsel but may ask the court to approve the settlement agreement
- The agreement must include provisions requiring a full and candid exchange of information between the parties and their

attorneys, hiring experts through joint agreement of the parties, and withdrawal of all counsel involved in the collaborative law process if the collaborative law procedure does not result in settlement⁴

Benefits of collaborative law

Supporters of collaborative law cite benefits to clients and attorneys alike. "Collaborative law seeks to create an environment in which the parties, with the aid of their attorneys, can address the issues presented as problems to be solved, rather than contests to be won."⁵ Hal D. Bartholomew has outlined the positive effects of the collaborative process, including:

- Cooperation, information sharing, and creative problem-solving replace suspicion, fear and mistrust
- The threat of litigation with its accompanying rancor and divisiveness is eliminated
- Attorneys are able to leave behind negative characteristics of the adversarial model that are emotionally and physically destructive to attorneys and clients alike
- Clients have control of the process and the outcome
- Both parties are allowed to speak and be heard in a safe environment
- The widest range of settlement options is considered because the process is interest-based, rather than claim denial-based

(continued on page 12)

From the Chair...



by James B. McLindon
Chair of the ABA Standing
Committee on Lawyer Referral
and Information Service

In this, my final column as chair, I will address two current issues that impact the quality of the service lawyer referral programs provide nationwide.

First, let me note that, as I leave this position, I am happy to report that more programs are in compliance with the ABA Model Supreme Court Rules Governing Lawyer Referral and Information Service than ever before. At present, 112 programs around the country—over 37 percent—can boast that they satisfy the requirements of the model rules. It is my hope that, before my term ends in August, the number will hit 40 percent.

The credit for this substantial increase in compliant programs goes to three sources. First are the programs directors, executive directors, LRIS committee members and other bar leaders who, in many cases, have worked tirelessly to overcome the hurdles that separated their programs from full compliance.

Second are the members of the LRIS Committee, who made the cold calls and the follow-up calls to programs around the country over the past three years, urging and assisting them to come into

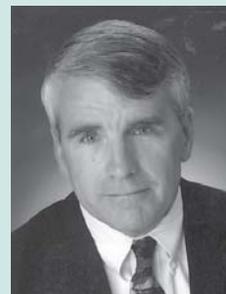
(continued on page 10)

It's Not Just About the Referral

by Briggs Cheney

For those involved in the legal referral business, this article is not about legal referral per se. Rather, it is about what I will call the “selfish side” of legal referral. It’s about why practicing lawyers ought to carefully review their practices in referring clients and potential clients to other lawyers, and consider that there is more to referring a client than just the referral.

My hopes are several: First, that I can provide for those in the lawyer referral “business” a tool to encourage lawyers in their communities to think of their local bar-sponsored lawyer referral service when making referrals. Second, that those in the business will take to heart the importance of making their referral service the very best. That is, providing a service that screens panel members to ensure they are competent and professionally responsible lawyers, and also prescribes specific panel standards. Third, for practicing attorneys, providing some good reasons why lawyers should formalize their practice for making referrals, and why that practice should include public service-oriented lawyer referral services.



Briggs Cheney

The process of referring a client or potential client to another lawyer is often done too casually, without enough thought. The circumstances and occasions when a lawyer refers a client vary widely. It may be that an existing client where the relationship has deteriorated, or a conflict has arisen. Maybe the individual is a potential client, but the referring lawyer cannot take on the representation (for example, due to time constraints or because nature of the legal problem is not within the area of practice of the referring lawyer). Whatever the reason, one of the very important things we can do as lawyers for the public we serve is to help members of that public find the best possible lawyer. It’s often a mystery how clients get to lawyers.

In my home state, the courts have made clear that “[n]o formal contract, arrangement or attorney fee is necessary to create the relationship of attorney and client... [and]... “the contract may be implied from the conduct of the parties.” *George v. Caton*, 600 P.2d 822, 827 (N.M. Ct. App. 1979). New Mexico is not alone in holding that whether an attorney-client relationship has been created is a question of fact. This creates a situation where a lawyer may believe no attorney-client relationship existed or had been terminated (and thus, no duty or obligation), but a client/potential client or a court may think differently. Some courts have recognized actions against lawyers for **negligent referral**. *Tormo v. York*, 398 F. Supp. 1159 (D. N.J. 1975) (recognizing that a lawyer must exercise ordinary care and skill in referring a client to another lawyer). The question then becomes: What are a lawyer’s duties and obligations and what is the standard of care for client referral?

In *Tormo*, the court concluded that the referring lawyer could reasonably rely upon the fact that the New York lawyer to whom the referral

(continued on page 10)

From the Chair...

(continued from page 9)

compliance. Last, but certainly not least, are the members of the LRIS Committee's staff, who made their own share of phone calls in addition to coordinating this effort and urging the committee forward whenever our energies lagged.

Compliance with the Model Rules should be a goal for every program for a variety of reasons. It's good marketing because compliance enables your program to become certified to use the ABA logo and slogan. These tell the world—and more specifically, your potential clients—that your program “meets ABA standards.” It's also good public service. Complying with the Model Rules means that your program has experience panels, requires insurance or proof of financial responsibility, and seeks client feedback among other things. Consumers deserve no less; more and more, in the competitive climate we all face, they demand it.

The second issue impacting the quality of LRIS service was highlighted in a recent exchange on the ABA's LRIS Listserv, which revealed to me that at least two bar

organizations around the country have considered whether to replace their LRIS program with a mere listing of their lawyers online. Such a proposal appears to elevate simplicity above all else, including public service, service to members, and, in many cases, financial opportunity.

Let me explain. Certainly, there could be nothing easier for a bar than e-listing its consenting attorneys and their self-designated areas of concentration, and leaving it to the public to make of that list what it will. However, an LRIS program that complies with the Model Rules does far more than this. First, mere listings often provide little guidance or information and obviously cannot provide any screening of prospective clients. Thus, clients lose out on the benefits of the informational aspect of LRIS: knowledgeable professionals trained to direct clients toward help. This is important when, for example, a client is better served by a referral to the appropriate public agency, not an appointment with a market-rate lawyer. Without an LRIS program in place, bar members are likely to receive an increased proportion of calls from members of the public who don't need or can't afford a lawyer, but do

require assistance. These are calls that attorneys and their staffs are usually ill suited to handle.

Moreover, because a well-run LRIS program often makes money, bar associations that drop their services will lose this revenue, or the potential for revenue, which often funds other public service programs. In short, now as ever, LRIS programs remain a necessary service of the bar, and one that provides important benefits to the public, the bar's members, and indeed the bar and its programming as well. To eliminate them would violate one of the guiding principles of bar associations that distinguishes them from mere trade organizations: the underlying goal of operating with public service in mind.

It's been a pleasure to serve as chair of the LRIS Committee over the last three years. I would be remiss if I didn't express my thanks to the ABA Staff in Chicago with whom I've had the pleasure of working over the last three years: Jane Nosbisch, Glenn Fischer, Colleen Glascott, Marsha Boone and Edna Driver. My job would be impossible to do without their able assistance, counsel and plain hard work. To them I say, “thank you.”

Responsible referrals

(continued from page 9)

was made was licensed by that state and was competent and fit to practice law. But what about the situation where the reason for referring is that a specific area of law outside the referring lawyer's expertise? Does the standard of care require the referring lawyer to

make reasonable inquiry into the experience or skills of the referred lawyer?

The standard of care applied will be dependent on the circumstances presented in each case. What about the referral to a lawyer who shares the same office suite as the referring lawyer? What if the referred lawyer is the tenant of the referring lawyer, the referred lawyer is behind on

the rent, and the referral of a client will make possible payment of past due rent? Or, what if the referring lawyer and the referred lawyer are business partners in some other venture? And how many names of other lawyers should a lawyer provide in making a referral? What does the referring really know about the lawyers recommended? Does she

(continued on page 11)

Responsible referrals

(continued from page 10)

have personal knowledge of the referred lawyers' competence or is it just a matter of thinking, "I have heard this lawyer is good in this area." Lawyers take a risk when making a referral. How can we minimize that risk?

One answer: make a referral to a recognized and reputable lawyer referral service. Interestingly, even bar association referral services have not been immune from lawsuits for negligent referrals, which only underscores the risk for the practicing lawyer. In *Weisblatt v. Chicago Bar Association*, 684 N.E.2d 984 (Ill. App. 1st Dist. 1997), the bar had referred the plaintiff to a lawyer for legal malpractice. The plaintiff later sued the bar for negligent referral alleging that the referred lawyer had entered into an inadequate settlement. In rejecting the action against the bar association, the Illinois court concluded that although a fee was paid to the bar, no attorney-client relationship existed, the bar association was not a lawyer, and thus, not subject to the same professional duties.

That same court in *Gonzales v. American Express Credit Corp.*, 733 N.E. 2d 345 (Ill. App. 1st Dist. 2000), relied on its earlier decision in *Weisblatt* in affirming dismissal of a variety of claims against a "for profit" referral service for a negligent referral. The dismissal followed the failure of the plaintiff to submit a legally sufficient complaint, suggesting that the door might not be closed on negligent referral if properly pled. However, citing *Weisblatt* and *Richards v. SSM Health Care, Inc.*, 724 N.E.2d 975 (Ill. App. 1st Dist. 2000), the court held that, "there are no legal requirements that a legal referral service 'stand legally responsible' for the services provided by a referral attorney..." In a Pennsylvania decision, *Bourke v. Kazaras*, 746 A.2d 642 (Pa. 2000), a referred client sued the bar referral service after the referred lawyer allowed the statute of limitations in the plaintiff's case to run. The referred lawyer, also sued, did not have malpractice insurance, which explains—in part—the suit against the referral service. The Pennsylvania court was less gentle in its rejection of the plaintiff's action against the bar

association concluding that to allow such an action would inhibit lawyers and bar associations in providing referrals.

The *Weisblatt*, *Gonzales* and *Bourke* cases provide several lessons and a convenient conclusion to this article. *Weisblatt* and *Gonzales* both confirm that a cause of action against a lawyer for negligent referral does exist, based on the court's comments that referral services are not lawyers and may be viewed differently. The *Bourke* holding reaffirms the importance of lawyers and referral services feeling comfortable in making referrals. Both decisions suggest that referral by a practicing lawyer to a recognized referral service may provide some insulation (the "selfish side") from liability. But the most important lesson is probably the responsibility we all have, lawyers and referral services, to make responsible referrals. It is not just about the referral, but about the right referral.

Briggs Cheney is a member of the ABA Standing Committee on Lawyer Referral and Information Service. His practice in Albuquerque, New Mexico is focused on lawyer and other professionals liability.

Enhance Your Development and Image at the 2004 National Lawyer Referral Workshop

The ABA Standing Committee on Lawyer Referral and Information Service will host the annual National Lawyer Referral Workshop in San Diego at the U.S. Grant Wyndham Hotel from October 13 to 16, 2004.

This year's workshop will feature programs on developing brand identity and loyalty to ensure that potential clients recognize your bar association lawyer referral service as a valuable asset. In addition, the workshop will feature programs on career-building skills such as priority/time management, and developing productive relationships with

association board members.

Expert consultants will be on hand to offer one-on-one assistance on topics including phone technology, ethics, and overall LRIS operation.

The workshop is the only event in the country of its kind, designed to help lawyer referral programs to better manage operations, save money and introduce innovative ways to provide high quality service delivery to the public served by your bar. Go to www.abalegalservices.org/lris/conference.html for more details.

Collaborative law

(continued from page 8)

- The process controls the pacing of the case rather than being driven by a court calendar or statutes
- The use of jointly selected experts and advisors and the simultaneous disclosure of information by the parties greatly reduces legal fees and expenses
- The parties and the attorneys devote all of their efforts to a negotiated settlement
- Voluntary discovery with full and accurate disclosure of assets and liabilities eliminates costly and often unnecessary court preparation and appearances, depositions, and formal discovery methods⁶

Another advantage stressed by supporters is that cases can be resolved in less time than the traditional court litigated divorce. This is particularly important in large counties such as Harris County, Texas, which includes Houston. Roughly 20,000 divorces were filed there in 2001.⁷

Critiques of collaborative law

The movement, however, is not without its detractors. In one article published in the *Wisconsin Lawyer*, Gary Young argues that CD “threatens to be a new paradigm for malpractice.”⁸ Young outlines how the documents that generally structure the Wisconsin collaborative divorce process commit lawyers to obligations they would not otherwise have.⁹ First, each spouse signs a retainer agreement with his or her own lawyer. Then the spouses sign a “Stipulation for Participation in Collaborative Law Process” form,

With so many consumers seeking assistance with family law matters, it is foreseeable that someone will ask an LRIS for a specific referral to a CD lawyer.

which in turn refers to a third document, the “Principles and Guidelines for the Practice of Collaborative Law,” which the four participants also sign.

Young argues that these documents impose four obligations on CD lawyers that they would not otherwise have: (1) the duty not to represent either spouse in an adversarial proceeding, (2) the duty to withdraw, (3) the duty to disclose, and (4) the duty to correct others’ mistakes. A CD lawyer, Young argues, is “answerable to the other spouse in both contract and tort.... Under the CL stipulation and CL Principles, [a lawyer has] four contractual obligations to the other spouse.” A lawyer who breaches any of these obligations can be sued by the other spouse for breach of contract, according to Young. “Few, if any legal malpractice policies cover breach of contract claims. You must reserve for them. Moreover, if the other spouse sues his or her own lawyer for, say, negligent tax advice, then either of them can join you as a defendant: You have a contract with both, and promised to correct their errors. Any malpractice action against one CD lawyer

will ensnare the other.”¹⁰

Detractors also argue that the CD process shortchanges clients because it doesn’t allow them to utilize the legal system to reach the most favorable solution possible.¹¹ In addition, if the process does not work, clients have to go through the added expense of litigation. Some lawyers believe collaborative law should be a non-issue: “Quality lawyers should be able to handle divorce cases with finesse and good manners without giving up the right to go to court.”¹² Other critics argue that CD is not unlike mediation, which also has its own pros and cons. Some also argue that divorce is inherently a process with a lot of venom, and no dispute resolution alternative will work.¹³

Even supporters of CD acknowledge that it is not appropriate for every case, particularly if one or more of the parties is intransigent and unwilling to negotiate, or in cases involving domestic, sexual, substance abuse. Further, some CD lawyers believe that infidelity disqualifies a couple from participating in the CD process.

Which way for LRIS?

Despite the continued growth of the movement, there is skepticism and some serious dissension among family law lawyers as to the benefits and risks associated with collaborative law. But despite its vocal dissenters, it is doubtful that the movement will quietly drift away. The question then becomes: What are the pros and cons from the perspective of LRIS programs?

Given the nationwide growth of the movement with an growing number of collaborative groups emerging, and the widespread dissemination of information

(continued on page 13)

Collaborative law

(continued from page 12)

about it to the public online, CD is likely to become increasingly well known. In 2003, the Houston Lawyer Referral Service received 100,000 calls; 20,000 of which were in the family law area. That same year, of the 19,900 referrals made by that service, 4,100 were family law referrals.¹⁴ With so many consumers seeking assistance with family law matters, it is foreseeable that someone will ask an LRIS for a specific referral to a CD lawyer.

For this reason, establishing a collaborative law panel may be a wise move for LRIS programs. That said, at least two directors of large LRIS services have indicated that, in their view, the drawbacks of CD keep them from adding such a panel to their programs.

Pitfalls for LRIS

These drawbacks go beyond the detractors' arguments outlined above, which focus primarily on the nature of CD proceedings and their inherent risks. Handling CD in the context of lawyer referral presents additional problems. The most critical is that many callers may be unfamiliar with the CD process, and a referral to this type of representation may require an exercise of judgment that an LRIS program is legally unable to perform. Many LRIS intake personnel are not lawyers, and may not be able to properly determine whether a caller is eligible for this type of service. Whether a specific case is eligible for collaborative lawyering is a determination that must be made by the client after private consultation with a lawyer. This requires an inquiry into the parties' rela-

tionship, finances, the need for formal discovery devices, and many other, often delicate issues, and requires the exercise of legal judgment. Only after listening to all the facts of a case and discussing the legal alternatives can a lawyer make an intelligent and well-informed recommendation. Even when the LRIS intake person is a lawyer, recommending a particular legal proceeding is generally beyond the scope of the LRIS referral staff.

Another serious consideration is time. While there may be some variations, the typical referral process takes less than ten minutes, and referral staff may have neither the time, nor the knowledge about the facts of a specific matter to make an informed recommendation regarding collaborative lawyering.

An LRIS program that wants to include a collaborative panel will have to conduct additional formal training specific to this area to ensure that staff can adequately handle these calls. For one thing, the callers will have to be informed that if the process does not result in a settlement, the CD lawyer will be unable to represent them in court. This is a potential expenditure that the typical client may not realize, and may ultimately reflect negatively on the LRIS if clients are not forewarned.

Different LRIS programs may make different decisions regarding collaborative law, based on the strength of the collaborative movement in the jurisdiction, the demands of the LRIS callers, and ability of the program to provide proper training for intake staff. As is often the case, there is no solution that fits all the varied LRIS programs.

Ana Otero, a member of the ABA Standing Committee on Lawyer

Referral and Information Service, is an associate professor at Thurgood Marshall School of Law in Houston and a part-time municipal court judge. She is on the board of the Houston Lawyer Referral Service.

Endnotes

- ¹ Bartholomew, Hal D., Collaborative Negotiation: A New Approach to Family Law at www.divorcehq.com/articles/collabnegotiation.html.
- ² Pauline H. Tesler, Frequently Asked Questions at www.dallascollaborativelaw.com.
- ³ Texas Family Code Annotated §6.603 (Sampson & Tindall 2002).
- ⁴ Id.
- ⁵ Don Royall and Houston McShane, Editors' comments to Sec. 6.603 of the Texas Family Code Annotated, Sampson & Tindall (West 2002).
- ⁶ Bartholomew, footnote 1 at p. 1.
- ⁷ Estimate as quoted by Harry L. Tindall, a Houston family law lawyer, in "Divorce Over Easy," by Jennifer Mathieu, *Houston Press*, August 29, 2002.
- ⁸ Gary M. Young, "Malpractice Risks of Collaborative Divorce, Collaborative Divorce and Malpractice: A Debate." *Wisconsin Lawyer*, Vol. 75, No. 5, May 2002.
- ⁹ Id at pages 1-3.
- ¹⁰ But see the counterarguments by Daniel R. Cross and Jolene D. Schneider, "Collaborative Divorce and Malpractice: A Debate, Collaborative Process itself, Doesn't Lead to Malpractice." *Wisconsin Lawyer*, Vol. 75, No. 5, May 2002.
- ¹¹ See footnote 7, Jennifer Mathieu, *Divorce Over Easy*, *Houston Press*, August 29, 2002.
- ¹² Lindsey Short, president of the American Academy of Matrimonial Lawyers. See Id at page 32.
- ¹³ See Id at p. 33.
- ¹⁴ Statistical information from Janet Diaz, executive director of the Houston Lawyer Referral Service.

LAMP Distinguished Service Award Nominees

The recipients of the 2003 LAMP Distinguished Service Award were profiled in the Spring 2004 edition of *Dialogue*. Many other commendable individuals and units were nominated for the award. A selection of several notable nominees is profiled here.

LT Col Timothy A. Guiden

Immediate past chief of the Air Force Legal Assistance and Preventive Law Division, LT Col Timothy A. Guiden demonstrated unparalleled leadership, vision, dedication and initiative in what many characterize as the rebirth of Air Force Legal Assistance. His tenure was marked by strong strategic planning, with policy initiatives and practical guidance that created a fundamental positive shift in the delivery of legal assistance to Air Force personnel. Under his guidance the following initiatives were executed:

- Publication of *Preventive Law Measures in Light of Pending Deployments*, which provides practitioners a comprehensive list of Web sites and references to expand and enhance their training programs
- Publication of the *Air Force Deployment Tax Guide*, which targets the filing options and income tax benefits available to deploying and deployed personnel at the federal and state levels
- Weekly publication of the "Deployment Readiness" item in the Judge Advocate General's Online News Service, which conveys current, practical information, documents and other resources



- Redrafting of AFI 51-504, *Legal Assistance, Notary, and Preventive Law Programs*, to reflect newly established governing principles facilitate practice in the field
- Revamping of the JACA Web site to provide current resources in the subject areas routinely encountered in legal assistance
- Coordinating the drafting and dissemination of guides on the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Jobs and Growth Tax Relief Reconciliation Act of 2003, the Military Family Tax Relief Act of 2003, and the Servicemembers Civil Relief Act
- Ongoing support for the tax assistance mission of the Air Force, including allocation of scarce resources for teaching assignments, ongoing guidance to field programs, and establishment of a "purple group" to share problem resolution techniques.

Guiden exemplifies all the characteristics of a genuinely gifted leader who seized the opportunity to create fundamental change in an organization, and crafted the tools and resources to make that change permanent.

Naval Reserve Legal Service Office (NRLSO) Southwest 119

NRLSO Southwest 119 earned its reputation as an exemplary reserve law unit in the months immediately following September 11. The unit earned a Meritorious Unit Commendation from the Chief of Naval Operations, a remarkable feat for a small, reserve staff command.

As preparations for military action gained momentum in the wake of September 11, NRLSO Southwest 119 committed its scarce resources to ensuring that effective deployment assistance was provided to ships, squadrons and commands of all description. Unit lawyers briefed thousands of mobilized reservists on the essential protections afforded to them and their families. In so doing, they prepared thousands of wills, living wills, and durable, general and special powers of attorney for active duty and reserve members preparing to deploy. An overview of the units they assisted is in order:

- Deployment support of the USS NIMITZ
- Deployment support of the USS JOHN C STENNIS
- Deployment assistance and support at the San Diego Naval Mobilization Processing Site (NMPS) and Naval Air Reserve Station
- Mobilization briefings to active and reserve members at Commander, Naval Air Force, U.S. Pacific Fleet
- Support to the NLSO Southwest Income Tax Center
- On-site assistance to units mobilizing from Arizona

(continued on page 18)

From the Chair...



by John Jenkins, RADM,
U.S. Navy, Retired

Chair of the ABA Standing
Committee on Legal Assistance
for Military Personnel

Recently, the Pentagon announced that tens of thousands of Reservists would face extended tours of duty in support of the current conflicts in Iraq, Afghanistan and other troubled areas in the world. While we honor these men and women for making an even greater sacrifice to protect our freedom, we must at the same time empathize with them for the civilian lives they have left behind, including their families, their jobs, and the daily routines that many of us take for granted.

These developments tend to increase focus on the military legal assistance community. As much as we try to prepare for mobilizations and help families deal with the manifold legal problems of everyday life in the absence of deployed service members, we must remain aware that difficulties not only happen, they can happen with greater frequency. And when the unexpected occurs and continues to occur, it is proper that military families should be able to turn to a capable support system for help.

There is good news for the service member support system, as the Utah Supreme Court recently embraced the Expanded Legal

(continued on page 16)

Military Consumer Law Centers— Turning the Predator into Prey?

by Glenn Fischer

A recent article in the *Newport News Daily Press* illustrated one of the common consumer problems that plagues members of the military. The May 30, 2004 piece, titled “Financial Organizations Target Military On Two Fronts,” described some of the ongoing disputes between area merchants and local military members arising from allegedly deceptive business practices. Some of the instances involved Marines at Camp LeJeune who purchased and financed cars on extremely unfavorable terms: \$23,000 paid for a 1997 Honda Civic with 80,000 miles on it and a book value of \$4,000; \$17,900 for a 2000 Dodge Intrepid with more than 63,000 miles on it and a book value of about \$8,000; \$14,500 for a 2001 Pontiac Grand Prix with 78,256 miles on it; and \$16,496 for a 2000 Pontiac Sunfire with 41,350 miles.

Unfortunately, tales of woe like those above tend to be all-too-common. Yet, while predatory lending practices are no stranger to service members, military lawyers are often ill-equipped to effectively deal with the culprits. In many instances, legal assistance attorneys are prohibited from providing in-court representation to service members because they do not hold a law license in the jurisdiction where they are stationed. And, while an ELAP rule can help remedy that particular problem, it does nothing to provide the time, manpower and resources necessary to meet the threat head on. *(Read about the adoption of an ELAP rule in Utah on page 18.)*

A new initiative being considered by the ABA LAMP Committee may help turn the tables and make service members victors rather than victims. In response to continued targeting of military consumers, the committee is contemplating a pilot project to test the concept of military consumer law centers (MCLC) near large military communities around the country. Locations currently under consideration for the pilot phase include San Diego, Jacksonville, Boston, and the Northern Virginia suburbs of Washington, D.C.

Each MCLC will provide experienced and committed consumer law teams to assert the consumer rights of military personnel, using the framework of state and federal consumer protection laws such as the Fair Debt Collection Practices Act and the Truth-in-Lending Act. The first goal of the pilot project will be to compose teams of advocates with consumer law expertise, including solo practitioners, local law firms, bar associations, legal aid and consumer affairs offices, who will coordinate with military legal assistance personnel.

Funding

In some instances, effective consumer advocacy for service members is already in place. The goal of the pilot project will be to collect information on existing successful efforts, facilitate the exchange of information and education among the pilot sites, and demonstrate a variety of models for thwarting deceptive consumer practices aimed at the military.

(continued on page 16)

From the Chair...

(continued from page 15)

Assistance Program, enacting its version of the Model ELAP Rule approved by the ABA House of Delegates at the 2003 Midyear Meeting after it was submitted by the LAMP Committee. We applaud this effort, and urge other jurisdictions to follow this lead.

While the LAMP Committee is concerned with policy issues and legislative change, another of the LAMP Committee's primary areas of concentration is preventive law. By providing tools and resources for lawyers to help military families better prepare for the personal and financial hardships that accompany an absent family member—in many cases the household breadwinner—the LAMP Committee is trying to do its part to ease the burdens that service members bear.

But we are learning that no matter how much we try to plan ahead and increase our level of legal preparedness, the exigencies

of modern military service still pose daunting challenges. In particular, just as contact with our justice system becomes more tightly woven into the fabric of everyday life, the legal problems faced by our service members seem to be growing in number and complexity. In the recent past, I have previewed in this column the work of the ABA Working Group on Protecting the Rights of Service Members, which is scheduled to release a report on its findings to coincide with the 2004 ABA Annual Meeting in Atlanta. I predict that this work will solidly illustrate this point.

One of the Working Group's research activities was to ask the leadership of the Reserve component legal establishment about the problems they saw on the horizon. The responses we received painted an interesting landscape. While the Working Group's report will delve into the specific problems in detail, it is sufficient at this point to say that heavy reliance on reserve troops, frequent reserve

troop rotations, and tours of duty beyond those originally anticipated all lead to increased stress on a substantial number of American families and not just the individual service members. The stressors emanate from problems that involve family law, consumer law, and real estate law, just to name a few.

For its part, the LAMP Committee will continue to seek forward-looking legal solutions and provide support, expanding its capabilities beyond basic legal readiness, just as our troops have expanded their role in protecting our freedom. Consistent with this goal, we ask that you too remain vigilant for issues that affect our service members, and let us know if the resources of the ABA and the LAMP Committee can be brought to bear. Do not hesitate to contact the LAMP Committee staff by phone at 312-988-5755 or email at fischerg@staff.abanet.org, or by visiting the LAMP Committee's Web page at www.abalegalservices.org/lamp.

Law centers

(continued from page 15)

Although start-up costs are a hurdle, the LAMP Committee is exploring grant funding that could get the effort off the ground. Once that is accomplished, the MCLC can strive toward economic self-sufficiency by recovering the attorneys fees provided for in many federal and state consumer law statutes.

Since private attorneys can anticipate having their fees and costs paid by defendants in successful cases, service members benefit in many ways. They can

secure representation at no cost, obtain relief from egregiously unfavorable business deals, and see a powerful message sent to predatory lenders and others who violate consumer laws.

Military consumers vulnerable

Military consumers, particularly junior enlisted personnel, fall victim to shady business practices, but with the added problem of a direct, negative impact on military readiness. Common areas of abuse include: (1) inflated prices and unauthorized "add-ons" in the sale of new and used vehicles; (2) exorbitant rates and misleading

terms in vehicle loan contracts; (3) exorbitant rates and misleading terms in short term loan contracts (such as "pay day" loans); (4) abusive debt collection practices; and (5) sham credit repair services. In 2003, the National Consumer Law Center issued "In Harms Way—At Home," a report that described these occurrences as pervasive and increasing. The underlying reasons cited in the report include the following:

- Many military consumers are young, and have a small but steady income
- They are inexperienced consumers—their first duty assign-

(continued on page 17)

Law centers

(continued from page 16)

- ment often serves as an introduction not only to the military, but also to car purchases, loans and rental agreements
- Intense work and deployment schedules leave little time to learn and assert rights under consumer law statutes
- The transient nature of military assignments prevents service members from staying in one location long enough to effectively pursue legal action in small claims court or get timely assistance from regulatory or enforcement agencies
- The military culture and command structure emphasizes

the payment of debts—however predatory—and threatens disciplinary action for those who do not comply

- Legal protections are underutilized due to a lack of client awareness, low dollar-value of the amounts in dispute in relation to the cost of litigation, and local court bias against military personnel.

While an MCLC cannot resolve all of these issues, it would offer a new approach to a longstanding problem, without increasing the strain on the already overtaxed resources of military legal assistance offices. Given the potential to create a new niche of business for lawyers who practice in and near military communities, the

MCLC model holds promise both as another layer of protection for service members, and a productive source of collaboration between the civilian and military bar.

Glenn Fischer is assistant staff counsel to the ABA Standing Committee on Legal Assistance to Military Personnel.

The full NCLC report, "In Harm's Way—At Home" can be viewed online at www.consumerlaw.org/initiatives/military/content/report_military.pdf.

The LAMP Committee values your input on this topic. If you would like to share your views, please contact LAMP Staff Counsel Jane Nosbisch at 312- 988-5754 or email at jnosbisch@staff.abanet.org.

Marine Corps Implements Legal Readiness Checklist

In an effort to further implement Department of Defense Directive 1350.4, which establishes DoD policy encouraging Marines to seek legal counsel regarding wills, living wills, advance medical directives, and other legal matters well before deployment or mobilization, the Marine Corps has developed a comprehensive checklist to help diagnose troops' legal readiness. The checklist is designed to allow judge advocates to quickly analyze the legal issues Marines might encounter during deployments.

Marines who seek legal counseling are to complete the checklist and give it to the judge advocate, or to the judge advocate's designee. Because a completed form reveals substantial personal information, Marines are cautioned to complete it only when thorough individual interviews with judge advocates or other attorneys are impossible (a situation not so uncommon

during times of conflict).

The checklist is similar to a model that appeared in the Spring 2003 edition of *Dialogue*. The LAMP Committee originally proposed that checklist as a tool to encourage and facilitate preventive law, addressing problems a service member is likely to experience at any stage of life or career, not necessarily limited to mobilization and deployment. Like the form developed by the Marines, the readiness checklist offered by the LAMP Committee was designed to help structure an approach to resolving legal problems before they occur, and thereby allow service members the ability to focus more intently upon their military missions.

Even though the Marines' use of the checklist centers primarily around mobilization and deployment, it is evidence of growing support for a preventive law

approach toward service members' legal needs. The LAMP Committee hopes that this trend toward preventive law programs will carry over to another if its policy initiatives, legal assistance as an entitlement.

By providing legal assistance services as a statutory entitlement, service members can be assured that the resources will be there to not just provide tools like the legal readiness checklist, but to fully implement them. While the checklist itself is simple to use, it is really only one more device in the ample store of resources that military lawyers have at their disposal to enhance readiness. But like so many other of those tools, it is one whose efficacy is gauged not so much by how often it is used, but rather by how often it leads to successful contemplation and elimination of legal problems before they arise.

Award nominees

(continued from page 14)

Activities conducted during normal drill weekends were supplemented by the donation of additional countless hours of personal time by the 10 judge advocates and eight legalmen of NRLSO Southwest, and they are worthy of commendation for their efforts.

LT Brett W. Johnson JAGC, USNR

The primary legal assistance attorney for NLSO Europe and Southwest Asia (NLSO EURSWA), LT Brett Johnson was nominated for the LAMP Distinguished Service Award because of his ability to successfully develop

an integrated program to address the legal needs of the diverse population in his area of responsibility from his post at Naval Station Rota (Spain).

In addition to the permanent personnel population of active duty, dependent, and DoD personnel at NAVSTA Rota, the base—located at the entrance to the Mediterranean region for U.S. military forces—serves as a major transit point for DoD civilians and all service members traveling to and from the Mediterranean Sea and Arabian Gulf. The Rota area is also home to a number of retired military personnel.

Johnson developed a substantial series of estate planning workshops to prepare service members likely to be deployed

for Operation Iraqi Freedom. As a direct result of these educational initiatives, service members not only received current wills, but additional legal issues were addressed in the individual consultations conducted by Johnson. These additional issues received thorough attention including after-hours phone calls stateside, extensive research, and letters to and from other parties.

As a result of Operation Iraqi Freedom, numerous units utilized Rota as a stopping point on their way to and from the Gulf. Additionally, a fully staffed Navy Field Hospital was set up to treat service members. Johnson often forfeited his off-duty hours to make himself available to every unit from all

(continued on page 28)

ELAP Success in Utah

The Utah Supreme Court has adopted an Expanded Legal Assistance Program rule, based upon the Model Rule approved by the ABA House of Delegates February 2003.

The rule allows military lawyers stationed in Utah, but who do not hold a license to practice law there, to provide free legal services to service members and their dependents.

The Utah State Bar filed a petition with the court on April 2, 2004, at the court's request, to adopt the ELAP Rule. Military lawyers admitted under the rule may not represent themselves to be members of the Utah State Bar, nor may they convey the impression that they are generally licensed to practice law in Utah. Representation provided under the rule is intended primarily to benefit military personnel in enlisted grades E-1

through E-4, and their dependents who are under substantial financial hardship.

"ELAP is a worthy initiative," said Utah Supreme Court Chief Justice Christine Durham. "Many service members are at an income level that makes hiring an attorney financially impossible, and it seems the least we can do to help those protecting our nation."

Utah's rule is codified as Rule 11-303 of the Utah Supreme Court Rules of Professional Practice, and can be viewed online at www.utcourts.gov/resources/rules/approved/CJA11-303.pdf

If your jurisdiction has interest in adopting an ELAP rule, please contact LAMP Committee Assistant Staff Counsel Glenn Fischer at 312-988-5755 or fischer@staff.abanet.org.

From the Chair. . .



by Debbie Segal

Chair of the ABA Standing Committee on Pro Bono and Public Service

Until recently, I had not given a great deal of thought about pro bono in other countries.

In my role as pro bono partner at Kilpatrick Stockton and as chair of the ABA's Pro Bono Committee, I have learned that the pro bono world abroad is more active and vibrant than I had imagined. Those of you who attended the most recent Equal Justice Conference in Atlanta may have encountered a large number of participants with delightful accents that suggest origins beyond the US borders and the growth of pro bono abroad.

Prompted by colleagues in my firm's London office and my own curiosity (and just a tad by the prospect of a trip to London), I began to plan an educational field trip to England for May of this year. Suzie Turner, an American lawyer who is the pro bono partner at Dechert LLP and resides in London, took me in hand and introduced me, on paper, to the multitude of organizations that provide British lawyers with pro bono opportunities. Through email, I introduced myself to a small number of these groups, and arranged appointments to meet with them.

I flew over on a Saturday night

(continued on page 20)

"You Must Never Leave the House"

Congressman John Lewis Delivers Keynote Address to the 2004 Equal Justice Conference

The following is an edited transcript of a speech given by Congressman John Lewis' speech to the Equal Justice Conference in Atlanta on April 16, 2004.

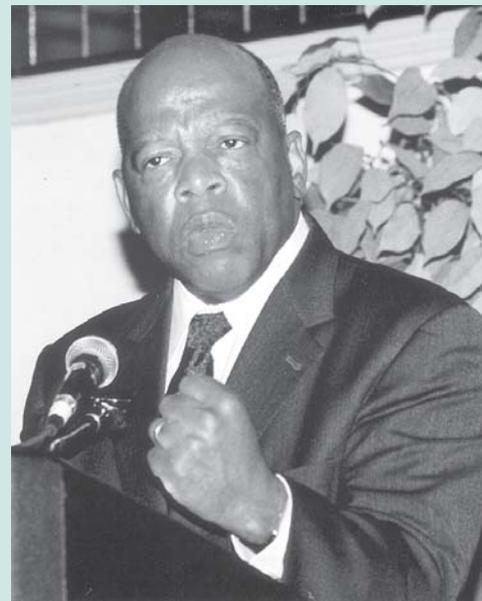
I must tell you I have a profound amount of respect for lawyers. You know, when I was much younger and had all of my hair and was a few pounds lighter, I got involved in a civil rights movement, and I went to jail a few times, about 40 times, between 1960 and 1966. And if it hadn't been for lawyers, I don't know where I would be. I don't know where our country would be and where our society would be.

I didn't grow up in a big city like Atlanta, in a big city like Washington, or New York, or Chicago, or Boston, or New Orleans, or Los Angeles, or Denver. I grew up on a farm 50 miles from Montgomery, near a little place called Troy in southeast Alabama. My father was a sharecropper, a tenant farmer. ... When I would visit the little town of Troy, or Montgomery, Tuskegee, or Birmingham, I saw those signs that said "white men, colored men," "white women, colored women." I saw those signs that said "white waiting, colored waiting." As a young child, I tasted the bitter fruits of segregation and racial discrimination, and I didn't like it.

When I finished high school in May of 1957 at the age of 17, I wanted to attend a little college 10 miles from my home called Troy State College. ... I submitted my application, my high school transcript. I never heard a word from the school. ... I wrote a letter to Martin Luther King, Jr. I had heard his voice over the radio, heard his words. They had inspired me. ... Dr. King wrote me back and sent me a round trip Greyhound bus ticket and invited me to come to Montgomery. In the meantime, I was accepted in a little college in Nashville, Tennessee, and I will never forget it as long as I live. In September 1957, an uncle of mine gave me a \$100 bill, more money than I ever had. He gave me a footlocker. I put everything that I owned in that footlocker, my books, my clothing... and went off to school to Nashville.

And while I was there, I told one of my teachers that I had been in

(continued on page 21)



John Lewis

From the Chair...

(continued from page 19)

with my good friend and ABA Board of Governors member Paula Frederick, who saw this as a great shopping (er... educational) opportunity. We were picked up at our hotel for a tour and dinner by Walter White, our old friend from the Young Lawyers Division who—horrors—was driving on the left side of the road! The next day, Monday, a bank holiday (which lawyers do observe), we toured London, shopped, and ate again, this time with my “pro bono” guide, Suzie Turner. It was then time (for me) to get down to work.

Over the next few days, I met many wonderful people who have approached pro bono in creative ways. The **Princes’ Trust**, started decades ago by Prince Charles, focuses its resources on underprivileged youth. Their Business Programme works with disadvantaged youth to create their own small businesses. Pro bono lawyers provide representation with negotiating contracts, leases and partnership agreements, perform IP work and hold advice clinics for the young business people.

The **Free Representation Unit** was created by law students, and is still run by young trainees with supervision. Their volunteers provide representation in social security, unemployment, criminal injury compensation, and immigration matters. Before being accepted as a volunteer, one must be trained and write the equivalent of a brief in a sample case to demonstrate a minimum level of expertise.

The **Bar Pro Bono Unit**, directed by new barrister Alice Sheldon, is

currently housed in an ivy covered stone building in a beautiful neighborhood in London that feels like a college town. The Unit works with barristers, including many who maintain chambers in the area. [By way of translation: solicitors are lawyers whom the public meets and hires for representation. Solicitors practice in groups or firms. When a court appearance is necessary, with some exceptions, a solicitor will instruct (hire) a barrister to perform that function. Barristers are self-employed, are not permitted to form firms, but do share chambers (space) with other barristers.] The unit recruits barristers to perform discrete portions of a case—drafting a contract, researching a point of law—not unlike what we have come to call “unbundled legal services”.

Liberty is a civil rights/human rights group, directed by Shami Chakrabarti. Liberty is structured similarly to the ACLU, and offers memberships as well as pro bono opportunities to lawyers. Litigation involving both civil rights and human rights issues is often undertaken in a co-counseling model with Liberty’s talented staff lawyers. Lawyers may also lobby and serve on their advice panels answering calls and responding to letters.

The **Solicitors Pro Bono Group (SPBG)**, directed by Sue Bucknall, offers perhaps the greatest range of pro bono opportunities, many of which are unique. It was started a number of years ago by a group of London law firms, which provided initial funding. In addition to taking referrals of complete cases, SPBG sponsors LawWorks, where volunteer lawyers staff community center law clinics, providing advice to

over 20,000 people annually. If a matter needs further representation, the individual lawyer can choose to accept the matter or the organization will refer it elsewhere. A number of the city’s law firms adopt a neighborhood law center and provide regular advice clinics and other support to low-income communities.

SPBG also sponsors **LawWeb**, a developing interactive Internet advice project. Volunteers designate areas of expertise where they are willing to offer advice. A screener sends a client’s question to an appropriate lawyer on the list and inquires if s/he is available to answer the question. If the lawyer is not available or doesn’t answer, it automatically forwards to the question to the next person on the list. If the lawyer accepts the inquiry, there is an opportunity for exchange of further information and documents. SPBG is tinkering with the technology and online process, but is clearly thinking creatively about how to serve simple unmet legal needs of clients.

I came away from my time in England with an expanded and creative mindset about pro bono opportunities. Not unlike the pro bono groups in the U.S., all of the groups I met with operate on very tight budgets, are housed in modest offices, and rely on donations to supplement their limited resources. They all offer training to encourage lawyers to volunteer outside their areas of expertise. Each staff person with whom I met was wonderful, inspiring and generous with her time and information. For me, this was a tremendous learning experience. I know I’ve only scratched the surface of pro bono opportunities... and I can’t wait to go back.

John Lewis

(continued from page 19)

contact with Martin Luther King, Jr., and this teacher was a friend of Dr. King. He informed Dr. King that I was in school in Nashville. Martin Luther King, Jr. got back in touch, and suggested when I was home for spring break to come and see him. In March of 1958 I arrived in downtown Montgomery. I had never seen a lawyer before. And a young lawyer by the name of Fred Gray met me at the Greyhound bus station and drove me to the First Baptist Church ... and ushered me in to the office of the church. I saw Martin Luther King, Jr. and Ralph Abernathy standing behind a table. I was so scared. But Dr. King spoke up and said, "Are you John Lewis?" I spoke up and said, "Dr. King, I am John Robert Lewis." I gave my whole name. I didn't want there to be any mistake that I was the right person. And that was the beginning of my involvement with Martin Luther King, Jr., the beginning of my involvement in the Civil Rights Movement.

I continued to study in Nashville, where students came together: black and white college students studying the philosophy of nonviolence, studying passive resistance, studying the role of civil disobedience, studying what Gandhi attempted to do in South Africa and what he accomplished in India. And then we started sitting in at lunch counters and restaurants, waiting to be served. And while sitting there waiting to be served or doing our homework, someone would come up and put a lighted cigarette out in our hair or down our backs, spit on us, pour hot water or hot coffee on us, and pull us off the lunch counter stools. But we grew to accept

*But many of
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It was good trouble.
It was necessary
trouble.*

nonviolence not simply as a technique or as a tactic, but as a way of life and a way of living.

When I was growing up, my mother, my father, my grandparents, and great grandparents told us over and over again when we would ask: "Why segregation? Why racial discrimination?" They would say, "That's the way it is." They would tell us, "Don't get in trouble. Don't get in the way." But many of the students and young people, we got in the way. We got in trouble. It was good trouble. It was necessary trouble. And as lawyers who look out for those who had been left out and left behind, you are getting in the way. You're getting in trouble. It's good trouble. It is necessary trouble. And we need more of you to continue to push and pull.

You must continue to use the law as an instrument, as a tool, to help liberate people. Help set people free and liberate people to enhance the quality of life and enhance the dignity of all of our citizens.

My generation got in the way through the sit-ins, through the freedom rides, by marching from Selma to Montgomery, by marching on Washington. Just think, 40 years ago during the Great Society, under the leadership of President

Johnson, in this part of the country in the old South, in many parts you still had those signs saying, "white waiting, colored waiting," "white men, colored men," and "white women, colored women." People could not register to vote simply because of the color of their skin. People couldn't eat in certain places or stay in certain places. But we changed that because we got in the way and brought about a nonviolent revolution under the rule of law. ...

As lawyers, you must believe, and I know I'm preaching to the choir, that somehow and some way another generation of young lawyers got in the way. Another generation of lawyers literally put their bodies on the line defending those of us that were involved in the movement.

There was a young lawyer named C.B. King in Albany in southwest Georgia, who was beaten by the sheriff. Lawyers were harassed and threatened. It was very dangerous to be a lawyer, a public interest lawyer, a civil rights lawyer, or a lawyer for the people during those years. Just think, those of us in the movement during those years, we didn't have a cellular telephone. We didn't have email. We didn't have a fax machine. We had the Constitution. We had a little time. We had our own being. And we did what we could to make this country a better place.

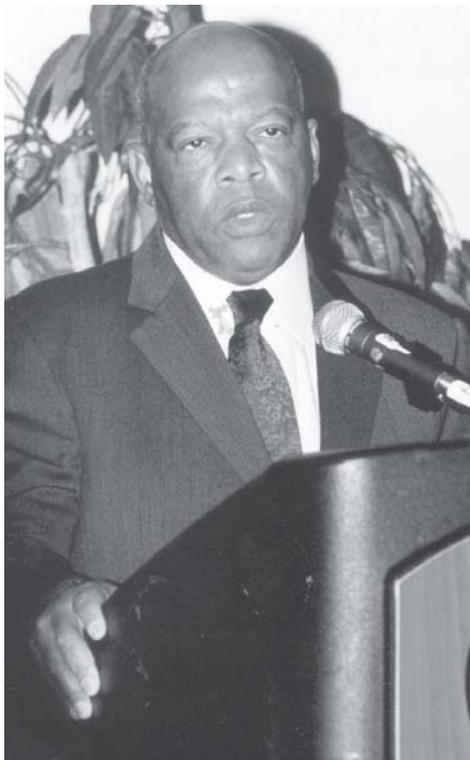
You have an obligation, a mission, and a mandate to use the law to push us further down that road to the building of what I like to call the beloved community, an all-inclusive community, a community at peace with itself. In spite of all the changes, in spite of all of the progress we've made as a nation and as a people, we have too many people who are still

(continued on page 27)

Scenes from the 2004 Equal Justice Conference



Renewing Our Commitment to Justice
April 15-17, 2004, Atlanta, Georgia



Congressman John Lewis delivered the keynote address at the 2004 Equal Justice Conference.



Rob Weiner (second from left), former ABA Pro Bono Committee Chair and Arnold and Porter partner was presented with the William Reece Smith Jr. Services to Pro Bono Award by the National Association of Pro Bono Professionals. The award was presented by ABA President Dennis Archer (far left), Reece Smith, and Patty Murto of NAPBPro.



More than 700 advocates from across the United States attended the three-day conference in Atlanta. Next year's Equal Justice Conference will take place May 5 to 7, 2005, in Austin, Texas.



The conference concluded with a panel discussion featuring (from left) Andrew Young, former ambassador to the United Nations, Equal Justice Works Fellow Rogelio Villagrana, ABA President Archer, and Gilda Haas of Strategic Actions for a Just Economy.

Program-Based Responses to Recruiting Family Law Volunteers

by Cheryl Zalenski

This article is the second in a periodic series examining the challenges pro bono programs face in handling family law cases. The first article was published in the Spring 2003 issue of Dialogue.

Pro bono programs consistently face a high numbers of clients in need of assistance in family law matters, such as divorce, custody and child support cases. At the same time, many of these programs are unable to recruit enough volunteer attorneys to meet this need.

To address this ongoing challenge, the ABA Center for Pro Bono published a report, "The Impact Of Family Law Cases On Pro Bono Programs"¹ in 2002. The report examined why attorneys are reluctant to volunteer for family law matters, and offered various strategies for addressing attorney concerns and increasing volunteers. Since the report, the center has continued the exchange of ideas and suggestions for recruiting and retaining sufficient volunteers, including through workshops at the annual ABA/NLADA Equal Justice Conference. The ongoing conversation has yielded some new issues and solutions.

Identifying challenges

Recruiting and retaining sufficient volunteers to meet client demand for family law assistance continues to challenge pro bono programs. At the 2004 Equal Justice Conference, at least two-thirds of the pro bono managers present at the family law workshop indicated

Thorough intake and screening procedures provide assurance to attorneys that they are receiving meritorious cases involving eligible pro bono clients and that the cases are within the parameters of the type for which they volunteered.

that their program had a waiting list for representation in family law matters. Workshop attendees identified a myriad of obstacles to recruiting volunteer attorneys in the family law area. These generally fall into two categories: situational barriers and individual barriers. The following paragraphs will discuss these challenges as well as some of the strategies developed by pro bono programs to respond to them.

Situational barriers

Situational challenges arise from the geographic and demographic characteristics of a program's service area, particularly in rural areas. These may include a limited number of attorneys in the area, frequent conflicts of interest (due to fewer attorneys in the area and/or attorneys' relationships to liti-

gants), and reluctance to provide pro bono services due to attorneys' low earning opportunities.

Pro bono programs have developed various strategies to address these issues, many of which are detailed in another Center for Pro Bono publication, *Rural Pro Bono Delivery: A Guide to Pro Bono Legal Services in Rural Areas*.² Some programs have worked with the judiciary to develop substantive legal trainings in local counties that are free of charge to pro bono attorneys. Other programs have worked to develop partnerships that share resources from urban locales with areas that have few attorneys. For example, partnerships have created "conflict panels" of attorneys for those clients the program and its volunteer attorneys are unable to serve. For programs facing a limited pool of attorneys from which to recruit, such techniques can maximize and increase available volunteer resources.

Overcoming individual barriers

Individual barriers to volunteering are internal to each attorney, of course, and often arise from his or her concerns and perceptions about the nature of family law cases, the skills or resources needed to handle a family law case, or issues related to poverty law practice. Programs developing techniques that reduce or remove the concerns can address these barriers and increase participation.

(continued on page 24)

Volunteers

(continued from page 23)

Volunteers may perceive family law cases as being highly emotional and requiring a great deal of time, as potentially endless, or in danger of “blowing up” and becoming more contentious than initially anticipated. Attorneys also may have concerns about personal safety if they accept family law cases.

Pro bono programs can address these concerns in a variety of ways. Thorough intake and screening procedures provide assurance to attorneys that they are receiving meritorious cases involving eligible pro bono clients and that the cases are within the parameters of the type for which they volunteered. To the extent possible, program staff can assess clients’ personalities during intake to ensure good personality

matches between client and attorney. To ease volunteer attorney concerns, programs also can promise to take a case back in-house or provide a staff attorney or another volunteer as co-counsel if the case becomes onerous.

Careful screening of cases also addresses concerns about personal safety. In addition, programs can provide family law volunteers with domestic violence training to help them identify cases in which domestic violence may be present. Offering alternative volunteer opportunities, such as mentoring or developing training manuals, to those attorneys who simply are uncomfortable with direct client contact can also increase resources available to serve clients.

An increasing number of pro bono programs are finding that longtime practitioners are no longer taking family law cases, for private or pro bono clients. Due in large part to the reasons

discussed above, these attorneys have “retired” from family law. Unfortunately, they are often among the reliable core of volunteers, and are certainly among the most experienced volunteers. Rather than losing these seasoned volunteers, pro bono programs have created alternative opportunities for them. Longtime practitioners are excellent candidates for conducting family law training for new volunteer and staff attorneys, serving as mentors, developing reference materials and form pleadings, or leading pro se clinics. They are also excellent spokespersons for recruiting new volunteers for the program, as they can share their personal experiences. Additionally, some practitioners, though reluctant to take on a full case, may be willing to provide legal assistance in discrete portions of a family law matter, such as a hearing for a protective order.

(continued on page 25)

Road-tested Strategies for Recruiting and Retaining Family Law Volunteers

- ◆ Offer a variety of volunteer opportunities
- ◆ Offer opportunities to provide unbundled services
- ◆ Partner with bar associations’ family law sections to recruit volunteers and develop trainings
- ◆ Educate volunteers about client issues
- ◆ Educate clients about effectively working with attorneys—and let your volunteers know that you have
- ◆ Conduct thorough intake and screening of cases and client eligibility
- ◆ Offer free substantive CLE training in exchange for taking a specific number of family law cases
- ◆ Partner with community businesses to give incentives for providing family law assistance (such as entry in a raffle or a free lunch) and to obtain door prizes and refreshments for trainings
- ◆ Involve the judiciary in training
- ◆ Provide substantive manuals and form pleadings
- ◆ Provide mentors for attorneys with limited family law experience, including opportunities to observe hearings before taking a case
- ◆ Provide training in domestic violence issues
- ◆ Offer to take problematic cases back in-house or provide co-counsel
- ◆ Provide a clear retainer agreement
- ◆ Provide use of office space, administrative support and malpractice insurance coverage
- ◆ Recruit court reporters, paralegals, interpreters, and social services providers to assist volunteer attorneys
- ◆ Obtain free custody evaluations for pro bono clients
- ◆ Have temporary orders in place before referring a case
- ◆ Provide technical assistance and substantive support

Volunteers

(continued from page 24)

When approaching attorneys with a request to provide pro bono family law assistance, programs should understand the perceptions the attorney may have about family law. If an attorney is reluctant to volunteer, a program should address these perceptions in an honest manner and assure the attorney that the program has procedures in place to minimize problems and is prepared to assist with any issues that arise. Additionally, by developing and offering a variety of opportunities that address volunteers' concerns, programs can appeal to a greater number of prospective volunteers and increase retention of long-term volunteers.

Skills and resources

At times, the reasons an attorney does not volunteer for a pro bono panel or accept cases are specific to that attorney's circumstances. For example, an attorney may have a conflict in a particular matter or feel that she does not have the time to devote to a pro bono case just then. New attorneys, or attorneys specializing in other fields, may feel they do not have the necessary experience to provide representation in family law matters. Solo practitioners may lack the administrative support to quickly complete and file the numerous pleadings often required in family law cases.

A pro bono program can address the majority of these issues by providing a broad menu of support services to its volunteers. Programs can provide training for new attorneys and attorneys unfamiliar with family law. A number of programs have

When asking an attorney to donate time to assist clients, pro bono programs should be prepared to offer opportunities that fit into the time the attorney is willing and able to give.

found that providing an opportunity to "shadow" a staff or volunteer attorney and observe hearings before referring a case to a volunteer increases that volunteer's comfort level.

Programs can take steps to

reduce the time volunteers spend on individual cases. For example, providing form pleadings eases the volunteer's workload. One program obtains temporary orders for custody and support before referring the case to a volunteer. Such timesaving measures make it easier for a volunteer to accept cases and may increase the number of cases a volunteer is willing to accept.

Offering a program's office resources to volunteers is another way to provide valuable assistance, particularly to corporate and government attorneys interested in family law pro bono work. Programs can provide office space for client meetings and interviews, administrative support, and copying to facilitate the volunteer's work. Recruiting court reporters, paralegals, interpreters, and social services providers to assist in

(continued on page 26)

Pro Bono Bulletin Board

Montana Amends Rule 6.1

Effective April 1, 2004, the Montana Supreme Court adopted comprehensive new Rules of Professional Conduct which strengthened Montana's Rule 6.1. The new rule asks lawyers to provide 50 hours of pro bono service to those unable to pay, and to provide a substantial majority of those hours without fee to persons of limited means or "charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means." The State Bar of Montana Ethics Committee was responsible for recommending the Rule amendments to the Montana Supreme Court. The language of the new rule tracks the ABA's Model Rule 6.1, and asks lawyers to voluntarily contribute money to organizations that provide legal services to persons of limited means. The new rule can be found online at www.lawlibrary.state.mt.us/dscgi/ds.py/Get/File-27482/Rules.pdf.

Volunteers

(continued from page 25)

cases are also strategies for supporting volunteer attorneys.

When asking an attorney to donate time to assist clients, pro bono programs should be prepared to offer opportunities that fit into the time the attorney is willing and able to give. Similarly, programs should be prepared to offer training and support to attorneys who are willing to donate their time and skills. Presenting a volunteer opportunity that is as convenient and comfortable as possible goes a long way toward enlisting and retaining a volunteer.

Low-income clients

Some potential volunteers may be reluctant to participate in pro bono due to their perceptions of low-income clients. Volunteer attorneys may believe that pro bono clients are apt to have unrealistic expectations of an attorney. They may worry that a client will expect assistance with other legal issues that arise during the course of representation. The

logistical challenges of working with low-income clients may be a source of reluctance, as well. Attorneys may, for example, be discouraged by the difficulty in contacting a client who has no ready telephone access.

The best approach to addressing such issues is educating both attorneys and clients. Training for volunteers that familiarizes them with issues commonly faced by low-income clients—such as the lack of reliable transportation or frequent moves—prepares volunteers to manage such situations if they arise.

Similarly, an informational sheet or video for clients will provide them with guidance for obtaining effective assistance from a pro bono attorney. A number of pro bono programs have developed an informational pamphlet that outlines the client's rights and responsibilities and contains suggestions for effectively working with her attorney.

The possibility of tangential legal issues—related to housing or public assistance, for example—arising in the course of a family law matter might deter attorneys

from volunteering. Retainer agreements should clearly state that the pro bono attorney is providing representation only in the matter referred. Additionally, programs should assure volunteers that they are not expected to provide representation in other matters, and instruct them to refer clients back to the program. In those cases where a volunteer is willing to assist the client in the additional legal matters, programs can provide technical assistance and advice as needed to the volunteer.

It is important to acknowledge that pro bono clients may present legal and logistical issues that might not be encountered with private clients. Programs that educate and prepare volunteer attorneys and their clients can minimize aggravation on each side and produce a more positive experience for everyone.

Conclusion

There continues to be greater client demand for family law assistance than pro bono programs are able to meet. Accordingly, pro bono

(continued on page 28)

Program News from the Field

Alaska: Krista Scully was hired as the pro bono recruitment coordinator at the Alaska Bar Association. This is a new position created by the bar to help legal services providers recruit volunteer attorneys, coordinate existing pro bono efforts, and generally promote and support pro bono within Alaska.

Delaware: Dana Harrington, managing attorney of the Delaware Volunteer Legal Services, resigned her position at the end of April 2004. Janine Howard, currently a DVLS staff attorney, became managing attorney on July 1, 2004.

Indiana: Kay Pechin, plan administrator for the Volunteer Lawyer Program of Southwestern Indiana Inc., left the program at the end of March 2004. Beverly Corn is the new plan administrator.

Tennessee: Linda Warren Seeley resigned her position as managing attorney for pro bono projects at West Tennessee Legal Services and assumed the position of deputy director at Memphis Area Legal Services in May 2004.

John Lewis

(continued from page 21)

left out and left behind.

Do what you can. You have a legacy to uphold. ... Forty years ago, Dr. Martin Luther King, Jr. received the Nobel Peace prize. He came back to America, held a meeting with President Johnson, and said: "Mr. President, we need a strong voting rights act." President Johnson told Dr. King in so many words, "We don't have the votes in the Congress."

Dr. King came back to Atlanta, met with a group of us a short distance from here and said, "We will write that act." And he made a decision to join us in Selma, Alabama. In Selma, in 1964, in 1965, only 2.1 percent of blacks of voting age were registered to vote. You could only attempt to register on the first and third Mondays of each month, and you had to be at the courthouse. But in Selma, you had a sheriff, a very big man who wore a gun on one side, a nightstick on the other side, and carried an electric cattle prodder in his hand. He didn't use it on cows...

[In early 1965] Dr. King came to Selma. More than 300 people were arrested, lawyers, teachers, doctors, ministers and farmers. We filled the city jail, the county jail and the city stockade. And then a few days later in a little town called Marion, Alabama, in the heart of the Black Belt, there was a grass roots indigenous organization organizing around the right to vote. They had a protest. A young man by the name of Jimmie Lee Jackson tried to protect his elderly grandmother during a confrontation. He was shot in the stomach by the state troopers. And a few days later, he died at the Good Samaritan Hospital in Selma.

*As lawyers, the
wind may blow on
your house, but you
must never leave
the house.*

We, the movement, made a decision because of what happened to him. We would march from Selma to Montgomery. On Sunday, March 7, about 600 of us participated in a nonviolent workshop. We lined up in twos to walk in an orderly, peaceful, nonviolent fashion from Selma to Montgomery.

I was walking beside a young man from Dr. King's organization by the name of Hosea Williams. We got to the edge of the Edmund Pettus Bridge, crossing the Alabama River. Hosea saw the water down below and he said, "John, can you swim?" And I said, "no." I said, "Hosea, can you swim?" And he said, "no." I said, "That's too much water down there. We're not going to jump. We're not going back. We're going forward." And we continued to walk. We came to the highest point on the bridge. Down below we saw a sea of blue Alabama state troopers. We continued to walk and we came within hearing distance of the state troopers. A man identified himself and said: "I'm Major John Cloud of the Alabama State Troopers. This is an unlawful march. You will not be allowed to continue. I'll give you three minutes to disperse and return to your church." In less than a minute and a half, the major said, "Troopers advance." We saw these men putting on their gas masks. They came toward us, beating us with nightsticks and bullwhips, and trampling us with horses, and releasing the tear gas.

A state trooper hit me in the head with a nightstick. I had a concussion at the bridge. I thought I was going to die. ...

That Sunday became known as Bloody Sunday. There was a righteous indignation all across America. People organized to support the struggle in Selma. The President of the United States, President Johnson, spoke to a joint session of the Congress and made one of the most meaningful speeches any American president had made in modern times on the whole question of civil rights or voting rights. Lyndon Johnson started that speech off that night by saying, "I speak tonight for the dignity of man and for the destiny of democracy." He went on to say, "At times history and fate meet in a single time in a single place to shape a turning point in man's unending search for freedom. So it was at Lexington and Concord, so it was at Appomattox a century ago, so it was last week in Selma, Alabama."

He condemned the violence in Selma and introduced the Voting Rights Act. Before he concluded that speech, he said more than once, "...and we shall overcome." I was sitting next to Martin Luther King, Jr. as we watched and listened to President Johnson. Tears came down his face. He cried, and we all cried a little to hear the President of the United States use the theme song of the Civil Rights Movement, "And We Shall Overcome."

We made it from Selma to Montgomery a few days later. President Johnson federalized the Alabama National Guard, called out part of the military to protect us. The Congress debated the Voting Rights Act, it passed, and the President signed it into law on August 6th, 1965 because we got

(continued on page 28)

John Lewis

(continued from page 27)

in the way. We got in trouble. ...

As lawyers, you must tell your clients that the time for silence is over. I think in America now we are too quiet. We need to make some noise. We need to push. We need to pull. And maybe, just maybe, lawyers, it's time to take it to the mat. We have to take our country back, take our government back. It belongs to all of the people, not just a select few. You have got to tell your clients to get out there and get in the way, to get registered. Get out there and get people to vote like they never, ever voted before. We have to do it. We must do it, not just for this generation, but for ongoing generations.

I'm going to close by telling a little story. When I was growing up outside of Troy, I had an aunt by the name of Seneva. And my Aunt Seneva lived in what we called a shotgun house. One Saturday afternoon, a group of my brothers and sisters, and a few of my first cousins—about 12 or 15 of us young children—were playing in my Aunt Seneva's dirt yard when a storm came up. The winds started blowing. The thunder started rolling. The lightning started flashing. And the rain started beating on the tin roof of this old shotgun house.

My aunt started crying. She was terrified; scared this old house was going to blow away. She got all of us little children together and told us to hold hands. And we all started crying. We thought this old house was going to blow away. The wind continued to blow. The thunder continued to roll. The lightning continued to flash. The rain continued to beat on the tin roof of this old shotgun house. And one corner of this old house appeared to be lifting from its foundation. My aunt had us walk to that side to try to hold the house down with our little bodies. When the other corner appeared to be lifting, she had us to walk to that corner to try to hold this house down with our little bodies. We were little children walking with the wind, but we never, ever left the house.

As lawyers, as members of the bar who look after those who have been left out and left behind, who stand up and defend those in need, the wind may blow on your house, but you must never leave the house. Call it the house of Georgia. Call it the house of New York. Call it your house in Washington. Call it the house of the bar. We all live in the same house. It doesn't matter whether we're rich or poor, black, white, Hispanic, Asian American, Native American, gay or straight, we all live in the same house. And there must

be justice for everybody, not just for some, but for all. And the quality of the justice must not depend on the size of your wallet or the zip code you live in.

So stay with the case. Stay with the house. Walk with the wind. And let simple justice and fairness under the rule of the law be your guide.

Volunteers

(continued from page 26)

programs persevere in developing and refining techniques to encourage volunteer attorneys to provide assistance in family law matters. By determining and evaluating the barriers to volunteering, programs can create solutions that address the volunteers' needs and concerns.

Cheryl Zalenski is an assistant staff counsel with the ABA Center for Pro Bono. For more information about strategies for recruiting and retaining family law volunteers, please contact her at 312-988-5770 or zalenskc@staff.abanet.org, or visit the Center for Pro Bono online at www.abaprobono.org.

Endnotes

- ¹ The report is available online at www.abaprobono.org/family_law_report.pdf.
- ² Available at www.abaprobono.org/aba_rural_book.pdf.

Award nominees

(continued from page 18)

services. Recognizing the value of in-depth knowledge of health care law for the Navy Field

Hospital and the retiree population, Johnson devoted additional off-duty hours to developing that expertise. His seminars and briefings on these issues are now the standard for the local legal

assistance effort.

Recognition of his talents within his own unit has merited his selection for attendance at The Hague Academy of International Law in the Netherlands.

From the Chair...



by Hon. Lora J. Livingston
Chair of the Standing Committee
on the Delivery of Legal Services

At its spring meeting, the Delivery Committee hosted a gathering of those with exceptional insights into the delivery of legal services. We invited technologists, policy advocates, academic clinicians, and limited scope practitioners to join the committee members for a daylong session of brainstorming. We called this gathering the "Visionaries' Forum."

Session topics included the futures of the legal profession and delivery of legal services, the role of technology in meeting legal needs, unbundling as a response to pro se litigation, and the role of policies in the advancement of full access. At the end of the day, we talked about the agenda of the committee and solicited the viewpoints of our guests.

Ideas ranged from those that were very pragmatic to those that were somewhat esoteric. For example, we discussed the practical impact of raising the dollar limits for the use of small claims courts. Some states have limits as low as \$1,500, while the legal reform group HALT advocates it be raised to \$15,000. What consequence would this produce on people using the courts to resolve their disputes? What effect would it have on the use of lawyers and

court administration?

Other issues were less direct. We discussed issues pertaining to the use of the low-income delivery architecture for moderate-income clients. When a program is subsidized to serve a client population with incomes of 125 or 200 percent of poverty, why shouldn't such a program be empowered to serve those at 300 or 400 percent of poverty and generate some income by doing so? The policy issues create obstacles which merit scrutiny.

We looked at using technology to enable the development of user communities that revolve around an issue or status. For example, in the health field, we are seeing "microcultures of meaning" (MOMs) established to enable people with similar health problems to provide mutual information and support. How can the legal profession enable clients and the public to use technology beyond the tools that facilitate access and gain insights that not only could help solve their

problems, but also avoid them in the future?

Needless to say, the discussions were provocative.

Our guests included David Baker, of legal insurance plan provider ARAG; Brenda Barton Blom, of the University of Maryland; Jeanne Charn, of Harvard Law School; Ayn Crawley, of the Maryland Legal Assistance Network; Tom Gordon, of HALT; Richard Granat, of the Granat Group; Camille Holmes, of the Center for Law and Social Policy; David Johnson, of New York Law School; Michael Millemann, of the University of Maryland; Michael Mills, of Davis, Polk & Wardwell; Wayne Moore, of AARP; and Forrest Mosten, an innovative practitioner.

On behalf of the committee, I want to thank each of these visionaries, who spent a beautiful spring day cloistered with us and helped examine a wide variety of issues that are important to the current and future agendas of the Delivery Committee.

The American Bar Association Section of Dispute Resolution will recognize Forrest 'Woody' Mosten as the winner of its 2004 Lawyer as Problem Solver Award at the ABA Annual Meeting in Atlanta. The Delivery Committee joins the section as a co-sponsor of the award this year. Mosten is being honored for pioneering the concept of "unbundling" legal services and maintaining a client library. Unbundling breaks down traditional legal services into component parts, such as providing only mediation representation, negotiation and trial coaching, legal research, drafting of letters and similar work. In each, the

client and attorney collaborate to determine the scope of the work. The Louis M. Brown Client Library, the first law firm library devoted to client-oriented resource materials about ADR, is available for use by clients and the public alike.

Mosten is also being recognized for his work as an accomplished ADR trainer and law professor, and his contributions to the field as a whole through his publications and leadership. Mosten is a former member of the Delivery Committee and recipient of a special recognition of the Louis M. Brown Award for Legal Access, given by the committee at the 2004 Midyear Meeting.

2004 Harrison Tweed Award Recognizes Georgia, Mecklenburg County Bars

The State Bar of Georgia and the Mecklenburg County Bar (based in Charlotte, North Carolina) will each receive the 2004 Harrison Tweed Award for their achievements in preserving and increasing access to legal services for the poor.

The Harrison Tweed Award was created in 1956 to recognize the extraordinary achievements of state and local bar associations that develop or significantly expand projects or programs to increase access to civil legal services for poor persons or criminal defense services for indigents. The award, given annually by the ABA Standing Committee on Legal Aid and Indigent Defendants and the National Legal Aid and Defender Association, will be presented during the ABA Annual Meeting in Atlanta at a joint luncheon of the National Conference of Bar Presidents, National Association of Bar Executives and National Conference of Bar Foundations.

State Bar of Georgia

The State Bar of Georgia is being recognized for the work of its Indigent Defense Committee, which has been instrumental in raising awareness and identifying the need for major reform of Georgia's indigent defense system. The committee played a key role in formulating a plan for reform, which culminated in the passage of the Georgia Indigent Defense Act of 2003, which transformed Georgia's entire indigent defense structure.

Scheduled for full implementation in 2005, Georgia's restructured indigent defense system

will shift from a collection of 159 county-based systems—which little state funding and few uniform standards of performance and accountability—to a circuit-based public defender system that will have uniform performance and caseload standards. The 2003 act also created the Office of the Capital Defender to manage indigent defense representation in all new Georgia death penalty cases filed after January 1, 2005. The office will be funded by the state and staffed by experienced death penalty lawyers.

“The State Bar of Georgia's Indigent Defense Committee demonstrated exceptional leadership in working to reform Georgia's indigent defense system,” said SLAID Chair Bill Whitehurst. “Their vision, dedication and hard work were instrumental in the development and passage of the 2003 act, and provide a wonderful example of the vital role bar associations can and should play in addressing the crisis facing our indigent defense system.”

Mecklenburg County Bar

The Mecklenburg County Bar is being recognized for the work of its Volunteer Lawyers Program (VLP). Since 1983 the VLP has dedicated itself to providing pro bono legal services to the county's indigent residents, and in the past 18 months has expanded its services and developed two new programs—Pro Bono for Nonprofits Program and Project PillowTex—in a continuing effort to provide unique legal services.

The Pro Bono for Nonprofits



Harrison Tweed

Program matches business lawyers with charitable organizations that need legal assistance in handling routine business transactions and other legal matters they otherwise would not be able to afford. Project PillowTex is a special pro bono service provided to the many people whose lives and families were affected by the August 2003 closing of PillowTex Corporation. The approximately 5,500 layoffs comprised the largest job loss in North Carolina's history. The VLP identified foreclosure as the most pressing issue faced by the former PillowTex employees and their families, and Project PillowTex lawyers worked diligently to assist laid-off workers in their efforts to safeguard their homes.

“The importance of VLP's work in Charlotte and throughout Mecklenburg County cannot be overstated,” said Whitehurst. “They have been invaluable over the years in providing pro bono legal services, and their most recent efforts, Pro Bono for Nonprofits and Project PillowTex, are creative and innovative approaches to the newly identified legal problems confronting their community.”

From the Chair...



by Bill Whitehurst
Chair of the ABA Standing
Committee on Legal Aid and
Indigent Defendants

Through its Access to Justice State Support Project, the Standing Committee on Legal Aid and Indigent Defendants is seeking to support new institutions within the organized bar to provide ongoing support for the legal services system. This project, formerly known as SPAN, works directly with the commission or committee in each state that is responsible for strengthening the system providing legal services for the poor. In many ways, the state support project is a continuation of previous efforts to enlist the organized bar, courts and the non-legal community in efforts to support legal services. A major part of this effort is to build a broad coalition and institutional infrastructure that will endure, so that we will constantly be ready to respond to federal funding or other legislative issues.

We are fortunate that today the Bush Administration supports ongoing funding for the Legal Services Corporation (LSC). But it was not always so. During much of the 1980s, this nation was in the midst of a crisis with regard to the legal services system. The LSC board seemed determined to destroy that organization from

(continued on page 32)

Access to Justice News

A New Name: The Access to Justice Support Project

Beginning with the 2004-2005 bar year, a familiar name will be retired. SPAN will be called the "Access to Justice Support Project" to better reflect its current mission and functions. As SCLAID has discussed at past meetings, the project has evolved beyond its original purpose as the "State Planning Assistance Network," and the SPAN acronym is no longer relevant. In anticipation of that transition, the SPAN Oversight Committee and SCLAID have been referring to the project in publications as the "SPAN Access to Justice Support Project" and minimizing use of the acronym SPAN.

The Access to Justice Support Project has a new address online as well. Link directly to the project's Web pages at www.ATJsupport.org.

New Report Published: Access to Justice Partnerships, State by State

The Access to Justice State Support Project has published the latest edition of its annual report on current activities in each state to improve access to justice. The report documents the striking growth of state access to justice commissions over the past five years. In 1999 there were six states with an Access to Justice Commission or similar entity. Today, that number has increased to 16. In addition, eight more states (Georgia, Massachusetts, Minnesota, New Mexico, New York, Oklahoma, Utah, and West Virginia) and the District of Columbia are considering or in the process of creating such a body, so the number is likely to be well over 20 within the next year. And this count does not take into consideration the number of states with bar-based committees that have reinvigorated their efforts or expanded their sphere of activity.

The report describes the structure and activities of each state's access to justice efforts. It can be downloaded without cost from the project's Web site at www.ATJsupport.org.

2004 National Meeting of State Access to Justice Chairs

The Access to Justice State Support Project convened the third National Meeting of State Access to Justice Chairs in Atlanta on April 16, in conjunction with the 2004 Equal Justice Conference. This year's meeting had the largest attendance of the three held so far. Over 80 participants represented 37 states and the District of Columbia. Of these, 48 were bar leaders or judges who serve as chairs or members of state access to justice commissions or committees, state bar presidents, or state supreme court justices, while 32 participated in a staff capacity. Staff and representatives from the ABA, NLADA, and the Legal Services Corporation brought the total number of participants to 90.

The meeting featured a plenary session moderated by Sarah Singleton, chair of the New Mexico State Bar's Legal Services and Programs Committee and a member of SCLAID. Speakers during this session included

(continued on page 32)

From the Chair...

(continued from page 31)

within. The Reagan Administration proposed to defund LSC. And the program's staff leadership seemed hostile to the local programs it funded.

Despite the best efforts of the ABA and SCLAID, few leaders of the organized bar had focused on the problems in the legal services system. Over the period of several years, a group called Bar Leaders for the Preservation of Legal Services for the Poor came together. State and local bar presidents from across the country organized and rallied in support of LSC. With a lot of hard work, the threat to legal services was overcome. We hope that the current project will assist in building a permanent legal services reserve corps that can step in quickly to resolve

problems, protect and increase funding, and serve an affirmative role in improving the system.

We are also planning to join with LSC and other national organizations to focus on a quality initiative in the legal services community. Since the early 1960s the ABA Standards for Providers of Civil Legal Services for the Poor have served as the fundamental guide for operation of a strong and effective legal services program. Last revised in 1986, the standards are due for a close examination and possible revision to reflect advances in knowledge about best practices and tools for delivering legal services to the poor. We will look to the bar and legal services communities for guidance and input as we embark upon this project, and will welcome the input of all.

Access to Justice

(continued from page 31)

Juanita Bing Newton, New York's deputy chief administrative judge for justice initiatives, LSC Board Chair Frank Strickland and LSC President Helaine Barnett. Also, Meredith McBurney, director of SCLAID's Project to Expand Resources for Legal Services, presented an overview of current resource development efforts for civil legal aid.

Small group sessions permitted participants to discuss ways to structure and guide state access to justice efforts. Also, participants were able to attend related workshops for the concurrent Equal Justice Conference. Plans are now underway for a fourth annual access to justice chairs' meeting for the spring of 2005.

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