

# DIALOGUE

News and Perspectives from the ABA Division for Legal Services

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"[T]oo often, the fundamental purpose of representing poor people and the organizations that serve them is lost."

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## Expanding the Market: How LRIS Programs Can Serve the LGBT Community

by Mark Scurti

Recently, the Bar Association of Baltimore City Lawyer Referral and Information Service implemented a new program to expand into the area of lesbian, gay, bisexual and transgender (LGBT) law. This change came about as the LRIS sought new opportunities to serve the public, recruit new panel attorneys, and increase income to the service. Whether it involves gay marriage, adoption, estate planning or gender changes, same-sex law is a growing area of legal practice.

Attorneys are just beginning to understand the positive financial impact same-sex law can have on their practices. Lawyer referral services have the same opportunity to capitalize on this trend by creating a database of attorneys qualified to handle same-sex legal matters and marketing these services directly to the gay, lesbian, bisexual, transgender and inter-sexed community.

Traditionally, mainstream law firms stayed away from LGBT legal issues for reasons including a lack of training and expertise. This is no longer the case. Straight attorneys are learning the legal issues that impact the gay community as more clients are coming to them with legal matters involving same-sex parties and controversies.

How can LRIS programs expand their services to reach this community? First, they should identify those areas of the law in which the LGBT status of the client or issue may impact the legal advice given and representation provided. Second, they should decide whether separate panels for LGBT issues are needed or

if existing panels can be augmented. For LGBT panels, it is important to establish panel member experience requirements that confirm sufficient legal knowledge and ensure successful referrals. Third, LRIS programs must recruit qualified panel attorneys. Finally, they should advertise LRIS to a new audience.



*LGBT law is a burgeoning area of legal practice. Is your lawyer referral program prepared to serve the growing need?*



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## Dialogue

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Dialogue is a quarterly magazine serving as an exchange of information on the funding and delivery of legal services, offering timely, relevant and proactive articles, developments and emerging issues from the ABA Standing Committee on Pro Bono and Public Service, Standing Committee on Lawyer Referral and Information Service, Standing Committee on Legal Aid and Indigent Defendants, Standing Committee on Legal Assistance for Military Personnel, and the Commission on IOLTA.

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## Same-sex Law

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**Traditionally, mainstream law firms stayed away from LGBT legal issues for reasons including a lack of training and expertise. This is no longer the case.**

### Know the law

Knowledge of the growing body of statutory and case law affecting LGBT individuals is essential to providing competent legal services to LGBT clients in areas of law such as estate planning and administration, family law and employment discrimination.

An LRIS panel member accepting referrals of LGBT clients for family law matters should be familiar with case law and statutes

in the areas of quantum meruit, constructive trusts, second-parent adoption, custody involving same-sex couples, visitation, and de facto parenting status. A typical case inquiry may involve a woman who is separating from her partner of 10 years. They have real property together, a child borne from one of them, and their assets commingled. The legal issues are numerous. First, did the non-biological parent adopt the child or does she qualify as a de facto or psychological parent? If so, custody and child support may be an issue. How will visitation be worked out? How is the home titled? If joint, is one partner going to refinance and re-title the property? Will the house be sold and how will the proceeds be split between the two? Will there be any capital gains tax assessed? Have they kept records showing contributions to the mortgage, insurance and taxes? Who claimed the deduction for tax purposes?

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## From the Editor...

### Welcome to our new design

With this issue, *Dialogue* debuts a new look. After more than 10 years of the familiar white, black and green color masthead and design, it was time for a change. The design is new, but *Dialogue* will continue to deliver the same information and perspective as always. We hope that you will find the new design easy and enjoyable to read.

### Paper or online?

In addition to the new look, you may notice that *Dialogue* feels different as well. We have changed the paper stock *Dialogue* is printed on in an effort minimize the impact of recent increases in paper costs. The Division for Legal Services plans to continue to publish *Dialogue* in print for the ease and convenience of our readers. However, each new issue of *Dialogue* (as well as archives back to 1997) is available online at [www.abalegalservices.org/dialogue](http://www.abalegalservices.org/dialogue).

If you would prefer to read *Dialogue* online and stop receiving it in print, we'd like to know. In lieu of receiving a print copy, we will send you notification by email when a new issue is posted. Please go to [www.abalegalservices.org/dialogue/electronic](http://www.abalegalservices.org/dialogue/electronic) and complete the form.

### Let us know what you think

Do you like the new design? Are there topics or issues you'd like to see more of in *Dialogue*? Please visit [www.abalegalservices.org/dialogue](http://www.abalegalservices.org/dialogue) to share your views.



## From the Chair...

by Ron Abernethy

### Chair of the ABA Standing Committee on Lawyer Referral and Information Service

Those of us who have been involved in lawyer referral for a number of years can recall when the only banner-style legal advertisements in the Yellow Pages were those placed by the local lawyer referral service. The rationale for allowing lawyer referral services to advertise while individual lawyers and firms could not was that lawyer referral was a public service, not a blatant commercial plea for clients. Times have changed and the legal marketplace is both competitive and full of lawyers. Lawyer advertising is prolific and the availability of information about lawyers on the Internet is staggering. This change has had a significant impact on lawyer referral services across the country. No longer holding a monopoly on advertising, lawyer referral services need to focus on what actually sells. Having “your name out there” is no longer sufficient. In some respects the prospect of choosing a lawyer, particularly for moderate-income legal consumers, is more daunting than ever. Who knows what claims made by lawyers are genuine? How does one see through the clutter of advertising and determine which lawyer is the right one to call?

The answers to these questions can be found, not surprisingly, through access to unbiased information. Giving prospective clients better information—perhaps even increasing their involvement in the lawyer selection process—is

worth considering. Lawyer referral competitors are quick to copy parts of the basic lawyer referral service model. They want to be seen as supplying unbiased information about lawyers and as an access point to lawyers who are ready, willing and able to handle the client’s case.

Perhaps it’s time that we in the lawyer referral service community look closely at how our competition goes about marketing. What strategies do they employ? How do they go about reaching the core lawyer referral demographic?



There has been a great deal of buzz in the past few months over start-up lawyer-rating Web sites such as Avvo and HireTrade. Both of these ventures are based on the premise that the legal consumer is already considering a particular lawyer and wants to know whether the lawyer is qualified. Both companies, and others like them, rate lawyers against a set scale. Given the extensive marketing background of the individuals behind these ventures, we can assume that market research supports the underlying premise.

Whether a rating given by either of these companies captures the skill level of the lawyer being rated remains to be seen, and is beside the point I want to make. What is significant is the marketing premise of giving the legal consumer some awareness of the qualifications of the lawyer. This approach makes a lot of sense in today’s Web-based environment, where information (or at least the illusion of information) is so widely available.

How can lawyer referral services market themselves in a way that provides potential legal consumers with solid information about the

qualifications of panel members?

Assuming that a lawyer referral service is operating in compliance with the ABA Model Supreme Court Rules Governing Lawyer Referral and Information Service, the answer is quite simple. Experience or “subject matter” panels, where each panel member has met objectively determinable membership criteria, allow lawyer referral programs to offer legal consumers more assurance than any commercial rating system. A lawyer referral service panel member has met participation requirements, carries malpractice insurance, and actually wants to handle cases in a particular area of law. Services with these panels deliver on the promise of “The Right Call for the Right Lawyer”. Better still for legal consumers, the lawyer actually has been vetted for a specific area of law. Just because a lawyer has been rated highly based on established expertise in admiralty law does not mean the lawyer is particularly skilled in probate administration.

The existence of legitimate subject matter panels should be the centerpiece of every lawyer referral service’s marketing efforts. Lawyer referral can give legal consumers a lawyer well qualified to handle a specific type of case. Failure to recognize the marketing appeal of lawyer ratings would be a serious mistake. Not only can we use subject matter panels to “rate” our lawyers, we can do it better than any of the existing systems because our rating is specific to an area of law. This type of rating is much more important to legal consumers in the real world.

For moderate-income legal consumers, calling an ABA certified lawyer referral service is “The Right Call for the Right Lawyer.” Lawyer referral service subject matter panel requirements currently provide the best lawyer rating system available. It is essential that our marketing efforts focus on that reality.

## Same-sex Law

(continued from page 2)

How is their debt going to be divided up? Do they have a jointly titled car and can they transfer title without needing to have the vehicle re-inspected and paying for new tags?

Some traditional separation and divorce legal principles may apply to same-sex couples. However, because the client and his or her partner are not married—or not recognized by their state as being married—the law may not be as clear. In some cases, mediation may be a viable alternative for same-sex couples going through separation and divorce.

In the estates and trust area, the attorney should be knowledgeable about estate tax law including gift tax, inheritance, property titling and partition actions. A typical case may involve two men who wish to protect each other in the event of sickness or death through proper estate planning. How do they title currently owned property without triggering a gift tax? What about future purchases? How should they be advised? Can one attorney draft both of their wills without a conflict of interest? What safeguards should be included in the wills to deter and defeat later challenges? What additional documents must be drafted in order to provide maximum protection by way of medical directives, powers of attorney, and domestic partnership agreements? Can decisions be made after death regarding the funeral and disposal of the body remains? The estate

planning legal issues are complex. Some tax liability may be unavoidable regardless of the planning and documents created.

A caller may just have been fired from her job solely because of her sexual orientation. She has been subjected to constant harassment at the workplace and her boss looks the other way. Finally, she cannot take it anymore and tells the owner of the company about the problem. Unmoved, he sees her as the problem and terminates her on the spot. What can she do? Does she have a claim under state law? Do any local ordinances protect her from discrimination based on sexual orientation? There are no federally based claims. However, can a case be made based on gender or some other protected class?

Another scenario may involve a man who wishes to undergo sexual reassignment surgery to become physically more like a woman. He wants to begin presenting himself as a woman at work and needs to transition smoothly. He wants to legally change his name and the gender mark on his driver's license and birth certificate. Can he obtain these legal changes? If so, how and under what circumstances can it be done? What gender pronoun do you use to refer to this individual?

Depending on the jurisdiction, there may be case law as well as statutes that give guidance and direction for the attorney to navigate and advise the client appropriately. If the law is silent or non-existent, creative lawyering may be necessary.

### **Building a LGBT component**

Recruiting attorneys for your panel

may be as easy as contacting the local or national gay and lesbian bar association in your area to promote your new service to their members.

Advertising for clients is easy as well. Almost all cities have a gay newspaper or community center that offers legal resources. A search on the Web can turn up additional resources and links to advertise your services and reach the gay community. In most large cities, there are gay pride or film festivals that provide additional opportunities to directly reach this community.

Before doing anything, do an internal check on your intake system. Is your intake staff trained to be gay friendly? Are your panel members and their staff going to be sensitive to the clients? When asking a person their marital status, do you provide the option of partnered or civil union? What information is necessary during intake to screen the caller before making a referral? Spending time with attorneys practicing in this area of the law can yield positive results. They can provide tips and procedures to put in place to handle clients and referrals effectively.

The gay, lesbian, bisexual, and transgender community is an emerging powerful economic force. Your LRIS can capitalize on this growing market through proper recruitment of attorneys and advertising of the service directly to the LGBT community.

*Mark Scurti is a private practitioner in Baltimore, and is the immediate past president of the Bar Association of Baltimore City.*

## Save the Date

**Plan now to attend the 2008 National Lawyer Referral Workshop in Anaheim, California from October 15 to 18. Check [www.abalegalservices.org/Iris](http://www.abalegalservices.org/Iris) for more details as they become available.**



## From the Chair...

by General Earl E. Anderson, USMC (Ret.)

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

Last December the nation's bar and other advocates of veterans' rights won partial elimination of an archaic federal barrier to the legal representation of veterans in the benefits appeal process. The Veterans Benefits, Health Care and Information Technology Act of 2006 ushered in far-reaching enhancements of veterans' services, among them the right to retain paid legal counsel at the point in the process where a veteran disagrees with an original ruling from a Veterans Benefits Administration regional office.

Now that the door is open, it is up to every lawyer who walks through it to refute the claims of those who argued that the bar's position was driven solely by the prospect of fees, and that lawyers' monetary gain would reduce benefits that flow to veterans. As I and others pointed out a year ago when the law was still a bill facing formidable opposition, that argument is a smokescreen that should not obscure the essential principle that every citizen—and surely every veteran—is entitled to a lawyer in the pursuit of his or her legal rights. Certainly, in the end veterans collectively will benefit from the fact that they have legal counsel on their side.

The crafters of this legislation did not leave it to chance that qualified lawyers will step up to fill the gap on these veterans' benefit appeal cases. A core element of the Act and of the still-pending

*(continued on page 6)*

## Traumatic Servicemembers' Group Life Insurance

by Steven Chucala

Servicemembers engaged in estate planning and physical disability counseling are too often insufficiently aware of an important source of financial support for those who become severely injured. Traumatic Servicemembers' Group Life Insurance (TSGLI), created by Congress in 2005, provides for payment of money to members of the uniformed services who sustain a traumatic injury resulting in certain severe physical/medical conditions. To receive TSGLI coverage, however, a servicemember must be enrolled in Servicemembers' Group Life Insurance (SGLI). TSGLI coverage is automatic for every servicemember enrolled in SGLI. The TSGLI premium is only \$1 per month above the SGLI premium.

The coverage provides monetary benefits ranging from \$25,000 to \$100,000, depending on the degree of severity of the effects of the traumatic injury. The payment may be used for whatever purposes the servicemember desires—it is meant to provide financial help during a difficult time.

Public Law 89-214, which took effect September 29, 1965, established the SGLI program. Numerous subsequent amendments have increased the dollar value of SGLI coverage. Veterans Group Life Insurance (VGLI) was added in 1974. TSGLI was enacted effective December 2005 with little fanfare, yet it is an important disability program that can provide critical support in the time of greatest need.

Questions posed to the author by clients during estate planning and physical disability counseling demonstrate a serious lack of knowledge of how TSGLI operates. Military and civilian attorneys advising their clients should familiarize themselves with TSGLI's provisions to ensure comprehensive counseling. This overview addresses issues often faced by servicemembers and their family members.

The inartfully named Traumatic Servicemembers' Group Life Insurance is a **traumatic injury** rider under the SGLI. It provides for payment of money to members of the Uniformed Services who sustain traumatic injury resulting in certain severe physical/medical conditions. Since December 1, 2005, every servicemember who has enrolled in SGLI also has automatically enrolled in TSGLI. (Retroactive application is provided for injuries incurred on or after October 7, 2001 as a result of Operation Enduring Freedom or Operation Iraqi Freedom.)

The amount of coverage available to a given enrollee depends on the degree of severity of the traumatic injury. TSGLI is not available to family members under SGLI or to servicemembers under the Veterans Group Life Insurance Program (VGLI).

Traumatic event is defined as the application of external force, violence, chemical, biological, or radiological weapons, or accidental ingestion of a contaminated substance causing damage to a living being. The damage caused is referred to as the traumatic injury. Coverage does not apply to non-traumatic illnesses and diseases, attempted suicide, self-inflicted injuries and medical or surgical treatments of illness.

Traumatic injury events are not limited to those occurring during combat operations, and coverage is 24-7-365. But recovery will be denied if the injury is attributable to a traumatic event that occurs while the servicemember is under the influence of an illegal or unauthorized

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## From the Chair...

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implementing regulations is that every lawyer who handles these cases should be certified by a regulating agency as ethically fit and professionally competent. Among other prerequisites to certification, it is contemplated that every lawyer will pass a certification test on the veterans' benefits process.

The American Bar Association is examining roles it may play in creating a more stringent "board-certified" status for true experts in the field. Under one approach, the ABA would "accredit" independent entities engaged in board-certifying those attorneys specializing in the practice area engendered by the new statute.

As this column goes to press, the final implementing regulations for the Act are months overdue. Perhaps the drafters are being deliberate because they know the final form of the rules will have significant policy implications. One area of concern, expressed by the ABA and a number of other organizations, is whether the proposed regulations might inadvertently create barriers to pro bono representation.

Placing stringent certification requirements on pro bono attorneys in these cases would erect new barriers that did not previously exist. Many lawyers historically have assisted veterans in the benefits process on a pro bono basis—the old law only barred **paid** counsel—

complementing the representation offered by the Veteran Service Organization representatives. It stands to reason that many lawyers might reluctantly forego their pro bono work on veterans' benefits cases rather than travel great distances to regional offices to take certification exams.

Surely, every veteran who retains counsel, whether paid or pro bono, is entitled to a lawyer who is qualified in the field. But the regulators must find a balance between rigorous qualifications on the one hand and the great need for legal counsel among this generation of veterans. Competence, after all, is a requirement of every state ethics code.

\* \* \*

All who care about military lawyers, military law and the legal interests of our servicemembers should recognize the extraordinary contributions of ABA Immediate Past President Karen Mathis to the military legal cause. President Mathis personally and most credibly reached out to the Judge Advocates General of the services to convey the message that their legal issues were on the ABA's radar, and that she would work to make the ABA an even better home for the military lawyer. President Mathis developed and moderated ABA programs—with participation by the Judge Advocates General of the Army, Navy, Air Force and Coast Guard, well as the Staff Judge Advocate to the Commandant of the Marine Corps, and ABA Executive Director

Henry F. White, Jr.—on rule of law developments and issues in overseas military environments. At all times, she advocated respect for human rights and the rights of detainees.

In her writings and actions, President Mathis supported the work of the LAMP Committee and the other ABA entities that serve military lawyers and the interests of servicemembers. Hers was a strong, clear voice in favor of military predatory lending reform, and the ABA's support helped with passage by Congress in 2006 of the Military Lending Act. She gave special attention to the many challenges facing the children of military members, particularly those whose parents are deployed, as part of her broader Youth at Risk Initiative. She chaired the Youth at Risk roundtable held at Hill Air Force Base in Utah, and she stood before the House of Delegates to back recommendations that would assist the children of deployed servicemembers and their caregivers. They passed unanimously. President Mathis also argued in favor of reaffirmation of ABA policy urging statutory entitlement to legal assistance for all servicemembers.

In doing these things and much more, President Mathis built stronger bridges between the civilian and military bars, and signaled our lawyers in uniform that they could find a receptive home in the American Bar Association. As chair of an ABA entity with a military focus, I thank former President Mathis for her efforts and accomplishments in this area.

## TSGLI

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controlled substance or is committing or attempting to

commit a felony.

The beneficiary of TSGLI is the servicemember or, if he or she is legally incompetent, a guardian/agent acting on the servicemember's behalf. Should

death ultimately result from the injury, payment is made to the beneficiary listed in the SGLI policy.

TSGLI payments are not

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## From the Chair...

by M.  
Catherine  
Richardson

### Chair of the ABA Standing Committee on the Delivery of Legal Services

This column often is devoted to the Louis M. Brown Award for Legal Access and the annual recipients of the award. The Brown Award was established in 1995 to honor innovative approaches to the delivery of legal services for those of moderate income. Through the award, the Delivery Committee wants to honor programs, projects and initiatives that help people get affordable legal services. But unlike some awards that are focused exclusively on recognition, the Brown Award has another dimension. It serves as another avenue to identify new developments and to stimulate increased access. Therefore, the Committee encourages the replication of models for the delivery of legal services that are found within the programs and projects of Brown Award nominees.

More recently, the Committee has advanced another method of stimulating replication. The Blueprints Project identifies innovations in the delivery of and access to legal services and provides online technical assistance to those who are interested in bringing these projects to their own backyards. (You can visit the project's Web site at [www.abalegalservices.org/delivery/blueprints.html](http://www.abalegalservices.org/delivery/blueprints.html).)

The latest blueprint provides information and resources to encourage lawyers to develop curriculum for and teach law school classes related to access

to justice. In selecting the topic, the Committee reasoned that the community dedicated to expanding access to legal services should take a "cradle-to-grave" approach. Substantial resources have been dedicated over the past year to the ABA Second Season of Service initiative, advanced by Karen Mathis, immediate past president of the ABA. Second Season focuses on changes resulting from the upcoming retirement of lawyers of the Baby Boom generation. In contrast, the blueprint on teaching access to justice looks at the other end of the spectrum and is designed to stimulate resources that will encourage law students to develop a life-long interest in meeting the needs of those with low and moderate incomes.

The Committee recognizes that few new law graduates will go into legal aid positions. On the other hand, we looked at data collected by the Center for Pro Bono and reasoned that lawyers need a better understanding of the delivery methods used to serve low and moderate-income populations. We also concluded that today's law students will become tomorrow's policy makers, as they serve on boards of legal aid and

**The Blueprints Project identifies innovations in the delivery of and access to legal services and provides online technical assistance to those who are interested in bringing these projects to their own backyards.**

pro bono programs and access to justice commissions.

As we sought out exemplary access to justice courses, the Committee came to some interesting conclusions. First, courses that examine methods of delivering legal services are uncommon, if not rare. We found that there are many courses on substantive poverty law. We found that access to justice often is presented as a unit within professional responsibility courses. We also found that there appears to be an increasing number of courses on "street law." These street law courses are very innovative, often calling upon students to teach community organizations about issues such as housing law, family law and immigration. But, they do not generally provide insights into delivery methods.

The Committee has identified a series of access to justice courses, three of which are taught by the current and former committee members. We found these courses are taught by those in all settings, including tenured faculty, clinical faculty and adjuncts. They lack a template (no doubt a good thing) and have no standardized reading materials. The course taught by Professor Jeanne Charn at Harvard Law School includes an international comparison of access to legal services, while the course taught by Professor Ronald W. Staudt at Chicago-Kent Law School focuses on the use of technology to expand access.

The blueprint explains the value of teaching these courses, provides links to the syllabi, and contacts to those who teach the courses. It is available online at [www.abalegalservices.org/delivery/blueprint3.html](http://www.abalegalservices.org/delivery/blueprint3.html). All we need now is for those in this generation to find the time and interest to tailor and teach courses on access to justice to those of the next generation.

## ABA Child Custody and Adoption Pro Bono Project Grants

The Child Custody and Adoption Pro Bono Project is pleased to mark the fifth year of its grants program by making nearly \$50,000 in grant awards to programs and projects working to develop partnerships between pro bono attorneys and law students in the representation of children in private custody cases.

Four programs from around the country will share the awards. They are:

### **AdvoCourt for Kids, Houston -**

**\$15,000 grant:** The primary mission of AdvoCourt for Kids is serving indigent children in custody and parentage cases for the family courts in Harris County, Texas. The program's goal is to "protect the legal rights of disenfranchised children who would not otherwise be afforded the protections granted by our judicial system." AdvoCourt for Kids was created so the family court judges of Harris County would have a steady source of volunteers to appoint as amicus attorneys for indigent children in private custody cases.

AdvoCourt for Kids will use the grant to fund an assistant clinical professorship at the University of Houston Law Center Civil Clinic supervising law students that represent children in divorce, custody and parentage cases. Additionally, the grant will fund a free training for law students and private attorneys on issues that arise in these cases. After completing the training, each law student will be paired with an experienced volunteer attorney who will supervise the student in a pending case, giving the student the opportunity for hands-on experience.

**Atlanta Volunteer Lawyers Foundation, Atlanta - \$15,000 grant:** Atlanta Volunteer Lawyers

### **Contributing to the Ann Liechty Scholarship Fund**

A scholarship fund has been established to support the attendance of pro bono child custody and adoption advocates and staff at the annual ABA/NLADA Equal Justice Conference (see: [www.equaljusticeconference.org](http://www.equaljusticeconference.org)). The project is seeking additional contributions to this fund.

For more information about the scholarship fund, or to make a donation, contact Project Director Genie Miller Gillespie, [gillespg@staff.abanet.org](mailto:gillespg@staff.abanet.org) or 312-988-5805. For further information about the ABA Child Custody and Adoption Pro Bono Project, visit our web site at [www.abachildcustodyproject.org](http://www.abachildcustodyproject.org).

Foundation (AVLF) coordinates the provision of free legal services by private lawyers to the nearly 150,000 Fulton County, Georgia residents who live in poverty. Fifteen years ago, Deborah Ebel (the 2005 recipient of the ABA's Ann Liechty Child Custody Pro Bono Award) helped create the GAL Project for AVLF. The GAL Project assists the Fulton County Superior Court Family Division in contested custody matters. Since its inception, AVLF has served as GAL in over 1,500 contested custody cases. The GAL Project is a national model for programs advocating for children in private custody cases. AVLF also has several other successful programs, including the One Child, One Lawyer program which provides pro bono representation to children in the custody of the Fulton County Department of Family and Children Services.

AVLF will use the grant to expand its One Child, One Lawyer program to private guardianship cases. The grant will allow one staff person and law students on field placement from some or all of the three Atlanta law schools to review actions filed in Fulton County Juvenile Court by private parties. The staff attorney and law students will conduct preliminary

investigations of these cases with a focus on the best interest of the child who is the subject of the action. If the case is not resolved at the first hearing, AVLF will refer the case to a volunteer attorney who will partner with the law student to investigate the case and advocate on behalf of the child until the case is resolved.

**ChildLaw Services, Inc., Princeton, West Virginia - \$7,950 grant:** ChildLaw Services, Inc. (CLS) is West Virginia's only children's legal services program. In the last six years, CLS has served over 2,500 children involved in the court system. CLS's mission is "to provide a stronger voice for children."

CLS will use the grant to implement a two-pronged project that partners attorneys with students from the Appalachian School of Law. Third-year law students will perform 15-week clinics with CLS, learning to represent children in private custody and adoption cases. Additionally, CLS staff attorneys, law students, and local volunteer attorneys will implement free one-day clinics on a monthly basis across southern West Virginia to assist young people in obtaining

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## From the Chair...

by Mark I. Schickman

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

William Shakespeare once asked “What is in a name?” Well, quite a bit—if your name includes the words “pro bono.” For, while it is perhaps the best known law-related term in the country, pro bono may also be the most misunderstood. Plumbers and architects who do freebies for their friends refer to their work as pro bono. Lawyers understand the power of words, and the need for precision in their use, but even in their hands few legal terms have more elasticity in their meaning than pro bono. Lawyers use these words to describe free advice to family and friends, service to clients who fail to pay, board service for civic organizations, and non-legal volunteer work.

As public parlance seems to define the term as anything that is “for free” and lawyers stretch it to cover a broad range of their non-billable activities, it becomes all the more important to keep the central definition of the term as clear as possible.

The definition of pro bono most often comes up in three law-related contexts—in a lawyer’s employment setting, regarding some reporting requirement, and in the general course of practice. Lawyers in large firms have it easy. Between their firm’s definition, the Pro Bono Institute’s definition, and American Lawyer Magazine’s definition, there is not much room for doubt. Even if you’re practicing in a state with a mandatory pro bono reporting rule you’re not

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## A Road Map to Quality Pro Bono Programs

by Steven B. Scudder

Throughout the legal services delivery system there are new and exciting efforts to develop and improve the quality of programs. Those who are in the business of serving the civil legal needs of the poor have an increasing arsenal of resources on which they can call for guidance. For the pro bono community, this new energy regarding quality provides an opportunity to revisit the ABA Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means, examine the core components of successful pro bono programmatic efforts, and explore how to use these tools to advance private attorney involvement within the overall legal services delivery system.

In 2002, Greg McConnell, former director of the ABA Center for Pro Bono, wrote an article titled *A Discussion on Evaluating a Pro Bono Program*.<sup>1</sup> That article explored strategies, systems and questions for evaluating the impact and quality of pro bono programs, primarily from the perspective of program funders. This article focuses on how pro bono programs can take the initiative internally to prepare for the questions that a funder concerned with quality might be asking sometime soon.

The variety, sophistication and complexity of pro bono programs and program structures have grown exponentially over the past 30 years, and that growth is expected to continue. Today, pro bono programs come in all shapes and sizes and settings. Not all of the concepts, strategies and resources discussed below are appropriate for every pro bono program. However, they provide a framework within which programs can evaluate the quality of their existing systems, services and community impact.

### Think broadly

Before getting into the day-to-day detail, a program should first step back and examine the big picture issues that form the core of the most successful pro bono programs. If one of these elements is weak or missing, the program is at a serious disadvantage.

- **Does the program have the support of the organized bar?** Are there demonstrated organizational connections with the most appropriate state or local bar associations reflecting at least an informal partnership with the pro bono program?
- **Does the program have the support of the judiciary?** Are the appropriate judicial systems or influential judges providing support for the program’s efforts?
- **Does the program have the support of the legal services community?** Are the legal services organizations engaged with the pro bono program and working actively to support pro bono as part of the overall legal services delivery system?

The key to a high-quality pro bono program is developing

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## From the Chair...

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likely to have much difficulty completing the form. But, for the rest of us, it's not so easy.

A challenge for the Standing Committee on Pro Bono and Public Service has been reviewing its own use of the term in light of ABA Model Rule of Professional Conduct 6.1. The Pro Bono Committee uses the term throughout its projects and activities, including the Pro Bono Publico Awards, the Center for Pro Bono, the Pro Bono Child Custody and Adoption Project, and the Pro Bono Data Collection Study. Model Rule 6.1 sets the well-considered base for how we believe pro bono should be understood and applied by lawyers across the profession. But, if you've read that rule recently, you'll note that it is not as straightforward as it could be.

Remember, a lawyer's professional responsibility flows from rules of professional conduct. The meaning of pro bono should be understood in that context; not according to a lawyer's personal opinion or how it might be defined for some reporting purpose. At its core, Model Rule 6.1 envisions that a lawyer will:

- Provide at least 50 hours of pro bono work annually
- Devote a majority of that work to direct representation of the poor or organizations which serve the poor with no expectation of remuneration
- Supplement that work with direct representation of other individuals and in support of a wide variety of organizations which focus on public interest issues

Everybody understands that the rule envisions a minimum number of hours worked with no expectation of remuneration. But too often, the fundamental purpose of representing poor people and the organizations that serve them is lost. Representing groups with environmental agendas or which protect access to public art is praiseworthy and is a great supplement to the core pro bono work. But it is the nation's poor who are most at risk, most underserved, and most in need of our help.

Model Rule 6.1 also states that law-related public service (i.e. not direct representation) also counts as a supplement to the core pro bono obligation. This public service pro bono may include, for example, service on bench-bar coalitions or teaching legal principles to community groups.

There is a final form of volunteerism, best described as community service. This is not pro bono, because there's nothing law-related about it. The ABA has policy encouraging lawyers to do good things in their communities—coaching, tutoring, helping the homeless, and much more—but makes it clear that this activity does not satisfy a lawyer's professional responsibility to engage in pro bono work. Community service simply is the type of work all citizens should do as individuals to better the world in which we live.

Why are these definitions important? Because they keep us focused on lawyers' professional obligation to help persons of limited means—maybe not the most glorious task, but the longest running and most needed.

The Pro Bono Committee plans to continue to explore this important issue, and your help is needed. What do you consider challenging about the term? Does having a clear definition of pro bono matter to you in your practice? To share your views on the definition please contact both Committee Chair Mark Schickman at [schickman@freelandlaw.com](mailto:schickman@freelandlaw.com) and Committee Counsel Steve Scudder at [scudders@staff.abanet.org](mailto:scudders@staff.abanet.org).

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## 2008 Equal Justice Conference

May 7 to 9 at the Hilton Minneapolis

Plan now to head north for the 2008 Equal Justice Conference. The 2008 conference theme is **Pursuing Justice—Balancing Challenges and Opportunities**.

The Equal Justice Conference brings together all components of the legal community to discuss equal justice issues as they relate to the delivery of legal services to the poor and low-income individuals in need of legal assistance. The emphasis of this Conference is on strengthening partnerships among the key players in the civil justice system. Through plenary sessions, workshops, networking opportunities and special programming, the Conference provides a wide range of learning and sharing experiences for all attendees.

Pro bono and legal services program staff, judges, corporate counsel, court administrators, private lawyers, paralegals, and many others attend this event.

In a departure from previous years, the 2008 conference will begin on a Wednesday and conclude on Friday. For more information, visit [www.equaljusticeconference.org](http://www.equaljusticeconference.org).

## Road Map

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a strong base of support from these three pillars of the legal community. Once these relationships are well established the program will be positioned to utilize the resources, influence and opportunities they have to provide for the benefit of the program's clients and volunteers.

### Don't reinvent the wheel

In striving to improve the quality of a pro bono program there is no need to work in a vacuum. There are extensive resources regarding standards, models, criteria and more that are available for pro bono programs of all types: legal services-based, independent, bar association, law firm, law school, government attorney, and others. These resources help programs focus their attention on the key operational elements which pro bono initiatives should use to best serve their clients' legal needs and to best support their volunteers.

As a program sets out on the journey to improve, here are some notable resources it should look to as a guide:

- **ABA Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means**<sup>2</sup>

The Pro Bono Standards were drafted by the ABA Standing Committee on Pro Bono and Public Service to guide newly established programs and their governing bodies, and to provide a basis for improving and evaluating the effectiveness and efficiency of existing programs. Approved by the ABA House of Delegates in 1996, these standards recognize that to utilize all resources effectively, programs should strive to develop a variety of methods, structure and resources for delivering high quality services to clients. The standards should be

a program's first stop on its path toward improving quality.

- **ABA Standards for the Provision of Civil Legal Aid**<sup>3</sup>

In 1961, the American Bar Association first adopted standards for the operation of civil legal aid programs. Those standards were revised in 1986. A complete overhaul of the standards was completed by the Standing Committee on Legal Aid and Indigent Defendants and adopted by the ABA House of Delegates in 2006. The Civil Standards offer comprehensive guidance to legal aid practitioners and providers of all types—including pro bono programs—about providing effective legal aid to the poor.

- **ABA Policies on Pro Bono**

Civil legal services matters were an important and significant part of the House of Delegates agenda in 2006. In particular, the House approved resolutions that provide detailed strategies that will help in developing quality pro bono initiatives. These are relevant to pro bono initiatives concerning large law firms, corporate law departments, government and military law offices, solo and small firm lawyers, law schools and the judiciary.

- **LSC Performance Criteria/PAI Program Letter**

The Legal Services Corporation (LSC) board adopted a Private Attorney Involvement (PAI) Action Plan in early 2007 to generate new interest, focus, resources and commitment in support of connecting private attorneys to the legal needs of LSC recipient clients. LSC's Performance Criteria include guidance for recipients on strategies for involving private attorneys. LSC is due to issue a program letter on PAI in late 2007 to provide recipients with specific guidance. (For more information go to [www.lsc.gov](http://www.lsc.gov))

- **Pro Bono Program Plans**

Some larger staffed legal services

projects with multiple locations have developed pro bono program plans as a way of coordinating the private attorney involvement activities among their offices. Legal Services of Northwest Texas, for example, utilizes a plan that helps to ensure uniform pro bono quality throughout the project.

- **Grant Performance Standards**

IOLTA funding is one of the major funding sources for legal services project-based and independent pro bono programs across the country. As IOLTA funders have become more sophisticated, some have developed grant performance standards that help their grantees understand what is expected of them in terms of operational and service quality. One such set of standards has been promulgated by the Legal Foundation of Washington.

- **Supporting Justice: A Report on the Pro Bono Work of America's Lawyers**<sup>5</sup>

Supporting Justice was the result of a one-year study conducted by the ABA Pro Bono Committee in 2004. The committee's goal was to produce a national survey that captured the amount of pro bono work being done by lawyers in the United States and to obtain a clearer understanding of why attorneys do or do not volunteer their time to offer legal assistance to people of limited means. Pro bono programs will find this latter section of the report particularly helpful in evaluating whether they are supporting their volunteer attorneys in ways that those volunteers find meaningful.

- **ABA Center for Pro Bono**

The Center for Pro Bono provides technical assistance and planning advice to a wide range of constituents in the field. It produces a number of publications, maintains a national clearinghouse of materials on a wide range of pro bono topics,

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## Road Map

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and operates the Peer Consulting Project. Visit [www.abaprobono.org](http://www.abaprobono.org) to learn more about the Center.

### Finally, focus on the details

Improving the quality of a pro bono program, like preparing for any journey, requires some advance planning. You should make sure you have taken care of the essentials and gathered the

information you will need as you go. After that, though, you should focus on the details. Selecting from your options, investing in additional research as necessary and visiting and enjoying the resources is where the real adventure begins. The resources listed above are the tour guides that will make your trip worthwhile and successful.

*Steven B. Scudder is counsel to the ABA Standing Committee on Pro Bono and Public Service.*

### Endnotes

- <sup>1</sup> Dialogue, Spring 2002, Volume 6, Number 2. Available online at [www.abalegalservices.org/dialogue/downloads/dialsp02.pdf](http://www.abalegalservices.org/dialogue/downloads/dialsp02.pdf).
- <sup>2</sup> Available online at [www.abaprobono.org/standards.html](http://www.abaprobono.org/standards.html).
- <sup>3</sup> Online at [www.abalegalservices.org/sclaid/downloads/civillegalaidstds2007.pdf](http://www.abalegalservices.org/sclaid/downloads/civillegalaidstds2007.pdf).
- <sup>4</sup> More information about pro bono-related resolutions is online at [www.abaprobono.org/news\\_current.html](http://www.abaprobono.org/news_current.html).
- <sup>5</sup> Online at [www.abaprobono.org/report.pdf](http://www.abaprobono.org/report.pdf).

# LAMP

## TSGLI

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deducted from SGLI coverage, are not a set off from any physical disability awards under AR 635-40, and TSGLI payments are not subject to federal income taxation. To be eligible for TSGLI benefits, the servicemember:

- Must be insured by SGLI.
- Must incur one of the listed losses and it must be the direct result of the traumatic injury.
- Must have suffered the traumatic injury prior to midnight of the day of separation from the uniformed services.
- Must suffer a scheduled loss within one year (365 days) of the traumatic event. (Pending increase to 2 years.)
- Must survive for a period of not less than seven full days (168 hours) from the date and time of the traumatic injury. (A beneficiary would be able to apply for benefits for a servicemember who survives beyond the seven-day period

but who later dies of the traumatic injury.)

The TSGLI program has a schedule of payments for traumatic losses that lists each medical/physical impairment and its degree with a corresponding dollar amount from \$25,000 to \$100,000. Recently, 44 types of losses were identified, ranging from total loss of sight in both eyes to the inability to carry out activities of daily living directly resulting from a traumatic injury other than an injury to the brain. Brain injuries are among the 44 types identified. Pure mental illnesses are not covered.

Several claims may be necessary for traumatic brain injury or coma that persists over prescribed periods of time. Such claims are payable in \$25,000 increments. Should additional losses result from the same event after filing the first claim, another claim is required. (Example: Loss of one foot followed by a second foot amputation two months later.) Aggregate recovery may not exceed \$100,000 for multiple injuries resulting from the same traumatic event, however.

Claims should be submitted

by the servicemember or on his or her behalf by use of the TSGLI Certification Form GL.2005.261. (2006 Edition, 10 pages.) It contains three parts. The first is to be completed by the servicemember or representative, the second by the attending medical professional, and the third by the service branch prior to submission to OSGLI.

The TSGLI program has many other features not captured in this article. To ensure that servicemembers have the latest information, counselors should contact program administrators as warranted. Additional information, requests for claim forms and appeals of TSGLI determinations are available at 800-419-1473 or 800-237-1336. Email requests may be directed to [osgli.claims@prudential.com](mailto:osgli.claims@prudential.com). The program Web site is [www.tsgli.army.mil](http://www.tsgli.army.mil).

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## From the Chair...

by Jonathan D. Asher

### Chair of the ABA Commission on IOLTA

In my last column for *Dialogue* I wrote about transition, focusing on the departure of outgoing members of the Commission on IOLTA and the loss of a long-time IOLTA program director to cancer. This column reflects on happier transitions—beginnings and comings on; our gains, not our losses. I am pleased to welcome Tim Crim, the Hon. Denise Johnson, and Diane Kutzko, who began their terms on the Commission on IOLTA earlier this fall. Each of these new members has a very impressive background—which you can read more about in the IOLTA News and Notes section on page 17. I am excited to begin work with each of them.

I am also pleased to observe that six IOLTA programs recently positioned themselves for another sort of beginning through their success in obtaining new revenue enhancement by rule or statute. You can read more about the developments in Alabama, California, Maine, Missouri, New York, and North Carolina on page 18. The adoption of mandatory IOLTA participation requirements, comparability requirements—or both—are intended to increase IOLTA revenues, and when they become effective, they will mark a new phase and mostly likely substantial growth for each program.

Even in the absence of rule or statutory changes, IOLTA programs are in an ongoing state of transition, as trustees, executive directors and other staff members come and go. For recent arrivals to our work, IOLTA is both

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## IOLTA Grantee Spotlight: Disability Rights Wisconsin

by Lynn Breedlove

For generations, people with disabilities have experienced discrimination and obstacles to full participation in society. But it was only in the late 20th Century that these problems began to be viewed as a priority in the provision of civil legal services in the United States. Disability Rights Wisconsin, a statewide nonprofit organization created in 1977 expressly to provide such services to children and adults with disabilities in Wisconsin, is an excellent example of this unique breed of specialty legal service providers around the country.

### Protection and advocacy

Disability Rights Wisconsin (DRW) is the state's designated "protection and advocacy agency", a concept created by Congress in the 1970's. Protection and advocacy agencies receive funding from several federal programs to provide core services for all disability groups, including people with mental illness. Unfortunately, the federal funding (like that for the Legal Services Corporation) has not kept pace with the increasing demand for legal services from this population.

The origins of the protection and advocacy program nationally were the so-called "Willowbrook Hearings" in Congress, which followed a sensational television exposé by Geraldo Rivera of horrific conditions in a huge state-run institution for people with severe disabilities on Long Island. Hidden cameras showed residents lying naked on the floor, abusive staff practices, and no meaningful activity or education taking place. Shocked and angry members of Congress decided to create a new disability advocacy system in each state, independent of state government and equipped with special powers to access records and clients in any setting. Originally the system only was mandated to assist people with developmental disabilities. But over time Congress has expanded the responsibility of protection and advocacy agencies to serve people with sensory and physical disabilities, and people with mental illness.

In Wisconsin, the mission and powers of the protection and advocacy agency are also spelled out in state law. State law includes provisions that permit Disability Rights Wisconsin to access disabled individuals and their records in instances where abuse and neglect is suspected. This distinguishes DRW both from LSC-funded legal services agencies and other disability advocacy organizations in the state and has resulted in DRW becoming increasingly viewed as the "go to" organization for leadership on disability rights in the state from the point of view of the governor, state and federal legislators, and state agencies.

DRW is a non-profit corporation with a \$3.6 million annual budget, three offices and 45 staff members, including 15 of the most knowledgeable disability attorneys in the state. The agency is governed by a 16-member statewide citizen board of directors. Although the majority of the agency's funding comes from the federal government, DRW also has received 20 years of continuous funding from the Wisconsin Trust Account Foundation, the state's IOLTA program. At present, the IOLTA grant to DRW is among the largest in Wisconsin, reflecting the Foundation's recognition of the importance of legal services to the disability population. DRW also receives state funding specifically earmarked for assisting individuals to obtain public benefits.

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## From the Chair...

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an exciting opportunity and a daunting challenge. Most trustees and program staff members relish the chance to work to increase access to justice through their involvement with their IOLTA program. But at the outset, the technical nature of the program can be difficult to master for those not yet familiar with terms such as “negative netting,” “comparability,” “assignment of income,” or “tiered rates.”

Fortunately, the Commission on IOLTA and the National Association of IOLTA Programs have a variety of resources to help orient and support those who are new to IOLTA, whether as trustees, executive directors, or as bar leaders. Most helpful for newcomers may be the semi-annual IOLTA Workshops. Held in conjunction with the ABA Annual and Midyear Meetings, the workshops provide two days of topical sessions for IOLTA program executive directors, staff members and trustees. Workshops focus on current developments in IOLTA, such as interest rate comparability and the wise use of increased IOLTA revenues, and issues of perennial importance, such as working effectively with banks, grant-making, and evaluating the work of grantees. Significantly, the workshops offer a breakfast meeting for newer executive

directors that allows them to meet and talk to a smaller group of peers. There is also a breakfast meeting for trustees. While the trustees breakfast is not geared to new trustees exclusively, it provides an excellent introduction to the workshops and to the IOLTA community.

The support for new executive directors extends well beyond the workshops. The Joint Commission/NAIP Technical Assistance Committee maintains a well-received mentoring program that matches new executive directors with more experienced executive directors. Executive directors also have access to an electronic mailing list maintained by the Commission, and to the burgeoning IOLTA.ORG Web site at [www.iolta.org](http://www.iolta.org). IOLTA.ORG has a members-only area with a growing library of resources for IOLTA program executive directors, staff and trustees. As the Web site approaches the end of its third year of operation, IOLTA.ORG increasingly serves as an important resource for the IOLTA community. IOLTA.ORG is complemented by the Commission’s own Web site and directory of IOLTA programs at [www.abalegalservices.org/iolta](http://www.abalegalservices.org/iolta), and by the IOLTA Clearinghouse, which maintains a database of information about IOLTA programs along with a wealth of materials about the establishment and administration of IOLTA programs.

The Commission’s staff is

also an invaluable resource for any newcomer. While electronic resources such as IOLTA.ORG are useful for the broad dissemination of information, contacting the Commission’s staff—led by Commission Counsel Bev Groudine—is frequently the best way to get answers to more complicated or involved questions. Bev is experienced and dedicated to providing high quality support to the IOLTA community. On those rare occasions when staff members do not have the information you may need, they are extremely effective in helping to guide you or identify others with the necessary expertise and bring them into the conversation. For any program that is considering an amendment to its IOLTA rule or comparable initiative, contacting Bev for information or assistance should be your very first step. (Bev can be contacted at 312-988-5771 or [bgroudine@staff.abanet.org](mailto:bgroudine@staff.abanet.org).)

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Whether you are new to the IOLTA community or an old hand, I hope you are planning to attend the 2008 Winter IOLTA Workshops, which will take place February 7 and 8 in Los Angeles. Detailed registration information is online at [www.abanet.org/midyear/2008](http://www.abanet.org/midyear/2008). If you download the printable form, make sure you use the registration form marked “IOLTA Workshops Registration.”

## Grantee Spotlight

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The legal issues facing people with disabilities are quite complex, and include a variety of matters that come before both federal and state courts, as well as administrative agencies. The scope of these issues is well illustrated

through a scan of DRW’s current annual priorities, which include: abuse and neglect in public and private institutions; housing, employment and insurance discrimination; physical and program accessibility problems covered by the Americans with Disabilities Act; long waiting lists for basic services; relocation from institutions to less restrictive

settings; need for assistive technology; safety issues and treatment problems in jails and prisons; denial of benefits that people are eligible for; violations of the IDEA (federal special education law); illegal use of seclusion and restraint; wrongful death investigations; and exclusion of women with disabilities from

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# IOLTA and the Civil Right to Counsel: An Opportunity for Leadership

by Jayne B. Tyrrell

Today there is an opportunity for IOLTA programs around the country to take on a critical leadership role. IOLTA programs are in a unique position to help expand the right to counsel in civil cases. With mission statements such as “Improving the administration of justice” and “Advancing the reality of equal justice under the law”, most IOLTA programs appear to be called upon to join the state-level movements towards a civil right to counsel.

## Background of the civil right to counsel movement

In 1963, the United States Supreme Court’s decision in *Gideon v. Wainwright*, 372 U.S. 335, established the right to free counsel for low-income persons facing state criminal charges. Forty-four years later, no similar right has been declared for civil cases. Pro se litigants dominate the dockets of most civil courts. In the family courts and housing courts of many states, at least one party is unrepresented in 60 to 90 percent of all cases<sup>1</sup>. Yet studies consistently show that having a lawyer makes a significant difference in case outcomes; access to “justice” is harder to obtain if you don’t have legal help.

More than 36 million people live below the federal poverty line and millions more survive on incomes that any reasonable measure would consider poor.<sup>2</sup> Many have physical or mental disabilities or other barriers to successful self-representation. The specific data on the volume of significant legal problems that low-income individuals face without legal help varies from state to state, but the national picture is clear. The “justice gap” (as described by

the Legal Services Corporation) swallows 60 to 80 percent of their legal needs. Despite major increases in the sources and the amounts of funding for civil legal aid, the gap seems to widen every year.

Isn’t it strange that a domestic violence victim, after a beating, will watch her abuser receive free counsel in a criminal proceeding if he is indigent, but has no right to a free attorney in civil court to help her end the abusive relationship or protect herself and her children from future harm?<sup>3</sup> Similarly, someone who creates a predatory loan scheme and is charged with fraud is entitled to a free attorney, but the family whose home is in jeopardy of foreclosure has no right to paid legal help.

A civil right to counsel does exist in limited circumstances under the laws of some states. The most common instances are cases involving the termination of parental rights and involuntary commitment. In a small number of states, a right to appointed counsel exists in other substantive areas, such as adult protective services, guardianships or housing discrimination.

## Establishing a civil right to counsel

In recent years, advocates around the country have joined together to expand the right of low-income individuals to be provided counsel in civil cases. They organized the National Coalition for a Civil Right to Counsel (NCCRC) to provide information-sharing, training, networking, coordination, research assistance, and other support. The coalition has more than 100 participants from 30 states, including legal services and private

lawyers and individuals from state bar associations, law schools, national strategic centers and state access to justice commissions.

In 2006, the ABA became a major proponent of broadening the civil right to counsel. At the coalition’s request in 2005, the ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID) examined the concept of a right to counsel in certain civil cases and began developing draft language. A task force appointed by Michael S. Greco, then president of the ABA, considered how the ABA could promote the expansion of the civil right to counsel as an essential component of equal justice under law. Following a year of intense debate, the task force proposed a resolution that was adopted by the ABA House of Delegates in August 2006:

RESOLVED, That the American Bar Association urges state, territorial and federal jurisdictions to provide counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction.

The ABA position is carefully weighted. Many would have preferred to urge a right to counsel in all significant legal proceedings, but the resolution stops at cases in which the most basic of human needs are at stake. Such cases involve interests so fundamental and important that they compel the conclusion that government

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## Right to Counsel

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should supply counsel to low income persons who cannot otherwise obtain it. Even in such cases, it is viewed as appropriate to explore a range of other actions before providing counsel, including changes to procedural rules, revised roles for court personnel, or implementation of limited assistance programs.

### Opportunities for IOLTA

Today, active civil right to counsel projects are underway in at least eight jurisdictions and discussions are taking place in a number of others. IOLTA programs that are serious about their mission of increasing access to justice should look carefully at these initiatives. The initiatives provide a valuable leadership opportunity for making equal access to justice a front-and-center concern in every state. These projects employ different strategies; IOLTA programs should consider what kind of project best suits the situation and possibilities in their states.

### Litigation

Some of these projects, with the support of IOLTA leaders, involve litigation. For example, a nonprofit poverty and civil rights program and two private law firms in Maryland are pursuing recognition of the civil right to counsel through an appellate strategy raising claims under the state's constitution. In 2003, this strategy brought the case of *Frase v. Barnhart* before Maryland's high court and raised the question whether a poor person has the right to appointed counsel in a civil case under Maryland's common law or state constitution. As part of a coordinated effort, the state bar association and legal services programs filed amicus briefs in support of the right to counsel. The court avoided ruling on the issue on a vote of

4 to 3 vote, but an impassioned concurrence by three judges declared support for a civil right to counsel in contested custody disputes. Further litigation and development of a legislative strategy lie ahead.

Advocates are pursuing a litigation strategy in other states, including Georgia, Washington State and Wisconsin. In Alaska, a trial court just ruled that an unrepresented custodial parent is entitled to counsel when a former spouse who is represented seeks custody.

If your state is not ready to mount major litigation, you might commission a number of legal opinions about your state's existing constitutional recognition of the right to civil counsel. The coalition has prepared papers on a number of states and can help with yours. Knowing the available legal theories will help advocates in your state determine if a challenge under the state constitution is feasible.

### Pilot projects

In California, the Access to Justice Commission recommended funding local pilot programs to test how a civil right to counsel might work. The program would provide a continuum of services for all eligible low-income people with specific family law and housing problems, including full representation for high priority needs. The chief justice of the state supreme court supported the proposal and persuaded the governor to include \$5 million per year for three years for a pilot program in three counties. Unfortunately, the programs were not funded because of the state's tight budget. No IOLTA-funded pilot programs have been established yet in any state, but this remains a possible model for involvement.

### Task forces

There have been several state task forces on civil right to counsel established across the United

States. Again in California, a task force established by the Access to Justice Commission has, with Justice Earl Johnson's leadership, been taking a lead role. It drafted a model statute called the "state equal justice act."<sup>4</sup> The statute creates a right to equal justice, not an automatic right to counsel, that applies to all categories of non-criminal cases. Equal justice is defined as providing a full range of services in the civil arena including legal advice, assistance with document preparation, and appropriate levels of representation before judicial and non-judicial forums. The task force is now nearing completion of its second project, a narrower model that focuses on cases involving basic human needs.

In New York, the president of the state bar announced that the civil right to counsel is on her agenda for the year and appointed a task force. Among the goals of that group are preparing a white paper on the next steps toward an expanded civil right to counsel in New York, developing a messaging campaign, and helping to organize a major conference in conjunction with Touro Law School.

Other states that may form task forces include Minnesota (led by the state bar) and Texas. But there are at least 24 states with access to justice commissions; the IOLTA program in each such state might usefully explore with commission leaders whether a special task force to examine the issue is appropriate, and what resources might be needed. The role of a civil right to counsel may also be a natural component of a state's strategic planning for the delivery of legal services.

### Research, reports and recommendations

Many states are doing research, writing papers, convening symposia and making recommendations to their governors, legislators and judiciaries. In Maine, the Justice

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## Right to Counsel

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Action Group is finalizing its report and a civil right to counsel is included. The New Hampshire Bar Foundation funded the two-year-old Citizens Commission on the State Courts which produced research and a final report that recommended a civil right to counsel. In November, the Hawaii Justice Foundation and state bar issued an extensive civil justice needs study with recommendations that include establishing a civil right to counsel.

In Massachusetts, resolutions supporting a civil right to counsel have been adopted by the Access to Justice Commission, the Boston Bar Association, and the Massachusetts Bar Association. The Boston Bar Association president has appointed a task force to study how to implement a civil right to counsel. IOLTA leaders could consider whether bar associations or other organizations interested in access to justice might sponsor research, write reports, develop recommendations or draft legislation about a civil right to counsel in their states.

### Education

If nothing else is feasible at the

moment, an IOLTA program can initiate an educational program. For example, Georgia held a moot court on the civil right to counsel that was argued before the Georgia Supreme Court as part of the state bar convention. Other initiatives include writing an article or republishing an existing article or articles on the issue of right to counsel in civil cases, or bringing a dynamic speaker to your annual meeting or a bar meeting on the issue. Those interested can maintain and enhance their education on this subject by joining the National Coalition for a Civil Right to Counsel.<sup>5</sup>

### Conclusion

Many major challenges lie ahead for those working for a national right to counsel in civil cases. How much will it cost? Where would the funds come from? What delivery method would be employed and who would administer it? Who should get counsel and in what types of cases? How would counsel be funded? Would a civil right to counsel divert funding from very important legal reform efforts that are not covered by the limited, defined right? IOLTA programs are poised to provide the state-level support needed for raising these questions and identifying answers

to them. The fact that we don't know all the answers should not keep us from asking the questions and finding our way to better access to justice. Justice for all was never meant to be justice for only those who can afford it.

*Jayne B. Tyrrell is executive director of the Massachusetts IOLTA Committee. She is a past president of the National Association of IOLTA Programs and a member of the Joint Commission/NAIP Technical Assistance Committee.*

### Endnotes

- <sup>1</sup> See *Framing the Issues for the Summit on the Future of Self-Represented Litigation, Report from the March 2005 Summit*, National Center for State Courts and the State Justice Institute, by John M. Greacen.
- <sup>2</sup> See the US Census Bureau report, *Income, Poverty and Health Insurance Coverage in the United States: 2006*, online at [www.census.gov/prod/2007pubs/p60-233.pdf](http://www.census.gov/prod/2007pubs/p60-233.pdf)
- <sup>3</sup> Mary Schneider used this example in her article, *Trumpeting Civil Gideon: An Idea Whose Time Has Come?*, Bench & Bar of Minnesota, October, 2006
- <sup>4</sup> A copy of the act is available on the Brennan Center Web site, [www.brennancenter.org](http://www.brennancenter.org).
- <sup>5</sup> Join the coalition by writing to [gardnerd@publicjustice.org](mailto:gardnerd@publicjustice.org).

## IOLTA News and Notes

The Commission on IOLTA welcomes three new members for the 2007-2008 bar year. Joining the Commission in August were Timothy A. Crim of Georgia, Hon. Denise R. Johnson of Vermont, and Diane Kutzko of Iowa.

**Timothy A. Crim** is in business as the CEO and managing partner of Lottery Services of Georgia. He previously held several executive positions in the banking industry, including service as vice president



(also now part of Bank of America)

Crim is a past treasurer of the Georgia Bar Foundation, the state's IOLTA program. He also has served

at Bank South (now part of Bank of America), senior vice president at First Southern Bank, and vice president at C & S Bank

in volunteer leadership positions with several business associations and community organizations, including the United Way and the YMCA. He is a cum laude graduate of Morehouse College in Atlanta, and holds an MBA from the University of Georgia.

### Hon. Denise R. Johnson

has been an associate justice of the Vermont Supreme Court since 1990. Her previous legal

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**IOLTA Notes**

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*Hon. Denise R. Johnson*

experience includes work as a private practitioner, chief of the civil rights division and public protection division of the state

attorney general's office, and a law school legal writing instructor. Johnson began her legal career with New Haven Legal Assistance Association in Connecticut, where she was a staff attorney, managing attorney, and assistant director. As an associate justice, Johnson has chaired the supreme court's Equal Access to Justice Committee and has acted as the court's liaison to the Vermont Bar Foundation.

**Diane Kutzko** is a senior vice president of Shuttlesworth & Ingersoll, P.L.C. in Cedar Rapids, Iowa. Kutzko has been a member of the board of directors of Iowa Legal Aid since 1992, and served as the organization's president from 1998 to 2002. She is active



in several bar and legal organizations, including the ABA and the Iowa State Bar Association. She currently is a member of the ABA House

of Delegates, and was a member of the Standing Committee on Legal Aid and Indigent Defendants from 2002 to 2004. She is a past member of the Iowa State Bar Associations board of governors, and current serves on the board of the Iowa State Bar Foundation.

**Revenue Enhancement**

Since the beginning of August, six states have adopted IOLTA rules, regulations or legislation aimed at increasing their IOLTA revenues. In New York, regulations implementing interest rate comparability took effect on August 15. On August 21, the Supreme Court of Missouri approved a new mandatory IOLTA rule that also includes a comparability requirement. The Maine Supreme Judicial Court approved a new IOLTA rule on September 25 that also requires mandatory attorney participation

and interest rate comparability.

On September 27, the Supreme Court of Alabama approved a new mandatory IOLTA rule. On October 10, California Governor Arnold Schwarzenegger signed legislation that adds an interest rate comparability requirement to the statute governing IOLTA. Finally, the Supreme Court of North Carolina adopted a new mandatory IOLTA rule on October 11.

The new mandatory participation rules will require lawyers to hold appropriate client funds in IOLTA accounts. The interest rate comparability requirements will require lawyers to place their IOLTA accounts at a financial institution that pays those accounts the highest interest rate or dividend generally available at the institution to other customers when IOLTA accounts meet the same minimum balance or other requirements, if any.

As 2008 begins, there will be 36 mandatory IOLTA programs in the United States, and 16 with interest rate comparability requirements.

*For more information about IOLTA rule changes contact Commission on IOLTA Counsel Bev Groudine at 312-988-5744 or [bgroudine@staff.abanet.org](mailto:bgroudine@staff.abanet.org).*

**Grantee Spotlight**

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sexual assault and domestic violence programs.

**IOLTA support critical**

In addressing these issues, DRW has greatly benefited from being a recipient of IOLTA funds. Not only have these funds expanded the agency's overall capacity to respond to the hundreds of requests that DRW receives, they also have provided flexibility for the agency to take on complex multi-issue situations involving

people from multiple disability populations (in contrast to the federal funding sources which are tied to either a single issue or a single disability population). DRW only utilizes IOLTA funding to serve low-income clients, but since the large majority of people with disabilities unfortunately are poor, that includes more than 90 percent of DRW's clientele.

**Systemic change**

Unlike LSC-funded programs, protection and advocacy agencies are not subject to any prohibitions against using class action as a legal services strategy. DRW has

had two resounding class action victories in recent years, both with major systemic change implications. The first of these, *M.L. et. al. v. State of Wisconsin*, resulted in a consent decree in 1997. For three years preceding the filing of this case, DRW had received reports of apparent illegal and excessive use of restraints and seclusion in Wisconsin's two state psychiatric hospitals. Through a series of individual cases, DRW attorneys attempted to convince administrators to voluntarily change the facilities' policies. This was unsuccessful, and led to the

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## Pro Bono Grants

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guardianships and other legal and social services. CLS will also partner with the 12th Circuit Family Court to train and support the interns and volunteer attorneys regarding the ABA Standards for Child Custody Representation, and West Virginia law, procedures and court rules.

**Children's Law Center, Covington, Kentucky - \$12,000 grant:** The Children's Law Center seeks to protect and enhance the rights of children through quality legal representation, research and policy work, including training and education of attorneys and others regarding the rights of children.

The center is planning to implement a program with law

students from the Northern Kentucky University Chase College of Law, who will receive pro bono hours for their participation. These students will work with pro bono attorneys on private custody cases. The grant will be used to hire a part-time coordinator to serve as a liaison among the pro bono attorneys, courts, center, and the Chase College of Law. The objectives of the project are to: 1) provide legal representation to children in divorce, parentage, adoption and domestic violence cases; 2) sponsor a continuing legal education program for the pro bono attorneys, law students, and family court judges, utilizing the ABA Standards for Child Custody Representation; and 3) provide a written assessment and report from information obtained by circuit and family court judges in Kentucky to encourage implementation of pro bono child custody representation in their court.

### General information

All four grants are for the period May 2007 through May 2008.

This is the fifth year of grants by the Child Custody and Adoption Pro Bono Project. The project is jointly sponsored by the ABA Standing Committee on Pro Bono and Public Service and the ABA Family Law Section, and is administered by and housed in the ABA Center for Pro Bono. It was established in 2001 through a grant from Bill and Melita Grunow, in memory of their niece, Ann Liechty, a dedicated child law advocate. The mission of the project is to design and implement programs and policies that foster children's well-being, development, and safety during custody matters, including in divorce, guardianship, adoption, parentage, and civil protective order cases.

## Grantee Spotlight

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decision to file suit on behalf of all current and future patients subject to the illegal practices. The consent decree resulted in a permanent, court-monitored policy change dramatically reducing the allowable use of restraints and seclusion in both hospitals.

More recently, DRW received a favorable decision in a class action on behalf of 17,000 students with disabilities in the Milwaukee Public Schools. In *Jamie S. et al. v. Milwaukee Board of School Directors, et al.*, the federal magistrate found the school system liable for widespread violations of the IDEA. This case grew out of numerous complaints from Milwaukee parents. These led to a series of group meetings between DRW and parents in the Milwaukee district, in which the parents helped to shape the overall thrust

and priorities for the litigation. This had the collateral effect of strengthening the solidarity between DRW staff and local parent organizations. After the judge's finding of liability, the case will now move into the remedy phase. Either appropriate remedies will be agreed upon in settlement discussions or the court will set a trial date for the remedy phase.

### Training and legal backup

DRW recognizes the reality that its staff attorneys will never be able to respond to all of the legal service needs of people with disabilities in the state. The agency is committed to provide training and legal backup support to private attorneys throughout Wisconsin. DRW attorneys have provided CLE training in special education, housing discrimination, the Americans with Disabilities Act, Medicaid law, guardianship, civil commitment proceedings and other disability-related topics. Attendance at these trainings

increases private attorney familiarity with DRW staff and not surprisingly leads to follow-up calls from private attorneys to DRW staff seeking legal advice on many of the same issues.

In recognition of its performance in advocating for various disability groups, DRW has received several awards for excellence in recent years. These awards were presented to DRW by the Wisconsin Council on Developmental Disabilities, the National Alliance on Mental Illness (Wisconsin chapter), the Wisconsin Association for the Deaf, the Brain Injury Association of Wisconsin, and the Wisconsin Coalition Against Sexual Assault.

*Lynn Breedlove is the executive director of Disability Rights Wisconsin.*



## 2007 Harrison Tweed Award

The 2007 Harrison Tweed Award was presented jointly to the Boston Bar Association (BBA) and the Massachusetts Bar Association (MBA) on August 10, 2007, during the ABA Annual Meeting in San Francisco. These bar associations were recognized for working tirelessly to expand the Massachusetts Equal Justice Coalition and its efforts to secure adequate funding for Massachusetts Legal Assistance Corporation to support civil legal aid. In addition, the BBA and the MBA have a long history of encouraging efforts by the Committee for Public Counsel Services to establish and maintain effective quality controls related to the provision of indigent defense services. These bars have also been strong advocates of adequate

compensation for both public defenders and assigned counsel.

The Harrison Tweed Award is presented annually by the American Bar Association Standing Committee on Legal Aid and Indigent Defendants and the National Legal Aid and Defender Association. It 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.



*Mark D. Mason, then president of the Massachusetts Bar Association (second from left) and Anthony M. Doniger, president of the Boston Bar Association (second from right) were presented with the 2007 Harrison Tweed Award by Charles A. Wynder, Jr., vice president for Leadership and Support at NLADA and Deborah Hankinson, chair of the ABA Standing Committee on Legal Aid and Indigent Defendants.*

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