

# DIALOGUE

News and Perspectives from the ABA Division for Legal Services

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## Planning for the Next Disaster: Is Your LRIS Prepared?

by Timothy J. Fennell

Hurricanes, tornadoes, floods, terrorist attacks, pandemics, fires... the list goes on. There is no place in the country that is immune from the next disaster.

Many recall school days during the Cold War when we were trained to go under our desks as an air raid siren sounded. Others may recall heading towards the basement when a storm approached or being trained to stay low as we evacuated a burning building. These safety procedures are still valid today, but what happens the day after the disaster? Is your LRIS prepared?



### Disaster at the LRS: Do You Have a COOP?

While the size of a bar association office can range from a solo, part-time staff person to several hundred full-time employees, the typical LRIS will consist of a director and a

number of staff that perform call-screen and support functions. What would happen if you could not access your space for a week? Or a month? Suppose you lost key personnel? In light of the 9/11 events, many larger bars have developed a Continuity of Operation Plan (COOP) also known as a contingency plan. Generally, a comprehensive COOP will address short-term and long-term problems. Included in a good COOP are plans to move to an alternate site; communications with staff; succession plans if leadership has been impaired and delegation of authority thereafter; accumulation and preservation of records and prioritization of essential functions. A COOP should also include important insurance coverage information and your insurer's contact information. In a disaster, an infusion of cash may be needed immediately. Insurance companies can write a check... usually within 48 hours. Contact your insurer to find out more about what your policy covers and how to file a claim.

Putting together a good COOP can be a paralyzing task. Everyone is already busy with their day-to-day operations and getting everyone to agree takes leadership. If you do not have a COOP for your LRIS, discuss this with your bar leadership as soon as possible. There are excellent resources at the Federal Emergency Management Agency (FEMA) website: [www.fema.gov/government/coop/index.shtm#0](http://www.fema.gov/government/coop/index.shtm#0) and the government's Ready Business website: [www.ready.gov/business/plan/planning.html](http://www.ready.gov/business/plan/planning.html). No one plan will fit all organizations, but it is

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## Dialogue

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## Disaster Planning

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important to develop such a plan and to avoid the mindset that disasters are something that only happens to “other people”. Developing a COOP will ensure that your organization is ready in case of a major disaster.

Consider this scenario: Overnight a fire substantially damages your bar center. Although no one is hurt, all of your paper records and computers are a total loss. It will be several weeks, if not months, before you will be back in your space. If you have planned a back up site to operate from and have a contact plan in place, a few telephone calls to your key personnel would result in local law firm’s conference rooms serving as the LRIS office the following day. A telephone call to your telephone service provider results in calls into the service from the public—who are unaware of your disaster—being forwarded to the new location. Backing up your computers with off-site storage would preserve records of referrals. Back-up discs of essential information, such as your roster of attorneys, will make everyone’s life easier than if you had to start from scratch the next day.

Let’s take the scenario one step higher. Not only have you lost your office, but the disaster has resulted in the death or impairment of your director or other key personnel. Have you, as a director, trained your staff in your COOP? Does everyone know where to meet? Who will be in charge? What needs to be done to keep the LRIS functioning in your absence? A good COOP will address all these issues.

Once you have a COOP, what next? A good COOP will be tested with simulation on a regular basis, just like the fire drills you have in an office. Give your staff the opportunity to ask questions and make sure that

your plan has answers. Review your COOP regularly with staff and make necessary adjustments as needed.

One of the first rules of disaster planning is that your plan will not cover every possible scenario. The scope of the disaster can alter the scope of the response. An alternate site located across the street is adequate if there was a fire in your office, but would it be available if a hurricane or terrorist attack crippled a city block surrounding your bar center?

If more than one of the LRIS staff is affected by the disaster, do other members of the bar staff know how to screen a call or operate your software? Ask bar leadership to have staff rotate positions from time to time so others have a sense of what the LRIS does. If no one is there to answer the telephones, the public will then look for help in other ways and the future of your LRIS could be impaired on a long-term basis.

### Pandemic

Although the flu pandemic has not manifested as predicted within the last few years, it is certainly a valid scenario to anticipate. The Department of Justice has directed all Federal Courts to anticipate a pandemic and establish plans for continuity of operations. The scenario in a pandemic anticipates that twenty percent or more of your staff are unable to report to work because of their own sickness or because of quarantines ordered by authorities. Imagine if schools were closed and daycare centers refused children. Members of your staff call in and report that they cannot work because they cannot find someone to watch their children. Pandemics create major economic upheaval in a community. Employers shut down businesses and employees working paycheck to paycheck suddenly do not have sufficient income to pay their bills. Legal

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## From the Chair...

by Sheldon Warren

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

Oh, how the world has changed since the first time I walked into the office of my local bar association's LRIS in the spring of 1981 to volunteer in the in-house counseling program. My role, I was told, was to interview individuals who had a question or problem that the LRIS telephone counselors thought could be resolved without referral to a panel attorney or, alternatively, about which the counselor was uncertain as to which subject matter panel the individual should be referred. If an individual was referred to an LRIS panel attorney, that attorney's name and contact information was retrieved from a 3 x 5 card that was maintained in a shoebox. The bar's LRIS was the "only game in town", i.e., there were no "for profit" referral services, and "direct to consumer" marketing by attorneys and law firms was in its infancy. Thus, the only significant marketing required of the LRIS was done through the Yellow Pages (where it was listed first under the "Attorneys" heading) and, on occasion, by way of public service announcements which ran on local radio stations (in the middle of the night, of course).

It goes without saying that the environment in which LRIS programs must operate in 2008 is almost unrecognizable from that of 27 years ago. Obviously, the most dramatic change that has taken place regarding how individuals find lawyers is the

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## The Frugal LRIS Director

*In 2008, Lawyer Referral and Information Service (LRIS) directors are looking cautiously at the bottom line. How can LRIS directors keep the phones ringing and maintain cash flow in turbulent economic times? In this last installment of the series, we will examine two more free and low cost ideas to collect money due and to promote LRIS.*

### Part III: Money for Nothing and Your Clicks for Free

by Charles J. Klitsch

The phone isn't ringing. The morning mail includes few checks. It's the weak economy. As an LRIS director, there's nothing you can do about this situation, right? Wrong!

For a little extra time and practically no budget, you *can* bring in more money and increase the flow of clients to LRIS. In this last installment of *The Frugal LRIS Director*, let's look at two ways to get you there.

#### 1. Increase collection efforts.

Your LRIS rules concerning percentage fee payments and collections are clear. Your panel members receive quarterly reports listing open cases. That's good. But you can do so much more.

Check up on your panel members and let them know that you are checking.

Begin early. Meet individually with each panel member who joins the service. Review the rules with the new panel member and place particular emphasis on your follow-up efforts. Tell the new panel member face-to-face what you do and include as many of the following methods as possible:

- Send a satisfaction survey to every client you refer, unless the referral involves a sensitive domestic relations issue or the client asks not to be contacted. When you receive a response that does not involve a complaint, do not simply file it away. If the client states that the attorney was hired, send a letter or e-mail to the panel member acknowledging the successful referral. If the client compliments the attorney, send a copy of the complimentary comments to the panel member and acknowledge a job well done.
- Place random calls to clients to find out if they were satisfied with LRIS and the panel member, and follow up with the panel member as noted above. Surveying clients in writing or by telephone is one of the requirements of the ABA Model Rules Governing Lawyer Referral and Information Services. The main purpose of such surveys is to obtain feedback from clients to ensure that the Service is meeting the needs of the public. However, surveys can also be used to determine whether services were provided, fees were paid and percentage fees are owed to LRIS.
- Check your local legal periodical or court website for cases filed. When you come across a referred matter, send a letter or e-mail to the panel member congratulating the attorney for taking action on behalf of the client.
- If the court's website has a public area displaying full court dockets, periodically check on the status of referred matters for verdicts or settlements. Again, congratulate the attorney for a successful case. Your well wishes will serve as a reminder to the attorney that a fee is owed to LRIS.
- Target personal injury, major jury, medical malpractice, products

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## From the Chair...

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development of the Internet. A consumer need only type a few words into a web browser to have almost instantaneous access to numerous sites offering to connect the consumer with just the right lawyer—even if the consumer does not know what type of lawyer he or she needs or, for that matter, if he or she actually needs a lawyer at all. Consumers can type an individual lawyer's name into Google and get more information than they probably want or, more importantly, could ever effectively use.

With so much information available, and so many organizations offering to connect consumers with attorneys, is there still a role for public service oriented lawyer referral and information services? I wouldn't have accepted the job as chair of the ABA LRIS Committee if I didn't believe that not only was there a role, but that LRIS programs that meet the standards established by the ABA's Model LRIS Rules are the best mechanism by which the middle income consumer can obtain counsel competent to handle their legal problem.

Having had the privilege to visit and work with numerous public service oriented LRIS

programs around the country over the last 27 years, I have found that the vast majority of the individuals who contact the services have one common attribute—they expect that the attorney to whom they are referred has been “vetted” by the LRIS. That is, whether or not it is clearly articulated, there is an expectation on the part of these individuals that the attorneys to whom they are being referred have more than just a license to practice law—they have actual experience in the areas of law in which they are referred.

In recent years, several local and state bar associations have posted member directories on their websites. I believe this creates an implied “endorsement” of those attorneys who are listed, and thus creates the same expectations on the part of the potential clients who contact LRIS. Unfortunately, many of these directories allow the listed attorneys to self-designate their claimed area(s) of “expertise,” without providing a mechanism for verifying the attorneys' experience. In such cases, there is a danger that clients who use a directory as a substitute for contacting LRIS will be disappointed, and the sponsoring bar association's reputation could suffer. In contrast, LRIS programs that meet the standards set out in the ABA Model Rules

should satisfy, if not exceed, clients' expectations.

There is no doubt that public service oriented LRIS programs face daunting challenges in the 21st century. Having said that, an LRIS that views itself as being “in the business of public service” (the “mantra” of the ABA LRIS Committee for nearly 20 years now) can prosper. As with any successful service provider, be it for-profit or not-for-profit and regardless of the nature of the service, an LRIS needs to (1) identify and understand its target market, (2) create a marketing message that distinguishes it from its competitors, and (3) utilize all available means to ensure that its message reaches the target market. This is not simply some “pie in the sky” phrase pasted together by an admitted LRIS cheerleader to make the reader feel good. Rather, it is the business model adopted throughout the country by successful public service oriented LRIS programs. Whether large or small, these LRIS programs recognize that while it is no longer 1981 when they were the “only game in town”, they remain the “best game in town.” For resources on how your program can be the “best game in town” please contact Jane Nobsch, ABA Staff Counsel, at [jnosbisch@staff.abanet.org](mailto:jnosbisch@staff.abanet.org) or call her at 312/988-5754.

## Frugal LRIS Director

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liability and other potential high yield referral categories for special attention. Personally contact the client and the lawyer within a few weeks after the referral is made to see if the client hired the attorney.

- Require the panel member to supply LRIS with a copy of the distribution sheet in any matter concluded by settlement or verdict.

- Conduct periodic reviews with panel members of referred matters. Do not limit reviews to cases in which there is a controversy over money owed to LRIS. Make sure your rules clearly state that a review of fees earned may be conducted in all matters referred through the Service.

**2. Raise your LRIS website's ranking in search engine results.** You can increase traffic to your LRIS website for little or no cost. When clients go online to search for an attorney, they frequently

go to popular search engines, such as Google and Yahoo, to find legal help close to home. If your site appears on the first page of the search results, there is a far better chance that the client will click on the link to your website than if your site appears on subsequent pages.

There are two ways to increase the likelihood that you will be on page one. First, you can launch a pay-per-click campaign to appear on the top or the right side of the first page of search results. You pay when a client

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## Frugal LRIS Director

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clicks through to your site. The more you are willing to pay, the higher your site will appear among the paid ads. It is highly recommended that you hire a search engine optimization consultant to get the best value for your money if you plan to begin a pay-per-click campaign.

The second method of raising your site's position to page one is the subject of the following paragraphs. There is no payment made to the search engine and little or no cost to your LRIS when you take steps to raise the rank of your LRIS website in the natural listings.

Natural listings are the results that appear, seemingly at random, in the main body of results for a search. Actually, the results are anything but random. The more relevant your site appears in that fraction of a second it takes for the search engine to scour its ongoing survey of websites, the more likely it is that your website will rise to the top of the listings.

Relevance is the key. Search engines employ certain criteria to conclude that a site is relevant to your search. By knowing these criteria, you can make

adjustments to your website that will drive more paying customers to your LRIS.

Again, for best results, it is wise to contact a search engine optimization consultant. Nevertheless, there are steps a layman can take to improve an LRIS website:

- Use words on your website that will raise it to the top of the listings. Search engines look for the location and frequency of the search words on your site. You run a lawyer referral service. However, if you only describe those who list to receive referrals as "lawyers" throughout the site, you may entirely miss clients who search for a "divorce attorney" in your town. State what you do, clearly and concisely, on the main page of your site. Identify common areas of practice for lawyers—and attorneys—who list with LRIS. Mention the towns you serve in order to capture those clients searching for a "divorce attorney" in "Smithtown."
- Provide useful legal information on your site. A bare bones site may function well. However, search engines tend to give lower ranking to sites that do not provide much information to the site visitor.
- Update your website regularly.

Search engines generally give preference to sites that are frequently updated. A static site will sink lower in the rankings.

- Link to high quality related websites and ask them to link to yours. Many of the popular search engines engage in an analysis of these links to determine whether you have an "important" website. Provide links to court offices, local legal periodicals, law schools and key state and federal agencies. Also, be sure to link to the ABA Lawyer Referral Directory, located at: <http://www.abanet.org/legalservices/lris/directory/home.html>. LRIS programs across the country link to this site and the directory links back to them. This network alone can raise your site rankings.

These simple steps will make your website more visible to consumers who are looking for legal help on the Internet.

We are in "the business of lawyer referral." Even in difficult economic times, we can keep our lawyer referral services afloat if we mind our accounts receivable and pay attention to the ever changing marketplace.

*Charles J. Klitsch is director of public and legal services of the Philadelphia Bar Association*

## Disaster Planning

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questions abound and the telephones ring, but no one is there to answer them. What can be done? Many of your plan attorneys are also sick or have closed their offices in light of the problem. Even if you can get people to answer the telephone, can you find attorneys to handle their problems?

Ask your bar leaders if they would allow a contingency plan in this event to accept volunteers who were not normally members of the referral service. Lawyers

who might not consider participating in a referral service might consider being "on the bench" in the event of a disaster. Develop stand-by lists in areas of bankruptcy, collections, disability, worker's compensation and landlord/tenant matters. Have your bar leadership provide names of attorneys experienced in these areas who might be willing to help in the event of a disaster or pandemic. See if plan attorneys or other members of the bar would be willing to donate staff on a part-time basis to make sure LRIS operations continue if your personnel cannot get to work. Post instructions for

panel members and the public on your bar website that can be referred to if the telephone cannot be answered for more than a day or two. Prepare public announcements that could be provided to the media, assuring the public that LRIS operations will continue during difficult times. Consider partnering with neighboring LRIS programs within your area to see if they would be able to support you in the event of the interruption of your services or staff on a short-term basis.

Your LRIS is not only a public service. It is in many

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## Disaster Planning

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instances a business service that contributes substantially to your bar operations. Make sure bar leadership takes disaster planning seriously and examine the worst-case scenario when you are planning a COOP.

### The Local Disaster

Now consider the disaster that affects a wide portion of your locale or region. Your LRIS is intact, but the area has taken a hard hit. Think hurricane, wild fires, floods, ice storms, etc. After the initial shock and only in a few days, legal questions arise. Is your LRIS prepared?

After 9/11, many lawyers offered to volunteer their time to assist victims and their families in the myriad of problems that resulted. How do I replace important documents? How do I apply for disability or make insurance claims? The LRIS can be overwhelmed.

After Katrina, lawyers from all over the country offered to help. However, in both instances unforeseen road blocks occurred. Could well meaning lawyers from out of state practice law under emergency conditions and advise clients without violating the law, Court rules or ethical rules?

The ABA developed a model rule for the delivery of legal services in the event of a disaster. The rule has been adopted by six states and is being considered by thirteen states and the District of Columbia.<sup>1</sup> Essentially, the rule allows for the Chief Judge of a state to make a declaration of disaster that would allow lawyers from other states to temporarily render pro bono services within the state where the disaster occurred. Check with your bar leaders and state bar organizations to see the status of the model rule in your state. If it has not been adopted or considered, perhaps your LRS can facilitate discussion about

the adoption of a rule.

Although lawyers always come through in the toughest of times, the need that can be created by local and regional disaster is hard to anticipate. Your existing panel attorneys may be overwhelmed because of the loss of property or life and some may be unable to continue to be productive panel members for you. Determine whether your LRIS can, on short notice, approach non-panel members of your bar association or surrounding organizations to temporarily respond to the public's needs for assistance.

In addition to LRIS cases, there will be a need for extensive pro bono panels. Consult with other local and regional LRIS programs to coordinate pro bono efforts in the area or region.

### The ABA Young Lawyers Division Disaster Response

The ABA Young Lawyers Division (YLD) has entered into a Memorandum of Understanding with FEMA, which requires ABA YLD to provide pro bono disaster-related legal services to low income victims in federally declared disaster areas when asked to do so by FEMA. Although the YLD will be contacted by FEMA, the current agreement suggests that the district representative of YLD will contact leaders of the state and local bar associations to implement a legal service disaster plan. Accordingly, the ABA YLD and local and state bars may operate side by side or together in responding to an event. The YLD program will likely have volunteer attorneys from the district but not necessarily from the locale of where the disaster hit. State and local bars may be able to coordinate the provision of pro bono legal services on the ground by establishing walk-in clinics or emergency hotlines. The ABA website provides additional information on this program and answers to frequently asked questions. See [www.abanet.org/disaster/yld\\_](http://www.abanet.org/disaster/yld_)

[disaster\\_faq.shtml](#).

The YLD program offers an excellent opportunity for lawyers of all ages to become involved whether or not they are ABA members. Make sure your LRIS informs members of your bar association about the ABA program. Suggest that lawyers in your association look into joining the YLD and suggest participation in the disaster legal assistance program. Whether or not the lawyers are interested in the YLD, make sure you are ready to send a blast e-mail or fax to lawyers who are ready to volunteer to help in pro bono programs that might be coordinated by your LRIS. Not only will you be helping your community, but you will establish invaluable relationships which will benefit your LRIS in the future when members of the public have legal needs.

### Conclusion

Preparing your LRS for a catastrophe can be a daunting task: from including the right information in your COOP to informing and training your staff. In the end, you'll feel better knowing that your LRS has a plan of action in case disaster strikes. When the dust settles, will your LRS be ready?

*Timothy J. Fennell is a practicing attorney in upstate New York. He formerly chaired the New York State Bar Association's Lawyer Referral and Information Services committee and is currently a member of the ABA's Standing Committee on Lawyer Referral and Information Service and is a PAR representative.*

### Endnote

<sup>1</sup> Arizona, Delaware, Iowa, Missouri, New Jersey and Washington have adopted the rule. Alabama, California, Florida, Georgia, Illinois, Maryland, Michigan, Minnesota, Mississippi, New York, Tennessee, Texas, Virginia and the District of Columbia are considering the adoption. Hawaii, North Carolina and North Dakota have decided not to adopt the rule.



## From the Chair...

by Jonathan D. Asher

### Chair of the ABA Commission on IOLTA

I am privileged to begin another year as Chair of the Commission on IOLTA. In doing so, I am most pleased to welcome five new members to the Commission. I know that each of the new members, Michael Gunn, Bruce Iwasaki, Maureen Kelly, Kathleen McLeroy and Linda Rexer, bring impressive credentials, exceptional skill and an unquestioned commitment to the IOLTA community—which you can read more about in the IOLTA News and Notes on page 10. Please join me in thanking them for sharing their time and talent in this important work.

Despite the continuing uncertainty of the financial markets, a number of states have pursued revisions to their Supreme Court rules or state statutes mandating attorney participation in their IOLTA programs and/or requiring interest rate comparability. With the recent action of the New Mexico Supreme Court, as of January 1, 2009, 38 jurisdictions will have mandatory IOLTA programs, 12 will require attorneys to affirmatively opt out of the program and only 2 jurisdictions will remain with purely voluntary programs. Fully 23 jurisdictions will have comparability requirements of some sort by the beginning of next year, and many more are aggressively pursuing negotiated revenue enhancements. All these efforts are intended to maximize revenue despite the difficult economic times and to increase

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## State Loan Repayment Assistance Programs: Why the Need Remains

by: Kelly Carmody

The educational debt of law school graduates continues to grow each year. Fortunately, recognition of the need to assist public interest attorneys with their debt burden is also growing. New loan repayment assistance on the federal level has raised questions as to the need for state loan repayment assistance programs (LRAPs). This article summarizes the new federal assistance and explains why public interest attorneys continue to need assistance with their educational debt from multiple sources, including statewide LRAPs.

### Federal Loan Forgiveness Programs in the CCRAA

The College Cost Reduction and Access Act (CCRAA) created two new loan forgiveness programs: the Income Based Repayment program (IBR) and Public Service Loan Forgiveness. The new law also affects the existing Income Contingent Repayment program (ICR). These three programs provide reduced monthly payments for many of the borrowers' federal and federally guaranteed educational loans. They also provide forgiveness of the balance of the loans after differing periods of time, described below.

### Income Based Repayment and Income Contingent Repayment Programs

The new Income Based Repayment program (IBR) goes into effect July 1, 2009. Any educational loan borrower (no public service required) with a "partial financial hardship" (high debt to income ratio) may be eligible. The program caps payments for *federal and federally guaranteed* loans, at 15 percent of the borrower's "discretionary income." This may be a large reduction from the payment amounts required under standard or extended repayment plans for some public interest attorneys. If payments are made for 25 years, the federal government forgives the remaining principal and interest.

The Income Contingent Repayment program (ICR) is similar to IBR, with forgiveness provided after 25 years. This length of time before forgiveness resulted in few individuals participating in ICR previously. IBR may have similar results.

### Public Service Loan Forgiveness

The Public Service Loan Forgiveness provision in the CCRAA may be more attractive to public interest attorneys than ICR was previously because the forgiveness provisions are effective after ten years of public service. To be eligible for Public Service Loan Forgiveness, a borrower must meet four primary eligibility criteria:

- **Eligible Employment.** Borrowers must be employed full-time in public service during the month that a qualifying payment is made. Public service employment includes employment by a government or a tax-exempt, non-profit (501(c)(3)) organization, plus other employment areas, including "public interest law services (including prosecution or public defense or legal advocacy in low-income communities at a nonprofit organization)."
- **Eligible loans.** Borrowers must have loans that are in the Federal Direct loan program. Federal and federally guaranteed loans

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## From the Chair...

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access to justice through their IOLTA programs. The Commission is proud to support and provide the technical assistance necessary to promote and implement these important efforts.

Despite these advances, of course, many states, if not all, are seeing interest rates decline and principle balances fall. Whether revenue is going up or down, however, the strategic use of IOLTA dollars is essential. The Commission and the National Association of IOLTA Programs (NAIP) are willing and able to provide assistance to programs as we all grapple with these uncertain economic realities. The Commission and NAIP are committed to maintaining and improving the resources designed to support the IOLTA community. Whether you are new to IOLTA or a veteran, we on the Commission and in NAIP all labor to ensure that the help you need, as an IOLTA director, staff or as a trustee or bar leader, is available, is timely and meets your needs.

The assistance and support includes the semi annual IOLTA Workshops, which are held in conjunction with the ABA Annual and Midyear Meetings. The Workshops held in New York this past August addressed banking issues, revenue

enhancement, new audit standards and managing across the intergenerational divide. Plans for the 2009 Winter Workshops are already underway. The Workshops provide two days of topical sessions and are a forum for discussing and sharing best practices and current issues. I hope that you plan to attend the Winter IOLTA Workshops which will take place February 12 and 13 in Boston. Detailed registration information is available online at [www.abanet.org/midyear/2009](http://www.abanet.org/midyear/2009). If you download the printable form, please make sure you use the registration form marked "IOLTA Workshops Registration."

The support provided by the Commission and NAIP goes beyond the Workshops. The joint Commission/NAIP Technical Assistance Committee maintains a mentoring program that matches new IOLTA program executive directors with more experienced colleagues. There is also a list service for executive directors and staff and an ever expanding and improving website, [www.iolta.org](http://www.iolta.org), which has a members-only area with a growing resource library. The website, [IOLTA.ORG](http://IOLTA.ORG), is complemented by the Commission's own website and directory of IOLTA programs, which may be found at [www.abalegalservices.org/iolta](http://www.abalegalservices.org/iolta) and by the IOLTA Clearinghouse, which maintains a database of

information about IOLTA programs together with a wealth of materials about the administration of IOLTA programs.

As helpful as the Workshops, mentoring opportunities, websites and clearinghouse are, none of these resources are more helpful than the Commission staff. Please make use, not just of experienced colleagues and mentors, but of Bev Groudine at the ABA in Chicago. Bev can be contacted at 312-988-5771 or [bgroudine@staff.abanet.org](mailto:bgroudine@staff.abanet.org). She is invaluable and is almost always where initial questions are best directed. She is experienced and dedicated to providing the very best support possible to the IOLTA community.

We are also fortunate to have a new assistant counsel to the Commission on IOLTA, Sofia Ali-Khan. Sofia worked for many years at Community Legal Services, Inc., in Philadelphia and brings with her a passion for and dedication to the delivery of legal services to the poor. Sofia can be reached at 312/988-5744 or [ali-khas@staff.abanet.org](mailto:ali-khas@staff.abanet.org). Please join me in welcoming Sofia to the IOLTA community.

I look forward to seeing you all in Boston for the February workshops, and to working together to support our IOLTA programs and to further access to justice and the important work our programs help support.

## Need for LRAPs

*(continued from page 7)*

currently not in the Federal Direct program can be consolidated into the program as of July 1, 2008. The ineligible loans, generally, are non-federally-guaranteed loans made by a state or private lenders, and Parent PLUS loans.

- **Qualifying payments.** Borrowers need to make 120 payments after October 1, 2007 while working full-time in eligible employment. Counted payments do not have to be continuous—individuals may have breaks in their eligible employment.
- **Eligible repayment plan.** Borrowers must be in an IBR, ICR, standard 10-year repayment plan, or in an extended

payment repayment plan but paying at least the amount due under a standard 10-year plan. Since IBR is not available until July 1, 2009, borrowers in extended repayment plans who are unable to make a payment equal to a standard 10-year plan payment amount may change to an ICR repayment plan now and into an IBR repayment plan after July 1, 2009.

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## Need for LRAPs

(continued from page 8)

### Federal Loan Forgiveness and Repayment Programs in the Higher Education Act Reauthorization

The recently-signed reauthorization of the Higher Education Act (HEA) has three loan assistance programs for which certain public interest attorneys may be eligible. However, appropriations for these programs have not yet been made.

### Civil Legal Assistance Attorneys

The Harkin provisions (named after Senator Tom Harkin who sponsored the original bill) authorize loan repayment assistance with federal loans for attorneys employed full-time by an eligible employer. Non-profit organizations that provide free legal assistance to low-income individuals in civil matters and protection and advocacy (P&A) organizations are the two types of eligible employers.

The assistance is limited to up to \$6,000 per year with a lifetime maximum of \$40,000. Assistance is provided to recipients in the form of a one-year loan. If the recipient works in eligible employment for three years, the initial one-year loan is forgiven. The recipient may also receive additional one-year loans. The service obligation required for forgiveness of loans received in subsequent years is unclear in the legislation, but may be shorter than a rolling three year period. This will be clarified through regulations.

The legislation also specifies priority for recipients of assistance, but these are complex and will require clarification through regulations to be issued in the coming months. In general, lawyers who have been in eligible public-service practice for a shorter period of time will receive priority, as will those who have previously received this assistance and/or are

in their first three years of required service under the program.

### Public Defenders and Prosecutors

The provisions of the HEA reauthorization, called the John R. Justice Prosecutors and Defenders Incentive Act of 2008, authorize loan repayment of federal loans for full-time attorneys who are employed by an eligible employer. The three types of eligible employment are (1) as prosecutors for state or local governments, (2) as public defenders for state or local governments (or contractors for one of these governments), or (3) as certain federal public defenders.

The assistance is limited to up to \$10,000 per year with a lifetime maximum of \$60,000. As is true for lawyers in eligible civil public service employment, assistance is provided to recipients in the form of a one-year loan. If the recipient works in eligible employment for three years, the initial one-year loan is forgiven. The recipient may also receive additional one-year loans. The service obligation required for forgiveness of loans received in subsequent years is unclear in the legislation, but may be shorter than a rolling three year period. This will be clarified through regulations.

The legislation also specifies priority for recipients of assistance, but these are complex, and differ slightly from the priorities for civil public service lawyers. These, too, will require clarification through regulations to be issued in the coming months. In general, lawyers who have previously received this assistance and/or are in their first three years of required service under the program will receive priority for participation.

### Service in Areas of National Need

The HEA reauthorization also authorizes loan forgiveness for borrowers who work in areas of national need. One of those areas is "public interest legal services (including prosecution, public

defense, or legal advocacy in low-income communities at a nonprofit organization)." Up to \$2,000 in federal loans may be forgiven after each year of service, up to a maximum of \$10,000 for five years of service.

### Continued Need for Non-Federal Loan Repayment Assistance Programs

The criteria and funding for these new federal loan repayment assistance programs indicate that there is a strong need for the continuation of other existing LRAPs, including state, law school and employer programs.

#### 1. The HEA programs do not have appropriations yet.

The HEA authorized up to \$10 million dollars annually for the civil legal assistance program and up to \$25 million annually for the prosecutor/public defender program. The amount for the Service in Areas of National Need program is authorized at "the sum necessary" for the program. Appropriating funds for FY2009 (10/1/08 – 9/30/09) is unlikely due to the timing of the election. This means appropriations may not be available for these programs until October 2009. Appropriations may be less than the amounts authorized, and even at their maximum amounts, will not be sufficient to address all of the needs of eligible attorneys.

#### 2. Not all loans are eligible for federal loan assistance.

Only federal direct and federally guaranteed loans are eligible for forgiveness or repayment. Among attorneys with loans that were taken out before July 1, 2006, about half of the educational debt is attributable to private loans, which are ineligible for assistance through these programs. More recent graduates will have a higher percentage of eligible loans, but how much higher is not yet known. Because they are taking out higher amounts in loans, recent graduates may still have significant ineligible debt.

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## Need for LRAPs

(continued from page 9)

**3. Experienced attorneys will benefit least from the federal programs.** As noted, experienced attorneys likely have less eligible debt because they have a higher percentage of private loans. Also, the HEA civil legal assistance program prioritizes attorneys with five years or less experience. However, many more experienced attorneys have significant educational debt that will preclude them from staying in public interest without assistance.

**4. Part-time attorneys are ineligible for federal loan assistance.** All of the federal programs require “full-time” employment for eligibility. The definition of full-time employment will be defined in regulations, which are at the proposed stage for the CCRAA programs and have not yet been drafted for the HEA programs. An increasing number of public interest attorneys, particularly mothers, are working less than full-time and will be ineligible for federal loan assistance.

**5. Some married attorneys may be ineligible for the CCRAA programs.** Married individuals may file separate

income tax returns if they do not want their spouse’s income to count when determining eligibility for Public Service Loan Forgiveness. However, married individuals who file separately will lose certain tax deductions, making some attorneys unwilling to file separately and thus ineligible for the 10-year forgiveness.

**6. Required payments will be more than some attorneys can afford.** The Public Service Loan Forgiveness program forgives federal loans after 10 years of payments. For many attorneys, at lower pay—even reduced payments will still be difficult to make without assistance from an LRAP.

**7. Not all eligible attorneys will want to enter ICR or IBR in order to receive Public Service Loan Forgiveness.** Some attorneys will be unable or unwilling to make a ten-year commitment to public service for a variety of reasons including parenthood, spouse’s job movement, other family commitments or not knowing if this career is for them. If these attorneys make only minimum payments on their educational debt while in ICR or IBR, the principal may increase when unpaid interest is capitalized.

**8. More than ten years of service may be required for some.** Attorneys who receive the

Harkin or the Services in Areas of National Need assistance may not be able to count their eligible employment time for the CCRAA’s Public Service Loan Forgiveness 10 year obligation. The statute is unclear and advocates are attempting to clarify and possibly change this restriction.

### Actions for Statewide, Employer and Law School LRAPs.

Continuation of existing state law school and employer LRAPs continues to be a priority. Because the federal programs only assist some public interest attorneys and assist others only partially. Design changes in current LRAPs may be needed to help make them more complementary of the federal programs, but necessary changes will not be fully understood until the regulatory process is complete. The only recommendation at this time is to eliminate any provisions that mandate that LRAP participants put their loans into extended repayment plans so that borrowers, who may want to participate in ICR, IBR or the Federal Loan Forgiveness Program, may be in an eligible repayment plan.

*Kelly Carmody is a consultant on attorney educational debt and loan repayment assistance to the ABA’s Standing Committee on Legal Aid and Indigent Defendants.*

## IOLTA News and Notes

The Commission on IOLTA welcomes new members **Michael P. Gunn, Bruce G. Iwasaki, Maureen P. Kelly, Kathleen S. McLeroy,** and **Linda K. Rexer,** for the 2008-2009 bar year.

**Michael P. Gunn** is in private practice at The Gunn Law Firm in St. Louis. He is a past president and past acting executive director of the Missouri Lawyer Trust Account Foundation. Gunn presently serves as board chair of Peter & Paul Community Services, an organization aiding homeless individuals



**Michael P. Gunn**

struggling with mental illness and HIV/AIDS.

An active leader in national, state and local bars, Gunn is currently a member of the ABA House of Delegates, Missouri State Delegate, and a member of the Nominating Committee. He has served as president of the Missouri Bar, the Bar Association of Metropolitan St.

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# Grantee Spotlight: Oklahoma Low Income Tax Clinic

by Mark R. Widell

## What is a Low Income Taxpayer Clinic?

The Low Income Taxpayer Clinic (LITC) Program was created by the United States Congress in 1998 to provide free or nominal fee representation to taxpayers who are involved in tax disputes with the Internal Revenue Service. LITCs also provide education and outreach services to English as a Second Language (“ESL”) taxpayers, known as “programs to inform.” Ultimately, the LITC Program’s goal is to improve the fairness and quality of tax administration.

LITCs serve all fifty states, the District of Columbia, Puerto Rico, and Guam. There are approximately one hundred and fifty-four (154) LITCs located at law schools, not-for-profit law firms, and community based organizations. Individuals whose income does not exceed 250% of the federal poverty level are eligible for services through the program.

## Oklahoma’s LITC

Oklahoma’s LITC is a part of Oklahoma Indian Legal Services, Inc. (“OILS”). OILS is a private, non-profit law firm organized under I.R.C. § 501(c)(3). For over twenty-six years, OILS has provided free legal representation to low-income Native Americans in civil matters. OILS is one of two legal services providers in the state of Oklahoma. Legal Aid Services of Oklahoma, Inc. (“LASO”) provides legal services in general civil cases while OILS provides unique expertise in the area of tribal and federal Indian law.

Although part of OILS, the Oklahoma LITC serves a diverse clientele who come from all regions of the state. The mission of the clinic is to protect and defend the rights of taxpayers through free legal representation; counsel and guide individuals

and families to comply with the obligations of tax law and achieve financial security; prepare law students to join the profession; and provide hope to all who are served. Like many not-for-profit organizations, the clinic serves and protects those who are unable to afford legal representation.

The LITC’s clients come from a wide range of sources. The clinic has a *pro se* referral contract with the U.S. Tax Court. All *pro se* litigants receive a flyer from the U.S. Tax Court with the docket call mailing providing contact information for the LITC. During tax season, staff consults with approximately 3,000 taxpayers through its “program to inform” outreach clinics. IRS telephone, publication and walk-in window referrals bring an even larger number of eligible clients to the clinic each year.

## Christina’s Story

A close relative of Christina had misled the IRS and convinced it that Christina received all the income from a family business. Previously, Christina had been diagnosed with psychiatric conditions and a life threatening disease; both challenges left her an outcast from her family. The close relative had expected that Christina would die in the near future.

Christina filed a case with the U.S. Tax Court *pro se* to contest the determination of tax liability and needed free legal representation. She was referred to the clinic by the court. The clinic accepted her case, gathered evidence and provided it to IRS Appeals. Appeals determined that its case lacked sufficient merit to take to trial and a decision document was entered by the court in favor of the taxpayer. In order for Christina

to become compliant with the IRS and Oklahoma Tax Commission (OTC), several years of federal and state individual income tax returns were prepared, filed, processed and the outcomes posted to her accounts. Christina now lives a more settled life and focuses on maintaining her health.

## Naomi and George’s Story

Naomi and George first came to the clinic for free tax preparation and e-file services. After a short consultation with counsel, it was determined that the elderly couple faced numerous tax, financial and health challenges. The situation seemed hopeless to them, and they were resigned to losing their home.

The clinic opened their case and provided a wide range of assistance to the couple. In order to become compliant with the IRS and OTC, several years of federal and state individual income tax returns were prepared, filed, processed and the outcomes posted to their accounts.

Clinic staff also prepared and filed a Chapter 7 Bankruptcy case, through which large amounts of income tax, medical bills and credit card debt were discharged. In addition, after research was conducted, it was determined that the IRS had filed tax liens against Naomi and George in the wrong county, a county in which the taxpayers did not reside. The IRS’s mistake resulted in the discharge of a large amount of old income taxes through the bankruptcy case. Post-bankruptcy, the couple reached an installment agreement with the IRS to pay the remaining non-dischargeable income tax debt. The taxpayers kept their home and are now enjoying their retirement.

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## Oklahoma Clinic

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### Honors for the Clinic

The Oklahoma LITC was recently recognized by the National Taxpayer Advocate, who oversees all LITC programs across the country, as one of the top tax clinics in the nation. It scored in the 2007 grant cycle as the top LITC in the nation and in the top five percent (5%) in the 2008 grant cycle. Annually, the clinic's goal is to open, work on and close no less than 500 formal tax cases. Additionally, staff handles no less than 2,000 informal tax cases per year. The clinic helps to maintain its success by conducting between 60 and 100 outreach clinics annually across the state.

### The Clinic's Growth

The Oklahoma LITC's workload and commitments continue to grow. Starting in late 2008, the clinic expects to mentor a new LITC located in the state of Oklahoma. The managing attorney/tax clinic coordinator

will serve indefinitely as the new clinic's "qualified tax expert" in an advisory role. In addition, the new LITC Program has asked staff of the Oklahoma LITC to conduct C.L.E. workshops to provide free tax training to attorneys and other professionals. Oklahoma LITC has agreed to conduct thirty (30) days of training in the second half of 2009. The clinic also made a commitment to the IRS to provide free representation in at least forty (40) U.S. Tax Court cases per year.

The clinic plans to expand its use of law students in the coming year, focusing on more work experience and client interaction. Students, under lawyer supervision, will counsel clients and prepare tax returns. After April 15, they will receive extensive training and will then be utilized to represent clients in U.S. Tax Court.

### IOLTA's Role

IOLTA grant funding from the Oklahoma Bar Foundation was vital to the initial development of the Oklahoma LITC and continues to make a significant

contribution to its success. The initial 2006 IOLTA grant of \$10,000 paid startup and operating expenses. This year's IOLTA grant was used in large part to rebuild the failing office telephone system and to purchase a reasonably priced replacement network computer server. The IOLTA funds also made it possible for the clinic to hire paralegal support staff, thereby enabling the clinic to increase the number of clients served.

### Conclusion

The Oklahoma Low Income Tax Clinic has given low income workers, retirees and disabled persons in the state the ability to obtain needed free legal services. It has brought positive outcomes to hundreds of Oklahomans who faced daunting financial challenges and who had no where else to turn.

*Mark R. Widell is the managing attorney/tax clinic coordinator of the Oklahoma Low Income Tax Clinic of Oklahoma Indian Legal Services, Inc.*

## IOLTA News

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Louis, the Lawyers Association of St. Louis and the St. Louis Bar Foundation. He was the chair of the Diversity Task Force of the Bar Association of Metropolitan St. Louis and was awarded the Missouri Asian American Bar Association and Mound City Bar Association Unity Award in 2005.



**Bruce G. Iwasaki**

**Bruce G. Iwasaki** is a partner at the firm of Lim, Ruger & Kim. He practiced law at San Fernando Valley Neighborhood Legal Services, Legal Aid Foundation of Los Angeles (LAFLA) and the law firm of O'Melveny & Meyers before becoming the executive director of LAFLA in 1997, a position he held until 2006.

Iwasaki has served on the boards of the California Bar Foundation, Sargent

Shriver National Center on Poverty Law, the Center for Law and Social Policy, and the Advancement Project, a policy, communications and legal action group committed to racial justice. He is also a past member of the ABA Standing Committee on Legal Aid and Indigent Defendants.

In 2008, Iwasaki was the recipient of the Public Interest Clearinghouse Opening Doors to Justice Award. His other recent awards include the 2006 ABA John Minor Wisdom Public Service and Professionalism Award and the 2004 State Bar of California Loren Miller Legal Services Award.



**Maureen P. Kelly**

**Maureen P. Kelly** is a shareholder of Babst, Calland, Clements & Zomnir, practicing in the area of employment litigation. She currently serves as chair of the Pennsylvania IOLTA Board. Kelly has also served as co-chair of the Pennsylvania Bar Association Task Force on Law Student Loan Forgiveness and as a

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## IOLTA News

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member of the statewide Task Force on Delivery of Legal Services to the Poor. For several years, she was chair of the Equal Justice Under Law Campaign, and a member of the Pennsylvania Legal Services board. She is also a past president of the Neighborhood Legal Services Association.

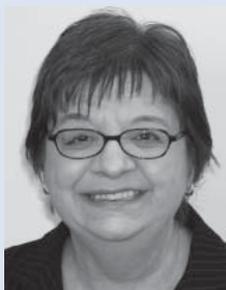
Kelly was the recipient of Pennsylvania Legal Aid Network's 2005 Outstanding Leadership in Support of Legal Services Award. In addition, she has been recognized in recent years for her support of women in the legal profession with awards from both Penn State Dickenson School of Law and the Women's Bar Association.



**Kathleen S. McLeroy** is a shareholder of Carlton Fields and a member of the firm's Real Property Litigation Practice Group. She is currently the president of the Florida Bar Foundation and also served as chair of both the Foundation's Ad Hoc Interest on Trust

Committee and Legal Assistance to the Poor Grant Committee. In addition, she served two terms as a board member of Bay Area Legal Services, including two one-year terms as president.

As an active member of the Florida State Bar, McLeroy has been a member of the Standing Committee on Professionalism and the Standing Committee on Pro Bono, Subcommittee on Pro Bono Participation Study. She currently serves as the vice chair of the Pro Bono Committee of the ABA Business Law Section. McLeroy has been the recipient of numerous awards for her pro bono contributions, including the 2005 Florida Bar President's Pro Bono Service Award and the 2001 President's Award for Excellence from the Florida Bar Foundation.



**Linda K. Rexer** is executive director of the Michigan State Bar Foundation, a position she has held since 1987. She founded the State Bar's Access to Justice Task Force in 1997 and serves on its successor entity, the Standing Committee on Justice Initiatives. In 2005, she received the Michael Franck Award for her work on access to justice from the State Bar of

Michigan's Representative Assembly.

Nationally, Rexer serves on the National Legal Aid and Defender Program Enhancement Committee working on strategies for quality in legal services and is a board member of the National Management Information Exchange, a journal addressing the needs of legal aid managers. Rexer is a past president of the National Association of IOLTA Programs (NAIP) and a past trustee of the National Conference of Bar Foundations. She has made numerous presentations at the IOLTA workshops and other state and national trainings events.

### Revenue Enhancement

In September, both the New Mexico Supreme Court and the Supreme Court of Pennsylvania adopted rule revisions that should lead to increased IOLTA income in both states. In New Mexico, the court adopted mandatory IOLTA and IOLTA interest rate comparability. In Pennsylvania, the court amended rules to enable the Pennsylvania IOLTA Board to promulgate regulations implementing IOLTA interest rate comparability.

The New Mexico rule revisions become effective on January 1, 2009, while the Pennsylvania revisions take effect upon publication in the Pennsylvania Law Bulletin, which should occur before the end of September. As a result, there will be 38 mandatory IOLTA states and 23 states with IOLTA interest rate comparability as of the beginning of 2009.

Assistance in exploring, drafting and implementing mandatory IOLTA, IOLTA interest rate comparability and other revenue enhancement strategies is available through the Commission on IOLTA and National Association of IOLTA Programs Joint Technical Assistance Committee. Contact Commission Counsel, Bev Groudine, at 312/988-5771 or [bgroudine@staff.abanet.org](mailto:bgroudine@staff.abanet.org) for more information.

### Winter 2009 IOLTA Workshops

The Winter 2009 IOLTA Workshops will be held on Thursday and Friday, February 12-13 at the Sheraton Hotel in Boston in conjunction with the ABA Midyear Meeting. The workshop sessions will address many timely topics, and the two days of programming will provide a wonderful opportunity for IOLTA staff and trustees to share information and network. A preliminary program will be available at the end of November. The registration deadline for the workshops and hotel is January 9, 2009, but hotels fill up quickly, so be sure to register as soon as possible. To register online go <http://www.abanet.org/midyear/2009/>



### From the Chair...

by M. Catherine Richardson

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

One of the hallmarks of the ABA Standing Committee on the Delivery of Legal Services is the Louis M. Brown Award for Legal Access. Each year, during the ABA Midyear Meeting, the Brown Award is presented to an innovative program or project dedicated to meeting the unmet legal needs for those of moderate incomes. The Brown Award programs not only provide access to affordable legal resources, but often serve as replicable models within the legal profession.

Since its inauguration in 1995, the Brown Award has gone to a wide range of projects. Last year, it was presented to the Chicago-Kent College of Law, Center for Access to Justice and Technology. The Center was recognized for its design and implementation of the A2J Author Project. The A2J Author is a unique software tool that enables persons from the courts,

legal services programs and educational institutions to create Guided Interviews resulting in document assembly, electronic filing and data collection. Viewers going through a Guided Interview are lead down a virtual pathway to the courthouse. As they answer simple questions about their legal issue, the technology then translates the answers to create, or assemble, the documents that are needed for filing with the court.

One of the strengths of the award is the way that it demonstrates the range of programs and projects of those who work so hard to improve access to justice. In prior years, the Brown Award has honored state-level initiatives sponsored by the California Commission on Access to Justice, the Self-Represented Litigant Task Force of the State of Maine and the New Hampshire Bar Association. Non-profits that have been recognized include the Baltimore-based Civil Justice, Inc. and AARP's Legal Hotlines project.

Brown Award recipients have not been limited to large public projects, but have also included entrepreneurial endeavors such as the legal hotline Tele-Lawyer, Inc. and the California coffee-house that dispenses java and justice, Legal Grinds.

This year's Award will be presented at the ABA Midyear Meeting in Boston on February

13, 2009. The presentation is made at a joint luncheon of the National Conference of Bar Presidents and National Association of Bar Executives. Leaders from the around the country learn about these premier efforts to expand affordable access. Both recipients and all qualified nominees are also featured in a booklet published and circulated by the Committee, titled *Profiles of Moderate Income Delivery Programs*. Additionally, much of the material is archived at the Committee's web site. Overall, the Brown Award is a great forum to share information about innovative ideas that are being put to action.

The Committee encourages nominations from those working in all settings. If you are involved in a program or project that is expanding access to justice for people of moderate means, consider submitting a nomination for the 2009 Louis M. Brown Award for Legal Access. The nomination form and award criteria can be found at our website [www.abanet.org/legalservices/delivery/brown.html](http://www.abanet.org/legalservices/delivery/brown.html). The site also provides detailed information on past recipients.

The Committee will receive nominations through December 15, 2008. For more information, contact Tracy Loynachan, at [loynacht@staff.abanet.org](mailto:loynacht@staff.abanet.org) or 312/988-6185.

## Pro Bono

### Program News From the Field

**Indiana:** Monica Fennell has returned to the Indiana Pro Bono Commission after a year in Washington, D.C.

**North Carolina:** Barbara Brunson joined the South Carolina Bar Association as the Director of Public Services effective July 1, 2008.



## From the Chair...

by Mark I. Schickman

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

### The Non-Partisan Issue of Pro Bono

Volunteerism is a non-partisan phenomenon, spanning all political leanings. In my youth, I thought it was an invention of the Democratic party, spurred on by John Kennedy's call to "ask not what your country can do for you, but rather, what you can do for your country." Young Democrats came out by the thousands as Peace Corps and Vista volunteers, returning to their home communities to fill party committees and political posts ever since. It is not surprising that the press coined the term "do-gooder liberals."

Over the course of the 1980s and '90s, however, "volunteerism" was widely viewed as a Republican Party buzzword, as President Ronald Reagan stumped for it, followed by President George H. Bush's quest for volunteers as "a thousand points of light." President Reagan's populist weekly radio programs frequently featured folksy stories of individual acts of voluntary help, to show that people—rather than government—provided solutions to problems. To support his point he'd also rely on a broad range of quotes—classical texts from sources like Alex de Tocqueville (who observed that "new undertakings [arose from] Government in France, a man of rank in England and in the United States... an association of individuals") or more common

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## Government Attorney Pro Bono: How Much is Being Done and How Can We Improve?

by Cheryl Zalenski, Assistant Staff Counsel, ABA Center for Pro Bono

*This article was reprinted in Public Lawyer, Vol. 16 No. 1 (Winter 2008).*

At the 2006 Annual Meeting, the ABA House of Delegates adopted Resolution 121A which, in part, urges government attorneys to serve their communities through pro bono and public service activities consistent with applicable rules of professional conduct. The resolution encourages government agencies to adopt written pro bono policies and procedures that include a definition of pro bono, sets forth case approval and conflicts checking procedures and addresses use of office resources. Other suggestions include designating a pro bono coordinator or committee, identifying and addressing any regulatory impediments to pro bono participation, and development of recognition programs.

Following adoption of the Resolution, the ABA Center for Pro Bono, in conjunction with the Government and Public Sector Lawyer Division, developed a survey of government attorneys regarding participation in pro bono as the first step in identifying and implementing strategies to carry out Resolution 121A. The survey was designed to identify current levels of pro bono and community service participation, motivating factors, and obstacles to participation. The results will inform the Center and Division activities in supporting and encouraging pro bono participation by government attorneys.

This article will discuss the results of the survey to date, what they reveal about government attorney pro bono participation, and the lessons to be drawn from participants' responses.

### I. Survey Results

The survey asked respondents about their participation in pro bono and public service, including the types of activity in which they engage and from where their pro bono matters are referred. Respondents were also asked about factors that encouraged or discouraged them from engaging in pro bono. The responses present a snapshot of how government attorneys engage in pro bono work and suggest strategies that may increase the number of attorneys who participate. This section will provide an overview of the responses to the survey.

### Pro Bono and Public Service Participation

The survey began by asking respondents about their pro bono participation. Questions were broken down to reflect the array of pro bono and/or public service participation as set forth in Rule 6.1 (See figure 1).

Respondents indicated that, within the 12 months prior to taking the survey:

- 38% provided pro bono services to persons of limited means or organizations that address needs of the poor.
- 34% provided pro bono services to groups or individuals seeking to secure or protect civil rights, civil liberties or public rights.
- 51% participated in activities improving the legal system or the legal profession.

The number of government attorneys providing pro bono services is

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## From the Chair...

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wisdom from icons like Gary Cooper (“I say the fellows who make the hill on high should stop once in a while to help those who can’t”). In keeping with his clarion calls for individual service, Reagan created the “Presidential Task Force on Private Sector Initiatives”, touting volunteerism as society’s “more humane, more compassionate and more effective [system of] meeting its members’ needs.” After these efforts, it was often assumed that volunteerism was a Republican proposition, in opposition to “big brother” government.

Now, 20 years post-Reagan, it is New York Mayor Michael Bloomberg, a political Independent, who has convened the “ServiceNation Summit” to “address America’s greatest social challenges through volunteer and national service.” “ServiceNation” kicked off its efforts with that summit on September 11, 2008, and established its first “ServiceNation Day” on September 27, 2008. Other groups, like the Taproot Foundation, are also engaged in the non-partisan effort to increase volunteer service. So, by now all political parties have become involved in the call for

individual service.

This range of efforts is good news for our ABA Standing Committee, whose charge is to increase pro bono and public service efforts within our profession so that the legal needs of Americans of limited means can be met. Our latest survey data shows that approximately 70% of America’s lawyers—about 700,000 people—each contribute about 40 hours of pro bono; that totals some 28 million hours of donated volunteer time annually. Though we have every reason to be proud of what American lawyers volunteer, we continually strive to increase the numbers of attorneys who provide service to low income individuals with legal needs.

Unfortunately, volunteerism alone will not bridge the justice gap which engulfs America’s poor. Even if the bar were to double its pro bono efforts, and we were to double the funding for legal services to the poor (very far reaching goals), we would still meet less than half of the legal needs of Americans of limited means. In order to fully meet the legal needs of the poor it will take more than simply an increase in volunteerism.

The First Annual National Pro Bono Celebration will take place on October 25-31, 2009. This national celebration will honor the vast percentage of lawyers

who engage in pro bono and recruit others—hoping to eventually approach universality of lawyer engagement in pro bono. We also hope that we can get other professionals in our communities to add their volunteer efforts to our own. We look forward to taking the grand pronouncements of our multi-partisan leadership and making them a grass-roots reality.

It is to the everlasting credit of the ABA that it places pro bono and public service at the heart of its organizational priorities. The ABA joins with dedicated legal services professionals, devoted volunteers and excellent law firms which treat pro bono clients as if they were CEOs of Fortune 500 companies. Law schools are enthusiastic partners in this effort, too, knowing that they are imprinting into the hearts and minds of law students the importance of service to others.

Like most other battles worth waging, the fight against unequal access to justice might never be won. But if we are to even tread water, we will need the aid of the non-legal community in satisfying the legal needs of the poor. We have the support of our profession, and of the Kennedys, Reagans and Bloomborgs; now we must continue the work of getting the hands-on help of our neighbors on every block.

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## Government

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lower than the overall attorney population.<sup>1</sup> The lower participation rate, however, is expected given the institutional barriers faced by government attorneys, the impact of which is discussed below.

When asked about the source of pro bono matters referred, most respondents indicated that pro bono matters came primarily from a legal services or pro bono

program. The second-most cited source was “Other.” Comments indicated that a large number of “Other” referral sources were

organizations in which the attorney participated as a volunteer (e.g. youth programs, Red Cross, etc.).

### **Incentives, Motivation, and Barriers**

The survey inquired about incentives and motivation for those respondents who participate in pro bono. The survey also inquired about the effect of institutional challenges to pro bono participation, such as

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*If you are interested in participating in the survey, please visit <http://www.surveymonkey.com/s.asp?u=146583205000> The survey takes approximately 3-5 minutes to complete.*

## Pro Bono Policy News

### **Nevada Adopts Emeritus Attorney Pro Bono Rule**

The Supreme Court adopted rule 49.2, effective June 9, 2008, establishing a limited practice rule for emeritus attorneys. Attorneys who are inactive members of the State Bar of Nevada in good standing, or any active or inactive attorney in good standing in any other jurisdiction who meets the requirements of the rule can apply for certification as an emeritus attorney. Emeritus status attorneys may represent, on a pro bono basis, only clients referred to them by legal assistance providers approved by the state's Access to Justice Commission or its designee. For more information on Nevada's new rule, see: <http://www.nvsupremecourt.us/documents/orders/ADKT425Order.pdf>.

### **New Mexico Adopts Emeritus and Non-Admitted Attorney Pro Bono Rule**

On August 29, 2008, the Supreme Court of New Mexico adopted an emeritus and non-admitted attorney pro bono rule incorporated as Board of Bar Examiners Rule 15-301.2. Emeritus attorneys are defined in the rule as persons who are members in good standing of any state bar, admitted to practice for at least 20 years, and who are inactive members of the State Bar of New Mexico; or inactive or active members of another state bar. Non-admitted attorneys refer to individuals who are not members of the State Bar of New Mexico but are admitted to practice in another state and have good standing therein.

Emeritus and non-admitted lawyers may represent, on a pro bono basis, only clients referred to the lawyers by qualified legal services programs. Upon

application, the clerk of the Supreme Court may issue a legal services limited non-renewable three-year license to the emeritus and non-admitted attorneys, except in the case of emeritus attorneys, the license shall be renewable for one term. For more information on New Mexico's new rule, see [http://nmsupremecourt.nmcourts.gov/rules/pdfs/15-301.2\\_\(approved\\_08-29-08\).pdf](http://nmsupremecourt.nmcourts.gov/rules/pdfs/15-301.2_(approved_08-29-08).pdf).

### **Tennessee "4All" Campaign and Adoption of Pro Bono Strategy**

Tennessee has several efforts underway to increase access to justice in the state. The Tennessee Bar Association, under the leadership of President Buck Lewis, has launched a Justice 4All campaign, following the model of the successful campaign in North Carolina. The campaign will involve lawyers and legal organizations across the state in a four-pronged effort to expand access to justice through education, collaboration, participation and legislation. Lewis is asking local bar associations, law schools, judges and lawyers across the state of Tennessee to become involved. As part of the campaign, the Bar Association has produced a DVD highlighting the seriousness of the issue, which it will show at every bar meeting and CLE session over the course of the year. For more information about the campaign, see <http://www.tba.org/4ALL/index.html>.

Concurrently, the Tennessee Bar Association Board of Governors recently approved the Tennessee Pro Bono Strategy, developed by the TBA Access to Justice Committee in consultation with members of the private bar. The Strategy, intended to serve as a working

plan for increasing pro bono in the state, sets out a vision, including full pro bono participation by the private bar and partnership with the private bar. The Strategy also names—as partners in the effort—the TBA Access to Justice Committee, Private Attorney Involvement (PAI) and other pro bono program managers, the Tennessee Alliance for Legal Services (TALS), Tennessee Law Schools, and the Tennessee Supreme Court. It sets forth goals and objectives and implementation strategies that include expanding urban and rural partnerships, expanding alternative pro bono opportunities, and increasing pro bono opportunities through the use of technology. For more information, contact Becky Rhodes, Tennessee Bar Association Access to Justice Coordinator, at [rebecca.rhodes@tncourts.gov](mailto:rebecca.rhodes@tncourts.gov) or 615/741-2687.

### **Katrina Model Court Rule**

New Jersey has become the fifth state to adopt the ABA Model Court Rule for the provision of legal services by out-of-state lawyers following a major disaster. See NJ Rule 1:21-10 (eff. September 1, 2008). Under the new rule, non-New Jersey lawyers working under established bar association or legal services programs can provide free, out-of-court services if the Supreme Court determines that an emergency warrants such services. Fourteen other states are considering adoption of the Model Court Rule. For more information see [http://www.abanet.org/cpr/clientpro/katrina\\_chart.pdf](http://www.abanet.org/cpr/clientpro/katrina_chart.pdf) or contact Tony Barash, Director, ABA Center for Pro Bono, at 312/988-5773 or [barasha@staff.abanet.org](mailto:barasha@staff.abanet.org).

## Government

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regulations or statutes that prohibit practice outside of employment, as well as other possible obstacles to participation. The results indicate that some general conclusions may be drawn regarding both motivation for pro bono involvement and obstacles to involvement.

Respondents indicated that a sense of professional responsibility and personal satisfaction are the primary reasons for participation in pro bono. Awards and CLE credit for pro bono work, on the other hand, have little effect on pro bono participation.

A lack of time and statutory/regulatory prohibitions are the reasons most often cited for not providing pro bono legal services. According to respondents, failure to participate in pro bono is not due to a lack of desire to do so—92.7% indicate that they would participate in pro bono if there were no institutional obstacles such as statutory prohibitions or restrictions or employer discouragement.

The survey also asked respondents to rate a number of listed inducements for their ability to encourage and/or facilitate pro bono and community service work. Top-ranking incentives to encourage pro bono are free malpractice insurance and an office policy that supports pro bono participation. The lowest rated factors are judicial encouragement and financial screening of clients. The factors that would most encourage nonlegal community service are the provision of wide range of opportunities and employer recognition for participation.

### General Observations

Respondents were also given the opportunity to provide any comments they may have regarding pro bono and community service participation. A number of respondents expressed the opinion

### Figure 1. ABA Model Rule 6.1: Voluntary Pro Bono Publico Service

*Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:*

*(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:*

- (1) persons of limited means or*
- (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and*

*(b) provide any additional services through:*

- (1) delivery of legal services at no fee or substantially reduce fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;*
- (2) delivery of legal services at a substantially reduced fee to persons of limited means; or*
- (3) participation in activities for improving the law, the legal system or the legal profession.*

*In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.*

that as government/public sector attorneys, their career was their pro bono contribution. The statement "I consider my practice in some ways to be pro bono publico because instead of working in corporate America and becoming rich I have spent my entire career on the reservation," typifies this point of view.

Several expressed a need for clear examples of the types of pro bono matters that would be permissible. One respondent expressed frustration at the obstacles: "I have always wanted to do more but my employer is concerned about possible conflict

of interest and that the pro bono work will take me away from my other duties. I wish there was more encouragement from management..." Others used the opportunity to again cite and emphasize issues that make pro bono work difficult, such as lack of support resources and conflicts of interest. As one respondent summarized, "I do plenty of volunteer non-legal work with youth groups. Because of statutory limitations, no malpractice insurance, and no resources, I do not want to pursue any pro bono work."

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## Government

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### II. Lessons Learned

The survey results provide some very useful guidance on how to better encourage and facilitate pro bono participation by government attorneys. Both government attorney offices and ABA entities have opportunities to use this information as a part of renewed efforts to support government and public sector lawyers with their pro bono efforts.

### Incentives, Motivation, and Barriers

Survey responses appear to indicate that internal motivation, more than external motivation, is critical to pro bono involvement. While awards, CLE credit for pro bono, and other inducements may be valuable, it is even more important that the ABA, law schools, and the legal community continue efforts to instill a sense of professional responsibility in law students and lawyers. Additionally, creating and offering opportunities that are personally satisfying to the attorney is crucial.

References to statutory/regulatory prohibitions of pro bono participation indicates that a thorough examination of such prohibitions is necessary in order to evaluate whether the barriers are perceived or actual, and whether action is needed to remove any such barriers. Additionally, government attorneys can research applicable statutes and regulations as well as check with their superiors. Where there are prohibitions or restrictions they can be addressed by adoption of a detailed pro bono policy in some cases; in other cases, a change of statute or regulation may be necessary.

Another frequently mentioned barrier to pro bono participation is the lack of malpractice insurance to cover such activities. Pro bono

and legal services organizations commonly provide malpractice coverage to volunteers; those that do so must communicate more effectively the availability of free malpractice insurance for cases that they refer. Individuals wishing to volunteer should check with their local organizations to determine whether coverage is provided. In agencies with a pro bono policy, particularly those that identify suitable pro bono opportunities, creating an inventory of organizations that offer malpractice insurance coverage will facilitate employee pro bono participation.

Government agency adoption of formal pro bono policies and support from top management is critical. Attorneys want the guidance and assurance of written policies that clearly delineate permissible activity before committing to a pro bono opportunity. Additionally, a pro bono policy signals agency support for pro bono generally. Assistant United States Attorney Randy Jones, citing the Department of Justice Policy Statement on Pro Bono Legal and Volunteer Services<sup>2</sup>, is “proud that the Department of Justice recognizes how important it is for federal prosecutors and other government employees to participate in pro bono legal and other volunteer service.” Advocacy for adoption of formal pro bono policies, and the sharing of existing policies, is important to creating a culture of pro bono within government agencies.

Lastly, it is essential that legal services organizations, their volunteers and the ABA continue to educate the government attorney community about the importance of providing legal services to low-income persons. While public and community service are commendable, it is important that the focus of pro bono participation be on providing legal services without a fee to persons of limited means.

Explaining his commitment to pro bono and community service, Mr. Jones says, “Government lawyers have a duty to not only represent our department or agency in court, but a responsibility to go beyond the four walls of our office into the communities where we live and serve. It is important to provide pro bono legal services and participate in non-legal volunteer activities that will help persons of limited means or community based organizations whose mission it is to help those who are less fortunate.”

Obtaining referrals from programs that screen for income and meritorious issues is the most effective way to obtain such matters, as well as providing support in the form of malpractice insurance, staff support, and resources such as office space and stationery.

### III. Conclusion

The survey findings corroborate the importance of written pro bono policies in facilitating government attorney pro bono participation. Identifying and addressing any regulatory impediments to pro bono participation, another recommended action, is also essential to eliminating barriers to pro bono participation. The results emphasize the validity of Resolution 121A's recommendations and the continued need for advocacy and education regarding the ability of government attorneys to provide pro bono legal services.

### Endnotes

- <sup>1</sup> See *Supporting Justice: A Report on the Pro Bono Work of America's Lawyers*, ABA Standing Committee on Pro Bono and Public Service. Available at <http://www.abanet.org/legalservices/probono/report.pdf>.
- <sup>2</sup> The Policy Statement encourages all employees of the Department to set a voluntary personal goal of at least 50 hours per year of pro bono legal and non-legal volunteer service.

## The ABA Military Pro Bono Project

The American Bar Association has launched its new Military Pro Bono (MilPro) Project, an online resource connecting income-eligible, active-duty military personnel and their families to pro bono lawyers in civilian practice. The MilPro Project is a bridge between legal cultures, allowing military legal assistance attorneys new to the world of pro bono, and private bar volunteers removed from military culture, to interact efficiently, from around the country, for the good of active-duty servicemember clients.

Traffic is now moving both ways across that bridge, with military attorneys starting to place cases for their servicemember clients, and private-practice lawyers stepping up in a big way to take them, all powered by an innovative, web-based referral engine custom-made for the program.

Less than two years ago, the MilPro Project was nothing more than a good idea from the Standing Committee on Legal Assistance for Military Personnel (LAMP), born out of recognition that the private bar is highly motivated to help those serving their country in these difficult times, and that military legal assistance was a limited-function resource that, however well delivered, was not designed to reach the full range of civil-law needs of military members. By late 2007, that idea had gained force, with a critical commitment from the ABA Section of Litigation reinforcing the groundwork of the LAMP Committee.

By August of this year, after intensive development work by the ABA project team and its external partners—web host Pro Bono Net and the referral software developer Delaware.net—the new MilPro website, [www.militaryprobono.org](http://www.militaryprobono.org), was



up and running. By September, referred cases were moving through the website to volunteer firms.

A project advisory board comprised of LAMP and Litigation volunteers has helped steer the Project since 2007, and the ABA Center for Pro Bono has delivered critical help in developing a project plan consistent with pro bono principles and best referral practices.

The Project picked up important momentum with the addition of a dedicated Project Director, Jason T. Vail, who has driven the design and development of the MilPro website, led and planned the promotional campaign, and worked to ensure that all project constituent groups are communicating, and that their interests and requirements are being addressed.

The Project's development to date has been augmented by the expert insights of the legal assistance leaders of the five military services. Their guidance has helped ensure that the MilPro case-referral terminology and criteria will optimize the Project's utility for referring military attorneys and their clients, as well as for private-sector volunteers accepting the referrals.

**How the MilPro Project Works**  
The MilPro Project was designed to facilitate the smooth and

effective transfer of civil cases from military legal assistance offices to pro bono law firms. The referral process begins when a referring military attorney (a Judge Advocate or civilian attorney employed by one of the military services) registers on the Project website and, after logging in to the referral system through a unique password assigned to his or her legal assistance office, fills out an online referral form, which is designed to walk the attorney through all of the necessary case information. The referring attorney identifies the applicable area of law, summarizes the facts (with enough specific facts provided to allow a prospective pro bono firm to run an initial conflicts check), and affirms that, upon reasonable investigation of law and facts, good cause exists for referring the case for pro bono assistance. Inherent in the referral mechanism is a recognition that MilPro can succeed for all constituencies only if worthy cases that are legally well-founded find their way into the pipeline, thus ensuring that MilPro volunteer firms are rewarded with cases deserving of their time.

For a case to be referred, the referring attorney must determine both that there is good cause to refer it, on the merits, and that the client is

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## From the Chair...

by Donald J. Guter, RADM, USN (Ret.)

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

This is my first column as the Chair, and I want my initial message to be one of thanks to General Earl E. Anderson, USMC (Ret.) for his outstanding leadership of the LAMP Committee for the last three years, and for his many decades of service to the ABA, to our country, and most especially to the service men and women—and their families—who need our support. General Anderson has always put them first; we will honor him as we continue to carry out our mission with the same devotion, spirit and determination. General Anderson's last message was very kind and overly generous in its introduction of me. I cannot match its eloquence, but I can pay him tribute by continuing to push hard, as he did, for our committee's still unmet goal of attaining military legal assistance as a legislative entitlement and by updating you on the status of the most recent accomplishments of his tenure.

#### The ABA Military Pro Bono Project

General Anderson was very proud of the exceptional progress that was made on this project during his watch. The groundwork was virtually complete when his term expired in August. Now I can report that this program to enable legal assistance attorneys, to refer cases on behalf of eligible active-duty servicemembers, to pro bono volunteers in law firms

all over our nation is up and running. The website that directs referrals is live; volunteers are registering at a healthy pace and our Project Director, Jason Vail, will continue to refine the referral system as we move forward. At your convenience, please visit the website at [www.militaryprobono.org](http://www.militaryprobono.org). The site contains additional information about the Project and offers the opportunity for pro bono attorneys to register to receive cases.

As the program works through its beta phase, aspects of the referral mechanism and other program logistics continue to be developed and refined, but we have seen a great beginning and enough to be quite encouraged that this ground-breaking military pro bono partnership can make a difference for hundreds of servicemembers whose legal needs cannot be readily or fully met by on-base legal assistance attorneys. I thank LAMP's project partner, the Section of Litigation, for its invaluable support.

It is important going forward, however, for military legal assistance attorneys to bear in mind the Military Pro Bono Project was not designed to be and cannot serve as a replacement or outlet for routine military legal assistance services. It is there to refer out good-cause cases not suitable for legal assistance resolution, e.g., a case involving a servicemember based in Florida who requires a court appearance in Kansas City. It also should be emphasized that the volunteer firms who have supported the concept of this program are highly motivated to help, in particular, those who have been deployed for extensive periods to overseas conflicts zones. We hope we see those client referrals reaching the volunteer firms.

#### Model Rule/ELAP

The effort to add priority states to the Expanded Legal Assistance Program (ELAP) roster is ongoing.

ELAP enables military attorneys licensed in other states to appear in a state's courts on a limited basis to represent their servicemember clients on civil matters. The ABA has worked to encourage new or better ELAP programs in North Carolina, Texas, California, Hawaii, Florida, South Carolina and Virginia. Each ABA letter to state's key court or bar officials has been individually tailored to address specific barriers to participation within those states and to provide a military point of contact within the state to facilitate discussion that we hope will lead to adoption of ELAP. The question of adding an ELAP rule is now being seriously considered in Texas, and we are optimistic progress will continue to be made in achieving or enhancing ELAP programs in other priority states.

#### SCRA

I believe it is accepted wisdom that we dodged a bullet recently during consideration of the FY-09 National Defense Authorization Act (NDAA). Those who kept up with the legislative process know that there was a serious attempt to amend the Servicemembers Civil Relief Act to create what could be called a federal law of child custody protection for military members. I am sure that the intention behind the amendment was honorable and was meant to serve the best interest of our military members and their children. If adopted, however, this amendment would have applied federal law to, and imposed federal-question jurisdiction over, family law issues that are governed appropriately by relevant state law and decided in state courts. Only a last minute, intense lobbying effort by our committee expert John Odom and Section of Family Law specialists Patricia Apy and Mark Sullivan staved

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## From the Chair...

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off this ill-advised legislation. We should heed their warning that “disappointed advocates” will not be deterred from revisiting

this or a similar amendment in Congress in the near future. My intention is to move a policy resolution forward for approval by the LAMP Committee, concurrence by the Section of Family Law, which needs to be closely involved, and adoption

by the House of Delegates.

In closing, let me say I am honored by the opportunity to continue to serve you, all of our service men and women, and their military and civilian lawyers through the good work of the LAMP Committee.

## MilPro Website

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financially eligible. Clients are presumed eligible if their pay grade is E6 or below.

Each time a referring military attorney generates a case for referral, the program automatically sends an email to a military “supervising” attorney, designated by that branch as having approval authority for a given set of installations for that branch of services. The case is advanced for referral only when the supervising attorney “affirms” that he or she has reviewed the submission and determined that good cause exists for referring the case going forward. This extra step provides an important measure of quality control at the front end.

Once military supervisor approval is in place, the Project staff initiates the placement process, reaching out to firms in the inventory of project volunteers, also maintained on the website. For example, if a Judge Advocate at Camp Lejeune in North Carolina is looking for a litigator in Kansas City to make a court appearance for a Marine client, the program staff will reach out to one or more listed volunteer firms from the Kansas City area. Once a willing firm qualified in the applicable subject area is engaged, enough case information is passed on to allow the firm to conduct a conflicts check. If the case clears conflicts, the Project refers the case for handling, and the referring attorney is advised to pass along the case file and brief the new

private-sector handling attorney(s) on the case.

The referral system is designed to allow all attorneys involved with a case—the military referring and supervising attorneys and private firm pro bono coordinators and handling attorneys—to have access to the case information online, with the ability to edit and update case data, add notes, and communicate with one another via email in the system. Also built into the case referral software is a milestone feature enabling the Project Director to track case developments and resolution. Milestones that go uncompleted for 90 days will cause the system to automatically notify the Project Director of the need to inquire about case progress. Additionally, case activity reports, capturing and sorting a variety of data elements like case type and originating installation, can be run by project staff, as well as military legal assistance leaders for cases arising in their respective branches. This reporting capability is an essential feature for gauging the overall effectiveness of the program over time, judging its success, and identifying areas where there may be opportunities or need to strengthen coverage over time.

Pro Bono Net, an independent organization that provides websites via a standard template for numerous pro bono and legal services programs nationally, has proven to be an invaluable project partner, integrating ABA MilPro site into the Pro Bono Net

framework and offering guidance on best uses of the web features, which include a library of educational resources for lawyer volunteers, training event listings and a “cause panel” home. The Project plans to develop cause panels of legal experts, by subject area, that referring military attorneys may consult when unsure whether good cause exists to refer a particular case. The Section of Litigation has committed to supporting the development of cause panels for the Project, and the library and training features of the website will be populated as the Project moves forward. Delaware.net, too, has contributed greatly to the success of the Project design by creating a first-of-its-kind online case referral management tool that is extraordinarily flexible and easily customizable to the evolving needs of the Project.

### Current Success and Future Challenges

From the ABA perspective, developing, from scratch, a project linking military legal assistance to the legal pro bono world through a sophisticated new web-referral vehicle was noteworthy enough for ABA President Tommy Wells to feature the Project at his inaugural press conference at the ABA Annual Meeting in August.

Enthusiasm for the Project has been building steadily among its various constituencies, as word of the Project spreads and more military and civilian lawyers are exposed to the sophisticated yet easy-to-use web resource. The

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## MilPro Website

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web-based referral engine may well serve as a model for other pro bono referral projects.

The Project remains in its infancy, however, and there remain uncertainties that must be resolved favorably for the Project to emerge over time as the success everyone hopes for and expects.

*A strong and reliable inventory of pro bono firms of all sizes.* The MilPro inventory of private bar lawyers must attract not only the large firms with proven pro bono records in urban population centers, but also the medium-size and smaller firms from less populous areas. Those less-populated regions are the home of many National Guard and Reserve units that have made extraordinary sacrifices, in terms of multiple deployments overseas. Their members have numerous civil-law needs attendant to extended absences from home and from regular employment. Project Director Vail is working with state-based bar and pro bono organizations to fill out the roster of firm volunteers in those areas. It is essential that the legal community understand that the Project is not merely looking for volunteer lawyers who “feel patriotic,” but firms that additionally have a proven commitment to pro bono and to delivering their best work for this most deserving client group.

*A continued buy-in from the services.* The service branches to date have all supported the Project through their guidance

and suggestions. Going forward, it is vital that services take whatever steps are necessary to ensure that their legal assistance attorneys are aware of the ABA MilPro Project and are encouraged to take advantage of it for appropriate cases. The Project will only be as effective as the quality and quantity of project information received by potential referring military attorneys. In a similar vein, the Project is relying on the commitment of designated military “supervising” attorneys to ensuring that only good cases, for “good cause,” are authorized for placement to volunteer firms.

*A consensus on what the MilPro Project is and is not.* Military legal assistance programs, like the military generally, are under significant operational and budgetary strain more than five years into our nation’s major engagements in Iraq and Afghanistan. The ABA designed the MilPro Project as a way to supplement military legal assistance, not to replace any part of it, and to provide legal help for servicemembers or family members only where military legal assistance attorneys have exhausted all reasonable means at their disposal of resolving the legal problem.

*Serving those who have borne the burden of deployment.* The ABA knows from firm surveys and anecdotal evidence that the private bar is particularly motivated to help those servicemembers who have sacrificed through extensive deployments overseas, particularly to Iraq and Afghanistan. While the Project, for obvious reasons,

cannot categorically exclude servicemember clients who do not fall in that category, the success of the MilPro Project will depend in part on the ability of volunteer firms to receive referrals of clients who have served in those theaters, and by doing so, sacrificed so much for us all. We hope that referring military attorneys and supervisors keep that in mind as they weigh which cases should have priority for requested referrals.

*Maintaining and building internal ABA support and external partnerships.* The commitment of resources and talent by the Section of Litigation has made all the difference in project development to date. The Project must and will continue to build on the Litigation partnership and reach out as needed to others within and without the ABA to ensure rich and thoughtful development of this resource. For example, many family lawyers will surely be needed to handle cases in their area of expertise. For the online library resource section of the site, the Project may look to the service schools and other outside experts for reference materials available to pro bono volunteers.

The success of the MilPro Project to date has been an impressive team effort, and that team will grow and strengthen as the Project extends its reach to a most deserving client population.

*Further information about the ABA Military Pro Bono Project may be found on its website, [www.militaryprobono.org](http://www.militaryprobono.org), or by contacting Project Director Jason T. Vail at [vailj@staff.abanet.org](mailto:vailj@staff.abanet.org) or 312/988-5783.*

### New Quarterly eNewsletter Will Cover Advocacy for Civil Right to Counsel

*Civil Right to Counsel Update* is a new quarterly, free e-newsletter that will keep you informed about the work of the National Coalition for a Civil Right to Counsel and the latest advocacy and research developments. Go to [www.civilrighttocounsel.org](http://www.civilrighttocounsel.org), enter your e-mail address in the lower left corner of the home page, and complete the subscription form. You can check out the inaugural October 2008 issue at [www.civilrighttocounsel.org/news/newsletter](http://www.civilrighttocounsel.org/news/newsletter). For news of litigation, legislative activity, involvement of bar associations and the access to justice community, research on the importance of counsel and the impact of the lack thereof, related conferences and workshops, and more, *subscribe now!*

## ABA and NLADA Announce 2008 Harrison Tweed Awards

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, named for a leader in the promotion of free legal services to the poor, is co-sponsored by the American Bar Association Standing Committee on Legal Aid and Indigent Defendants and the National Legal Aid and Defender Association. Bar associations being honored this year epitomize the wide range of activities that bars engage in to promote access to free legal services for the poor. The awards were presented during the August 8, 2008 annual Joint Luncheon of the National Conference of Bar Presidents/National Association of Bar Executives.

### **Monroe County Bar Association**

The Monroe County Bar Association was recognized for

its leadership and fundraising efforts that resulted in the four civil legal services providers in the county being housed in one location. By co-locating, the programs will realize substantial savings and cost benefits due to a fixed, long-term rental rate and collaborative efficiencies such as shared common areas and personnel. From these savings alone, it is estimated that most of the programs will annually save at least an amount equal to that of the salary of a new attorney. Clients are the true beneficiaries of this effort, for they will no longer be required to travel to different sites for services. The new location has a common reception area where clients receive information and are directed to the appropriate program. Through co-location, the chance that clients will fall through the cracks is considerably lessened, and the opportunity for cooperation and collaboration among the programs is greatly enhanced.

### **Houston Bar Association** The Houston Bar Association

(HBA) was honored for its Equal Access Initiative the bar's ambitious campaign to increase by 25% each year the number of cases handled by pro bono lawyers through the Houston Volunteer Lawyers Program (HVLP). The campaign began in 2007 with an intensive recruitment effort by six teams composed of representatives of the HBA, the Houston Bar Foundation and the HVLP. Each team was responsible for recruiting law firms, corporate law departments and individual attorneys. Those recruited signed a five-year commitment form, pledging to provide representation in a certain number of cases each year, based upon the number of attorneys in their firm or department. Each also designated a pro bono coordinator who works with the HVLP to ascertain that case assignments are received and representation is completed. In its first year of operation, the Equal Access Initiative was extremely successful: the number of low income clients receiving pro bono legal services through HVLP increased by 50%.

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